



U.S. Department of Justice
Executive Office for Immigration Review
Office of the General Counsel

5107 Leesburg Pike, Suite 2150
Falls Church, Virginia 22041

01/11/2022

Mr. Austin Evers
American Oversight
1030 15th Street NW
Suite B255
Washington, DC 20005

Re: 2022-12536

Dear Austin Evers,

This letter is in partial response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) dated 12/22/2021 in which you seek records related to Email correspondence/calendars (CAIJ/CIJ).

A search was conducted and responsive record(s) was/were located. You are granted full access to the record(s). We will continue to process your request.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* <http://www.justice.gov/oip/foiapost/2012foiapost9.html>.

You may contact the EOIR FOIA Public Liaison at (703) 605-1297 or EOIR.FOIArequests@usdoj.gov for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

If you are not satisfied with the Executive Office for Immigration Review's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you

submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

Joseph Schaaf
Supervisory Attorney Advisor (FOIA)



BIA
20-02

Effective: November 10, 2020

To: BIA Legal Staff
From: David H. Wetmore, Chief Appellate Immigration Judge
Date: November 10, 2020

CASE HOLD LIFTED

PURPOSE:	Lifting of temporary suspension of adjudication of certain cases
OWNER:	Board of Immigration Appeals
AUTHORITY:	8 C.F.R. § 1003.1(a)(2)(i)(A) and (e)(8)(iii)
CANCELLATION:	BIA 18-04: Case Hold – <i>Negusie</i>

As the result of the publication of *Matter of Negusie*, 28 I&N Dec. 120 (A.G. 2020), I am lifting the existing hold (temporary suspension of adjudication time limits) on certain cases involving the persecutor bar, whether an involuntariness or duress exists to limit of the bar.

Cases that were placed on hold pursuant to the *Negusie* hold are in the process of being returned for adjudication. If you have questions regarding the circulation of cases with this issue, please see your Senior Panel Attorney or team leader.



BIA
21-01

Effective: October 27, 2021

To: BIA Legal Staff
From: David H. Wetmore, Chief Appellate Immigration Judge
Date: October 27, 2021

CASE HOLD

PURPOSE:	Announce temporary suspension of adjudication of certain cases
OWNER:	Board of Immigration Appeals
AUTHORITY:	8 C.F.R. § 1003.1(a)(2)(i)(A) and (e)(8)(iii)
CANCELLATION:	None

As you are aware, the Attorney General recently referred to himself *Matter of Negusie*, 28 I&N Dec. 399 (A.G. 2021) in order to review the Board's decision.

Given this development, the BIA will temporary suspend adjudication in individual cases where the dispositive issue is whether coercion and duress are relevant to the application of the Immigration and Nationality Act's persecutor bar. *See* INA §§ 101(a)(42), 208(b)(2)(A)(i), 241(b)(3)(B)(i), 8 U.S.C. §§ 1101(a)(42), 1158(b)(2)(A)(i), 1231(b)(3)(B)(i). Each case should therefore be reviewed to determine whether an alternate, legitimate ground for adjudication exists outside this issue.

For any case that appears to fall into this hold category, the attorney should provide a brief statement for the Team Leader which explains why there is no alternative basis for adjudication. The statement should be completed in the BIA Wide Hold Sheet and attached to the JT Adjudication ROP Routing Sheet.



BIA
21-02

Effective: December 16, 2021

To: BIA Legal Staff
From: David H. Wetmore, Chief Appellate Immigration Judge
Date: December 16, 2021

DAVID
WETMORE

Digitally signed by
DAVID WETMORE
Date: 2021.12.16
11:45:33 -05'00'

CASE HOLD

PURPOSE:	Announce temporary suspension of adjudication of certain cases
OWNER:	Board of Immigration Appeals
AUTHORITY:	8 C.F.R. § 1003.1(a)(2)(i)(A) and (e)(8)(iii)
CANCELLATION:	None

As you are aware, the Attorney General recently referred to himself *Matter of B-Z-R-*, 28 I&N Dec. 424 (A.G. 2021), in order to review the Board's decision. This case raises the question of whether mental health may be considered when determining whether an individual was convicted of a "particularly serious crime" within the meaning of 8 U.S.C. §§ 1158(b)(2)(A)(ii) and 1231(b)(3)(B)(ii). The Board determined in *Matter of G-G-S-*, 26 I&N Dec. 339 (BIA 2014), that a person's mental health is not a factor to be considered in a particularly serious crime analysis for immigration purposes.

In light of the above, the Board of Immigration Appeals will temporary suspend adjudication in individual cases where the dispositive issue involves assessing a person's mental health as a factor in determining whether the individual's criminal conviction is for a "particularly serious crime" within the meaning of sections 208(b)(2)(A)(ii) and 241(b)(3)(B)(ii) of the Act. Each case should therefore be reviewed to determine whether an alternate, legitimate ground for adjudication exists outside this issue.

For any case that appears to fall into this hold category, the attorney should provide a brief statement for the Team Leader which explains why there is no alternative basis for adjudication. The statement should be completed in the BIA Wide Hold Sheet and attached to the JT Adjudication ROP Routing Sheet.

Board of Immigration Appeals

Style Manual

A Guide to Drafting Board Decisions

The guidance contained in this manual is updated periodically. Readers should check the BIA Web Page for the most current version.

The guidance contained within this manual is for internal BIA use only and serves as part of the Board's deliberative process of drafting and circulating decisions. This manual is not intended, in any way, to substitute for a careful study of the pertinent law and regulation.

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August 16, 2021

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August 16, 2021

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1 Case Processing

1.1 Types of Decisions

The Board of Immigration Appeals (BIA) is comprised of 23 Appellate Immigration Judges (AIJ), including a Chief Appellate Immigration Judge (CAIJ) and one or two Deputy Chief Appellate Immigration Judges (DCAIJ). 8 C.F.R. § 1003.1(a). When authorized, the BIA may also have temporary Appellate Immigration Judges, who have all the authorities of a permanent AIJ, except the ability to vote on en banc matters. 8 C.F.R. § 1003.1(a)(4). Under the direction of the CAIJ, the BIA uses a case management system to screen all cases and manage its caseload. 8 C.F.R. § 1003.1(e). Under this system, the BIA adjudicates cases in one of three ways:

(a) *Single AIJ decisions.* – The majority of cases at the BIA are adjudicated by a single AIJ. In general, a single AIJ will decide a case, unless the case falls into one of seven categories listed in 8 C.F.R. § 1003.1(e)(6):

- the need to settle inconsistencies among the rulings of different immigration judges
- the need to establish a precedent construing the meaning of laws, regulations, or procedures
- the need to review a decision by an Immigration Judge or DHS that is not in conformity with the law or with applicable precedents
- the need to resolve a case or controversy of major national import
- the need to review a clearly erroneous factual determination by an Immigration Judge
- reverse the decision of an Immigration Judge, other than for an intervening law, regulation or precedent
- the need to resolve a complex, novel, unusual, or recurring issue of law or fact.

(b) *Panel decisions.* – Cases not suitable for adjudication by a single AIJ are adjudicated by a panel consisting of three AIJs. Cases requiring three AIJ review are decided by majority vote and may include dissenting and/or concurring opinions.

Cases are assigned to specific panels pursuant to the CAIJ's administrative plan. The CAIJ may change the composition of the sitting panels and may reassign AIJs at his or her discretion.

(c) *En Banc decisions.* – The BIA may, by majority vote or by direction of the CAIJ, assign a case or group of cases for full en banc consideration. 8 C.F.R. § 1003.1(a)(5). Temporary AIJs participate in en banc discussions, but may not vote. 8 C.F.R. § 1003.1(a)(4). By regulation, en banc proceedings are not favored.

1.2 Clerk's Office Role

(a) *Generally.* – The Office of the Clerk (Clerk's Office) is responsible for managing appellate records and information for the BIA, which includes processing all filings, entering all data related to cases properly into EOIR's database, Case Access System for EOIR (CASE), and processing all correspondence pertaining to cases before the BIA.

The Clerk's Office is headed by the Chief Clerk of the BIA. Cases in which the respondent/applicant is not detained are processed by two regional teams (East and West), depending on the location of the Immigration Court. Cases involving detained respondent/applicants are processed by the Priority Case Management team. The Motions team processes both detained and non-detained motions for the BIA. The Docket team processes adjudicated cases and serves decisions on the parties. Various other teams provide management and administrative support to all operations.

(b) *Processing.* – When a properly filed appeal or motion arrives at the BIA, it is date-stamped and entered as soon as practicable into CASE, and a receipt is sent to both parties. The BIA will then obtain the record of proceedings (ROP) from the Immigration Court. In appropriate cases, a briefing schedule is provided to both parties. Also, in appropriate cases, a transcript is prepared, and copies are sent to the parties along with the briefing schedule. After the briefs are received or the briefing schedule expires, the case is forwarded to the Screening Panel for screening by the paralegals. See Appendix B (BIA Workflow).

With respect to visa petitions, once an appeal or motion has been properly filed with DHS and the petition record is complete, DHS forwards the petition record to the BIA for adjudication of the appeal or motion. Briefing schedules, if any, are issued by DHS and are completed prior to the forwarding of the record to the BIA. After the BIA receives the record from DHS, the BIA issues a notice to the parties acknowledging it has the record and the appeal.

(c) *Paralegal referral.* – Appeals and motions that are time or number-barred are routed to the paralegal team for the preparation of a BIA decision. Waived appeals

and direct appeals from most *in absentia* decisions are also routed to the paralegals. If the paralegal determines that the case should be adjudicated on the merits instead of being dismissed or denied on jurisdictional grounds, the case is returned to the Clerk's Office for continued file preparation and processing for adjudication. Motions to withdraw the appeal or motion are also routed to the paralegals for preparation of a BIA decision.

1.3 Case Screening Process

(a) Paralegal screening. – The paralegals screen all cases received from the Clerk's Office for adjudication by the Screening and Merits Panels.

(i) Issue identification. – During the screening process, the paralegals identify the general issues raised in a particular case, enter the relevant information into CASE, and attach an annotated "Issues Sheet" to the front of the Record of Proceedings (ROP). See BIA Webpage (Forms Book). The paralegals then forward the cases to the Screening Panel support staff for attorney assignment.

(ii) Adjudication readiness. –

(A) Not ready. – If a determination is made that the ROP is not ready for adjudication, the ROP is sent back to the Clerk's Office for further processing as identified on the Quality Problem Correction Form. See BIA Webpage (Forms Book). The Supervisory Case Management Specialist (SCMS) for the Panel or designated supported staff will enter a notation in the Comments section in CASE that the case has been sent back to the Clerk's Office.

(B) Ready. – On the "Issues Sheet," the paralegals also note the respondent/applicant's country of origin, identify oral argument requests that must be acted upon, and note any particular issues of which the attorney assigned to the case should be aware. They may also complete certain informational memoranda or checklists, when warranted, which are placed inside the left front cover of the ROP. The ROPs are then forwarded to the Screening Panel's support staff, who assign the cases to the attorneys and start the case completion goal clock in the CASE system. See Appendix B (BIA Workflow).

(b) Screening Panel. – The Screening Panel is comprised of two panels: Panel 3 and Panel 4. Each panel is led by a Senior Panel Attorney (SPA) and is comprised of Team Leaders (TLs), attorneys, and paralegals. Both panels are supported by a Supervisory Case Management Specialist (SCMS) and support staff.

(i) **Paralegals.** – The paralegals not only screen cases for adjudication by attorneys, but also draft decisions in cases involving straightforward jurisdictional issues (including case appeals, motions, IJ-MTRs and visa petitions). Paralegals forward cases with more complex jurisdictional issues to the Paralegal TL for review by or assignment to a Panel 4 attorney.

(ii) **Attorneys.** – The attorneys assigned to either panel of the Screening Panel screen designated cases to determine whether they should be referred to the Merits Panel. If a case is not referred, the attorney drafts a proposed decision for consideration by an AIJ panel.

(c) **Merits Panel.** – The Merits Panel is comprised of two panels: Panel 1 and Panel 2. Each Panel is led by a SPA, and consists of TLs and attorneys. Both panels are supported by a SCMS and support staff.

Cases that are referred from the Screening Panel are sent to the Merits SCMS for assignment to attorneys who prepare a proposed decision for consideration by a panel AIJ.

(d) **Circulation.** –

(i) **Proposed decisions.** – Decisions drafted by attorneys and paralegals are scanned to “circulation” and placed in an area for review by the support staff before being circulated to AIJs. The support staff makes any necessary corrections to proposed decisions, enters the circulation date in CASE, scans reviewed cases to a central AIJ location, and delivers the cases to the AIJ Legal Assistants to distribute among the AIJs. See Appendix B (BIA Workflow).

(ii) **Appellate Immigration Judge review.** – Circulated proposed decisions are reviewed and adjudicated by either a single AIJ or three AIJ member panel in accordance with the regulations. See Chapter 1.1 (Types of Decisions). At the direction of an AIJ, the AIJ Legal Assistants make any necessary changes to the proposed decision, or return the case to the attorney or paralegal to revise and recirculate the revised proposed decision for consideration. An AIJ signs the final approved decision. Signed decision cases are scanned to and processed by the Clerk’s Office Docket team. See Chapter 1.2 (Clerk’s Office role).

(iii) **Three AIJ Panel referral.** – By regulatory default, all cases are assumed to be a single AIJ decisions. Cases are converted to a three AIJ panel decision when either the attorney drafting the proposed decision recommends that the case be converted at time of circulation (via a three AIJ panel review referral sheet attached to the circulation sheet), or an AIJ decides

that the case should be converted. See Chapter 1.8(a) (Three AIJ Panel Review referral sheet); BIA Web Page, Forms Book.

1.4 Case Completion Deadlines and Goals

Case completion deadlines and goals have been established by the Department of Justice, Director, and Chief Appellate Immigration Judge (CAIJ) for certain categories of cases adjudicated by the BIA. Some of those deadlines and goals are set by regulation, other by agency determination. This section discusses the major case completion deadlines and goal types. In addition to these established priorities, temporary priorities may be established from time to time in response to special directive or exigent circumstances and not captured in this listing.

(a) *Detained/RUSH cases.* – In general, cases involving detained respondent/applicants are the BIA's highest priority.

(i) *GPRA cases.* – The acronym GPRA (Government Performance and Results Act of 1993 and Government Performance and Results Modernization Act of 2010) is used herein to refer to the BIA's goal to complete appeals filed by detained respondent/applicants within 150-days from receipt of the Notice of Appeal. The BIA's GPRA goal for processing detained respondent/applicant case appeals is a performance measure reported by EOIR, through the Department, to Congress.

(ii) *Other detained case types.* – Although outside the ambit of the GPRA goal, bond appeals, and motions involving detained respondent/applicants are treated by the BIA as detained case appeals and are to be completed within the 150-day goal.

(b) *Priority cases.* – Certain cases involving non-detained respondent/applicants warrant expedited treatment for reasons of good government. Examples include federal court remands or a case which has been considered en banc. Non-detained cases that are designated as "priority cases" have a tag placed on the ROP and/or are delivered to the assigned attorney or paralegal with instructions to expedite.

(c) *Non-detained appeals.* – By regulation, all appeals (including visa petition appeals) have a 90-day deadline for single AIJ decisions and a 180-day deadline for three AIJ panel decisions. All non-detained appeals are therefore subject to these deadlines. See 8 C.F.R. § 1003.1(e)(8).

(e) CASE Information on the 90-day/180-day clock. – More information on CASE is provided later in this Chapter, but the image below is a snapshot from CASE showing where the “Dec. Due” field (highlighted for illustrative purposes only) is located on the component bar of the Appeals Tab.

RDC41 | MintonA | CASE1 | EOIRDB | EOIR-SQL-DCE32 - Internet Explorer

CASE MANAGER

REPS / **APPEAL** / ACTIONS / DISPOSITION / COMMENTS / COMPETENCE

Gen | Priority | Fee | ROP | Trans | Brief | Oral | Docket | Hold | Adj | Extn | Alty |

BEL Rec'd at EOIR: 06/26/14 Case Type: Removal 90-day/180-day clock Admin Site: HAR
 Lodged at EOIR: Custody: Released RoP Req. On: 02/09/2016
 ROP Location: BIA BOARD MEMBER/MAINNA-OFFICE Due On: 02/11/2016

MAINNA-OFFICE Last Circulated: 10/19/2016 App./Mot. Filed: 02/08/2016 by Allen INS Code: HAR
 Base City: HAR BIA Proc. Type: Case Appeal Priority: n/a
 Hloc: HAR Decision Date: n/a Dec. Due: 11/05 01/17/2017
 SIL Status: n/a Atty. Assigned: Decision: n/a

(i) **Extension.** – Where there are exigent circumstances, the CAIJ may extend the time to complete the adjudication of a case past the 90-day or 180-day deadline, but only up to an additional 60 days. Requests for an extension must be initiated by either an AIJ or a SPA when there is a compelling need. Also, the request must explain why this specific case needs an extension and cannot be based on general workload considerations.

(ii) **Hold.** – The CAIJ may authorize the temporary suspension of the 90-day or 180-day deadline for an individual case or group of cases where the BIA is awaiting upcoming case law, statute, regulation, or publication of a BIA decision.

(A) Individual case. – Requests to place an individual case on “hold” must be initiated by an AIJ, the Director of Operations, a SPA, or a Senior Legal Advisor (SLA). The request must articulate why there is no alternative basis for adjudication.

(B) *En banc* case. – Cases referred by a panel for en banc consideration are eligible for temporary suspension of the adjudication deadlines. Cases not selected for an en banc conference resume normal processing.

(C) BIA-wide hold. – Where a group of cases may be substantially impacted by impending case law, statute, or regulation, the CAIJ may issue a BIA-wide hold.”

For any case that warrants a hold as described in the issuing CAIJ’s Memorandum, an attorney must attach a brief statement for the TL explaining why there is no alternative basis for adjudication. The statement should be attached the BIA Wide Holds Routing Sheet. See BIA Web Page, Forms Book.

(g) Work prioritization. – Attorneys and paralegals are expected to prioritize their caseload and should consult a supervisor whenever there is uncertainty about a priority, confusion over a due date, or the possible need to digress from general practice. When a case is subject to more than one priority, the earlier goal or deadline controls when the case should be completed.

Attorneys and paralegals are also responsible, when prioritizing and circulating cases, for ensuring that AIJ have sufficient time to review their research and the proposed decisions. Supervisors use the processing deadlines and priorities in making case assignments, and expect that attorneys and paralegals will identify applicable deadlines and priorities and circulate cases to the AIJ in accordance with them, so that the cases may be completed in a timely fashion. Questions that arise regarding case deadlines and priorities should be directed to a TL or SPA.

1.5 Case Identification Tags

To assist the BIA in completing cases in a timely fashion, the Clerk’s Office and the support staff place tags on the categories of cases listed above. These tags help the legal staff determine the level of priority to give to a particular case.

(a) Yellow tag (*RUSH detained cases*). – A yellow tag usually indicates that the respondent/applicant is being detained at government expense. The 150-day GPRA deadline is hand-written on the tag. In addition, the word “AUTOSTAY” along with the 90-day automatic stay deadline is hand-written on the tag in applicable DHS bond appeal cases.

(b) Green tag (*regulatory deadline*). – A green tag is used to identify the regulatory deadline for a case. This tag has spaces for two dates: one for the 90-day regulatory adjudication deadline (single AIJ) and another for the 180-day deadline (three AIJ panel). See 8 C.F.R. § 1003.1(e)(8). The 90-day due date is identified on the tag unless and until the case is converted to a three AIJ member panel case.

(c) Federal court remand. – A tag with “FCR” stamped on it indicates a federal court remand case, i.e., a U.S. District Court or a U.S. Court of Appeals has remanded the case to the BIA for further action.

(d) Blue tag (Congressional Interest). – A blue tag indicates that a member of Congress has expressed an interest in the resolution of a particular matter. The tag is for informational purposes only and may not influence the adjudication. The tag serves only to remind staff to be extra vigilant about timely completion of that case.

(e) Dual tags. – Some cases may have more than one tag. For example, a detained, single AIJ case would have two tags: Yellow (150-day GPRA goal date) and Green (90-day regulatory deadline). In such cases, the due date would be the earlier of the due dates listed on the tags.

(f) Other tags. – Other color tags may sometimes be used to reflect that the case needs to be expedited, sent to the Certification Unit, or is subject to some other special deadline or action to be taken. Attention should therefore be paid to any and all tags appearing on an ROP.

1.6 High Profile Cases

(a) Generally. – A case may be considered high profile (or potentially high profile) when:

- public figures are involved
- the case or subject has already generated press attention or publicity
- the case involves an issue of intense public, press, or Department interest

(b) Effect on adjudication. – The fact that a case is or may be high profile is not relevant to how that case is adjudicated and should not influence drafting or the result in a decision. The purpose behind designating a case as high profile is to allow the CAIJ to alert the Director of the issuance of decisions of potential public attention.

(c) Procedures for High Profile cases. –

(i) Identification. – When an attorney assigned to a case determines that the case is or could be high profile, the attorney should promptly notify his or her supervisor. If the supervisor agrees, the SCMS for the Panel will enter a notation in the Comments section in CASE that the case is an “HPC” and

include a notation requesting that the Docket team send a copy of the signed decision to the attorney, TL, and SPA immediately after its issuance.

(ii) *Proposed decision.* – When the proposed BIA decision is ready for circulation, the drafting attorney must include the instruction below the “Special Instructions to Docket” section of the applicable circulation sheet:

“Send a copy of the signed decision to the [attorney], [TL], and [SPA] immediately after issuance.”

(iii) *Memo to the SPA.* – In a short memo, the attorney should identify the reason the case is deemed or could become high profile, provide a succinct summary of the facts and proposed holding of the case. The short memo should be provided to the SPA, with a copy to the attorney’s TL (but *not* to the AIJs), when the case is ready to be circulated, under the assumption that the proposed decision will be approved and issued as drafted. Thus, the memo should refer to the BIA “decision,” and not “draft” or “proposed decision.” If the decision is materially changed, the attorney should provide the SPA and TL with a revised memo when the case is recirculated.

(iv) *High Profile case cover sheet.* – A High Profile Case cover sheet *must* be stapled on top of the circulation sheet. See BIA Webpage, Forms Book.

(v) *Bring the case to SCMS to circulate.* – The attorney should not put the case directly on the circulation table but hand-deliver it to the SCMS as a safeguard against delay or misplacement.

(vi) *Monitor circulation.* – The attorney should monitor that case’s circulation through CASE/ROP Location as a safeguard against delay or misplacement.

(d) *AIJ procedures for High Profile cases.* – In most instances, the potential for a case to become a high profile will be spotted first by the drafting attorney. When an AIJ is the first to spot a possible high profile case, the AIJ should advise the Panel’s SPA.

(e) *Notice to the Chief Appellate Immigration Judge (CAIJ).* – When the decision for the case is signed, the SPA will deliver the ROP and decision to the CAIJ or DCAIJ. In turn, the CAIJ or DCAIJ will assess only whether the Office of the Director needs to be notified of a possible high profile case before the case is routed to the Clerk’s Office Docket team for issuance of the decision.

1.7 Issue Identification

While reviewing the record, the attorney and paralegal should make note of the issues that must be addressed by the BIA to resolve the case.

(a) *Jurisdictional issues.* – As a general rule, cases involving jurisdictional issues will have been screened. Check for notations on the “Issue Sheet” or memos attached inside the left front cover of the ROP to see any potential jurisdictional issues, or whether a determination was made with regard to a jurisdictional question.

Most commonly, jurisdictional issues arise where:

- the appeal is untimely
- the motion is untimely or number-barred (especially where the respondent/applicant claims an exception)
- the appeal has been waived (especially where the respondent/applicant claims waiver was not “knowing and intelligent”)
- the appeal or motion was withdrawn
- the case is appropriate for summary dismissal under 8 C.F.R. § 1003.1(d)(2)

In addition, the CO Screening Panel Routing Sheet lists types of cases that are considered to involve jurisdictional issues. See BIA Webpage, Forms Book (CO Screening Panel Routing Sheet).

(b) *BIA-wide holds.* – Cases may be placed on “hold” by the CAIJ. 8 C.F.R. § 1003.1(e)(8). See Chapter 1.4(f) (Extension and suspension of 90-day/180-day clock). Attorneys and paralegals should stay current on which categories of cases have been placed on “hold.”

(c) *High profile case.* – See section 1.6 of this Chapter.

(d) *Dispositive issues on appeal.* – Attorneys and paralegals must carefully review the record and appellate filings to identify issues on appeal. The building blocks of review are:

- the proceeding type (removal, deportation, exclusion, etc.)
- the procedural posture of the case (appeal, motion, etc.)

- the Immigration Judge's decision (especially the issues expressly decided by the Immigration Judge)
- the Notice of Appeal (in particular, the allegations of error specified by the appealing party)
- appellate briefs (the issues specifically argued and the challenges to the Immigration Judge's decision, including due process arguments, etc.)
- a motion to remand (and the basis for the motion)

1.8 Three AIJ Panel Review Referral Sheet

A Three AIJ Panel Review referral sheet must be completed whenever cases are to be converted from a single AIJ decision to a three AIJ panel decision. See Chapter 1.1 (Types of Decisions); Chapter 1.3(d) (Circulation). The case must fall within one of the seven categories listed below:

- settle inconsistencies among the rulings of different Immigration Judges
- establish a precedent construing the meaning of laws, regulations, or procedures
- review an Immigration Judge or DHS decision that is not in conformity with the law or applicable precedents
- resolve a case or controversy of major national importance
- review a clearly erroneous factual determination by an Immigration Judge
- reverse the decision of an Immigration Judge, other than for an intervening law, regulation, or precedent
- the need to resolve a complex, novel, unusual, or recurring issue of law or fact.

In addition to identifying the reasons for the referral, the attorney should provide a summary of the case.

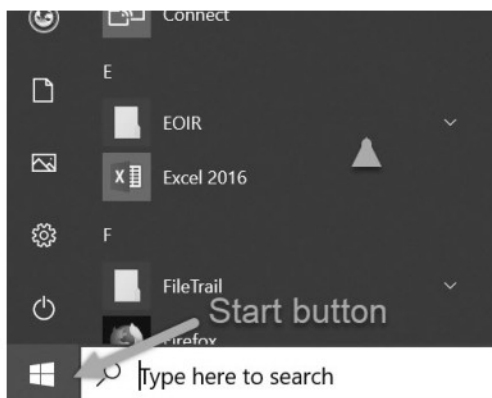
Fillable Three AIJ Panel Review Referral sheets are available on the BIA Webpage, Forms Book.

2 Record of Proceedings

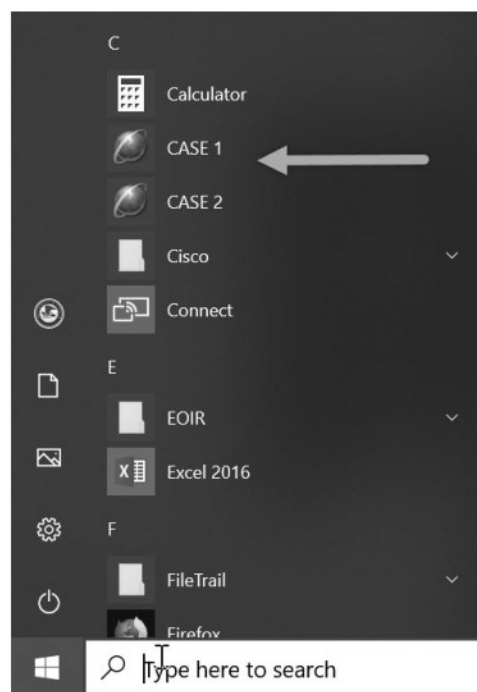
2.1 CASE

EOIR's database for case processing is the CASE system. Information about Immigration Court proceedings below is recorded in this database by court staff, and by the time legal staff receive a case, the Clerk's Office will have entered the relevant BIA information into the system. All new attorneys and paralegals receive training on CASE. The following introduction is provided here as a quick reference.

(a) Access. – CASE can be accessed through the “start” button on the taskbar (lower left-hand side of the computer screen). Select either “CASE 1” or “CASE 2” from the list of available programs.

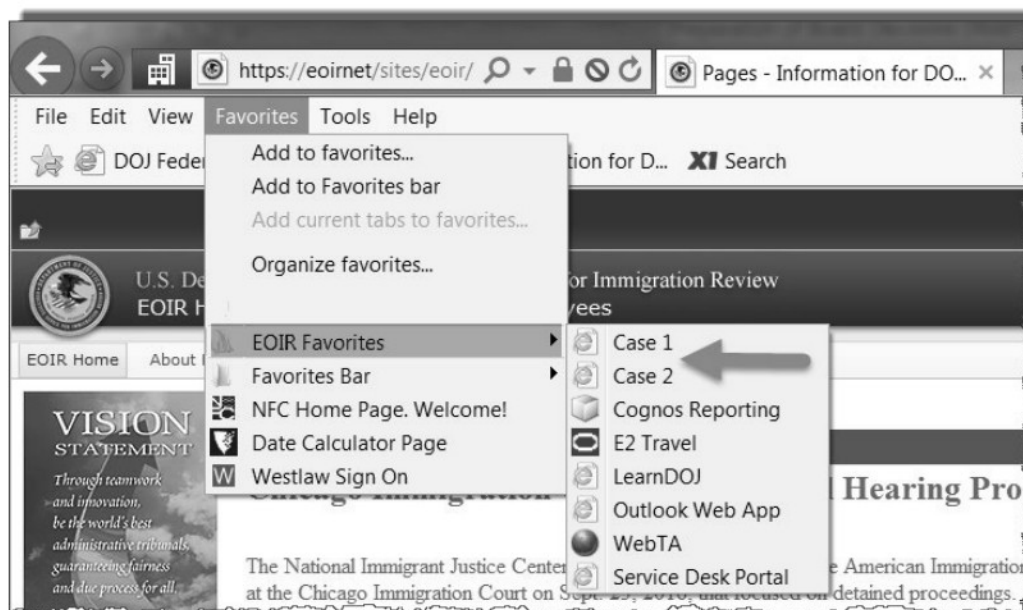


Step 1



Step 2

Alternatively, CASE can be accessed through the Internet Explorer icon and taskbar. Select “Favorites,” then “EOIR Favorites” from the dropdown menu. Select either “CASE 1” or “CASE 2” to open a session.



(b) Login. – Use your Windows “UserName” and password to log into CASE. Once logged into CASE, click on “Case Manager,” toolbar button then type the Registration Number (A#) in the space provided. CASE requires a 9-digit number. When working with an 8-digit A#, add a “0” to the front number. For example: 12-345-678 becomes 012-345-678.

CASE MANAGER

CASE SELECTION

To Search for a case: Please enter the respective search criteria, then click the 'SEARCH' button.
 8-Digit A-Number: When searching for a case that uses an 8-Digit A-Number, add a leading zero to the front of the 8-Digit A-Number.
 To Add a Case: Please enter the A-Number, Charging Document Date and Case Type, then click the 'SEARCH' button.
 To Add a Rider: Please enter the A-Number, Lead A-Number, and the Lead's Charging Document Date, then click the 'ADD' button.

CASE SEARCH CRITERIA

A-Number: A (123-456-789 or 123456789)
 Lead A-Number: A
 Charging Document Date:
 Case Type:

(c) Immigration Judge decisions. – Generally, once an A# is entered, a screen will appear showing all Immigration Judge proceedings that are pending and/or completed for that particular respondent/applicant. For most cases, the only entry will be a “Case Appeal” or “IJ-MTR appeal,” but where there are multiple types of proceedings, be certain to select the proper one.

The image below is an example of a case with one entry - a Case Appeal:

06/06/08 IMMIGRATION(DET) RDN | REMOVAL - 01/16/14 | RELEASED

Charging Doc. Date (Type)	Proc. #	HLoc	Name
06/06/08 (RMV)	2	DET	

	I	U Dec.	U Dec. Date	Type	U	Base City	Hearing	BIA Dec.Date	Dec.Code
2	L	X	01/16/2014	Case Appeal	RDN	DET	DET		

Ref#:

The image below is an example of a case with multiple entries - a Case Appeal and an MTR BIA-REI (motion requesting the BIA to reinstate proceedings or reissue a prior decision):

03/09/10 (KAN) PD1 | REMOVAL - 10/23/13 | NEVER DETAINED

Charging Doc. Date (Type)	Proc. #	HLoc	Name
03/09/10 (RMV)	1	KAN	

	I	U Dec.	U Dec. Date	Type	U	Base City	Hearing	BIA Dec.Date	Dec.Code
2	L	V	10/23/2013	Case Appeal	PD1	KAN	KAN	05/06/2015	ADM
3	L	V	10/23/2013	MTR BIA - REI	PD1	KAN	KAN		

Ref#:

In this instance, selecting “Case Appeal,” will open the “Appeal” tab screen where attorney/paralegal case assignment can be verified, the completion date can be checked, receipts or non-receipt of documents can be confirmed, and case processing information can be obtained.

Charging Doc. Date (Type)	Proc. #	HLoc	Name	U Dec.	U Dec. Date	Type	U	Base City	Hearing	BIA Dec. Date	Dec. Code
01/05/14 (RMV)	2	HLG		X	08/08/2016	Case Appeal	DA	HLG	HLG		

Ref#:

Under the Appeal tab, there is a “Dec. Due” field which shows whether the case is a single AIJ case or three AIJ member panel case, and how many days remain to adjudicate the case before the due date.

The “Comments” tab contains notations regarding filings that may have been received since the case was assigned, and need to be retrieved and added to the ROP. Attorneys and paralegals should always check this tab both upon receiving the case and before circulating. The “Comments” tab will generally appear red if there are notes, but it is wise to check it regardless.

Upon receiving a case, attorneys and paralegals may verify that the case has been properly assigned to him or her by typing the 9-digit A# into CASE.

Case Type	Custody	ROP Location	App/Mot. Filed	BIA Proc. Type	Decision Date	Dec. Due
Withholding Only	Detained	BIA BOARD MEMBER/MANNA-OFFICE	12/12/2016 by Aken	Case Appeal	n/a	1/72 05/17/2017

Case Assignment:

90/180-day adjudication clock

(d) DHS decisions. – The BIA has appellate jurisdiction over a select number of DHS decisions, but the vast majority of DHS decisions reviewed by the BIA are family-based visa petition appeals (historically referred to as District Director or “DD”

appeals). After the A# is entered, select “DDC – DD Appeal” from the Case Type drop down menu, as shown in the image below.

CASE MANAGER

CASE SELECTION

To Search for a case: Please enter the respective search criteria, then click the **SEARCH** button.
 8-Digit A-Number: When searching for a case that uses an 8-Digit A-Number, add a leading zero to the front of the A-Number.
 To Add a Case: Please enter the A-Number, Charging Document Date and Case Type, then click the **ADD CASE** button.
 To Add a Rider: Please enter the A-Number, Lead A-Number, and the Lead's Charging Document Date, then click the **ADD RIDER** button.

CASE SEARCH CRITERIA

A-Number: A 123456789 (123-456-789 or 123456789)
 Lead A-Number: A
 Charging Document Date:
 Case Type: Please Select One
 AOC - Asylum Only Case
 CDR - Continued Detention Review
 CFR - Credible Fear Review
 CSR - Claimed Status Review
 DCC - Departure Control
DDC - DD Appeal
 DEP - Deportation
 EXC - Exclusion
 NAC - NACARA Adjustment
 REC - Recission
 RFR - Reasonable Fear Case
 RMV - Removal
 WHO - Withholding Only

ADVANCED **SEARCH**

The image below is an example of a DHS decision, which is entered in CASE as a DD Visa case type, with only one entry:

209-203-919 | DD APPEAL | NEVER DETAINED |

Charging Doc. Date (Type)	Proc. #	HLoc	Name	Alias	U Completion (Date)
N/A	N/A			N/A	N/A

U Dec.	U Dec. Date	Type	U District	Office	BIA Dec. Date	Dec. Code
		DD Visa	CSC	CSC		

ADD DD **Ref#:** **OPEN CASE**

Click on “DD Visa” under Type links to view the “Appeal” tab screen.

Case assignment and other information can be found under the Appeal tab, as depicted below.

2.2 Responsibility for Tracking (Scanning) and Maintaining ROPs

(a) Generally. – Once a ROP has been received by an attorney or paralegal, it is that person’s responsibility to ensure that the ROP in their possession is handled properly, and stored properly. Every ROP at the BIA (with rare exception) has a bar-code label affixed to the file tab. This label provides the A#, the name of the respondent/applicant, the type of proceeding, and which volume of the ROP that particular file is (e.g., the second volume of a case where a motion has been filed with the BIA will reflect “MTR BIA – ROP”). Every attorney and paralegal workstation should have a bar-code scanner and each person is responsible for scanning each ROP in his or her office and/or possession.

(b) Scanning. – It is mandatory that an ROP be scanned whenever it changes physical location and/or staff assignment. An ROP therefore must be scanned whenever sending the ROP to any other location. All volumes of a particular ROP must be scanned and kept together. If an attorney or paralegal is working offsite, he or she must scan every ROP folder in his or her possession to the next destination, whether the file is moving between offsite and onsite locations or between different onsite locations.

(i) Scanning Procedures for the movement of ROPs. – ROPs should be scanned according to the following procedure. (This section covers only general guidance regarding scanning from one location to another.)

1. Log into CASE, and access the “Other Programs” module.
2. Find the row for “Barcode Search,” and click on “Click to Launch.”
3. Once “Barcode Search” loads, click the “View My Cart” button.

4. Verify that the cursor is located in the box labeled “Scan Barcode or RFID.” If not, click in the box to move the cursor before beginning scanning.
5. Scan all the barcodes in the file. Verify that all barcodes appear in the cart scan window.
6. Click the “Check Out” button.
7. From the “Check Out” window, select the “Location.” All attorneys and paralegals are located under their Attorney or Paralegal Team.
8. Select the “Check Out To” field. The “Check Out To” field is filtered by Location (e.g., Attorneys show up on their Team). When selecting a destination in the drop down menu, take careful note whether it is a Home or Office location.
9. After verifying that all files are there, click on the “Check Out” button to complete the move. The screen will then close, and the file location will be moved.

(ii) Scanning tips. – Below are some scanning tips:

- On the “Check Out” screen, unchecking “Remove from Cart” before clicking the “Check Out” button will display the details of the move. Click the “Remove” button before scanning another set of files. (Otherwise, the original set of ROPs may be assigned to the wrong location.)
- On the “Check Out” screen, the red “R” means required. Do not use the “Due Back Date” field.
- EOIR does not use the “Check In” functionality.

(c) Locating a Scanned ROP. – It is possible to locate a case in CASE through “Case Manager.” Log into CASE, and access the “Case Manager” module.

1. From “Case Manager,” search for the A#.
2. Click on the A# hyperlink.

3. Once opened, the file location is displayed in the grey areas at the top of the screen under “BIA ROP Location,” as depicted below.

CASE MANAGER		
REPS	APPEAL	ACTIONS
DISPOSITION	COMMENTS	COMPETENCE
(ase) DUIEL	Rec'd at EOIR: 12/19/12 Lodged at EOIR:	Case Type: Removal Custody: Released ROP Location: BIASLA/MINTONA-OFFICE
ONA-OFFICE 10/25/2016	Last Circulated: n/a Base City: TAC Hoc: AIR S/L Status: n/a	App./Mot. Filed: 06/27/2016 by Other BIA Proc. Type: Circuit Court Remand Decision Date: n/a Atty. Assigned: AMM

(d) ROPs taken offsite. – The “Employee Agreement Governing Removal of Records of Proceeding from BIA Offices” specifies when and how ROPs may be removed from the workplace. See BIA Webpage, Executive Officer (Flexiplace ROP Removal Agreement and Flexiplace Article 32). Certain ROPs may *never* be removed from BIA workspace, including, but not limited to, a case that involves a high profile person or matter, or is associated with classified information. For example, a case that has been identified as a Secure Access Case (i.e., case involves classified documents or information) or is subject to a Protective Order issued by an Immigration Judge may not be removed from BIA workspace.

(e) ROP Routing Slip. – Whenever an ROP is to be forwarded to other BIA or EOIR staff, the person who has possession of the ROP must scan the ROP to the receiving person, complete a ROP Routing Slip, and place it on the ROP. See BIA Web Page, Forms Book (ROP Routing Slip).

(f) Incoming correspondence. –

(i) Cases pending before the BIA. – When correspondence or a filing is received by the Clerk’s Office relating to a case pending before the BIA, the document is forwarded to the attorney or paralegal assigned to the case, with a Document Routing Sheet advising whether to file the correspondence in the record or to return the ROP to an individual designated on the pink sheet for further action. A notation should be made in the “Comments” section of CASE when this is done. Occasionally, the correspondence may need to be reviewed or handled by a SLA or other member of BIA staff, in which case the ROP and correspondence must travel together. If the attorney or paralegal has been instructed to deliver the ROP to another individual, it should be properly scanned and forwarded to that person via hand-delivery or intra-office mail. See subsection (d) above. The ROP will be returned to the attorney or

paralegal assigned to the case as soon as the correspondence has been addressed.

(ii) Cases not pending before the BIA. – There are times when correspondence or a filing is received by the Clerk's Office that is related to a case that has been completed, i.e., BIA decision issued. Depending on when correspondence/filing is received, or the nature of the document, the Clerk's Office will take one of the following actions:

1. If the document is received before a case is completed but it not associated with the case prior to completion, the Clerk's Office will route to to a designated location for Panel management for non-associated review and processing.
2. If the document is received after a case is completed, the Clerk's Office will return it to the sender with the appropriate response and annotate CASE accordingly.
3. If a motion is received after a case is completed, the Clerk's Office motion team will process.

(iii) Cases never pending before the BIA. – There are also times when the Clerk's Office receives correspondence or a filing related to a case that has never been before the BIA. Depending on the nature of the correspondence or filing and/or the status of the case, the Clerk's Office will either forward the material to the appropriate Immigration Court or USCIS, or return it to the sender with an appropriate response.

(g) Monitoring CASE. – Because correspondence and filings do come in after a case has been assigned, attorneys and paralegals should always re-check the "Comments" tab in CASE before circulating any proposed decision. It is the responsibility of the person assigned to the case to ensure that the record is complete and that all correspondence received to date has been reviewed and addressed, for so long as the ROP remains in his or her possession.

2.3 Review of the ROP

(a) Generally. – One of the most important tasks facing BIA attorneys and paralegals is to ensure that the BIA has a complete and accurate record in any given case. This involves reviewing both the physical ROP and checking CASE to ensure both that the information the Clerk's Office has entered is correct and that everything received by the BIA has been connected to the record. There is an Attorney Case

Processing Checklist to assist attorneys in conducting a complete and thorough review of the record. See BIA Web Page, Forms Book.

(b) *What to expect in the ROP.* – The ROP contains everything that has been submitted pertaining to the proceeding before the Immigration Court and the BIA. The Clerk’s Office identifies essential correspondence received with marked colored tabs in the ROP. See Appendix C, Clerk’s Office Color Tab Guide. For removal proceedings, the following will generally be found in the ROP:

- Notice to Appear (Form I-862) [red tab]
- Notices of Hearing generated by the Immigration Court
- Any motions filed before the Immigration Court (e.g., for reopening, change of venue, termination, etc.)
- Evidence submitted by the DHS relating to the removability charges (e.g., Form I-213, evidence pertaining to criminal convictions, etc.)
- Any applications for relief filed by the respondent/applicant and supporting documentation
- Background information regarding country conditions in asylum cases
- Transcript of the hearings below
- Written Immigration Judge decision or transcript of oral decision
- Summary of oral decision [yellow tab]
- Notice of Appeal (Form EOIR-26) [green tab]
- Appearance by attorney/representative (Form EOIR-27), if respondent/applicant not acting pro se [blue tab]
- Briefing Schedule
- Briefs filed by the parties [purple tabs]
- Motion [orange tab]

For deportation and exclusion proceedings, the charging document differs, but otherwise the same documents will generally be found. Different documents will be found in ROPs coming from the DHS, such as visa petitions, fines, or section 212(d)(3)(A)(ii) applications.

(c) *What to do if there are problems with ROP.* – If there are problems with the record, the ROP will generally need to be returned to the Clerk’s Office for further preparation of the record for adjudication. The more typical problems will be: erroneous information in CASE, improper service of documents, missing documents, missing ROP folder, and transcription problems. Bring the problem to the attention of a SCMS, TL or SPA. Most problems will be handled by a SCMS, TL or SPA, who will complete a Quality Problem Correction form to request that the Clerk’s Office address the problem with the ROP. See BIA Web Page, Forms Book (Quality Problem Correction form).

2.4 Discovery of possible classified documents/information (involving WikiLeaks)

(a) *Generally.* – On occasion, the BIA may receive a case from an Immigration Court or DHS that contains a classified document or information. No employee may handle or review classified information without the requisite level of clearance. (In recent history, the BIA has encountered a number of ROPs containing classified information that a party obtained through the website “WikiLeaks.”) The fact that classified information may or has been leaked to the public does *not* change the fact that the information is classified. Public disclosure does not relieve a government employee or contractor of the obligation to treat the information as classified whenever it is encountered.

For detailed information regarding the BIA’s directives for the receipt and processing of case-related classified National Security Information (NSI), consult the latest Classified National Security Information Document Control memorandum.

(b) *How classified information reaches the ROP.* – As a practical matter, classified information comes before the BIA only when a party submits it for the record. This usually happens at the Immigration Court level, where the Immigration Judge is supposed to handle the submission in accordance with classified information protocols (which are applicable to both the courts and the BIA). Occasionally, the Immigration Court may not discover or recognize the classified information (which often times is a small portion of a voluminous filing) or a party may submit the classified information directly to the BIA through a filing. It is incumbent on BIA staff to spot and then properly handle such information.

(c) *Steps to take if classified information is found or suspected.* – If a BIA employee or contractor discovers, or even suspects, that he or she has encountered

classified information, the following steps should be taken immediately to ensure that information is handled properly.

1. Secure the information *immediately*. Do *not* examine it. Do *not* attempt to verify that the information is classified or assess its level of classification.
2. Then notify a supervisor immediately, who will in turn notify the BIA's Classified Case Coordinator and/or designated SLA. If your supervisor or another supervisor is not available, contact the Classified Case Coordinator and/or designated SLA directly. The EOIR Office of Security should be contacted only if neither the Classified Case Coordinator and/or designated SLA are available.
3. Keep a written record of how the document was handled prior and up to the point that the classified information was discovered or suspected. Record each step taken (how the discovery was made, what was seen and not seen, what actions were taken to secure the record, who was consulted for guidance and next steps, etc.). Be sure to record the date and time of each step. All of this information is vital to assessing the damage of disclosed information and to protecting BIA staff from blame for mishandling classified information.

