

FILING BIA APPEALS:

A Guide for Pro Bono Attorneys

Immigration judges have the authority to adjudicate applications for asylum and related relief, which includes withholding of removal and relief under the Convention Against Torture (CAT).

When an immigration judge rules on an application for asylum, either or both parties – the asylum applicant or the trial attorney (TA) for the Department of Homeland Security (DHS) – may file an administrative appeal.

Administrative appeals are filed with the Board of Immigration Appeals (BIA), a 23-judge court located in Falls Church, Virginia, in the metropolitan Washington, DC area. Like the immigration courts, the BIA is a component of the Executive Office for Immigration Review (EOIR), which is a component of the Department of Justice (DOJ).

When an appeal is filed with the BIA, the court may dismiss the appeal, sustain the appeal, or remand proceedings to the immigration judge for further consideration. If the BIA's decision results in the denial of asylum, the asylum applicant has the option of seeking judicial review with a US Circuit Court of Appeals. If the BIA's decision results in the grant of asylum, the decision is final, and DHS may not seek judicial review of the asylum grant.

Reasons to Appeal

There are obvious reasons for filing an appeal: (i) to preserve your client's legal rights, and (ii) to reverse the denial of her application for asylum. There are also other benefits to filing an appeal.

First, in most instances, the filing of an appeal automatically stays the removal order, and the stay of removal remains in place for so long as the BIA appeal is pending. Historically, the BIA's appeals processing time has taken months and even years. Changes at the BIA in 2019 and 2020 make it increasingly difficult to forecast how long it will take for the BIA to decide your client's appeal. A quick decision and a long wait are now equally possible. Either way, your client cannot be removed from the United States while the appeal is pending.

Second, immigration law is constantly changing. During the pendency of the appeal, it is possible that your client's legal situation may improve. If you can appeal on a good faith argument, there is a

possibility that developments in asylum law, changes in your client's country conditions, changes in her personal circumstances, or some other development will arise during the course of the appeal and be useful to bolstering your client's asylum claim. Finally, filing an appeal is a strategy to counter extreme inconsistency in adjudications of asylum cases by different judges and different courts around the country. By filing an appeal, it ostensibly allows a neutral party to re-evaluate if an immigration judge correctly applied asylum law.

Reasons to Cross Appeal/Respond to a DHS Appeal

In immigration proceedings, both your client and the DHS can file an appeal of the immigration judge's decision. If DHS files an appeal, you should always respond to that appeal. Be sure to file an opposing brief and argue why the immigration judge's decision was correct or should stand. If there is an aspect of the immigration judge's decision that is detrimental to your client and your silence could be construed by the BIA as concession on that point, you may want to file a cross appeal to protect your client's rights. Be sure to consult your Tahirih mentor on any DHS appeal.

Appeal Resources

Your best resource will be your Tahirih mentor, but you also should be familiar with these resources:

- BIA Practice Manual – <https://www.justice.gov/eoir/board-immigration-appeals-2>
The BIA Practice Manual is a how-to on practicing before the BIA. It has chapters on appeals, briefs, motions, and various court rules and procedures. It also has several helpful appendices with mailing information, a phone directory, a table of filing deadlines, a sample cover page, a sample proof of service, and citation guidelines.
- Administrative precedent decisions – <https://www.justice.gov/eoir/ag-bia-decisions>
The BIA and the Attorney General publish precedents that are binding law on immigration judges and DHS. Those decisions are listed on this website. Additionally, Westlaw and LexisNexis have BIA precedent decision databases that are more easily searchable than the Justice Department's online library.
- EOIR Virtual Law Library (VLL) – <https://www.justice.gov/eoir/virtual-law-library>
The VLL is a compilation of country condition and other information that can be useful in the filing of asylum applications. Sometimes, newly available country condition information will be posted here.
- EOIR forms – <https://www.justice.gov/eoir/list-downloadable-eoir-forms>
Many EOIR forms are downloadable and fillable, including those for appeal, an entry of appearance, and changes of address. Because the BIA color codes its forms, the BIA Practice Manual lists the preferred colors at Chapter 12 (“Form colors”). E-27 Notices of Appearance may be filed by online e-registry. However, note that Notices of Appeals, briefs, and other filings may not be filed by e-registry.

- EOIR hotline
The BIA provides automated case information at (800) 898-7180. You can also call the Clerk's Office main line at (703) 605-1007 and speak to a live person, but the information that the phone clerk is authorized to give is limited. As an attorney that has registered with EOIR, you should also review the online case status system for updates, available at <https://portal.eoir.justice.gov/>.

