

## **Administrative Appeals**

Should a petition or application be denied or revoked by the U.S. Citizenship and Immigration Services (“USCIS”) or immigration court, in most cases you may appeal that decision to a higher authority.

### **A. Appeals of denials of USCIS Decisions**

The USCIS Administrative Appeals Office (AAO) has jurisdiction over 40 petitions and applications. The AAO has five main functions:

- Adjudicates appeals under authority delegated to the USCIS by the Secretary of DHS
- Its officers work to resolve immigration issues in a timely and efficient manner and produce appellate decisions that provide fair and legally supportable resolutions of individual applications and petitions for immigration benefits
- Reviews the decisions made by USCIS adjudication officers on petitions and applications for immigration benefits to ensure consistency and accuracy in the interpretation of immigration laws
- Maintains awareness of applicable case law to insure compliance with the most current legal standards while ensuring accuracy and legal sufficiency
- Recommends the publication of precedent decisions to clarify issues in the adjudications program

If you receive a denial notice, review the Form I-292 or notice of denial that accompanied the adverse decision to identify whether you are eligible to appeal the denial of your petition or application. There are strict deadlines that must be met to properly file an appeal. The notice of appeal must be filed within 30 days of the date of the decision and must be filed on Form I-290B (Notice of Appeal to the Administrative Appeal Office). Deadlines are key! If it is by mail that you have received the decision, you must file the appeal within 33 days of the date of the decision. On the other hand, if it is the revocation of an approved immigration petition that you wanted to appeal, then you must file the appeal within 15 days of the date of the decision, or within 18 days of the date of the decision if the decision is received by mail. The fee must also be included. If it is a fee waiver that you wish to have, you may see “fee waiver request procedures” and the “USCIS fee waiver policy memorandum”. You may file a brief (a written explanation) in support of the appeal. After review, the appellate authority may: agree with you and change the original decision, disagree with you and affirm the original decision, or send the matter back to the original office for further action.

Finally, let us talk about the concept of standing. The person who submitted the original application or petition may file the appeal. The petitioner has standing to appeal the denial of a visa petition. However, the beneficiary of a visa petition may not appeal the decision. Example of this is that an employer from the United States is petitioning for an immigrant visa for his employee abroad. Only the employer can appeal the denial and not the employee living abroad.

The person appealing the decision may be represented by an attorney or representative. When represented, the appeal must be accompanied by a properly executed USCIS Form G-28, Notice

of Entry or Appearance as Attorney or representative and the person who filed the original application or petition.

### **B. Motions to reconsider and reopen before the AAO**

In filing a motion to reopen or a motion to reconsider, you may ask the office to reexamine or reconsider its decision. The motion to reopen must state the new facts that are to be provided in the reopened proceeding and must also be accompanied by affidavits or other evidence documentations. While the motion to reconsider must be able to establish that a decision was based on an incorrect application of law or USCIS policy and furthermore establish that a decision was incorrect based on the evidence in the file at the time the decision was made. There are certain rules pertaining to the number of motions allowed as well as deadlines that need to be closely followed.

As with appeals, the person who submitted the original application or petition may file the motion to reopen and/or reconsider. The petitioner has standing to file his motion to reopen and/or reconsider the denial of a visa petition. However, the beneficiary of a visa petition may not file such a motion.

The person filing the motion to reopen and/or motion to reconsider may be represented by an attorney or representative. When represented, the motion must be accompanied by a properly executed USCIS Form G-28, Notice of Entry or Appearance as Attorney or representative and the person who filed the original application or petition.

### **C. Appeals before the Board of Immigration Appeals**

The Board of Immigration Appeals (BIA) is the highest administrative body for interpreting and applying immigration laws. This Board has the jurisdiction, nationwide, to hear appeals from certain decisions rendered by immigration judges and by district directors of the DHS in variety of proceedings in which the government of the United States is one party and the other party is an alien, a citizen, or a business firm.

BIA decisions are binding on all DHS officers and immigration judges unless modified or overruled by the Attorney General or a federal court. Most of its decisions are subject to judicial review in the federal courts. The majority of its appeals involve orders of removal and applications for relief from removal. Other cases are: exclusion of aliens applying for admission to the United States, petitions to classify the status of alien relatives for the issuance of preference immigrant visas, fines imposed upon carriers for the violation of immigration laws, and motions for reopening and reconsideration of decisions previously rendered.

If the relief you tried to seek in immigration court was denied you may appeal the adverse finding of the immigration judge (or district director if denial made by USCIS) by filing a notice of appeal to the Board of Immigration Appeals. It is incumbent to closely read the immigration judge's order and/or notice of denial by the district director to identify whether you are eligible to appeal the denial of your petition or application. There are strict deadlines that must be met to properly file an appeal. The notice of appeal must be filed within 30 days of the date of the decision. The

notice of appeal must be received by the 30<sup>th</sup> day. If the Board has not actually physically received the notice of appeal by the 30<sup>th</sup> day, the appeal will be dismissed. The fee must also be included.. After you file your notice of appeal, the Board will send you a receipt notice as well as a briefing schedule. Any brief (a written explanation) in support of the appeal must be turned in on that day otherwise the appeal will be dismissed.

As discussed above, the person who submitted the original application or petition may file the appeal. The petitioner (if USCIS denial) or the respondent (if in removal proceedings) has standing to appeal the denial of a visa petition or relief requesting in removal proceedings. The person appealing the decision may be represented by an attorney or representative. When represented, the appeal must be accompanied by a properly executed EOIR-27 Notice of Entry or Appearance as Attorney or representative before the Board of Immigration Appeal.

#### **D. Motions to reconsider and/or reopen before the immigration judge or Board of immigration appeals**

In filing a motion to reopen or a motion to reconsider, you may ask either the immigration judge or Board to reexamine or reconsider its decision. The motion to reopen must state the new facts that are to be provided in the reopened proceeding and must also be accompanied by affidavits or other evidence documentations. While the motion to reconsider must be able to establish that a decision was based on an incorrect application of law or policy and furthermore establish that a decisions was incorrect based on the evidence in the file at the time the decision was made. There are certain rules pertaining to the number of motions allowed as well as deadlines that need to be closely followed.

As with appeals, the person who submitted the original application or petition may file a motion to reopen/reconsider. The petitioner (if USCIS denial) or the respondent (if in removal proceedings) has standing to bring this motion.. The person bringing the motion may be represented by an attorney or representative. When represented, the appeal must be accompanied by a properly executed EOIR-27 Notice of Entry or Appearance as Attorney or representative before the Board of Immigration Appeal.

#### **E. Appeals before the circuit courts**

If all else fails and you have no other option, there are certain instances where an appeal can be made before the appellate court sitting in your district. The complexity of these appeals is typically involved and therefore any questions concerning the process needs to be addressed to a licensed attorney.

To find out more about the procedural steps involved and an estimate of fees, call or email us today for your free in-depth consultation!