



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

October 8, 2019

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Chief, Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

Submitted via www.regulations.gov
Docket ID No. USCIS-2008-0027

Re: OMB Control Number 1615-0095

USCIS 60-Day Notice of Comment Period: Revision of a Currently Approved Collection
Form I-290B, Notice of Appeal or Motion

Dear Ms. Deshommes:

The American Immigration Lawyers Association (AILA) respectfully submits the following comments in response to the above-referenced 60-day notice and request for comments on proposed revisions to Form I-290B, Notice of Appeal or Motion and its instructions published in the Federal Register on Friday, August 9, 2019.¹

AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on the proposed revisions to Form I-290B and its instructions, and believe that our members' collective expertise and experience make us particularly well-qualified to offer views that will benefit the public and the government.

As an initial matter, AILA applauds USCIS for its ongoing efforts to further clarify the Form I-290B and its instructions. We also appreciate the simplifications made to the Form I-290B instructions and offer recommendations in this comment for further clarifications. AILA also raises concerns in this comment regarding the agency's treatment of requests to appeal Adam Walsh Child Protection and Safety Act (AWA) "no risk" determinations to the Administrative Appeals Office (AAO).

¹ 84 Fed. Reg. 39359 (Aug. 9, 2019).

Comments on USCIS's Attempt to Eliminate AWA Risk Determination Appeals to the AAO

Overview of AAO's Appellate Jurisdiction Over AWA Risk Determinations

The AAO has appellate jurisdiction over AWA risk determinations. *See* USCIS Policy Memorandum PM-602-0124, Initial Field Review of Appeals to the Administrative Appeals Office (Nov. 4, 2015) (acknowledging that “DHS maintains sole jurisdiction over Adam Walsh Act risk determinations in family-based immigrant visa proceedings. As such, certification of an initial decision containing a risk determination under the Adam Walsh Act must be directed to the AAO, not the BIA.”).² *See also* section 10.8(a)(2) of the Adjudicators Field Manual, which states that DHS maintains sole jurisdiction over AWA risk determinations:

As a statutory exception, DHS maintains sole jurisdiction over Adam Walsh Act risk determinations in family-based immigrant visa petition proceedings. As such, certification of an initial decision containing a risk determination under the Adam Walsh Act must be directed to the AAO, not the BIA. Once the AAO has resolved the Adam Walsh Act risk determination, a denied family-based immigrant visa petition can be certified to the BIA, if necessary.³

AILA acknowledges the Board of Immigration Appeals (BIA) does not have jurisdiction to review a “no risk” determination by USCIS. *See Matter of Aceijas-Quiroz*, 26 I&N Dec. 294 (BIA 2014) (holding that the BIA lacks jurisdiction to review a “no risk” determination by the USCIS, including the appropriate standard of proof to be applied).

Given the AAO's sole appellate jurisdiction over AWA risk determinations, the AAO has issued a robust number of non-precedent decisions involving AWA risk determinations. *See e.g., Matter of C-L-W-*, ID# 109944 (AAO May 26, 2017) (involving an appeal to the AAO of an I-129F petition that had been denied by the Vermont Service Center based on an AWA risk determination); *Matter of P-M-S-*, ID# 10522 (AAO Mar. 9, 2017) (involving an appeal to the AAO of an I-130 petition that had been denied by the National Benefits Center based on an AWA risk determination); *Matter of W-R* (AAO Feb. 16, 2016) (involving an appeal to the AAO of an I-130 petition that had been denied by the Indianapolis Field Office based on an AWA risk

² U.S. CITIZENSHIP & IMMIGRATION SERV., DEPT. OF HOMELAND SECURITY, PM-602-0124, INITIAL FIELD REVIEW OF APPEALS TO THE ADMINISTRATIVE APPEALS OFFICE (Nov. 4, 2015).

³ U.S. CITIZENSHIP & IMMIGRATION SERV., DEPT. OF HOMELAND SECURITY, ADJUDICATORS FIELD MANUAL, SECTION 10.8(A)(2). The USCIS Policy Manual, Volume 1: General Policies and Procedures, Part F – Motions and Appeals has not been published; thus, we conclude that the Adjudicators Field Manual is still in effect for this topic.

determination). USCIS currently posts a handful of AAO decisions involving AWA risk determinations on its “Administrative Decisions” website.⁴

USCIS Appears to be Attempting to Eliminate Appellants’ AWA Risk Determination Appeal Right to the AAO Without Proper Notice and Comment

Despite the AAO’s clear appellate jurisdiction over AWA risk determinations, and its legacy of issuing decisions involving AWA risk determinations, it appears that USCIS is attempting to eliminate appellants’ AWA risk determination appeal right without providing the public with proper notice and comment of this change. In fact, far from notifying the public, USCIS has quietly eliminated any reference to the AAO’s appellate jurisdiction over AWA risk determinations from its public-facing resources.

AILA is extremely concerned regarding what appears to be the agency’s attempt to eliminate appellants’ right to appeal an AWA risk determination to the AAO, particularly given that USCIS has not provided the public with proper notice and comment regarding such a fundamental rule change. Such a fundamental rule change, which erodes the due process rights of AWA appellants, warrants public notice, as well as a meaningful opportunity for the public to comment on such a change. The agency’s failure to provide proper notice and comment is an act of bad faith, fundamentally undermines due process rights of U.S. citizen and lawful permanent resident (LPR) petitioners, and erodes public trust in the agency.

By way of background, up until summer of 2018, the USCIS website explicitly stated that the AAO has jurisdiction for Adam Walsh Act risk determinations. Please see a screenshot provided below of the USCIS’s AAO website, **dated July 6, 2018**, which is attached as **Exhibit A**.