Before You File

In order to practice before the BIA, all attorneys and fully accredited representatives must register with EOIR's eRegistry system. An attorney who fails to provide required registration information risks being administratively suspended from practice before EOIR.

If you have never registered with eRegistry, you must register before your first appearance before EOIR, whether on appeal or at the immigration trial court level. You will receive an EOIR number similar to a bar number. Include that number on all filings to the BIA. If you do not eRegister in advance of your first appearance, the BIA will not recognize you as your client's counsel, and anything you file can be rejected.

You only have to eRegister once. For instructions, see <https://www.justice.gov/eoir/ECAS>, and scroll down to eRegistry section. Remember that, once you eRegister, you are required to keep your information current in the eRegistry system.

When To File

Appeals to the BIA must be filed within 30 calendar days of the immigration judge's decision.

If the judge renders an oral decision, the judge will issue a dated minute order, and the appeal clock starts on the date listed.

If the judge issues a written decision, either the decision, an accompanying minute order, or a transmittal letter will bear the decision date. The order should be mailed the same day, and that mailing date starts the appeal clock.

PRACTICE TIP: If you receive a mailed decision, be sure to save the mailing envelope in case there is a dispute over what it is the proper appeal deadline.

When counting days toward an appeal deadline, the day that the decision is rendered -- either orally in court or by mailed written decision -- counts as "day 0." The day after counts as "day 1." The appeal deadline is based on calendar days, and Saturdays, Sundays, and legal holidays are therefore counted. If the appeal deadline falls on a weekend or a legal holiday, the deadline then falls on the next business day.

Always keep in mind that the BIA follows a receipt rule, not a mailbox rule. In other words, your client's appeal has to arrive at the BIA before 4:30 p.m. EST (when the BIA filing window closes) on day 30. Be aware that, to determine timeliness, the BIA will look to its Clerk's Office date stamp, not

a post office cancellation stamp or the courier delivery slip. Nonetheless, be sure to save USPS or other delivery service proof of delivery in case there is any dispute over timeliness.

Because the BIA follows the receipt rule, you do not really have 30 days to file an appeal. The BIA does not accept electronic filings of appeals, so you must file the appeal on paper -- which means you have 30 days to prepare the appeal minus the time it takes to deliver it to Falls Church, Virginia. The BIA is exceedingly strict about the filing deadline, so do not cut it close.

PRACTICE TIP: Tahirih strongly recommends filing in-person directly or via courier, and scheduling the courier filing for at least one business day prior to the deadline. If it is not possible to use a courier or to expedite shipping service with tracking, be sure to allow 1-2 extra business days in case of delays.

For BIA contact information (including the mailing address, Clerk's Office window hours, and the Clerk's Office phone number), consult the BIA Practice Manual, Appendix A.

What To File

The mechanics of how to file submissions with the BIA are covered in the BIA Practice Manual, Chapter 3. You should review that chapter, but among the most important items:

- You need to file only *one* copy of your appeal packet.
- All documents should be single-sided and two-hole punched on top. Staples are permitted, but not clips, ACCO-fasteners, or other bindings.
- The BIA prefers the originals of signed forms. However, photocopies are accepted so long as the original form bears an original signature and is available to the BIA upon request. Further, digital and electronic signatures are also accepted, regardless of whether the document is filed by mail, in person, or electronically.
- While the Practice Manual does not reference cover letters, it is wise to use one. You should include a cover letter that clearly enumerates everything in your appeal packet.

Per Chapter 3 of the BIA Practice Manual, the documents in the appeal packet should be assembled in this order (after the cover letter):

1. Notice of Appeal (Form EOIR-26)

Appeals are filed on Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge. The BIA prefers that it be printed on blue paper. On the form, note the following:

- *Reasons for appeal box.* In box 6, insert "Please see attached Addendum to Form EOIR-26."
- *Oral argument box.* The BIA rarely holds oral argument and does so only at its own discretion. However, if you would like the chance to argue your case in person, you can mark the "yes" box at question 7. (Oral argument is covered in Chapter 8 of the Practice Manual.)
- *Brief box.* Question 8 on the form asks whether you intend to file a separate written brief after filing the Notice of Appeal. If you check yes, you will receive a briefing schedule and hearing transcript.

Important: If you do check “yes” and then fail to file a timely brief, the appeal can be summarily dismissed.

