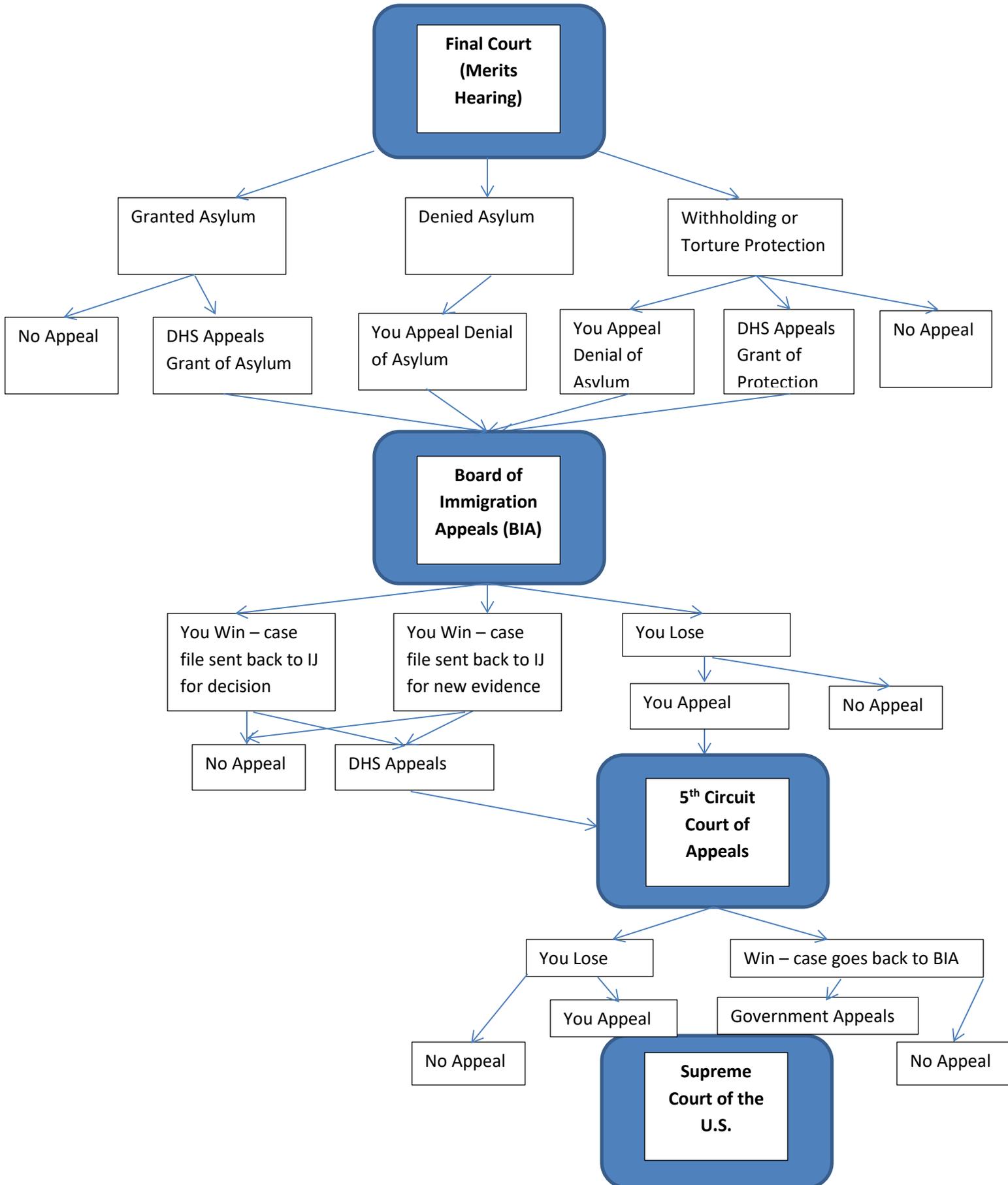


APPEAL PROCESS AND LEVELS



STEPS FOR APPEALING TO THE BIA

If the Immigration Judge orders you removed from the United States, you may appeal to the Board of Immigration Appeals (BIA). You must RESERVE appeal after the judge issues his or her decision if you want to appeal to the BIA by telling the judge that you would like to appeal or by telling the judge that you want time to think about and decide whether you will appeal.

If you are not sure what you should do, it is always safer to RESERVE your right to appeal so you have 30 days to decide what to do. If you WAIVE appeal at your hearing but later change your mind, it will be very difficult to appeal (you must show that your decision to waive appeal was not knowing and intelligent).

If you RESERVE appeal you have 30 days from the date of the Immigration Judge's decision for your Notice of Appeal (Form EOIR-26) to be RECEIVED by the BIA.