Be mindful that EOIR-issued laptops, computers, and fax machines are not certified to process classified information and may not be used to process classified information.

(d) Steps to take if working offsite. – The process and the steps to be taken are the same.

(e) Classification markings (indicator of classified information). – In general, classified information is marked or labeled by the classifying agency. Entire documents or just portions may be classified; and a given document may have different levels of classification in different parts of the document, with each part annotated for its particular level. If any portion of a document has markings at the Top Secret, Secret, or Confidential level, then the entire document is treated as classified. The following classification levels and/or symbols for information that is classified may be seen in the document:

- Top Secret “(TS)”
- Secret “(S)”
- Confidential “(C)”

In addition, a document may have non-classified marking and/or symbols that reflect that information is not classified. The following non-classified markings and/or symbols may be seen in the document:

- Unclassified “(U)”
- Sensitive but Unclassified “(SBU)”
- Controlled Unclassified Information “(CUI)”
- For Official Use Only “(FOUO)”
- Limited Official Use “(LOU)”

The fact that a document containing classified information also contains unclassified information does not change the overall classification of the document. The entire document is still considered classified at the highest level of the classified information within it, until declassified by an appropriate U.S. Government authority.

With immigration proceedings, State Department cables seem to be the most common form of leaked information that makes its way into the record, usually as supporting evidence of country condition evidence or documentation of an individual’s collaboration with law enforcement. Be especially vigilant about classified information whenever a State Department cable appears in the record (and watch for *any* indication it was obtained through WikiLeaks).

(f) Cases subject to a Protective Order. –

(i) Generally. – An Immigration Judge has the authority to issue protective orders and to seal related records in immigration or bond proceedings to ensure that sensitive but unclassified information is protected from general disclosure. See 8 C.F.R. § 1003.46. *Only* the DHS may file a motion to protect specific information that it intends to submit or is submitting under seal and may do so at any time. The Immigration Judge may issue a protective order barring disclosure of such information upon a showing by the DHS of a substantial likelihood that the information, if disclosed, would harm national security or law enforcement interests of the United States.

Unlike classified information, the information subject to the protective order may be reviewed by the respondent/applicant and his or her representative. Also, although information subject to a protective order does not require BIA employees to have a special clearance for handling or reviewing the sensitive information subject to the protective order, all BIA

employees must make every effort to prevent inadvertent disclosure to anyone in the public.

(ii) Processing Protective Order Cases by BIA Legal Staff. - When a case which involves a protective order is ready for adjudication, a Clerk's Office Program Analyst who is responsible for protective order processing in the Clerk's Office will forward the case to a designated SLA (or Federal Court Remand Coordinator, if involving a federal court remand). The SLA will consult the CAIJ and/or DCAIJ regarding the assignment of the case to a Panel. The SLA (and/or Federal Court Remand Coordinator) will then coordinate with the Director of Operations regarding the assignment of the case to a staff attorney. The SLA will provide the SPA and/or TL with the necessary processing paperwork for circulation of a proposed BIA decision to the AIJ(s).

(A) Assignment. - The SPA and/or TL shall advise the staff attorney assigned to the case of the sensitive nature of the protective order related matter. When assigned a case involving a protective order, the attorney should remember the following:

- the record of proceedings (ROP) may not be taken offsite from BIA offices
- a "Special Processing Instructions" sheet (obtained from SLA) must be attached to the front of the circulation sheet when proposed order circulated to AIJ(s)
- observe any additional processing procedures that may be required for the particular case. (For example, the Immigration Judge may have segregated portions of their decision or transcript. In such cases, if the BIA's decision discusses the information subject to the protective order or information derived therefrom, the information shall be discussed in a separate attachment.)
- if a High Profile Memorandum, consult with a SPA and/or TL

(B) Signed Decision. - When the BIA's decision has been signed, the designated AIJ Legal Assistant will notify (via e-mail) the appropriate SPA, Chief Clerk, designated SLA, and the Clerk's designated Office Program Analyst that the case has completed AIJ

review and has been signed. The Legal Assistant will deliver the ROPs to the SLA after scanning their location in CASE.

(C) SLA Review. – The designated SLA will review the case for administrative purposes as well as:

- The SLA will apprise the CAIJ and/or DCAIJ of the pending issuance of the decision.
- If a High Profile Memorandum has been prepared, the SLA will collect the memorandum and forward it to the appropriate individual upon the issuance of the BIA's signed decision.
- The SLA or Program Analyst will deliver the signed decision and ROPs to the Docket Team Leader or Acting Team Leader for issuance of the BIA decision.

2.5 Tabbing the ROP

Tabbing is an art, and staff should aim for a balance between too little and too much. Tabbing the relevant portions of the ROP is very helpful for the AIJs, but an overabundance of tabs defeats the purpose. Tabs are most useful when they identify:

- critical testimony of the respondent or key witnesses
- where cross examination begins
- dispositive exhibits such as criminal records of conviction and related documents
- documents relied upon by the Immigration Judge for credibility findings or burden of proof.

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3 Creating the Electronic Decision

3.1 Where To Start

The starting point for creating a decision is to choose the appropriate BIA template based upon the type of proceeding. Each type has specific heading caption requirements. Templates have been created in Word, which contains the appropriate format settings for the captions and the body of the decision.

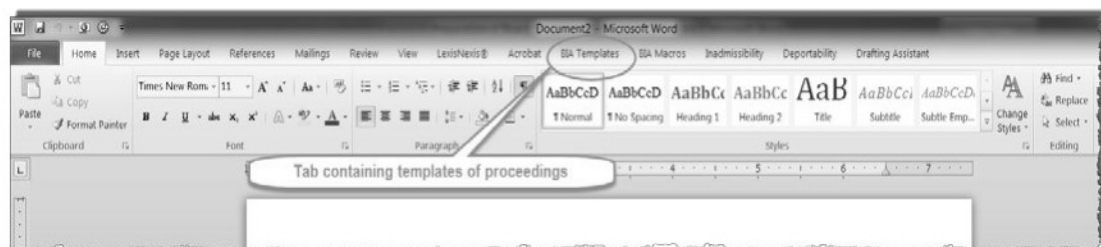
Below is a list of the types of proceedings generally before the BIA. Asterisks (**) indicates that a template has been created for that type of proceeding. Where no template has been created, one of the existing templates should be modified accordingly.

- APPLICATION FOR ADVANCE PERMISSION TO ENTER AS A NONIMMIGRANT PURSUANT TO SECTION 212(d)(3) OF THE IMMIGRATION AND NATIONALITY ACT **
- IN ADJUSTMENT OF STATUS PROCEEDINGS
- IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS **
- IN ATTORNEY DISCIPLINE PROCEEDINGS **
- IN BOND PROCEEDINGS **
- IN CONTINUED DETENTION REVIEW PROCEEDINGS
- IN DEPORTATION PROCEEDINGS **
- IN EXCLUSION PROCEEDINGS **
- IN FINE PROCEEDINGS **
- IN PRACTITIONER DISCIPLINARY PROCEEDINGS **
- IN REMOVAL PROCEEDINGS **
- IN RESCISSION PROCEEDINGS UNDER SECTION 246 OF THE IMMIGRATION AND NATIONALITY ACT **

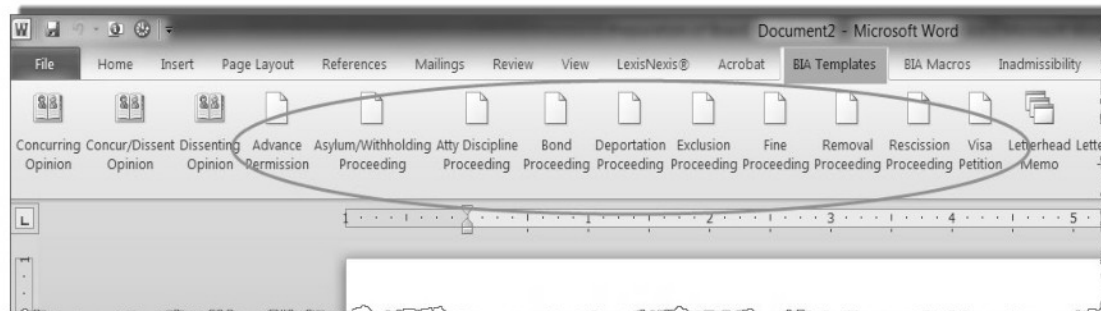
- IN VISA PETITION PROCEEDINGS **
- IN VISA PETITION REVOCATION PROCEEDINGS

3.2 BIA Templates

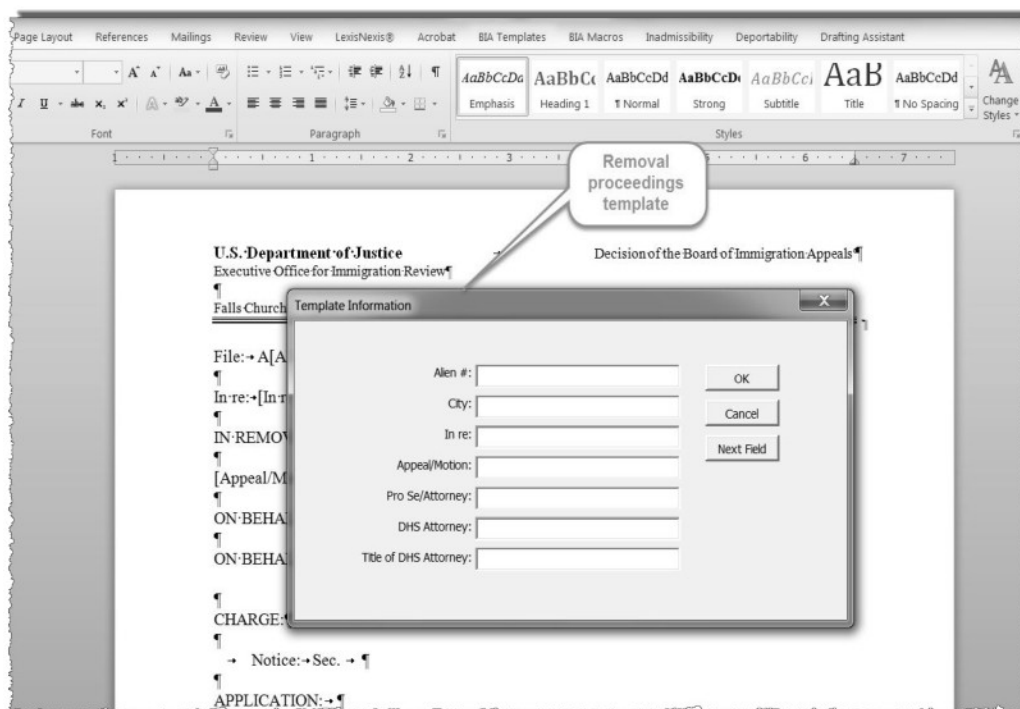
(a) Accessing. – The BIA templates are located under the tab labeled “BIA Templates” on the Word Ribbon. Below is an illustration showing the location of the tab.



By clicking on the “BIA Templates” tab, the user will see a ribbon that contains the types of proceedings for which a template has been created. Below is an illustration of the BIA Templates ribbon with the type of proceedings circled.



By clicking on the name of a template, the selected template will open as a new Word document. A Template Information box will also appear in which the user may enter information to complete captions. Below is an illustration showing what appears when the “Removal Proceeding” icon is selected.



(b) *Separate Opinion Templates.* – In addition to templates for the types of proceedings, templates have also been created for the following types of separate opinions:

- Concurring opinion
- Concurring/dissenting opinion
- Dissenting opinion

3.3 Where to Save Electronic Decisions

(a) *Network drives.* – While the BIA has multiple network drives (indicated by a letter followed by a colon), electronic decisions are *not* to be saved on the C: or H: drives. Documents on the C: or H: drive are inaccessible to other staff members. In

addition, files stored on the C: drive are not backed up and will be lost if the file, software, or computer is damaged or lost.

(b) *Electronic File Folders.* –

(i) *Team folders.* – All electronic copies of BIA decisions belong in the folder bearing the name of the drafting attorney or paralegal. Those folders are located within each person’s Team folder.

(ii) *Subject subfolders.* – Attorneys and paralegals may elect to utilize subfolders to organize and maintain electronic decisions. Subfolders should correspond to general subject areas that are frequently addressed by the BIA. Commonly used short form names or abbreviations make subfolders easier for others to find and navigate. Following is a list of general subject areas and corresponding subfolder names (short name or abbrev.) that are commonly used when a new attorney or paralegal folder is created. For that reason, the use of these folder names and abbreviations are highly recommended, but other easily recognizable folder names or abbreviations are also acceptable.

Subject	Subfolder Short Name	Subfolder Abbrev.
Abandonment of LPR Status	Abandon	ABND
Adjustment of Status	Adjustment	ADJ
Asylum and Withholding	Asylum	ASY
Bond	Bond	BOND
Cancellation of Removal	Cancellation	COR
Citizenship	Citizen	CIT
Constitutional Rights	Constitutional	CON
Criminal Individual	Criminal	CRIM
Convention Against Torture	CAT	CAT
Evidence and Procedure	Evidence	EVID
In Absentia	In Absentia	INAB
Motions	Motions	MTN
Removability	Removability	RMV
Visa Petitions	Visa Petitions	VISA
Voluntary Departure	Voluntary Departure	VD
Waivers	Waivers	WVR

Attorneys and paralegals may add other subject folders and subfolders. However, electronic decisions may *not* be placed in temporary or transitory folders (e.g., folders named “circulating orders”), given the risk that those decisions will not subsequently be moved to a location where the files can be found. Also, when naming folders and subfolders, folder names should be kept short and have labels that are easily identified by others. Similarly, these

folders and subfolders are part of the file path that is used when completing the circulation sheet, and the file path must be completely and accurately identified on the circulation sheet. See Chapter 9.3(b)(ix) (Document filename). Do not assume that the user will intuit the location of the file.

3.4 File Naming Convention

(a) Generally. – Any electronic decision *must* have a file name with standard descriptive elements in order of appearance as listed below.

1. “A#” – required
2. Respondent/applicant/beneficiary name – required
3. Separate opinion – required *if applicable*
4. Version – required *if more than one version is saved*
5. Drafter/editor’s initials – required

Examples:

New file	–	012345678 XENOS amm
Newer version	–	012345678 XENOS v2 amm
Separate opinion	–	012345678 XENOS (dissent) amm
Edited order	–	012345678 XENOS amm dbh
Edited order (multiple)	–	012345678 XENOS amm dbh hm dbh

(b) “A” number. – The file names for electronic decisions must always begin with the registration number (A number) assigned to a respondent/applicant/beneficiary. Do not start the file name with the letter “A.” Do start the file name with the number “0” when the A number is eight digits long and not nine. The A number should always be nine consecutive numbers without dashes, spaces, or underscore.

Example: 012345678 XENOS amm

If there is more than one respondent/applicant and the decision is identical for both the lead and rider, there is no need to include rider A numbers in the file name. However, if rider A numbers are included in the file name, they should be identified by

the last three digits of the rider's A number (whether or not the files are numbered sequentially) and inside the parentheses (in the same way as a separate opinion is identified). However, if there is a rider that requires a different decision, then that electronic decision will be identified by a separate file name starting with the rider's A number, without reference to the lead A number.

Examples:

012345678 XENOS amm

012345678 (680 691) XENOS amm

(c) Last name – Use only the last name as identified in the charging document or visa petition, which in turn should match the name in the charging document. (If the name appearing in the charging document does not match what appears in CASE, bring the discrepancy to the attention of a TL.) Do not include aliases, even if they appear in the charging document or visa petition. Do not shorten names unless they are exceedingly long.

Examples:

012345678 XENOS v2 amm hm

012345678 XENOS (dissent) amm

(d) Separate opinion. – When the proposed decision is a separate opinion, the file name must reflect that.

Example: 012345678 XENOS (concur) amm

(e) Version. – If multiple versions of a decision are saved, then the file name should include the version number to allow editors to distinguish between versions. Use the letter “v” and a number to indicate the version number. Do not include a period (e.g., “v” not “v.”).

Minor edits to a proposed decision do not merit saving a new version. Rather, a new “version” should be significantly different from the prior draft (e.g., there have been significant substantive changes in the content of the decision; there are so many minor changes that it makes sense to retain the prior decision).

Example: 012345678 XENOS v1 amm

(f) Drafter's initials. – The original author of the proposed decision must include his or her initials (lower case) in the file name.

Example: 012345678 XENOS amm

(g) Editor's initials. – An “editor” is any person, other than the original drafter, who edits the proposed decision, be it an AIJ, a legal assistant or other staff authorized to revise the decision or input edits. Editors must add their initials and update the version number, if appropriate, before saving the edited version in the original drafter's folder. Editors should use the “save as” function in Word in order to preserve the prior version. The last initials (lower case) should always be the last person who altered the decision. Also, to preserve editing history, no initials should ever be deleted.

Examples:

last edited by a legal assistant 012345678 XENOS amm hm

last edited by a AIJ 012345678 XENOS amm hm dbh

The circulation sheet must also be updated to reflect the editor's initials.

(h) Separators. – To separate file name elements, use a space, *not* dots/periods (.), underscores (_), or dashes (-) to represent a space between file name elements.

Example: 012345678 XENOS amm

Not 012345678.XENOS.amm, or

012345678_XENOS_amm, or

012345678-XENOS-amm

(i) Additional information. – Once the required elements are listed (and in the right order), additional information may be added (e.g., issue, country, key words). If additional information is included, use spaces as a separator, not a period, underscore, or dash. As a practice, try to keep additional information succinct. Avoid special characters, -- such as: “?” “/” “\$” “%” “&” “#” “.” “\” “:” “<” “>” -- since many of these characters will not work in file names and may complicate file searching.

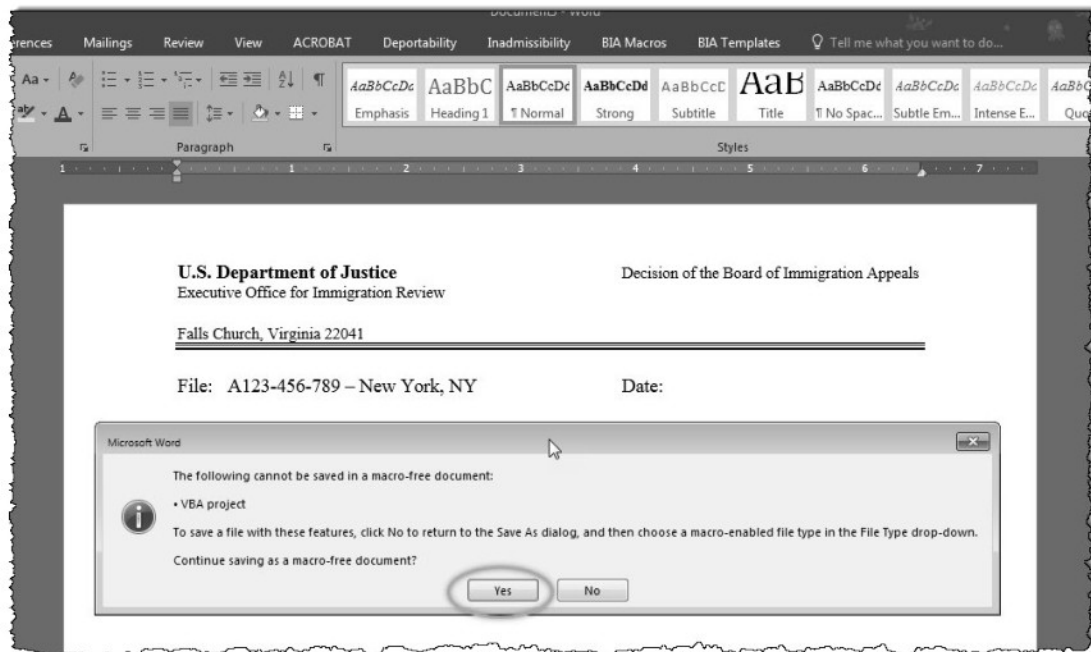
Examples:

012345678 XENOS amm mtr for approved I-130

012345678 XENOS v03 amm hm npm sec 212(c) 10th cir

(j) File extension. – Do *not* add “.docx” at end of a file name because this is the default setting in Word and will automatically be included in the file name by Word.

Also, do *not* use the file extension “.docm” since this extension will prevent the contents of the file to be searched. As a result, when using the BIA templates and first saving the electronic decision, make sure to change the file type to “.docx” and select “Yes” when the dialogue box below appears on the screen. This action will enable the document to be saved as a “.docx” file.



4 Captions

4.1 BIA Decisions Generally

For purposes of this manual, all BIA decisions are divided into three formatting and style components: captions, body, and order(s), as seen in the illustration below.

The illustration shows a sample BIA decision document. On the right side, three large curly brackets group the document into three sections: 'Captions' (covering the header and case information), 'Body' (covering the main text paragraphs), and 'Order(s)' (covering the final order and signature line).

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A123-456-789 – Memphis, TN Date:

In re: Veronica SMIT

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Sam Carlyle, Esquire

ON BEHALF OF DHS: Patricia Beattie
Chief Counsel

An appeal from the immigration Judge's decision in this case is currently pending before the Board of Immigration Appeals (Board). The Department of Homeland Security (DHS) and the respondent, through counsel, have submitted a joint motion to administratively close these proceedings to allow the respondent the opportunity to apply for a Form I-601A provisional waiver of inadmissibility. The motion will be granted and the proceedings administratively closed.

If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no action in the case unless a request is received from one of the parties. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party.

Accordingly, the following order will be entered.

ORDER: The Proceedings before the Board of Immigration Appeals in this case are administratively closed.

FOR THE BOARD

This section addresses the completion of the heading captions. The other elements of a BIA's decision are discussed in the following chapters:

- Body Chapters 5, 6, and 7
- Order(s) Chapter 8

4.2 Captions Generally

Captions, which appear at the beginning of each BIA decision, identify the type of proceedings and may include information related to applications for relief from removal. Although more information on captions is provided later in this chapter, below are illustrations of a typical caption for a decision involving removal proceedings and visa petition proceedings.

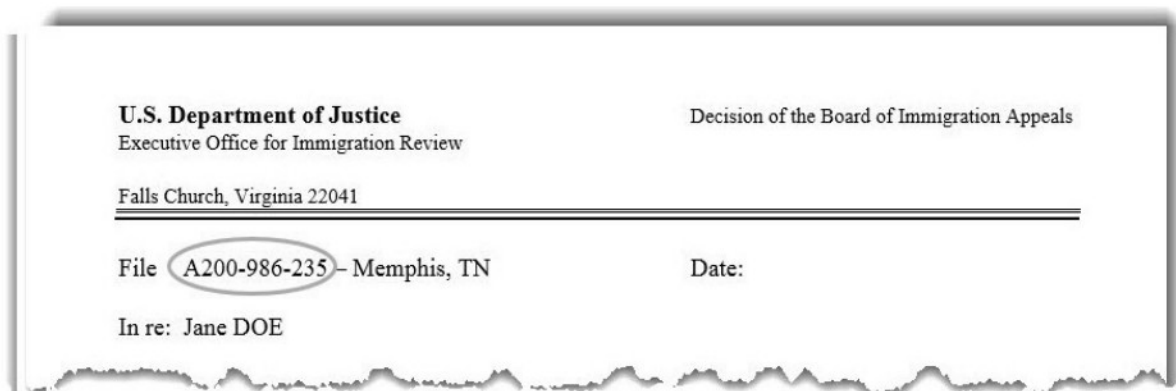
U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File: A098-587-123 – Vermont Service Center	Date:
In re: Sue CLARK, Beneficiary of a visa petition filed by Karl J. Clark, Petitioner	
IN VISA PETITION PROCEEDINGS	
APPEAL	
ON BEHALF OF PETITIONER: Pro se	
ON BEHALF OF DHS: Keven R. Vandermount Legal Counsel	
APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa	

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File: A200-986-235 – Memphis, TN	Date:
In re: Jane DOE	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Alexandra Jones, Esquire	
ON BEHALF OF DHS: Bill Young Assistant Chief Counsel	
APPLICATION: Adjustment of status	

Each type of proceeding before the BIA has its own specific caption requirements. As a result, when preparing to draft a decision, determine first the type of proceeding before the BIA. The next step is then to select the appropriate proceeding within the BIA Templates and complete the fields within the “Template Information” box and other required information. This chapter provides guidance as to what information should be included within each caption and when to delete or not include a particular caption.

4.3 File: Registration Number (A number)

(a) Generally. – The A number, with hyphens or dashes is placed in the “File:” caption. For example, A123-456-789.



U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A200-986-235 - Memphis, TN Date:

In re: Jane DOE

(i) Nine-digit A number. – A numbers have nine digits (e.g., A234-567-890). Formerly, A numbers had eight digits (e.g., A12-345-678). In the case of an eight-digit A number, place a “0” before the A number (e.g., A012-345-678).

(ii) BIA Templates. – When using a template, the letter “A”: is automatically placed in the caption for the A number by the template. However, the hyphens or dashes in the A number are not automatically inserted by the template. The hyphens or dashes must be included after the third and sixth number when inserting information in the template dialogue box or after completion.

(b) Multiple individuals. – When the decision applies to more than one individual, all must be listed in the caption of the decision, unless the cases are severed or separate decisions are prepared as a result of different outcomes or types of proceedings.

(i) ***How multiple A numbers appear in caption.*** – When there are multiple individuals in a decision, list riders on separate line(s) below the lead A number. Also, the caption title “File:” must be changed to “Files:” For example:

Files: A012-345-678
A012-345-679

Below is an illustration of how the A number caption appears when the BIA’s decision pertains to multiple individuals.

The illustration shows a header for a BIA decision. At the top left, it reads "U.S. Department of Justice" and "Executive Office for Immigration Review". At the top right, it reads "Decision of the Board of Immigration Appeals". Below this, on the left, is "Falls Church, Virginia 22041". A horizontal line separates the header from the body. Below the line, on the left, is "Files: A012-345-678 – Chicago, IL" and "A012-345-679". On the right, it says "Date:". Below the "Files:" line, on the left, is "In re: John DOE" and "Jane DOE". On the right, it says "File: is changed to Files:" and "when there are multiple aliens".

(c) ***How multiple individuals appear in the header on second and subsequent pages.*** – The second and all subsequent pages for a decision involving multiple individuals must state the lead A number followed by “et al.” and no other A numbers. Although the header is automatically created when using the BIA Templates, the second page will need to be manually updated, i.e., insert “et al.” Note that there is no comma after the A number and before the “et al.” Also, the “et al.” is not in italics. Below is an illustration of how the header on subsequent pages for decisions with multiple individuals should appear.

The illustration shows a header for a BIA decision on a subsequent page. It reads "A012-345-373 et al." and "No comma or italics". Below this, it says "However, the Immigration Judge found incredible the lead respondent’s claims regarding the alleged basis for the threats or attempted kidnapping (I.J. at 13). The Immigration Judge considered that the threats to the lead respondent began in 1998 after he started his business."

(d) Visa petition case with multiple beneficiaries. – Generally, DHS does not consolidate family members' visa petitions, and the BIA issues a separate decision for each beneficiary, without listing the other beneficiaries' names or A numbers. However, on the rare occasion where the DHS has consolidated family members and issued one decision for the group, all the beneficiaries that are included on the Notice of Appeal or motion filed by the petitioner must be listed in the caption unless the cases are severed.

When there are consolidated family members in a decision, list the other family members on separate line(s) below the lead beneficiary's A number. Also, the caption title "File:" must be changed to "Files:" as well as change "Beneficiary" to "Beneficiaries" in the "In re:" caption. For example:

Files: A075-648-264 – California Service Center
A075-648-265

In re: Nhu Bau HO
Sun Ti HO, Beneficiaries of a visa petition filed by

John Ho, Petitioner

Below is an example of how the A number caption should appear with multiple beneficiaries when the DHS has consolidated petitioners.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Files: A075-648-264 – California Service Center
A075-648-265

Date: File: is changed to Files:

In re: Nhu Bau HO
Sun Ti HO, Beneficiaries of a visa petition filed by

Beneficiary is changed to Beneficiaries

John Ho, Petitioner

IN VISA PETITION PROCEEDINGS

4.4 Hearing Location

(a) **Generally.** – The Immigration Court identifies the docketed hearing location of the proceedings in the hearing notice issued to the parties. The city and state of the final designated hearing location (as identified in the final hearing notice issued by the Immigration Court) is listed in the caption. For the city, use the full city name and not an abbreviation (e.g., do *not* use NY, NY). For the state, use the correct postal abbreviation (e.g., Chicago, IL). Below is an example of a hearing notice issued by an Immigration Court. Do not use periods with state abbreviations.

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
26 FEDERAL PLZ 12TH FL., RM1237
NEW YORK, NY 10278

RE: BELL-TENOR, MAX
FILE: A012-345-678

DATE: January 16, 2014

TO:

JOHNSON & ASSOCIATES
1156 MARKET STREET
SPARKSBERG, OH 49006

Please take notice that the above captioned case has been scheduled for a Master/individual hearing before the Immigration Court on June 5, 2015 at 10:00 a.m. at

26 FEDERAL PLZ 12TH FL., RM1237, 14th FL. COURTROOM #12
NEW YORK, NY 10278

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified

In the illustration, the hearing has been scheduled on June 5, 2015, at 26 Federal Plaza, 14th Floor, Courtroom #12, New York, NY 10278. Since this was the final scheduled hearing in this matter, the caption in the BIA's decision would identify the hearing location as New York, NY.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A012-345-678 – New York, NY

Date:

In re: Max BELL-TENOR

IN REMOVAL PROCEEDINGS

APPEAL

(b) Telephonic or video-conference. – When a hearing is conducted by telephone and/or video conference, the final docketed hearing location as designated by the Immigration Court may be different from where the Immigration Judge and/or respondent/applicant are physically located. In these situations, an Immigration Judge is also supposed to identify the specific hearing location where he or she is conducting the hearing as well as identify the location of the parties. See PM 21-03 *Immigration Court Hearings Conducted by Telephone and Video Teleconferencing*. In addition, any order or decision by an Immigration Judge must include the hearing location where the case was docketed in the caption (i.e., specific hearing location as opposed to an administrative control court/base city court). *Id.*

Below is a hearing notice that directs the respondent to appear at the Hartford Immigration Court via VTC from a detention facility in Greenfield, MA. If this were the respondent/applicant's last hearing notice, the hearing location would generally be captioned as taking place in Greenfield, MA.

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
450 MAIN ST., ROOM 628
HARTFORD, CT 06103

RE: ROSS, JOHN ALLEN
FILE: 098-458-123

DATE: Nov 12, 2014

TO: ROSS, JOHN ALLEN
FRANKLIN HOUSE OF CORRECTIONS 160 ELM STREET
GREENFIELD, MA 01301

Please take notice that the above captioned case has been scheduled for a VIDEO hearing before the Immigration Judge on Dec 10, 2014 at 1:00 P.M.. The alien will be present via tele/video. All other parties and witnesses should report to:

450 MAIN STREET, ROOM 628
HARTFORD, CT 06103

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is accredited to represent persons before an Immigration Judge. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order

Below is an illustration of how the hearing location caption based on hearing notice above.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

File: A098-458-123 – Greenfield, MA Date:

In re: John Allen ROSS

IN REMOVAL PROCEEDINGS

However, there may be instances in which the respondent/applicant was directed to appear at one location but the respondent/applicant's physical location was at another when the hearing took place. As noted above, in these circumstances, an Immigration Judge should identify the specific hearing location where he or she is conducting the hearing and the order or decision should be captioned with the hearing location (i.e., specific hearing location as opposed to an administrative control court/base city court). To avoid confusion by the parties or a federal court, it may be appropriate to include a footnote when the Immigration Judge and the respondent/applicant are located in different locations. If, however, the record is not clear, consult your TL for guidance.

(i) Immigration Judge and respondent/applicant are located in different federal circuits. – To avoid confusion by the parties or a federal circuit court, include a footnote when the Immigration Judge and respondent/applicant are located in different circuits. In the footnote, describe the BIA's reasoning for designating a specific hearing location, i.e., state that the BIA is applying the Circuit law of the docketed hearing location. See *Matter of R-C-R-*, 28 I&N Dec. 74 n.1 (BIA 2020) (explaining that the circuit law applied to proceedings conducted via video conference is the law governing the docketed hearing location).

In the illustration on the next page, the decision includes a footnote acknowledging that the case was docketed in Greenfield, MA, but that the Immigration Judge was physically located in Hartford, CT when proceedings were conducted through video-conference.

In the illustration below, the decision includes a footnote acknowledging that the case was docketed in Greenfield, MA, but that the Immigration Judge was physically located in Hartford, CT when proceedings were conducted through video-conference.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File: A098-458-123 – Greenfield, MA ¹	Date:
In re: John Allen ROSS	
IN REMOVAL PROCEEDINGS	
APPEAL	

¹ Removal proceedings before the Immigration Judge in this matter were completed in Greenfield, MA, where the respondent was located and the hearing docketed. The Immigration Judge conducted the hearing remotely from the Immigration Court in Hartford, CT, through video conference pursuant to section 240(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(2)(A). The docketed hearing location is within the geographic area of the United States Court of Appeals for the First Circuit. Therefore, we will apply the law of that circuit. See *Matter of R-C-R-*, 28 I&N Dec. 74 n.1 (BIA 2020) (explaining that the circuit law applied to proceedings conducted via video conference is the law governing the docketed hearing location).

Information on hearing locations for the Immigration Courts is available on EOIR's website.

(ii) **Seventh Circuit footnote.** – The Court of Appeals for the Seventh Circuit has held that the hearing location is where parties are required to file their motions and briefs and where orders are prepared and entered. See *Chaves-Vasquez v. Mukasey*, 548 F.3d 1115, 1118 n.1 (7th Cir. 2008) (“Venue is determined by the location of the immigration judge rather than the by location from which witnesses appear via teleconference.”); *Ramos v. Ashcroft*, 371 F.3d 948, 949 (7th Cir. 2004) (denying the Government’s request to transfer the proceedings to a different circuit because “the respondent may

petition for review in the circuit where the immigration court is located”). If the case arises in the Seventh Circuit and the outcome of the case would be the same regardless of which circuit law applied, then the example footnote below may be used (and should be updated as necessary). Otherwise the Seventh Circuit case law on video teleconference hearings should be applied.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041		Decision of the Board of Immigration Appeals
File: A099-258-462 – Kansas City, MO ¹ In re: William MCCARTY IN REMOVAL PROCEEDINGS APPEAL	Date:	
¹ Removal proceedings before the Immigration Judge in this matter were completed in Kansas City, MO, where the respondent was located and the hearing docketed. The Immigration Judge conducted the hearing remotely from the Immigration Court in Chicago, IL, through video conference pursuant to section 240(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(2)(A). The docketed hearing location is within the geographic area of the United States Court of Appeals for the Eighth Circuit. Therefore, we will apply the law of that circuit. See <i>Matter of R-C-R-</i>, 28 I&N Dec. 74 n.1 (BIA 2020) (explaining that the circuit law applied to proceedings conducted via video conference is the law governing the docketed hearing location). We note, however, that even if we were to consider this case under the precedent decisions in the United States Court of Appeals for the Seventh Circuit, we would find the respondent has not met his burden of proof to establish eligibility for relief.		

(iii) Other Circuit Courts. – The Third and Tenth Circuit have published cases addressing this issue. See *Luziga v. Att’y Gen of U.S.*, 937 F.3d 244, 250 (3d Cir. 2019) (applying Third Circuit law where the Immigration Judge appeared by video conference from Arlington, Virginia, (outside the circuit) to preside over proceedings in York, Pennsylvania (within in the circuit); *Medina-Rosales v. Holder*, 778 F.3d 1140, 1143 (10th Cir. 2015) (stating that “the law of the circuit where the video conference hearing is held is applicable law” and holding that the docketed hearing location does not change merely because an Immigration Judge appears by video conference from a different location). Additionally, the First Circuit has discussed the issue in *Georcelly v. Ashcroft*, 375 F.3d 45, 48 (1st Cir.2004) (noting that proceeding conducted in St. Thomas

but likely docketed in Puerto Rico might be deemed “completed” in Puerto Rico because IJ's order was docketed there, but not deciding the issue). Remember to check and follow the relevant law of the circuit in which the case arises, and include this information in a footnote.

(c) *When a change of venue is granted by the BIA.* – In a case where the BIA's decision reflects that change of venue is being granted by the BIA, the hearing location caption should reflect the city and state of the final hearing location as designated by the Immigration Court's hearing notice, *not* the location where venue will be on remand. See subsection (a) above. The Immigration Court will take the necessary steps to effect the change of venue upon receipt of the record of proceedings and will forward the record to the Immigration Court to which the venue has been changed.

(d) *Visa petition proceedings.* – The United States Citizenship and Immigration Services (USCIS) is responsible for adjudicating immigrant visa petitions. USCIS has five Service Centers that process visa petitions, as well as numerous Field Offices that adjudicate petitions.

For purposes of this caption, a decision rendered by one of the five Service Centers or the National Benefits Center is listed without the city or state. However, when a decision has been rendered by one of the Field Offices, the caption should identify the city and state (abbreviation) of that office. Do not try to pick the closest Service Center and do not create a new Service Center for purposes of the decision. For example, there is no Florida Service Center. The five Service Centers are:

- Vermont Service Center
- Nebraska Service Center
- California Service Center
- Texas Service Center
- Potomac Service Center

Below is an illustration of how the hearing location caption should appear for one of the Service Centers.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A075-864-264 – California Service Center Date:

In re: Kathy SMITH, Beneficiary of a visa petition filed by
William Stewart Smith, Petitioner

IN VISA PETITION PROCEEDINGS

Below is an example of how the hearing location caption should appear for the National Benefits Center. Note: Do not list the city and state (Lee's Summit, MO) where the National Benefits Center is located.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A206-884-567 – National Benefits Center Date:

In re: Ava JOHNSON, Beneficiary of a visa petition filed by
Karl Smith Johnson, Petitioner

IN VISA PETITION PROCEEDINGS

Below is an example of how the hearing location caption should appear for a Field Office.

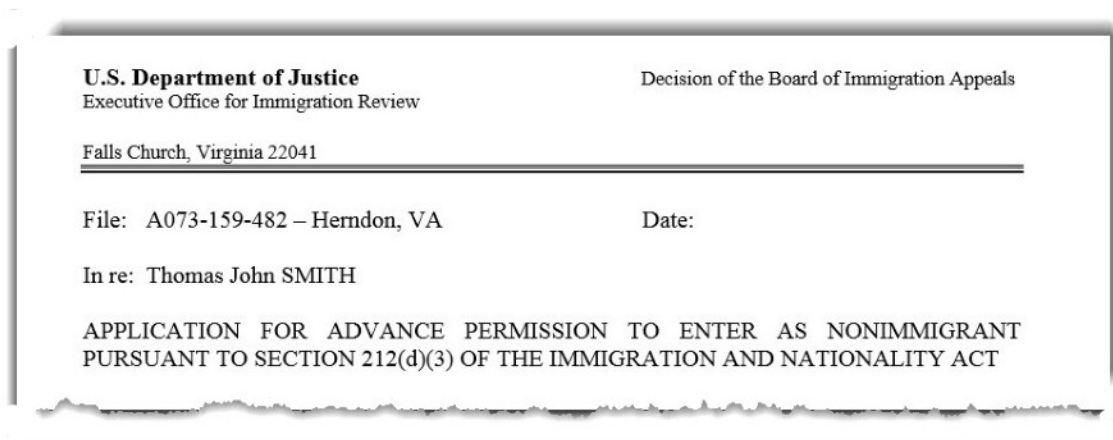
U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
<u>Falls Church, Virginia 22041</u>	
File: A204-235-264 – St. Albans, VT	Date:
In re: Ellen POE, Beneficiary of a visa petition filed by Jack Poe, Petitioner	
IN VISA PETITION PROCEEDINGS	

(e) *Fine proceedings.* – The hearing location caption should always state “Washington, DC” because the Carrier Fines Branch of DHS’ Customs and Border Patrol (CBP) is located in the District of Columbia. Below is an illustration of how the hearing location should appear.

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
<u>Falls Church, Virginia 22041</u>	
File: A099-123-456 – Washington, DC 2005-4001-321-44445	Date:
In re: CHINA AIRLINES FLIGHT NO. CI012, which arrived at New York, NY, from Taipei, Taiwan, on July 2, 2000.	
Alien passenger involved: Li Mint Ho	
IN FINE PROCEEDINGS	

(f) Applications for advance permission (Section 212(d)(3)(A)(ii) waiver).

– The Admissibility Review Office (ARO) is a division of CBP is responsible for the adjudication of section 212(d)(3)(A)(ii) waiver applications (Form I-192, Advance Permission to Enter as a Nonimmigrant). These adjudications are not centralized in one office and can be adjudicated by any number of DHS offices. List the city and state (abbreviation) where the decision of the ARO was rendered. Below is an illustration of how the hearing location should appear.

An illustration of a document from the U.S. Department of Justice, Executive Office for Immigration Review. The document is titled "Decision of the Board of Immigration Appeals" and includes the address "Falls Church, Virginia 22041". It contains fields for "File: A073-159-482 – Herndon, VA" and "Date:", followed by "In re: Thomas John SMITH". The subject line reads "APPLICATION FOR ADVANCE PERMISSION TO ENTER AS NONIMMIGRANT PURSUANT TO SECTION 212(d)(3) OF THE IMMIGRATION AND NATIONALITY ACT".

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A073-159-482 – Herndon, VA Date:

In re: Thomas John SMITH

APPLICATION FOR ADVANCE PERMISSION TO ENTER AS NONIMMIGRANT
PURSUANT TO SECTION 212(d)(3) OF THE IMMIGRATION AND NATIONALITY ACT

4.5 Names

(a) Generally. – For purposes of the “In re:” caption, the BIA’s practice is to list the respondent/applicant’s name as identified in the charging document but in the following order: first name, middle name (if any), and last name. The last name is the *only* part of the name that will appear in all CAPs unless fall within the exception discussed in subsection (ii) below. For example:

In re: John KARL

See illustration on the next page.

Below is an illustration of a Notice to Appear (charging document in removal proceedings) where the respondent's name is listed in the "Respondent: line:" as John KARL.

U.S. Department of Homeland Security **Notice to Appear**

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: _____ FIN #: _____ File No: A200-569-753
 DOB: _____ Event No: _____

In the Matter of:

Respondent: John KARL _____ currently residing at: _____
 DHS/ICE CUSTODY _____
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below:

The last name is the only part of the name that will appear in all CAPs in the caption. For example:

In re: John KARL

Below is an illustration of how a name appears in the caption for removal proceedings.

U.S. Department of Justice Decision of the Board of Immigration Appeals
 Executive Office for Immigration Review

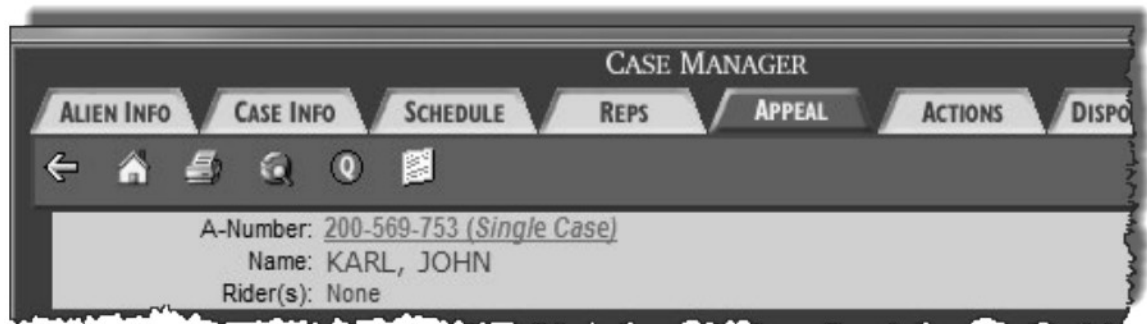
Falls Church, Virginia 22041

File A200-569-753 – Orlando, FL Date:

In re: John KARL

IN REMOVAL PROCEEDINGS

Below is an illustration of how the respondent's name should appear in CASE (Appeals Tab), based upon the information contained in the illustration of a Notice to Appear on the previous page. If the name appearing on the charging document does not match what appears in CASE, see subsection (d) below.



Below is an illustration of how the respondent's name should appear on a barcode.



Note: Although some charging documents (as well as CASE and the ROP barcodes) use a "last name first" convention, captions should be in regular name order.

If there is a middle name identified in the charging document, the middle name in the caption should be in lower case and *only* the last name is in CAPS. For example:

In re: Jane Anne STEVENS

Below is an example of how the respondent's name would appear in the caption if they had a middle name.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File A073-412-787 – Atlanta, GA Date:

In re: Jane Anne STEVENS

IN REMOVAL PROCEEDINGS

It is not always clear from the charging document precisely which portion of the respondent's name is the last name (e.g., when the respondent or applicant's name appears MARIO ALFONSO VALDEZ GARCIA or Mario Alfonso Valdez Garcia). In such cases, check CASE to see how the name was entered. You may also check on how the name appears on the barcode of the ROP(s). Below is an illustration of how the name appears in for the example Notice Appear.

U.S. Department of Homeland Security **Notice to Appear**

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: _____ FIN #: _____ File No: A200-852-493
DOB: _____ Event No: _____

In the Matter of:
Respondent: MARIO ALFONSO VALDEZ GARCIA currently residing at:
DHS/ICE CUSTODY _____
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below:

Below is an illustration of how the name was entered in CASE for the example Notice to Appear on the previous page.

N(HAR) ASM REMOVAL - 04/30/15 RELEASED					
Name					
VALDEZ GARCIA, MARIO ALFONSO					
Type	U	Base City	Hearing	BIA Dec.Date	Dec.Code
<u>Case Appeal</u>	ASM	HAR	HAR		DIS

Below is an illustration of how the name should appear on the barcode for the example Notice to Appear.

	
4/30/15 Removal VALDEZ GARCIA, MARIO ALFONSO 1 ROP	200-852-493 Lead: 200-852-493

Based on the information contained in the charging document, CASE, and the barcode, the respondent's name would be listed in the caption as illustrated below:

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File A200-852-493 – Atlanta, GA	Date:
In re: Mario Alfonso VALDEZ GARCIA	
IN REMOVAL PROCEEDINGS	

(i) No charging document. – Some proceedings before the Immigration Court are not initiated by the filing of a charging document. For

example, a “zero bond.” In such cases, use the respondent’s name that appears in CASE.