- *Certificate of service.* Be sure to complete this section, or the appeal will be rejected.

2. Addendum to the Notice of Appeal

The Form EOIR-26 must be accompanied by an addendum that fleshes out the basis of the appeal in a page or two. Staple the addendum to the form. Be sure to list your client’s name and “A number” on the top (and likewise for any family members included in the appeal).

The addendum serves to:

- *Avoid summary dismissal.* Under 8 C.F.R. § 3.1(d)(2), the BIA can summarily dismiss an appeal under specific circumstances. The most common reasons for summary dismissal include: (i) the appeal is not timely, (ii) the respondent requested briefing but never filed a brief, and (iii) the Notice of Appeal did not adequately state the grounds for appeal (e.g., it was blank or contained only boilerplate). Other grounds for summary dismissal are listed in the regulations.
- Be aware that, due to docket pressures and managerial directions from above, the BIA is increasingly resorting to summary dismissal, and the addendum needs to preempt that possibility. Pursuant to an EOIR Director memorandum issued in the fall of 2019, the BIA has “streamlined” its processing of cases in ways that do not favor respondents and encourage summary dismissal whenever possible.
- *Articulate the grounds for appeal.* The addendum should succinctly but substantively specify any relevant errors of fact, errors of law, or abuse of discretion made by the immigration judge. The fuller articulation of error and argument will be made in your separate written brief, but the addendum should convey enough information that the BIA cannot construe your appeal as lacking either substance or merit.
- Also, it is generally a good idea to cite significant law that you will rely on in your brief – especially if it applies specifically to your case. Be careful, however, to cite *immigration* law and not just invoke due process generally. If your addendum reads like due process boilerplate, it invites summary dismissal.
- *Request 3-Board Member review.* Per regulations, the BIA has the authority to “streamline” what it deems to be facially unpersuasive appeals and issue an “Affirmance Without Opinion” (AWO). In an AWO, a single Board Member affirms the immigration judge decision in a one-page boilerplate order without any discussion of the case. To avoid an AWO, your addendum should request “3-Board Member review,” arguing with some specificity why the immigration judge’s decision is wrong and, where appropriate, invoking any of the other grounds for 3-Board Member review articulated in the regulations. See 8 C.F.R. § 1003.1(e)(4)(I).
- *Expressly reserve the opportunity to raise additional arguments in your brief.* Be sure to include the language to preserve the ability to include in your brief any additional arguments you develop after the Notice is filed, such as:

“Counsel hereby reserves the right to amend these reasons and assert additional or distinct reasons upon filing of the appellate brief, after a complete and careful consideration of all the records, including the transcription of proceedings, a review of the record evidence, and the written decision of the Immigration Judge.”

3. Fee or fee waiver request (Form EOIR-26A)

If the appeal fee is being paid, the payment should be made in the form of a check or money order, and it must be stapled on top of the Form EOIR-26.

If a fee waiver request is being filed, then Form EOIR-26A (printed on tan paper, if possible) should follow the Form EOIR-26 in the packet.

PRACTICE TIP: Tahirih strongly encourages pro bono attorneys to cover the cost of the filing fee. First, given the economic downturn and most clients' economic instability, the filing fee may be an obstacle for your client. Second, it is very risky to file a fee waiver request. EOIR policy is that fee waivers are "generally disfavored," and with increasing frequency, fee waiver requests are denied. Such denials are usually without explanation. As a practical matter, as of July 2020, Tahirih has not observed fee waivers being granted in non-detained cases, while they are routinely granted in detained cases. Also, filing a fee waiver request does not toll the appeal filing deadline. Combined with the certainty that you will not receive a decision on the fee waiver before the appeal deadline, an unsuccessful request puts the entire appeal in jeopardy.

- ***If you have to file a fee waiver request, be sure to identify yourself as a pro bono attorney. Many Board Members assume that if a respondent can afford an attorney then they can afford the fee, regardless of what financial information appears on the form. Also, be sure to provide adequate financial information on the form, or the request will be denied.***
- ***The current filing fee for an appeal is \$110, but an increase in that fee was proposed in March 2020. Be sure to double check if the amount has changed before filing the appeal.***

4. Notice of Entry of Appearance (Form EOIR-27)

It does not matter whether or not you represented your client before the immigration judge. You must always file an entry of appearance before the BIA along with the Notice of Appeal. The Form EOIR-27 (printed on yellow paper, if possible) is specific to the BIA. Do *not* use the Form-28, which is specific to the immigration courts. While it is possible to file the EOIR-27 electronically, it remains more practical (and invites less clerical error) to file a paper copy since the Notice of Appeal is also on paper.

