

Code of Federal Regulations

Title 8. Aliens and Nationality

Chapter V. Executive Office for Immigration Review, Department of Justice (Refs & Annos)

Subchapter A. General Provisions (Refs & Annos)

Part 1003. Executive Office for Immigration Review (Refs & Annos)

Subpart C. Immigration Court—Rules of Procedure (Refs & Annos)

8 C.F.R. § 1003.38

§ 1003.38 Appeals.

Currentness

(a) Decisions of Immigration Judges may be appealed to the Board of Immigration Appeals as authorized by 8 CFR 3.1(b).¹

(b) The Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) shall be filed directly with the Board of Immigration Appeals within 30 calendar days after the stating of an Immigration Judge’s oral decision or the mailing of an Immigration Judge’s written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A Notice of Appeal (Form EOIR–26) may not be filed by any party who has waived appeal.

(c) The date of filing of the Notice of Appeal (Form EOIR–26) shall be the date the Notice is received by the Board.

(d) A Notice of Appeal (Form EOIR–26) must be accompanied by the appropriate fee or by an Appeal Fee Waiver Request (Form EOIR–26A). If the fee is not paid or the Appeal Fee Waiver Request (Form EOIR–26A) is not filed within the specified time period indicated in paragraph (b) of this section, the appeal will not be deemed properly filed and the decision of the Immigration Judge shall be final to the same extent as though no appeal had been taken.

(e) Within five working days of any change of address, an alien must provide written notice of the change of address on Form EOIR–33 to the Board. Where a party is represented, the representative should also provide to the Board written notice of any change in the representative’s business mailing address.

(f) Briefs may be filed by both parties pursuant to 8 CFR 3.3(c).²

(g) In any proceeding before the Board wherein the respondent/applicant is represented, the attorney or representative shall file a notice of appearance on the appropriate form. Withdrawal or substitution of an attorney or representative may be permitted by the Board during proceedings only upon written motion submitted without fee.

Credits

[57 FR 11571, April 6, 1992; 59 FR 1899, Jan. 13, 1994; 60 FR 34089, June 30, 1995; 61 FR 18908, April 29, 1996]

SOURCE: 52 FR 2936, 2941, Jan. 29, 1987; 52 FR 2936, Jan. 29, 1987; 57 FR 11570, April 6, 1992; 60 FR 29468, June 5, 1995; 61 FR 59305, Nov. 22, 1996; 63 FR 27448, May 19, 1998; 63 FR 31894, June 11, 1998; 64 FR 56141, Oct. 18, 1999; 66 FR 37123, July 17, 2001; 66 FR 54911, Oct. 31, 2001; 66 FR 56976, Nov. 14, 2001; 68 FR 9824, Feb. 28, 2003; 68 FR 9830, Feb. 28, 2003; 71 FR 57884, Oct. 2, 2006; 71 FR 70857, Dec. 7, 2006; 73 FR 33876, June 16, 2008, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub.L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub.L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub.L. 106–554, 114 Stat. 2763A–326 to –328.

Notes of Decisions (28)

Current through March 24, 2016; 81 FR 16051.

Footnotes

1

So in original; probably should read 1003.1(b). See 68 FR 9824.

2

So in original; probably should read 1003.3(c). See 68 FR 9824.

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