(ii) No last name or first name. – Sometimes the respondent, petitioner, or beneficiary does not have a last name or first name. If the charging document (or Form I-130) or CASE recognizes the lack of a last or first name, then list the “name” as identified. If DHS recognizes that an individual does not have a first name by using the abbreviation “NFN,” use all CAPs for the abbreviation. For example:

In re: NFN KARL

If DHS does not recognize the lack of a first or last name by leaving this information blank in the charging document (or Form I-130), list the name that appears in CASE in all CAPs. For example:

In re: JOHN

(b) Multiple surnames or family names. – If the charging document identifies more than one surname or family name, then list the name as identified. For example, if the charging document identifies the respondent or applicant’s name as Juan VALDEZ-Granada, as seen in the illustration below, the caption would appear as follows:

In re: Juan VALDEZ-GRANADA

U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: _____ FIN #: _____ File No: 200-158-231

DOB: _____ Event No: _____

In the Matter of:

Respondent: Juan VALDEZ-Granada currently residing at: _____

DHS/ICE CUSTODY _____

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☒ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below:

Below is an illustration of how the caption would appear.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File A200-158-231 – El Paso, TX Date:

In re: Juan VALDEZ-GRANADA

IN REMOVAL PROCEEDINGS

If the charging document hyphenates the two last names, then hyphenate the name in the caption. Do not insert hyphens if no hyphen is used in the charging document.

(c) Mismatch between CASE and the charging document. – Usually the name appearing on the charging document (or Form I-130) matches what appears in CASE. When it does not, bring the discrepancy to the attention of a TL. Do not try to determine which name is correct, and do not circulate the proposed decision with instructions to the Docket team to update CASE. Rather, take the case to a panel SCMS who may make the correction in CASE. If a panel SCMS is not available, contact your TL or SPA who may complete a Quality Problem Correction form to request that the Clerk's Office address the discrepancy. See BIA Webpage, Forms Book (Quality Problem Correction form).

(d) Multiple respondent/applicants. – Where there is more than one alien filing an appeal or motion, list all of them in the "In re:" caption. List the lead rider first, then riders immediately below the lead -- first and middle name, then the last name in all CAPs. The same formatting rules apply as described in the subsections above.

In addition, when using a template, the following caption elements will need to be corrected:

- Change "File:" to "Files:"
- Change "RESPONDENT:" to "RESPONDENTS:"

For example:

Files: A012-045-078 – Los Angeles, CA
A012-045-079

In re: John DOE
Jane DOE

Below is an illustration of how multiple respondents' names should appear in the caption.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Files: A012-045-078 – Los Angeles, CA
A012-045-079

Date:

In re: John DOE
Jane DOE

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Sally L. Smith, Esquire

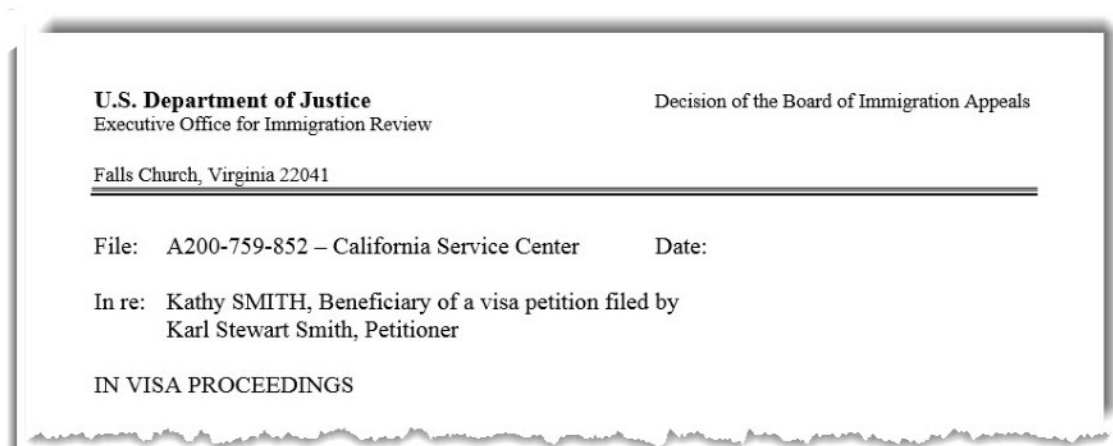
(e) *Visa petitions.* –

(i) *Generally.* – The DHS does not consolidate family members' visa petitions, and the BIA issues a separate decision for each beneficiary. List the beneficiary name as it appears in the petition (Form I-130) with the last name in all CAPs. The petitioner name as it appears in the petition (Form I-130) should be listed in lower case. If there is a discrepancy between the name appearing on the Form I-130 or other documents in the record and what appears in CASE, see subsection (d) and (e) as to how to proceed. Note: Aliases are not included in the caption for visa petitions.

For example:

In re: Kathy SMITH, Beneficiary of a visa petition filed by
Karl Stewart Smith, Petitioner

Below is an illustration of how the beneficiary and petitioner's names should appear in the caption.

The illustration shows a sample caption for a Board of Immigration Appeals (BIA) decision. It is presented as a white rectangular card with a slightly distressed, torn-edge bottom, set against a dark background. The card contains the following text: At the top left, 'U.S. Department of Justice' in bold, followed by 'Executive Office for Immigration Review' on the next line. At the top right, 'Decision of the Board of Immigration Appeals'. Below this, a horizontal line separates the header from the address 'Falls Church, Virginia 22041'. Underneath the line, on the left, is 'File: A200-759-852 – California Service Center' and on the right is 'Date:'. Below that, the caption reads 'In re: Kathy SMITH, Beneficiary of a visa petition filed by Karl Stewart Smith, Petitioner'. At the bottom of the card, it says 'IN VISA PROCEEDINGS'.

Note: See section 4.7(d) (Petitioner) when the beneficiary is allowed to self-petition.

(ii) *DHS consolidated multiple beneficiaries' visa petition.* – On rare occasions, DHS will consolidate related visa petitions and issue only one decision. If the petitioner lists both beneficiaries on the appeal or motion, then both beneficiaries are listed in the caption. An example of a caption for multiple beneficiaries in a case consolidated by DHS may be found in section 4.3(d) of this Chapter.

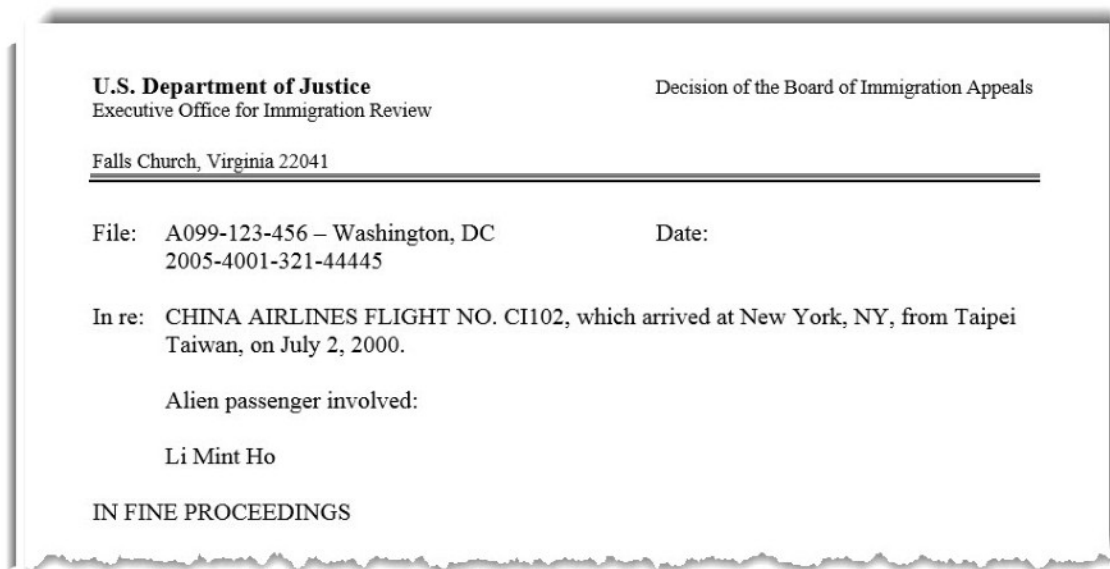
(f) ***Fine proceedings.*** – The entire name of the carrier is listed in all CAPS. Although the passenger’s name is also listed, it is in lower case *not* all CAPs. For example:

In re: CHINA AIRLINES FLIGHT NO. C1012, which arrived at New York, NY from Taipei, Taiwan, on July 2, 2000.

Alien passenger involved:

Li Mint HO

Below is an illustration of how the caption should appear in the BIA’s decision.

The illustration shows a document with a header section containing 'U.S. Department of Justice' and 'Executive Office for Immigration Review' on the left, and 'Decision of the Board of Immigration Appeals' on the right. Below this is a line with 'Falls Church, Virginia 22041'. The main body of the document contains the following text: 'File: A099-123-456 – Washington, DC' and 'Date: 2005-4001-321-44445'. Below that is 'In re: CHINA AIRLINES FLIGHT NO. CI102, which arrived at New York, NY, from Taipei Taiwan, on July 2, 2000.' followed by 'Alien passenger involved: Li Mint Ho'. At the bottom, it says 'IN FINE PROCEEDINGS'.

U.S. Department of Justice
Executive Office for Immigration Review
Decision of the Board of Immigration Appeals
Falls Church, Virginia 22041

File: A099-123-456 – Washington, DC
2005-4001-321-44445
Date:

In re: CHINA AIRLINES FLIGHT NO. CI102, which arrived at New York, NY, from Taipei
Taiwan, on July 2, 2000.

Alien passenger involved:
Li Mint Ho

IN FINE PROCEEDINGS

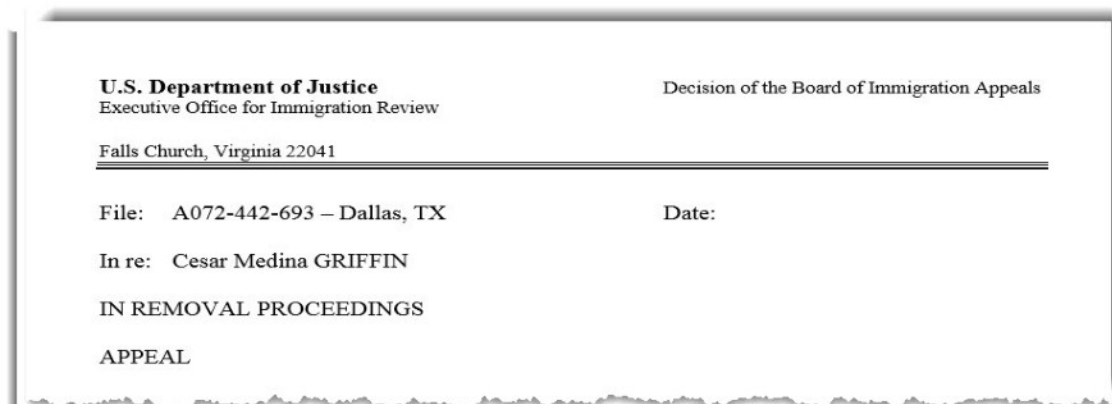
4.6 The Posture of Case

(a) ***Generally.*** – The caption must identify the posture of the case before the BIA, which includes the following designations:

- APPEAL
- MOTION
- APPEAL AND MOTION

- CERTIFICATION
- INTERLOCUTORY APPEAL

(b) Appeal. – The designation “APPEAL” in all CAPs is used when the posture of the case is a direct appeal from the decision of either the Immigration Judge or a DHS officer. This is a snapshot of the captions in the BIA’s decision in *Fine Proceedings*.



U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A072-442-693 – Dallas, TX Date:

In re: Cesar Medina GRIFFIN

IN REMOVAL PROCEEDINGS

APPEAL

(i) IJ MTR. – The designation “APPEAL” also includes cases where a party is appealing from an Immigration Judge’s decision denying or granting a motion to reopen or reconsider. For example, if a respondent or applicant appeals an Immigration Judge’s denial to rescind an order of removal entered *in absentia*, then “APPEAL” would appear in this caption, *not* “MOTION.”

(ii) Federal court remand. – When a federal court vacates the BIA’s decision dismissing the respondent/applicant’s appeal and remands the case to the BIA for further proceedings, put “APPEAL” in the caption. There may be times when it is unclear whether the federal court vacated the BIA’s underlying decision. In such a case, first consult with your TL to evaluate the nature of the federal court’s decision. If the federal court did not vacate the BIA’s underlying decision, use the posture of the case identified in the BIA’s decision challenged in federal court.

(iii) Untimely appeal or waived appeal. – When the BIA elects to review a case involving an untimely or waived appeal, in its discretion, the designation “APPEAL” is used in the BIA’s caption. Also, include a footnote to this caption or explain in the introductory paragraph of the BIA’s decision that

the appeal is being considered pursuant to the BIA's authority 8 C.F.R. § 1003.1(c). For example:

- "To resolve any issues of timeliness, we will consider this matter on appeal pursuant 8 C.F.R. § 1003.1(c)."

Below is an illustration on how the BIA's caption would appear if the designation "APPEAL" and a footnote were used.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File: A200-365-002 – York, PA	Date:
In re: Emanuel ROBLES-GOMEZ	
IN REMOVAL PROCEEDINGS	
APPEAL ¹	
ON BEHALF OF RESPONDENT: Alan Stewart, Esquire	

¹ To resolve any issues of timeliness, we will consider this matter on appeal pursuant to 8 C.F.R. §1003.1(c).

(iv) Administrative return or certification. – If in the BIA's prior decision the case was remanded or returned to the Immigration Court for an administrative deficiency (e.g., missing a transcript, Immigration Judge decision, charging document), and the deficiency has been corrected and the case returned to the BIA for further adjudication, the designation "APPEAL" is used in the caption, *not* "CERTIFICATION." For more information as to when to use the caption "CERTIFICATION," see section (e) below.

In addition, if the BIA's prior decision remanded the case to the Immigration Judge to adjudicate a particular issue and to thereafter return or certify his or her decision back to the BIA, put "APPEAL" in the caption.

(c) Motion. – The designation "MOTION" is used only when the motion to reopen or reconsider is filed *with* the BIA.

In addition, when a federal court vacates the BIA's decision denying the respondent/applicant's motion to reopen or reconsider and remands the case to the BIA for further consideration of the motion, put "MOTION" in the caption. There may be times when it is unclear whether the federal court vacated the BIA's underlying decision. In such a case, first consult with your TL to evaluate the nature of the federal court's decision. If the federal court did not vacate the BIA's underlying decision, use the posture of the case identified in the BIA's decision challenged in federal court. Below is an illustration on how the BIA's caption would appear if the designation "MOTION" is used.

The illustration shows a sample BIA caption form. At the top left, it reads "U.S. Department of Justice" and "Executive Office for Immigration Review". At the top right, it reads "Decision of the Board of Immigration Appeals". Below this, the address "Falls Church, Virginia 22041" is listed. A horizontal line separates the header from the body. The body contains the following text: "File: A099-448-002 – Boston, MA", "Date:", "In re: John Paul JONES", "IN REMOVAL PROCEEDINGS", and "MOTION".

(d) Appeal and motion. – The designation "APPEAL AND MOTION" is used when the case involves both an appeal and motion. Generally, this occurs when a party files a motion to remand the proceedings to the Immigration Judge while there is a direct appeal pending before the BIA. This designation is also used when a motion to recalendar or reinstate proceedings is filed in a case that the BIA has administratively closed, i.e., pursuant to the American Baptist Churches settlement agreement (ABC).

See illustration on next page.

Below is an illustration on how the BIA's caption would appear if the designation "APPEAL AND MOTION" is used.

U.S. Department of Justice Executive Office for Immigration Review <u>Falls Church, Virginia 22041</u>	Decision of the Board of Immigration Appeals
File: A200-476-493 – Newark, NJ	Date:
In re: Juan Carlos LOPEZ	
IN REMOVAL PROCEEDINGS	
APPEAL AND MOTION	

(e) Certification. – The designation "CERTIFICATION" is used *only* when a case is certified to the BIA by either the Immigration Judge or the DHS adjudicator as permitted by the regulations. See 8 C.F.R. §§ 1003.1(c) and 1003.7. In other words, "CERTIFICATION" is reserved for those cases in which the first time the BIA sees the case is upon a direct referral from the Immigration Judge or DHS officer – and not when the Immigration Judge or DHS adjudicator has returned the case to the BIA subsequent to a remand or administrative return. Either include a footnote to this caption or explain in the introductory paragraph of the decision that the case is before the BIA via certification.

The footnote should read as follows:

- "The Immigration Judge certified [his/her] decision to the Board pursuant to 8 C.F.R. § 1003.7.

See illustration on next page.

Below is an illustration of how the BIA's caption would appear if the designation "CERTIFICATION" and a footnote are used.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
--	--

File: A205-888-753 – Atlanta, GA Date:

In re: Marcos SMITH JONES

IN REMOVAL PROCEEDINGS

CERTIFICATION¹

ON BEHALF OF RESPONDENT: Alan Stewart, Esquire

¹ The Immigration Judge certified her decision to the Board pursuant to 8 C.F.R. § 1003.7

Note: The Clerk's Office enters the special issue "Immigration Judge Certification (IJC)" or "District Director Certification (DDC)" in General Appeal Information field in CASE when an Immigration Judge or DHS officer certifies his or her decision pursuant to 8 C.F.R. §§ 1003.1(c) and 1003.7. On the next page is a snapshot from CASE, Appeal Tab Screen showing the General Appeal Information field and the "Special Issue" with an example of Immigration Judge Certification is circled.

Below is a snapshot from CASE, Appeal Tab Screen showing the General Appeal Information field and the “Special Issue” with an example of Immigration Judge Certification is circled.

Case Manager v.06.03.02.01 | CASE1-RDC45 | MintonA | CASE1 | EOIRDB | EOIR-SQL-DCE32 - Internet Explorer

CASE MANAGER

ALIEN INFO CASE INFO SCHEDULE REPS **APPEAL** ACTIONS DISPOSITION COMMENTS COMPETENCE

Gen | Priority | Fee | ROP

A-Number: [REDACTED] Rec'd at EOIR: 11/30/09 Case Type: Removal
 Name: [REDACTED] Lodged at EOIR: [REDACTED] Custody: Never Detained
 Rider(s): None ROP Location: BIA BOARD MEMBER/O'CONNOR-OFFICE

BIA ROP Location: BIA BOARD MEMBER/O'CONNOR-OFFICE Last Circulated: 11/08/2016 App./Mot. Filed: 03/01/2016 by Alien
 Screened: 10/21/2016 Base City: NYC BIA Proc. Type: Case Appeal
 Reg. Code: Eastern Hloc: NYC Decision Date: n/a
 Modified By: DograM on 11/09/2016 S/L Status: n/a Atty. Assigned: [REDACTED]

GENERAL APPEAL INFORMATION

Appeal Due: 03/03/2016
 Appeal/Mot. Type: Case Appeal
 Filed On: 03/01/2016
 Filed By: Other
 Special Issue: Immigration Judge Certification...(IJC)

PRIORITY INFORMATION

Priority: [REDACTED] Priority Status: [REDACTED]

(f) *Interlocutory appeal.* – The designation “INTERLOCUTORY APPEAL” is used when one of the parties is appealing a preliminary ruling by an Immigration Judge and a final decision regarding the immigration proceedings has not been entered. An example of an interlocutory appeal is when a respondent appeals the denial of a motion to change venue or to suppress, but the case in chief is still pending before the Immigration Judge.

The designation “Interlocutory appeal” should *not* be used in the APPLICATION caption. Information on the APPLICATION caption is provided in section 4.13 of this chapter.

See illustration on next page.

Below is an illustration of how the BIA's caption would appear if the designation "INTERLOCUTORY APPEAL" is used.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A202-476-589 – Lumpkin, GA Date:

In re: Martin HERNANDEZ-MENDOZA

IN REMOVAL PROCEEDINGS

INTERLOCUTORY APPEAL

4.7 “ON BEHALF OF” - Designation of Individual or Entity in Proceedings

(a) Generally. – There are two parts to this element of the caption. First, one of the following terms must be used to identify the individual(s) or entity being represented before the BIA, and the term must be in all CAPS:

- RESPONDENT
- APPLICANT
- PETITIONER
- BENEFICIARY
- CARRIER/INDIVIDUAL

Below is an illustration of the “ON BEHALF OF” designation for a respondent in removal proceedings. The term “RESPONDENT” is highlighted here for illustration purposes only.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File: A072-442-693 – San Antonio, TX	Date:
In re: Ceasar GUZMAN-SALAZAR	
IN REMOVAL PROCEEDINGS	
INTERLOCUTORY APPEAL	
ON BEHALF OF RESPONDENT : Patrick Smith, Esquire	

When there is more than one person who is the subject of the appeal or motion, make the term in the “ON BEHALF OF” line plural, and add an “s” to the word “File:” preceding the A number listing. Below is an illustration of how these two elements should appear when multiple respondents are referenced. Also, the letter “s” has been highlighted in the illustration only to emphasize the need to make this element plural.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File ^s : A097-442-789 – New York, NY A097-159-463	Date:
In re: Lisa Chin YOUNG Andrew Chin YOUNG	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT ^S : Jane A. Smith, Esquire	

(b) Respondent. – This term is used when proceedings before the BIA fall under one of these categories:

- Removal
- Deportation
- Bond
- Continued Detention
- Rescission
- Attorney Discipline

(c) Applicant. – This term is used in this caption when proceedings before the BIA fall under one of these categories:

- Exclusion
- Asylum and/or Withholding
- Application for Adjustment of Status (e.g., pursuant to HRIFA or NACARA)
- Application for Advance Permission pursuant to section 212(d)(3)(A)

The term “APPLICANT” is highlighted in the illustration below for emphasis only.

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
<u>Falls Church, Virginia 22041</u>	
File: A202-445-629 – New York, NY	Date:
In re: Hai TAU	
IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS	
APPEAL	
ON BEHALF OF APPLICANT : John L. Smith, Law Student	

(d) *Petitioner*. – This term is used in the caption for visa petition proceedings and is highlighted in the illustration for emphasis only. The term is also used when an individual is permitted to self-petition. For example, an individual is self-petitioning because the petitioner has died (e.g., self-petitioning widow(er)). See 8 C.F.R. § 1250.1(a)(3). On the next page is an illustration of self-petitioning caption.

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
<u>Falls Church, Virginia 22041</u>	
File: A206-014-007 – California Service Center	Date:
In re: Pearl Smith JONES, Beneficiary of a visa petition filed by Albert JONES, Petitioner	
IN VISA PETITION PROCEEDINGS	
APPEAL	
ON BEHALF OF PETITIONER : Pro se	

Below is an illustration of when the term petitioner is used for a self-petitioning visa petition. The term petitioner is highlighted in the illustration for emphasis only.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A076-381-158 – California Service Center Date:

In re: Maria Del Rosario GARCIA, **Petitioner** as widow of
Rafael Lopez Jimenez

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF **PETITIONER**: Pro se

(e) Beneficiary. – Generally, the beneficiary to a visa petition has no standing to file an appeal or motion, but there are instances where it is allowed or the BIA will render a decision nonetheless. The BIA also renders decisions on appeals improperly filed by a beneficiary (or a third party on behalf of a beneficiary), dismissing the appeal for the filer’s lack of standing. It is only appropriate to use the term beneficiary in the caption. The term “BENEFICIARY” is highlighted in the illustration below for emphasis only.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A205-011-887 – Potomac Service Center Date:

In re: Alan WILLIAMS, Beneficiary of a visa petition filed by
Sandra Crosby WILLIAMS, Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF **BENEFICIARY**: Karl Young, Esquire

(f) **Carrier/Individual.** – The term “CARRIER” or “INDIVIDUAL” is used in fine proceedings. Below is an illustration of the term carrier and is highlighted for emphasis only.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A206-962-460 – Washington, DC Date: 2015-4701-300-42501

In re: CHINA AIRLINES FLIGHT NO. CI 012 which arrived at New York, NY, from Taipei, Taiwan, on March 1, 2014.

Alien passenger involved:
Lin Ming

IN FINE PROCEEDINGS

ON BEHALF OF **CARRIER:** Jon P. Williams, Esquire

4.8 Representation for Individual or Entity before the BIA

(a) **Generally.** – The BIA recognizes in its decision whether an individual or entity in proceedings before the BIA is represented and by whom. This recognition also appears in the “ON BEHALF OF” caption that appears before the “ON BEHALF OF DHS:” caption.

As a practical matter, there are four categories of people who may present cases on behalf of an individual or entity: unrepresented (*pro se*), attorneys, accredited representatives, and certain kinds of individuals who are expressly recognized by the BIA. See *generally* 8 C.F.R. § 1292.1. They are:

- Pro se
- Attorney
- Accredited Representative
- Law Student

- Law Graduate
- Reputable Individual
- Accredited Official

Non-lawyer “immigration specialists,” “visa consultants,” and “notarios” are not authorized to represent parties before the BIA.

The highlighted area in the illustration below identifies the ON BEHALF OF caption where the representation status and related information appears:

The illustration shows a document from the U.S. Department of Justice, Executive Office for Immigration Review, titled "Decision of the Board of Immigration Appeals". The address "Falls Church, Virginia 22041" is underlined. The document contains the following text: "File: A205-894-658 – Boston, MA", "Date:", "In re: Rudolph SOX", "IN REMOVAL PROCEEDINGS", "APPEAL", and "ON BEHALF OF RESPONDENT:". The text "ON BEHALF OF RESPONDENT:" is highlighted in a grey box, and the area following it is redacted with a solid grey bar.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A205-894-658 – Boston, MA Date:

In re: Rudolph SOX

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: [REDACTED]

(b) Unrepresented Individuals (“Pro se” Appearances). –

(i) Generally. – When an individual in proceedings represents himself or herself before the BIA, the designation “Pro se” is listed in the caption. For example:

ON BEHALF OF RESPONENT: Pro se

Below is an illustration showing the designation of “Pro se.”

The illustration shows a document with a torn bottom edge. The text on the document is as follows:

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A205-054-247 – Baltimore, MD Date:

In re: Domingo Antonio ORTIZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

(ii) No EOIR-27. – The “Pro se” designation is also appropriate when an individual’s attorney or representative fails to file a Notice of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). If a practitioner files an appeal or motion without a Form EOIR-27 and is not the “attorney” of record, the Clerk’s Office should accept the filing as pro se and send a Form EOIR-27 requirement notification to the practitioner.

In addition, the BIA will not recognize a practitioner based on an Immigration Court appearance form (Form EOIR-28), even when the EOIR-28 is filed with the BIA.

(iii) No EOIR ID number. – The “Pro se” designation *may* be appropriate when an individual’s attorney or fully accredited representative who is accredited to appear before EOIR fails to include the EOIR ID number on the Form EOIR-27. Attorneys and accredited representatives must register with EOIR’s eRegistry in order to practice before the BIA. See 8 C.F.R. § 1292.1(f).

The designation of “Pro se” is appropriate if an attorney or fully accredited representative failed to include their EOIR ID number on the Form EOIR-27 *unless*:

- Form EOIR-27 in the record of proceedings was received by the BIA (date stamp on form) *on or before* 08/01/2014, or
- “E-27 Date” in CASE reflects a date *on or before* 08/01/2014.

It is important to check the record of proceedings or CASE to see when the filing was made and whether either of these conditions apply. Additionally, if an attorney or accredited representative files an appeal or motion without an EOIR ID number on the Form EOIR-27, the Clerk’s Office should reject the filing. The Clerk’s Office will also provide both the individual and the practitioner 15 days from the date of the rejection notice to perfect and resubmit the filing.

(iv) Representative deceased. – The BIA may learn of the death of an individual’s attorney or representative from a variety of sources. As a result, the Clerk’s Office will try to verify the death of an attorney or representative. The Clerk’s Office should send a letter to impacted individuals in proceedings before the BIA which advises them that their attorney or representative of record is deceased and that they will be treated as unrepresented. This letter also advises that, if the individual obtains new counsel, their attorney or representative must file a Form EOIR-27. It is important to check the record of proceedings to see if the Clerk’s Office has notified the individual of their attorney or representative’s death and the requirement for new counsel to file an EOIR-27.

The “Pro se” designation is appropriate when an individual’s attorney or representative is deceased and new counsel has not entered an appearance. A footnote should only be added to the designation “Pro se” if the record of proceedings does not contain the letter sent by the Clerk’s Office to the individual in proceedings. For example, “The Board is aware that the respondent’s attorney is deceased and a new representative has not filed a Notice of Appearance (Form EOIR-27).” The footnote should *not* advise that a courtesy copy of the BIA’s decision is being provided to the address, firm, or organization of the deceased attorney or representative.

(v) *Courtesy copy of BIA decision footnote.* –

(A) No EOIR-27 or an EOIR-28 is filed. – A footnote advising that a courtesy copy of the BIA decision is being provided to the practitioner who failed to file a Form EOIR-27 or submitted a Form EOIR-28 should *only* be included in the decision in those cases where the Clerk's Office failed to issue a Form EOIR-27 requirement notice to the individual and the representative. The practitioner's name should *not* be included in the footnote.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041		Decision of the Board of Immigration Appeals
File: A205-054-247 – Baltimore, MD	Date:	
In re: Domingo Antonio ORTIZ		
IN REMOVAL PROCEEDINGS		
APPEAL		
ON BEHALF OF RESPONDENT: Pro se ¹		

¹ An attorney filed an appellate brief on behalf of the respondent. However, the attorney did not file a Notice of Appearance (Form EOIR-27). We will nevertheless provide the attorney with a courtesy copy of the decision.
--

On the next page is an illustration of a footnote advising that a courtesy copy of the BIA decision is being provided to the practitioner who submitted a Form EOIR-28 and the Clerk's Office failed to issue a Form EOIR-27 requirement notice to the individual and the representative. The practitioner's name should not be included in the footnote.

Below is an illustration of a footnote advising that a courtesy copy of the BIA decision is being provided to the practitioner who submitted a Form EOIR-28 and the Clerk's Office failed to issue a Form EOIR-27 requirement notice to the individual and the representative. The practitioner's name should not be included in the footnote.

U.S. Department of Justice Executive Office for Immigration Review <u>Falls Church, Virginia 22041</u>	Decision of the Board of Immigration Appeals
File: A205-054-247 – Baltimore, MD	Date:
In re: Domingo Antonio ORTIZ	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Pro se ¹	

¹ An attorney filed an appellate brief on behalf of the respondent. However, because a Notice of Appearance before the Immigration Court (Form EOIR-28) instead of a Notice of Appearance before the Board (Form EOIR-27) was filed, we will not recognize the attorney. We will nevertheless provide the attorney with a courtesy copy of the decision.

(B) No EOIR ID number. – Where a Form EOIR-27 filed by an attorney or accredited representative should have been rejected by the Clerk’s Office because the practitioner failed to include their EOIR ID number, it is appropriate to include a footnote advising that a courtesy copy of the BIA’s decision is being provided to that practitioner. The practitioner’s name should *not* be included in the footnote.

Below is an illustration with an example footnote with suggested language.

The illustration shows a sample of a BIA decision form. The header includes "U.S. Department of Justice" and "Executive Office for Immigration Review" on the left, and "Decision of the Board of Immigration Appeals" on the right. Below this is the address "Falls Church, Virginia 22041". The main body of the form contains the following text: "File: A204-200-985 – Las Vegas, NV", "Date:", "In re: Pedro SMITH-GORGANO", "IN REMOVAL PROCEEDINGS", "APPEAL", and "ON BEHALF OF RESPONDENT: Pro se¹". A horizontal line separates the main body from a footnote at the bottom. The footnote reads: "¹ An attorney filed a Notice of Appearance as Attorney or Representative before the Board of Immigration Appeals (Form EOIR-27) with the Board. The attorney, however, did not provide his EOIR ID number on the Form EOIR-27. We will nevertheless provide the attorney with a courtesy copy of the decision."

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A204-200-985 – Las Vegas, NV Date:

In re: Pedro SMITH-GORGANO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se¹

¹ An attorney filed a Notice of Appearance as Attorney or Representative before the Board of Immigration Appeals (Form EOIR-27) with the Board. The attorney, however, did not provide his EOIR ID number on the Form EOIR-27. We will nevertheless provide the attorney with a courtesy copy of the decision.

(C) Annotate circulation sheet. – When including a courtesy copy footnote, the “Special Instructions to Docket” section of the circulation sheet *must* be annotated to advise the Docket team to send a courtesy copy of the BIA’s decision. See Chapter 9 (Circulation).

(vi) DHS appeal. – When the DHS files an appeal with the BIA, the individual subject to proceedings will be treated as unrepresented (*pro se*) unless and until the Clerk’s Office receives a Form EOIR-27 from the

respondent's or applicant's representative. A courtesy copy footnote for a DHS appeal should *only* be included in those cases where the Clerk's Office did not issue a Form EOIR-27 requirement to the individual and his or her representative. The practitioner's name should *not* be included in the footnote.

The Clerk's Office issues a Form EOIR-27 requirement notice to both the individual and his or her representative if the DHS serves a copy of the Notice of Appeal (Form EOIR-26) on that individual's attorney or accredited representative. However, if DHS only serves the Notice of Appeal on the individual, then the Clerk's Office does not send a Form EOIR-27 requirement.

(vii) *Withdrawn representation.* – Generally, a request to withdraw representation will already have been dealt with before the case is assigned to an attorney. However, where the record does not contain a notice from the BIA reflecting that a request to withdraw representation has been allowed, then the withdrawal request should be addressed in the BIA's decision. The request may be granted if the attorney or accredited representative has complied with the requirements of *Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988). In such cases, the caption should reflect that the individual is unrepresented, i.e., Pro se, and include a footnote reflecting the disposition of the motion.

(A) *Grant request with respondent still in the United States.*
– When the requirements of *Rosales* are met and the individual is still in the United States, a courtesy copy of the BIA decision may be provided to the former representative.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A200-568-741 - Baltimore, MD Date:

In re: Isau Eduardo JORDAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se¹

¹ The respondent's counsel's request to withdraw from this case is granted. See *Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988). A courtesy copy of this decision will be provided to former counsel.

(B) Grant request with respondent/applicant outside the United States. – When the requirements of *Rosales* are met, but the respondent/applicant is no longer in the United States, the representative may be allowed to withdraw from the case, but he or she is still responsible for receiving correspondence, notices, and the BIA's decision.

Below is an illustration with a sample footnote containing language that may be used.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A200-568-741 – Baltimore, MD

Date:

In re: Carlos GOMEZ-YOUNG

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se¹

¹ The respondent's counsel's request to withdraw from this case is granted for all purposes except for the receipt of correspondence, notices, and the Board's decision in this matter since the respondent's counsel has stated that the respondent has left the United States. *See Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988). The respondent will be provided a copy of this decision at his last known mailing address.

(C) Deny request. – Below is an illustration with an example footnote containing sample language denying an attorney’s request to withdraw.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041		Decision of the Board of Immigration Appeals
File: A200-568-741 – Baltimore, MD	Date:	
In re: Carlos GOMEZ-YOUNG		
IN REMOVAL PROCEEDINGS		
APPEAL		
ON BEHALF OF RESPONDENT: John L. Smith ¹		

¹ The attorney’s request to withdraw as the respondent’s counsel is denied. *See Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988).

(viii) Representative is suspended. –

(A) Clerk’s Office notification of suspended counsel. – When the record reflects that the Clerk’s Office has already notified the individual of his or her representative’s suspension, the caption should read “Pro se.” A footnote about the suspension in this instance is optional and left to the discretion of the AIJ or panel.

(B) No Clerk’s Office notification of suspension. – When the ROP has a purple copy of the suspension decision and order but *does not* reflect that the Clerk’s Office has notified the represented individual that their representative has been suspended, the caption should read “Pro se,” (unless the individual has retained new representation), and there must be a footnote indicating that the representative is under an order of suspension. Also, the “Special Instructions To Docket” portion

of the circulation sheet must be annotated so the Docket Team will know to send the represented individual a copy of the BIA's suspension decision and order. See Chapter 9 (Circulation).

Below is an illustration of the caption reflecting the representation as "Pro se" and a footnote regarding the suspension of the representative before the BIA. (Note that this sample language will not apply to all suspension scenarios.)

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File: A200-568-741 – Baltimore, MD	Date:
In re: Carlos GOMEZ-YOUNG	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Pro se ¹	

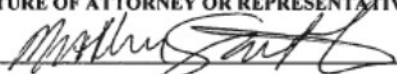
¹ At the time the respondent filed his appeal, he was represented by attorney John Doe. Since Mr. Doe has been suspended from practice before the Board and Immigration Judges, he is not permitted to practice before the Board at this time. This decision will be sent directly to the respondent and only a courtesy copy is being sent to Mr. Doe. Please see the attached copy of the Board's order suspending Mr. Doe from practice.

(ix) Change in accredited representative status. –

(A) Clerk's Office notification of change in accredited representative status. – When the record reflects that the status of an accredited representative has changed and that the Clerk's Office has notified the represented person of the change, the caption should read "Pro se" (unless the individual has retained new representation). A footnote about the change in accreditation status is optional and left to the discretion of the AIJ or panel.

(B) No Clerk's Office notification of a change in accredited representative status. – When the records reflects a change in accredited representative status and the Clerk's Office has not notified the represented person of the change, the caption should read "Pro se" (unless the individual has retained new representation). There must be a footnote indicating that the representative's accredited status has changed.

(c) Represented. – When the ROP contains a Form EOIR-27, only the designated Primary Attorney/Representative's name, as it appears on the form or as updated by subsequent correspondence is listed on this line.

SIGNATURE OF ATTORNEY OR REPRESENTATIVE		EOIR ID NUMBER	DATE
X 		QZA4568	7/2/15
NAME OF ATTORNEY OR REPRESENTATIVE, ADDRESS, FAX & PHONE NUMBERS, & EMAIL ADDRESS			
Name: Mathew		B	Smith
(First)		(Middle Initial)	(Last)
Address: 1234 Silver Dollar Place, Suite 100			
(Number and Street)			
Las Vegas		NV	89120
(City)		(State)	(Zip Code)
Telephone: 702-555-1212		Facsimile: _____ Email: _____	
☐ Check here if new address			

Form EOIR - 27
Rev. July 2015

(i) **Mismatch between CASE and the EOIR-27.** – Usually the name appearing on the EOIR-27 matches what appears in CASE and on Notices issued from the BIA.

(A) **First and/or last name discrepancy.** – When the first and/or last name appearing on the EOIR-27 does not match CASE and Notices, first check the Comments screen in CASE to see if the Clerk's Office has already investigated the discrepancy. If the Clerk's Office has resolved the matter, then for purposes of the "ON BEHALF OF" caption, list the first and last name as it appears on the EOIR-27. However, if the Clerk's Office has *not* resolved the issue, bring the discrepancy to the attention of a TL or SCMS. Do not try to determine which name is correct and do not circulate the decision with instructions to the Docket team to update CASE. If necessary, a TL or SCMS will complete a Quality Problem Correction form to request that the Clerk's Office address the discrepancy between the EOIR-27 and CASE. See BIA Webpage, Forms Book (Quality Problem Correction form).

(B) **Middle name discrepancy.** – Attorneys and fully accredited representatives must register with EOIR's eRegistry in order to practice before the BIA. See 8 C.F.R. § 1292.1(f). eRegistry requires the use of a full middle name as opposed to just a middle initial. For purposes of the ON BEHALF OF caption, list what the attorney or fully accredited representative has identified as their middle name. For example, if the EOIR-27 notes John Q. Smith instead of John Quincy Smith (eRegistry and CASE), then list "John Q. Smith, Esquire" in the ON BEHALF OF caption.

(ii) **Primary and Non-Primary Attorney/Representatives.** – If several representatives have filed an EOIR-27 in the case (usually seen where representatives are from the same law firm), one of the representatives must be designated as Primary Attorney/Representative. List only the designated Primary Attorney/Representative in this caption, and do *not* include a footnote stating that a courtesy copy of the BIA's decision will be provided to Non-Primary Attorney/Representatives.

To determine which representative is the Primary Attorney/Representative, either check the reverse of the Form EOIR-27, or look

under the “REPs” tab in CASE. Below is an illustration of the relevant portion of the Form EOIR-27.

Indicate Type of Appearance:

☒ Primary Attorney/Representative ☐ Non-Primary Attorney/Representative

I am providing pro bono representation. Check one: ☐ yes ☒ no

Proof of Service

(iii) Attorney. – An attorney may practice before the BIA 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). For more information, please consult the BIA Practice Manual.

If an EOIR-27 is submitted by an attorney who meets the requirements set forth in the regulations and has provided an EOIR ID number, his or her name should be followed by “Esquire” in the caption. As noted above, only the Primary Attorney is listed in this caption. Below is an illustration of the caption reflecting an attorney as the representative.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File A204-200-363 – Las Vegas, NV Date:

In re: Friend SMILEY

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew B. Smith, Esquire

(iv) Accredited representative. – An accredited representative is a person who is approved by EOIR to represent individuals before the BIA the Immigration Courts, and/or 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 EOIR to represent individuals. A fully accredited representative may represent individuals before the BIA, the Immigration Courts, and DHS. A partially accredited representative may only represent individuals before DHS and therefore would not practice before the BIA. For more information regarding accredited representatives, please consult the BIA Practice Manual on the EOIR website.

If an EOIR-27 is submitted by an accredited representative who meets the requirements set forth in the regulations and has provided an EOIR ID number, his or her name should be followed by “Accredited Representative” in the caption. A fully accredited representative is required to obtain an EOIR ID number.

As discussed in the subsection above, only the Primary Representative is listed in this caption. See illustration below.

The illustration shows a rectangular form with a decorative, torn-edge bottom. The text is as follows:

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
<u>Falls Church, Virginia 22041</u>	
File: A097-360-799 – New York, NY	Date:
In re: Avril Alexandra SMITH	
IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Sandy Wood, Accredited Representative	

(v) Law student or law graduate. – The regulations allow for an individual to be represented by a law student or law graduate under certain circumstances. See 8 C.F.R. § 1292.1(a)(2). If an EOIR-27 is submitted by a law student or law graduate who meets the requirements set forth in the regulations, his or her name should be followed by either “Law Student” or “Law Graduate” in the caption. A law student or law graduate is not required to obtain an EOIR ID number. See illustration on next page.

Below is an illustration of the caption reflecting that the respondent's representative is a law student. As discussed in the subsection (ii), only the Primary Representative is listed in this caption.

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
<u>Falls Church, Virginia 22041</u>	
File A046-340-799 – Baltimore, MD	Date:
In re: Francis SCOTT	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Elizabeth Roosevelt, Law Student	

Below is an illustration of the caption reflecting that the respondent's Primary Representative is a law graduate.

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
<u>Falls Church, Virginia 22041</u>	
File A200-340-584 – Detroit, MI	Date:
In re: Earl WATSON a.k.a. Junior Watson	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Timothy Stanley, Law Graduate	

(vi) Reputable Individual. – The regulations allow for an individual in proceedings to be represented by a “reputable individual.” See 8 C.F.R. § 1292.1(a)(3). Generally, whether to accept the submission of an EOIR-27 by a person seeking to represent an individual in proceedings as a reputable individual will have already been dealt with before the case is assigned to an attorney. However, where the record does not reflect that the individual seeking such recognition meets the requirements set forth in the regulations, bring the matter to the attention of a TL, who will complete a Quality Problem Correction form. The Clerk’s Office, in conjunction with a SLA, will address whether the individual has met the regulatory criteria.

If an EOIR-27 is submitted by a person who has met the requirements of a reputable individual, his or her name should be listed in this caption followed by “Reputable Individual.” A reputable individual is not required to obtain an EOIR ID number.

Below is an illustration of the caption reflecting that the respondent’s representative is a reputable individual.

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
<u>Falls Church, Virginia 22041</u>	
File: A078-340-716 – San Diego, CA	Date:
In re: Olga Alexandria HOGAN	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Jane Valdez-Austin, Reputable Individual	

(vii) Accredited Officials. – The regulations allow for an individual in proceedings to be represented by an “accredited official” in the United States. See 8 C.F.R. § 1292.1(a)(5). An “accredited official” is different from an “accredited representative.” See *supra*. If an EOIR-27 is submitted by a person seeking to represent an individual in proceedings as an accredited official and this person meets the requirements set forth in the regulations, his or her name should be listed in the caption followed by “Accredited Official.”

Below is an illustration of the caption reflecting that the respondent’s representative is an accredited official.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File: A075-854-657 – New York, NY	Date:
In re: Andrew JONES-STEVENSON	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: John B. Nation, Accredited Official	

4.9 DHS Representative

(a) Designation of DHS/ICE representative. –

(i) Generally. – The Office of the Principal Legal Advisor (OPLA) within U.S. Immigration and Customs Enforcement (ICE) of the DHS is the U.S. Government’s representative in proceedings before the Immigration Court and the BIA, if an appeal is filed. OPLA is headquartered in Washington, D.C. and has 25 Offices of Chief Counsel.

(ii) **Caption information.** – The name and title, as it appears in the latest substantive filing from the DHS, is listed in the “ON BEHALF OF DHS” caption. The name of the DHS representative appears on the first line and is followed by his or her title as it appears in the filing.

There may be instances where the latest substantive filing submitted on behalf of DHS identifies two ICE attorneys. If it is clear, which DHS attorney prepared the substantive filing, list their name and title. However, if you are unsure, then select only one DHS attorney for this caption. Do not list DHS judicial law clerks, legal interns, or paralegals in this caption.

U.S. Department of Justice Executive Office for Immigration Review <u>Falls Church, Virginia 22041</u>	Decision of the Board of Immigration Appeals
File: A200-054-115 – Arlington, VA	Date:
In re: Ceasar ACOSTA-EDUARDO	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Anna B. Smith, Esquire	
ON BEHALF OF DHS: Linda A. Carter Assistant Chief Counsel	

(iii) **When to delete from caption.** – If the DHS does not file a response to an appeal or motion, the “ON BEHALF OF DHS” caption should be deleted. Also, if the name of the DHS representative and/or title is illegible on the Notice of Appeal or other filing, the caption should be deleted.

Below is an illustration of how the BIA’s decision headings would appear if the DHS/ICE did not file a response.

