

**Administrative Appeals Office**

# **Practice Manual**



**U.S. Citizenship  
and Immigration  
Services**

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## 1. The Administrative Appeals Office

### 1.1 Practice Manual

This Practice Manual describes rules, procedures, and recommendations for practice before the Administrative Appeals Office (AAO).

This Practice Manual is provided for the information and convenience of the public and parties that appear before the AAO. It does not replace or modify any legal authority or U.S. Citizenship and Immigration Services (USCIS) policy.<sup>1</sup>

The AAO will update this Practice Manual periodically. The current version is posted on the AAO's home page within the USCIS website at [www.uscis.gov/aao](http://www.uscis.gov/aao).

The AAO welcomes and encourages the public to provide comments and propose improvements to this Practice Manual.<sup>2</sup>

### 1.2 AAO Overview

The AAO conducts administrative appellate review of USCIS officers' decisions regarding immigration benefit requests under its jurisdiction in order to promote consistency and accuracy in the interpretation of immigration law and policy.

While the AAO exercises independent, *de novo* appellate review<sup>3</sup> of USCIS officers' decisions, the AAO is not independent of its parent agency, USCIS.<sup>4</sup> The AAO applies USCIS policies and legal interpretations to matters before it.

For more information about the AAO, please visit [www.uscis.gov/aao](http://www.uscis.gov/aao).

### 1.3 AAO History

The Immigration and Naturalization Service (INS) established the Administrative Appeals Unit (AAU) in 1983 to centralize the review of administrative appeals.<sup>5</sup> Before 1983, the INS

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<sup>1</sup> This Practice Manual does not create any enforceable right or benefit, substantive or procedural, in any proceeding. It does not constitute legal advice, nor is it a substitute for legal advice.

<sup>2</sup> Please mail or fax any comments or suggestions to the AAO with "AAO Practice Manual" in the subject line. See Chapter 6.1 for the AAO's contact information.

<sup>3</sup> For more information about the AAO's standard of review, see Chapter 3.4.

<sup>4</sup> USCIS oversees lawful immigration to the United States by adjudicating immigration benefit requests. For more information about USCIS, see [www.uscis.gov](http://www.uscis.gov).

commissioner, four regional commissioners, and three overseas district directors shared responsibility for the adjudication of administrative appeals and the issuance of precedent decisions.

The INS later established the Legalization Appeals Unit (LAU) to adjudicate appeals of denied Legalization and Special Agricultural Worker applications under the Immigration Reform and Control Act of 1986. In 1994, the INS consolidated the AAU and the LAU to create the AAO.<sup>6</sup>

The Homeland Security Act of 2002 dismantled the INS and separated the former agency into three components within the Department of Homeland Security (DHS). On March 1, 2003, USCIS officially assumed responsibility for the immigration service functions of the federal government, with the AAO as one of its offices.

#### 1.4 Jurisdiction and Types of Cases

The AAO adjudicates three primary categories of cases: appeals, motions, and certifications. Each category serves a different function and has distinct requirements that are covered in more detail below.

**Only an “affected party” may file an appeal or motion, or submit a brief in response to a Notice of Certification (Form I-290C).<sup>7</sup> Affected parties may include petitioners, applicants, or, in the case of bond breach appeals, bond obligors. For simplicity, this Practice Manual refers to all affected parties as “appellants.”**

##### (a) Appeals

When a USCIS field office<sup>8</sup> issues an unfavorable decision for an application or petition that falls under the AAO’s jurisdiction, the appellant may appeal the decision to the AAO.

Under the authority that the Secretary of DHS delegated to USCIS, the AAO exercises appellate jurisdiction over approximately 50 different immigration case types.<sup>9</sup>

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<sup>5</sup> Powers and Duties of Service Officers; Availability of Service Records, 48 Fed. Reg. 43,160 (Sept. 22, 1983).

<sup>6</sup> Implementation of Internal Reorganization of the Immigration and Naturalization Service, 59 Fed. Reg. 60,065, 60,066 (Nov. 22, 1994). The current USCIS regulations refer to both the AAU and the AAO.

<sup>7</sup> 8 C.F.R. § 103.3(a)(1)(iii)(B) defines an “affected party” as “the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.”

<sup>8</sup> For the purposes of this Practice Manual, the AAO uses the term “field office” broadly to include USCIS field offices, international offices, Service Centers, and the National Benefits Center. The contact information for the various USCIS offices is available at the [Find a USCIS Office](#) web page.

Not every type of denied immigration benefit request may be appealed, and some appeals fall under the jurisdiction of the Board of Immigration Appeals (the Board), which is a part of the U.S. Department of Justice (DOJ).<sup>10</sup>

The USCIS website lists the AAO's jurisdiction by both [subject matter and form number](#), and includes the following case types:

- Most employment-based immigrant and nonimmigrant visa petitions (Forms I-140 and I-129);
- EB-5 immigrant investor petitions (Form I-526) and Regional Center applications (Form I-924);
- Temporary Protected Status applications (Form I-821);
- Fiancé(e) petitions (Form I-129F);
- Applications for a waiver of inadmissibility (Form I-601);
- Applications for permission to reapply for admission after removal (Form I-212);
- Certain special immigrant visa petitions (Form I-360);
- Orphan petitions (Forms I-600/I-600A and I-800/I-800A);
- T visa applications for victims of human trafficking (Form I-914), U visa petitions for victims of criminal activity (Form I-918), and the related adjustment of status applications (Form I-485);<sup>11</sup>
- Applications for certificates of citizenship (Form N-600) and applications to replace certificates of naturalization and citizenship (Form N-565);
- Applications to preserve residence for naturalization purposes (Form N-470); and
- Immigration and Customs Enforcement determinations that a surety bond has been breached.

The AAO also has jurisdiction to review USCIS field office decisions revoking the approval of certain petitions.<sup>12</sup>

For more information about appeals to the AAO, see Chapter 3.

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<sup>9</sup> The Secretary of DHS may delegate any authority or function to administer and enforce the immigration laws to any official, officer, or employee of DHS pursuant to 6 U.S.C. § 112(b)(1) and 8 C.F.R. § 2.1. The Secretary of DHS's delegation of appellate jurisdiction to USCIS is DHS Delegation Number 0150.1(U) (effective March 1, 2003).

<sup>10</sup> The Board has appellate jurisdiction over USCIS decisions on family-based immigrant petitions (Form I-130), except for petitions on behalf of certain orphans and Adam Walsh Act "no risk" determinations. The Board also has appellate jurisdiction over petitions for widowers (Form I-360). See Chapter 1.6 for more information about the Board.

<sup>11</sup> In most cases, there are no administrative appeal rights for denied Form I-485 applications. See the USCIS web page [When to Use Form I-290B, Notice of Appeal or Motion](#) for information about the types of Form I-485 applications that may be appealed.

<sup>12</sup> 8 C.F.R. § 205.2(d).

**(b) Motions to Reopen and Motions to Reconsider**

The AAO has jurisdiction over motions to reopen and motions to reconsider its own decisions.<sup>13</sup> If the AAO issues an unfavorable decision, the appellant may file a motion to reopen and/or a motion to reconsider that decision. The AAO may also reopen or reconsider one of its prior decisions on its own motion.<sup>14</sup>

A motion to reopen is based on documentary evidence of *new facts*. Alternatively, a motion to reconsider is based on a claim of *incorrect application of law or policy* to the prior decision.<sup>15</sup>

For more information about motions on AAO decisions, see Chapter 4.

**(c) Certifications**

USCIS officers may ask the AAO to review an initial decision for a case that has an unusually complex or novel issue of law or fact. This administrative procedure is known as “certification.”

Except for case types that fall under the Board’s appellate jurisdiction, USCIS officers may certify any decision type to the AAO, including decisions that do not convey appeal rights.<sup>16</sup>

For more information about certifications to the AAO, see Chapter 5.

**1.5 Non-Precedent, Adopted, and Precedent Decisions**

The AAO generally issues non-precedent decisions that apply existing law and policy to the facts of an individual case. Non-precedent decisions are binding on the parties involved in the case, but do not create or modify USCIS policy or practice. The AAO does not announce new interpretations of law or establish agency policy through non-precedent decisions. As a result, non-precedent decisions do not provide a basis for applying new or alternative interpretations of law or policy. Non-precedent decisions are available for review at the [AAO Non-Precedent Decisions](#) web page on the USCIS website.

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<sup>13</sup> 8 C.F.R. § 103.5(a)(1)(ii).

<sup>14</sup> 8 C.F.R. § 103.5(a)(5).

<sup>15</sup> 8 C.F.R. § 103.5(a)(2)-(3).

<sup>16</sup> Since the AAO’s *certification* jurisdiction is broader than its *appeal* jurisdiction, some of the case types listed on the [AAO Non-Precedent Decisions](#) web page are not appealable to the AAO but have been included because the AAO has issued decisions upon certification for those case types.

USCIS may also “adopt” an AAO non-precedent decision and direct that the “adopted decision” serve as binding policy guidance on all USCIS employees. Adopted decisions are not binding on personnel outside of USCIS.

On occasion, the Secretary of DHS may, with the Attorney General’s approval, designate AAO decisions to serve as precedents in all future proceedings involving the same issue(s). These precedent decisions, except as modified or overruled by later precedent decisions or statutory or regulatory changes, are binding on all DHS employees. AAO precedent decisions may announce a new legal interpretation or agency policy, or may reinforce an existing law or policy by demonstrating how it applies to a unique set of facts. AAO precedent decisions are available online through the [Precedent Decisions](#) web page on the USCIS website.

For more information about non-precedent, adopted, and precedent decisions, see Chapter 3.15.

## 1.6 The Board of Immigration Appeals

The Board and the AAO are separate administrative appellate entities that have jurisdiction over different types of immigration cases. The Board is located within the DOJ’s Executive Office for Immigration Review (EOIR).

The majority of appeals to the Board involve decisions that EOIR immigration judges made in removal proceedings. The Board also reviews USCIS decisions on immigrant petitions for alien relatives (Form I-130). The Board’s appellate jurisdiction is enumerated at 8 C.F.R. § 1003.1(b).<sup>17</sup>

The Board has the authority to designate its decisions as precedent. Board precedent decisions are binding on immigration judges and DHS employees in cases involving the same issue(s).

EOIR publishes all AAO and Board precedent decisions in bound volumes entitled *Administrative Decisions Under Immigration and Nationality Laws of the United States*. Precedent decisions can also be found online at EOIR’s [Virtual Law Library](#).

In addition, the Board is responsible for recognizing organizations and accrediting representatives who wish to practice before the Immigration Courts, DHS, and the Board. The Board is also an important part of EOIR’s program that disciplines attorneys and accredited representatives who violate rules of professional conduct while practicing before the Immigration Courts, DHS, and the Board.

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<sup>17</sup> The regulations outlining EOIR’s role and authority are located at 8 C.F.R. §§ 1001-1337.

## 2. Representation of Parties before the Administrative Appeals Office

### 2.1 Representation Generally

Appellants<sup>18</sup> may represent themselves before the Administrative Appeals Office (AAO) or choose to have an attorney or other authorized representative represent them.<sup>19</sup> Most representatives are attorneys or accredited representatives.<sup>20</sup> In limited circumstances, law students and law graduates<sup>21</sup> or certain reputable individuals<sup>22</sup> may also be authorized to represent appellants before the AAO.

