



Immigration Court and Appellate Processes



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Overview

In this session, we will review:

- Hearings before the Immigration Judge:
 - Master calendar hearings
 - Individual hearings
- The appellate process:
 - Why would a party appeal the case?
 - What types of cases are appealable to the Board of Immigration Appeals (BIA)?
- Motions



What Happens During a Master Calendar Hearing?

A short, preliminary hearing before the Immigration Judge to determine how the noncitizen's case will proceed. There may be more than one master calendar hearing scheduled in a case.

The Immigration Judge will:

- Identify the noncitizen's name, address, telephone number, and case number; the date and place of the proceeding; and the presence of the parties.
- Explain the noncitizen's rights in immigration proceedings.
- Address any issues pertaining to representation.
- Confirm that the Notice to Appear (Form I-862) was properly served.



What Happens During a Master Calendar Hearing? (Cont.)

- Provide the noncitizen the opportunity to admit/deny factual allegations and concede/contest the charges of removability.
- Determine if removability is established.
- Provide the noncitizen with the opportunity to claim defenses and/or seek relief, if removable.
- Set a date for the individual hearing.
- Resolve the case if possible.

For more information, please consult the EOIR Policy Manual, Part II, Chapter 4.15, located at <https://www.justice.gov/eoir/eoir-policy-manual/4/15>.



What Happens During an Individual Hearing?

A lengthier, substantive hearing at which the noncitizen argues why they are eligible to remain in the United States.

During this hearing, the Immigration Judge will:

- Consider the substance of applications for relief or protection from removal.
- Listen to arguments from the respondent (or respondent's counsel, if represented) and DHS counsel.
- Take testimony of witnesses and review documentary evidence.



What Happens During an Individual Hearing? (Cont.)

- Make a final decision on whether the noncitizen can remain in the United States or will be ordered removed (i.e., deported).
- Issue a final decision
 - Oral decision: An oral decision is usually issued at the conclusion of the hearing.
 - Written decision: The Judge may also reserve and later issue a written decision.

For more information, please consult the EOIR Policy Manual, Part II, Chapter 4.16, located at <https://www.justice.gov/eoir/eoir-policy-manual/4/16>.



The Appeal Process

- File a Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge
 - The Notice of Appeal must be RECEIVED by the BIA within 30 days of the issuance of the Immigration Judge's decision.
- Submit supporting documentation along with the Notice of Appeal.
 - The BIA generally reviews an appeal based on the record of proceedings before the Immigration Judge without additional oral arguments.
- The BIA only has the authority to review appeals from certain types of immigration decisions.
 - For more information, please consult the EOIR Policy Manual, Part III, Chapter 1.4, located at <https://www.justice.gov/eoir/eoir-policy-manual/iii/1/4>.

If the noncitizen **leaves the United States** prior to the BIA issuing a decision, the appeal will be **considered withdrawn**. 8 C.F.R. §§ 1003.3(e), 1003.4.



Motions

- Motion to Reopen
- Motion to *Sua Sponte* Reopen
- Motion to Reconsider

Motions are filed with the immigration court, *unless* an appeal has been filed with the BIA. For more information, please consult the EOIR Policy Manual, Part II, Chapter 5, located at <https://www.justice.gov/eoir/eoir-policy-manual/5>.



Jurisdiction of the Federal Circuit Courts

- Generally, federal circuit courts can review a final agency action.
- Examples of final agency actions:
 - A BIA decision denying an appeal.
 - A previously dismissed appeal on the merits but remanded to the Immigration Judge for administrative matters such as background check.
 - BIA reverses and remands an Immigration Judge's denial of motion to terminate removal proceedings, but no relief is sought.