If you WAIVE appeal, or do not get your Notice of Appeal to the BIA within 30 days, Immigration and Customs Enforcement (ICE) will begin the deportation process and you will be sent back to your country. This could take several weeks (Latin America) or months (Africa and Asia), depending on how quickly ICE can verify your identity with your country's embassy/consulate and how quickly they can arrange a flight for you to go back.

If you are detained, the appeal process takes between 4-6 months (longer, around 12-18 months, if you are not detained). It may be faster or slower depending on your case.

If you RESERVE appeal decide at any time before the 30 days are over that you do not want to appeal, you can start the deportation process early by writing to the judge and the government lawyer to tell them that you do not want to appeal. If you do this, you WAIVE your right to appeal.

Here is a summary of the appeal process:

FIRST STEP

You complete and send the Notice of Appeal to the BIA. The BIA must receive your Notice of Appeal within 30 days. We highly recommend that you mail your Notice of Appeal 5 business days before it is due. In this first step you are simply telling the BIA that you want to appeal and the general reasons why.



Where the form asks your reasons for appealing, write a short explanation or list of all the things that you believe the judge did wrong (you can add an additional page(s) if needed – just be sure to write a note on the form telling the BIA that there is an additional page(s) to read). Then add this line: “I reserve the right to raise additional arguments upon receipt of the transcript.” The transcript is a written record of everything you – as interpreted by the interpreter, the judge, your lawyer, the government lawyer, and any witnesses and the interpreter said in court (with the exception of things that were said in a language other than English).



You may want to check “yes” where the form asks if you will write a brief (a brief is a written argument). This can be important because you may find additional problems with the judge’s decision after you have reviewed the transcript and can then write about them. Be aware that if you check “yes” and do not submit any additional brief or statement by the deadline (see below), the BIA may decide that you no longer want to appeal your case. If, after reviewing the transcript, you realize that there is nothing else you need to explain to the BIA, write them a short letter telling them that there are no additional arguments you would like to make.

If you cannot afford the \$110 fee to appeal you will need to fill out and sign a fee waiver request (Form EOIR-26A).

Sign the Notice of Appeal (pg. 2) and Certificate of Service (pg. 3). Mail all three pages of the Notice of Appeal plus any additional explanation pages together with your fee or fee waiver request and any additional documents that you did not submit to the judge that you believe are important to your case (make sure to explain why you did not give them to the judge as normally the BIA cannot accept new evidence). Mail one copy to the BIA and one copy to the government lawyer at the addresses written below (for the South Texas Detention Complex in Pearsall, Texas). Make sure to keep a copy for yourself.



Board of Immigration Appeals
Clerk’s Office
5107 Leesburg Pike, Suite 2000
Falls Church, VA 20530

Office of the Chief Counsel
Department of Homeland Security
566 Veteran’s Drive
Pearsall, TX 78061

SECOND STEP

Next, the BIA will send you a receipt acknowledging the day that your Notice of Appeal was received. Keep a copy for your records.

The BIA will then send you a copy of the transcript, the Immigration Judge's decision, and a briefing schedule. The briefing schedule is your deadline to write your brief. You will likely have less than three weeks to write and file your brief (you will have 21 days from the day the BIA SENT the briefing schedule to write, mail, and have your brief RECEIVED by the BIA – in practice this means you will only have about 1 ½ weeks to prepare.) Anyone helping you should be informed immediately when you receive your briefing schedule deadline.

You may ask for one 21-day extension – but this request must be received by the briefing schedule deadline. If you have mailed this request and not heard back from the BIA granting your request for an extension before the deadline, it is a good idea to write as much of your brief as possible and mail it into the BIA with an explanation that you will write more if your request for more time is granted.



If at any point in time you decide that you no longer want to appeal, you can write a letter to the BIA explaining why you no longer want to appeal and ask them to dismiss your appeal.

If you win your case in Immigration Court and the government appeals, you will receive a copy of their Notice of Appeal, transcript, the Immigration Judge's decision, a briefing schedule, any brief they file, and any other documents they submit. You do NOT have to respond, but you may write a brief in response if you want to.

MOTIONS TO REOPEN WITH THE IMMIGRATION JUDGE

Requirements for a Motion to Reopen

- You can get a **new hearing** and a **new decision** with the Immigration Judge if you ask the judge to reopen your case within _____ days of the final decision. 8 CFR 1003.2(c)(2), 8 C.F.R. § 1003.23(b)(1), 8 C.F.R. § 1003.23(b)(3), 208.4(b)(3)(ii), 1208.4(b)(3)(ii).
- You must have **new evidence** that was not _____ (previously available) because:
 1. It did not exist
 2. You did not know of its existence
 3. You could not get it even though you made all reasonable efforts to do so
- This new evidence must be _____ (relevant).
- You **must** establish a *prima facie* case, in other words that there is a _____ (reasonable likelihood / realistic chance) of winning.¹ You do **not** need to prove a clear probability / that it is more likely than not that you will win your case.²
- The Immigration Judge should **not** decide whether you are telling the truth in considering your motion, ie make a credibility determination; that is something the judge will do in court if the judge decides to reopen your case.³
- You only have the right to file **one** motion.