U.S. Citizenship and Immigration Services (USCIS) cannot recommend a representative, but the USCIS [Find Legal Services](#) web page provides general information about obtaining professional representation. In addition, the USCIS [Common Scams](#) web page provides information about organizations and individuals who are not authorized to give legal advice, such as “*notarios*” and other unauthorized representatives. The USCIS website also contains instructions for [reporting immigration scams](#).

USCIS regulations do not recognize the beneficiary of a petition as an affected party in a proceeding.<sup>23</sup> Therefore, USCIS will not recognize a representative who is acting solely on behalf of the beneficiary of a petition.<sup>24</sup>

The AAO may reject or dismiss an appeal or deny a motion filed by an individual who is not authorized to represent parties before USCIS.<sup>25</sup>

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<sup>18</sup> A person or entity with legal standing in a proceeding is an “affected party.” 8 C.F.R. § 103.3(a)(1)(iii)(B). Affected parties with cases before the AAO on appeal, motion, or certification may include petitioners, applicants, or, in the case of bond breach appeals, bond obligors. For simplicity, this Practice Manual refers to all affected parties as “appellants.”

<sup>19</sup> This Practice Manual uses the term “representative” to refer to all persons authorized to represent appellants before the AAO. A self-represented appellant is sometimes referred to as *pro se*.

<sup>20</sup> An “accredited representative” is an individual who has been accredited by the Board of Immigration Appeals (the Board) to represent others in immigration proceedings. See Chapter 2.6 for more information about accredited representatives.

<sup>21</sup> 8 C.F.R. § 292.1(a)(2).

<sup>22</sup> See 8 C.F.R. § 292.1(a)(3) for more information on reputable individuals.

<sup>23</sup> 8 C.F.R. § 103.3(a)(1)(iii)(B). Self-petitioners, such as Violence Against Women Act (VAWA) self-petitioners under section 204 of the Immigration and Nationality Act, are both the “petitioners” and the “beneficiaries” of their self-petitions. The AAO recognizes the beneficiary of a self-petition as a party in a proceeding because that person is also the petitioner.

<sup>24</sup> 8 C.F.R. §§ 103.2(a)(3), 103.3(a)(1)(iii)(B).

<sup>25</sup> 8 C.F.R. §§ 103.3(a)(2)(v)(A), 103.5(a)(1)(iii)(A).

For more information on representation, see the regulations at 8 C.F.R. §§ 1.2 (definitions of attorney and representative), 103.2(a)(3) (allowing representation), and 292 (representation and appearances).

## 2.2 Notice of Entry of Appearance

To establish their eligibility to appear on behalf of an appellant, certain representatives must submit a new, properly executed [Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative](#).

### (a) Who Can Use Form G-28

Only attorneys, accredited representatives, and law students and law graduates working under the supervision of an attorney or accredited representative may use Form G-28.

### (b) New Form G-28 Required for Appeals

A representative who files an appeal on behalf of an appellant must submit a new, original, properly executed Form G-28.<sup>26</sup>

### (c) New Form G-28 Recommended for Motions and Certifications

The AAO recommends that representatives submit a new Form G-28 with a motion to reopen and/or reconsider. Similarly, when responding to an initial decision certified to the AAO, representatives should submit a new Form G-28 with any supporting brief.

### (d) Original Signatures Required

Each Form G-28 must contain the original signatures of the appellant and representative. A signature stamp or typewritten name in place of a signature is not sufficient. A photocopy or fax of a signed Form G-28 is also not acceptable.

If the appellant is a company or organization, the AAO suggests that the signer print his or her name at Part 2, Item Numbers 5.a. - 5.c. in addition to the company or organization name at 5.d. If the AAO cannot determine who signed a Form G-28 for the appellant, it may request additional information to confirm that the appellant authorized the representation.<sup>27</sup>

The signature of the representative on Form G-28 constitutes a representation that he or she is authorized and qualified to represent parties before USCIS.<sup>28</sup>

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<sup>26</sup> 8 C.F.R. §§ 103.3(a)(2)(v)(A)(2), 292.4(a); *see also* [Form G-28 instructions](#).

<sup>27</sup> *See* 8 C.F.R. § 292.4(a).

<sup>28</sup> *Id.* *See* Chapter 2.7 for more information about ineligible representatives.

### 2.3 Service of Decisions, Notices, and Other Communications

If the record of proceedings contains a valid Form G-28, the AAO will send decisions, notices, and requests for evidence to both the appellant and the representative.<sup>29</sup> In some circumstances, the AAO may send a written communication only to the representative.<sup>30</sup>

In addition, the AAO will only respond to telephone inquiries from a representative about a specific case if the record of proceedings contains a valid Form G-28 for that representative. For more information about case-specific telephone inquiries, see Chapter 6.1(c).

### 2.4 Change of Address

Representatives should inform the AAO any time they change business addresses to ensure that the AAO sends any decisions or correspondence to the correct address. Please fax or mail change of address notifications to the AAO. No special form is required. See Chapter 6.1 for the AAO's contact information.

Due to USCIS record retention and privacy obligations, representatives should submit a separate change of address notification for each matter pending before the AAO.

### 2.5 Attorneys

An attorney must be eligible to practice law in, and be a member in good standing of the bar of, the highest court of any U.S. state, possession, territory, or Commonwealth, or of the District of Columbia.<sup>31</sup>

Attorneys exclusively admitted to the practice of law in countries other than the United States may represent individuals only in matters adjudicated in USCIS offices outside of the United States.<sup>32</sup> The AAO cannot recognize representation by an attorney who is not eligible to practice law in the United States, even if the attorney was recognized during the initial adjudication by an overseas USCIS office.

In addition, an attorney cannot be under any order from the Board suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.<sup>33</sup> An attorney under any order of discipline (including orders of other federal bodies or state licensing authorities) may be subject to discipline by the Board, including the immediate suspension of a practitioner who has been disbarred or suspended by a federal or state court.

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<sup>29</sup> 8 C.F.R. §§ 103.3(a)(1)(x), 292.5.

<sup>30</sup> For VAWA, T visa, and U visa cases before the AAO that contain a valid Form G-28, the AAO will send all correspondence, including its final decision, to the appellant “in care of” the representative.

<sup>31</sup> 8 C.F.R. § 1.2.

<sup>32</sup> See 8 C.F.R. § 292.1(a)(6); [Form G-28 instructions](#).

<sup>33</sup> 8 C.F.R. § 1.2.

The Executive Office for Immigration Review (EOIR) maintains a [List of Currently Disciplined Practitioners](#) who are not authorized to practice before the Department of Homeland Security (DHS), the Board, and the Immigration Courts.

**(a) Law Firms**

Attorneys, not law firms, represent appellants. Each attorney who is representing an appellant before the AAO should submit a separate Form G-28. If an attorney leaves a law firm, he or she remains the attorney of record unless the attorney's representation is withdrawn (e.g., through the submission of a new Form G-28 for a different attorney) or the attorney is no longer eligible to practice before DHS. See Chapter 2.8 for more information about withdrawal of representation.

**(b) Law Students and Law Graduates**

A law student at an accredited U.S. law school may represent an appellant if the law student is participating in a legal aid program or clinic conducted by a law school or non-profit organization, and is under the direct supervision of a faculty member, licensed attorney, or accredited representative.<sup>34</sup> The law student cannot receive any direct or indirect compensation from the appellant.

A graduate of an accredited U.S. law school who has not been admitted to the bar may represent an appellant if the graduate is under the supervision of a licensed attorney or accredited representative and does not receive any direct or indirect compensation from the appellant.<sup>35</sup>

A law student or a law graduate may appear before a DHS official if that official grants permission.<sup>36</sup>

## **2.6 Accredited Representatives**

An accredited representative is a person who:<sup>37</sup>

- Represents an organization that the Board has recognized; and
- Has been accredited by the Board to represent others in immigration proceedings.

Certain nonprofit religious, charitable, social service, and similar organizations may apply for Board recognition. An organization must establish that its fees are nominal and that it has adequate immigration law knowledge and experience.

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<sup>34</sup> 8 C.F.R. § 292.1(a)(2).

<sup>35</sup> *Id.*

<sup>36</sup> 8 C.F.R. § 292.1(a)(2)(iv); *see also* [Form G-28 instructions](#).

<sup>37</sup> 8 C.F.R. §§ 292.1(a)(4), 292.2.

Board recognition of an organization does not mean that any employee of that organization is an accredited representative. A recognized organization must still apply for accreditation on behalf of each individual representative. The accreditation of a representative is valid for three years. Individuals lose their accreditation once they are no longer employed by or otherwise connected with the recognized organization.<sup>38</sup>

EOIR maintains a list of recognized organizations and accredited representatives on its website at [www.justice.gov/eoir/ra/raroster.htm](http://www.justice.gov/eoir/ra/raroster.htm). Accredited representatives listed by EOIR as “partially accredited” are only authorized to practice before DHS. Accredited representatives listed by EOIR as “fully accredited” may practice before both DHS and EOIR.

## 2.7 Ineligible Representatives

If the AAO determines that the representative who signed the Form I-290B for an appeal or motion was ineligible to represent an appellant at the time of filing, the AAO may reject or dismiss the appeal or deny the motion as improperly filed.<sup>39</sup> However, if the appellant signed the Form I-290B, the AAO may proceed as if the appellant was self-represented.<sup>40</sup>

If an attorney or accredited representative becomes ineligible to represent a party *after* filing an appeal or motion, the AAO will consider the appellant to be self-represented until a new Form G-28 is submitted for an eligible attorney or accredited representative.

## 2.8 Withdrawal of Representation

Appellants may request the withdrawal of a representative’s appearance on their behalf, and representatives may request to withdraw their representation of an appellant. If the AAO authorizes a withdrawal, it will no longer communicate with the representative about the matter. The AAO will treat the appellant as self-represented until the submission of a new Form G-28 for a new representative.<sup>41</sup>

For cases before the AAO, withdrawal of representation requests must be in writing and sent by mail or fax. No special form is required. The written request should identify the appellant and the representative being released. The withdrawal request should also identify the immigration benefit request by Receipt Number and any related Alien Registration Number (A-Number). See Chapter 6.1 for the AAO’s contact information.

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<sup>38</sup> 8 C.F.R. § 292.2(d).

<sup>39</sup> 8 C.F.R. §§ 103.3(a)(2)(v)(A)(I), 103.5(a)(4).

<sup>40</sup> 8 C.F.R. § 103.2(a)(3).

<sup>41</sup> See 8 C.F.R. § 292.4(a).

## 2.9 Change of Representation

Appellants wishing to replace their representative of record must submit a new Form G-28. Recognition of the new representative also accomplishes the withdrawal of the former representative.

## 2.10 Rules of Professional Conduct

Attorneys and accredited representatives must represent their clients in accordance with the law, including applicable rules of professional conduct.<sup>42</sup> Under these rules, attorneys and accredited representatives may be disciplined for criminal, unethical, or unprofessional conduct.<sup>43</sup>

Any individual who believes that an attorney or accredited representative has engaged in criminal, unethical, or unprofessional conduct while practicing before DHS may file a complaint with the USCIS Disciplinary Counsel.<sup>44</sup> The complaint must be in writing and include relevant names, dates, locations, and other details sufficient to clearly identify the offending conduct. The AAO encourages appellants to use [Form EOIR-44](#) to file a complaint and include any supporting documents or information.