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
<u>Falls Church, Virginia 22041</u>	
File: A204-232-891 – Chicago, IL	Date:
In re: Rashad B. TYAMA	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Pro se	
APPLICATION: Adjustment of status	

(iv) **ICE Appellate Counsel.** – Generally, the DHS attorney who submitted the latest substantive filing is listed in the “ON BEHALF OF DHS” caption. However, the Immigration Law and Practice Division (ILPD) of OPLA may submit filings on behalf of the DHS/ICE and/or serve as the government’s representative during an oral argument. If an attorney from ILPD argued a case before the BIA, (i.e., appear at oral argument), then he or she should be listed as the DHS representative. Also, if an attorney from ILPD has submitted a brief or memo that significantly affects the BIA’s action in the case, then that attorney should be listed as the DHS representative. For example, if the ILPD attorney submits a withdrawal of appeal or gives notice that the respondent/applicant has died or has been removed, then *only* the ILPD attorney would be listed in this caption.

(b) Designation of DHS/USCIS representative. – The USCIS of the DHS is responsible for representing the government in visa petitions proceedings before the BIA.

(i) Caption information. – The name and title, as listed in the latest substantive filing from the DHS, is listed in the “ON BEHALF OF DHS” caption. The name of the DHS/USCIS representative appears on the first line and is followed by his or her title as listed in the filing. There also may be instances where the latest substantive filing submitted on behalf of DHS identifies two DHS/USCIS attorneys. If it is clear, which DHS attorney prepared the substantive filing, list their name and title. However, if you are unsure, then select only one DHS attorney for this caption.

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
Falls Church, Virginia 22041	
File: A200-555-635 – California Service Center	Date:
In re: Jane D. SMITH, Beneficiary of a visa petition filed by Karl Smith, Petitioner	
IN VISA PETITION PROCEEDINGS	
APPEAL	
ON BEHALF OF PETITIONER: Pro se	
ON BEHALF OF DHS: Steven L. Doe Associate Counsel	

(ii) When to delete from caption. – If the DHS/USCIS does not file a response to an individual’s appeal or motion, the “ON BEHALF OF DHS” caption should be deleted. Also, if the name of the DHS representative and/or title is illegible, the caption should be deleted.

(c) Designation of DHS/CBP representative. – The U.S. Customs and Border Protection (CBP) within the DHS is the government’s representative in fine proceedings and advance permission proceedings before the BIA. Follow the same guidelines as for ICE and USCIS representatives as discussed in subsections (a) and (b) when completing this caption for a CBP representative.

4.10 Amicus Curiae

(a) **Generally.** – The BIA may grant permission to amicus curiae to appear, on a case-by-case basis, where it serves the public interest. See 8 C.F.R. § 1292.1(d). The decision to grant or deny a request to appear as amicus curiae is within the sole discretion of the BIA.

(b) **Solicitation of amicus briefs.** – Absent extenuating circumstances, the solicitation of amicus curiae will be done through public solicitation.

(c) **Recognition.** – The recognition of which amici, if any at all, in the BIA decision is left to the discretion of the judge in a single AIJ decision or the panel in a three AIJ panel decision.

(d) **Amicus briefs submitted without solicitation.** – If an amicus brief is submitted without public solicitation, whether to recognize that amicus is left to the discretion of the AIJ in a single AIJ decision or the panel if a three AIJ panel decision.

(e) **Caption.** – If the BIA accepts amicus briefs, a caption is *not* added to identify amicus or amici. *Only* published decisions may include “AMICUS CURIAE” in the caption. Once a decision is designated for publication, revisions to captions will be made as part of the publication process.

(f) **Footnote.** – If a drafting attorney proposes acknowledgment or the AIJ(s) decide to recognize the receipt of amicus brief(s), then a general footnote should be added in the body of the decision acknowledging that the BIA received and accepted amicus briefs in the matter.

See illustration on next page.

Below is an illustration of a general acknowledgment of amicus footnote.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041		Decision of the Board of Immigration Appeals
File: A058-684-158 – Memphis, TN In re: Omar JACOBS IN REMOVAL PROCEEDINGS APPEAL ON BEHALF OF RESPONDENT: Pro se ON BEHALF OF DHS: Marcy Bradley Chief Counsel APPLICATION: Termination of proceedings	In a decision dated May 19, 2015, an Immigration Judge ordered the respondent removed from the United States. The respondent has appealed from that decision. The appeal will be sustained and the proceedings terminated. The only question on appeal is whether the respondent derived United States citizenship upon the naturalization of his father pursuant to section 320(a) of the Immigration and Nationality Act, 8 U.S.C. § 1431(a).¹ The Immigration Judge relying on Board precedent, determined that the respondent – who was born out of wedlock in Jamaica to parents who never married – had not been “legitimated” under Jamaican law and thus did not derive citizenship as his father’s	
¹ We acknowledge the brief submitted by amicus curiae.		

(i) Individuals. – When an AIJ in a single AIJ decision or the panel in a three AIJ panel decision wishes to express its appreciation for an amicus brief by an individual (but not on behalf of an organization, law firm, or other entity) or multiple individuals, then this should be acknowledged in the footnote. Note: Only published decisions may include “AMICUS CURIAE” in the caption.

(ii) **Organizations.** – When an AIJ a single AIJ decision or the panel in a three AIJ panel decision wishes to express its appreciation to amicus brief by an organization (including a law firm or other entity) or multiple organizations, then this should be acknowledged in the footnote. Note: Only published decisions may include “AMICUS CURIAE” in the caption.

Below is an illustration of an amicus footnote acknowledging appreciation for an amicus brief.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File: A458-785-158 – Memphis, TN	Date:
In re: Karl JOHN	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Sandra Wood, Esquire	
ON BEHALF OF DHS: Bradley Smith Assistant Chief Counsel	
APPLICATION: Cancellation of removal under section 240A(b) of the Act	
In a decision dated February 3, 2015, an Immigration Judge pretermitted the respondent's application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), finding that the respondent failed to establish the requisite continuous physical presence. The respondent appealed from that decision.¹ The appeal will be dismissed.	
¹ We acknowledge and appreciate the briefs submitted by the parties and by the amicus curiae representing the American Immigration Lawyers Association.	

(A) *Representatives.* – As appropriate, representatives of an organization may be recognized in the footnote, with the default being up to three named representatives per organization. Unless particular names are specified by the organization, the footnote will list the first three names that appear on the brief’s signature page, with the signing representative first and the remaining names in alphabetical order. Names of representatives should be separated by commas, and names of the organizations should be separated by semicolons. The titles “Esquire” and “Accredited Representative” should not be used. For example: Jane Doe, John Smith, and Bob Tran of Immigration Law Firm; and Sam Blogs Immigration Organization.

(B) *Multiple amici.* – If multiple amici are acknowledged in the footnote without identification of the representatives, then the organizations should appear in alphabetical order.

(C) *Additional information or acknowledgment.* – If the judge in a single AIJ decision or the panel in a three AIJ panel decision wishes to provide additional information or acknowledgment regarding a specific amicus, that information or acknowledgment should be added to the footnote.

(g) *Courtesy copy of BIA decision.* – Recognizing an amicus in a case does not entitle amicus curiae to a copy of the BIA’s decision. Do *not* include footnote reflecting that courtesy copy is being provided to amici or instruct the Clerk’s Office to provide a courtesy copy of the BIA’s decision.

(h) *BIA denies request to appear as amicus curiae.* – The Clerk’s Office is responsible for briefs that have been accepted by the BIA. If an amicus brief is contained in the ROP, the brief has been accepted and can be considered and referenced.

4.11 Oral Argument

(a) *Request granted.* – When the BIA has heard argument in a case, the panel may, at its discretion, reference that determination in the decision in either a footnote or the body of the decision, not a caption in the heading of the decision.

(b) *Request denied.* – When a request for oral argument is denied, a panel may, at its discretion, reference that determination in the decision. The decision to deny oral argument should be reflected in a footnote in the body of the decision, not a caption in the heading of the decision.

In addition, the regulation addressing oral argument is 8 C.F.R. § 1003.1(e)(7), *not* § 1003.1(c). The regulations also direct that no oral argument is allowed in a case that is assigned for disposition by a single AIJ. See 8 C.F.R. § 1003.1(e)(7).

4.12 Charge(s) of Removability, Inadmissibility, or Deportability

When a charge of removability, inadmissibility or deportability is alleged by the DHS in a charging document (NTA, Order to Show Cause, etc.) or Additional Ground of Deportability (Form I-261) is at issue, it should be identified in the decision and not within the headings of the BIA's decision. Charges should *not* appear in the header of the BIA's decision.

If a BIA Template contains a "CHARGE" related caption, delete from the decision before circulating the proposed decision. The following BIA Templates contain a "CHARGE" caption: Advance permission; Deportation proceeding; Exclusion proceeding; Fine proceeding; and Removal proceeding.

4.13 Application

(a) Generally. – The "APPLICATION" caption should specify the type of application for relief or protection from removal, deportation, or exclusion that is raised on appeal, no matter which party filed the appeal. If there are multiple applications for relief, separate each application by a semi-colon. For example:

APPLICATION: Cancellation of removal under section 240A(a) of the Act; voluntary departure.

If an application which has been pretermitted by an IJ is an application raised on appeal, you may include it in this caption.

See illustration on next on next page.

Below is an illustration of the application caption in removal proceedings.

U.S. Department of Justice Executive Office for Immigration Review	Decision of the Board of Immigration Appeals
Falls Church, Virginia 22041	
File: A079-555-555 – Portland, OR	Date:
In re: Ernest BANKS	
IN REMOVAL PROCEEDINGS	
APPEAL	
ON BEHALF OF RESPONDENT: Ron Santos, Esquire	
ON BEHALF OF DHS: Bill Williams Assistant Chief Counsel	
APPLICATION: Cancellation of removal under section 240A(b) of the Act, voluntary departure	

(b) Application granted by the Immigration Judge but not challenged by the DHS. – When a respondent/applicant's application for relief or protection is granted by an Immigration Judge but not appealed by the DHS, then the granted relief or protection does not need be included in the caption. For example, an Immigration Judge denies an application for asylum and withholding, but grants protection under Convention Against Torture (CAT). If the appeal challenges the denial of the applications for asylum and withholding, then the caption should read "APPLICATION: Asylum; withholding of removal." Since there are multiple applications, each application is separated by the use of a semi-colon. Also, in this example, had DHS appealed the grant of CAT, then "Convention Against Torture" would have been listed in the caption along with asylum and withholding of removal.

See illustration on next page.

Below is an illustration of how the application would appear if the only issues on appeal were asylum and withholding of removal.

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
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File: A079-555-555 – Portland, OR Date:

In re: Ernest BANKS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ron Santos, Esquire

ON BEHALF OF DHS: Bill Williams
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal

(c) No application. – If there is no application for relief being challenged on appeal by either party, then delete the “APPLICATION” caption from the heading.

(d) List of applications. – A partial listing of applications for this caption appears in in Appendix D.

4.14 Separate Opinions

(a) Generally. – The heading of a majority opinion includes most of the caption information -- i.e., name(s) of those in proceedings, parties’ representatives, type of proceedings, charge(s), and application(s). In contrast, when preparing the heading for a separate opinion, do not include the names of representatives, charge(s), or application(s) information. Instead, include *only* the following information in separate opinion caption: A number, hearing location, name, and type of separate opinion.

(b) BIA Templates. – As discussed in Chapter 3, BIA Templates have been created in Word for three types of separate opinions:

- Concurring opinion
- Concurring/Dissenting opinion
- Dissenting opinion

Each separate opinion template contains the appropriate format settings for the caption headings as well as the body of the decision. For information on how to access the separate opinion templates, see Chapter 3.2 (BIA Templates).

(c) Captions. –

(i) File: A number. – See Chapter 4.3. (File: Registration number (A number)).

(ii) Hearing location. – See Chapter 4.4 (Hearing location).

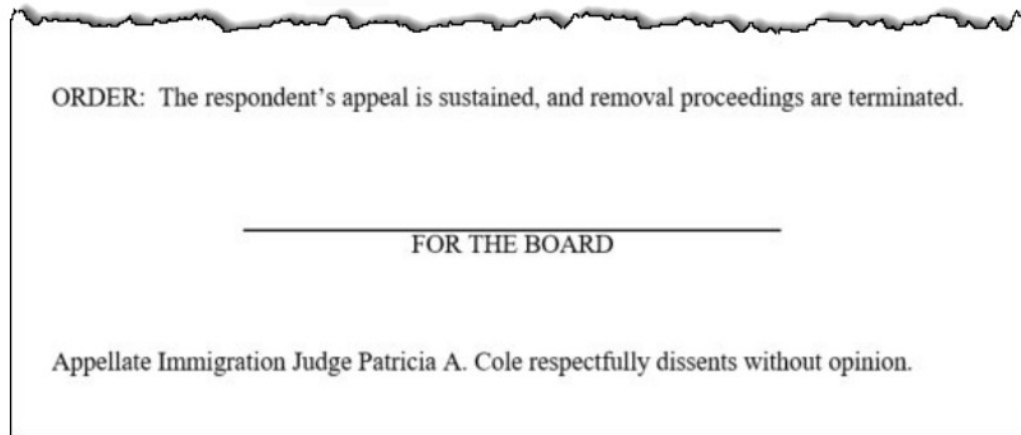
(iii) Names. – See Chapter 4.5 (Names).

(iv) AIJ. – Just after the type of separate opinion (CONCURRING OPINION; CONCURRING/DISSENTING OPINION; DISSENTING OPINION), the AIJ or Temporary AIJ's name followed by his or her respective title is listed. For example, "CONCURRING OPINION: Neil P. Miller, Appellate Immigration Judge."

(v) Example Concurring opinion. – Below is an illustration of the captions for a separate "Concurring Opinion."

U.S. Department of Justice Executive Office for Immigration Review Falls Church, Virginia 22041	Decision of the Board of Immigration Appeals
File: A206-033-142 – Harlingen, TX	Date:
In re: Lora SMITH-JONES	
<u>CONCURRING OPINION:</u> John Guendelsberger, Appellate Immigration Judge	
I respectfully concur.	

(d) *Dissent without opinion.* – AIJs will, in the interest of judicial economy, sometimes “dissent without opinion” from a panel decision. The AIJ’s or Temporary AIJ’s name followed by “respectfully dissent’s without opinion” or “respectfully dissent’s without separate opinion” should be included below the signature line. Below is an illustration of how the dissent without opinion would appear.



5 Formatting and Style

5.1 Generally

As noted earlier in this manual, BIA decisions are divided into three formatting components: captions, body, and order(s). This section addresses the BIA's system of formatting, as well as style when writing the body of a decision.

5.2 Terminology

(a) *Generally*. – The Immigration and Nationality Act is a complex statute. Legal consequences may vary according to the particular term used. Therefore, care must always be taken to use terms of art in the correct sense when drafting a decision. Attorneys and paralegals should use the language recommended in this section when writing decisions.

(b) *Adjudicators whose decisions the BIA reviews*. –

(i) *Immigration Judges*. – The BIA entertains appeals from certain decisions of Immigration Judges. An Immigration Judge presides over exclusion, deportation, removal, and asylum proceedings, as well as other proceedings which the Attorney General may assign. See 8 C.F.R. § 1003.10. Although some portions of the federal regulations may still refer to the Immigration Judge as a “special inquiry officer,” the term is no longer used. The tribunal is referred to as the “Immigration Court.”

(ii) *Department of Homeland Security*. – The BIA entertains appeals from certain decisions of the Department of Homeland Security (DHS). For example,

- decisions of the DHS on family-based immigrant petitions, the revocation of family-based immigrant petitions, and the revalidation of family-based immigrant petitions (except orphan petitions)
- decisions of the DHS regarding waivers of inadmissibility for nonimmigrants under § 212(d)(3)(A)(ii) of the Immigration and Nationality Act
- decisions of the DHS involving administrative fines and penalties under 8 C.F.R. part 1280

(c) Individual or entities before the BIA. –

(i) Alien. – The term has been used to describe an individual in proceedings before the BIA depends on the type of proceedings (e.g., removal proceedings, adjustment of status proceedings, visa petition proceedings).

(A) Respondent. – An individual is referred to as “the respondent,” and not as “Respondent” at all stages of the proceedings in the following types of proceedings:

- Removal proceedings
- Deportation proceedings
- Bond proceedings
- Continued detention review
- Rescission proceedings

(B) Applicant. – An individual is referred to as “the applicant” at all stages of the proceedings in the following types of proceedings:

- Asylum and/or withholding-only proceedings
- Adjustment of status proceedings (e.g., pursuant to HRIFA or NACARA)
- Application for Advance permission pursuant to section 212(d)(A)(3)
- Exclusion proceedings

(C) Beneficiary. – In visa petition proceedings, the individual on whose behalf the visa petition has been filed is referred to as “the beneficiary.” Also, an individual who has received a labor certification is known as “the beneficiary.”

(ii) Petitioner. – In visa petition proceedings, the sponsoring individual or entity who has filed the petition on behalf of the beneficiary is referred to as “the petitioner.” Sometimes, the petitioner is the beneficiary (e.g., self-petitioning widow(er)), or a permanent resident sponsoring a spouse or child.

(iii) **Carrier.** – In fine proceedings, unless an individual (such as the owner, master, commanding officer of a vessel or aircraft) is being fined in his or her individual capacity, the various companies and agents involved are collectively referred to as “the carrier.”

(iv) **Department of Homeland Security.** – The government is represented by several different agencies in proceedings before the BIA. As a rule of thumb, the BIA refers to the representatives of Immigration and Customs Enforcement (ICE) who appear before us as the Department of Homeland Security (DHS). However, the BIA often references other DHS components, such as USCIS specifically, particularly when that component has jurisdiction over some form of relief for which the respondent may be eligible. See Chapter 6.9 (Government representatives).

In the body of the decision, the BIA uses “Department of Homeland Security (DHS)” as the first reference to DHS, and uses “DHS” thereafter. Similarly, the BIA uses “U.S. Citizenship and Immigration Services (USCIS)” as the first reference to USCIS, and “USCIS” thereafter. The use of quotations around the acronym when first identifying is optional; however, use or non-use of quotations should be consistent throughout the BIA’s decision when first identifying acronyms.

(v) **Representatives.** – Individuals in proceedings before the BIA may be represented. Unless there is a reason to spotlight counsel’s behavior or there exists some other special circumstances that merits focusing on the representation, the default is to make no reference to counsel in the body of the decision.

(vi) **Practitioners.** – The BIA has the authority to impose disciplinary sanctions upon attorneys and accredited representatives who violate rules of professional conduct in practice before the BIA, the Immigration Courts, and DHS. The term “practitioner” is defined as an attorney or accredited representative, as defined in 8 C.F.R. § 1001.1(f), (j). In Practitioner Disciplinary proceedings, the practitioner is referred to as “the respondent.”

(d) **References to BIA actions.** –

(i) **Appeals.** – Within the body of the decision, the following terminology should be used to describe how the BIA is disposing of the case. Be sure to use the future tense, since the disposition is not in effect until pronounced in the ORDER line at the conclusion of the decision. For more information regarding order language see Chapter 8 (Order Language). Note: the disposition language is different when the BIA considers a matter on certification pursuant to 8 C.F.R. § 1003.7. See subsection (ii) below.

(A) *Dismissed*. – If the decision upholds the Immigration Judge’s or District Director’s decision, then say that the “appeal will be dismissed.”

(B) *Sustained*. – If the decision reverses the Immigration Judge’s or District Director’s decision, then say that the “appeal will be sustained.”

(C) *Remand*. – If the decision remands the case back to the Immigration Judge or District Director for further proceedings, then say that the “record will be remanded [for a specific reason].”

(D) *Return*. – If the decision returns a case to the Immigration Judge to rule on a motion, then say “the appeal will be dismissed, but the record will be returned to the Immigration Court for an Immigration Judge to consider the [respondent/applicant’s] motion.” In that situation, the case is being returned, not “remanded,” to the Immigration Court.

(E) *Sustained in part and dismissed in part*. – If the decision reverses part of the Immigration Judge’s or District Director’s decision below, but upholds another part of the Immigration Judge’s or District Director’s decision below, then say that the “appeal will be sustained in part and dismissed in part.”

(F) *Appeals from Immigration Judge decision on motions*. – When a decision sustains the appeal of a denial of a motion to reopen, direct that the motion will be granted, rule that proceedings will be reopened, and order that the record will be remanded to the Immigration Judge.

(ii) *Certification*. – When the BIA considers a matter on certification pursuant to the request of an Immigration Judge or District Director, there is no appeal to be “sustained” or “dismissed.” Therefore, the BIA’s decision will either “affirm” or “reverse” the underlying decision of the Immigration Judge or District Director.

(iii) *Motions to reopen or reconsider*. – Where the motion to reopen or reconsider is properly directed to the BIA for initial consideration, the following terminology should be used:

(A) *Denials*. – A motion should be denied if it (i) is deficient under the regulations, (ii) warrants a unfavorable exercise of discretion, or (iii) is technically sufficient but the arguments or facts set forth are

determined to be without merit or a prima facie showing of eligibility for requested relief has not been made.

(B) Grants. – If a motion is technically sufficient and contains new facts or legal arguments set forth which warrant consideration, then the motion may be “granted.” If it is a motion to reopen, the BIA may consider the new facts or arguments and enter a new decision or remand the matter for further proceedings. If it is a motion to reconsider, the BIA will generally “vacate” or “withdraw from” its prior decision and enter a new decision.

(C) Appeals from Immigration Judges’ decisions on motions. – Appeals that challenge an Immigration Judge decision on a motion are treated as appeals (which is referred to as IJ MTR). Where an appeal of an IJ MTR pertains to a denial of a motion to reopen and the appeal is sustained, the decision will direct that the motion be granted, the proceedings be reopened, and the case remanded to the Immigration Judge. See subsection (F) above.

(iv) Motions to remand. – When a motion to reopen is filed with the BIA while an appeal is pending, it is considered a motion to remand. The standards for a motion to remand are the same as those for a motion to reopen. Regardless of the posture of the case, if the BIA decides to remand or to reopen and remand the matter to the Immigration Judge or to the Service Center or District Director for further proceedings, state that “the record is remanded.”

(v) Vacating a stay. – Once a motion is denied (or an appeal is dismissed), any stays granted by the BIA should be “vacated.”

(e) Miscellaneous terms of art. –

(i) Admission/admitted. – The terms “admission” and “admitted” refer to the lawful entry of the alien into the United States after inspection and authorization by an immigration officer. See section 101(a)(13) of the Act. These terms have a specific legal consequences (i.e., eligibility for certain benefits depends upon an alien having been “admitted”). For more information, see *Matter of Agour*, 26 I&N Dec. 566 (BIA 2015); *Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015); *Matter of Quilantan*, 25 I&N Dec. 285, 286 (BIA 2010).

(ii) “Arriving alien.” – The term “arriving alien” refers to an applicant for admission coming into the United State at a port-of-entry, or an individual seeking transit through the United States at a port-of-entry, or an individual interdicted in international waters and brought into the United States by any

means, whether or not to a designated port-of entry, and regardless of the means of transport. See 8 C.F.R. § 1001.1(q).

(iii) Entry. –The term “entry” refers to an individual coming into the United States. The only persons who may come physically into the United States without “entering” for immigration purposes include: (i) those who present themselves for “admission,” but whose inspection or admission is “deferred”; (ii) those who have been “paroled” into the United States for some other reason; (iii) those who fall within the ambit of *Fleuti v. Rosenberg*, 374 U.S. 449 (1963); see also *Vartelas v. Holder*, 132 S. Ct. 1479 (2012).

Note that, for any legacy deportation or exclusion cases, the term “entry” has very different legal implications. Most importantly, under pre-removal law, an individual who has “entered the United States is subject to deportation proceedings, not exclusion proceedings, and enjoys more procedural and substantive advantages.

(iv) Familial Relationship. – Many benefits and waivers under the Act depend upon proof of a family relationship of some sort. Thus, terms such as “parent,” “child,” and “spouse” should be carefully and precisely used when the relationship is significant to the resolution of the case.

Section 101(b) defines “child” for the purposes of both the Act and BIA decisions. If a familial relationship does not fit within the “parent-child” language of section 101(b), do not use those labels in the decision.

Note that section 101(b), also defines the terms “brother” and “sister,” by inference.

(v) Nonimmigrant classifications. – Nonimmigrant classifications use fairly common terms (e.g., “visitor,” “crewman,” and “student”) but have precise meanings with the immigration law. Since the visa classification significantly impacts the type of relief or waivers available to the alien, these terms should be used with precision and always be employed with an eye to their legal significance.

(vi) Refugees. – Individuals may be eligible for asylum and/or withholding of deportation or removal under section 208, section 243(h), and/or section 241(b)(3) of the Act. Care should be taken not to confuse these provisions, because the standards for eligibility and the legal implications of each form of relief are different.

(vii) Order to Show Cause. – The charging document in a deportation case is an Order to Show Cause and Notice of Hearing (Form I-221), which

contains “allegations” and “charges.” A “charge” is a claim by DHS that a person is deportable under a certain section of the Act. The “allegations” are the facts asserted by DHS that, if true, render the person deportable on the cited “charge(s).” In BIA decisions, the respondent’s representations as to the facts of his or her case described as “alleged” and to any points or legal conclusions are described as “argued.” A “lodged charge” is an additional charge that is added after issuance of the Order to Show Cause by the issuance of a Form I-261, Additional Charges of Inadmissibility/Deportability. See 8 C.F.R. § 1240.48(d). Factual allegations or charges may also be amended or withdrawn. See Appendix H (Charging Documents).

(viii) Notice to Appear. – The charging document in a removal case is a NTA (Form I-862), which contains “allegations” and “charges.” A “charge” is a claim by DHS contention that a person is deportable or inadmissible under a certain section of the Act. The “allegations” are asserted by DHS that, if true, render the person subject to removal on the cited “charge(s).” In BIA decisions, the respondent’s representations as to the facts of his or her case are described as “alleged,” and any points of law or legal conclusions are described as “argued.” A “lodged charge” is an additional charge that is added after issuance of the NTA by the issuance of a Form I-261, Additional Charges of Inadmissibility/Deportability. See 8 C.F.R. § 1240.10(e). Factual allegations or charges may also be amended or withdrawn. See Appendix H (Charging Documents).

(ix) Notice to the Applicant for Hearing. – The charging document in an exclusion case is a Notice to the Applicant for Hearing Before the Immigration Judge (Form I-122), which contains “grounds.” A “ground” is a claim by DHS that a person is excludable under a certain section of the Act. The “allegations” are facts asserted by DHS that, if true, render the person excludable from the United States.

(x) Notice of Certification. – The document used by DHS to refer a case to the Immigration Judge involving an application for adjustment of status pursuant to either the Nicaraguan and Central American Relief Act (NACARA) or the Haitian Refugee Immigrant Fairness Act (HRIFA) is called a Notice of Certification (Form I-290C). The applicant, who is subject to a final order of exclusion, deportation or removal, is permitted to have his or her eligibility for adjustment of status reviewed by an Immigration Judge. For purposes of formatting the caption, the type of proceeding is “ADJUSTMENT OF STATUS PROCEEDINGS” regardless of whether the application for adjustment of status is pursuant to NACARA or HRIFA.

(xi) Notice of Referral. – The document used by DHS to refer asylum and/or withholding only proceedings is called a Notice of Referral to

Immigration Judge (Form I-863). For purposes of formatting the caption, the type of proceeding is “ASYLUM AND/OR WITHHOLDING PROCEEDINGS” regardless of whether the application is asylum only or withholding of removal only. See Appendix H (Charging Documents).

(xii) Voluntary departure. – In general, an order of voluntary departure permits a respondent, who is otherwise removable, to depart from the country at his or her own expense within a designated amount of time in order to avoid being considered “removed from the United States.” Sometimes it is referred to as the “privilege of voluntary departure in lieu of [deportation or removal].” See section 244(e) of the Act (deportation proceedings); section 240B of the Act (removal proceedings).

5.3 Punctuation

Poor punctuation reflects poorly on the BIA, so choose and place punctuation marks carefully. The sole aim of punctuation is to convey to the reader the exact meaning intended. For additional information on punctuation, consult the latest version of the U.S. Government Printing Office (GPO) Style Manual, a PDF version for download is available on the GPO website at www.govinfo.gov.

(a) Dates. – All complete dates in the body of the decision and orders should be followed by a comma. See GPO Style Manual Rule 8.53. Note that there is a comma after the year in each of the examples below:

- On June 8, 2010, the respondent was admitted to the United States.
- The respondent appeals from the April 1, 2015, decision of the Immigration Judge.

(b) Month and year. – Commas are omitted between a month and year. See GPO Style Manual Rule 8.56. For example:

- The respondent in June 2010 departed the United States.

(c) Series of words. – Commas should be used between the words of a series and before the conjunction joining them. See GPO Style Manual Rule 8.46. Note that a comma *should* appear before the “and” in the example below.

- Clear, unequivocal, and convincing

(d) **City and state.** – In the body of the decision there should be a comma between the city and state, and generally after the state, unless it is followed by a zip code. See GPO Style Manual Rule 8.55. Note that there is *no* comma after the state name in the last two examples below.

- Reno, Nevada, is the location
- Government Printing Office, Washington, D.C. 20401-0003
- East Rochester, OH 44625-9701

(e) **Possessive noun.** – Use an apostrophe in a possessive noun. See GPO Style Manual Rule 8.14.

- The respondent's attorney
- The respondents' attorney (when there are multiple respondents)

5.4 Capitalization

(a) **Generally.** – Refer to Bluebook Rule 8 and GPO Style Manual Rule 3 for general capitalization rules. When there is a conflict between the two, follow the Bluebook.

(b) **Court.** – Capitalize the word “court” only when naming any court in full. References to the United States Supreme Court are always capitalized, including when it is referred to as “the Court.” For other rules on capitalization, see Bluebook Rule 8. (Please note that the GPO Style Manual does not contain a specific rule with regard to courts.)

- The United States Court of Appeals for the Fifth Circuit [note: thereafter, may be referred to as the Fifth Circuit]
- The California Supreme Court
- The court held that . . . (for any court *other than* the U.S. Supreme Court)

(c) **Immigration Court.** – “Immigration Court” should be capitalized.

(d) **Immigration Judge.** – “Immigration Judge” should be capitalized. Also, Immigration Judge should always be spelled out, and the abbreviation “IJ” limited to

adjectival use (e.g., “the IJ decision”) and to citations to the decision below (e.g., IJ at 5).

(e) *Constitution*. – Capitalize the word “constitution” only when naming any constitution in full. References to the United States Constitution should always be capitalized. Parts of the U.S. Constitution are capitalized when used in text but not in citations. See Bluebook Rule 8.

- Fifth Amendment
- Preamble
- Article 1, Section 8 Clause 17 of the Constitution says . . .
- *But see* U.S. Const. art. I, § 8, cl. 17

(f) *First word in a sentence*. – The first word of any sentence must be spelled out. If a sentence begins with a number, it also must start with a capitalized word (not a number). Thus, it is incorrect to begin a sentence in the following manner: “8 C.F.R. § 1003.2 provides” See GPO Style Manual Rule 12.16; Bluebook Rules 6.2(a)(i) and (c). In contrast, the first word in a citation may be a number. For example, it is proper to say, “The Immigration Judge gave the respondent the procedural advisals required by the regulations, explained the removal charges against him, took pleadings, and found the respondent removable as charged. 8 C.F.R. § 1240.10(a)(1)-(6), (c).”

(g) *Officer in charge*. – Do not capitalize or hyphenate officer in charge. See GPO Style Manual Rules 6.40 and 6.47.

(h) *DHS personnel*. – Capitalize Director, District Director, Field Office Director, or Assistant District Director in the body of the decision. Also, capitalize the DHS representative’s title in the caption of the BIA’s decision. See Chapter 4.

(i) *Explanatory phrase*. – The first word of an explanatory phrase is not capitalized unless the parenthetical information is a quotation of a full sentence. See Bluebook Rule 1.5.

(j) *Quotations*. – See Chapter 5.6(f) below.

5.5 Spacing

(a) *Periods*. – Put two spaces after a period.

(b) **Colons.** – Put two spaces after a colon.

(c) **Semi-colons.** – Put one space after a semi-colon.

(d) **Between sets of parentheses.** – Put one space in between two sets of parentheses.

- *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996) (concluding that FGM constitutes persecution).

5.6 Quotations

(a) **Fifty words or more.** – As a general rule, quotations of 50 words or more should be indented without quotation marks. See Bluebook Rule 5.1.

(b) **Forty-nine words or less.** – As a general rule, quotations of fewer than 50 words should be in quotation marks and therefore part of the text. See Bluebook Rule 5.1.

(c) **Alterations and omissions.** – For rules regarding alterations and the use of ellipses to indicate omissions in quotations, follow the Bluebook Rules 5.2 and 5.3. An ellipsis should *never* be used to begin a quotation, or before or after quoted matter used as a phrase or clause. When an ellipsis is used within a sentence, there should be a space before the period, between each period, and after the last period. Refer to Rules 5.3(b)(iii), (iv), and (v) to determine if the final word sentence is followed by a space or a period, i.e., when the ellipsis represents an omission at and/or after the end of the sentence.

- A respondent must establish that he has been “physically present in the United States for 7 years.”

NOT

- A respondent must establish that he has been “. . . physically present in the United States . . .” for 7 years.

(d) **Indenting quotations.** – For rules on how to indent quotations in order to indicate paragraph structure and omissions of entire paragraphs, see Bluebook Rule 5.1(a)(iii) and 5.1(b).

(e) Use of a colon and comma. – Use a colon to formally introduce a long direct quotation and a comma to set off a direct quotation of only a few words following an introductory phrase:

- In *Matter of Seda*, 17 I&N Dec. 550 (BIA 1980), we stated as follows:
“[A] person sentenced under a first offender statute . . . shall not be considered to be ‘convicted’ for immigration purposes.”
- The respondent stated, “We married for love.”

See GPO Style Manual Rules 8.23 and 8.39.

(f) Capitalization in Quotations. –

(i) Direct quote. – Capitalize the first word of a direct quotation following a colon or comma when introducing an independent clause or sentence. If the case of the first letter is changed, indicate the change with brackets. See Bluebook Rule 5.2, GPO Style Manual Rule 3.44.

- Section 101(a)(3) of the Act provides as follows: “The term ‘alien’ means any person not a citizen or national of the United States.”
- Section 240A(a) of the Act provides in pertinent part: “[T]he Attorney General may cancel removal in the case . . .”

(ii) Fragmentary quotation or introduced indirectly. – Do not capitalize the first word of a fragmentary quotation or one introduced indirectly in the text. Do not set off such a quotation by a comma or use an ellipsis before or after the quotation. See GPO Style Manual Rule 3.46.

- Section 245(c) of the Act provides that adjustment of status is unavailable to “an alien crewman.”
- Section 101(a)(10) of the Act provides that “[t]he term ‘crewman’ means a person serving in any capacity on board a vessel or aircraft.”

(g) Quotation marks. – Always place quotation marks outside the comma and the final period. Other punctuation marks should be placed inside the quotation marks only if they are part of the matter quoted. See GPO Style Manual Rule 8.138 and Bluebook Rule 5.1(b).

(h) **Citation.** – When a citation follows an indented quotation, the citation is returned to the left margin in the main body of the text. See Bluebook Rule 5.1(a).

(i) **Colon.** – Do not end a page with a colon. The colon and least two lines of text of the quotation that follows must be on the same page.

5.7 Numbers

(a) **Time, measurement, and money.** – Always use figures for time, measurement, and money. See GPO Style Manual Rule 12.6.

- 10-year-old 6 months 6 years old
- 25 feet about 10 yards 7 minutes
- 4:30 p.m. \$3.65 65 yen

(b) **Number of 10 or more.** – Numerals are used for a single number of 10 or more with the exception of the first word of a sentence. See GPO Style Manual, rule 12.4. This rule differs from Bluebook Rule 6.2(a). Numerals are also used in a listing or group of two or more numbers, where any one of which is 10 or more. See GPO Style Manual Rule 12.5. However, this rule does not apply when one or more of the numbers is a unit of time, measurement, or money. See GPO Style Manual Rule 12.6.

- two robberies and three burglaries
- 3 shoes, 5 dresses, and 15 gloves
- five decisions written during 2 weeks

(c) **Ordinal numbers.** – For rules regarding the use of ordinal numbers (i.e., first, 14th), see GPO Style Manual Rules 12.10-12.13.

(d) **Hyphen after a number.** – Use a hyphen after the number in an adjective compound. See GPO Style Manual Rule 6.36.

- 3-week period
- 6-month extension
- fourth-preference classification

(e) **Fractions.** – When fractions are used with whole numbers, separate them from the subsequent word by a space, not a hyphen or the word “and.” For rules regarding the use of fractions, see GPO Style Manual Rules 12.26-12.28.

- 3½ grams of cocaine

(f) **Numbers containing four or more digits.** – When numbers contain four or more digits, use commas to separate groups of three digits (e.g., 1,000). See GPO Style Manual Rule 12.14. (This rule differs from Bluebook Rule 6.2(a).)

5.8 Italics

(a) **Generally.** – Follow the rules in the Bluebook for italicization. See Bluebook Rule 7. Underlining is prohibited (with the rare exception of quoting text that was underlined in the original document).

(b) **Quoted material.** – Refer to the Bluebook for rules regarding the addition or omission of emphasis and other alterations to quoted material. See Bluebook Rules 5.2 and 5.3.

If italics are used for emphasis in a quotation, add “emphasis added” in a parenthetical immediately following the quotation or citation. When the quotation is followed by a citation, “emphasis added” is part of the citation sentence and therefore is not capitalized, and the period is placed outside the parenthesis. See Bluebook Rule 5.2.

- “The Board *in its discretion* may grant or deny oral argument.”
8 C.F.R. § 1003.1(e)(7) (emphasis added).

When there is no citation following the quotation, “emphasis added” constitutes a sentence and follows the final period of the quotation. Note that in this case the “e” in emphasis is capitalized and the period is placed inside the parenthesis. If the quotation is indented, include the “emphasis added” at the end of the indented paragraph.

- Section 101(a)(10) of the Act provides: “The term ‘crewman’ means a person *serving in any capacity* on board a vessel or aircraft.” (Emphasis added.)

(c) *Explanatory phrases.* – Italicize explanatory phrases introducing prior or subsequent history and phrases introducing related authority. See Bluebook Rules 1.6, 10.7.1, and T8.

- aff'd, cert. denied,
- modified available at
- vacated reprinted in
- quoted in

(d) *Name of a case.* – Italicize the entire name of a case, including the “v.” and all procedural phrases. See Bluebook Rule 10. However, do not italicize the commas after the name and citation. For example:

- *Kaczmarczyk v. INS*, 933 F.2d 588 (7th Cir.1991), *cert. denied*, 502 U.S. 981 (1991)
- *Ladha v. INS*, 215 F.3d 889 (9th Cir. 2000), *overruled by Abebe v. Mukasey*, 554 F.3d 1203 (9th Cir. 2009).

(e) “*Infra*,” and “*id.*” – Italicize “*infra*” and “*id.*” (but *not* the commas next to them). Do not italicize “hereinafter.” See Bluebook Rule 4.

(f) *Introductory signals.* – Italicize all introductory signals, including any commas or periods within the signals, when they appear in citation sentences or clauses, but not when they serve as the verbs of ordinary sentences. See Bluebook, Rule 1.2. Also, do not italicize the comma after an introductory signal.

- *See also*
- *See generally*

However, all but the last commas are italicized in the examples below.

- *See, e.g.,*
- *But see, e.g.,*

An example when the signal is used as a verb and is not in italics:

- For an explanation of the petty offense exception, see *Matter of Castro*.

(g) Foreign words or phrases. – Italicize only those foreign words and phrases that have not been incorporated into common English usage. Do not italicize “e.g.” or “i.e.” when used in a sentence. See Bluebook Rule 7.

5.9 Typography

(a) “And” vs. “&.” – In textual sentences, always spell out the word “and” unless the “&” sign appears in the name of a law firm, organization, book title, or author list. In citation sentences, follow the Bluebook rules regarding use of the “&” sign.

- Mr. and Mrs. Castillo
- Verner, Lipfer, Bernhard & McPherson, LLC
- Gordon, Mailman, Yale-Loehr & Wada, *Immigration Law and Procedure*, ch. 5.2.

(b) Splitting. – For guidance on how to avoid splitting words or text in Word, see Appendix F.

(i) Words. – Do not split proper nouns (names). Names should always be kept intact.

(ii) Case citations. – Avoid splitting case cites across pages – i.e., a citation should not begin on one page and end on the next. However, if a citation has to be split between pages, keep the case name and the volume number on the same page.

(iii) Paragraphs. – When splitting a paragraph, at least two lines of text should be on either page. See Appendix F.

(iv) Section symbol(s) “§”. – Keep the section symbol on the same line as the citation number.

(v) Volume numbers. – Keep the number 8 with U.S.C. or C.F.R. on the same line.

(vi) Month and day. – Keep the month and the day of a calendar date on the same line.

(c) **Justification.** – The body of the BIA’s decision should always be fully justified.

(d) **Footnotes.** – When using the BIA Templates, the formatting is automatically set. If not, the text in the footnotes should be fully justified. Footnote numbers should be in superscript font (above the line of the rest of the text in the footnote).

(e) **Spaces between citations.** – Spaces should be used in citations to cases printed in the Federal Supplement and Supreme Court Reporter, but not in United States Reports and Federal Reporter 2d and 3d. See Bluebook Rules 6.1(a) and T1.

- F. Supp. 2d S. Ct.
- U.S. F.3d

In a district court case, single capitals should not have spaces between them. However, where an abbreviated word is longer than a single capital letter, it should have spaces before and after it.

- (E.D.N.Y. 1978)
- (M.D. Mass. 1980)

For spacing of abbreviations of periodical names, see Bluebook Rules 6.1(a) and T.13.

5.10 Line Spacing

(a) **Generally.** – Generally, the body of the decision is single spaced. However, if the decision is 10 lines or less, then the body should be doubled spaced.

(b) **Lines between application line and “ON BEHALF OF” caption.** – If the “ON BEHALF OF DHS” caption is included in the captions, there may be two or three lines between this caption and the “APPLICATION” caption. If the “ON BEHALF OF DHS” caption is deleted, then there may be two or three lines between the remaining “ON BEHALF OF” caption and the “APPLICATION” caption.

(c) **Lines between order and signature line.** – There may be two or three lines between the last order and the FOR THE BOARD signature line.

5.11 Signature Line

The BIA signature line should never be on a page without text or order language preceding it. It may be necessary to add additional lines between the application line and the body of the decision to ensure that the FOR THE BOARD signature line is *not* on a page by itself.

In addition, use the appropriate BIA Macro for creation of the BIA signature line. See Chapter 8.2 (BIA Macros).

6 Citations

6.1 Generally

The basic rules for citation are the rules set forth in the most recent edition of the Bluebook, which is available on the BIA Web Page. In certain instances, the BIA guidelines differ from the Bluebook. Refer to the Bluebook for any rules that are not provided by this manual.

6.2 Cases

(a) *Case Names.* –

(i) *Italics.* – The case name should be italicized. See Bluebook Rule B2.

(ii) *Abbreviations.* – As a general rule, well-known agency abbreviations (e.g., DHS, FBI, INS) may be used in a case name, but without periods. If an agency name includes reference to the “United States,” it is acceptable to abbreviate it to “U.S.” However, when the “United States” is named as a party in the case, do not abbreviate “United States.” See Bluebook Rules 6.1(b), 10.2.1, 10.2.2. For example:

- INS v. Smith not I.N.S. v. Smith
- U.S. Dep’t of Justice v. Smith not United States Department of Justice v. Smith
- United States v. Smith not U.S. v. Smith

(b) *BIA Decisions.* – The BIA uses “*Matter of*” when referencing a BIA case, which differs from Bluebook convention. See Bluebook Rule 14.3.1(a).

- *Matter of Velarde*, 23 I&N Dec. 253, 256 (BIA 2020)

(i) *Published Decisions.* – Citations to BIA precedent decisions should always include the following elements:

- “*Matter of*” and the control name of the party(ies), as indicated by the part of the name(s) that is in all capital letters

- book volume number followed by “I&N Dec.” (note: no spaces within “I&N”; include a period after “Dec”,)
- the number of the first page of the published decision
- the adjudicator and year of the decision in parentheses (the adjudicator will usually be “BIA,” but the BIA also publishes AG, DIR (EOIR Director), and AAO decisions)

If referencing a specific page (pinpoint citation or pincite), follow this same format, then add a comma and the page number of the page cited. See Bluebook Rules B10.1.2.

(A) “Interim Decision.” – In the past, the BIA issued precedent decisions in slip opinion or “Interim Decision” form. Because all published cases are now available in final form (as “I&N Decisions”), citations to “Interim Decisions” are no longer appropriate.

(B) “Matter of” and not “In re.” – All precedent decisions should be cited as “Matter of.” The BIA does not use “In re.”

- *Matter of Yanez*, not *In re Yanez*

(C) Short Form Citations. – After a case has been cited in full, a shortened form of the name may be used thereafter. The short form citation for a BIA decision should include the following: (1) the procedural phrase and controlling party name, (2) volume number plus “I&N Dec.” and (3) “at,” followed by a pinpoint citation to the page cited.

- *Matter of Velarde*, 23 I&N Dec. at 256.

(ii) Unpublished Decisions. – Citation to unpublished decisions is discouraged because these decisions are not controlling on any other case. However, when it is necessary to cite to an unpublished decision, the citation should include the initials of the individual’s full name separated by hyphens, the A number with all but the last three digits of the number replaced with X’s, and a parenthetical containing the abbreviation of the adjudicating body as well as an abbreviation of the precise date of the decision. Do not use italics, underlining, or “Matter of.”

For example: John Jonathan Smith, A123-456-789, BIA 12/20/2020 would become J-J-S-, AXXX-XXX-789 (BIA Dec. 20, 2020).

(c) Federal and State Courts Decisions. –

(i) Published Decisions. – Federal and State court decisions should generally be cited according to the standard legal convention, as follows: (1) the first party name v. the second party name, (2) the reporter volume number, (3) the reporter abbreviation, (4) the first page of case, followed by a comma and pinpoint citation to the page cited. Unless the adjudicator is the U.S. Supreme Court, the citation must also identify the adjudicator (9th Cir., D. Mass., etc.) and the year of the decision. See Bluebook Rule 10.

The Supreme Court Reporter citation (“S. Ct.”) should be used only when the case has not yet been published in the United States Reports (“U.S.”).

- *INS v. Phinpathya*, 464 U.S. 183, 184 (1984).
- *Saakian v. INS*, 252 F.3d 21, 22 (1st Cir. 2001).
- *McDaniel v. United States*, 142 F. Supp. 2d 219, 220 (D. Conn. 2001).

