



## U.S. Citizenship and Immigration Services

# Questions and Answers: Appeals and Motions

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

A. Yes, you may be eligible to file an appeal or a motion on an unfavorable decision.

An appeal is a request to a different authority to review an unfavorable decision. You may appeal certain USCIS decisions to the USCIS Administrative Appeals Office (AAO) or the Board of Immigration Appeals (BIA), an office within the Department of Justice. The BIA and the AAO are administrative appellate entities that have jurisdiction over different types of immigration cases. Your denial or revocation notice will provide information about whether the decision may be appealed and where to file your appeal.

A motion is a request to the USCIS office that issued the unfavorable decision to review its decision. With certain exceptions, you may file a motion to reopen or a motion to reconsider if you received an unfavorable decision in your case. You may file a motion even if your case is not eligible for an appeal.

### Q. I am the beneficiary of a visa petition that was denied or revoked. Can I file an appeal or motion?

A. Generally, only the petitioner may file an appeal or motion of a denied or revoked visa petition. If you are the beneficiary, generally you cannot file an appeal or motion unless you are both the petitioner and the beneficiary (for example, you are a VAWA self-petitioner, the widow(er) of a U.S. citizen, or otherwise authorized to file a visa petition for yourself).

However, if you are the beneficiary of a [Form I-140, Immigrant Petition for Alien Worker](#), you may be able to file an appeal or motion in a **revocation proceeding** only. In order to be able to file an appeal or motion, you must meet the following requirements:

- You had an approved Form I-140 that USCIS later revoked;
- You filed a Form I-485 based on a valid Form I-140, and the Form I-485 has been pending for 180 days or more;
- You submitted a Form I-485 Supplement J after January 17, 2017, to request job portability, or you submitted a portability request before January 17, 2017, via a written letter or other acceptable form of communication; and
- USCIS has approved your portability request.

NOTE: If you are the beneficiary of a petition, currently have an approved Form I-140 for which USCIS has issued a Notice of Intent to Revoke, and meet the last three criteria listed above, you may provide evidence in response to that Notice of Intent to Revoke.

## Appeals

### Q. What is an appeal?

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

### Q. What happens when I file an appeal to the AAO?

A. When you appeal a decision to the AAO, the USCIS office that made the original decision will first review the appeal to determine whether to take favorable action and grant the requested immigration benefit. During this “initial field review,” the reviewing office will either treat the timely appeal as a

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motion to reopen or a motion to reconsider and approve the application or petition; or forward the appeal and the related record of proceedings to the AAO to issue a new decision.

Note: Filing an appeal does not delay any decision in your case from going into the effect or extend a previously set departure date.

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

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

**Q. How do I file an appeal?**

- A. Most appeals are filed using [Form I-290B, Notice of Appeal or Motion](#) but there are some exceptions:
- Appeals of decisions on an N-400, Application for Naturalization, are made on [Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings](#) Under Section 336.
  - Appeals of decisions of special immigrant worker and legalization applications and termination of lawful temporary resident status under sections 210 and 245A of the Immigration and Nationality Act are made on [Form I-694, Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act](#).
  - Appeals of decisions on an I-130, Petition for Alien Relative, or other decisions that are appealed to the BIA, are filed on [Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer](#) with the office that made the decision on the petition.

When you are notified of an unfavorable decision that may be appealed, you will also receive information about which form you should use to appeal the decision.

**Q. How much time do I have to file an appeal?**

A. Generally, you must file an appeal within 30 days from the date of the decision (not the date you received the decision). A shorter appeal period may apply to some cases such as the revocation of the approval of a petition, which has a 15-day deadline. Your decision will tell you how long you have to file the appeal. There is no extension to this deadline. However, an extra 3 days is provided when your decision is mailed to you (33 days in the case of denial and 18 days in the case of revocation).

**Q. Where do I file an appeal?**

A. Your denial or revocation notice will include information about which form to use to file your appeal. Information about where to file your appeal can be found on the [Direct Filing Addresses for Form I-290B, Notice of Appeal or Motion](#) page. If you mail your appeal, make sure you allow enough time for the document to reach the office by the deadline. Do not send forms or fees directly to the AAO.

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

A. You are not required to submit a brief with an appeal, but you may submit one if you choose. You must, however, specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. If you do not provide a sufficient explanation of why you think the earlier decision was in error, your appeal may be dismissed.