Please mail complaints about an attorney's or accredited representative's conduct in a matter before DHS to:

U.S. Citizenship and Immigration Services  
ATTN: Disciplinary Counsel  
111 Massachusetts Avenue, NW, Room 3100, MS 2121  
Washington, D.C. 20529-2121

The USCIS Disciplinary Counsel may initiate formal disciplinary proceedings, which can result in censuring, suspending, or disbaring an attorney or accredited representative from practicing before the Immigration Courts, the Board, and DHS. The USCIS Disciplinary Counsel may also refer complaints about unethical or unprofessional conduct to the appropriate state licensing authorities.

For more information about the discipline of attorneys and accredited representatives, see EOIR's [Fraud Prevention and Attorney Discipline Programs](#) web page.

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<sup>42</sup> See 8 C.F.R. § 292.3.

<sup>43</sup> EOIR oversees the discipline of attorneys and accredited representatives who violate rules of professional conduct in practice before the Immigration Courts, DHS, and the Board.

<sup>44</sup> See 8 C.F.R. § 292.3(d)(1).

## 3. Appeals

### 3.1 Overview

The Administrative Appeals Office (AAO) conducts appellate review of immigration benefit requests within its jurisdiction. The regulations for appeals to the AAO are located at 8 C.F.R. § 103.3.

The AAO generally issues its appellate decisions as non-precedent decisions. However, the Secretary of Homeland Security may, with the Attorney General's approval, designate an AAO decision as a precedent. Precedent decisions are binding on Department of Homeland Security (DHS) employees and provide guidance to the public on the proper interpretation and administration of immigration law and policy.

### 3.2 Jurisdiction

The AAO has appellate jurisdiction over approximately 50 different immigration case types filed with U.S. Citizenship and Immigration Services (USCIS) field offices,<sup>45</sup> as well as certain Immigration and Customs Enforcement (ICE) determinations. For more information about the AAO's jurisdiction, see Chapter 1.4.

However, even for case types under its jurisdiction, the AAO does not consider appeals in the following scenarios:

#### (a) Rejected Applications and Petitions

A field office's rejection of an immigration benefit request may not be appealed to the AAO.<sup>46</sup> When USCIS rejects an immigration benefit request, it does not retain a filing date, and there is no merits-based decision for the AAO to review.

#### (b) Abandoned Applications and Petitions

Field office denials of an immigration benefit request as abandoned, administratively terminated, or administratively closed may not be appealed to the AAO.<sup>47</sup> However, appellants may file a motion to reopen the field office decision.

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<sup>45</sup> For the purposes of this Practice Manual, the term "field office" is used broadly to include USCIS field offices, international offices, Service Centers, and the National Benefits Center. The contact information for the various USCIS offices is available at the [Find a USCIS Office](#) web page.

<sup>46</sup> 8 C.F.R. § 103.2(a)(7)(iii).

<sup>47</sup> 8 C.F.R. § 103.2(b)(15).

(c) **Withdrawn Applications and Petitions**

A field office's acknowledgement of a withdrawal of an application or petition may not be appealed to the AAO.<sup>48</sup>

(d) **Denied Motions to Reopen and/or Reconsider**

An appellant<sup>49</sup> may not appeal a field office's unfavorable decision on a motion to reopen and/or reconsider unless the field office's original decision was appealable to the AAO.<sup>50</sup>

(e) **AAO Decisions**

An appellant may not appeal an unfavorable AAO decision (whether on an appeal, motion, or certification). Instead, the appellant may file a motion to reopen and/or reconsider the AAO decision. See Chapter 4 for more information about motions.

### 3.3 Representation by an Attorney or Other Representative

An appellant may be represented by an attorney or other representative. See Chapter 2 for more information about representing parties before the AAO.<sup>51</sup>

### 3.4 *De Novo* Standard of Review

The AAO exercises *de novo* review of all issues of fact, law, policy, and discretion. This means that the AAO looks at the record anew and is not required to defer to findings made in the initial decision. Furthermore, the AAO's decision may address new issues that were not raised or resolved in the prior decision.

While the AAO does not need to defer to the field office's determinations, the AAO does apply USCIS policy and legal interpretations to its decisions.<sup>52</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> A person or entity with legal standing in a proceeding is an "affected party." 8 C.F.R. § 103.3(a)(1)(iii)(B). Affected parties with cases before the AAO on appeal, motion, or certification may include petitioners, applicants, or, in the case of bond breach appeals, bond obligors. For simplicity, this Practice Manual refers to all affected parties as "appellants."

<sup>50</sup> 8 C.F.R. § 103.5(a)(6).

<sup>51</sup> This Practice Manual uses the term "representative" to refer to all persons authorized to represent appellants before the AAO.

<sup>52</sup> The AAO does not exercise independent authority to establish USCIS policy or legal interpretations. See USCIS Policy Memorandum PM-602-0086.1, [Precedent and Non-Precedent Decisions of the Administrative Appeals Office \(AAO\)](#) (Nov. 18, 2013).

### 3.5 Burden of Proof

The appellant has the burden of proof to establish eligibility for the requested immigration benefit.<sup>53</sup> The appellant's burden includes the burden of production and the burden of persuasion.<sup>54</sup>

The appellant must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing of the immigration benefit request and continuing through adjudication.<sup>55</sup>

### 3.6 Standard of Proof

Except where a different standard is specified by law, the appellant must prove eligibility for the requested immigration benefit by a *preponderance of the evidence*.<sup>56</sup>

Under the preponderance of the evidence standard, the evidence must demonstrate that the appellant's claim is "probably true" based on the factual circumstances of the individual case.<sup>57</sup>

If the appellant submits relevant, probative, and credible evidence that leads the AAO to believe that the claim is "more likely than not" or "probably true," the appellant has satisfied the standard of proof. Stated another way, the appellant must establish that there is greater than a fifty percent chance that a claim is true.

In adjudicating an appeal under the preponderance of the evidence standard, the AAO will examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.<sup>58</sup>

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<sup>53</sup> *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). When the approval of an immigration benefit request is discretionary, an appellant must also establish that a favorable exercise of discretion is warranted.

<sup>54</sup> The burden of production is the obligation to submit enough evidence to have the issue decided on the merits, while the burden of persuasion is the obligation to persuade the agency that the final decision should be favorable to the appellant. *See Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 272-80 (1994).

<sup>55</sup> Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 103.2(b)(1); *see also Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, 1308 (9th Cir. 1984) (stating that the burden to establish eligibility "is not discharged until the visa is issued").

<sup>56</sup> *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). For more information about the discussion in this section, see *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989); and *Matter of Skirball Cultural Center*, 25 I&N Dec. 799, 805 (AAO 2012).

<sup>57</sup> *Matter of Chawathe*, 25 I&N at 376.

<sup>58</sup> Evidence is *relevant* if it is logically connected to proving or disproving the case at hand, *probative* if it tends to prove or disprove a fact or issue, and *credible* if it is worthy of belief. *See Black's Law Dictionary* 636, 1323, 1404 (9th ed. 2009).

### 3.7 Filing Requirements for Appeals

#### (a) Parties Eligible to File an Appeal

To appeal an unfavorable decision to the AAO, a person or entity must have legal standing in the proceeding. USCIS regulations provide that a petitioner or an applicant has legal standing in an appeal before the AAO, while the beneficiary of a petition or another third party does not.<sup>59</sup>

If the person or entity submitting an appeal does not have legal standing, USCIS will reject the appeal as improperly filed and will not refund any previously accepted filing fee.<sup>60</sup>

#### (b) Form I-290B, Notice of Appeal or Motion

An appellant must use Form I-290B, Notice of Appeal or Motion, to file appeals with the AAO.<sup>61</sup> Form I-290B and the instructions for completing the form are available to review, print, and download at [www.uscis.gov/i-290b](http://www.uscis.gov/i-290b).<sup>62</sup> In addition, an appeal must contain a statement explaining the basis for the appeal, as directed by Form I-290B and the accompanying instructions. See Chapter 3.7(f) for more information about this statement.

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<sup>59</sup> 8 C.F.R. § 103.3(a)(1)(iii)(B). “Petitioner,” “applicant,” and “beneficiary” are precise, legal terms, and an individual may fit the definition for more than one term in different but related benefit requests. For example, a foreign national who is the “beneficiary” of a Form I-140, Immigrant Petition for Alien Worker, filed by a U.S. employer, does not have standing to appeal the denial of the petition. The appeal must be filed by the U.S. employer “petitioner,” even if the foreign national is also the “applicant” for a related immigration benefit request, such as a Form I-485, Application to Register Permanent Residence or Adjust Status.

<sup>60</sup> 8 C.F.R. § 103.3(a)(2)(v)(A).

<sup>61</sup> Appellants must use Form I-290B to file appeals of legalization applications filed under section 1104 of the Legal Immigration Family Equity Act and its amendments. For appeals of denied immigration benefit requests under the legalization provisions of sections 210 and 245A of the Immigration and Nationality Act (the Act), appellants must use Form I-694, Notice of Appeal of Decision Under Section 210 or 245A of the Act. 8 C.F.R. § 103.3(a)(3)(ii). Form I-694 and the accompanying instructions are available at [www.uscis.gov/i-694](http://www.uscis.gov/i-694).

<sup>62</sup> Every benefit request submitted to USCIS must be executed and filed in accordance with the form instructions. Form instructions are incorporated into the regulations under 8 C.F.R. § 103.2(a)(1).

(c) **Time Period for Filing**

For most appeals, appellants must file an appeal on Form I-290B within **30 calendar days** after personal service of the decision, or **33 calendar days** if the decision was mailed.<sup>63</sup>

An appellant must file an appeal of a USCIS decision to revoke the approval of an immigrant petition upon notice under 8 C.F.R. § 205.2 within **15 calendar days** after personal service of the decision,<sup>64</sup> or **18 calendar days** if the decision was mailed.<sup>65</sup>

(1) **Decision Issuance Date**

The service of notices and decisions by mail is complete upon the **date of mailing** and not the date the appellant receives the notice or decision.<sup>66</sup> In most cases, the date of mailing will be the same as the date on the decision, but an appellant may submit evidence to establish that the mailing date was later than the decision date (e.g., through postmarks).

(2) **Appeal Filing Date**

The filing date for an appeal is the day the USCIS location designated for filing the appeal receives it, not the date the appellant mailed the appeal.<sup>67</sup>

(3) **Computing the Time Period to File an Appeal**

When computing the period of time for filing an appeal, the following factors apply:

- USCIS counts every calendar day (including Saturdays, Sundays, and legal holidays) starting the first calendar day **after** the date USCIS mailed the unfavorable decision.
- If the **last** day of the filing period falls on a Saturday, Sunday, or a legal holiday, the period to file an appeal runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.<sup>68</sup>

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<sup>63</sup> 8 C.F.R. § 103.3(a)(2)(i). If a decision is mailed, 3 days are automatically added to the 30-day filing period. 8 C.F.R. § 103.8(b).

<sup>64</sup> 8 C.F.R. § 205.2(d) (revocation on notice). There are no appeal rights for automatic revocations under 8 C.F.R. § 205.1.