(ii) Short Form Citations. – After a case has been cited in full, a shortened form of the name may be used thereafter. The short form citation for Federal and State court decisions should include the following: (1) the first party name, (2) the reporter volume number, (3) the reporter abbreviation, and (4) “at” followed by a pinpoint citation to the page cited. See Bluebook Rule 10.9.

Please note that Bluebook Rule B4 and 10.9 provide multiple acceptable short forms for case citations

- *Phinpathya*, 464 U.S. at 184.
- *Saakian*, 252 F.3d at 22.
- *McDaniel*, 142 F. Supp. 2d at 220.

(iii) Pending Cases and Unreported Cases. – When citing to a case that is unreported but available on an electronic database, use the following citation form: (1) the first party name v. the second party name, (2) docket number, (3) database identifier, (3) court name, and (4) full date of the most recent major disposition in the case. Screen or page numbers, if assigned, should be preceded by an asterisk. Paragraph numbers, if assigned, should be preceded by a paragraph symbol. See Bluebook Rules 10.8.1, 18.3.

- *Hernandez-Avalos v. Lynch*, No. 14–1331, 2015 WL 1936721, at *2 (4th Cir. Apr. 30, 2015).

(iv) Unpublished Cases. – When citing to the Federal Appendix use F. App'x, not Fed. Appx. See Bluebook Rule 10.5(b), T1.1.

- *Khavrenko v. Holder*, 588 F. App'x 543, 544 (9th Cir. 2014).

Note: Unpublished circuit decisions issued after January 1, 2009, may only be cited for persuasive value and earlier unpublished decisions should not be cited.

6.3 Regulations

Regulations appear first in the Federal Register (Fed. Reg.) and then in the Code of Federal Regulations (C.F.R.). Once regulations appear in a volume of the C.F.R., do not cite to the Federal Register *unless* there is a specific reason to do so.

(a) Code of Federal Regulations. – Always identify (1) the C.F.R. title number, and (2) the section number. Unlike the Bluebook, the year should not be included if citing to the current regulation. See Bluebook Rule 14.2. Only include the year when referring to a past regulation. Always use periods in the abbreviation “C.F.R.” The BIA does not use a short form for a citation to the C.F.R.

- 8 C.F.R. § 1003.1.
- Cite a past regulation as: 8 C.F.R. § 1003.1 (2007).

(b) Federal Register. – The first citation to the Federal Register should always include (1) the commonly used name of the rule or regulation (if there is one), (2) the volume number, (3) the abbreviated form “Fed. Reg.”, (4) the page on which the rule or regulation begins, and (5) the date. Provide important identifying information, such as “proposed rule,” “interim rule,” “supplementary information,” or the citation where the rule will appear, parenthetically. Prohibitively long titles may be shortened as long as the result is unambiguous. See Bluebook Rules 14.2, 14.5(c).

- Full: Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4753 (Jan. 31, 2005) (to be codified at 8 C.F.R. § 1003.47(a), (b)).
- Short: 70 Fed. Reg. at 4753.

6.4 Statutes/Laws

(a) Statutes currently in force. – If possible, for statutes currently in force, cite to the current official code or its supplement. See Bluebook Rule 12.2.1. Codified Federal statutes enacted subsequent to the latest edition or supplement of the Code should be cited to an unofficial code (e.g., West’s United States Code Annotated) until published in the United States Code.

When a Federal statute (other than a provision of the Act) is discussed in a citation sentence, include the following: (1) the title number of the United States Code, (2) the abbreviation for the code “U.S.C.,” (3) a section symbol, (4) the section number, and (5) a date parenthetical specifying the year of the version cited.

- 18 U.S.C. § 16 (2018)

Always use the section symbol when citing a Federal statute.

- Full cite: This case involves a respondent convicted of a crime of violence under 18 U.S.C. § 16 (2018).
- Short cite: On March 11, 2019, the respondent was convicted of a crime of violence under § 16.

When a State statute is discussed in a citation sentence, include the following: (1) the abbreviated name of the code listed under T1.3 of the Blue Book, (2) the section symbol, (3) the section number, and (4) a date parenthetical specifying the year of the version cited that complies with the format set forth in T1.3 of the Blue Book.

- Cal. Penal Code § 273.5 (West 2018)

However, when a State statute is being discussed in a textual sentence, include three components in the following order: (1) the word “section” spelled out, (2) the applicable section number, and (3) the name of the State code spelled out.

- In this case, the respondent violated section 273.5 of the California Penal Code.

(b) Session Laws. – When citing to session laws, give the name of the statute, the public law or the chapter number, the relevant section, the volume and page number in the Statutes at Large, and the year of enactment (unless the year it was passed is part of the name). See Bluebook Rule 12.4. When citing the entire act, give the page of the session law on which the act begins. When citing only part of an act,

give the section(s) or subsection(s), the page on which the act begins, and the page on which the relevant section or subsection(s) appear.

- National Environmental Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970).
- National Environmental Act of 1969, Pub. L. No. 91-190, § 102, 83 Stat. 852, 853 (1970).

(c) *Special Rule for the INA.* – When citing to the Immigration and Nationality Act for the first time, give (1) the section number, (2) the full name of the Act, and (3) a citation to the corresponding section of the U.S.C. Do not follow the citation with the “the Act” in parentheses. Thereafter, give the section number, followed by “of the Act.” Include a citation to the U.S.C. each time a new section of the Act is cited. Always spell out “section” in the text and citation. Also, as a rule of thumb, omit the year in a citation to the INA (and the associated U.S.C. citation). Include the year in the citation only when citing a past version of the INA and the year is needed for accuracy.

- Full: Section xxx of the Immigration and Nationality Act, 8 U.S.C. § xx.
- Short: Section xx of the Act.
- “An applicant was found inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), and applied for relief under section 212(c) of the Act.”

(d) *Commonly Cited Acts.* –

(i) *USA PATRIOT ACT.* –

- Full: Section xxx of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.
- Short: USA PATRIOT Act § xxx.

(ii) *NACARA.* –

- Full: Section xxx of Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit.

II, 111 Stat. 2193 (1997), *amended by* Pub. L. No. 105-139, 111 Stat. 2644 (1997).

- Short: NACARA § xxx.

(iii) ***IIRIRA***. –

- Full: Section xxx of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546.
- Short: IIRIRA § xxx.

(iv) ***AEDPA***. –

- Full: Section xxx of Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214.
- Short: AEDPA § xxx.

(v) ***REAL ID Act***. –

- Full: Section xxx of the REAL ID Act of 2005, Division B of Pub. L. No. 109-13, 119 Stat. 302.
- Short: REAL ID Act § xxx.

6.5 Legislative Materials

(a) *Bills and Resolutions*. – When citing federal bills, include (1) the name of the bill (if relevant), (2) the abbreviated name of the chamber, (3) the number of the bill, (4) the number of the Congress, (5) the section (if any), and the year of publication. Cite resolutions analogously, using the abbreviations lists in Bluebook Rule 13.2.

- Full: S. 516, 105th Cong. § 2 (1997).
- Short: S. 516.
- Full: H.R. 422, 106th Cong. (1999).
- Short: H.R. 422.

(b) Hearings. – When citing federal committee hearings, include (1) the entire subject matter title as it appears on the cover, (2) the bill number (if any), (3) the subcommittee name (if any), (4) the committee name, (5) the number of the Congress, (6) the page number of the particular material being cited (if any), (7) and the year of publication. See Bluebook Rule 13.3.

- Operations of the Executive Office for Immigration Review (EOIR): Hearing before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary, 107th Cong. 19 (2002) (testimony of EOIR Director).

(c) Reports. – When citing to numbered federal reports, include (1) the name of the chamber, (2) the number of the Congress connected by a hyphen to the number of the report, (3) the part and/or page number on which material being cited appears, and (4) the year of publication. If the document is a conference report, indicate that in parenthesis after the citation. See Bluebook Rule 13.4.

- Full: H.R. Rep. No. 99-253, pt. 1, at 54 (1985).
- Short: H.R. Rep. No. 99-253.

6.6 Treaties and International Materials

(a) Generally. – When citing to treaties and other international agreements among more than two parties, include (1) the name of the agreement, (2) the subdivision cited, (3) date of signing, (4) one U.S. treaty source, and (5) one international treaty source. See Bluebook Rule 21.4.

(b) Convention Against Torture. – When citing to the Convention Against Torture (CAT), cite to the regulations implementing CAT unless citing the language of the Convention. Use the abbreviation “CAT” in the text of the decision.

- The regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT).
- Short: 8 C.F.R. § 1208.18
- Full: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature Dec. 10, 1984,

G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984) (entered into force June 26, 1987; for the United States Apr. 18, 1988) (Convention Against Torture).

- Short: Convention Against Torture, art. 3.

(c) Commonly Cited Treaties. –

(i) U.N. Protocol on Refugees. –

- Full: 1967 United Nations Protocol Relating to the Status of Refugees, *opened for signature* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967; for the United States Nov. 1, 1968).
- Short: 1967 Protocol on the Status of Refugees, art. xx.

(ii) U.N. Convention on Refugees. –

- Full: United Nations Convention Relating to the Status of Refugees, *adopted* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150.
- Short: 1951 Convention Relating to the Status of Refugees, art. xx.

6.7 Administrative Publications and Forms

Please note that Bluebook Rule 14.2(d) provides guidance on citing administrative publications. However, the BIA's convention for citing its publications and forms vary from the Bluebook in this context. Please utilize the following guidelines.

(a) Practice Manuals. – Neither the BIA's Practice Manual nor the Immigration Court Practice Manual can be cited as legal authority. They are practitioner guidance and should only be cited as reference material or as documentation of practice and procedure. When citing to either Practice Manual, the preferred form is to identify the specific provision by section. In addition, include the date at the bottom of the page on which the cited section appears.

- Full: BIA Practice Manual, § 8.5(a)(iii), at 104 (Oct. 5, 2020).

- Short: Practice Manual, § 8.5(a)(iii).
- Full: Immigration Court Practice Manual § 3.3(g), at 53 (July 2, 2020).
- Short: Practice Manual § 3.3(g).

(b) Forms. – When citing forms, include the full name, followed by the number in parentheses. See Appendix G for a listing of applications commonly referred to in BIA decisions.

- Full: Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26).
- Short: Notice of Appeal or Form EOIR-26.

(c) Country Reports. – Citations to country reports should always contain the publication date and the specific page numbers (if available). If citing to the internet version, include the section number and title, followed by a colon and the subsection name. Also add web address to the report at the end of the citation. The first citation to any country report should contain all identifying information, and a short citation form may be used thereafter.

- Full: Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, 2019 Country Reports on Human Rights Practices: Nigeria, sec. 6. Discrimination, Societal Abuses, and Trafficking in Persons: Women (Mar. 2020).
- Short: 2019: Nigeria Country Reports.

(d) Visa Bulletin. – Citations to the State Department’s Visa Bulletin should include the volume, number, month, and year of the specific issue being cited.

- Full: U.S. Dep’t of State Visa Bulletin, Vol. VIII, No. 55 (Mar. 2003).
- Short: Visa Bulletin (Mar. 2003).

6.8 Commercial and Academic Publications

(a) Law Review Articles. – When citing law review articles, include (1) the author’s full name, (2) title of the article, (3) journal number, (4) abbreviation of journal, (5) page on which the article begins, (6) span of specific pages cited, and (7) date of

publication. See Bluebook Rule 16. Use *supra* in the short citation form. See Bluebook Rules B16.2 and 16.9(b).

- Full: Derek Smith, *A Refugee by Any Other Name: An Examination of the Board of Immigration Appeals' Action in Asylum Cases*, 75 Va. L. Rev. 681, 682 (1989).
- Short: Smith, *A Refugee*, *supra*, at 682.

(b) Treatises. – When citing to treatises, include (1) the volume number, if any, (2) full name of author(s), (3) title of the publication, (4) section number, (5) page and pinpoint cite, if any, (6) edition, and (7) year. See Bluebook Rules 3.1, 3.2, 3.3, B15, B8. Use *supra* in the short citation form. See Bluebook Rule B15.

- Full: 2 Charles Gordon, Stanley Mailman, Stephen Yale-Loehr, and Ronald Y. Wada, *Immigration Law and Procedure* § 3.5(a) 51, (rev. ed. 1997).
- Short: Gordon et al., *supra*, at 51.

6.9 BIA Internal Guidance

(a) BIA Style Manual. – The BIA Style Manual should *not* be cited. The guidance contained within the BIA Style Manual is for internal BIA use only and serves as part of the BIA's deliberative process of drafting and circulating decisions. It should never be cited as a substantive, procedural, or legal authority in a BIA decision.

(b) BIA memorandums or emails. – Internal BIA guidance such as the BIA Style Manual and CAIJ Memos (or Chairman's Memos) should never be cited as procedural or substantive authority.

6.10 Court Documents

(a) Citation Format. – A full citation to court documents includes the following elements: (1) the name of the document (abbreviated when appropriate), (2) “at,” unless citing an affidavit paragraph, (3) pinpoint citation (page, section, or paragraph), and (4) the date of the document, if more than one document bears the same title. See Bluebook Rule B17.1.2. Generally, avoid citing to court documents in the middle of the sentence, unless emphasis is necessary. Enclose the citation in parentheses and place it within the period, as part of the sentence that it relates to.

- Respondent's Br. at 2.

- IJ at 3, June 19, 2004.
- Smith Aff. ¶ 3.
- Alexandra Smith Aff. ¶¶ 5-7, May 16, 2018.

(b) Abbreviations. – When citing to court documents, use the following abbreviations. See Bluebook BT1.

- Immigration Judge – IJ or I.J.
- Brief – Br.
- Transcript – Tr.
- Exhibit – Exh.

(c) Order of citing documents. – When citing multiple court documents, place them in the following order: (1) Immigration Judge decision, (2) transcript, (3) exhibits, and (4) parties' briefs.

(d) Unpaginated Immigration Judge Decisions and parties' briefs. – If an Immigration Judge's decision or party's brief is unpaginated, do *not* include a pinpoint cite. Either include a footnote or explain in the decision that the Immigration Judge's decision or party's brief is unpaginated. Citation should be (IJ or I.J.) (unpaginated) and then (Respondent's Br.) (unpaginated). For example:

- We note that the respondent's brief is not paginated and not in conformance with the Board's Practice Manual. See BIA Practice Manual, § 3.3(c)(iii) (Feb. 20, 2020) ("Briefs and other submissions should always be paginated.").
- Because the brief is not paginated, we are unable to provide citations to specific pages in this decision. See BIA Practice Manual, § 4.6(b) (Feb. 20, 2020) ("Briefs should always be paginated.")
- The Immigration Judge's decision is unpaginated.
- The Board cannot provide specific cites to the respondent's brief because it is unpaginated.

- The respondent's motion to reopen is not paginated.

(e) *Numbering or renumbering submissions.* – If an Immigration Judge has numbered exhibits (or renumbered them on remand) or changed the pagination of submissions contained in the record, do *not* number or renumber them for purposes of the BIA's decision.

6.11 Introductory Signals

(a) *Signals that indicate support.* – See Bluebook Rule 1.2(a).

(i) *No signal.* – No signal is used when the cited authority states the proposition or identifies the authority referred to in the text. Use no signal when quoting an authority.

(ii) *E.g.* – This signal is used when more than one cited authority states the proposition, but citation to others is not helpful or necessary. This signal may be combined with another signal, in which case the comma preceding it is italicized, but the comma following it is not.

- *See, e.g.,*
- *But see, e.g.,*

For more information regarding the use of italics and introductory signals, see Chapter 5.8(f).

(iii) *Accord.* – This signal is used when the text quotes or refers to one authority, but one or more others also state or clearly support the cited proposition. This signal may also be used when the law of one jurisdiction is in accord with that of another jurisdiction whose authority is cited.

(iv) *See.* – This signal is used when the cited authority clearly supports the proposition of law. “*See*” is used instead of “no signal” when the proposition is not directly stated by the cited authority but inferentially follows it. Do not use “*see*” following a citation to a source that quotes or directly states the proposition. In that case, the appropriate signal is “*see also.*” See subsection below.

(v) *See also.* – This signal is used when the cited authority is additional material supporting the proposition where other authorities that state or directly support the proposition already have been cited or discussed. The use of a

parenthetical explanation to indicate the source's relevance is encouraged. See Bluebook Rule 1.5.

(vi) **Cf.** – This signal, which means “compare,” is used when the cited authority supports a proposition that is different from the main proposition of law but is sufficiently analogous to lend support. It should be followed by a parenthetical explanation of the source's relevance. See Bluebook Rule 1.5.

(b) **Signals that suggest a useful comparison.** – See Bluebook Rule 1.2(b).

When comparing cited authorities that support or illustrate the proposition of law, use the signal “*Compare*.” This signal, however, must be used in conjunction with “*with*,” preceded by a comma, and each source should be followed by a parenthetical explanation of its relevance. If more than two authorities are compared, use “*and*” to connect them.

- *Compare* [cite and parenthetical], *with* [cite and parenthetical].
- *Compare* [cite and parenthetical], *and* [cite and parenthetical], *with* [cite and parenthetical], *and* [cite and parenthetical].

(c) **Signals that indicate contradiction.** – See Bluebook Rule 1.2

(i) **Contra.** – This signal is used when the cited authority directly states the contrary proposition. “*Contra*” is used where “no signal” would be used for support.

(ii) **But see.** – This signal is used when the cited authority clearly supports a proposition contrary to the main proposition. “*But see*” should be used where “*see*” would be for support.

(iii) **But cf.** – This signal is used when the cited authority supports a proposition analogous to the contrary of the main proposition. It should be followed by a parenthetical explaining the source's relevance.

(d) **Signals that indicate background material.** – See Bluebook Rule 1.2(d).

“*See generally*” is the signal used when the cited authority provides useful background material related to the proposition. It should be followed by a parenthetical explaining the source's relevance.

(e) **Order of signals.** – See Bluebook Rules B1.2 and 1.3.

When more than one signal is used, they should be in the order of the signals listed in Rule 1.2. See Bluebook Rule 1.3. Signals of the same type (supportive, comparative, contradictory, and background) should be in a single citation separated by semicolons. Signals of different types are grouped in different citation sentences that are separated by periods. However, different type signals may also be used in citation clauses (i.e., relating to only part of the sentence), in which case they are separated by semicolons.

(f) Order of authorities within each signal. – See Bluebook Rules B1.2 and 1.4(d).

Cases are arranged within a signal according to the issuing court and should always be in reverse chronological order within each level of authority (i.e., the most recent Supreme Court decisions are first, then the newest circuit court decisions, without regard to the specific court, then district court cases, and BIA decisions). For purposes of determining the order, it does not matter whether a case is published or has subsequent history.

6.12 Parenthetical Information

Parentheticals appear after the citation and are used to explain the relevance of a particular authority. Proper use of parentheticals is an important part of persuasive decision writing. While the Bluebook should be consulted for more information, this section highlights key items when using parentheticals in a BIA decision.

(a) Present participial phrase. – See Bluebook Rules B1.3 and 1.5(a)(i).

When not directly quoting the authority, the parenthetical phrase should begin with a present participle and should not begin with a capital letter. For example:

- *Zhang v. Mukasey*, 543 F.3d 851, 855 (6th Cir. 2008) (finding that the alien “did not carry her ‘heavy burden’ of demonstrating a prima facie case for relief” where she “made no attempt . . . to rehabilitate her credibility”).
- *Matter of Santos*, 19 I&N Dec. 105, 107 (BIA 1984) (stating that “an alien must demonstrate that he has been prejudiced by a violation of a procedural rule or regulation before his deportation proceeding will be invalidated”).

- *Matter of Valenzuela*, 25 I&N Dec. 867, 870–71 (BIA 2012) (explaining that Congress imposed this restriction on K visa holders as part of its efforts to combat marriage fraud).
- 8 C.F.R. § 1003.31(c) (2020) (providing authority for Immigration Judges to “set and extend time limits for the filing of applications and related documents”).

(b) Quoting the authority. – See Bluebook Rule 1.5(a)(ii).

When quoting the authority, begin with a capital letter and include the appropriate closing punctuation. For example:

- *Okpala v. Whitaker*, 908 F.3d 965, 971 (5th Cir. 2018) (“To prevail on a claim regarding an alleged denial of due process rights, an alien must make an initial showing of substantial prejudice.”)
- *Santos-Alvarado v. Barr*, 967 F.3d 428, 439 (5th Cir. 2020) (“The Fifth Amendment’s Due Process Clause protects individuals in removal proceedings.” (citation omitted)).

(c) Order of parentheticals within a citation. – When more than one parenthetical is used, they should be in the order listed in Rule 1.5(b). For information on quoting/citing parentheticals (a.k.a. nesting parentheticals) within a case citation, see Bluebook Rule 10.6.3. Note: Explanatory parentheticals precede any citation of subsequent history. See Bluebook Rule 10.7.1(a).

7 Drafting the Decision

7.1 Generally

In general, BIA decisions should communicate, as clearly and precisely as possible, the BIA's rulings on the dispositive issues raised by the parties on appeal and the supporting rationale for those rulings. Decisions should cite to relevant authority and evidence in the record.

(a) Succinctness. – Be succinct; be direct. Complicated sentences with multiple subjects, multiple predicates, and strings of dependent clauses lose the reader. The objective of the BIA is not to impress, but to be understood. Sentences should therefore be straightforward, err on the side of being brief, and have neither unneeded verbiage or excessive precision.

(b) Sentence openers. – Avoid using “throat-clearing” phrases, such as:

- “After [upon] a careful review of the record” -- This is presumed.
- “We next consider whether the respondent is eligible” – Just state whether or not the respondent is eligible.
- “Are applicable to” -- use “apply.”

(c) Factual recitations. – The BIA has limited fact-finding ability on appeal. 8 C.F.R. § 1003.1(d)(3). Thus, facts should generally be discussed in the context of stating the reasons for our decision. Also, to avoid fact-finding on appeal, it is often helpful to cite to the page of the Immigration Judge's decision where the Immigration Judge made the pertinent factual finding, together with a citation to the page(s) of the transcript or the exhibit(s) supporting that finding.

7.2 Introductory Paragraph

(a) Generally. – The first paragraph of most decisions involving appeals from an Immigration Judge decision should succinctly: (1) identify the party that filed the appeal; (2) state the disposition and resolution of the case before the Immigration Judge (including identifying the forms of relief granted or denied); and (3) state whether the appeal is sustained, dismissed, remanded, sustained in part and remanded, or otherwise resolved.

In addition, apply the following:

- Do not attempt to summarize the rationale of the Immigration Judge's decision here. Often, that gets protracted and unwieldy, so it is best left to the substantive discussion in the decision. Analyze the judge's decision in the analysis section of the decision.
- If the case has a lengthy procedural history, try to avoid summarizing that history in the first paragraph. Leave that for a subsequent paragraph that may either immediately follow the first paragraph, or be included in your discussion and analysis of the issues on appeal. (Where the history is complicated, set it off in a separate section entitled "Procedural history" or something comparable.)
- For most cases (other than visa petition appeals), identify the respondent's nationality and citizenship in the introductory paragraph or shortly thereafter.
- For visa-petition appeals, identify the claimed relationship between the petitioner and beneficiary in the opening paragraph.

(b) Examples. – Below are sample introductory paragraphs.

- "The Department of Homeland Security appeals from the decision of the Immigration Judge, dated [], that granted asylum and withholding of removal to the respondent, a native and citizen of China. [Cite pertinent statutes and regulations here.] The appeal will be dismissed in part and the record remanded."
- "In a [date] decision, the Immigration Judge denied the respondent's application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), but granted the respondent's request for voluntary departure. The respondent, a native and citizen of Mexico, has appealed the denial of cancellation of removal. The appeal will be dismissed."
- "The petitioner appeals the decision of the Director dated [], denying the visa petition which was filed on behalf of the beneficiary as the child of a United States citizen."

7.3 Standard of Review

(a) **Generally.** – The second paragraph of the decision should concisely set forth the standard of review to be applied. This can be done very briefly with appropriate citations to the regulations and, if appropriate, BIA precedent.

(i) **Examples.** – Most decisions will require nothing more than one of these examples:

- “We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).”
- “We review all questions arising in appeals from decisions of DHS officers de novo. See 8 C.F.R. § 1003.1(d)(3)(iii).”

(ii) **Language to avoid.** – In addition to citing the correct standard of review at the beginning of the decision, avoid imprecise language regarding which standard of review is being applied to each portion of the Immigration Judge’s decision. Ambiguity in the standard of review invites unfavorable judicial review and remand.

(b) **REAL ID Act.** – Do not cite the REAL ID Act unless there is a case-specific reason to do so. When it is necessary to cite the REAL ID Act, indicate which application for relief is implicated and provide an appropriate citation.

7.4 Body of Decision

(a) **General Guidance.** –

(i) **Goal.** – The “body” of our decisions should communicate, as precisely as possible, the dispositive issues raised by the parties on appeal and the BIA’s legal reasoning for ruling as it has.

(ii) **Neutral Judicial Tone.** – A neutral judicial tenor is essential. It is unprofessional to treat a party’s argument in a dismissive or pejorative fashion. Judgmental language directed towards a party suggests bias and undermines the BIA’s authority in the eyes of the public and reviewing courts. A best practice is to remember to “judge the case, not the person.” Therefore, do not use words and phrases that contain implied condemnation (e.g., the respondent “failed to” file a timely application) when a direct statement would

suffice (e.g., the respondent “did not” file a timely application). Avoid terms such as “obviously,” “of course,” “pointless,” “curiously,” and “inexplicably” since they can be interpreted pejoratively.

(iii) Precision. – Take on one issue at a time, resolve that issue, and then move on to the next issue, each in a separate paragraph.

(A) Sentence structure. – Clarity is critical to the drafting of effective decisions, and overly complex sentences invite unfavorable judicial review. Sentences should be complete but brief to the degree possible. Short sentences are easier to read, which serves to make them more persuasive. Long sentences can be difficult to understand, especially when laced with dependent clauses. There is usually a way to break a complex sentence into a series of shorter and easier to digest sentences. Also, avoid unnecessary verbiage. Do not be precise to the point of tedium. Avoid dependent clauses that state the obvious and do not add to the meaning or clarity of the sentence (e.g., “the application for relief that was filed in the course of removal proceedings before the Immigration Judge” likely contains too many unnecessary dependent clauses).

(B) Paragraph structure. – Like long sentences, long paragraphs are difficult to read and can dilute clarity and effectiveness. As a rule of thumb, if a paragraph runs more than nine lines, it is probably time to start a new one. Most complex paragraphs can be broken down into a series of smaller, more digestible ones. Although it may seem, at times, that the break is artificial, it is better to err on the side of readability to ensure clarity.

(C) Word choice. – Word choice is critical to clarity. While BIA decisions need to be legally precise, they also need to be understood. Limit legalese and Latin terms to what is truly necessary, and strive to be understood, not lawyerly.

(D) Sentence openers. – Please use sparingly phrases such as “We note,” “We observe,” “In any event,” and “Notwithstanding the foregoing.” Just say what you are going to say. See section 7.1(b) above.

(b) Organization of Body Paragraphs. –

(i) Identify issue(s) in dispute. – Dispositive issues must always be acknowledged in the decision, whether or not the decision repeats every point in dispute. Non-dispositive issues raised by the parties may or may not bear

repeating in the decision, but the decision should always say enough that the parties know that the BIA heard, considered, and understood the issues raised. For example:

- “The respondent raises a number of issues in challenging the Immigration Judge’s finding of removability and the denial of cancellation of removal on both eligibility and discretionary grounds, including due process claims relating to the conduct of the hearing. We find it unnecessary to address most of these contentions because we agree with the Immigration Judge that the respondent is removable as result of being convicted of an aggravated felony and does not qualify for any relief requested at the hearing.”

(ii) Clearly announce ruling. – Always state the BIA’s ruling on dispositive issues. In other words, always articulate the “bottom line” as to which party wins or loses on the dispositive issues. This can usually be done in a single sentence or clause, and it can be combined with the identification of the issue. For example:

- “We reject the respondent’s argument that, because the statute of conviction does not require as an element the use of “violent” force, his conviction cannot be classified as a “crime of violence” under section 101(a)(43)(F) of the Act.”
- “We reject the respondent’s argument that his Form I-9 (Employment Eligibility Verification) was not admissible to support DHS’ charge of removability. See *Matter of Bett*, 26 I&N Dec. 437 (BIA 2014).”

(iii) Explain reasons for decision. – The decision needs to say enough that the parties can understand who prevailed and why. As with issue identification, the explanation needs to give the parties and any reviewing body confidence that we understood the essence of the case, reviewed the record and identified the dispositive issue(s), and set forth a reasonable, legally correct and defensible resolution, even if the losing party or reviewing body might take issue with it.

Citations to the transcript and relevant exhibits demonstrate that the BIA reviewed the record. For example:

- “The adverse credibility finding is supported by the various inconsistencies in the testimony and evidence identified by the Immigration Judge (IJ at 11-18), some of which go to the heart of the respondent’s claim. For example, as the Immigration Judge

found that critical aspects of the respondent's testimony – specifically his 5 weeks of detention and the two beatings during interrogation sessions – were not mentioned in his asylum application (Exh. 3) or during his credible fear interview (IJ at 12-15; Tr. at 46-58; Exh. 5)."

(iv) Address losing party's arguments. – Address the points made by the losing party that bear on the dispositive issues. It is not necessary to address potential issues that clearly have no effect on the outcome. Meritless arguments are oftentimes best disposed of by simply acknowledging them and explaining why they have no bearing on the outcome. However, be certain to address every legitimate claim that is before us.

If new claims are raised on appeal, it is unlikely that the BIA can address them at this stage in the proceedings, but the decision should at least acknowledge the new claims, identify them as new, and state what effect they have, if any, on the outcome. When addressing new claims and new evidence on appeal, a best practice is to cite the pertinent regulations regarding the BIA's role as an appellate adjudicator rather than a fact-finder (e.g., 8 C.F.R. § 1003.1(d)(3)(iv)), but then also assess whether any of the new evidence submitted on appeal meets the criteria under 8 CFR § 1003.2(c)(1) and (4) for a motion to remand, i.e., whether the evidence is material and was unavailable and could not have been discovered or presented at the hearing below.

(v) Address one issue at a time. – Address each issue separately by focusing on one and then moving to the next issue (or part of an issue). Start a new paragraph with each next issue. Avoid long paragraphs that address multiple dispositive issues.

7.5 Fee Waiver Request

(a) Generally. – When an appeal or motion requires a filing fee, the BIA has the discretion to waive that fee upon a showing of economic hardship or incapacity. 8 C.F.R. § 1003.8(a)(3).

(b) Fee Waiver Request form. – 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. If the Form EOIR-26A is not properly completed, the Clerk's Office should reject the filing as "improperly filed" and

return the filing package to the filing party. The rejection notice provides information as to how to resubmit the filing.

(c) BIA's decision. – During the adjudication process, if an issue regarding the merits of a fee waiver request is raised, it is the AIJ or the panel that makes the determination as to whether to deny the fee request.

(i) Grant request. – A footnote in the decision about the grant of the waiver is optional and left to the discretion of the AIJ or panel.

(ii) Deny request. – When the fee waiver request is denied, the respondent/applicant is given notice through the issuance of an interim order to submit the requisite fee within 15 days and admonished that failure to do so may result in dismissal of the appeal or denial of the motion. For example for an appeal, the interim order language would read as follows:

- “The respondent timely filed his Notice of Appeal (Form EOIR-26), accompanied by an Appeal Fee Waiver Request (Form EOIR-26A). The fee waiver request is denied. See 8 C.F.R. § 1003.8. We will grant the respondent 15 days from the date of this order to submit the requisite \$110 filing fee. If the respondent does not file the fee waiver within the time allotted, the Immigration Judge’s decision may become final, and the record will be returned to the Immigration Court without further action. See 8 C.F.R. §§ 1003.3(a) and 1003.38.”

See illustration on the next page.

Note: The drafting attorney *must* include the instructions below in the “Special Instructions to Docket” section of the circulation sheet.

“Docket Team route the ROP to CO Appeals Examiner for Fee Issue.”

Below is an illustration of an interim order involving an appeal in which the fee waiver request is denied.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A123-456-789 – Memphis, TN

Date:

In re: John BANKS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sam Jones, Esquire

INTERIM ORDER

The respondent timely filed his Notice of Appeal (Form EOIR-26), accompanied by an Appeal Fee Waiver Request (Form EOIR-26A). The fee waiver request is denied. *See* 8 C.F.R. § 1003.8. We will grant the respondent 15 days from the date of this order to submit the requisite \$110 filing fee. If the respondent does not file the fee within the time allotted, the Immigration Judge's decision may become final, and the record will be returned to the Immigration Court without further action. *See* 8 C.F.R. §§ 1003.3(a) and 1003.38.

FOR THE BOARD

7.6 Withdrawal of Appeal by Represented Individual

An appealing party may, at any time prior to the entry of a decision by the BIA, voluntarily withdraw his or her appeal, with or without the consent of the opposing party. If a represented individual wishes to withdraw an appeal, the individual's representative should file the withdrawal. However, if a represented individual files the withdrawal himself or herself, the withdrawal should indicate whether it is being made with the advice and consent of the representative. When the represented individual has not indicate that his or her request has been made with the advice and consent of their represented, bring this to the attention of a TL or SCMS. The Clerk's Office will contact the individual's representative to confirm the withdrawal.

7.7 Affirmance Without Opinion

A case is appropriate for affirmance without opinion ("AWO") where the result reached in the decision under review was correct; any errors were harmless or nonmaterial, the issues on appeal are squarely controlled by BIA or federal court precedent and do not involve the application of precedent to a novel factual scenario; or the factual and legal issues raised in the appeal are not so substantial that the case warrants a more substantive written opinion. 8 C.F.R. § 1003.1(e)(4).

The order should read as follows:

- "The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. See 8 C.F.R. § 1003.1(e)(4)."

The order should *not* contain any further reasoning or explanation. See 8 C.F.R. § 1003.1(e)(4)(B)(ii).

An AWO should *not* be used when there are any meaningful issues or legal arguments in the case. Also, an AWO should *not* be used when affirming an Immigration Judge's decision to grant relief covered by EOIR's Background and Security Check Rule. See Chapter 8.7(e) and 8.8(f) (Affirmance without opinion (AWO) order).

7.8 Matter of Burbano Language ("adopt and affirm")

Where an Immigration Judge's decision fully addresses the issues necessary for the resolution of an appeal, it may be appropriate to use *Matter of Burbano* language ("adopt and affirm") in the decision. In such instances, succinctly state why the BIA is affirming and adopting the Immigration Judge's decision. There is no need to restate the Immigration

Judge's findings, analysis, and/or legal citations. Also, do not include a parenthetical setting forth the holding in *Matter of Burbano*, but simply cite the case instead. For example:

- We adopt and affirm the decision of the Immigration Judge. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994).
- We adopt and affirm the decision of the Immigration Judge only with respect to [specify issue(s) or application(s)] for the reasons stated therein (IJ at X-X). See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994).

It is appropriate to “adopt and affirm” while still addressing an issue or two raised on appeal that was not addressed in the Immigration Judge’s decision. Such decisions should also be succinct, but if they become lengthy, then the use of the “affirm and adopt” approach for resolution of the appeal may not be appropriate.

7.9 Remand to Different Immigration Judge

When Immigration Judge conduct may be an issue, it may be appropriate to remand to a different Immigration Judge. In these instances, it is important to state the reason that the case is being remanded to a different Immigration Judge, but do not upbraid or berate the Immigration Judge.

Upon remand, parties should generally be given the opportunity to present additional evidence and testimony to the new Immigration Judge. For example:

- “Under the circumstances, we find that a remand to a different Immigration Judge is warranted in this case. On remand, the new Immigration Judge should allow the parties to present testimony and additional evidence, as appropriate, and should make a new credibility determination.”

In addition, the IJR code on the circulation sheet *must* be circled. For more information on the IJR code and the completion of the circulation sheet, see Chapter 9 (Circulation).

7.10 Re-issued or Amended Decision/Order

(a) Generally. – Certain circumstances require the BIA to issue a new decision with the same content as a prior decision (re-issued) or with slight modification (amended order). Examples for reissued decisions include when the BIA is ordered by a federal court to reissue a decision with a new date (to preserve a party’s appeal rights) or, as a result of an administrative error, the BIA’s decision was sent to a bad address and was returned. As to an amended order, examples include when there

has been an error in the text of the BIA's prior decision that requires correction (e.g., respondent/applicant's nationality or designated country of removal), or when correspondence not previously associated with the ROP is now considered, and the decision must be amended to reflect this consideration.

(b) Re-issued decision. –

(i) Caption. – When the BIA reissues a decision, the phrase “REISSUED DECISION” in all CAPS and bold font should appear two lines below the “APPLICATION” caption or two lines above the text of the body of the decision if there is no application line. The text should also be centered.

(ii) Body of Decision. – The “body” of the decision should explain why the BIA is reissuing its decision.

(iii) Order Language. – When a decision is being reissued, further order language must be added to advise that the BIA's prior decision is attached and is being reissued and “shall be treated as entered as of today's date.” For example: “FURTHER ORDER: The BIA's decision dated June 1, 2018, attached hereto, is hereby reissued and shall be treated as entered as of today's date.

(iv) Circulation. – Attach to the proposed decision a copy of the dated signed prior BIA decision that is being reissued.

In addition, in the “Special Instructions to Docket” section of the circulation sheet, advise the Docket Team to use the “REISSUED DECISION” stamp for the BIA's prior decision that is being reissued.

(c) Amended Decision. – When the BIA issues an amended decision/order, the appropriate phrase of either “AMENDED DECISION” or “AMENDED ORDER” in all CAPS and bold font should appear two lines below the “APPLICATION” caption or two lines above the text of the body of the decision if there is no “APPLICATION” caption. This text should also be centered.

In addition, the decision should explain, in a footnote, why the BIA is amending or correcting a decision/order. There must also be order language that reflects the BIA's prior decision is being vacated.

7.11 Federal Court Remand

(a) Generally. – BIA decisions following remand from a federal court have a slightly different structure. Generally, the decision should begin with a statement that

the case is before the BIA pursuant to a decision or order from the federal court remanding the case to the BIA. The decision should then have a statement of what the BIA has been instructed or asked to do. Finally, the decision should include a statement of the disposition of the matter on remand.

(b) *Sample language.* –

(i) *When federal court grants petition for review.* –

- “This case is presently before us pursuant to a September 19, 2008, decision of the United States Court of Appeals for the Ninth Circuit, granting the petition for review from the Board’s decision of March 5, 2006, and remanding for further proceedings. In light of the Ninth Circuit’s decision, we find the respondent eligible for asylum and remand the case to the Immigration Court for completion of background checks.”
- “On June 29, 2006, the United States Court of Appeals for the Second Circuit granted a petition for review, vacated our November 5, 2003, decision, and remanded the case to this Board. In light of the Second Circuit’s decision, the Department of Homeland Security has requested that the record be remanded to the Immigration Judge for an update of the security and background checks and for a possible grant of asylum. The record will be remanded to the Immigration Judge for further proceedings.”

(ii) *When court grants a motion to remand.* –

- “This case is presently before us pursuant to an order of the United States Court of Appeals for the Third Circuit granting the Government’s unopposed motion to remand for further consideration of the respondent’s applications for asylum and withholding of removal. In a decision dated May 11, 2004, we had affirmed the decision of the Immigration Judge denying those applications for relief. The record will be remanded to the Immigration Judge for further proceedings.”

7.12 Motions with Pending Petition for Review in Federal Circuit Court

When the record reflects that there is a pending petition for review (PFR) in a federal circuit court, include a footnote recognizing the existence of the pending PFR and instructing that the parties should notify the circuit court of the BIA’s decision. Also, the “Special Instructions to Docket” portion of the circulation sheet must be annotated so the Docket Team

will know to notify OGC of the BIA's decision. For example, write the following: "Docket, BIA decision issued in case with pending PFR. Notify OGC of the A# and Respondent's name."

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8 Order Language

8.1 Generally

Every decision must advise the parties of the disposition of the case. Listed below is some general guidance in drafting order language.

(a) Appeal. – If the case before the BIA is on direct appeal from a decision of the Immigration Judge or DHS officer, the order should either sustain or dismiss the appeal. A further order may be appropriate if the record is remanded or the Immigration Judge's grant of voluntary departure is reinstated. Notice of potential fine for failure to depart the United States may also be appropriate. See Chapter 8.3 (Notice Fine for Failure to Depart). Furthermore, since the BIA may not enter an order granting certain forms of relief unless required background and security checks have been completed, a further order line remanding the record for updated checks may be required. See 8 C.F.R. §§ 1003.1(d)(6) and 1003.47(h). See Chapter 8.7 (EOIR's Background and Security Check Rule).

(b) Motions to reopen and motions to reconsider. – Where a motion to reopen or reconsider is properly directed to the BIA (i.e., where the BIA entered the last decision in the proceedings sought to be reopened or reconsidered), the motion is either granted or denied. Notice of a potential fine for failure to depart the United States may also be appropriate. See Chapter 8.3 (Notice Fine for Failure to Depart). A further order line may be necessary if the record is remanded for further proceedings below.

(c) Appeal and motion. – When the case comes to the BIA as the result of a direct appeal and a party files a motion to remand to apply for a new form of relief or to consider new evidence not previously available, the appropriate disposition is either to grant the motion, or to have two order lines, one order line dismissing or sustaining the appeal and a further order line addressing the motion.

(d) Interlocutory appeal. – An interlocutory appeal is either dismissed or sustained. A further order line may also be needed.

(e) Certification. – If a case is certified to the BIA by an Immigration Judge or a DHS adjudicator (on direct referral and not subsequent to a remand or administrative return), the order should either affirm or reverse the decision below.

(f) Return of record of proceedings. – If the BIA returns a case to the Immigration Judge to rule on a motion, then say the appeal will be dismissed, but the record will be returned to the Immigration Court for an Immigration Judge to consider

the [respondent/applicant's] motion. Note: The case is not “remanded” but is returned to the Immigration Court by the Clerk’s Office.

(g) Asylum and/or withholding proceedings. – The only issue in these proceedings is the applicant’s eligibility for asylum and/or withholding and/or protection under CAT. As a result, there should not be an order of removal. For example, if the BIA sustains a DHS appeal challenging the grant of withholding in these proceedings, the proposed decision should contain order language sustaining the DHS appeal and vacating the judge’s grant of relief. There should not be an order of removal or language designating a country of removal. However, notice of a potential fine for failure to depart the United States may be appropriate. See Chapter 8.3 (Notice Fine for Failure to Depart).

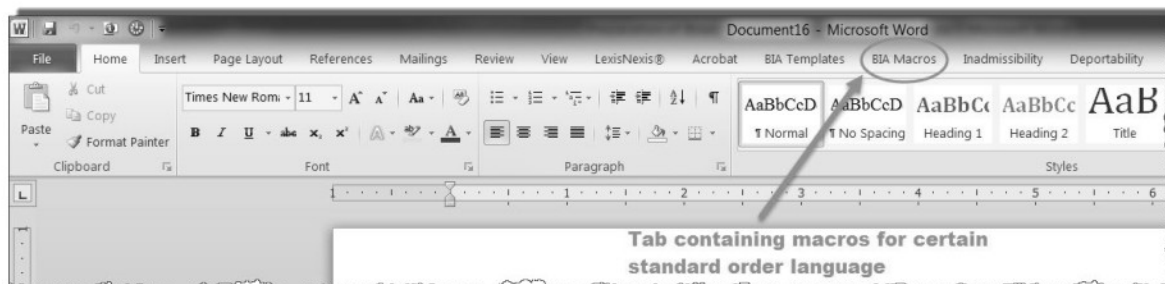
8.2 BIA Macros

(a) Generally. – The BIA has created several standard order macros to be used in certain circumstances. These include the following:

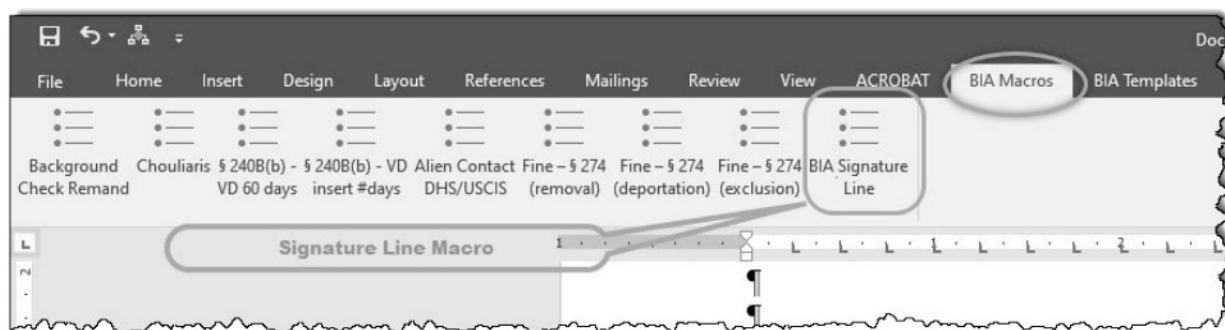
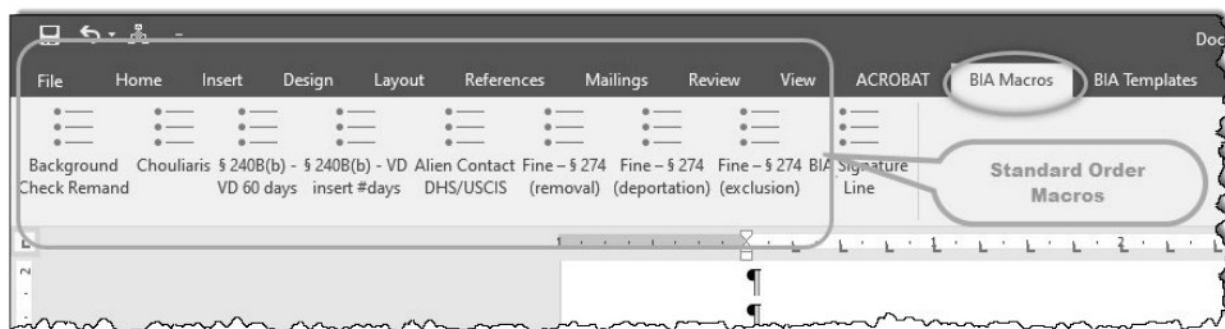
- Background Check Remand Further Order Language
- Chouliaris – Voluntary Departure Further Order Language (deportation proceedings)
- § 240B(b) – Voluntary Departure Further Order Language for 60 days (removal proceedings)
- § 240B(b) – Voluntary Departure Further Order Language for [insert #days] (removal proceedings) ***
- Alien Contact DHS/USCIS Notice Language

The BIA has also created a macro for the signature line. Every decision must have a signature line.