Exceptions:

1. There are **changed country conditions** – there is evidence that could not have been previously _____ (discovered) or _____ (presented)⁴
 2. The **government lawyer agrees** that your case should be reopened⁵
 3. The **Immigration Judge** decides to reopen on his/her own, this is called “*sua sponte*”⁶
- You cannot file a Motion to Reopen with the Immigration Judge when your case has been sent to the Board of Immigration Appeals (BIA). If you want the Immigration Judge to consider new evidence, you must write to the BIA and request that it “remands” your case back to the Immigration Court. This is called a Motion to Remand.
 - Filing a Motion to Reopen does not stop immigration from proceeding with your deportation.

¹ 8 CFR 1003.2, 8 CFR 1003.23, 208.4(b)(3)(i), 1208.4(b)(3)(ii).

² *Fadiga v. Att’y Gen of the US*, 488 F.3d 142, 157-63 (3d Cir. 2007).

³ *Bhasin v. Gonzales*, 423 F.3d 977, 986 (9th Cir. 2005), *Ghadessi v. INS*, 797 F.2d 804 (9th Cir. 1986).

⁴ INA 240(c)(7)(C)(ii), 8 CFR 1003.2(c)(3)(ii), 8 CFR 1003.23(b)(4)(i), 8 CFR 1003.23(b)(3).

⁵ 8 CFR 1003.2(c)(3)(iii), 8 C.F.R. § 1003.23(b)(4)(iv).

⁶ 8 CFR 1003.2(a).

How to File a Motion to Reopen

- Write a letter to the Immigration Judge explaining:
 1. What your new evidence is
 2. Why it is important, ie why it could change the judge's decision
 3. Why you did not have this evidence in your first court and why you now have this previously unavailable evidence
- Attach a copy of any new evidence, translated into English and with a proper Certificate of Translation (see sample at the end of this packet).
- Attach a Certificate of Service at the end (see sample at the end of this packet for the South Texas Detention Complex in Pearsall, Texas).
- Make a copy for you and a copy for the government lawyer.
- Sign the Certificate of Service stating what day you gave a copy of everything to the government lawyer and by what means of delivery.

MOTIONS TO RECONSIDER WITH THE IMMIGRATION JUDGE

Requirements for a Motion to Reconsider

- You can get and a **new decision**, and maybe a new hearing, with the Immigration Judge if you ask the judge to reconsider your case within _____ days of the final decision. 8 C.F.R. § 1003.23(b)(1).
- You **must** explain how the judge made a mistake – either a:
 1. **Mistake of law** (a Motion to Reconsider is also appropriate if there has been a change in the law), or
 2. **Mistake of fact** (please note that you cannot introduce new evidence).
- You **must** establish a *prima facie* case, in other words that there is a _____ (reasonable likelihood / realistic chance) of winning.⁷ You do **not** need to prove a clear probability / that it is more likely than not that you will win your case.⁸
- The Immigration Judge should not decide whether you are telling the truth in considering your motion, ie make a credibility determination; that is something the judge will do in court if the judge decides to reopen your case.⁹
- You only have the right to file **one** motion.

Exceptions:

1. You convince the **government lawyer** (ICE) to file a motion¹⁰
 2. The **Immigration Judge** decides to reopen on his/her own, this is called “*sua sponte*”¹¹
- You cannot file a Motion to Reconsider with the Immigration Judge when your case has been sent to the Board of Immigration Appeals (BIA).
 - Filing a Motion to Reconsider does not stop immigration from proceeding with your deportation.

⁷ 8 CFR 1003.2 (before the BIA), 8 CFR 1003.23, 208.4(b)(3)(i), 1208.4(b)(3)(ii).

⁸ *Fadiga v. Att’y Gen of the US*, 488 F.3d 142, 157-63 (3d Cir. 2007).

⁹ *Bhasin v. Gonzales*, 423 F.3d 977, 986 (9th Cir. 2005), *Ghadessi v. INS*, 797 F.2d 804 (9th Cir. 1986).

¹⁰ 8 CFR 1003.2(c)(3)(iii), 8 C.F.R. § 1003.23(b)(1).

¹¹ 8 CFR 1003.2(a).