<sup>65</sup> If a decision is mailed, 3 days are automatically added to the 15-day filing period. 8 C.F.R. § 103.8(b).

<sup>66</sup> *Id.* Routine service consists of mailing the notice or decision by ordinary mail addressed to the appellant and any representative of record at his or her last known address. 8 C.F.R. § 103.8(a)(1)(i).

<sup>67</sup> 8 C.F.R. § 103.2(a)(7)(i).

<sup>68</sup> 8 C.F.R. § 1.2. Legal public holidays are listed at 5 U.S.C. § 6103.

#### (4) Untimely Appeal

An appeal which is not filed within the time allowed must be rejected as improperly filed.<sup>69</sup> However, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the field office that made the unfavorable decision must treat the untimely appeal as a motion, and make a new decision on the merits of the case.<sup>70</sup>

#### (d) Where to File

***Do not mail appeals directly to the AAO.*** The AAO's mailing address is for briefs and evidence supplementing a pending appeal, and for other correspondence related to existing matters. The correct addresses for filing appeals are listed at [www.uscis.gov/i-290b-addresses](http://www.uscis.gov/i-290b-addresses). Any appeals mailed to the AAO will be rejected and returned as not properly filed.<sup>71</sup>

#### (e) Filing Fee and Fee Waiver Requests

Appeals must contain the proper filing fee or a fee waiver request. ***Do not mail filing fees directly to the AAO.*** Filing fees are listed on the USCIS [Forms](#) web page and at the *What is the Filing Fee?* section of the [Form I-290B instructions](#).

In certain categories of cases, USCIS may waive the fee for Form I-290B if the appellant can show an inability to pay. For information about which fees USCIS may waive and how to request a fee waiver, see [Form I-912, Request for Fee Waiver](#) and the [Form I-912 instructions](#), 8 C.F.R. § 103.7(c), and [www.uscis.gov/fees](http://www.uscis.gov/fees).

#### (f) Statement or Brief Identifying an Error

An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision on Form I-290B, in a written statement attached to Form I-290B, in a brief, or both.

General assertions that fail to specifically identify an error may result in the AAO summarily dismissing an appeal.<sup>72</sup> The appellant must state any arguments it wishes the AAO to consider on appeal, even if the arguments were previously raised in earlier filings before the field office.

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<sup>69</sup> 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

<sup>70</sup> 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

<sup>71</sup> The AAO has appellate jurisdiction over ICE determinations that an immigration bond has been breached. An appellant must file immigration bond breach appeals under the terms described on ICE Form I-323, Notice - Immigration Bond Breached, which ICE sends to the appellant.

<sup>72</sup> 8 C.F.R. § 103.3(a)(1)(v).

There are no specific formatting rules related to statements or briefs. See Chapter 7.3 for suggested guidelines. The AAO encourages appellants to provide as much detail as possible in the appeal statement or brief in order to apprise the AAO of the specific basis of the appeal.

### 3.8 Supplemental Briefs and Evidence

Appellants may, but are not required to, submit a supplemental brief or additional evidence. If the appellant elects not to file a brief, the appeal must otherwise specifically identify any erroneous conclusion of law or fact. An appellant may do so through a statement accompanying Form I-290B.

On Form I-290B, appellants must indicate whether they:

- Have attached a brief and/or additional evidence;
- Will submit a brief and/or additional evidence within 30 days; or
- Will not submit a supplemental brief and/or additional evidence.

*Appellants who elect on Form I-290B to submit a supplemental brief and/or additional evidence within 30 days of filing the appeal must mail the brief or additional evidence directly to the AAO.* See Chapter 6.1 for the AAO's mailing address.

Any supplemental brief or evidence must specifically reference the Receipt Number of the underlying benefit request and/or Alien Registration Number (A-Number).

While appellants may submit supplemental materials after filing the appeal, the submission of additional materials complicates USCIS's ability to match the appeal with those materials in time for the field office's initial review of the appeal (initial field review). To ensure that the field office has a meaningful opportunity to consider supplemental materials during initial field review, the AAO recommends that appellants submit supplemental materials concurrently with the appeal. See Chapter 3.9 for information on initial field review.

#### (a) Brief Writing and Citation Guidelines

See Chapter 7.3 for suggested brief writing and citation guidelines.

#### (b) Supporting Evidence

In general, an appellant cannot meet the burden of proof simply by claiming a fact to be true, without supporting documentary evidence.<sup>73</sup> An appellant must support assertions

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<sup>73</sup> *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); see also *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

with relevant, probative, and credible evidence.<sup>74</sup>

The AAO will accept new evidence on appeal. The evidence need not be previously unavailable, can post-date the filing of the application or petition, and can relate to events and circumstances that pre- or post-date the filing of the application or petition. The AAO will also accept new evidence on appeal that had been previously requested by a field office. The appellant's failure to respond to a field office's request will not prevent the AAO from considering that evidence on appeal.

That said, an appellant must be eligible for the requested immigration benefit at the time of filing and remain eligible through the adjudication process.<sup>75</sup> An appellant who only satisfies the requirements of an immigration benefit after filing an application or petition is not eligible for that benefit.

For certain protection-related benefit categories (including, but not limited to, asylum applications, Violence Against Women Act (VAWA) self-petitions, T visa applications, and U visa petitions) where it may be difficult for some appellants to secure corroborative evidence, credible testimonial evidence may suffice to meet the burden of proof.<sup>76</sup>

Assertions by representatives do not constitute evidence and must be supported by documentary evidence in the record.<sup>77</sup>

### (1) Photocopies

Although photocopies of documents are generally permissible, the AAO may request that an appellant submit an original document for review.<sup>78</sup> An original document submitted in response to such a request will be returned when the adjudication is complete. Failure to submit a requested original document may result in the dismissal of an appeal.

If an appellant submits original documents on appeal when not specifically requested, the documents may remain a part of the record, and USCIS will not automatically return the originals.<sup>79</sup>

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<sup>74</sup> See *Matter of Chawathe*, 25 I&N Dec. at 376.

<sup>75</sup> 8 C.F.R. § 103.2(b)(1).

<sup>76</sup> For VAWA self-petitions, T visa applications, and U visa petitions, USCIS will consider "any credible evidence." See sections 204(a)(1)(J), 214(p)(4) of the Act, 8 U.S.C. §§ 1154(a)(1)(J), 1184(p)(4); 8 C.F.R. § 214.11(d)(3).

<sup>77</sup> See *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

<sup>78</sup> 8 C.F.R. § 103.2(b)(5).

<sup>79</sup> Use [Form G-884, Return of Original Documents](#), to request the return of original documents.

## (2) Translations

Any document in a foreign language must be accompanied by a full English language translation. The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English.<sup>80</sup>

## (3) Unavailable Evidence

The nonexistence or other unavailability of required evidence creates a presumption of ineligibility for the requested immigration benefit.<sup>81</sup>

If a required document does not exist or cannot be obtained, an appellant must generally:

- Demonstrate its nonexistence or unavailability; and
- Submit relevant secondary evidence.

If relevant secondary evidence also does not exist or cannot be obtained, the appellant must generally:

- Demonstrate the unavailability of both the required document and relevant secondary evidence; and
- Submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition and who have direct personal knowledge of the event and circumstances.

### (i) Demonstrating that a Government Record is Unavailable

Where a government record does not exist, the appellant must submit an original written statement on the letterhead of the appropriate government entity establishing its unavailability and stating the reason it does not exist and whether similar records for the time and place are available.<sup>82</sup>

However, a statement from a foreign government is not required if the Department of State's *Foreign Affairs Manual* indicates this type of document generally does not exist.<sup>83</sup>

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<sup>80</sup> 8 C.F.R. § 103.2(b)(3).

<sup>81</sup> For more information about the discussion in this section, see 8 C.F.R. § 103.2(b)(2).

<sup>82</sup> While the AAO considers any credible evidence when adjudicating VAWA, T and U cases, it may determine that a government record (e.g., a conviction record) is necessary to the adjudication.

<sup>83</sup> The Bureau of Consular Affairs [Visa Reciprocity](#) web page contains information about the availability of certain foreign government records on a country-by-country basis.

Appellants who are unable to acquire a necessary document or statement from the relevant foreign authority may submit evidence that they made repeated good faith attempts to obtain the required document or statement. However, if the AAO determines that such documents or statements are generally available, it may require that an appellant submit the required document or statement.

**(4) Inconsistencies in the Record**

An appellant must resolve any material inconsistencies in the record by competent, objective evidence. Unresolved material inconsistencies may lead the AAO to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit.<sup>84</sup>

**(c) Requests to Extend the Deadline for Submitting Briefs and/or Additional Evidence**

On Form I-290B, appellants may indicate that they will submit a brief and/or additional evidence within 30 days of filing the appeal. This 30-day briefing period is automatically granted by checking the appropriate box on Form I-290B. It does not require additional AAO approval.

If, however, an appellant requires additional time beyond the original 30 days, the AAO may extend the deadline for submitting briefs for good cause shown.<sup>85</sup>

Appellants may mail or fax extension requests directly to the AAO within **30 calendar days** of filing the appeal. See Chapter 6.1 for the AAO's contact information. The request should contain the specific reasons for seeking an extension and request a specific submission date for a brief and/or additional evidence.

If the AAO extends the deadline for submitting briefs beyond the automatic 30-day briefing period, it will notify the appellant in writing of the new due date.

***Filing an extension request does not automatically extend the 30-day deadline for submitting briefs. Unless and until the AAO grants an extension request, the existing deadline to submit a brief and/or additional evidence remains unchanged.***

**(d) Requests to Submit Supplemental Information after the Deadline**

The AAO has the discretion to accept or reject supplemental information submitted after the deadline for submitting briefs.

<sup>84</sup> *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

<sup>85</sup> 8 C.F.R. § 103.3(a)(2)(vii).

To supplement a pending appeal with new evidence after the deadline, the appellant should add “SUPPLEMENTAL EVIDENCE” in all capital letters in the subject line of the cover letter, and include the requested information for case-specific correspondence as set forth at Chapter 6.1(b).

**(e) *Amicus Curiae***

An *amicus curiae* (friend of the court) brief is a written statement of law or legal opinion from a person or organization that is not a party in a case but may have a strong interest in the issue being considered.

The AAO may, with prior notice to the appellant, request the submission of *amicus curiae* briefs to inform its review of complex or unusual issues of law or policy. The AAO will post solicitations for *amicus curiae* briefs on the AAO web page at [www.uscis.gov/ao](http://www.uscis.gov/ao). The solicitation will include instructions on brief format, page length, and the deadline for submission.

A person or organization that wishes to submit an unsolicited *amicus curiae* brief may coordinate with the appellant. An *amicus curiae* brief that has not been solicited by the AAO must be submitted by the appellant.<sup>86</sup>

The AAO limits *amicus curiae* to the filing of briefs. Since an appearance as *amicus curiae* is not a request to represent a party before the AAO, no notice of representation (Form G-28) is required.

**(f) Oral Argument**

The AAO generally adjudicates decisions based on the record of proceedings without oral argument. However, the AAO may grant a written request for oral argument when a case involves an issue of particular significance and the AAO determines that it would benefit from supplemental argument. For more information on requests for oral argument, see Chapter 6.5.