(b) Accessing BIA Macros. – The BIA Macros are located in the Tab labeled BIA Macros on the Word Ribbon. Below is an illustration showing the location of this Tab.



Click on the BIA Macros Tab and the ribbon containing the available macros listed in subsection (a) above will appear. Below are illustrations of this ribbon.



8.3 Notice Fine for Failure to Depart

A respondent or applicant subject to a final order of removal, deportation, or exclusion may be subject to civil monetary penalties if he or she fails to depart the United States. See sections 240B(d) and 274D of the Immigration and Nationality Act, 8 U.S.C. §§ 1229c(d), 1324d. The DHS is responsible for the imposition and collection of these civil monetary penalties. The DHS announced in April 2021 the rescission of civil monetary penalties for failure to depart. The notice of potential fine should *not* be included in the BIA's decision.

8.4 Removability or Deportability at Issue on Appeal

This section addresses order language that should be used in both removal proceedings (commenced by INS on or after April 1, 1997, through the filing of a NTA with an Immigration Court) and deportation proceedings (initiated by INS, before April 1, 1997, through the filing of an Order to Show Cause with an Immigration Court). By definition, the respondent/applicant's deportability or inadmissibility will be at issue.

(a) Respondent/applicant appeal. – Deportability or inadmissibility at issue.

(i) Sustain. – When the respondent/applicant's appeal is sustained, one of the following orders should be used:

ORDER: The respondent's appeal is sustained, and removal proceedings terminated.

FOR THE BOARD

ORDER: The respondent's appeal is sustained, and deportation proceedings terminated.

FOR THE BOARD

(A) *Vacating Immigration Judge decision.* – If the Immigration Judge’s decision needs to be vacated, the following further order line may be added:

ORDER: The Department of Homeland Security’s appeal is sustained.

FURTHER ORDER: The Immigration Judge’s decision dated [date], is vacated, and removal proceedings are terminated.

FOR THE BOARD

(B) *Nonimmigrant admitted to United States.* – In rare circumstances where a nonimmigrant is seeking admission in removal proceedings, it will be necessary to set the days/months the nonimmigrant may be admitted and to set a bond. The following order should be used:

ORDER: The appeal is sustained, and the respondent is admitted to the United States as a nonimmigrant (for a period of [#] days/months from the date of this order conditioned on the posting of a maintenance of status bond in the amount of \$[amount]).

FOR THE BOARD

(ii) **Dismiss.** – When a respondent’s appeal is dismissed, the following order should be used:

ORDER: The appeal is dismissed.

FOR THE BOARD

(iii) **Sustained in part.** – When an appeal is sustained in part, but the respondent or applicant is still subject to removal/deportation on other grounds, the following order may be used:

ORDER: The respondent’s appeal is sustained with respect to the finding of inadmissibility under section 212(a)(4)(A) of the Immigration and Nationality Act, but is dismissed in all other aspects.

FOR THE BOARD

(iv) **Remand.** - When an appeal is dismissed or sustained, but the case is being remanded to the Immigration Judge for further proceedings (other than for updating background and security checks or considering merits of a motion originally filed with the Immigration Court), the following order and further order should be used:

ORDER: The appeal is dismissed.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

(A) *BIA did not reach the merits.* – If the decision remands without reaching the merits, the following order should be used:

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

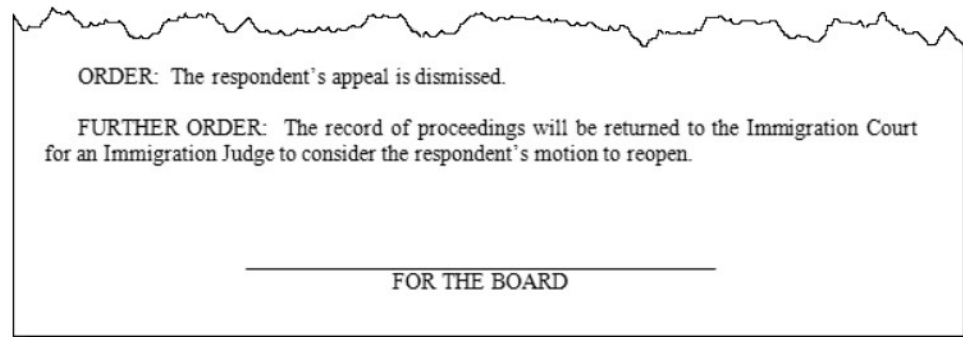
FOR THE BOARD

(B) *Background and Security Check Rule.* – See Chapter 8.7.

(C) *BIA orders a Qualified Representative (QR).* – When the BIA determines that an Immigration Judge's finding of competence is clearly erroneous, BIA must order a QR. For example:

FURTHER ORDER: A Qualified Representative shall be provided to the respondent through the Executive Office for Immigration Review's National Qualified Representative Program.

(v) Return record for Immigration Judge to consider merits of a motion. – If the BIA decides to return a case to the Immigration Judge to rule on a motion, then say the appeal will be dismissed, but the record will be returned to the Immigration Court for an Immigration Judge to consider the [respondent/applicant's] motion. Note: The case is not “remanded” but is returned to the Immigration Court by the Clerk’s Office. See Chapter 9.3(b)(v) (Special Instructions to docket) for more information to ensure ROP returned the Immigration Court.



ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: The record of proceedings will be returned to the Immigration Court for an Immigration Judge to consider the respondent's motion to reopen.

FOR THE BOARD

(b) **DHS appeal.** – Deportability or inadmissibility at issue.

(i) **Sustain.** – When a DHS appeal is sustained, the order line should be accompanied by one of the further orders listed below:

(A) **Remand to allow respondent to apply for relief.** – If the case is being remanded to allow the respondent to apply for relief or protection, the further order language should be used:

ORDER: The Department of Homeland Security's appeal is sustained.

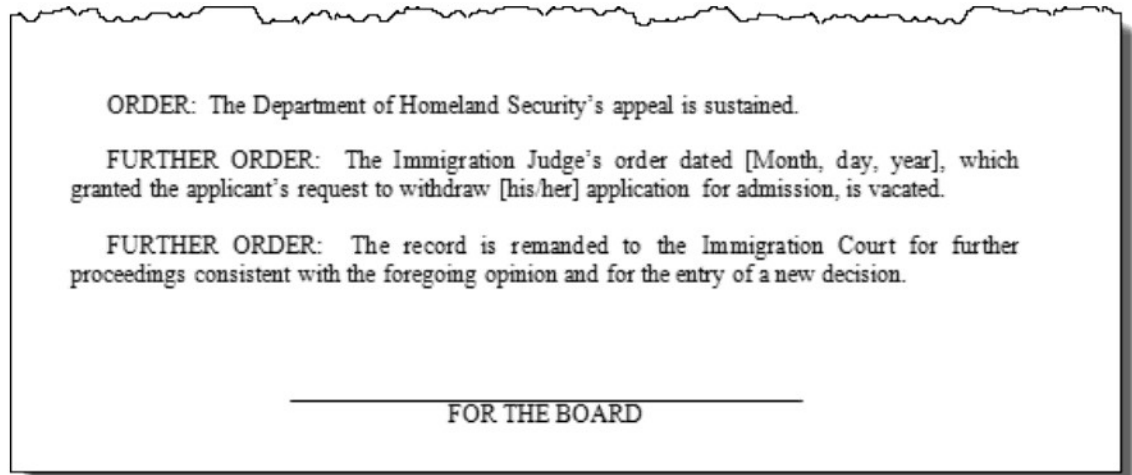
FURTHER ORDER: The Immigration Judge's order dated March 2, 2015, is vacated, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

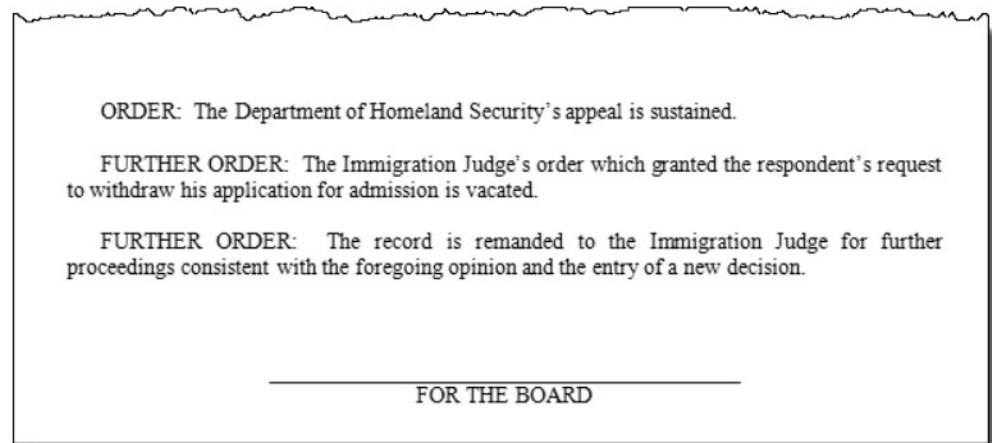
(B) **Order removal from United States.** – If the respondent, is removable/deportable as charged, is ineligible for any relief or protection from removal/deportation, or was provided an opportunity to apply for relief or protection below and declined, an order of removal must be included.

See illustration on next page.

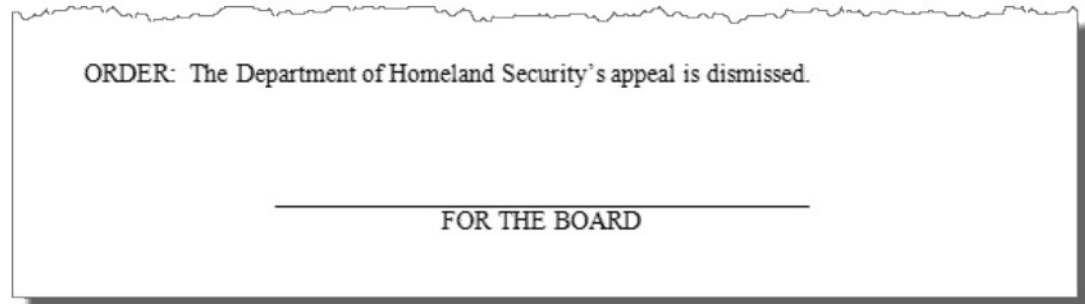
Below is an illustration of order language where the DHS appeal is sustained in removal proceedings and the respondent is ordered removed from the United States.



(ii) Overturn Immigration Judge's grant of a request to withdraw application for admission. – If DHS is appealing the erroneous grant of a request to withdraw an application for admission and the appeal is being sustained, the following order and further orders should be used:

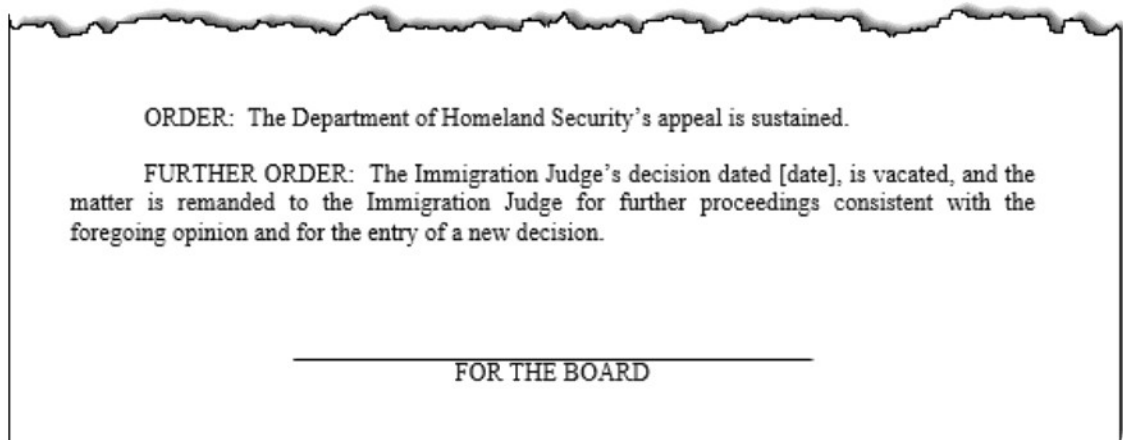


(c) **Dismiss.** – When a DHS appeal is dismissed, the following order should be used:

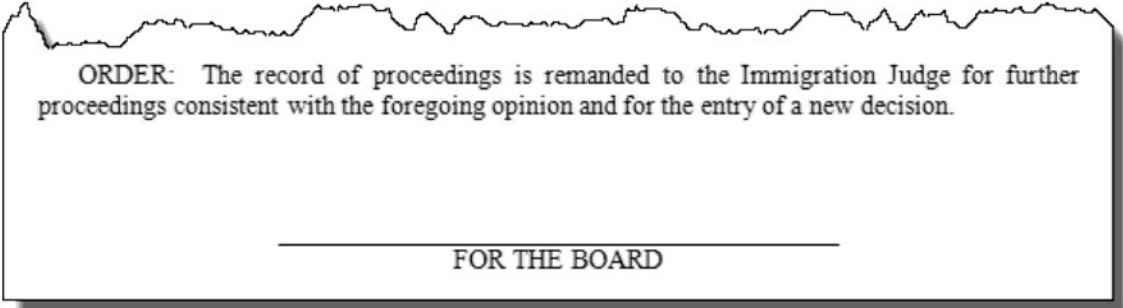


This order language is also appropriate to use when proceedings were terminated by the Immigration Judge on a finding that removability was not established. For appropriate orders for where relief is at issue, see Chapters 8.6 thru 8.8.

(d) **Remand.** – When a DHS appeal is sustained, but the record is being remanded to the Immigration Judge, the following order should be used:



(i) ***BIA did not reach merits.*** – If remanding, without reaching the merits, the following order should be used:



ORDER: The record of proceedings is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

(ii) ***Background and Security Check Rule.*** – See Chapter 8.7.

8.5 Excludability

This section addresses order language that should be used in exclusion proceedings (which will have been initiated by INS before April 1, 1997, through the filing of a Notice to Applicant for Admission Detained for Hearing before Immigration Judge (Form I-122) with an Immigration Court). By definition, the applicant's inadmissibility will be at issue. Note: The individual placed in exclusion proceedings is referred to as an applicant, rather than a respondent.

(a) *Applicant appeal.* –

(i) *Sustain.* –

(A) *Not inadmissible.* – When the appeal is sustained and the applicant is found not inadmissible, the following order should be used:

ORDER: The appeal is sustained, and the applicant is admitted to the United States.

FOR THE BOARD

(B) *Not excludable.* – When the appeal is sustained and the applicant is found not excludable, the following order should be used:

ORDER: The appeal is sustained, and exclusion proceedings are terminated.

FOR THE BOARD

(C) *Nonimmigrant seeking admission.* – In the rare case of a nonimmigrant seeking admission through exclusion proceedings, the following order should be used when the appeal is sustained:

ORDER: The appeal is sustained, and the applicant is admitted to the United States as a nonimmigrant (for a period of [#] days/months) from the date of this order conditioned on the posting of a maintenance of status and departure bond in the amount of \$ [amount]).

FOR THE BOARD

(D) *Vacating Immigration Judge decision.* – Where an Immigration Judge's order was entered in error, the following orders should be used:

ORDER: The applicant's appeal is sustained, and [if necessary].

FURTHER ORDER: The Immigration Judge's decision dated [], is vacated.

FOR THE BOARD

(ii) *Dismiss.* – When an applicant's appeal is dismissed and he or she is not subject to exclusion, the following order should be used:

ORDER: The applicant's appeal is dismissed.

FOR THE BOARD

However, where there is more than one ground of inadmissibility and the applicant remains subject to exclusion, the following order should be used:

ORDER: The applicant's appeal is sustained with respect to the finding of inadmissibility under section [] of the Immigration and Nationality Act, but is dismissed in other aspects.

FOR THE BOARD

(b) Remand. – When an applicant’s appeal is sustained but the case is being remanded to the Immigration Judge for further proceedings (beyond simply updating background and security checks), the following order and further order should be used:

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

(i) BIA did not reach the merits. – If remanding without reaching the merits, the following order should be used:

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

(ii) Background and Security Check Rule. – See Chapter 8.7

(c) *DHS appeal.* –

(i) **Sustain.** – When a DHS appeal is sustained, the order line states “The Department of Homeland Security’s appeal is sustained” or “The DHS’ appeal is sustained.” Then one of the further orders listed below should be included.

(A) **Remand to allow applicant to apply for relief.** – If the case must be remanded to allow the applicant an opportunity to apply for relief from exclusion, the following further order language should be used:

ORDER: The Department of Homeland Security’s appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.

FOR THE BOARD

(B) **Order applicant excluded and deported from United States.** – If the applicant is inadmissible, is ineligible for any relief from exclusion, or was provided an opportunity to apply for relief below and declined, the following further order should be used:

ORDER: The Department of Homeland Security’s appeal is sustained.

FURTHER ORDER: The applicant is ordered excluded and deported from the United States to [designated country of removal].

FOR THE BOARD

(ii) ***Overturn Immigration Judge's grant of a request to withdraw application for admission.*** – If DHS is appealing the erroneous grant of a request to withdraw an application for admission and the appeal is being sustained, the following order and further orders should be used:

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's order dated [Month, day, year], which granted the applicant's request to withdraw [his/her] application for admission, is vacated.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

(iii) ***Dismiss.*** – When a DHS appeal is dismissed, the following order should be used:

ORDER: The Department of Homeland Security's appeal is dismissed.

FOR THE BOARD

This order language is also appropriate to use when proceedings were terminated by the Immigration Judge on a finding that deportability was not established. For appropriate orders where relief is at issue, see generally chapter 8.7 – 8.8.

(iv) **Remand.** – When a DHS appeal is dismissed or sustained, but the record is being remanded to the Immigration Judge for further proceedings other than for updating background and security checks, the following order should be used:

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision dated [] is vacated, and the matter is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

(v) **BIA did not reach the merits.** – If remanding, without reaching the merits the following order should be used:

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

(vi) **Background and Security Check Rule.** – See Chapter 8.7

8.6 Voluntary Departure

This section addresses order language that should be used when an application for voluntary departure is at issue on appeal.

(a) Voluntary departure denied below. –

(i) Removal proceedings. –

(A) Sustain. – When the respondent challenges the denial of voluntary departure and the appeal is sustained, the orders below are suggested.

ORDER: The appeal is sustained.

FURTHER ORDER: The portion of the Immigration Judge's decision denying the respondent voluntary departure is hereby vacated.

FURTHER ORDER: In lieu of removal and conditioned upon compliance with the provisions of the statute, the respondent is permitted to voluntarily depart from the United States without expense to the Government, within 60 days from the date of this order, or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). See section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); see also 8 C.F.R. § 1240.26(c), (f). In the event the respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

FURTHER ORDER: The respondent must post a voluntary departure bond in the amount of \$500 with DHS within 10 business days of the date of this order.

NOTICE: If the respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. See section 240B(d) of the Act.

WARNING: If the respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. See 8 C.F.R. § 1240.26(e)(1).

WARNING: If, prior to departing the United States, the respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the alien provides to the DHS such evidence of his or her departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he or she has remained outside of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply to an alien who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. See 8 C.F.R. § 1240.26(i).

FOR THE BOARD

(B) *Dismiss.* – When the respondent challenges the denial of voluntary departure and the appeal is dismissed, the following order should be used:

ORDER: The respondent's appeal is dismissed.

FOR THE BOARD

(ii) *Deportation proceedings.* –

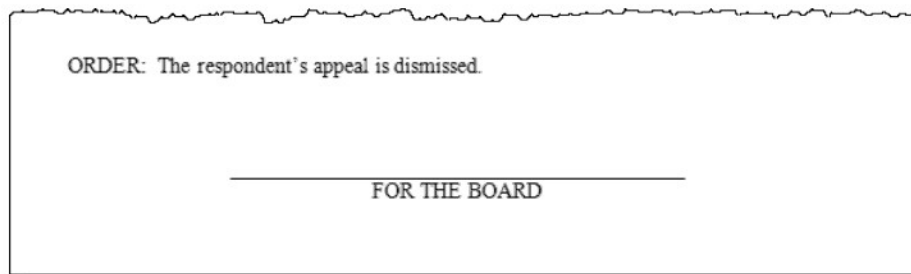
(A) *Sustain.* – When the respondent challenges the denial of voluntary departure and the appeal is sustained, the following orders should be used:

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The outstanding order of deportation is withdrawn, and in lieu of an order of deportation, the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security, and, in the event of failure to so depart, the order of deportation is reinstated and executed.

FOR THE BOARD

(B) Dismiss. – When the respondent challenges the denial of voluntary departure and the appeal is dismissed, the following order should be used.



ORDER: The respondent's appeal is dismissed.

FOR THE BOARD

(b) Voluntary departure granted below. –

(i) Respondent's appeal (not regarding voluntary departure). –

(A) Removal proceedings. – If voluntary departure was granted by the Immigration Judge, it will usually be necessary to include a FURTHER ORDER relating to the reinstatement of voluntary departure. Use the BIA Macro § 240B(b) – VD 60 days. However, if the Immigration Judge granted less than 60 days, use the BIA Macro § 240B(b) – VD insert #days. See Chapter 8.2 (BIA Macros).

Important note: Where voluntary departure has been granted after January 20, 2009, the respondent has an affirmative duty to submit proof to the BIA within 30 days of filing an appeal, proving that he or she has posted the bond amount set by the Immigration Judge. See 8 C.F.R. § 1240.26(c)(3)(ii). If the respondent fails to provide timely proof that the bond has been paid, the BIA cannot reinstate voluntary departure. However, if the Immigration Judge did not provide all the advisals that are required and the respondent failed to submit timely proof of posting the bond, the record should be remanded to the Immigration Judge to grant a new period of voluntary departure and to provide required advisals. See *Matter of Gamero*, 25 I&N Dec. 164 (BIA 2010).

(B) Deportation proceedings. – If voluntary departure was granted by the Immigration Judge, it will usually be necessary to include a FURTHER ORDER relating to the reinstatement of voluntary departure. Use the BIA Macro Chouliaris. See Chapter 8.2 (BIA Macros). However, if the Immigration Judge granted less than 30 days,

the Chouliaris macro will need to be modified to reflect the actual number of days granted by the Immigration Judge.

(ii) DHS appeal (of grant of voluntary departure). –

(A) Sustain. – If DHS' appeal is sustained, the following orders should be used:

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's grant of voluntary departure is reversed, and the respondent is ordered removed from the United States to [designated country].

FOR THE BOARD

(B) Dismiss. –

(I) Removal proceedings. – When a DHS appeal is dismissed, it will usually be necessary to include a FURTHER ORDER relating to the reinstatement of voluntary departure. Use the BIA Macro § 240B(b) – VD 60 days. However, if the Immigration Judge granted less than 60 days, use the BIA Macro § 240B(b) – VD insert #days. See Chapter 8.2 (BIA Macros).

Important note: Where voluntary departure has been granted after January 20, 2009, the respondent has an affirmative duty to submit proof to the BIA within 30 days of filing an appeal, proving that he or she has posted the bond amount set by the Immigration Judge. See 8 C.F.R. § 1240.26(c)(3)(ii). If the respondent fails to provide timely proof that the bond has been paid, the BIA cannot reinstate voluntary departure.

(II) Deportation proceedings. – When a DHS appeal is dismissed, it will usually be necessary to include a FURTHER ORDER relating to the reinstatement of voluntary departure. Use the BIA Macro Chouliaris. See Chapter 8.2 (BIA Macros). However, if the Immigration Judge granted less than 30 days, the Chouliaris macro will need to be modified to reflect the actual number of days granted by the Immigration Judge.

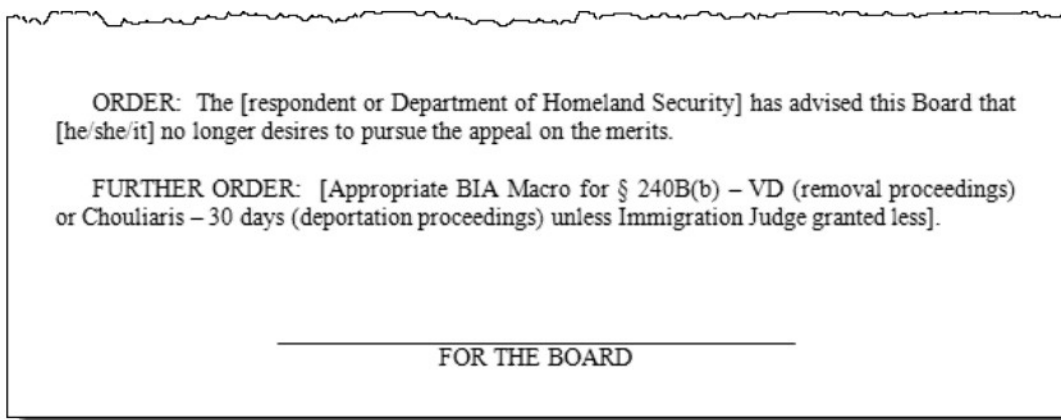
(c) Respondent challenged departure period. – The BIA does not have jurisdiction when the respondent appeals only the length of the voluntary departure granted. Therefore, the following order should be used:

ORDER: The appeal is dismissed for lack of jurisdiction pursuant to 8 C.F.R. §§ 1003.1(b)(3), 1240.26(g).

(d) Appeal withdrawn. – If DHS withdraws its appeal, or the respondent withdraws his or her appeal but still wants voluntary departure, it will usually be necessary to include a FURTHER ORDER relating to the reinstatement of voluntary departure. See subsection (b) above. On the next page is an illustration of an order where a respondent, in deportation proceedings, has withdrawn the appeal, but still wants voluntary departure, and the BIA reinstates the Immigration Judge's grant of voluntary departure.

See illustration on next page.

Below is an illustration of an order where a respondent, in deportation proceedings, has withdrawn the appeal, but still wants voluntary departure, and the BIA reinstates the Immigration Judge's grant of voluntary departure.



(e) *Exclusion Proceedings.* – Voluntary departure is not available in exclusion proceedings. Therefore, a FURTHER ORDER related to voluntary departure should not be included in exclusion cases.

8.7 EOIR's Background and Security Check Rule

(a) *Generally.* – The BIA may not enter an order granting any of the forms of relief or protection from removal, deportation, or exclusion listed below without first ensuring that DHS-required background and security checks have been completed and reported. See 8 C.F.R. § 1003.1(d)(6).

- Asylum under section 208 of the Act
- Adjustment of status to that of a lawful permanent resident under section 209, 245, or any other provision of the Act
- Waiver of inadmissibility or deportability under sections 209, 212, or 237 of the Act
- Permanent resident status on a conditional basis under sections 216 or 216A of the Act

- Cancellation of removal under section 240A or suspension of deportation under former section 244 of the Act
- Relief from removal under former section 212(c) of the Act
- Withholding of removal under section 241(b)(3) of the Act
- Withholding or deferral of removal under the Convention Against Torture
- Registry under section 249 of the Act
- Conditional grants for any of the above, including 207(a)(5) and 240A(e) of the Act

Be sure to check the BIA Webpage for updated guidance.

(b) Background Check Remand (BCR). – When a case in which the BIA’s decision results in a grant (or the affirmance of a grant) of a covered form of relief and the record reflects either:

- checks were not completed and reported to the Immigration Judge, or
- reported checks have *expired*

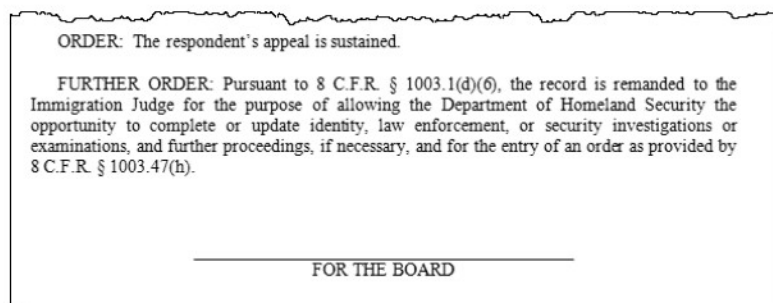
then remand the record to the Immigration Court to provide DHS an opportunity to complete or update expired checks. Use the BIA Macro “Background Check Remand” which contains the following order language.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

In addition, the proposed decision should not explicitly state that relief or protection is granted. Rather, the decision should reflect that eligibility for the relief or protection has been established. For information on how to access the BIA Macro “Background Check Remand,” see Chapter 8.2 (BIA Macros).

(c) Respondent/applicant appeal with BCR. –

(i) Sustain. – When the respondent/applicant's appeal of denied relief or protection is sustained and BCR applies (see subsection (b) above), use the following orders:



Note: The proposed decision should not explicitly state that the relief or protection is granted. Rather, the decision should reflect that eligibility has been established.

(ii) Dismiss. –

(A) Respondent/applicant challenges denial, but DHS does not challenge grant. – Where the respondent/applicant appeals the denial of a form of relief covered by the Background Check rule, but DHS does not challenge the grant of a covered form of relief that was granted, the BIA's dismissal of the respondent/applicant's appeal has the effect of affirming the judge's grant of covered relief. As a result, a BCR is required.

For example, the respondent appeals an Immigration Judge's denial of his application for asylum and withholding of removal, and DHS does not appeal the judge's grant of withholding of removal under the Convention of Torture (CAT). Since the BIA's decision is to dismiss the respondent's appeal, it has the effect of affirming the judge's grant of withholding of removal under CAT. On the next page is an illustration of the order.

Since the BIA's decision is to dismiss the respondent's appeal, it has the effect of affirming the judge's grant of withholding of removal under CAT, below is an illustration of the order.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD

Note: The proposed decision should not explicitly state that the relief or protection is granted. Rather, the decision should reflect that eligibility has been established.

(B) Voluntary Departure. – Although the Background and Security Check rule does not apply to voluntary departure, reinstatement of voluntary departure in removal proceedings is not automatic. In the case where voluntary departure was granted by the Immigration Judge, see sections 8.6 and 8.7 of this Chapter.

(iii) Remand. –

(A) Not reach the merits of appeal. – If remanding without reaching the merits, the following order should be used:

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

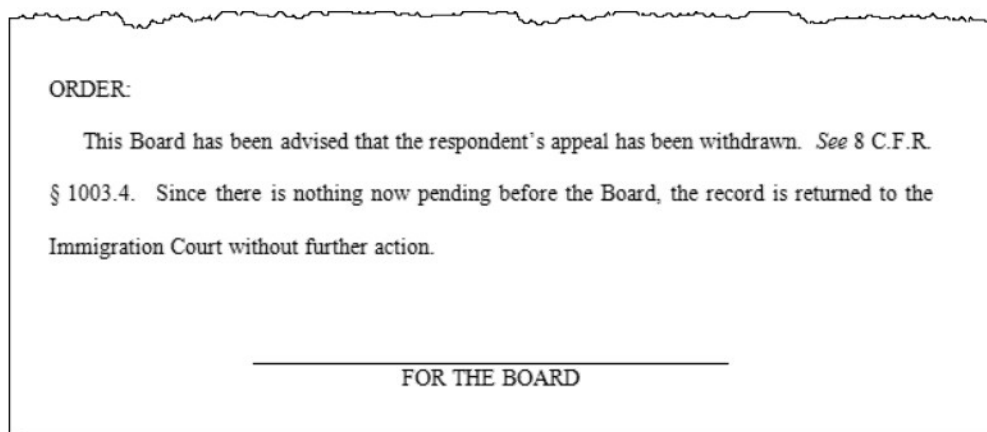
(B) Remand other than for BCR. – If there is a reason for a more specific remand (i.e., for some other purpose than a simple BCR), then the order should articulate that reason. For example,

ORDER: The record is remanded to the Immigration Court to accept an application for a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, to consider the application for adjustment of status under section 245 of the Act, and to enter a new decision in accordance with the foregoing opinion.

(iv) Withdrawn appeal. – When the respondent/applicant files an appeal of an Immigration Judge's decision that contains a grant of relief covered by the Background and Security Check rule but the appeal is subsequently withdrawn, a BCR is not required *unless* DHS expressly advises the BIA that checks are needed or need updating. If DHS does not respond to the withdrawal of appeal, then a withdrawal order should be used as seen in the first example. Again, if DHS expressly advises the BIA of the need to complete or update checks, then the BIA *must* enter an order dismissing the respondent/applicant's appeal and include a BCR as seen in the second example.

See illustration on next page.

Below is an example of a withdrawal order where DHS did not expressly advise the BIA of the need to complete or update checks where an Immigration Judge granted the respondent's application for asylum:

The illustration shows a document with a torn top edge, representing a BIA order. The text is as follows:

ORDER:

This Board has been advised that the respondent's appeal has been withdrawn. See 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

FOR THE BOARD

Below is an example of when the BIA recognizes the respondent's request to withdraw an appeal involving a granted a form of relief covered by the Background and Security Check rule. It includes BCR language because DHS has expressly advised the BIA of the need to complete or update checks:

The respondent has advised the Board that [he/she] is withdrawing their appeal from the Immigration Judge's [DATE], decision. However, the Department of Homeland Security has asked the Board to remand these proceedings to the Immigration Court so that the required background and security checks can be completed or updated. Accordingly, while the respondent's appeal will be dismissed due to the withdrawal of their appeal, the record will be remanded to the Immigration Judge for the required background and security checks.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD

(d) *DHS appeal.* –

(i) *Sustain.* –

(A) *BCR required.* – Where DHS appeals the grant of one form of relief or protection covered by the Background and Security Check rule, but not another, the BIA’s decision has the effect of affirming the judge’s grant of the covered relief. As a result, a BCR may be required, see subsection (b) above, and if so, the following orders should be used:

ORDER: The Department of Homeland Security’s appeal is sustained.

FURTHER ORDER: The Immigration Judge’s grant of [*relief/protection*] is reversed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD

Note: The proposed decision should not explicitly state that the relief or protection is granted. Rather, the decision should reflect that eligibility has been established.

(B) *BCR not required.* – If the BIA’s decision does not result in the affirmance of a grant of covered relief, an order of removal from the United States may be appropriate.

See illustrations on next page.

Below is an illustration, in removal proceedings, of when the BIA's decision does not result in the affirmance of a grant of covered relief and an order of removal from the United States is appropriate.

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's order dated [month, day, year], granting [relief/protection] is vacated and the respondent is ordered [removed/deported] from the United States to [country].

FOR THE BOARD

In addition, in Asylum and/or Withholding proceedings or Adjustment of Status proceedings, an order of removal from the United States should not be included.

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's order dated [month, day, year], granting withholding of removal is vacated.

FOR THE BOARD

(ii) **Dismiss.** – Where DHS challenges an Immigration Judge's grant of a form of relief covered by the Background and Security Check rule (or one form of covered relief but not another) and the BIA dismisses DHS' appeal, the BIA's decision has the effect of affirming the judge's grant of the covered relief. As a result, a BCR may be required, see subsection (b) above, and if so, the following orders should be used:

ORDER: The Department of Homeland Security's appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD

Note: The proposed decision should not explicitly state that the relief or protection is granted. Rather, the decision should reflect that eligibility has been established.

(iii) Remand. –

(A) Not reach the merits of appeal. – If remanding without reaching the merits, the following order should be used:

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

(B) Remand other than for BCR. – If there is a reason for a more specific remand (i.e., other than for a simple BCR), then the order should articulate that reason. For example:

ORDER: The record is remanded to the Immigration Court to accept an application for a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, to consider the application for adjustment of status under section 245 of the Act, and to enter a new decision in accordance with the foregoing opinion.

FOR THE BOARD

(iv) Withdrawn appeal. – Where DHS appeals a grant of relief covered by the Background and Security Check rule but subsequently withdraws its appeal, a BCR is not required *unless* DHS expressly advises the BIA that checks are needed or need updating. If DHS' withdrawal does not address the need for checks, then a withdrawal order should be used, as shown in the first illustration below. However, if DHS does advise the BIA of the need to complete or update checks, then the BIA must enter an order dismissing the DHS appeal and include a BCR, as seen in the second illustration (next page).

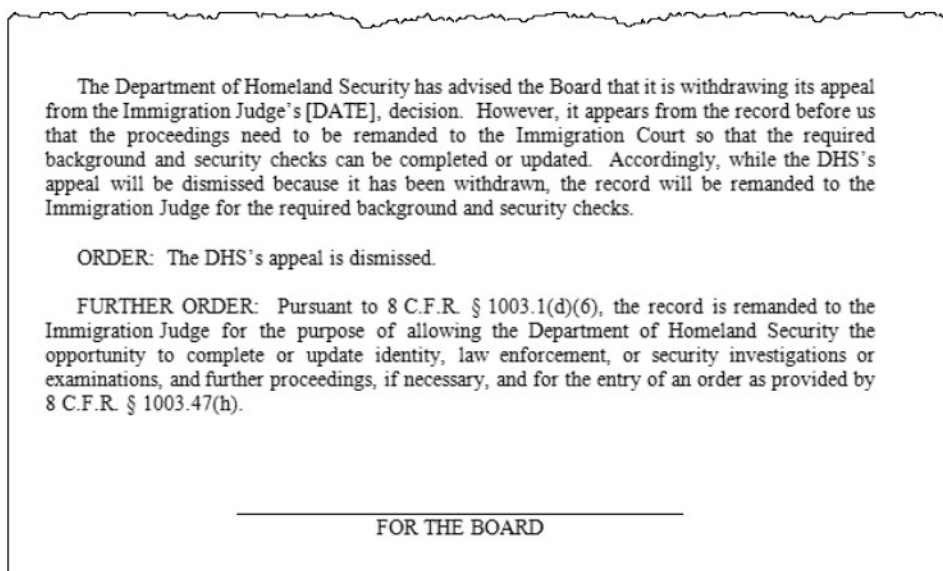
Below is an example of a withdrawal order where DHS did not expressly advise the BIA of the need to complete or update checks:

ORDER:

This Board has been advised that the Department of Homeland Security's appeal has been withdrawn. See 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

FOR THE BOARD

Below is an example of a withdrawal order where DHS did not expressly advise the BIA of the need to complete or update checks:



(e) Affirmance without opinion (AWO) order. – Do *not* use an AWO when affirming an Immigration Judge's decision to grant relief. Instead, prepare a short decision to affirm an Immigration Judge's decision and indicate that relief has been granted and what type of relief.

8.8 Notice to Alien to Contact DHS/USCIS

(a) Background. – Where covered relief is to be affirmed or granted, but checks have not been completed or expired, the BIA issues a BCR whereby the record is remanded to the Immigration Judge to allow DHS to complete or update them. See section 8.9 of this Chapter. The BIA will issue an order explicitly affirming or granting the relief covered by the Background and Security Check rule *only* in cases where the record before the BIA affirmatively reflects that DHS reported the checks to the Immigration Judge and those checks have *not* expired. The BIA's order in such cases must also include specific language notifying the respondent/applicant that he or she must contact the appropriate DHS office in order to obtain documentation evidencing status. See 8 C.F.R. § 1003.47(i).

(b) No BCR (BIA decision issues grants or affirms grant). – Where the BIA determines:

- a covered form of relief should be granted or affirmed,
- the record reflect that checks were completed, reported, and considered by the Immigration Judge, and
- reported checks are “current” (i.e., expiration date of the checks is known and has not been reached)

then the BIA may issue a decision that grants or affirms the grant of relief. However, the BIA’s decision *must* also include specific language notifying the respondent/applicant that he or she must contact the appropriate DHS office in order to obtain documentation evidencing status. Use the following standard language:

NOTICE TO ALIEN TO CONTACT DHS/USCIS: The Board of Immigration Appeals has issued a final decision in your case. Depending on the type of relief or protection from removal that you have been granted, you may be entitled to documents evidencing your status allowing you to remain in the United States or you may be eligible to work in this country. However, in order to receive any documentation, you need to contact the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), which is the agency responsible for the issuance of documents evidencing your status and/or work authorization. Information regarding the specific USCIS instructions can be found at www.uscis.gov (search “Post-Order Instructions”) on procedures for obtaining status documentation or work authorization. A hyperlink to the USCIS webpage that contains the “Post-Order Instructions” may also be found on the Executive Office for Immigration Review’s website at www.justice.gov/eoir. You may also call the USCIS national customer service number at 1-800-375-5283.

If the requirements listed above are met, then the procedures listed below need to be followed.

(c) Do not include the expiration date of the checks. – The BIA’s decision should not contain the actual expiration date of the checks reported by DHS but simply reference the checks as being “current.” For example:

- The record reflects, per DHS, that the relevant security checks have been completed and are current. Accordingly, the following order(s) will be entered.

(d) Explicitly state that relief is granted or affirmed. – The respondent/applicant is required to bring a copy of the BIA's decision (final order granting/affirming relief) when seeking documentation of status from DHS. Therefore, the decision *must* explicitly state that relief has been granted. Below are some general examples.

(i) Asylum and withholding. –

(A) Respondent/applicant's appeal sustained. –

ORDER: The appeal is sustained, and the [respondent/applicant's] application for asylum pursuant to section 208 of the Immigration and Nationality Act is granted.

NOTICE TO ALIEN TO CONTACT DHS/USCIS: The Board of Immigration Appeals has issued a final decision in your case. Depending on the type of relief or protection from removal that you have been granted, you may be entitled to documents evidencing your status allowing you to remain in the United States or you may be eligible to work in this country. However, in order to receive any documentation, you need to contact the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), which is the agency responsible for the issuance of documents evidencing your status and/or work authorization. Information regarding the specific USCIS instructions can be found at www.uscis.gov (search "Post-Order Instructions") on procedures for obtaining status documentation or work authorization. A hyperlink to the USCIS webpage that contains the "Post-Order Instructions" may also be found on the Executive Office for Immigration Review's website at www.justice.gov/eoir. You may also call the USCIS national customer service number at 1-800-375-5283.

FOR THE BOARD

(B) Respondent/applicant's appeal of asylum and withholding dismissed, but CAT affirmed. – Below is an example where the respondent remains subject to a final order of removal even though his/her application for deferral is affirmed

ORDER: The [respondent/applicant's] appeal of the denial of [his/her] application for asylum and withholding of [removal/deportation] is dismissed.

FURTHER ORDER: The [respondent/applicant's or Immigration Judge's grant of respondent/applicant's] request for deferral of [removal/deportation] to [country] under the Convention Against Torture is affirmed.

NOTICE TO ALIEN TO CONTACT DHS/USCIS: The Board of Immigration Appeals has issued a final decision in your case. Depending on the type of relief or protection from removal that you have been granted, you may be entitled to documents evidencing your status allowing you to remain in the United States or you may be eligible to work in this country. However, in order to receive any documentation, you need to contact the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), which is the agency responsible for the issuance of documents evidencing your status and/or work authorization. Information regarding the specific USCIS instructions can be found at www.uscis.gov (search "Post-Order Instructions") on procedures for obtaining status documentation or work authorization. A hyperlink to the USCIS webpage that contains the "Post-Order Instructions" may also be found on the Executive Office for Immigration Review's website at www.justice.gov/eoir. You may also call the USCIS national customer service number at 1-800-375-5283.

FOR THE BOARD

(C) Respondent/applicant's appeal of asylum and withholding dismissed, but CAT granted by BIA. – Below is an example where the respondent remains subject to a final order of removal even though protection under CAT is granted by the BIA

ORDER: The [respondent/applicant's] appeal of the denial of [his/her] application for asylum and withholding of [removal/deportation] is dismissed.

FURTHER ORDER: The [respondent/applicant's] request for deferral of [removal/deportation] to [country] under the Convention Against Torture is granted.

NOTICE TO ALIEN TO CONTACT DHS/USCIS: The Board of Immigration Appeals has issued a final decision in your case. Depending on the type of relief or protection from removal that you have been granted, you may be entitled to documents evidencing your status allowing you to remain in the United States or you may be eligible to work in this country. However, in order to receive any documentation, you need to contact the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), which is the agency responsible for the issuance of documents evidencing your status and/or work authorization. Information regarding the specific USCIS instructions can be found at www.uscis.gov (search "Post-Order Instructions") on procedures for obtaining status documentation or work authorization. A hyperlink to the USCIS webpage that contains the "Post-Order Instructions" may also be found on the Executive Office for Immigration Review's website at www.justice.gov/eoir. You may also call the USCIS national customer service number at 1-800-375-5283.

FOR THE BOARD

(D) DHS appeal dismissed. – Below is an example where the DHS’s appeal is dismissed in removal proceedings, and the Immigration Judge’s grant of withholding of removal is granted.

ORDER: The Department of Homeland Security’s appeal is dismissed.

FURTHER ORDER: The Immigration Judge’s decision granting the [respondent/applicant’s] request for withholding of [removal/deportation] is affirmed.

NOTICE TO ALIEN TO CONTACT DHS/USCIS: The Board of Immigration Appeals has issued a final decision in your case. Depending on the type of relief or protection from removal that you have been granted, you may be entitled to documents evidencing your status allowing you to remain in the United States or you may be eligible to work in this country. However, in order to receive any documentation, you need to contact the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), which is the agency responsible for the issuance of documents evidencing your status and/or work authorization. Information regarding the specific USCIS instructions can be found at www.uscis.gov (search “Post-Order Instructions”) on procedures for obtaining status documentation or work authorization. A hyperlink to the USCIS webpage that contains the “Post-Order Instructions” may also be found on the Executive Office for Immigration Review’s website at www.justice.gov/eoir. You may also call the USCIS national customer service number at 1-800-375-5283.

FOR THE BOARD

(E) DHS's appeal of asylum and withholding sustained, but CAT granted or affirmed. – Below is an example where the DHS's appeal is sustained in removal proceedings, but protection under CAT is granted or affirmed.

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision granting [asylum and/or withholding of removal/deportation] is reversed.

FURTHER ORDER: The [respondent/applicant's] request for deferral of [removal/deportation] to [country] under the Convention Against Torture is granted.

NOTICE TO ALIEN TO CONTACT DHS/USCIS: The Board of Immigration Appeals has issued a final decision in your case. Depending on the type of relief or protection from removal that you have been granted, you may be entitled to documents evidencing your status allowing you to remain in the United States or you may be eligible to work in this country. However, in order to receive any documentation, you need to contact the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), which is the agency responsible for the issuance of documents evidencing your status and/or work authorization. Information regarding the specific USCIS instructions can be found at www.uscis.gov (search "Post-Order Instructions") on procedures for obtaining status documentation or work authorization. A hyperlink to the USCIS webpage that contains the "Post-Order Instructions" may also be found on the Executive Office for Immigration Review's website at www.justice.gov/eoir. You may also call the USCIS national customer service number at 1-800-375-5283.