5. Proof of voluntary departure bond payment (if applicable)

If your client was granted voluntary departure by the immigration judge, you must include proof that your client paid the voluntary departure bond. Otherwise, the BIA will assume the bond was not paid, will construe your client as having forfeited her interest in voluntary departure, and will not reinstate it at the close of the appeal. In other words, if your client is denied asylum and voluntary departure is not reinstated, she becomes immediately removable.

6. Anything else

If the appeal packet will have supporting documents or anything not already listed here, place those documents at the bottom of the packet.

Filing the appeal packet. Tahirih strongly recommends that the appeal packet be filed with the BIA by overnight delivery, a courier service, or some other in-person delivery. This is to protect your client from inadvertence. If the appeal is filed by mail and the filing is misrouted by the postal service, or if the appeal is rejected by the BIA for some reason, you are unlikely to learn about it before the

appeal deadline has passed. If you have concerns or questions about in-person filing or filing services, please contact your Tahirih mentor attorney.

Delivery confirmation. The BIA will send you a filing receipt to confirm that your appeal was received and will be processed. Because BIA staffing has been uncertain since the start of the COVID-19 pandemic, receipts are not always mailed promptly. Once there has been enough time for the appeal to reach the BIA, you should call the EOIR hotline daily to see if has been received. You may also wish to call the BIA clerk, who may have information that does not yet appear in the automated or online systems.

What To Include in the Brief

If your appeal is not summarily dismissed, the BIA will send you a briefing schedule and transcript of the proceedings before the immigration judge. Unfortunately, it is impossible to predict when you will receive the briefing schedule. Before the BIA can set a schedule, it has to retrieve the record of proceedings from the court below, and how long that retrieval will take depends on which immigration court has the official record, whether that court is open, and if open, to what extend it is staffed. If you have concerns about when you will receive a briefing schedule, consult your Tahirih mentor for advice.

Once you get the briefing schedule, you will likely be given 21 days to file your brief. Historically, the BIA has been generous in granting briefing extensions, but reportedly, briefing extensions have fallen in disfavor with current agency management and may not be granted so readily for much longer. Therefore, you should begin working on your brief soon after filing the Notice of Appeal to avoid the need for an extension. If you cannot avoid needing an extension, be sure your request reaches the BIA *before* the briefing deadline.

Before drafting your brief, you should review Chapter 4.6 of the BIA Practice Manual. It contains general recommendations and specific rules about brief writing. Your Tahirih mentor can also provide you with sample appellate briefs upon request.

Here is the general formula for a BIA brief:

1. Cover page

A cover page is required. A sample cover page can be found at Appendix F of the BIA Practice Manual.

2. Table of contents / structure

When possible, it is best to “roadmap” your brief for the BIA, using a brief table of contents and outline-like organization. This approach better focuses Board Members and BIA legal staff on the points you want them to see. Your table of contents may be deemed as part of the 25 page limit, so keep the table brief and on point.

3. Pagination / page limits

You *must* paginate the brief. The BIA has a strict 25-page limit, and any brief longer than 25 pages should be accompanied by a motion articulating why the BIA should accept a longer brief. In most instances, staying within the 25-page limit is the wiser approach. If you file an overlong brief with a motion, you risk having *no* brief on record. If your motion is denied, you will not have enough time to

revise and refile your brief before the deadline, and it is unlikely the BIA will favorably entertain a motion for a late-filed brief.

4. Contents

Every BIA brief should include the following sections:

- A short statement of the facts with citations to the transcript. Consult the BIA Practice Manual for instructions on what you include as facts. Due to the strict page limits on briefs, consider limiting your recitation of facts to those details that are truly pertinent to your argument. While concise, the statement of facts should be persuasive and written in a story-telling style to immediately draw BIA reviewers into the most compelling aspects of your client's case. To save space, you can also incorporate by reference or otherwise cite the immigration judge's recitation of facts, insofar as you agree with it.
- A short statement of the procedural history of the case. If the procedural history is complex and the immigration judge correctly summarized it in her or his decision, consider referencing the recitation to save space in your brief.
- A statement of the issue(s) the BIA should review.
- The standard for review for each issue. By regulation, the BIA reviews findings of fact under a "clear error" standard (i.e., the BIA will not overturn an immigration judge's factual findings, including credibility findings, unless the findings are clearly wrong). The BIA reviews legal conclusions under a *de novo* standard. The BIA reviews the exercise of discretion under a *de novo* standard. Be aware there is no "abuse of discretion" standard in immigration proceedings.
- A brief summary of the argument(s). Keep the summary brief if it will negatively impact on the brief's page limit.
- The legal argument(s). You need not go through a generic or talismanic recitation of legal authorities and sources of law. Limit your legal argument to the points and citations that you will expressly or specifically rely upon.