### **3.9 Initial Field Review**

Initially, the USCIS field office that denied the immigration benefit request will review the appeal and determine whether to take favorable action and grant the benefit request.<sup>87</sup>

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<sup>86</sup> Persons or organizations submitting unsolicited *amicus curiae* briefs should label the briefs “REQUEST TO APPEAR AS *AMICUS CURIAE*,” and provide the requested information for case-specific written correspondence listed at Chapter 6.1(b). The brief should also contain a statement describing the person or organization submitting the brief and the nature of its interest in the issue. See Chapter 7.3 for suggested brief writing and citation guidelines.

<sup>87</sup> 8 C.F.R. § 103.3(a)(2)(ii)-(iv).

During this initial field review, the field office may:

- Treat the appeal as a motion to reopen and/or reconsider and approve the application or petition; or
- Forward the appeal and the related record of proceedings to the AAO.

The initial field review should be completed within 45 days.

For more information about initial field review, see USCIS Policy Memorandum PM-602-0124, [\*Initial Field Review of Appeals to the Administrative Appeals Office\*](#) (Nov. 4, 2015).

### **3.10 Expedite Requests**

An appellant may request expedited processing of an appeal. For more information about expedite requests, see Chapter 6.3.

### **3.11 Withholding Adjudication**

The AAO may temporarily withhold the adjudication of an appeal if there is an ongoing investigation relating to the petition or the appellant, and the disclosure of such information would prejudice the investigation.<sup>88</sup>

A delay in adjudication, however, does not mean that a case is under investigation. There are many reasons why a case may take longer to complete than normal processing times. Please contact the AAO for status information on cases outside of normal processing times. See Chapter 6.2 for information about submitting status inquiries for pending appeals.

### **3.12 Withdrawing an Appeal**

At any time before the AAO makes a decision, appellants may withdraw an appeal by submitting a written request by mail or fax.<sup>89</sup>

No specific form is required. The appellant should add “WITHDRAWAL OF APPEAL” in all capital letters in the subject line of the cover letter, and include the requested information for case-specific correspondence as set forth at Chapter 6.1(b).

The AAO may accept a withdrawal request from a representative if the record contains a valid Form G-28 establishing representation of the appellant.

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<sup>88</sup> 8 C.F.R. § 103.2(b)(18).

<sup>89</sup> 8 C.F.R. § 103.3(a)(2)(ix). The AAO will treat a request to withdraw the underlying immigration benefit request as a request to withdraw the appeal.

The AAO will acknowledge the withdrawal request by issuing a decision dismissing the appeal as withdrawn. Appellants may not retract withdrawals, and may not file a motion to reopen or reconsider a withdrawal.<sup>90</sup>

### 3.13 Requests for Evidence and Notices of Intent to Dismiss

If the evidence in the record does not establish eligibility for the requested immigration benefit, the AAO may:<sup>91</sup>

- Dismiss the appeal;
- Request more information or evidence from the appellant; or
- Notify the appellant of its intent to dismiss the appeal.

Requests for evidence (RFE) and notices of intent to dismiss (NOID) specify the type of evidence required and/or the bases for the proposed dismissal.<sup>92</sup>

The RFE or NOID will state the deadline for responding, up to a maximum of 12 weeks from the issuance of an RFE or 30 days for a NOID.<sup>93</sup> See Chapter 3.7(c) for information on how to calculate the time periods.

#### (a) Derogatory Information

If the AAO plans to issue an unfavorable decision based on derogatory information *of which the appellant is unaware*, the AAO will issue a NOID to advise the appellant of this information and to offer an opportunity to rebut the information and present other information before the AAO makes a decision.

#### (b) Responding to an RFE or NOID

When responding to an RFE or NOID, an appellant must timely submit all requested materials together at one time, along with the original RFE or NOID.

If the appellant submits only some of the requested evidence, the AAO will consider the

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<sup>90</sup> 8 C.F.R. § 103.2(b)(6).

<sup>91</sup> For this section, see 8 C.F.R. § 103.2(b)(8), (11), (13)-(14), (16). For more information about RFEs and NOIDs, see USCIS Policy Memorandum PM-602-0085, [Requests for Evidence and Notices of Intent to Deny](#) (June 3, 2013).

<sup>92</sup> The AAO may “dismiss” an appeal, while field offices may “deny” an application or petition. Accordingly, the AAO may issue a notice of intent to *dismiss* during the adjudication of an appeal, while a field office may issue a notice of intent to *deny* during the adjudication of an application or petition. In both cases, this Practice Manual refers to these notices as NOIDs, and the same regulatory provisions apply.

<sup>93</sup> If an RFE or NOID is mailed, 3 days are automatically added to the response deadline. 8 C.F.R. § 103.8(b).

response as a request for a decision on the record. However, failure to submit all requested evidence that is material to the requested immigration benefit is grounds for dismissing the appeal.

If the appellant fails to respond altogether to an RFE or NOID by the required date, the AAO may summarily dismiss the appeal as abandoned, dismiss based on the record, or dismiss for both reasons.<sup>94</sup>

### 3.14 AAO Decision

The AAO will serve the appeal decision by mail on the appellant and any representative of record.<sup>95</sup> The appeal decision is effective and final on the date that the AAO issues it, unless and until the AAO reopens or reconsiders the decision on motion or a federal court modifies or overrules it. The filing of a subsequent motion to reopen or reconsider the AAO's decision does not affect the finality of the decision.<sup>96</sup>

AAO decisions may order any action consistent with its authority under the Act, the regulations, and applicable USCIS policy as is appropriate and necessary for the disposition of the appeal. Common appeal dispositions are described below.

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<sup>94</sup> Appellants may request special expedited review of an unfavorable AAO decision based solely on the failure to respond to an RFE or NOID, if one of the following criteria apply:

- There is evidence that the AAO received the appellant's timely response to the RFE or NOID.
- There is evidence in a USCIS system that the RFE or NOID was not sent to the appellant or, if there is a valid Form G-28 on file, to the attorney or representative of record.
- The appellant properly submitted a change of address prior to the issuance of the RFE or NOID, but the AAO sent the RFE or NOID to a previous or improper address.

For AAO decisions, this expedited review may be requested by calling the AAO. See Chapter 6.1 for the AAO's contact information. The AAO will make every effort to take action on the request within 5 business days.

For more information (including instructions on how to request special expedited review of USCIS field office decisions), see USCIS Instructional Memorandum IM-602-0059, [Expedited Case Review Process for Specifically-Defined Administrative Errors](#) (Mar. 23, 2012).

<sup>95</sup> 8 C.F.R. § 103.3(a)(2)(x), (3)(iii); *see also* 8 C.F.R. § 103.8(a)(1)(i) (routine service consists of mailing the notice by ordinary mail addressed to the appellant and his or her representative).

<sup>96</sup> *See* 8 C.F.R. § 103.5(a)(1)(iv).

**(a) Sustain**

If an appellant establishes eligibility for the requested immigration benefit, the AAO may sustain the appeal and order the approval of the application or petition.<sup>97</sup>

Other than its final decision, the AAO does not issue evidence of an approved benefit request (such as a Form I-797, Notice of Action). The AAO also does not notify the Department of State (DOS) that a benefit request has been approved. Instead, the office that made the underlying unfavorable decision is responsible for issuing any documents relating to the approved benefit request and notifying DOS, when applicable.

**(b) Dismissal**

The AAO may dismiss an appeal when an appellant fails to establish eligibility for the requested immigration benefit, when the appeal is moot (e.g., the appellant obtained the desired immigration status through other means), or when the appellant withdraws the appeal.<sup>98</sup>

Because the AAO has *de novo* review authority, a decision dismissing an appeal may contain new grounds of ineligibility not addressed in the initial decision. See Chapter 3.4 for more information about the AAO's standard of review.

While an AAO decision to dismiss an appeal may not be appealed to the AAO, an appellant may file a motion to reopen and/or reconsider the decision. See Chapter 4 for more information about motions.

**(c) Summary Dismissal**

The AAO may summarily dismiss an appeal when the appeal does not specifically identify any legal or factual error in the original decision.<sup>99</sup>

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<sup>97</sup> 8 C.F.R. § 103.2(b)(1). The AAO will sustain an immigration bond breach appeal if it determines that the obligor has not substantially violated the stipulated conditions of the bond. See 8 C.F.R. § 103.6(e).

<sup>98</sup> The AAO will dismiss an immigration bond breach appeal if it determines that there has been a substantial violation of the stipulated conditions of the bond by the obligor. 8 C.F.R. § 103.6(e). However, the substantial performance of all of the conditions imposed by the terms of a bond shall release the obligor from liability. See 8 C.F.R. § 103.6(c)(3). For legalization appeals, a decision dismissing the appeal includes a final notice of ineligibility. 8 C.F.R. § 103.3(a)(3)(iii).

<sup>99</sup> 8 C.F.R. § 103.3(a)(1)(v). Appeals of denied benefit requests under the legalization provisions of sections 210 and 245A of the Act may be summarily dismissed if the appeal fails to state the reason for appeal, is filed solely on the basis of a denial for failure to file the application for adjustment of status under sections 210 or 245A of the Act in a timely manner, or is patently frivolous. 8 C.F.R. § 103.3(a)(3)(iv).

The AAO may also summarily dismiss an appeal as abandoned when the appellant fails to respond to an RFE or NOID by the required date.<sup>100</sup>

**(d) Reject**

The AAO will reject improperly filed appeals. Rejected appeals do not retain a filing date.<sup>101</sup>

Improperly filed appeals may include the following:

- Untimely filed;<sup>102</sup>
- Missing or incorrect filing fee;<sup>103</sup>
- Case types that do not fall under the AAO's jurisdiction, including appeals of AAO decisions;
- The party submitting the appeal does not have legal standing in the proceeding;<sup>104</sup>
- Form I-290B is not signed;<sup>105</sup> and
- Form I-290B is signed by a representative, but there is no accompanying Form G-28.<sup>106</sup>

**(e) Remand**

The AAO may remand a decision to the office that made the unfavorable decision to take further action and to enter a new decision.

For example, the AAO may remand a decision if the appellant has overcome the grounds of the unfavorable decision on appeal, but the AAO has identified additional grounds of ineligibility during its *de novo* review. In this case, the AAO may determine that it is more appropriate to remand the matter to the office that made the unfavorable decision instead of issuing an RFE or NOID.

In certain circumstances, an AAO decision that remands a case for further action may also order the officer to certify the decision back to the AAO if the new decision is unfavorable to the appellant. This certification order permits the appellate review of a new, unfavorable decision without requiring the appellant to pay a second appeal filing fee. See Chapter 5 for more information on certifications.

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<sup>100</sup> 8 C.F.R. § 103.2(b)(13)(i). See Chapter 4.5(b) for information about the limitations on the ability to file a motion for appeals dismissed as abandoned.

<sup>101</sup> 8 C.F.R. § 103.2(a)(7)(iii).

<sup>102</sup> 8 C.F.R. § 103.3(a)(2)(v)(B).

<sup>103</sup> *Id.*; see also 8 C.F.R. § 103.3(a)(2)(i).

<sup>104</sup> 8 C.F.R. § 103.3(a)(2)(v)(A).

<sup>105</sup> 8 C.F.R. § 103.2(a)(7)(i).

<sup>106</sup> 8 C.F.R. § 103.3(a)(2)(v)(A)(2).