FOR THE BOARD

(ii) Cancellation of removal under section 240A(b) or suspension of deportation. – There is a statutory annual cap on the number of grants of non-LPR cancellation of removal under section 240A(b) of the Act and former suspension of deportation under former section 244(a) of the Act. It is important that cases falling within the scope of section 240A(e)(1) of the Act are identified when completing the circulation sheet. See Chapter 9.3(b)(vi) and 9.4(a)(iv) (CoR Cap Case).

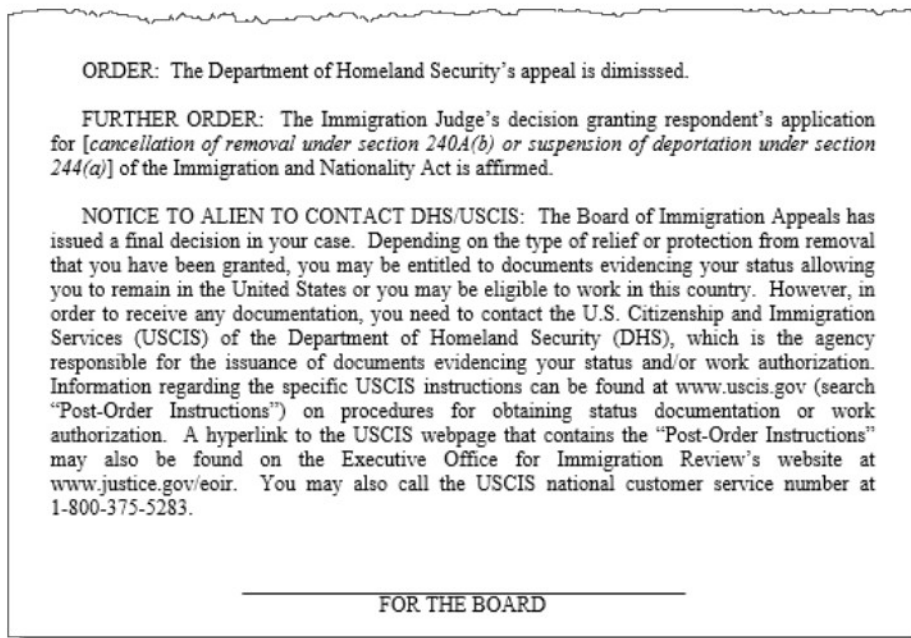
(A) Sustain respondent's appeal. –

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The respondent's [*removal proceedings are cancelled under section 240A(b) or deportation proceedings are suspended under section 244(a)*] of the Immigration and Nationality Act.

NOTICE TO ALIEN TO CONTACT DHS/USCIS: The Board of Immigration Appeals has issued a final decision in your case. Depending on the type of relief or protection from removal that you have been granted, you may be entitled to documents evidencing your status allowing you to remain in the United States or you may be eligible to work in this country. However, in order to receive any documentation, you need to contact the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), which is the agency responsible for the issuance of documents evidencing your status and/or work authorization. Information regarding the specific USCIS instructions can be found at www.uscis.gov (search "Post-Order Instructions") on procedures for obtaining status documentation or work authorization. A hyperlink to the USCIS webpage that contains the "Post-Order Instructions" may also be found on the Executive Office for Immigration Review's website at www.justice.gov/eoir. You may also call the USCIS national customer service number at 1-800-375-5283.

FOR THE BOARD

(B) Dismiss DHS appeal. –

(e) Notice to Alien to Contact DHS/USCIS. – A decision that grants or affirms a grant of relief covered by the Background and Security Check rule *must* contain the "NOTICE TO ALIEN TO CONTACT DHS/USCIS" standard notice language. This language *must* appear above the FOR THE BOARD signature line.

NOTICE TO ALIEN TO CONTACT DHS/USCIS: The Board of Immigration Appeals has issued a final decision in your case. Depending on the type of relief or protection from removal that you have been granted, you may be entitled to documents evidencing your status allowing you to remain in the United States or you may be eligible to work in this country. However, in order to receive any documentation, you need to contact the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS), which is the agency responsible for the issuance of documents evidencing your status and/or work authorization. Information regarding the specific USCIS instructions can be found at www.uscis.gov (search "Post-Order Instructions") on procedures for obtaining status documentation or work authorization. A hyperlink to the USCIS webpage that contains the "Post-Order Instructions" may also be found on the Executive Office for Immigration Review's website at www.justice.gov/eoir. You may also call the USCIS national customer service number at 1-800-375-5283.

(f) Affirmance without opinion (AWO) order. – Do *not* use an AWO when affirming an Immigration Judge’s decision to grant relief. Instead, prepare a short decision to affirm an Immigration Judge’s decision and indicate that relief has been granted and what type of relief. Also, be sure to include the “Notice to Alien to Contact DHS/USCIS” standard language.

(g) Circulation sheet. –

(i) Report expiration date of checks. – The DHS-reported expiration date and transcript cite or filing must be identified in the Special Instructions to Docket area on the front-side of the circulation sheet. Below is an illustration of an example of reporting the location in the ROP of the reported expiration date.

The illustration shows a circulation sheet form with the following sections:

- ATTORNEY / PARALEGAL**: AMM/SLA 6/14/17
- SPECIAL INSTRUCTION TO DOCKET**: DHS reported checks expire 10/12/17; Tr. 55 (This section is circled in the illustration)
- Copy of Circulation Sheet to ATTY/PL, TL & SPA**: ☐
- CoR Cap Case?**: ☐ YES ☒ NO
- IJR**: ☐ (Check box if referral to OCIJ for possible IJ conduct issue)
- AC**: ☐ (Check box if referral to OGC for attorney conduct and/or possible fraud issue)

(ii) Decision code. – Either the decision code “SUS” or “DIS” will be the decision code selected in a case where the BIA is granting or affirming a covered form of relief.

8.9 BIA Orders Qualified Representative

(a) Generally. – In certain instances, a Qualified Representative (QR) may be required pursuant to EOIR’s obligations under *Franco-Gonzalez v. Holder*, No. CV 10-02211, 2013 WL 3674492 (C.D. Cal. Apr. 23, 2013) (partial judgment and permanent injunction order) and *Franco-Gonzalez v. Holder*, No. CV 2:10-02211, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014) (order further implementing permanent injunction), or EOIR’s Nationwide Policy. When the BIA determines that an Immigration Judge’s finding of competence is clearly erroneous, the BIA must order a QR. For example:

FURTHER ORDER: A Qualified Representative shall be provided to the respondent through the Executive Office for Immigration Review’s National Qualified Representative Program.

(b) *Annotate circulation sheet.* – When the BIA orders a QR, the “Special Instructions to Docket” section of the circulation sheet must be annotated to advise the Docket team that a QR is being ordered and the Competence tab in CASE should be started.

9 Circulation

9.1 Finalize Decision Generally

(a) **Proofread final draft.** – A major responsibility of the attorney or paralegal is to proofread any decision before circulating. AIJ's should only see well-prepared decisions, and decisions should be sign-able, and often are signed, without revision. Moreover, typographical errors, when caught, require correction and detract from the efficient processing of cases and, when not caught, detract from the BIA's credibility with the parties and the general public. See BIA Web Page, Forms Book (Attorney Case Processing Checklist).

(b) **Signature line.** – An AIJ's signature line must be included in the draft decision circulated to the AIJs. The signature line should never be on a page without text or order language and, where appropriate, "NOTICE TO ALIEN TO CONTACT DHS/USCIS" standard notice language, should precede it. See Chapters 5.11 (Signature Line) and 8 (Order Language).

(c) **Print.** – The draft circulated to the AIJs must be printed on buff paper. There must be a separate decision printed for each when the decision involves multiple respondent/applicants.

(d) **Check CASE.** – Prior to circulating a draft decision, attorneys and paralegals should check CASE to verify that there is no correspondence that has not yet been associated with the ROP.

(e) **Circulation sheet.** – The requirements for completing a circulation sheet are found in sections 9.2–9.4 of this Chapter. Fillable circulation sheets are available on the BIA Web Page, Forms Book.

(f) **Three AIJ Panel Review Referral sheet.** – Where the regulations at 8 C.F.R. § 1003.1(e)(6) require that a three AIJ panel review a decision, attorneys must fill out a Three-AIJ Panel Review Referral Sheet and attach it to the circulation sheet. A fillable form is available on the BIA Web Page, Forms Book (Three AIJ Panel Referral Sheet).

(g) **Special case processing.** – Some cases require special processing. For further information regarding these types of cases and the applicable procedures, refer to guidance contained within this manual as well as any that may have been issued by the CAIJ or a SPA.

(h) **Prepare ROP.** – The attorney or paralegal should ensure that:

- all relevant portions of the ROP have been tabbed
- the circulation sheet has been fully completed (see section 9.3).
- any additional materials the attorney has printed out for AIJ reference (such as relevant circuit cases or the current Visa Bulletin) are either stapled to the circulation sheet or rubber-banded to the outside of the ROP
- the case has been scanned to the designated circulation location (because panel location varies, so be sure to check the recipient panel's requirements)

In order to avoid forgetting any of a number of important checks, the Attorney Case Processing Checklist, available on the BIA Web Page, Forms Book, can serve as a useful tool for ensuring that the attorney or paralegal has fully prepared the record for circulation.

9.2 Circulation Sheets

(a) **Generally.** – Always use the correct circulation sheet. Do *not* use out-of-date circulation sheets, especially when they list the wrong AIJs, and do *not* print circulation sheets en masse, since panel memberships do change. Remember that circulation sheets ensure the case circulates to appropriate AIJ(s), provide information to the AIJs about the case, and provide information to the Clerk's Office on how to process the case properly upon completion. Circulation sheets are also used to identify cases that contain specific issues, such as cases involving a judge or attorney conduct issue.

(b) **Types of circulation sheets.** – The panels within Screening and Merits have their own circulation sheets and should be used when circulating draft decisions to a panel. Attorneys and paralegals should consult with their TL or SPA if they have questions regarding the selection of a circulation sheet when the proposed decision overlaps panel coverage.

Fillable circulation sheets are available on the BIA Webpage in the BIA Forms Book.

9.3 Circulation Sheet Instructions for Attorneys and Paralegals

(a) **Generally.** – Attorneys and paralegals are responsible for completing the circulation sheet, including both the front and the reverse side when there is one. The fillable version of a circulation sheet should be used, and information blocks completed. Fillable circulation sheets are available on the BIA Webpage in the BIA Forms Book.

The instructions for attorneys and paralegals completing a circulation sheet are listed in subsections (b) and (c) below.

(b) **Front side.** –

(i) **3 AIJ or 1 AIJ Box.** – Select the appropriate box to designate whether the circulated decision is proposed as a three AIJ panel decision or a single-AIJ decision.

(ii) **Recirculate box.** – This box should be selected if the circulated decision is being recirculated to the single AIJ or panel after revisions have been made. Use a new circulation sheet when recirculating a case, but attach the previous circulation sheet, comments, and prior circulated decision (folded). Furthermore, prior reviewed versions of the decision should have the front page crossed out in order to avoid confusion as to which draft is the final decision to be mailed out to the parties by the Clerk's Office. (On the rare occasion that there is an AIJ signature on a prior circulated decision, cross that out as well.)

(iii) **A# and name.** – The A number(s) and individual(s) before the BIA must appear on the designated lines of the circulation sheet. If there is more than one individual and the decisions are not the same for all the individuals involved, use separate circulation sheets to reflect the different decisions and record the different decision codes. Be sure to distinguish the circulation sheets by listing only the A number(s) that directly correspond with the selected decision code, and utilize the Special Instructions to Docket field, see subsection (v) below.

(iv) **Attorney/Paralegal.** – The initials of the attorney or paralegal who prepared the proposed decision should appear in the designated area, followed by the date. This information advises the AIJs, as well as the SCMS, legal instrument examiner, and legal assistant, whom to consult with questions about that decision.

(v) **Special instructions to docket.** – This section should be used to articulate any special processing instructions to the attention of the Clerk's

Office Docket team. For example, this is where to annotate that a courtesy copy of the decision should be sent to an attorney who failed to file an EOIR-27, or to indicate that the decision is an Interim Order if not using an Interim Order, circulation sheet. This section should also be used in the case of a motion with a pending petition for review (PFR) to advise docket of the PFR, and docket needs to advise OGC. See section 7.12 (Motions with Pending Petition for Review in Federal Circuit Court).

In addition, use this section to advise docket when an ROP should be returned to the Immigration Court for the judge to rule on a motion. For example, such a notation may be used when the BIA determines that it does not have jurisdiction to rule on a respondent's motion, but advises in the decision that the record is being returned to the Immigration Judge to rule on the motion. This section should also be used to advise docket that there are different decisions codes for the respondent/applicants addressed by the BIA's decision.

(vi) CoR Cap Case. –

(A) Required field. –This field *must* be completed whenever the circulation sheet has a CoR Cap Case field. If this field is not completed when a decision is circulated or re-circulated, the case will be returned to the circulating attorney or paralegal.

Use only the fillable circulation sheets posted on the BIA Web Page, Forms Book. The CoR Cap Case field is listed on circulation sheets requiring completion of this field.

(B) What is a CoR Cap Case? – A CoR Cap Case is a removal or deportation case in which the relief sought by the respondent is either:

- § 240A(b) cancellation of removal and adjustment of status (Form EOIR-42B), or
- § 244(a) suspension of deportation (Form EOIR-40).

However, a case is *not* a CoR Cap Case if the respondent falls into one of these groups:

- certain nationals of Guatemala, El Salvador, and former Soviet bloc countries as described in section 203(a)(1) of the Nicaraguan Adjustment and Central American Relief Act (NACRA) (Form I-881), or

- respondent in deportation proceedings prior to April 1, 1997, who applied for suspension of deportation pursuant to section 243(a)(3) of the INA (as effective prior to April 1, 1997).

(C) Report “Yes” CoR Cap Case. – Mark this box “Yes” if :

- a CoR Cap Case, and
- the BIA’s decision results in a grant (or affirmance of a grant) of cancellation/suspension (Form EOIR-42B or Form EOIR-40).

For example, if the underlying relief sought is section 240A(b) cancellation of removal and the BIA’s decision affirms an Immigration Judge’s grant of cancellation of removal, the mark the “Yes” box in the CoR Cap Case field on the Circulation Sheet, as seen below.

CoR Cap Case? ☒_X_Yes ☐_No

(vii) Referral codes. – Cases involving questionable conduct by an Immigration Judge, respondent/applicant’s attorney, or DHS attorney, or possible fraud by a party, may be referred by the BIA to the appropriate EOIR component.

(A) IJR. – Mark this box if any of these apply:

- language in the circulated decision involves the Immigration Judge’s conduct in the proceedings below
- drafting attorney believes that the judge’s conduct during the proceedings should be referred to OCIJ
- case is being remanded to another Immigration Judge on account of a judge’s conduct

After issuance of the BIA’s decision, all cases with IJR selected are referred to a SLA for review on behalf of the CAIJ and potential referral to OCIJ, as appropriate.

(B) AC. – This notation relates to egregious conduct by an respondent/applicant/petitioner’s attorney or by a DHS attorney. Mark this box if any of these apply:

- BIA makes an affirmative finding of ineffective assistance of counsel (either past or present counsel)
- BIA makes a finding that the requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) were met and the case is reopened
- record reveals that an attorney's conduct in representing the or DHS is questionable enough that it may warrant an investigation by EOIR's Office of General Counsel (OGC), see 8 C.F.R. § 1003.102
- record reveals concerns related to possible fraud, immigration scams, or the unauthorized practice of immigration law enough that it may warrant referral to OGC.

After issuance of the BIA's decision, all cases with AC selected are referred to a SLA for review on behalf of the CAIJ and potential referral to OGC, as appropriate.

(viii) VTC Hearing. – Mark this box if the proceedings were conducted through video teleconference (VTC) as provided by section 240(b)(2)(A)(iii) of the Act, and 8 C.F.R. § 1003.25(c), and one of the parties raises an issue related to the hearing being conducted by VTC. Challenges to VTC hearings will likely be seen in the context of a due process/fair hearing-related argument.

(ix) VAWA, T or U-visa case. – Mark this box if a Violence Against Women Act (VAWA) related application for relief has been submitted by the respondent(s). For applicable forms of relief, see sections 101(a)(15)(T), (15)(U), (51) and 240A(b)(2) of the Act.

(x) Comments/Analysis. – This section should be used to communicate to the AIJs(s) either (a) a synopsis of the case, (b) identify substantive issues, (c) flag complications, and/or (d) articulate any other case details or matter of law that the AIJ(s) should be aware of. Comments should be clear and concise. They should *not* be a cut-and-paste from the circulated decision, which serves no informational purpose. Information should be typed, and if more room as needed (e.g. if the font has become so small that it is no longer legible), continue the information on a second sheet (with the individual's name and A number on it), and attach that second sheet to the circulation sheet.

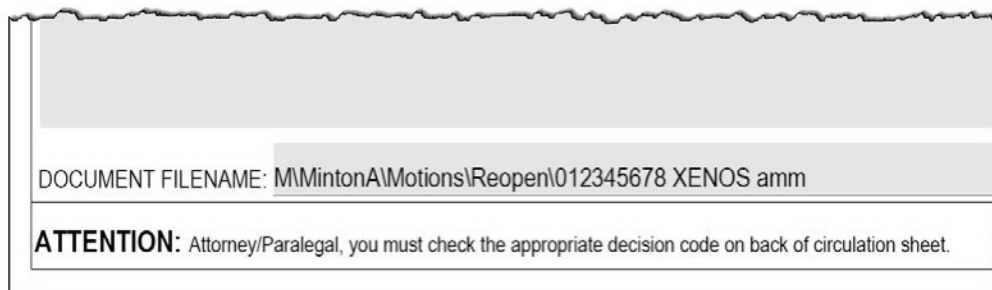
In addition, complete, as applicable, the following information:

(A) *Immigration Judge*. – Identify the Immigration Judge whose decision is being appealed.

(B) *Circuit*. – Identify the controlling circuit law.

(C) *District Office*. – For DD matters, identify the district office.

(xi) *Document filename*. – Document file names are critical to support staff, AIJs, and future attorney staff who need to locate that document. It is therefore necessary to follow a naming convention to assure that an electronic file can be located. Be sure to include Team and subject subfolders to assist in the location of the electronic decision. The illustration below is an example of a completed DOCUMENT FILENAME.



DOCUMENT FILENAME: M\MintonA\Motions\Reopen\012345678 XENOS amm

ATTENTION: Attorney/Paralegal, you must check the appropriate decision code on back of circulation sheet.

(A) *File path*. – The file path describes the location of the proposed electronic decision in an attorney or paralegal's Team folder on the network. The specific network drive (G or I) does not need to be included. Rather, the following file path (location) information must be included:

- the author's Team initial
- the author's folder name
- the author's subfolder name, if applicable

Example of file path:

M\MintonA\Motions\Reopen\012345678 XENOS amm

or

Team M\MintonA\Motions\Reopen\012345678 XENOS amm

Not

G:\M\MintonA\Motions\Reopen\012345678 XENOS amm

(B) File name. – Only the required elements as directed by the BIA’s electronic file naming convention should be listed, *not* the additional descriptive information used by an attorney or paralegal.

(C) Separators. – Use a backslash (“\”) or forward slash (“/”) to separate the elements of the file path and the file name.

(D) Editor update. – If an edited draft is circulated, the circulation sheet must include the editor’s initials in the file name. An “editor” is any person who edits the electronic file, be it an AIJ, a legal assistant, or other staff authorized to revise the decision or input edits.

(E) File extensions. – Do not include the file extension “.docx.”

(c) Reverse side. – Most of the BIA’s circulation sheets have a reverse side listing decision codes. Exceptions are:

- Interim Decision
- Attorney Discipline proceedings

Only one decision code may be selected for each appeal or motion type entered in CASE. Select the decision code that most accurately reflects the overall decision of the BIA.

Questions about which decision code should be selected in a particular case should be discussed with a TL and/or SPA.

(i) SUS. – This code applies when the appeal is sustained (i.e., the appealing party prevails).

(ii) DIS. – This code applies when the appeal is dismissed (i.e., the appealing party does not prevail), and the decision of the Immigration Judge or DHS officer stands. This code also applies if the BIA’s order dismisses the appeal and denies a motion to remand. Additionally, if the BIA declines to consider an interlocutory appeal, this code applies.

(iii) DVD. – This code applies when the BIA dismisses an appeal, but reinstates voluntary departure.

(iv) **SAF.** – This code applies when the BIA affirms without opinion the decision of the Immigration Judge, as provided at 8 C.F.R. § 1003.1(e)(4).

(v) **SAV.** – This code applies when the BIA affirms without opinion the decision of the Immigration Judge, as provided at 8 C.F.R. § 1003.1(e)(4), but further reinstates voluntary departure.

(vi) **SDG.** – This code *must* be selected anytime an appeal is summarily dismissed on the appellant files an untimely appeal or waived appeal before the Immigration Judge as provided in 8 C.F.R. § 1003.1(d)(2)(i)(G).

(vii) **SED.** – This code *must* be selected anytime an appeal is summarily dismissed based on the appellant's failure to file a brief as stated at 8 C.F.R. § 1003.1(c)(2)(i)(E). For example, the proposed decision summarily dismisses an appeal under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(A) and (E).

(viii) **SUD.** – This code applies when an appeal is summarily dismissed for any of the other reasons listed at 8 C.F.R. § 1003.1(d)(c)(2)(i) (A) – (D), (F), and (H). See subsection (vi) above.

(ix) **DEN.** – This code applies when the motion is denied. This code also applies when a motion is number- or time-barred.

(x) **GNR.** – This code applies when a motion to reopen, reconsider, or recalendar is granted, and the BIA disposes of the case *without remanding* the proceedings to the Immigration Judge or DHS officer. Examples of when this code applies include the following:

- the BIA sua sponte reopens or reconsiders proceedings and issues an amended or new decision
- the BIA reissues a decision
- the BIA recalendared an appeal (either through an Interim Order or single decision) and disposes of the recalendared appeal

However, this code should *not* be selected when other codes are applicable and required (*i.e.*, non-bond proceedings – CTM, ABC, DEN, REM, ACR, NJU, TER, WDL; or bond proceedings – DEN, NJU, REM, ACR, WDL).

In addition, this code applies if the BIA's decision grants a motion to reopen or reconsider for the limited purpose of reinstating voluntary departure. This code also applies in bond proceedings where the BIA grants a motion to

reconsider and dismisses the appeal (unless DEN, NJU, or WDL are applicable).

(xi) **ACR**. – This code applies if the sole basis for the remand is to return the case to the Immigration Court to correct a deficiency in the file. Examples for when to use this code include the following:

- Defective or missing transcript
- Defective or missing Immigration Judge decision
- Immigration Court did not forward record of proceedings to the BIA

(xii) **REM**. – This code *must* be selected if the decision remands the case to the Immigration Judge or DHS officer *except* for when ACR is applicable. This code should not be used the BIA is returning a case to the Immigration Judge to rule on a motion. Rather, instruct Docket Team (Special Instructions to Docket on circulation sheet) to not put the file in Case Storage, but return record to Immigration Court.

(xiii) **NJU**. – This code applies where the BIA lacks jurisdiction to review the merits of the appeal or motion. For example, this code is used when a respondent/applicant files a motion to reopen subsequent to dismissal of an appeal for lack of jurisdiction (i.e., *Matter of Mladineo*, 14 I&N Dec. 591 (BIA 1974)).

(xiv) **WDL**. – This code applies when an appeal or motion is withdrawn.

(xv) **TER**. – This code applies when the underlying removal/deportation/exclusion proceedings are terminated. Examples for when to use this code include the following:

- Respondent not subject to removal proceedings
- Respondent/applicant/beneficiary is deceased
- BIA advised that DHS adjusted respondent/applicant's status to that of a lawful permanent resident and grants request to terminate proceedings
- BIA advised that the respondent/applicant has been granted U.S. citizenship

However, this code should *not* be selected when an application for relief, for example, asylum, is granted.

(xvi) **ABC**. – This code applies to cases that are administratively closed pursuant to the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (“ABC”).

(xvii) **ADM**. – This code applies to cases that are administratively closed for reasons other than CON, ABC, DED, TPS, or APD.

(xviii) **CON**. – This code applies to cases where proceedings are continued and taken off the docket. Code last used to identify cases that were administratively closed because of repapering eligibility.

(xix) **DED**. – This code applies to cases administratively closed based on the respondent/applicant is subject to deferred enforcement departure through Presidential Order.

(xx) **TPS**. – This code applies to cases that are administratively closed based on the respondent/applicant’s eligibility for Temporary Protected Stats.

(xxi) **APD**. – This code applies to cases administratively closed based on DHS exercise of prosecutorial discretion.

(xxii) **TPD**. – This code applies to proceedings that are terminated based on DHS exercise of prosecutorial discretion.

(xxiii) **WPD**. – This code is applies to proceedings that DHS withdrawals appeal based on exercise of prosecutorial discretion.

9.4 AIJs Usage of Circulation Sheets

(a) *Front side of circulation sheet.* –

(i) **Initials & Date box.** – After reviewing the proposed decision, AIJs should place their initials next to their name, followed by the date. This informs the AIJ legal assistants that the decision has been reviewed by that specific AIJ and that the case may either be moved to another AIJ for consideration or sent to the Clerk’s Office for processing.

(ii) **Vote.** – AIJs should indicate “Yes” or “OK” if they accept the proposed decision or “No” if they do not agree with the decision as drafted. The Clerk’s Office will not process the decision unless the vote of each AIJ

involved in that case is recorded in this box, along with the AIJ(s) initials and date.

(iii) **SOP.** – AIJs should indicate whether they intend to write a separate opinion.

(iv) **Special instructions to docket.** – This section should be used to bring any special processing instructions to the attention of the Clerk's Office Docket Team. See Chapter 9.3(b)(v) (Special instructions to docket).

(A) **Copy of circulation sheet to Attorney/Paralegal box.** – If positive feedback is provided to the attorney or paralegal in the Comments/Analysis section of the circulation sheet, the AIJ should mark this box. The Docket Team will arrange for a copy of the circulation sheet to be provided to the attorney or paralegal as well as to his or her TL and SPA.

(B) **Notes to other AIJs or other legal staff.** – This space should never be used to communicate with other AIJs, attorneys, paralegals, or other legal support staff.

(C) **CoR Cap Case.** – The CoR Cap Case field is listed on circulation sheets and must be completed by the attorney or paralegal when the case is circulated or re-circulated.

For more information regarding this field, see Chapter 9.3(b)(vi).

(v) **VTC hearing.** – This field should be completed by the attorney or paralegal when the hearing below was conducted through video teleconference (VTC), and one of the parties raises an issue related to the hearing being conducted by VTC. For more information regarding this field, see Chapter 9.3(b)(viii).

(vi) **VAWA, T or U-visa case.** – This field should be completed by the attorney or paralegal when the respondent(s) submitted Violence Against Women Act (VAWA) related application for relief. Also applies when the respondent(s) submitted a T or U-visa application with USCIS for adjudication. For more information regarding this field, see Chapter 9.3(b)(ix).

(vii) **Comments/Analysis field.** – After reviewing the decision, AIJs may elect to provide written comments regarding the drafted decision to other AIJs for their consideration in this section. As a general rule, however, AIJs should write their comments either on the circulation sheet (if brief) or on a

separate “goldenrod,” but not on any other attachments to the record. See Chapter 9.6(e) (Communication between AIJs (“Goldenrods”). AIJs may also elect to communicate with the attorney or paralegal through the use of a “green slip.” See Chapter 9.6(c) (Revision of proposed decision (“Green slips”)).

This area may also be utilized to provide positive feedback to the attorney or paralegal who prepared the proposed decision. As noted above in subsection (iv)(A), the AIJ should select the “Copy of Circulation Sheet to Atty/PL, TL & SPA” box in the Special Instructions to Docket section.

(viii) Referral codes. – Cases involving questionable conduct by an Immigration Judge, respondent/applicant/petitioner’s attorney, or DHS attorney, or possible fraud by a party, may be referred by the BIA to the appropriate EOIR component. AIJs should *not* cross out an attorney’s or paralegal’s selection of the IJR and/or AC code. If an AIJ disagrees with the selection of the IJR and/or AC by an attorney, paralegal, or other AIJ, a brief explanation should be added to the Comments/Analysis section on the circulation sheet. After the issuance of the BIA’s decision, all cases with the IJR or AC selected are referred to a SLA for review on behalf of the CAIJ before any potential referral.

(A) IJR. – If an attorney or paralegal has not already done so, AIJs should mark this box if any of these apply:

- language in the circulated decision involves the Immigration Judge’s conduct in the proceedings below
- the judge’s conduct during the proceedings might be referable to OCIJ
- the case is being remanded to another Immigration Judge on account of a judge’s conduct

(B) AC. – This notation relates to egregious conduct by an respondent/applicant/petitioner’s attorney or by a DHS attorney. If an attorney or paralegal has not already done so, an AIJ should select the AC code when:

- BIA makes an affirmative finding of ineffective assistance of counsel (either past or present counsel)

- BIA makes a finding that the requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) were met and the case is reopened
- record reveals that an attorney's conduct in representing the party or DHS is questionable or reprehensible that it may warrant an investigation by EOIR's Office of General Counsel (OGC). See 8 C.F.R. § 1003.102.

In addition, this notation should be selected if there are any suspicions or concerns about possible fraud. The case may then be referred to OGC's Fraud Program for further consideration after issuance of the BIA's decision.

(b) Reverse side of circulation sheet. – Although it is the primary responsibility of the attorney or paralegal who prepared the decision to complete the reverse side of the circulation sheet, AIJs should review the decision code marked to verify that it is accurate. For more information regarding BIA decision codes, see Chapter 9.3(c) (Reverse side).

9.5 Special Case Processing

(a) Protective Order case. – The drafting attorney *must* attach the “Special Processing Instructions” sheet to the front of the circulation sheet when the proposed decision is circulated.

(b) High Profile case. – The drafting attorney *must* include the instructions below in the “Special Instructions to Docket” section of the circulation sheet.

“Send a copy of the signed decision to the [staff attorney], [Team Leader, and [SPA] immediately after its issuance.”

9.6 AIJ Review

(a) Generally. – Cases circulate to the AIJs for review and approval. For single-AIJ cases, once the judge has reviewed and approved the decision, that AIJ will sign the order and it will be forwarded to the Clerk's Office for processing. If the case has been circulated for three-AIJ panel review, it must go to three AIJs on the appropriate panel for review and vote. An AIJ who dissents, in whole or in part, may elect to dissent without opinion or draft a short dissenting or concurring opinion.

(b) *En banc* consideration. –

(i) *Electronic En Banc.* – If any permanent AIJ of a three AIJ Panel decides that the circulated decision should be considered by the entire BIA, that decision (and any separate opinions) is then posted electronically for en banc consideration, along with the appropriate supporting documents. If a majority of the permanent AIJs votes to hear the case en banc, then the case is scheduled for an en banc conference. Temporary AIJs do not have the authority to vote on any matter decided by the BIA en banc. 8 C.F.R. § 1003.1(a)(4).

(ii) *En Banc Conferences.* – The attorney who drafted the circulated decision will generally be advised by e-mail of the date and time for an en banc discussion. The attorney is expected to attend that discussion. After the conference, the attorney will generally receive further guidance and directives for the revision and processing of the case.

(c) *Revision of proposed decision (Panel Revision Sheet).* – If an AIJ wants revisions made to a circulated decision, the case may be returned to the attorney or paralegal with a directive on a panel revision sheet (a.k.a. “green slip”) from the AIJ. The panel revision sheet contains the AIJ’s specific instructions on how to revise the decision. The AIJ may also pose questions on further legal research or analysis, or ask the attorney or paralegal to discuss the case in person.

In addition, the panel revision sheet will generally provide guidance on whether the case merely needs to be returned to the AIJ making the request, or whether it may be recirculated without return to that AIJ. More complex cases where three AIJs have reviewed and provided comments may require more interaction with the AIJs involved. Where the drafting attorney or paralegal is uncertain how to proceed, especially where the AIJs involved may not have a consensus on what the decision should say, the attorney or paralegal can always bring questions or concerns about what the AIJ wants to his or her TL. The AIJ may also elect to make revisions to an order without returning the case to the attorney or paralegal, in which case he or she will send a Decision Corrections sheet (a.k.a. “blue slip”) to the AIJ’s administrative support staff with instructions on what change(s) should be made to the decision.

(i) *Receipt of Panel Revision sheet.* – If the attorney or paralegal understands the directive, but wishes to raise a question regarding its substance (e.g., to see if the directive can be changed or modified in some way), the attorney/paralegal should discuss the matter with the AIJ who issued the panel revision sheet. It is appropriate for the attorney/paralegal to bring it to the AIJ’s or a supervisor’s attention if he or she believes something has been overlooked or misunderstood. However, a case should not be redrafted in a

manner that does not comply with an AIJ's directive without first getting the approval of the AIJ(s).

(ii) **Recirculate.** – When the panel revision sheet instructs the case to be recirculated, a new circulation sheet should be completed and the “recirculate” box checked on the front side. The new circulation sheet should reflect which AIJs the case should be reviewed by. The old version of the decision should always be folded and stapled to the new circulation sheet and panel revision sheet so that neither the AIJ nor the Clerk's Office is confused about which version is the final.

(iii) **“Return to”.** – When the green slip instructs the case to be returned to a particular AIJ, the attorney or paralegal should write the AIJ's name in the space provided in the “STAFF ATTORNEY USE ONLY” section of the panel revision sheet and recirculate the case according to the guidance in section (ii) above.

(iv) **Timely completion of revisions.** – Cases returned for revision should be redrafted and returned/recirculated promptly. If the case involves a detained respondent/applicant, it must be handled expeditiously. Non-detained “returned” cases should be handled as soon as any other pending detained cases have been resolved, unless the attorney/paralegal has been instructed otherwise.

(d) **Separate opinion.** – At times, the recommended modification will require preparation of a separate opinion or the revision of the circulated decision to respond to a point raised in a separate opinion. The dissenting AIJ generally will have noted on the circulation sheet the basis upon which he or she requests that a dissent be drafted. The attorney/paralegal may request clarification or guidance from the dissenting AIJ. A draft of the dissenting opinion, along with the case file, should be returned to that AIJ through his or her legal assistant. Once the dissent is approved by that, the case will recirculate as appropriate. For more information regarding formatting separate opinions, see Chapter 4.14 (Separate Opinions).

(e) **Communications between AIJs (AIJ Memo).** – The Appellate Immigration Judge Memo (a.k.a. “goldenrod”) is used by an AIJ to communicate with other AIJs regarding a specific case. This could be used for a case that is designated as a three AIJ panel case as well as a single AIJ case.

9.7 Publication of BIA Decision

The BIA will generally determine whether to publish as precedent decisions those cases involving novel and important questions of law and decisions that overrule, modify, or

further explain a published BIA decision. If an attorney or paralegal believes that publication of a particular case may be warranted, he or she should so indicate on the circulation sheet and attach a “Referral for Three AIJ Panel Review Sheet” with the appropriate box checked.

In addition, when a case is designated for publication, the BIA retains the option to select the attorney or another individual to write the majority, dissenting, or concurring opinions. Moreover, although a decision may initially be designated for publication, it is subject to further voting by the en banc BIA, which may result in the case being published as a Panel decision or having publication status rescinded.

Once a decision has been designated for publication and any necessary revisions have been made, the Publication Unit will ask the attorney to complete data input sheet for the case, which includes (i) draft “headnotes” for the case, (ii) a list of the cases, statutes, and regulations pertinent to the decision; and, (iii) the topics under which the case should appear in the library index and the index of published decisions. The decision and headnotes will be edited for publication by the Publication Unit and then reviewed for final approval.

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APPENDIX A

Acronyms

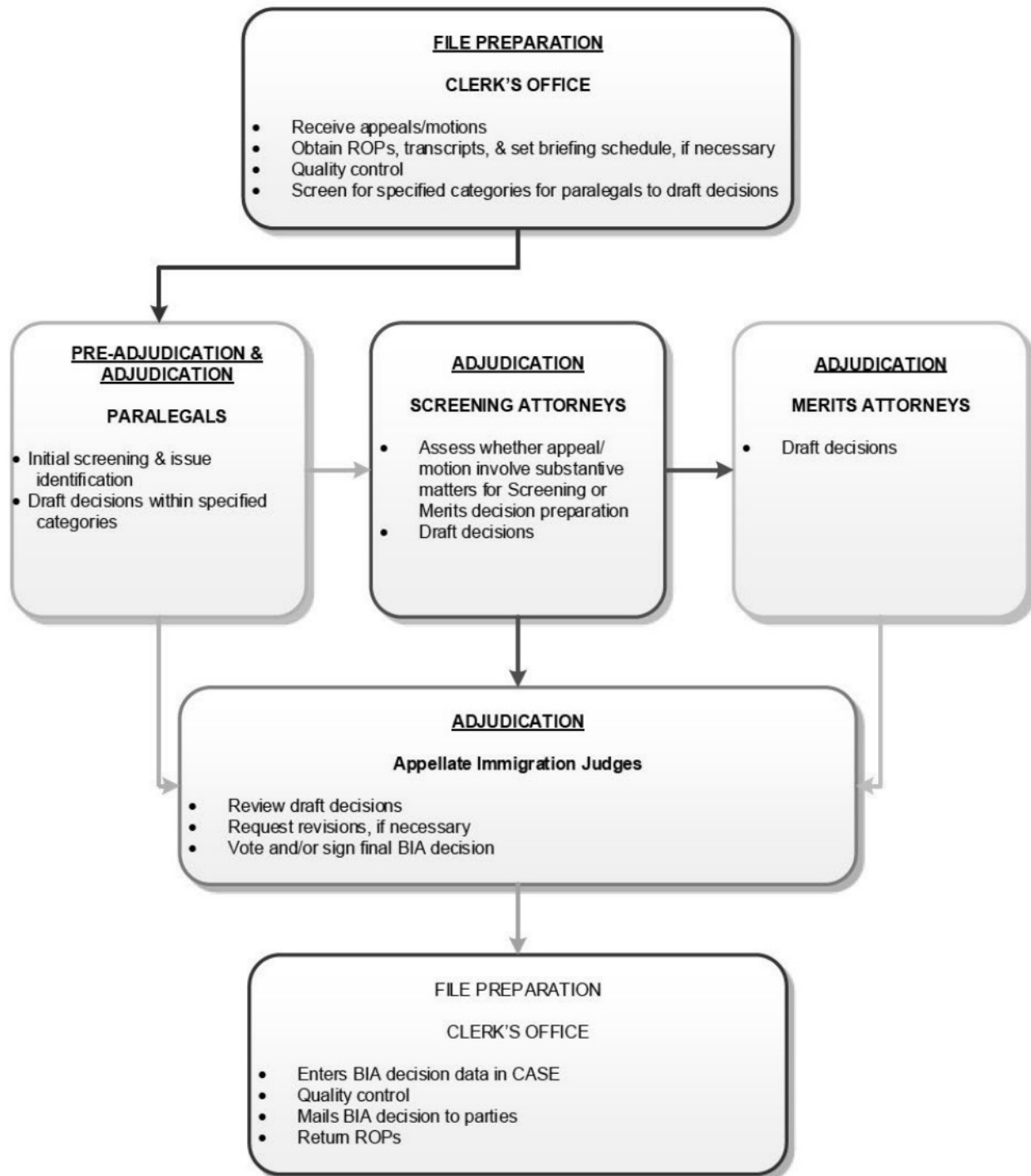
The following is a listing of some of the abbreviations that appear in this manual and are commonly used at the BIA.

AAO	Administrative Appeals Office, DHS
AIJ	Appellate Immigration Judge
ACF	Adverse Credibility Finding
A#	Registration number
ARO	Administrative Review Office, DHS
AWC/ATD	Adult(s) with Children (i.e., family units) who are released from custody and are subject to a form of DHS supervision or reporting
AWC/D	Adult(s) with Children who are being detained by DHS
AWO	Affirmance Without Opinion
BIA	Board of Immigration Appeals
CASE	Case Access System for EOIR
CBP	U.S. Customs and Border Protection, DHS
CAIJ	Chief Appellate Immigration Judge
DD	District Director
DCAIJ	Deputy Chief Appellate Immigration Judge
DHS	Department of Homeland Security
EOIR-26	Notice of Appeal from a Decision of an Immigration Judge
EOIR-27	Notice of Appearance as Attorney or Representative Before the Board of Immigration Appeals
EOIR-29	Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer
EOIR-33	Alien's Change of Address Forms
EEUH	Exceptional and extremely unusual hardship
FCR	Federal Court Remand

GPR	Government Performance and Results Act
HPC	High Profile Case
ICE	U.S. Immigration and Customs Enforcement, DHS
IJMTRs	Appeal of an Immigration Judge's decision regarding a motion
INS	Immigration and Naturalization Service
MTR-REI	Motion requesting the BIA to reinstate proceedings
NOA	Notice of Appeal
OIL	Office of Immigration Litigation, DOJ
OSC	Order to Show Cause
PFR	Petition for Review
R&A	Recognition and Accreditation
ROP	Record of Proceeding
RBC/D	Recent Border Crossers who are Detained
SCMS	Supervisory Case Management Specialist
SLA	Senior Legal Advisor
SPA	Senior Panel Attorney
UAC	Unaccompanied Alien Children
UC	Unaccompanied Children
TL	Team Leader

APPENDIX B

BIA Workflow



This chart is a general illustration of the BIA's case processing workflow. This chart does not display all aspects of the BIA's case processing.

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APPENDIX C

Clerk's Office Tab Guide

The Clerk's Office identifies essential correspondence received with marked colored tabs in the ROP.

Charging Document	Red
Minute Order	Yellow
Written Decision	Yellow
Bond Memorandum	Yellow
MTR-BIA (motion to reopen/reconsider)	Orange
Form EOIR-26 (Notice of Appeal)	Green
Form EOIR-29 (DD – Notice of Appeal)	Green
Form EOIR-27 (Entry of Appearance)	Blue
Form EOIR-33 (Alien Change of Address)	Blue
Respondent/Applicant's Brief	Purple
DHS' Brief	Purple
All Additional Briefs	Purple
Briefing Extension	Purple

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APPENDIX D

List of Applications for APPLICATION caption

Below is a partial listing of applications that may be listed in the “APPLICATION” caption. See Chapter 4.13 (Application).

Removal proceedings

Applications for relief or protection

Adjustment of status

Admission to the United States

Admission to the United States as lawful permanent resident

Admission to the United States as returning lawful permanent resident

Admission to the United States as nonimmigrant

Asylum

Cancellation of removal under section 240A(a) of the Act

Cancellation of removal under section 240A(b) of the Act

Change of venue

Convention Against Torture

Joint petition under section 216 of the Act

Reconsideration

Registry

Remand

Reopening

Retroactive permission to reapply for admission after removal

Stay of removal

Termination of proceedings

Voluntary departure

Waiver of inadmissibility under section _____ of the Act

Removal proceedingsApplications for relief or protection (cont.)

Waiver under section 237(a)(1)(H) of the Act

Waiver under section 216(c)(4) of the Act

Withholding of removal

Motions

Reconsideration

Remand

Reopening

Bond cases

Change in custody status

Change in custody status (Autostay)

Elimination of condition of bond

Redetermination of bond

Reduction in amount of bond

Release on own recognizance

Continued Detention Review Proceedings

Review of custody status pending removal from United States

Deportation proceedingsApplications for relief or protection

Adjustment of status

Asylum

Change of venue

Convention Against Torture

Hearing de novo

Joint petition under section 216 of the Act

Deportation proceedingsApplications for relief or protection (cont.)

Reconsideration

Registry

Remand

Reopening

Retroactive permission to reapply for admission after deportation

Stay of deportation

Suspension of deportation

Termination of proceedings

Voluntary departure

Waiver of inadmissibility under section _____ of the Act

Waiver under section 241(a)(1)(H) of the Act

Waiver of deportability under section 241(f) of the Act

Waiver under section 216(c)(4) of the Act

Withholding of deportation

Motions

Reconsideration

Remand

Reopening

Bond cases

Change in custody status

Change in custody status (Autostay)

Elimination of condition of bond

Redetermination of bond

Reduction in amount of bond

Release on own recognizance

Deportation proceedingsContinued Detention Review Proceedings

Review of custody status pending removal from United States

Exclusion proceedingsApplications for relief or protection

Admission to the United States

Admission to the United States as lawful permanent resident

Admission to the United States as returning lawful permanent resident

Admission to the United States as nonimmigrant

Asylum

Change of venue

Convention Against Torture

Remand

Reconsideration

Reopening

Termination of proceedings

Waiver of inadmissibility under section _____ of the Act

Withdrawal of application for admission

Withholding of exclusion and deportation

Motions

Reconsideration

Remand

Reopening

Fine proceedings

Mitigation of fine

Remission of fine

Termination

Visa Petition cases

Petition to classify status of alien relative for issuance of immigrant visa

Petition for classification as spouse of deceased citizen for issuance of immigrant visa

Application for Advance Permission to Enter as a Nonimmigrant Pursuant to Section 212(d)(3)(A) of Immigration and Nationality Act

Advance Permission to enter as nonimmigrant

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APPENDIX E

Immigration Judge Gender List

(August 10, 2021)

* Indicates Name Change.

Abbott, William L.	(Mr.)	Arthur, Andrew R.	(Mr.)	Bartleymay, Robert C.	(Mr.)
Abrams, Steven R.	(Mr.)	Ashworth, Sherron	(Ms.)	Bartleson, J. Thomas	(Mr.)
Achtsam, Howard E.	(Mr.)	Atenaide, Anthony	(Mr.)	Bartolomei, Jr., Richard	(Mr.)
Adams, Justin F.	(Mr.)	Attia, Olga E.	(Ms.)	Bashore, Jacob D.	(Mr.)
Adkins Blanch, Charles	(Mr.)	Auh, Kyung	(Mr.)	Bass, Lori R.	(Ms.)
Aikman, Susan F.	(Ms.)	Averwater, Richard J.	(Mr.)	Baumgarten, Mary C.	(Ms.)
Aina, Nathan N.	(Mr.)	Ayala, David	(Mr.)	Baxter, Laura A.	(Ms.)
Alberdi, Yon K.	(Mr.)	Ayze, Thomas M.	(Mr.)	Beamer, Dayna*	(Ms.)
Alcorn, Stuart D.	(Mr.)	Bagley, Kenneth A.	(Mr.)	Beatman, Sr., Jerry A.	(Mr.)
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Rooyani, Rodin (Ms.)	Schmidt, Paul W. (Mr.)	Simmons, Gregory L. (Mr.)
Rosche, Robin J. (Ms.)	Schnitzner, Michael A. (Mr.)	Sitgraves, D. D. (Ms.)
Rose, Howard (Mr.)	Schools, Shelly W. (Ms.)	Slavin, Denise N. (Ms.)