Many immigration judges now add an addendum of law to their decisions. To save space in your brief, consider cross referencing the pertinent parts of that addendum, especially if you want it highlighted in anticipation of filing a future petition for review with a US Circuit Court.

- A concise conclusion. Explicitly state what you request of the BIA (reversal of the immigration judge's decision, remand for further fact-finding, etc.). Precision is important because it better focuses the BIA on the outcome you seek.

5. Transcript citations

When citing to testimony, be sure to identify the transcript pages (or audio time stamps, if you rely on the recording in the absence of a transcript). If you wish to listen to the digital audio recording of the proceeding, you will have to make a special arrangement to do so either with the BIA or your local immigration court. Plan to do that early, as it can take a significant amount of time to obtain an appointment or receive an audio recording, particularly during the COVID-19 pandemic. If this situation arises, contact your Tahirih mentor for guidance.

6. Proof of service

Be sure to include with your brief a proof of service, and be sure to serve a copy on the DHS. A sample proof of service appears in the BIA Practice Manual, Appendix G.

Filing the appeal brief. Tahirih strongly recommends that the appeal packet be filed with the BIA by overnight delivery, a courier service, or some other in-person delivery. The BIA is stingy about timeliness, and the right form of delivery protects your client from the adverse impact of a late-filed brief. If the appeal is filed by mail and the filing is misrouted by the postal service -- or the appeal is rejected by the BIA for some reason -- you are unlikely to learn about it before the appeal filing deadline has passed. If you have concerns or questions about in-person filing or filing services, please contact your Tahirih mentor.

Delivery confirmation. Unlike the appeal filing, the BIA will *not* send you a receipt for your brief. However, you can still confirm it was received by checking the status of the case via telephone hotline or online attorney registry.

While You Wait

Checking the status of the appeal

Once everything is filed and confirmed, it is advisable to **monitor the status of your client's appeal** by frequently checking the EOIR Hotline. Given the lack of predictability in timelines, Tahirih recommends checking the EOIR Hotline every two weeks. If the BIA issues an adverse decision, you need to know that as soon as possible and definitely *before* the order comes in the mail.

Change of address

If you or your client changes address at any time during the pendency of the appeal, you need to update EOIR's records. If your office moves or your contact information changes, you should update your eRegistry record promptly. If your client moves, you are required to file a form EOIR-33/BIA Change of Address (on pink paper, if possible) with the BIA within 5 days of the change of address. Be careful not to use the form EOIR-33/IC, which is used for changes of address with an immigration court.

Work authorization

If your client's work authorization will expire during the appeal process, you should follow the instructions on the Form I-765 to file the renewal application -- along with all of the necessary documentation, the appropriate fees, and addressed to the appropriate DHS Service Center as listed on www.uscis.gov. As with all employment authorization renewals, Tahirih recommends that you submit the application at least 90 days in advance of the expiration of your client's current employment authorization to ensure that there are no lapses in authorization to work. If your client has not previously filed for a work permit while the asylum application was pending, please consult your Tahirih mentor.

Order of supervision compliance

Clients who were previously detained may, at the discretion of the DHS Detention and Removal Office (DRO), be placed on an Order of Supervision. Each Order of Supervision will contain a list of obligations that the client must comply with in order to avoid being detained during the appeals process. Some common obligations include: (i) reporting to the DRO on a monthly basis to be inspected by a removal

officer, (ii) obtaining prior approval from the DRO for any extended travel outside the DC metro area, and (iii) refraining from criminal acts or associating with gang members.

Client guidance regarding departures

Tahirih *strongly* recommends that clients not travel outside the United States after the issuance of any immigration decision that they intend to appeal and during the pendency of any appeal. Departure from the United States can jeopardize your client's right to appeal, *even* when the departure is authorized or even compelled by DHS. Departure from the United States prior to filing an appeal or while an appeal is pending may be construed as a withdrawal of that appeal.