### 3.15 Non-Precedent, Adopted, and Precedent Decisions

#### (a) Non-Precedent Decisions

The AAO generally issues non-precedent decisions.<sup>107</sup> Non-precedent decisions apply existing law and policy to the facts of an individual case. The decision is binding on the parties to the case, but does not create or modify agency guidance or practice. The AAO does not announce new constructions of law or establish agency policy through non-precedent decisions.<sup>108</sup> As a result, non-precedent decisions do not provide a basis for applying new or alternative interpretations of law or policy.<sup>109</sup>

Non-precedent decisions (with personally identifiable information and other sensitive material redacted) are available online at the [AAO Non-Precedent Decisions](#) web page.<sup>110</sup>

DHS officers may not rely upon or cite to non-precedent decisions as legal authority in other decisions. Appellants who nonetheless wish to refer to a non-precedent AAO decision in an unrelated matter should attach a copy of that decision to their submission and explain how the facts in that case are analogous to their own case.

#### (b) Adopted Decisions

USCIS occasionally “adopts” an AAO non-precedent decision as binding policy guidance for USCIS employees. Unlike precedent decisions, adopted decisions are not binding on personnel outside of USCIS.

Adopted decisions are available online at the [Adopted AAO Decisions](#) web page.

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<sup>107</sup> The AAO uses the term “non-precedent” instead of “unpublished” to avoid confusion about the status of non-precedent decisions that are discussed in immigration periodicals or available on government and non-government websites.

<sup>108</sup> The AAO defers to the USCIS Senior Policy Council (SPC) to prescribe agency policy and to the USCIS Office of Chief Counsel on matters of legal interpretation. The SPC includes senior USCIS leadership who meet regularly to deliberate on a range of issues.

<sup>109</sup> For more information about AAO precedent and non-precedent decisions, see USCIS Policy Memorandum PM-602-0086.1, [Precedent and Non-Precedent Decisions of the Administrative Appeals Office \(AAO\)](#) (Nov. 18, 2013).

<sup>110</sup> Because the AAO’s *certification* jurisdiction is broader than its *appeal* jurisdiction, some of the case types listed on the non-precedent decision web page are not appealable to the AAO but have been included because the AAO has issued decisions upon certification for those categories. See Chapter 5 for more information on certifications.

### (c) Precedent Decisions

Certain AAO decisions may be designated as precedent by the Secretary of Homeland Security, with the Attorney General's approval.<sup>111</sup>

Precedent decisions are administrative decisions of the AAO, the Board of Immigration Appeals, and the Attorney General, which have been designated as precedent for future proceedings. AAO precedent decisions announce new legal interpretations or policy, or reinforce existing law or policy by demonstrating its application to the facts of a specific case. Precedent decisions are binding on all DHS employees.

USCIS, petitioners, and applicants may cite and rely upon a precedent decision as authority in later cases involving the same issue, unless a later statute, regulation, precedent decision, or binding federal court decision has modified or overruled the precedent decision.

The Executive Office for Immigration Review (EOIR) publishes all precedent decisions in bound volumes entitled *Administrative Decisions Under Immigration and Nationality Laws of the United States*. Precedent decisions are also available online at EOIR's [Virtual Law Library](#).

### (d) Distinguishing Between Precedent and Non-Precedent Decisions

Precedent decisions are recognizable by their citation format. Precedent decisions are generally designated using the phrase "Matter of," followed by the name of the party. Next are the volume and page number where the print version of the decision is published. Citations conclude with a parenthetical statement containing the office that authored the decision and the year of publication.

The following are examples of precedent decision citations:

- *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012)
- *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791 (Comm'r 1988)
- *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)

Conversely, AAO non-precedent decisions are not considered "published" as that term is used at 8 C.F.R. § 103.3(c). Each AAO non-precedent decision issued since July 2, 2013, clarifies that it is not a precedent.

On September 1, 2015, the AAO introduced a citation string for its non-precedent decisions. AAO non-precedent decisions can now be cited to using the citation string located at the end of each decision. This new decision format applies to decisions dated

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<sup>111</sup> See 8 C.F.R. § 103.3(c).

September 1, 2015, and later – older decisions posted on the AAO website cannot be retrofitted with a citation string.

Citations now begin with the phrase “Matter of,” followed by an abbreviated name of the party. The abbreviated name is followed by an identification number (ID#). Citations conclude with a parenthetical containing “AAO” and the date of publication.

The following are examples of AAO non-precedent decision citations:

- *Matter of D-E-S- Inc.*, ID# 14390 (AAO Nov. 23, 2015)
- *Matter of L-V-R-R-*, ID# 14227 (AAO Jan. 5, 2016)

An adopted AAO decision is identified by a unique citation format as well as by a USCIS cover memorandum announcing its designation as an adopted decision. The following are examples of current adopted AAO decision citations:

- *Matter of H-V-P-*, Adopted Decision 2016-01 (AAO Feb. 9, 2016)
- *Matter of Vazquez*, Adopted Decision 07-0006 (AAO July 31, 2007)
- *Matter of Perez Quintanilla*, Adopted Decision 07-0005 (AAO June 7, 2007)
- *Matter of IT Ascent, Inc.*, Adopted Decision 06-0001 (AAO Sept. 2, 2005)

**(e) Requests to Reissue a Non-Precedent Decision as an Adopted or Precedent Decision**

The AAO will consider written requests from the public to reissue a non-precedent decision as an adopted or precedent decision. No specific form is required. The request should explain why the non-precedent decision warrants adoption or designation as a precedent decision. The request should include a copy of the non-precedent decision, or reference the decision by its A-Number or Receipt Number, and the date of the decision. See Chapter 6.1 for how to send a written correspondence to the AAO.

## 4. Motions to Reopen and Reconsider

### 4.1 Motions to Reopen and Reconsider Generally

If the Administrative Appeals Office (AAO) issues an unfavorable decision, the appellant<sup>112</sup> may file a motion to reopen and/or reconsider the decision. The AAO may also reopen and/or reconsider one of its prior decisions on its own motion.<sup>113</sup>

Unlike appeals, which ask a different authority to review and reverse a decision, motions to reopen and/or reconsider request a review by the authority that issued the latest decision in the proceeding.<sup>114</sup> Therefore, a U.S. Citizenship and Immigration Services (USCIS) field office has jurisdiction over motions relating to its decisions, and the AAO has jurisdiction over motions relating to its decisions.

A motion to reopen is based on documentary evidence of *new facts*.<sup>115</sup> Alternatively, a motion to reconsider is based on a claim of *incorrect application of law or policy* to the prior decision.<sup>116</sup> The AAO may grant a motion that meets requirements of a motion to reopen and/or reconsider and overcomes the basis of the prior decision.

The regulations for motions to reopen and motions to reconsider are located at 8 C.F.R. § 103.5.

### 4.2 Motions to Reopen

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence.<sup>117</sup> Resubmitting previously provided evidence or asserting a fact without providing supporting documentary evidence will not meet the requirements of a motion to reopen. See Chapter 3.8(b) for more information about requirements for documentary evidence.

### 4.3 Motions to Reconsider

A motion to reconsider must establish that the AAO based its decision on an incorrect application of law or policy, and that the decision was incorrect based on the evidence in the

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<sup>112</sup> A person or entity with legal standing in a proceeding is an “affected party.” 8 C.F.R. § 103.3(a)(1)(iii)(B). Affected parties with cases before the AAO on appeal, motion, or certification may include petitioners, applicants, or, in the case of bond breach appeals, bond obligors. For simplicity, this Practice Manual refers to all affected parties as “appellants,” including those who file a motion to reopen and/or reconsider an AAO decision.

<sup>113</sup> 8 C.F.R. § 103.5(a)(5).

<sup>114</sup> 8 C.F.R. § 103.5(a)(1)(ii).

<sup>115</sup> 8 C.F.R. § 103.5(a)(2).

<sup>116</sup> 8 C.F.R. § 103.5(a)(3).

<sup>117</sup> 8 C.F.R. § 103.5(a)(2).

record of proceedings at the time of the decision.<sup>118</sup> The AAO will not consider new facts or evidence in a motion to reconsider.

In determining whether a prior decision was based on an incorrect application of law or policy, the AAO will consider any relevant precedent decisions, as well as relevant statutory and regulatory provisions, binding federal court decisions, and statements of USCIS policy.

#### **4.4 Combined Motions to Reopen and Reconsider**

Appellants may file a combined motion to reopen and reconsider. The AAO will consider each motion independently. The AAO may grant both motions, grant one motion but deny the other, or deny both motions.

#### **4.5 Limitations on the Ability to File a Motion**

##### **(a) Rejected Appeals**

The AAO will deny a motion to reopen and/or reconsider its rejection of an appeal. When the AAO rejects an appeal, the appeal does not retain a filing date and there is no merits-based decision for the AAO to review. For more information about rejections of appeals, see Chapter 3.14(d).

##### **(b) Abandoned Appeals**

A motion to reopen an appeal that the AAO dismissed due to abandonment must establish that the decision was in error because:<sup>119</sup>

- The requested evidence was not material to the decision;
- The appellant submitted the required initial evidence or additional information to the AAO before the deadline; or
- The AAO incorrectly sent the request for additional information or appearance to the wrong address of record.

For more information on the dismissal of an appeal due to abandonment, see Chapter 3.14(b).

##### **(c) Legalization, Special Agricultural Workers, and the Legal Immigration Family Equity Act Legalization Provisions**

USCIS decisions pertaining to benefit requests under section 245 of the Immigration and Nationality Act (the Act) (Legalization), section 210 of the Act (Special Agricultural Workers), and the Legal Immigration Family Equity Act legalization provisions are not

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<sup>118</sup> 8 C.F.R. § 103.5(a)(3).

<sup>119</sup> 8 C.F.R. § 103.5(a)(2).

subject to further review through the filing of a motion.<sup>120</sup> However, USCIS may reopen or reconsider its prior decision on its own motion.<sup>121</sup>

## 4.6 Filing Requirements for Motions

### (a) Parties Eligible to File a Motion

The appellant or representative of record must file the motion.<sup>122</sup> Except where the beneficiary is also a self-petitioner, USCIS regulations state that the beneficiary of a petition is not a party to the proceeding and does not have standing to file a motion.<sup>123</sup>

### (b) Form I-290B, Notice of Appeal or Motion

Appellants must file a motion on Form I-290B, Notice of Appeal or Motion. Form I-290B and the instructions for completing the form are available at [www.uscis.gov/i-290b](http://www.uscis.gov/i-290b).

On Form I-290B, appellants must select whether they are submitting a motion to reopen, a motion to reconsider, or a combined motion to reopen and motion to reconsider.

### (c) Timing

Appellants must file a motion within 30 days of the unfavorable decision (or 33 days if the decision is mailed).<sup>124</sup> See Chapter 3.7(c) for more information about calculating time periods.

The AAO may excuse the failure to timely file a motion to *reopen* if the appellant demonstrates that the delay was reasonable and was beyond his or her control.<sup>125</sup> The regulations provide no corresponding discretion to excuse an untimely motion to *reconsider*.

### (d) Where to File

***Do not mail motions directly to the AAO.*** The correct filing address for a motion is listed at [www.uscis.gov/i-290b-addresses](http://www.uscis.gov/i-290b-addresses). Any motions mailed to the AAO will be returned, will not be considered filed, and will not retain a filing date.