You do not need to file the brief and/or supporting evidence together with the appeal. You may provide that documentation either with the appeal or submit it directly to the AAO within 30 days after you filed the appeal.

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

A. The AAO strives to complete its appellate review within 180 days from the time it receives a complete case file after the initial field review. Some cases may take longer than 180 days due to factors beyond the AAO's control. For example, additional documentation may be needed to complete the file or the case may be more complex and require additional review.

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

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A. Yes. DHS regulations, at 8 CFR 103.7(c), specify some cases in which USCIS can waive a filing fee based on inability to pay. If USCIS can waive the filing fee for the underlying petition or application itself, or if it had no fee, USCIS can also waive the filing fee for the motion.

## **Motions to Reopen or Reconsider**

### **Q. What is a motion to reopen?**

A. A motion to reopen is a request to the office that issued the unfavorable decision to review its decision *based on new facts*. The motion must state new facts and be supported by affidavits or other documentary evidence demonstrating your eligibility at the time you filed the underlying application or petition.

“New facts” means facts that have not been previously submitted in the proceeding. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute “new facts.” Also, the new facts must be relevant to the issues raised on motion.

If the underlying application or petition was denied due to abandonment (for example, failure to respond on time to a request for evidence or a notice of intent to deny), you may file a motion to reopen if you can show that:

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

### **Q. What is a motion to reconsider?**

A. A motion to reconsider is a request to the office that issued the unfavorable decision to review its decision *based on an incorrect application of law or policy*. The motion must establish that the decision was incorrect based on the evidence of record at the time of that decision. The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions when filed and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of decision. See 8 CFR 103.5(a)(3). Unlike a motion to reopen, we do not consider new facts or evidence in a motion to reconsider.

### **Q. How do I file a motion?**

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

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

If you are filing a motion about an asylum decision, you do not need to file a Form I-290B (or any other DHS form). A filing fee is also not required for a motion on an asylum decision. You must submit any motion within 30 days of the decision and indicate if the motion seeks to reopen and/or reconsider. However, an extra 3 days is provided when your decision is mailed to you (for a total of 33 days). If you do not file a motion *to reopen* before this response period expires, the asylum office director can decide to still accept your motion if you demonstrate that the delay was reasonable and beyond your control. Either the principal applicant or a dependent may file a motion to reopen or reconsider.

### **Q. When do I file a motion?**

A. Generally, you must file motions within 30 days from the date of the decision (not the date you received the decision). However, an extra 3 days is provided when your decision is mailed to you (for a total of 33 days to respond). The time for you to file your motion to reopen can only be extended at the discretion of USCIS if you demonstrate that the delay was reasonable and beyond your control.

**Q. Where do I file a motion?**

A. Your denial or revocation notice will include information about which form to use to file your motion. Information about where to file your motion is available on the [Direct Filing Addresses for Form I-290B, Notice of Appeal or Motion](#) page. If you mail your motion, make sure you allow enough time for the document to reach the office by the deadline. Do not send forms or fees directly to the AAO.

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

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

Note: While you may submit a brief and/or supporting evidence within 30 days after filing an appeal, this does not apply to motions. You **must** submit any brief or additional evidence together with your motion. See 8 CFR 103.5(a)(2).

**Q. What happens when I file a motion?**

A. You will receive a decision on any properly filed motion. Filing a motion, however, does not delay any decision in your case from going into effect or extend a previously set departure date.

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

A. Although some cases may take longer, USCIS field offices and service centers try to adjudicate motions within 90 days. The AAO strives to complete its review of motions within 180 days from the time it receives a complete case file. If you do not receive a decision on your motion within that time, you may contact the [USCIS Contact Center](#) at 800-375-5283 and ask for a “service request.”

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

A. Yes. DHS regulations, at 8 CFR 103.7(c), specify some cases in which USCIS can waive a filing fee based on inability to pay. If USCIS can waive the filing fee for the underlying petition or application itself, or if it had no fee, USCIS can also waive the filing fee for the motion.

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

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

If an asylum office denies or dismisses your motion arising from a case that received a final denial, you may submit a new [Form I-589, Application for Asylum and for Withholding of Removal](#). You will be subject to the same prohibitions on filing as any other newly filed asylum application. You should file the application directly with the asylum office having jurisdiction over your place of residence. USCIS service centers cannot accept new asylum applications on cases that have previously been denied. You should include a letter with your application stating that your previous application for asylum was denied.

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