Withdrawal of appeal

It is unlikely but there are occasions when your client may no longer wish to pursue an appeal. You may, at any time prior to the BIA entering a decision, voluntarily withdraw your client's appeal. You do not need the consent of opposing counsel at DHS. The withdrawal of appeal must be in writing and filed with the BIA. The cover page to the withdrawal should be clearly labeled "MOTION TO WITHDRAW APPEAL" and comply with the BIA's general requirements for filing found in the BIA Practice Manual, Chapter 4.11. If the BIA does not receive the withdrawal BIA prior to rendering a decision, the BIA will not recognize the withdrawal, and the BIA's decision will become binding. Be mindful that once an appeal is withdrawn, the decision of the immigration judge immediately becomes final, including any order of removal. (Note: If the immigration judge granted your client voluntary departure, the withdrawal of appeal will likely mean that voluntary departure has expired and is lost, rendering her immediately removable.)

BIA Decision: Asylum Granted

If your client prevails and has an asylum grant at the end of the appeal process, congratulations.

With the heavy lifting over, don't forget the critical housekeeping that remains, e.g., advising your client on her asylee rights and responsibilities and obtaining her updated Form I-94 (to reflect her grant of asylum). Be sure to consult your Tahirih mentor on the housekeeping steps and sample advisory language.

Also, while you have won the case before the BIA, there is a caveat. While it is true that DHS cannot appeal the grant of asylum to a US Circuit Court of Appeals, DHS is not without options. DHS may still file a motion to reconsider with the BIA, a motion to reopen with the BIA, or even seek judicial review of your client's case on grounds separate from the asylum grant. Should that happen, or if you are uncertain of the finality of your client's case, please consult your Tahirih mentor.

As general information, you should be aware that, when your client is awarded asylum at the end of the appeal process, they can seek to adjust status – i.e., **get a "green card"** – after one year of presence in the U.S. with asylee status. Here, too, please reach out to your Tahirih mentor for the proper advisory language for your client.

BIA Decision: Asylum Denied

If your client does not prevail before the BIA, notify your Tahirih mentor immediately. The clock starts ticking the moment the BIA issues its decision, *even if* you have not received it. In the current environment, you should anticipate DHS attempting to apprehend and remove your client from the United States before you can take another legal step.

When you contact your Tahirih mentor, please be prepared to say whether you will continue to represent your client. Continuity is generally in the client's best interests, and we hope you will continue to volunteer on her behalf. If you can stay with the case, your Tahirih mentor will help you strategize on how best to proceed and will help ascertain whether the expertise or strategic impact of the case calls for representation by additional or new counsel. Of course, Tahirih understands that you may not be able to continue representing your client. If that is the case, it is imperative you inform your Tahirih mentor as soon as possible, so that Tahirih can find new counsel for your client before DHS acts on the BIA's removal order.

If you remain on the case, there are usually three different strategies you can take when your client loses on appeal. In chronological order, they are:

Motion to reconsider (30 days)

If you can identify legal or factual error(s) in the BIA decision or there is an emergent legal development subsequent to the decision, you have 30 calendar days from the date of the BIA decision to file a motion to reconsider with the BIA. The motion will need to spell out the BIA's error(s) or intervening law, and it will have to articulate how that error or subsequent change in law impacts on the outcome of your client's case.

Petition for review (30 days)

If you want to seek judicial review of the BIA decision, you have 30 calendar days from the date of the BIA decision to file an appeal with the US Circuit Court of Appeals having jurisdiction over your client's case. That will usually (but not always) be the Circuit where the last immigration judge's decision was rendered. Because the filing of a petition for review does not result in an automatic stay of removal, you will typically want to file a motion for a stay of removal as soon as the case is docketed in the court of appeals.

Motion to reopen (90 days)

If, subsequent to the BIA decision, there are changes in your client's personal circumstances and/or her country conditions, you have 90 calendar days from the date of the BIA decision to file a motion to reopen. You will have to argue how those changes affect the outcome of the case. (There are narrow exceptions to the 90-day deadline which can allow for later filings, but clients generally do not qualify for them. Be sure to consult your Tahirih mentor if you are considering a motion filed after the 90-day deadline.) Note that, if you have filed a petition for review and the BIA then reopens your client's case, the court of appeals will lose jurisdiction.

Depending on the particulars of your client's case, your Tahirih mentor will review the pros and cons of each strategy with you.

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