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<sup>120</sup> 8 C.F.R. § 103.5(b).

<sup>121</sup> *Id.*

<sup>122</sup> 8 C.F.R. § 103.5(a)(1)(iii)(A).

<sup>123</sup> 8 C.F.R. § 103.3(a)(1)(iii)(B).

<sup>124</sup> If a notice is served by mail, 3 days are automatically added to the stated period to perform the specified act. 8 C.F.R. § 103.8(b).

<sup>125</sup> 8 C.F.R. § 103.5(a)(1)(i).

### (e) Filing Fee and Fee Waiver Requests

Motions must contain the required filing fee or a fee waiver request. Filing fees are listed at the USCIS [Forms](#) web page and at the *What is the Filing Fee?* section of the [Form I-290B instructions](#). There is no additional fee for a combined motion to reopen and motion to reconsider.

In certain categories of cases, USCIS may waive the fee for Form I-290B if the appellant can show an inability to pay. For information about which fees may be waived and how to request a fee waiver, see [Form I-912, Request for Fee Waiver](#) and [Form I-912 instructions](#), 8 C.F.R. § 103.7(c), and [www.uscis.gov/fees](http://www.uscis.gov/fees).

### (f) Required Statement Regarding Judicial Proceedings

All motions must be accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding.<sup>126</sup>

## 4.7 Briefs and Additional Evidence

### (a) Motion Filed by Appellant

Appellants are not required to submit a brief with their motions; however, if they choose to submit a brief or additional evidence, they must do so *concurrently* with their motions.<sup>127</sup>

### (b) Service or *Sua Sponte* Motion

The AAO may reopen a proceeding or reconsider a decision on its own motion (sometimes called a Service motion or a *sua sponte* motion). If the AAO reopens on its own motion and the new decision may be unfavorable to the appellant, the AAO will notify the appellant and provide 30 days to submit a brief.<sup>128</sup> The AAO may extend the deadline for submitting a brief upon request if the appellant shows good cause.<sup>129</sup> See Chapter 3.8(c) for more information on requests to extend the deadline for submitting briefs and additional evidence.

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<sup>126</sup> 8 C.F.R. § 103.5(a)(1)(iii)(C).

<sup>127</sup> The requirement that a motion be complete upon filing is different from appeals, where the appellant may choose to have a 30-day period following the filing of the appeal to submit a brief and supporting evidence.

<sup>128</sup> 8 C.F.R. § 103.5(a)(5)(ii). The regulations provide 3 additional days for an appellant to respond when a notice is served by mail. 8 C.F.R. § 103.8(b).

<sup>129</sup> 8 C.F.R. § 103.5(a)(5)(ii).

#### **4.8 Effect of Filing a Motion or Subsequent Application or Petition**

Unless USCIS directs otherwise, the filing of a motion to reopen and/or reconsider (or the filing of a subsequent application or petition) does not delay the execution of any decision in a case or extend a previously set departure date.<sup>130</sup>

#### **4.9 Expedite Requests**

An appellant may request expedited processing for a motion. For more information on expedite requests, see Chapter 6.3.

#### **4.10 Requests for Oral Argument**

The AAO generally adjudicates decisions based on the record of proceedings without oral argument. However, the AAO may grant a written request for oral argument where a case involves an issue of particular significance and the AAO determines that it would benefit from supplemental argument. For more information on oral argument requests, see Chapter 6.5.<sup>131</sup>

#### **4.11 Requests for Evidence and Notices of Intent to Deny**

Prior to issuing a new decision, the AAO may issue a request for evidence (RFE) or notice of intent to deny (NOID). For more information about RFEs and NOIDs, see Chapter 3.13.

#### **4.12 Withdrawing a Motion**

Appellants may withdraw a motion by submitting a written request via mail or fax before the AAO issues a decision. The procedure for withdrawing a motion is the same as the procedure for withdrawing an appeal. See Chapter 3.12 for more information about withdrawals.

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<sup>130</sup> 8 C.F.R. § 103.5(a)(1)(iv).

<sup>131</sup> 8 C.F.R. § 103.5(a)(7) states that the oral argument provisions for appeals at 8 C.F.R. § 103.3(b) also apply to motions.

## 5. Certifications to the Administrative Appeals Office

### 5.1 Certifications Generally

A U.S. Citizenship and Immigration Services (USCIS) official may ask the Administrative Appeals Office (AAO) to review an initial decision for a case that has an unusually complex or novel issue of law or fact.<sup>132</sup> This administrative procedure is known as “certification.”<sup>133</sup> The regulations governing certifications are located at 8 C.F.R. § 103.4.

### 5.2 Jurisdiction

A USCIS official may certify case types that fall under the jurisdiction of the Board of Immigration Appeals (the Board) to the Board.<sup>134</sup> A USCIS official may certify any other type of case to the AAO, including cases that do not convey appeal rights.<sup>135</sup> Furthermore, a USCIS official may certify any decision type – including approvals, denials, and revocations – to the AAO.

### 5.3 Notice of Certification and Deadline for Submitting Briefs

To certify a case to the AAO for appellate review, a USCIS certifying office must first issue an initial decision. The initial decision should articulate an unusually complex or novel issue of law or fact to be reviewed by the AAO. The AAO will return a case to the certifying office if it lacks an initial decision, or if the initial decision does not involve an unusually complex or novel issue of law or fact.

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<sup>132</sup> 8 C.F.R. § 103.4(a)(1). Only a USCIS official may certify a case to the AAO. The AAO will not consider a request from an appellant to certify a decision. For more information regarding certifications to the AAO, see USCIS Policy Memorandum PM-602-0087, [Certification of Decisions to the Administrative Appeals Office \(AAO\)](#) (July 2, 2013).

<sup>133</sup> This chapter addresses the certification of initial decisions to the AAO for review. The regulation at 8 C.F.R. § 103.4(a)(1) also permits USCIS to certify a case (or a class of cases) from one office to another for the issuance of a decision. This “pre-decision” certification does not involve AAO appellate review and is not addressed in this Practice Manual.

<sup>134</sup> 8 C.F.R. § 1003.1(c). For decisions issued by USCIS, the Board has appellate jurisdiction over family-based immigrant petitions (Form I-130), except for petitions on behalf of certain orphans and Adam Walsh Act “no risk” determinations. The Board also has appellate jurisdiction over petitions for widowers (Form I-360). For more information about the Board, see Chapter 1.6.

<sup>135</sup> 8 C.F.R. § 103.4(a)(4). The AAO’s *certification* jurisdiction is broader than its *appeal* jurisdiction. Therefore, some of the immigration benefit types listed on the [AAO Non-Precedent Decisions](#) web page are not directly appealable to the AAO but are nonetheless included because the AAO has issued decisions upon certification for those categories.

Along with the initial decision, the USCIS certifying office will also send a Notice of Certification (Form I-290C), which notifies the appellant<sup>136</sup> of the right to submit a brief within 30 days of the notice (or 33 days if the notice is mailed).<sup>137</sup> ***Any brief should be mailed directly to the AAO.*** See Chapter 3.8 for more information about preparing and submitting supporting briefs to the AAO.

There is no requirement to submit a brief. Appellants that do not wish to submit a brief may mail or fax a letter to the AAO waiving the briefing period, or simply await the issuance of the AAO's final decision.

#### **5.4 Oral Argument**

The AAO generally adjudicates decisions based on the record of proceedings without oral argument. However, the AAO may grant a written request for oral argument where a case involves an issue of particular significance and the AAO determines that it would benefit from supplemental argument. For more information on requests for oral argument, see Chapter 6.5.

#### **5.5 Requests for Evidence and Notices of Intent to Deny**

Before issuing a final decision on a certification, the AAO may issue a request for evidence (RFE) or notice of intent to deny (NOID) the application or petition. For more information about RFEs and NOIDs, see Chapter 3.13.

#### **5.6 Standard of Review**

Decisions certified to the AAO are reviewed *de novo*. See Chapter 3.4 for more information about the AAO's standard of review.

#### **5.7 Burden of Proof**

Appellants have the burden of proof to establish that they have satisfied all eligibility requirements for the benefit request. See Chapter 3.5 for more information about the burden of proof for immigration benefit requests.

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<sup>136</sup> A person or entity with legal standing in a proceeding is an "affected party." 8 C.F.R. § 103.3(a)(1)(iii)(B). Affected parties with cases before the AAO on appeal, motion, or certification may include petitioners, applicants, or, in the case of bond breach appeals, bond obligors. For simplicity, this Practice Manual refers to all affected parties as "appellants," including petitioners or applicants who receive a Notice of Certification.

<sup>137</sup> The regulations provide 3 additional days for an appellant to respond when a notice is served by mail. 8 C.F.R. § 103.8(b). See Chapter 3.7(c) for more information about calculating time periods.

## 5.8 Standard of Proof

Except where a different standard is specified by law, appellants must prove eligibility for requested immigration benefits by a *preponderance of the evidence*. See Chapter 3.6 for more information about the standard of proof for immigration benefit requests.

## 5.9 Effect of Filing a New Application or Petition while a Certification is Pending

If an appellant files a new application or petition for the same benefit request that is before the AAO on certification, USCIS may hold the new filing in abeyance until the AAO issues a final decision.

## 5.10 AAO Decision

The initial decision certified to the AAO is not final until the AAO issues a decision. The AAO will review the initial decision and may order any action consistent with its authority under the Immigration and Nationality Act, the regulations, and applicable USCIS policy as is appropriate and necessary for the disposition of the case. The AAO will serve its decision by mail on the appellant and any representative of record.<sup>138</sup>

If the AAO orders the approval of the petition, the AAO will return the matter to the certifying office for continued processing and to generate any USCIS documents related to the approved benefit request.

The AAO may also remand a certified case if it identifies additional grounds of ineligibility during its *de novo* review that the field office did not address in the initial decision.

If the AAO's decision is unfavorable, the appellant may file a motion to reopen and/or reconsider the AAO's decision.<sup>139</sup> However, the appellant may not appeal the AAO's decision to the AAO.

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<sup>138</sup> 8 C.F.R. § 103.3(a)(2)(x), (3)(iii); *see also* 8 C.F.R. § 103.8(a)(1)(i) (routine service consists of mailing the notice by ordinary mail addressed to the appellant and his or her attorney or representative).

<sup>139</sup> See Chapter 4 for information on motions to reopen and/or reconsider.

## 6. Contacting the Administrative Appeals Office

### 6.1 Contact Information

The Administrative Appeals Office (AAO) strives to provide outstanding customer service and welcomes communication by telephone, fax, and mail.

Telephone: (703) 224-4501

Fax: (703) 778-7483

Mailing Address (regular and express service):

***Do not mail appeals or motions directly to the AAO.*** The correct filing addresses for appeals and motions are available at [www.uscis.gov/i-290b-addresses](http://www.uscis.gov/i-290b-addresses). Any appeals or motions mailed to the AAO will be returned and will not be considered properly filed.

The AAO's mailing address, *for briefs and other correspondence related to existing matters*, is:

U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Avenue, NW, MS 2090  
Washington, D.C. 20529-2090

#### (a) Inquiries about a Specific Case

The AAO will communicate with appellants<sup>140</sup> or their representatives who have submitted a properly completed and signed [Form G-28, Notice of Entry of Appearance](#). See Chapter 2 for more information about Form G-28 and representing parties before the AAO.