Sloan, Andrea	(Ms.)	Taylor, Bruce A.	(Mr.)	Uddin, Marium S.	(Ms.)
Smith, Gary W.	(Mr.)	Taylor, John D.	(Mr.)	Vahid-Tehrani, Gita	(Ms.)
Smith, Renetta	(Ms.)	Taylor, Khalilah M.	(Ms.)	Van Winkle, Howard	(Mr.)
Snow, Thomas G.	(Mr.)	Taylor, Philip P.	(Mr.)	Van Wyke, William P.	(Mr.)
Sogocio, Rico M.	(Mr.)	Teeter, Marilyn J.	(Ms.)	Vandello, James P.	(Mr.)
Solow, Bruce W.	(Mr.)	Terrazas, Gilda M.	(Ms.)	Vargas-Padilla, Nelson A.	(Mr.)
Sonom, Ronald G.	(Mr.)	Terrien, Jeb T.	(Mr.)	Verman, Dinesh C.	(Mr.)
Soper, Emmett D.	(Mr.)	Thielemann, Christopher J.	(Mr.)	Verrillo, Phillip	(Mr.)
Spath, Vance H.	(Mr.)	Thogersen, Cassie A.	(Ms.)	Vicars, Robert O.	(Mr.)
Spencer, Oshea Denise	(Ms.)	Thompson, Jr., Donald	(Mr.)	Videla, Gabriel C.	(Mr.)
Spencer-Walters, Linda	(Ms.)	Thompson, Kenley J.	(Mr.)	Villegas, Veronica S.	(Ms.)
Sponzo, Jem C.	(Ms.)	Thomsen, Scott E.	(Mr.)	Vinikoor, Robert D.	(Mr.)
Stancill, Christine E.	(Ms.)	Tijerina, Eric J.	(Mr.)	Virchis, Bridget	(Ms.)
Star, Shadee M.	(Ms.)	Torg, Cynthia Shepard	(Ms.)	Vomacka, Alan A.	(Mr.)
Staton, Jack W.	(Mr.)	Torreh Bayouth, Lilliana	(Ms.)	Wagner, Jr., Clarence M.	(Mr.)
Stockton, Bette Kane	(Ms.)	Tovar, Eleazar	(Mr.)	Walker, Nathaniel B.	(Mr.)
Stogner, W. Wayne	(Mr.)	Travieso, Frank M.	(Mr.)	Walleisa, Michael G.	(Mr.)
Strasser, William K.	(Mr.)	Tregerman, Gwendylan E.	(Ms.)	Walsh, John F.	(Mr.)
Straus, Michael W.	(Mr.)	Trimble, Dan	(Mr.)	Walton, Richard D.	≠ (Mr.)
Sturla, Mario J.	(Mr.)	Tripi, Michael A.	(Mr.)	Wang, Lynn W.	(Ms.)
Sukkar, Elisa M.	(Ms.)	Trujillo, Eileen R.	(Ms.)	Ward Jr., George J.	(Mr.)
Swink, Arwen A.	(Ms.)	Truman, Phillip M.	(Mr.)	Ward, Robert Quincy	(Mr.)
Tabaddor, A. Ashley	(Ms.)	Tsankov, Mimi	(Ms.)	Waterloo, Jason R.	(Mr.)
Tadal, Mirlande	(Ms.)	Tucman, Dean S.	(Mr.)	Watson, Bryan D.	(Mr.)
Talavera-Peraza, Elvin R.	(Mr.)	Tyrakoski, Meredith	(Ms.)	Watters, Mathew H.	(Mr.)
Tamez, Lydia G.	(Mr.)	Ubarri, Maria T.	(Ms.)	Webber, Polly A.	(Ms.)
Taylor, Brock E.	(Mr.)	ul-Haq, Ubaid	(Mr.)	Weil, Jack H.	(Mr.)

Weisel, Robert D.	(Mr.)	Wiegand, III. Charles A.	(Mr.)	Yates, Clarease Rankin*	(Ms.)
Weiss, Daniel	(Mr.)	Williams, John C.	(Mr.)	Yeargin, Robert	(Mr.)
Weiss, Irene	(Ms.)	Williams, Philip T.	(Mr.)	Young, Elizabeth L.	(Ms.)
Wells, Kenya L.	(Mr.)	Wilson, Earle B.	(Mr.)	Young, Victoria E.	(Ms.)
Whipple, David C.	(Mr.)	Wilson, Tamar H.	(Ms.)	Zagzoug, Randa	(Ms.)
White, Curtis G.	(Mr.)	Wood, Ryan R.	(Mr.)	Zanfardino, Richard M.	(Mr.)
White, David	(Mr.)	Wright, Virna A.	(Ms.)	Zerbe, Craig M.	(Mr.)
White, Romaine L.	(Ms.)	Yam, Mimi S.	(Ms.)	Zimmer, William K.	(Mr.)
White, Ted A.	(Mr.)	Yamaguchi, Michael J.	(Mr.)	Zlatow, Jeffrey	(Mr.)
White, Vincent	(Mr.)	Yarbrough, Susan L.	(Ms.)	Zuniga, Bertha A.	(Ms.)
Whitworth, Mark. R.	(Mr.)				

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APPENDIX F

Using Microsoft Word

How do I . . .	In Microsoft Word, Do this:
Set tabs?	Click on the "Home" tab at the top → Click the small "expander box" next to "paragraph" → set tabs and other formatting options manually.
Track Changes and Final View	In "Review," click on the "Track Changes" button in the middle of the ribbon. If you want to view the document in its final version, with changes incorporated, click on "Final" in the drop down menu next to the "Track Changes" button. If you want to view the document in its original version, without any of the tracked changes, click on "Original" in the drop down menu next to the "Track Changes" button.
Disable superscripts?	Click on "File" tab at top of page → Select "Options" link on left → Select "Proofing" link on left → Select "AutoCorrect Options..." at top right → Select "AutoFormat" tab in pop-up menu → Uncheck "Ordinals (1st) with Superscript"
Keep text together?	Simultaneously type shift + Ctrl + space bar (or hyphen) to keep text together.
Show the ruler?	Click on the "View" tab at the top → Click on the box next to "Ruler" in the "Show" Group. (This will show a ruler at the top of the page and all tabs. You can delete tabs by dragging them out and add tabs by clicking on the ruler).

How do I . . .	In Microsoft Word, Do this:
Tell Word to Stop Autocorrecting?	After Word autocorrects something, hold your cursor over the autocorrected word. You will see a small blue rectangle under the word. Click that blue rectangle. This will pull up a menu that allows you to choose to undo that particular auto correction, or to tell Word to stop making that auto correction in the future.
Include the § ?	Simultaneously type "Ctrl + 6" <u>You may have to set this command as a shortcut</u> – To do this, under "Insert," click on the "symbol" button on the right side of the ribbon → Under "Symbol," click on "More symbols → Highlight the § symbol and click on "Shortcut Key" → Simultaneously type "Ctrl + 6" under "Press new shortcut key" → Click "Assign" in the bottom left corner of the box
Copy and paste?	Highlight the text you would like to copy → simultaneously type control + C → Put your cursor where you want the text to appear → simultaneously type control + V
Maintain formatting while using copy & paste?	After pasting something, you will see a little box that says has a clipboard symbol and the text (Ctrl). Click that box. A paste options menu will come up. Choose "keep source formatting" (the clipboard with a paintbrush symbol) if you want to keep the formatting from the original document. Choose "keep text only" (the A symbol) if you want the text formatting to match the new document.
Search for a word or phrase in a document?	Simultaneously type control + "F"
Show paragraph markers and other formatting symbols?	Click the ¶ on the Home tab
Undo something when I have messed it up?	Click Undo (the arrow pointing left in the top left corner next to save)

APPENDIX G

Forms and Subsequent References

Application Name	Number	Subsequent Reference
Request for Recognition as a Nonprofit Religious, Charitable, Social Service or Similar Organization Established in the United States	Form EOIR-31	recognition application
Application to Register Permanent Residence or Adjust Status	Form I-485	adjustment application
Notice of Appeal from a Decision of an Adjudicating Official in Practitioner Discipline Case	Form EOIR-45	notice of appeal
Notice of Appeal from a Decision of an Immigration Judge	Form EOIR-26	notice of appeal
Notice of Appeal to the Board of Immigration Appeals of a USCIS Officer	Form EOIR-29	notice of appeal
Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals	Form EOIR-27	entry of appearance
Notice of Entry Appearance as Attorney or Representative before the Immigration Court	Form EOIR-28	entry of appearance
Immigration Practitioner/Organization Complaint Form	Form EOIR-44	practitioner complaint form

Application Name	Number	Subsequent Reference
Application for Asylum and Withholding of Removal	Form I-589	asylum and withholding application
Application for Cancellation of Removal for Certain Permanent Residents	Form EOIR-42A	cancellation application
Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents	Form EOIR-42B	cancellation application
Alien's Change of Address Form	Form EOIR-33/IC Form EOIR-33/BIA	change of address form
Fee Waiver Request	Form EOIR-26A	fee waiver request
Application for Suspension of Deportation or Special Rule Cancellation of Removal	Form I-881	NACARA suspension of deportation application <u>or</u> special rule cancellation application
Application for Advance Permission to Return to Unrelinquished Domicile	Form I-191	212(c) application
Application for Suspension of Deportation	Form EOIR-40	suspension of deportation application
Application for Temporary Protected Status	Form I-821	temporary protected status application
Immigrant Petition for Alien Worker	Form I-140	employment-based visa petition
Petition for Alien Relative	Form I-130	visa petition

Application Name	Number	Subsequent Reference
Application for Waiver of Grounds of Inadmissibility	Form I-601	waiver of inadmissibility application

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APPENDIX H

Charging Documents

Below is an image of the first page of a Notice to Appear (Form I-862). Removal proceedings begin when DHS files the Notice to Appear with the Immigration Court after it is served on the individual subject to proceedings.

U.S. Department of Homeland Security		Notice to Appear	
In removal proceedings under section 240 of the Immigration and Nationality Act:			
Subject ID : [REDACTED]	FIN #: [REDACTED]	File No: [REDACTED]	
DOB: [REDACTED]		Event No: [REDACTED]	
In the Matter of: [REDACTED]			
Respondent: [REDACTED]		currently residing at:	
DHS/ICE CUSTODY			
(Number, street, city and ZIP code)		(Area code and phone number)	
☐ 1. You are an arriving alien. ☒ 2. You are an alien present in the United States who has not been admitted or paroled. ☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.			
The Department of Homeland Security alleges that you: 1. You are not a citizen or national of the United States; 2. You are a native of MEXICO and a citizen of MEXICO; 3. You arrived in the United States at or near San Ysidro, CA, on or about December 15, 2007; 4. You were not then admitted or paroled after inspection by an Immigration Officer.			
On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law: 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.			
☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture. ☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(b)(5)(iv)			
YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: TO BE SET			
(Complete Address of Immigration Court, including Room Number, if any)			
on a date to be set at a time to be set to show why you should not be removed from the United States based on the			
charge(s) set forth above.			
Date: September 2, 2008		SUP DETENTION & DEPORTATION OFFICE (Signature and Title of Issuing Officer)	
SAN DIEGO, CALIFORNIA		(City and State)	
See reverse for important information			
Form I-862 (Rev. 08/01/07)			

Below is an image of the first page of an Order to Show Cause (Form I-221). Deportation proceedings begin when the former INS filed the Order to Cause with the Immigration Court after it was served on the individual subject to proceedings.

U.S. Department of Justice Immigration and Naturalization Service		Order to Show Cause and Notice of Hearing
ORDER TO SHOW CAUSE AND NOTICE OF HEARING (ORDEN DE PRESENTAR MOTIVOS JUSTIFICANTES Y AVISO DE AUDIENCIA)		
In Deportation Proceedings under section 242 of the Immigration and Nationality Act. (En los trámites de deportación a tenor de la sección 242 de la Ley de Inmigración y Nacionalidad.)		
United States of America: (Estados Unidos de América:)	File No. _____ (No. de registro)	
Inmate #: _____ EPR Date: _____	Dated <u>June 28, 1996</u> (Fecha)	
In the matter of (En el asunto de)	_____ (Respondent) _____ (Demandado)	
Address (Dirección)	<u>c/o Superintendent, Taconic Correctional Facility</u> <u>250 Harris Road, Bedford Hills, New York 10507-2498</u>	
Telephone No. (Area Code) (No. de teléfono y código de área)	_____	
Upon inquiry conducted by the Immigration and Naturalization Service, it is alleged that: (Según las indagaciones realizadas por el Servicio de Inmigración y Naturalización, se alega que:)		
1) You are not a citizen or national of the United States; (Ud. no es ciudadano o nacional de los Estados Unidos) 2) You are a native of <u>The Dominican Republic</u> and a citizen of <u>The Dominican Republic</u>; (Ud. es nativo de) <u>(La República Dominicana)</u> (y ciudadano de) <u>(La República Dominicana)</u> 3) You entered the United States at or near <u>New York, New York</u> on or about <u>March 27, 1970</u>; (Ud. entró a los Estados Unidos en o cerca de) <u>(Nueva York)</u> (el día o hacia esa fecha) <u>(27 de Marzo, 1970)</u> <u>Nueva York)</u> 4. At that time, you were admitted as a Lawful Permanent Resident; (En ese momento, Ud. fue admitido como un Residente Permanente Legal); 5. You were, on September 20, 1995, convicted in the Supreme Court of the State of New York, County of New York, for the offense of Attempted Arson in the second degree, in violation of Section 110/150.15 of the New York State Penal Law; (Ud. resulto convicto, en el 20 de Septiembre de 1995, en el Tribunal Supremo del Estado de Nueva York, Condado de Nueva York, por el delito de Atentado Incendio en el segundo grado, en violación de la Sección 110/150.15 del Código Penal del Estado de Nueva York); 6. The above mentioned crime of Attempted Arson in the second degree was committed on or about June 25, 1994; (El crimen mencionado arriba de Atentado Incendio en segundo grado fue cometido alrededor mas o menos del 25 de Junio de 1994); 7. For the commission of the aforesaid crime, you were sentenced to confinement in a prison or corrective institution for a minimum term of two years and a maximum term of six years. (Por haber cometido el crimen mencionado anteriormente, Ud. fue sentenciado a confinamiento en una prisión o institución correctiva por un término mínimo de dos años (2) y término máximo de seis años (6)).		
Form I-221 (Rev. 12-82)	Page 1	

Below is an image of the first page of a Notice of Referral to Immigration Judge (Form I-863). Asylum and/or Withholding proceedings begin when DHS files the Notice of Referral with the Immigration Court after it is served on the applicant subject to the proceedings.

U. S. Department of Justice Immigration and Naturalization Service		Notice of Referral to Immigration Judge
Name		Date
Place and Manner of Arrival PHILADELPHIA INTERNATIONAL AIRPORT, PHILADELPHIA, PA, POB; Air		A-File
Country of Citizenship		Date of Arrival

To immigration judge:

☐ 1. The above-named alien has been found inadmissible to the United States and ordered removed pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act). A copy of the removal order is attached. The alien has requested asylum and/or protection under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act and 8 CFR § 208.30(g).

☐ 2. The above-named alien arrived in the United States as a stowaway and has been ordered removed pursuant to section 235(a)(2) of the Act. The alien has requested asylum and/or withholding of removal under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

☒ 3. The above-named alien arrived in the United States in the manner described below and has requested asylum and/or withholding of removal under the Convention against Torture. The matter is referred for a determination in accordance with 8 CFR § 208.2(c). Arrival category (check one):

☐ Crewmember/applicant	☐ Crewmember/refused	☐ Crewmember/landed
☐ Crewmember/violator	☒ VWP/applicant	☐ VWP/violator
☐ 235(c) order	☐ S-visa nonimmigrant	☐ Stowaway: credible fear determination attached

☐ 4. The above-named alien has been ordered removed by an immigration officer pursuant to section 235(b)(1) of the Act. A copy of the removal order is attached. In accordance with section 235(b)(1)(C) of the Act, the matter is referred for review of that order. The above-named alien claims to be (check one):

☐ a United States citizen	☐ a lawful permanent resident alien
☐ an alien granted refugee status under section 207 of the Act	☐ an alien granted asylum under section 208 of the Act.

☐ 5. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the Immigration and Naturalization Service (INS) has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **does not** have a reasonable fear of persecution or torture. The alien has requested a review of that determination in accordance with 8 CFR §§ 208.31(f) and (g).

☐ 6. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the INS has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **has** a reasonable fear of persecution or torture. The matter is referred for a determination in accordance with 8 CFR § 208.31(e).

☐ 7. The Commissioner of the INS has determined that the release from custody of the above-named alien who is under a final order of removal would pose a special danger to the public according to the standards set in 8 CFR § 241.14(f)(1). The INS has therefore invoked procedures to continue the alien's detention even though there is no significant likelihood that the alien will be removed from the United States in the reasonably foreseeable future. The matter is referred to the immigration judge for a review of this determination in accordance with 8 CFR § 241.14(g).

Page 1 of 2

Form I-863 (Rev. 10/24/13)

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APPENDIX I

Decision Codes

Only one decision code may be selected for each appeal or motion type entered in CASE. Select the decision code that most accurately reflects the overall decision of the BIA. Questions about which decision code should be selected in a particular case should be discussed with a TL and/or SPA.

Below is a listing of active decision codes found on the reverse side of the circulation sheet. See Chapter 9.3 (Circulation Sheet Instructions for Attorneys and Paralegals).

SUS. – This code applies when the appeal is sustained (i.e., the appealing party prevails). This code does not apply when the BIA's decision overturns an Immigration Judge grant of cancellation of removal or suspension of deportation in a CoR Cap Case (certain cancellation of removal/EOIR-42B or suspension of deportation/EOIR-40 applications subject to § 240A(e)(1) of the Act). See codes CFD and CFV.

DIS. – This code applies when the appeal is dismissed (i.e., the appealing party does not prevail), and the decision of the Immigration Judge or DHS officer stands. This code also applies if the BIA's order dismisses the appeal and denies a motion to remand. Additionally, if the BIA declines to consider an interlocutory appeal, this code applies.

DVD. – This code applies when the BIA dismisses an appeal, but reinstates voluntary departure.

SAF. – This code applies when the BIA affirms without opinion the decision of the Immigration Judge, as provided at 8 C.F.R. § 1003.1(e)(4).

SAV. – This code applies when the BIA affirms without opinion the decision of the Immigration Judge, as provided at 8 C.F.R. § 1003.1(e)(4), but further reinstates voluntary departure.

SDG. – This code *must* be selected anytime an appeal is summarily dismissed on the appellant files an untimely appeal or waived appeal before the Immigration Judge as provided in 8 C.F.R. § 1003.1(d)(2)(i)(G).

SED. – This code *must* be selected when an appeal is summarily dismissed anytime an appeal is summarily dismissed based on the appellant's failure to file a brief as stated at 8 C.F.R. § 1003.1(c)(2)(i)(E). For example, the proposed decision summarily dismisses an appeal under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(A) and (E).

SUD. – This code applies when an appeal is summarily dismissed for any of the reasons listed at 8 C.F.R. § 1003.1(d)(2)(i)(A) – (D), (F), and (H) except for when (E) and (G) apply. See SED and SGD above.

DEN. – This code applies when the motion is denied. This code also applies when a motion is number- or time-barred.

GNR. – This code applies when a motion to reopen, reconsider, or recalendar is granted, and the BIA disposes of the case without remanding the proceedings to the Immigration Judge or DHS officer. Examples of when this code applies include the following:

- the BIA sua sponte reopens or reconsiders proceedings and issues an amended or new decision
- the BIA reissues a decision
- the BIA recalendared an appeal (either through an Interim Order or single decision) and disposes of the recalendared appeal

However, this code should not be selected when other codes are applicable and required (i.e., non-bond proceedings – CTM, ABC, DEN, REM, ACR, NJU, TER, WDL; or bond proceedings – DEN, NJU, REM, ACR, WDL).

In addition, this code applies if the BIA's decision grants a motion to reopen or reconsider for the limited purpose of reinstating voluntary departure. This code also applies in bond proceedings where the BIA grants a motion to reconsider and dismisses the appeal (unless DEN, NJU, or WDL are applicable).

ACR. – This code applies if the sole basis for the remand is to return the case to the Immigration Court to correct a deficiency in the file. Examples for when to use this code include the following:

- Defective or missing transcript
- Defective or missing Immigration Judge decision
- Immigration Court did not forward record of proceedings to the BIA

REM. – This code must be selected if the decision remands the case to the Immigration Judge or DHS officer except for when ACR is applicable. This code should not be used the BIA is returning a case to the Immigration Judge to rule on a motion. Rather, instruct Docket Team (Special Instructions to Docket on circulation sheet) to not put the file in Case Storage, but return record to Immigration Court.

NJU. – This code applies where the BIA lacks jurisdiction to review the merits of the appeal or motion. For example, this code is used when an respondent/applicant files a motion to reopen subsequent to dismissal of an appeal for lack of jurisdiction (i.e., *Matter of Mladineo*, 14 I&N Dec. 591 (BIA 1974)).

WDL. – This code applies when an appeal or motion is withdrawn.

TER. – This code applies when the underlying removal/deportation/exclusion proceedings are terminated. Examples for when to use this code include the following:

- Respondent/applicant not subject to removal proceedings
- Respondent/applicant/beneficiary is deceased
- BIA advised that DHS adjusted respondent/applicant's status to that of a lawful permanent resident and grants request to terminate proceedings
- BIA advised that respondent/applicant has been granted U.S. citizenship

However, this code should not be selected when an application for relief, for example, asylum, is granted.

ABC. – This code applies to cases that are administratively closed pursuant to the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (“ABC”).

ADM. – Proceedings administratively closed for reasons other than CON, ABC, DED, TPS, or APD.

CON. – Proceedings continued and taken off docket. Code last used to identify cases that were administratively closed because of repapering eligibility.

DED. – Proceedings are administratively closed because the alien is subject to deferred enforced departure through Presidential Order.

TPS. – This code applies to cases administratively closed because the Attorney General or DHS has granted Temporary Protected Status to aliens of a designated nationality.

APD. – Proceedings are administrative closed based on DHS’ affirmative exercise of prosecutorial discretion.

TPD. – Proceedings are terminated based on DHS’ affirmative exercise of prosecutorial discretion.

WPD. – DHS appeal withdrawn based on DHS’ affirmative exercise of prosecutorial discretion.

Below is a listing of inactive decision codes that are no longer used by the BIA, but may appear in CASE.

BCR. – Sole basis for remand to the Immigration Judge is for background and security checks to be updated by DHS.

CFD. – BIA overturns the Immigration Judge’s grant of CoR Cap Case, no remand (certain EOIR-42B and EOIR-40 applications).

CFG. – BIA decision results in final grant of CoR Cap Case (certain EOIR-42B and EOIR-40 applications).

CTM. – This code applies to cases administratively as permitted by *Matter of Castro-Tum* for reasons other than for ABC.**CVF.** – BIA overturns the Immigration Judge’s grant of CoR Cap Case, with grant of Voluntary Departure (certain EOIR-42B and EOIR-40 applications).

CGR. – Conditional grant of relief formerly used for conditional grants of suspension of deportation.

CPC. – Conditional asylum grants based upon coercive population control policies. This code was replaced in CASE on May 11, 2005, by the CPG decision code.

D30. – Appeal dismissed but FURTHER ORDER giving the alien 30 days to voluntarily depart the United States.

DNS. – Motion is denied based on *Matter of Soriano*.

DSO. – Appeal is dismissed pursuant to the BIA’s decision in *Matter of Soriano*.

DUT. – Appeal is dismissed as untimely.

FMD. – Sole basis for denial of R’s Franco motion is b/c R would remain removable & ineligible for relief (or ineligible for relief in reopened proceedings).

GRS. – Motion is granted based on *Matter of Soriano*.

MBD. – Appeal in bond proceedings is moot.

OTH. – No other code is appropriate.

OTS. – *Matter of Soriano* based decision when no other code is appropriate.

SAD. – Appeal is summarily dismissed based on inadequate reasons stated for the appeal.

SNC. – Special NACARA continuance.

SND. – Appeal is summarily dismissed based on inadequate reason and failure to file an appellate brief.

SOD. – Appeal is summarily dismissed on other grounds.

Table of Changes

This Style Manual is updated periodically. The table below is arranged by most recent date of change and identifies the section amended and nature of the change made. Note that page numbers throughout the Style Manual may have changed as the result of updates.

August 16, 2021

Section amended	Nature of Change
1.3(d)(iii)	Technical correction – updated
9.3(c)(vii) – (xxiii)	Updated decision code information (deleted and added)
Appendix E	Update information
Appendix I	Updated decision codes (active and inactive)

July 7, 2021

Section amended	Nature of Change
4.4(b)	Updated information regarding telephone and VTC hearing location
4.4(b)(ii)	Technical correction – added missing word to parenthetical

June 15, 2021

Section amended	Nature of Change
Global change	Technical correction updated term “alien”
4.4(a)-(b)	Updated information regarding hearing location
4.8(b)(iv)	Added new subsection to address when the respondent’s representative deceased Renumbered subsequent subsections
6.2(b)(ii)	Updated information regarding citing an unpublished BIA decision
6.11	Technical correction – typo “indicates” to “indicate”
8.2(a)	Updated information – Removal of macros related to section 274D fine

June 15, 2021

Section amended	Nature of Change
8.3	Updated information – Removal of section 274D fine
8.4(a)(ii) and (iii)	Updated information – Removal of section 274D fine
8.4(b)(i)(B)	Updated information – Removal of section 274D fine
Appendix E	Updated information.

November 5, 2020

Section amended	Nature of Change
1.4(a)(ii)	Updated information – deleted “federal court remands (FCR)”
1.4(b)	Technical correction – changed “FCR” to “federal court remands”
1.7(a)	Technical correction – changed “esp.” to “especially”
3.4(a)	Updated information – deleted “if applicable”
4.4(b)(i)	Technical correction – updated image / citation
4.4(b)(ii)	Technical correction – updated citations
4.4(b)(ii)	Technical correction – updated image / citation
4.14(d)	Technical correction – updated image
5.3	Updated information – added web address for GPO Style Manual to locate PDF download
5.4(f)	Updated information – example changed
5.7(e)	Updated information – clarification of location of space after fraction
6.1	Updated information
6.2(b)	Updated information – citation
6.2(b)(i)	Updated information
6.2(b)(i)(C)	Updated information
6.2(c)(i)	Updated information
6.2(c)(ii)	Updated information

November 5, 2020

Section amended	Nature of Change
6.2(c)(iii)	Updated information
6.2(c)(iv)	Updated information – subsection renamed and text
6.3(a)	Updated information
6.3(b)	Updated information
6.4(b)	Updated information
6.4(c)(i)	Updated information
6.4(d)(i)	Updated information
6.4(d)(iv)	Updated information
6.5(a)	Updated information
6.5(b)	Updated information
6.6(b)	Updated information - citation
6.6(c)(i)	Updated information - citation
6.7(a)	Updated information - citation
6.7(c)	Updated information - citation
6.8(a)	Updated information - citation
6.8(b)	Updated information
6.10(a)	Updated information – Bluebook citation
6.10(b)	Updated information – Bluebook citation
6.10(c)	Updated information – corrected typo
6.10(d)	Updated information – citation example
6.10(e)	Updated information
6.11(a)	Updated information – citation
6.11(a)(i)	Updated information
6.11(a)(ii)	Updated information
6.11(a)(iv)	Updated information
6.11(a)(v)	Updated information

November 5, 2020

Section amended	Nature of Change
6.11(a)(vi)	Updated information
6.11(b)	Updated information
6.11(c)	Updated information
6.11(d)	Updated information
6.11(e)	Updated information
6.11(f)	Updated information
6.12(a)	Technical correction – moved text
6.12(b)	Technical correction – moved text
7.4(b)(iii)	Technical correction – added missing word “interview”
7.4(b)(iv)	Technical correction – updated citation
7.8	Updated information
7.11(a)	Technical correction – changed “circuit” to “federal”
7.11(b)	Updated information
8.1	Technical correction – added “in which”
8.3(b)	Technical correction – typo “language”
8.4(b)(i)(B)	Technical correction – typo “language”
8.6(b)(ii)(A)	Technical correction – typo “DHS”
9.3(b)(v)	Technical correction – updated internal citation to BIA Style Manual
9.3(b)(vii)(A)	Technical correction – changed “Chairman” to “CAIJ”
9.3(B)(vii)(B)	Technical correction – changed “Chairman” to “CAIJ”
9.6(a)	Technical correction – typo “AIJ”
9.6(c)	Technical correction – typo “AIJ”
Appendix E	Updated information

September 21, 2020

Section amended	Nature of Change
4.4(b)(i)	Updated information and image – controlling circuit law and video conference
4.4(b)(ii)	Updated information and image – controlling circuit law and video conference
4.4(b)(iii)	Updated information – updated citations
4.14(d)	Updated image – Dissent without opinion
6.10(d)	Technical correction – updated (Respondent’s brief) to (Respondent’s Br.)
6.11(b)(ii)	Updated information
6.11(d)	Updated information
6.11(e)	Updated information
6.12	Updated information
7.4(a)(ii)	Technical correction – fixed typo “public”
8.2(a)	Update information to include new macros
8.2(b)	Updated illustrations to include new macros
8.3(b)	Updated information to include new macros
8.9	Added new section to address when the BIA orders a Qualified Representative
Appendix A	Technical correction – fixed typo “hardship”
Appendix E	Updated information

July 13, 2020

Section amended	Nature of Change
Global changes	“Board” to “BIA” unless used in BIA decision “Board Member” to “Appellate Immigration Judge or AIJ” “Chairman” to “Chief Appellate Immigration Judge” “Vice Chairman” to “Deputy Chief Appellate Immigration Judge”
1.1	Updated information
1.7(a)	Updated information
1.8(a)	Deleted (b) and renamed section Updated information

July 13, 2020

Section amended	Nature of Change
	Added seventh category for referral for thee AIJ Panel review
4.5(c)	Deleted and renumbered section – discontinued use of aliases in caption Renumbered subsequent sections
4.5(e)	Deleted and renumbered section – discontinued use of aliases in caption Renumbered subsequent sections
4.6(b)(iii)	Technical correction – corrected citation
4.6(d)	Updated illustration/image – deleted aka
4.7(a)	Updated illustration/image – deleted aka
4.8(b)(i), (iv), (vi) and (vii)	Updated illustration/image – deleted aka
4.8(c)(iv)	Updated illustration/image – deleted aka
4.9(a)(i)	Updated information
4.9(a)(ii)	Updated illustration/image – deleted aka
5.2(c)(iv)	Updated information regarding use of quotations when first identify an acronym
6.2(a)	Updated information – deleted reference to comma
6.4(a)	Updated information – added examples
6.9	Added new section to address citing to internal BIA guidance Renumbered subsequent sections
6.10(a)	Updated information – added citing to paragraph(s) in an affidavit
6.10(b)	Renumbered Updated information regarding Immigration Judge abbreviation
6.10(d)	Renumbered Updated information regarding treatment of unpaginated IJ decisions and briefs added examples
6.12	New section – parenthetical information
7.6	Added new section to address withdrawal of appeal by represented alien Renumbered subsequent sections
7.11	Updated information
8.1	Updated information to address Notice of potential fine - § 274D
8.3	Added new section to address Notice of potential fine - § 274D Renumbered subsequent sections
8.4(a)(ii)	Updated text to address Notice of potential fine - § 274D Updated image
8.4(a)(iii)	Updated illustration/image Notice of potential fine - § 274D

July 13, 2020

Section amended	Nature of Change
8.4(a)(iv)(B)	Updated information – internal reference
8.4(b)(i)(B)	Updated illustration/image – Notice of potential fine - § 274D
8.4(c) and (d)	Updated information – internal reference
8.5(a)(ii)	Updated text to address Notice of potential fine - § 274D
8.5(b)(ii)	Updated information – internal reference
8.5(c)(i)	Updated text
8.5(c)(i)(B)	Updated illustration/image Notice of potential fine - § 274D
8.5(c)(iii)	Updated information – internal reference
8.5(c)(vi)	Updated information – internal reference
8.6(a)(i)(A) and (B)	Updated illustration/image Notice of potential fine - § 274D
8.6(a)(ii)(A) and (B)	Updated illustration/image Notice of potential fine - § 274D
8.6(b)(i)(A) and (B)	Updated text to address Notice of potential fine - § 274D
8.6(b)(ii)(A)	Updated text and image Notice of potential fine - § 274D
8.6(b)(ii)(B)	Updated illustration/image Notice of potential fine - § 274D
8.6(c)	Updated text Notice of potential fine - § 274D Added image
8.6(d)	Updated text and image Notice of potential fine - § 274D
8.6(e)	Updated text Notice of potential fine - § 274D
8.6(f)	Deleted
8.8	Technical correction – deleted ICE and replaced with USCIS in section heading
8.8(b)	Updated information – Notice of potential fine - § 274D
8.8(d)(i)(B) – (E)	Updated information - Notice of potential fine - § 274D Updated illustration
9.3(b)(v)	Updated information – added example
9.3(b)(viii)	Added new subsection – VTC hearing
9.3(b)(ix)	Added new subsection – VAWA, T and U-Visa case Subsequent subsection renumbered
9.3(c)(xv)	Updated information – deleted reference to use of decision code TER
9.3(c)(xvi)	Updated information – deleted example

July 13, 2020

Section amended	Nature of Change
9.4(a)(v)	Added new subsection – VTC hearing
9.4(a)(vi)	Added new subsection – VAWA, T and U-Visa case Subsequent subsection renumbered
Appendix A	Updated information
Appendix B	Updated information
Appendix E	Updated information
Appendix I	Updated information – decision codes WDL and TER

August 1, 2019

Section amended	Nature of Change
4.8(b)(iv)(A)	Updated image footnote
6.9(e)	Added subsection to address numbering or renumbering submissions
8.1(g)	Added subsection to address order language in asylum and/or withholding proceedings
9.3(c)(vi) – (xxi)	Updated information – added SED and deleted OTH decision codes Renumbered subsections
Appendix E	Updated information
Appendix I	Updated information

May 1, 2019

Section amended	Nature of Change
4.4(b)(i)	Updated image - footnote
4.4(b)(ii)	Updated image - footnote
7.6	Added sentence to last paragraph
8.6(e)	Added new subsection Renumbered subsequent subsection

May 1, 2019

Section amended	Nature of Change
9.3(b)(ix)	Updated information
9.3(b)(ix)(A) and (D)	Updated information
Appendix E	Updated information

March 6, 2019

Section amended	Nature of Change
4.6(d)	Technical correction – deleted prosecutorial discretion and temporary protected status
9.3(x)(xvi) and (xx)	Updated Information – added CTM and deleted MBC and TPS decision codes Renumbered subsequent subsections
Appendix E	Updated information
Appendix I	Updated information

November 20, 2018

Section amended	Nature of Change
Cover Page	Technical correction
Table of Contents	Added Appendices
1.8(b)	Updated information Deleted reference to Panel 4
2.4(a)	Updated information Deleted reference to Chairman's Memorandum BIA 17-02 and BIA Webpage, Chairman's Memo Book
2.4(f)	Updated information Deleted reference to Chairman's Memorandum BIA 10-05 and BIA Webpage, Chairman's Memo Book
7.9	Updated and clarified informant related to re-issued and amended decisions/orders Deleted reference to corrected decisions and corrected orders
8.7(g)(ii)(B)	Technical correction – added subsection B Deleted reference to Chairman's Memorandum BIA 15-05 and BIA Webpage, Chairman's Memo Book

November 20, 2018

Section amended	Nature of Change
9.1(g)	Deleted reference to BIA Webpage, Chairman's Memo Book
9.3(b)(ix)(B)	Deleted reference to BIA Webpage, Chairman's Memo Book
Appendix A	Added acronym

November 1, 2018

Section amended	Nature of Change
4.14(c)(v)	Technical correction - deleted reference to signature line
9.3(c)(x) – (xxvii)	Updated information Added, deleted inactive decision codes and subsequent subsections renumbered
Appendix I	Added

August 8, 2018

Section amended	Nature of Change
1.1	Updated number of Board Members from 17 to 21
3.4(j)	Updated image - A#
4.1	Updated image - A#
4.2	Updated images - A#
4.3(a)	Updated information and image - A#
4.3(a)(i)	Updated information – A#
4.3(a)(ii)	Updated information
4.3(b)(i)	Updated information and image - A#
4.3(c)	Updated image - A#
4.3(d)	Updated information and image - A#
4.4(a)	Updated images – A#

August 8, 2018

Section amended	Nature of Change
4.4(b)	Updated image – A#
4.4(b)(i)	Updated image – A#
4.4(b)(ii)	Updated image – A#
4.4(d)	Updated images – A#
4.4(e)	Updated image – A#
4.4(f)	Updated image – A#
4.5(a)	Updated images – A#
4.5(b)	Updated image – A#
4.5(c)	Updated images – A#
4.5(f)	Updated information and image – A#
4.5(g)(i)	Updated image – A#
4.5(h)	Updated image – A#
4.6(b)	Updated image – A#
4.6(b)(iii)	Updated image – A#
4.6(c)	Updated image – A#
4.6(d)	Updated image – A#
4.6(e)	Updated image – A#
4.6(f)	Updated image – A#
4.7(a)	Updated images – A#
4.7(c)	Updated image – A#
4.7(d)	Updated images – A#
4.7(e)	Updated image – A#
4.7(f)	Updated image – A#
4.8(a)	Updated image – A#
4.8(b)(i)	Updated image – A#
4.8(b)(iv)(A)	Updated images – A#

August 8, 2018

Section amended	Nature of Change
4.8(b)(iv)(B)	Updated image – A#
4.8(b)(vi)(A)	Updated image – A#
4.8(b)(vi)(B)	Updated image – A#
4.8(b)(vi)(C)	Updated image – A#
4.8(b)(vii)(B)	Updated image – A#
4.8(c)(iii)	Updated image – A#
4.8(c)(iv)	Updated image – A#
4.8(c)(v)	Updated images – A#
4.8(c)(vi)	Updated image – A#
4.8(c)(vii)	Updated image – A#
4.9(a)(ii)	Updated image – A#
4.9(a)(iii)	Updated image – A#
4.9(b)(i)	Updated image – A#
4.10(f)	Updated image – A#
4.10(f)(ii)	Updated image – A#
4.13(a)	Updated image – A#
4.13(b)	Updated image – A#
4.14(c)(v)	Deleted and subsequent subsections renumbered
4.14(c)(v)	Updated image – A#
5.4(h)	Updated information – added Field Office Director to example
6.2(b)(ii)	Updated information – A#
7.5(c)(ii)	Updated image – A#
Appendix B	Updated
Appendix E	Updated

April 19, 2018

Section amended	Nature of Change
7.5(c)	Updated information
9.3(b)(vii)(B)	Updated information
9.3(c)(i)	Updated information
9.4(a)(vi)(B)	Updated information

February 16, 2018

Section amended	Nature of Change
1.1(b)	Updated information
1.3(b)	Technical correction – deleted “fixed”
1.3(b)(ii)	Technical correction – deleted “fixed”
1.3(c)	Technical correction – deleted “fixed”
1.4(a)(ii)	Updated information
1.4(b)	Updated information
1.4(c)	Deleted section and subsequent sections renumbered
1.4(d)	Updated name of subsection and information
1.4(g)(ii)(C)	Updated information
1.7	Deleted section and subsequent sections renumbered
1.8(b)	Technical correction – subsection renumbered Updated information
1.8(c)	Deleted subsection and subsequent subsections renumbered
2.4(d)	Technical correction – deleted comma
4.3(c)	Technical correction – typo
4.4(f)	Updated information
4.10(b) and (c)	Added new subsection and renumbered subsequent subsections
7.4(b)(ii)	Technical correction -typo
7.5(b) – (c)	Updated information

February 16, 2018

Section amended	Nature of Change
7.8	Technical correction – changed “note” to “state”
8.6(a)	Updated information
9.2(b)	Updated information
9.3(b)(vii)(B)	Technical correction – typo
9.3(b)(viii)(C)	Technical correction – typo
9.3(c)(viii)	Updated information
9.3(c)(xix)	Updated information
9.6(c)(iii)	Technical correction – deleted “me” and added quotations
Appendix A	Updated information

January 12, 2018

Section amended	Nature of Change
4.8(c)((iv) – (vii)	Technical correction – corrected subsection numbering
5.8(e)	Updated information – deleted reference to <i>supra</i>
9.3(a)(vi)(A)	Updated information - CoR Cap Case
9.3(a)(vi)(B)	Updated information – CoR Cap Case
9.3(a)(vi)(C)	Added
9.4(a)(C)	Updated information – CoR Cap Case

December 8, 2017

Section amended	Nature of Change
1.1(a)	Technical correction – updated citation
1.3(b) – (b)(i)	Technical correction – changed “J&M” to “Panel 4”
1.4(a)(ii)	Technical correction – deleted “motions”

December 8, 2017

Section amended	Nature of Change
1.6(e)	Update information related High Profile Cases processes
1.8(a)	Technical correction – changed “J&M” to “Panel 4”
1.9(b)	Technical correction – changed J&M” to “Panel 4”
2.2(a)	Updated information
2.3(c)	Updated information
3.1	Updated information related to type of proceedings generally before the Board
4.3(d)	Updated information related to visa petitions with multiple beneficiaries Updated illustration
4.5(a)	Added subsections (i) and (ii) addressing “In re:” caption when there is no charging document and the alien no last name or first name
4.5(c)	Updated information related to treatment of numerous aliases
4.5(d)	Updated information related to panel SCMS able to correct discrepancy in CASE as well as Clerk’s Office
4.5(e)	Updated information regarding listing of aliases in caption
4.5(g)	Updated information regarding discrepancy with names and use of aliases in visa petition proceedings
4.6(b)(ii)	Updated information regarding whether federal court vacated the Board’s underlying decision
4.6(c)	Updated information regarding whether federal court vacated the Board’s underlying decision
4.7(c)	Updated information regarding types of proceedings – deleted reasonable fear and credible fear proceedings
4.8(c)(iii)	Updated information regarding only Primary Representative listed in caption
4.9(a)(ii)	Updated information regarding DHS filings that identify more than one DHS attorney as submitting the filing on behalf of DHS Updated information regarding the listing of DHS judicial law clerks, legal interns, or paralegals
4.9(a)(iii) – (iv)	Technical correction – renumbered (iii) and (iv)
4.9(a)(iii)	Updated information regarding when to delete caption
4.9(b)(i)	Updated information regarding DHS filings that identify more than one DHS attorney as submitting the filing on behalf of DHS
4.9(b)(ii)	Updated information regarding when to delete caption
4.12	Updated information regarding templates
4.13	Updated information regarding treatment of applications pretermitted by an IJ
5.2(c)(B)	Updated information regarding types of proceedings

December 8, 2017

Section amended	Nature of Change
5.4(f)	Technical correction – deleted “roman numeral” and added “number”
5.4(h)	Technical correction – deleted “DHS Center”
5.8(e)	Technical correction – typo “hereinafter”
5.9(d)	Updated information regarding appearance of footnote numbers
5.10(b)	Renamed subsection and added information on lines between application line and “ON BEHALF OF” caption Renummer subsequent subsections
6.3(a)	Updated information regarding inclusion of year in citation
6.4(c)	Updated information regarding inclusion of year in citation
6.6(b)	Update information regarding citation for deferral of removal
6.9(a)	Updated information regarding placement of citation of documents
6.9(d)	Updated title of subsection and information regarding treatment of unpaginated IJ decisions and briefs
7.3(a)(i)	Updated examples related to standard of review
7.4(b)(iii)	Updated example
7.5	Technical correction – updated citation
7.10	Added section on motions with pending petition for review
7.11	Added section on requests for fee waiver
8.3(a)(i)(A)	Technical correction to illustration – FURTHER ORDER language
8.3(d)	Technical correction to illustration – FURTHER ORDER language
9.3(b)(iii)	Updated information regarding use of more than one circulation sheet
9.3(b)(v)	Updated information regarding information to advise Clerk’s Office Docket team
9.6(c)(iii)	Updated Information
Appendix D	Technical correction – waiver under section 237(a)(1)(H)
Appendix E	Updated IJ Gender Listing

July 1, 2017

Section amended	Nature of Change
Table of Contents (Summary List)	Added Table of Changes
2.3(c)	Technical correction – added “SCMS”
2.4(a)	Updated reference
2.4(c)	Technical correction – typo “taken immediately”
3.3(b)(ii)	Technical correction – deleted quotation mark and added “subfolder” at end of sentence.
4.4(d)	Added illustration of National Benefits Center hearing location Revised illustration of Field Office hearing location
4.5(g)	Updated information related to beneficiary name in “In re:” caption
4.6(b)(iii)	Technical correction to illustration – citation
4.6(e)	Technical correction to illustration – citation
4.7(d)	Technical correction – typo “highlighted”
4.8(b)(iv)(A)	Technical correction to illustration – replaced “failed”
4.8(b)(iv)(B)	Technical correction to illustration – replaced “failed”
4.8(b)(vi)(C)	Technical correction to illustration – added “Esquire”
4.8(c)(i)	Renumbered adding (A) and (B) Added middle name discrepancy
4.10(d)	Technical correction – typo “amici”
4.14(c)(vi)	Technical correction - typo “opinion”
5.2(d)(i)(F)	Technical correction – added missing words and punctuation
5.2(e)(x)	Technical correction - deleted quotation marks around HRIFA and NACARA
6.3(b)	Technical correction – deleted §
6.4(c)	Technical correction – added space between “xx(2012)”
6.10(d)	Technical correction – typo “signal” and “indicate”
7.3(a)(i)	Technical correction – typo “judgment”
7.4(b)(iv)	Technical correction – delete “For example:”
7.6	Technical correction – delete period after “I&N”
8.5(a)(i)(A)	Technical correction to illustration – citation and DHS
8.7	Technical correction to illustration – delete “Revised”

July 1, 2017

Section amended	Nature of Change
9.3(b)(ix)(B)	Updated reference
9.4(a)(vi)(A)	Technical correction – typo “referable”
9.6(c)	Technical correction – delete “minor”
Appendix D	Technical correction – delete “, art. 3”