How to File a Motion to Reconsider

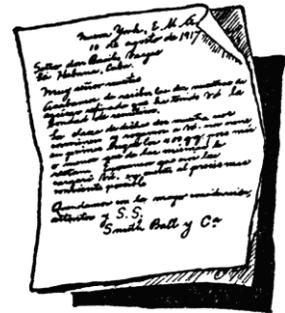
- Write a letter to the Immigration Judge explaining why you think he/she made a mistake.
- Attach a copy of any new law, including any decision from another court, that you think the judge should consider.
- Attach a Certificate of Service at the end (see sample at the end of this packet for the South Texas Detention Complex in Pearsall, Texas).
- Make a copy for you and a copy for the government lawyer.
- Sign the Certificate of Service stating what day you gave a copy of everything to the government lawyer and by what means of delivery.

MOTION TO REOPEN BASED ON
“INEFFECTIVE ASSISTANCE OF COUNSEL”
 (“Lozada Motion to Reopen”)

You can ask for a new hearing and a new decision because there was information that you did not give to the Immigration Judge – or a misunderstanding or other problem – due to a mistake your lawyer made. These are the steps to take:

1. Write a letter explaining what your lawyer did and/or did not do, focusing on why you believe this affected the outcome of your case (feel free to explain the emotional impact of your lawyer’s actions – for example, were you so nervous in court because your lawyer did not prepare you that you had a difficult time listening to the questions? – but do not attack the lawyer unnecessarily because it’s good to show the judge that you’re considering things logically and fairly). Here are some common problems:

- Describe the contract: Was it in writing? Which services did you hire the lawyer for? What was the cost? Was this cost fair?
- If you think that your lawyer did not meet with you and/or talk to you enough about your case, to the best of your memory, list:
 - All your meetings: approximate dates and length of visit, who was at the meetings (lawyer and/or legal assistant), what you discussed, whether you had an interpreter, whether you asked for an interpreter, etc.
 - All your phone calls: approximate dates and times, why you called and how your lawyer responded
- Problems contacting the lawyer
- How documents were prepared, such as your asylum application
- Describe documents given / not given to you by your lawyer: contract, evidence filed with court, evidence filed by the government lawyer, requests to your lawyer for evidence
- The lawyer’s conduct in court: Did the lawyer show up on time? Was the lawyer prepared?



2. Send a letter to your lawyer explaining that you are trying to reopen your case for ineffective assistance of counsel. Give the lawyer a copy of the letter in #1 above and give your lawyer time to respond / fix the problem. Make sure to date and sign your letter.
3. Send in a bar complaint to the state bar explaining what ethics rules were violated. Explain that you are sending the bar complaint so that you can ask the Immigration Judge to reopen your case because your lawyer did not do what he/she was supposed to do. Attach a copy of the letters in #1 and #2 above and any response you get in #2 above.

4. Write a motion to the Immigration Judge explaining why your lawyer's mistakes affected the outcome of your case, what new evidence and/or testimony you'll present if given a new hearing, and why this evidence and/or testimony is important, in other words why it could change the judge's decision. Send the Immigration Judge a copy of all the documents listed in #1-3 above, with all attachments. Attach a copy of any new evidence and/or declaration, translated into English and with a proper Certificate of Translation.

If you've appealed...

1. Write a motion to the BIA titled "Motion to Remand" asking the BIA to send your case file back to the Immigration Judge so that the Immigration Judge can make a decision on your Motion to Reopen. Attach a copy of all documents sent to the Immigration Judge (see #4 above).
2. Attach a copy of the "Motion to Remand" sent to the BIA to your submission to the Immigration Judge so that the Immigration Judge knows that you've requested that your case file be sent back to Immigration Court in order for the Immigration Judge to make a decision on your Motion to Reopen.

CERTIFICATE OF TRANSLATION

I, _____ (name of translator), am competent to translate
from _____ (language) into English, and certify that the translation of
_____ (names of documents) is true and
accurate to the best of my abilities.

(signature of translator)

(printed name of translator)

(address of translator)

(address of translator)

(telephone number of translator)

Pro Se

DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
566 VETERAN'S DRIVE
PEARSALL, TX 78061**

In the Matter of:)
)
)
_____)
In removal proceedings.)
_____)

File No. A _____

Immigration Judge _____

Next Hearing: _____

MOTION TO _____

CERTIFICATE OF SERVICE

On _____ (month and day), 2017, I, _____ (name),
served a copy of:

MOTION TO _____

On the Office of the Chief Counsel, Immigration and Customs Enforcement, Department of
Homeland Security by the following method:

- Hand-delivery at 566 Veteran's Drive, Pearsall, TX 78061
- Mail to 566 Veteran's Drive, Pearsall, TX 78061
- E-mail to occ-sna-pearsall@ice.dhs.gov

Signature

Date