The AAO is unable to respond to case-specific inquiries from beneficiaries of a petition (or their representatives) because beneficiaries do not have legal standing in a proceeding.<sup>141</sup>

The AAO cannot give legal advice, discuss the merits of a case, or provide status information about matters that are not pending with the AAO.

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<sup>140</sup> An “affected party” is a person or entity with legal standing in a proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B). Affected parties with cases before the AAO on appeal, motion, or certification may include petitioners, applicants, or, in the case of bond breach appeals, bond obligors. For simplicity, this Practice Manual refers to all affected parties as “appellants.”

<sup>141</sup> 8 C.F.R. §§ 103.2(a)(3), 103.3(a)(1)(iii)(B).

**(b) Written Communications**

Written communication about a specific case should contain as much of the following information as possible:

- Full name of the appellant;
- Any Alien Registration Number (A-Number) assigned to the case;
- Receipt Number for the Form I-290B, Notice of Appeal or Motion, Form I-290C, Notice of Certification, or Form I-694, Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act (the Act);<sup>142</sup>
- Receipt Number and case type for the *underlying application or petition* before the AAO;
- Name, address, telephone number, and fax number of the author; and
- For written communications from representatives, a copy of the Form G-28, Notice of Entry of Appearance, submitted with the appeal or motion.

**(c) Telephone Communications**

Callers should be prepared to provide the A-Number and Receipt Number of the pending case and to confirm information establishing the caller's identity. AAO personnel may not discuss a specific case by telephone if they cannot confirm the caller's identity.

To protect confidentiality, the AAO does not provide information in response to case-specific telephone inquiries about the following types of cases:

- Immigrant petitions for battered spouses, children, or parents under the Violence Against Women Act (Form I-360);
- Petitions for U nonimmigrant status (Form I-918) and qualifying family members of a U-1 nonimmigrant (Form I-918A and Form I-929);
- Applications for T nonimmigrant status (Form I-914) and immediate family members of a T-1 nonimmigrant (Form I-914A);
- Adjustment of status applications (Form I-485) filed by individuals in U or T nonimmigrant status under section 245(l) or (m) of the Act;
- Applications for Temporary Protected Status (Form I-821); and
- Immigration benefit requests under the legalization provisions of sections 210 and 245A of the Act, and under section 1104 of the Legal Immigration Family Equity Act and its amendments.

Please inquire in writing about these case types.

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<sup>142</sup> A Receipt Number is an inventory control number assigned to a case by U.S. Citizenship and Immigration Services (USCIS). Receipt Numbers generally start with three letters (e.g., EAC, LIN, MSC, NBC, SRC, or WAC) and then have a series of numbers. Receipt Numbers are located on the USCIS-issued notice for the case.

## 6.2 Processing Times and Status Inquiries

The USCIS field office that issued the unfavorable decision will first conduct an “initial field review” of the appeal. If that office does not take favorable action on the appeal, it will forward the appeal to the AAO and send the appellant a Notice of Transfer to the AAO. The initial field review should be completed within 45 days.<sup>143</sup>

The processing times for appeals pending before the AAO are available on the [AAO Processing Times](#) web page. The appellate review should be completed within six months or less from the date that the AAO received the appeal from the field office following the initial field review.

The AAO is unable to provide case status information on appeals awaiting initial field review. Appellants may contact the USCIS [National Customer Service Center](#) line at (800) 375-5283 (the TTY number is (800) 767-1833) or submit an e-Request through the USCIS website to inquire about a case if, within 75 days of filing an appeal, USCIS has not sent any of the following:

- An approval notice;
- A Notice of Transfer to the AAO; or
- Any other correspondence or action from the field office.

## 6.3 Requests for Expedited Processing

The AAO generally processes appeals in the order it receives them, but it will review expedite requests on a case-by-case basis. To request expedited processing, the appellant must provide evidence that one or more of the following criteria have been met:

- Severe financial loss to a company or individual;
- An extreme emergent situation;
- A humanitarian situation;
- The nonprofit status of a requesting organization in furthering the cultural and social interests of the United States;
- A Department of Defense or national interest situation. The request must come from an official United States government entity and must state that a delay will be detrimental to the government;
- A USCIS handling error created an unreasonable delay that may be fixed by placing the case back in its original order; or
- A compelling interest of USCIS.

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<sup>143</sup> See 8 C.F.R. § 103.3(a)(2)(iii). For more information about initial field review, see USCIS Policy Memorandum PM-602-0124, [Initial Field Review of Appeals to the Administrative Appeals Office](#) (Nov. 4, 2015).

To request expedited processing, please mail or fax a written request to the AAO. The cover letter should clearly say “EXPEDITE REQUEST,” and the request should include documentary evidence to support the claimed need for expedited processing.

#### **6.4 Notification of Address Change**

Most non-U.S. citizens must report a change of address within 10 days of moving within the United States or its territories. For more information about change of address requirements for non-U.S. citizens, please visit the USCIS [Change of Address Information](#) web page.

While a case is pending with the AAO, appellants and their representatives should also notify the AAO directly of any address change to ensure that all decisions and correspondence are sent to the correct address. Due to AAO record retention and privacy obligations, representatives should submit an individual change of address notification for each case before the AAO.

Change of address notifications should be sent to the AAO by fax or mail. No special form is required. See Chapter 6.1 for the AAO’s contact information and for the information to include in written communications.

#### **6.5 Requests for Oral Argument**

The AAO generally adjudicates decisions based on the record of proceedings without oral argument. However, the AAO may grant a written request for oral argument where a case involves an issue of particular significance and the AAO determines that it would benefit from supplemental argument. Oral argument is granted at the discretion of the AAO.<sup>144</sup>

Appellants must request oral argument in writing either at the time they file the appeal or motion, or at the time they file a supporting brief. The request must explain in writing specifically why oral argument is necessary.<sup>145</sup>

If the AAO approves a request, it will notify the appellant of the time, date, place, and conditions of the oral argument.<sup>146</sup> If the AAO denies a request for oral argument, it will notify the appellant in the AAO’s written disposition of the appeal, motion, or certification.

#### **6.6 FOIA Requests for a Copy of the Record of Proceedings**

An appellant may obtain a copy of the record of proceedings through a Freedom of Information Act (FOIA) request. For information on how to make a FOIA request, please visit the [USCIS FOIA web page](#).

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<sup>144</sup> 8 C.F.R. § 103.3(b)(2).

<sup>145</sup> 8 C.F.R. § 103.3(b)(1).

<sup>146</sup> 8 C.F.R. § 103.3(b)(2).

The AAO generally will not take action on a case while a FOIA request is pending. However, filing a FOIA request does not extend timeframes, such as deadlines for filing appeals or motions, responding to requests for additional evidence or notices of intent to dismiss, or submitting briefs or supplemental evidence.

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## 7. Resources

### 7.1 USCIS Website

For more information about U.S. Citizenship and Immigration Services (USCIS), please visit [www.uscis.gov](http://www.uscis.gov).

#### (a) Laws

The USCIS website contains a [Laws](#) web page which provides information on the statutes, regulations, and interpretations controlling immigration and the work of the immigration-related components of the Department of Homeland Security and other federal agencies.

The [Laws](#) web page includes links to several legal, policy, and procedural resources, including:

- The Immigration and Nationality Act (the Act);<sup>147</sup>
- USCIS regulations published in Title 8 of the Code of Federal Regulations (8 C.F.R.);
- Regulations of other agencies that play a role in enforcing immigration law, including the Department of Labor (20 C.F.R.) and the Department of State (22 C.F.R.);
- USCIS Federal Register publications, including notices, proposed, interim and final rules;
- Administrative Appeals Office (AAO) precedent and non-precedent decisions;
- The USCIS Adjudicator’s Field Manual (AFM);
- The USCIS Policy Manual; and
- USCIS Policy Memoranda.

#### (b) Forms

USCIS forms and instructions are available to read, print, and download at [www.uscis.gov/forms](http://www.uscis.gov/forms).

### 7.2 Federal Court Decisions

For information on the federal court system and where to find federal court decisions, see the [Law Library of Congress](#) web page.

For information on the role of federal court decisions on the adjudication of immigration applications and petitions, see Chapter 14.5 of the AFM. A public version of the AFM is available at [www.uscis.gov/laws/afm](http://www.uscis.gov/laws/afm).

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<sup>147</sup> The Act is also contained in Title 8 of the United States Code (8 U.S.C.), titled “Aliens and Nationality.” Although it is correct to refer to a specific section by either its citation to the Act or its U.S.C. citation, the citation to the Act is more commonly used.

### 7.3 Guidelines for Briefs, Citations, and Evidence

#### (a) Briefs

The AAO does not have specific procedural rules for the format of supporting briefs. Briefs should clearly and concisely explain any legal arguments, relevant facts, and procedural history, and cite to the proper legal authorities fully, fairly, and accurately.

The AAO encourages limiting briefs to no more than 25 pages.

#### (b) Citations

The AAO encourages, but does not require, appellants to follow the guidelines of *The Bluebook* legal citation style guide.<sup>148</sup>

#### (c) Evidence

The AAO recommends the following when submitting evidence in support of an appeal, motion, or certification:

- Include an index for the submitted evidence with a short explanation of the relevance of each document;
- Number each page;
- Insert file tabs and/or colored paper between exhibits; and
- Do not resubmit evidence that is already in the record of proceedings. The AAO reviews all previously submitted evidence in the relevant record. Resubmitting the same evidence may slow down appellate review. Instead, the brief should reference the existing evidence.

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<sup>148</sup> *The Bluebook: A Uniform System of Citation* is compiled by the editors of the *Columbia Law Review*, the *Harvard Law Review*, the *University of Pennsylvania Law Review*, and *The Yale Law Journal*, and is published and distributed by the *Harvard Law Review Association*. See [www.legalbluebook.com](http://www.legalbluebook.com) for more information about *The Bluebook*.

## TABLE OF CHANGES

This Practice Manual will be updated periodically. The tables below detail the changes made to this Practice Manual since its initial publication on January 14, 2015.

The tables are arranged in reverse chronological order, with the most recent table at the top. The tables identify the section that was amended and describe the nature of the change. Sections identified in older tables may not be accurate because of subsequent amendments.

### May 5, 2016

SECTION	DESCRIPTION OF CHANGE
N/A	Made minor technical edits to each chapter.
1.5	Added information about adopted AAO decisions.
3.4	Clarified the explanation of the AAO's <i>de novo</i> standard of review.
3.7(c)(1)	Clarified the explanation of the date of service for notices and decisions served by mail.
3.8(b)	Added information about the AAO's acceptance of new evidence submitted on appeal.
3.9	Added a reference to USCIS Policy Memorandum PM-602-0124, <a href="#">Initial Field Review of Appeals to the Administrative Appeals Office</a> (Nov. 4, 2015).
3.13(b)	Added information about the special expedited case review process for certain types of administrative errors.
3.15(b)	Added Chapter 3.15(b) to include additional information about adopted AAO decisions.
3.15(d)	Added information about the AAO citation string for non-precedent decisions and identifying adopted decisions.
4.1	Updated information about the adjudication of motions to reopen and motions to reconsider.
7.3(c)	Added Chapter 7.3(c) to provide guidance on submitting evidence to the AAO.