Jurisdiction

Under authority that the Secretary of the Department of Homeland Security (DHS) has delegated to USCIS, we exercise appellate jurisdiction over approximately 50 different immigration case types. Not every type of denied immigration benefit request may be appealed, and some appeals fall under the jurisdiction of the Board of Immigration Appeals (BIA), part of the U.S. Department of Justice. Our jurisdiction is listed by both [subject matter](#) and [form number](#) and includes the following categories:

- Most employment-based immigrant and nonimmigrant visa petitions (Forms I-129 and I-140);
- Immigrant petitions by alien entrepreneurs (Form I-526);
- Applications for Temporary Protected Status (TPS) (Form I-821);
- Fiancé(e) petitions (Form I-129F);
- Applications for waiver of ground of inadmissibility (Form I-601);
- Applications for permission to reapply for admission after deportation (Form I-212);
- Certain special immigrant visa petitions (Form I-360, except for Form I-360 widower appeals, which are appealable to the BIA);
- Orphan petitions (Forms I-600 and I-600A);
- T and U visa applications and petitions (Forms I-914 and I-918) and the related adjustment of status applications;
- Applications to preserve residence for naturalization purposes (Form N-470);
- Immigration and Customs Enforcement (ICE) determinations that a surety bond has been breached; and
- Adam Walsh Act risk determinations (may arise in several form types, such as Forms I-129F and I-130).



⁴ See *USCIS Administrative Decisions*, U.S. CITIZENSHIP & IMMIGRATION SERV., https://www.uscis.gov/laws/admin-decisions?topic_id=1&newdir=N1+-+Petition+for+Alien+Relative+%28Adam+Walsh+Act+Only%29/ (last updated September 23, 2013).

In addition, up until summer of 2018, Chapter 1 of the AAO Practice Manual stated that the AAO has jurisdiction for Adam Walsh Act risk determinations and acknowledged in footnote 10 of Chapter 1 that the BIA does not have jurisdiction over Adam Walsh Act “no risk” determinations. Please see a screen shot of Chapter 1 of the AAO Practice Manual, **dated July 6, 2018** provided below, and also attached to this comment as **Exhibit B**.

7/6/2018

Chapter 1. The Administrative Appeals Office | USCIS

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, except for Form I-360 widower appeals, which are appealable to the Board);
- 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); [\[11\]](#)
- 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);
- Immigration and Customs Enforcement determinations that a surety bond has been breached; and
- Adam Walsh Act risk determinations (may arise in several form types, such as Forms I-129F and I-130).

The AAO also has jurisdiction to review USCIS field office decisions revoking the approval of certain petitions. [\[12\]](#)

Furthermore, up until at least **August 2018**, the USCIS I-290B website indicated that Form I-130 is under the appellate jurisdiction of the BIA, *except for reviews of USCIS “no risk” determinations under the AWA*. Please see a screen shot of I-290B website from **August 27, 2018** provided below, and also attached to this comment as **Exhibit C**.

- Want to file an appeal with the Board of Immigration Appeals (BIA). Appeals of Form I-130, Petition for Alien Relative, are under the appellate jurisdiction of the BIA (except for reviews of USCIS “no risk” determinations under the Adam Walsh Act). The BIA also has jurisdiction over appeals of immigrant petitions filed by widow(er)s on Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. You may file an appeal with the BIA using [Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals](#).

Starting in the spring / summer of 2018, USCIS began quietly eliminating reference to the AAO's jurisdiction over Adam Walsh Act risk determinations from its public-facing resources, and preventing appellants from submitting an appeal to the AAO involving an AWA risk determination. Among the steps that USCIS has taken to eliminate this appeal right without proper notice and comment include, but are not limited, to the following:

- On May 10, 2018, AILA reported in a comment submitted to USCIS regarding Form I-290B that AILA had received reports from AILA members who reported that upon filing an appeal of an AWA risk determination to the AAO via filing a Form I-290B with the USCIS Lockbox, that the USCIS Lockbox was rejecting the Form I-290B and instructing stakeholders to either submit their appeals to the Board of Immigration Appeals (BIA) on Form EOIR-29 or submit a motion to reopen/reconsider with USCIS. AILA expressed concern regarding the agency's actions, indicating that such actions directly contradict USCIS' own policy guidance on this issue.⁵
- On July 11, 2018, USCIS completely eliminated from the AAO Practice Manual language previously contained in Chapter 1 of the AAO Practice Manual referencing the AAO's jurisdiction over Adam Walsh Act risk determinations.⁶ See **Exhibit B** for previous version of Chapter 1.
 - While AILA acknowledges that USCIS provided a note in the Table of Changes section of the AAO Practice Manual, dated July 11, 2018, which indicates that the agency "Deleted references to Adam Walsh Act "no risk" determinations in both sections,"⁷ AILA contends that such a note in the Table of Changes section was not proper notice to the public regarding such a fundamental change, which eliminated an AAO appeal right of AWA appellants, nor did the agency provide the public with the opportunity to comment on such a change.
- On October 29, 2018, USCIS updated its Form I-290B website to provide the following language regarding Adam Walsh Act "no risk" determinations:

Want to appeal a USCIS "no risk" determination under the Adam Walsh Act. You may seek further review by filing a motion to reopen or reconsider

⁵ See *AILA Submits Comment on Proposed Changes to Form I-290B, Notice of Appeal or Motion*, AM. IMMIGRATION LAWYERS ASS'N (May 10, 2018), published on AILA InfoNet at Doc. No. 18080131.

⁶ U.S. CITIZENSHIP & IMMIGRATION SERV., AAO PRACTICE MANUAL, CHAPTER 1. THE ADMINISTRATIVE APPEALS OFFICE, <https://www.uscis.gov/tools/practice-manual/chapter-1-administrative-appeals-office> (July 11, 2018).

⁷ See U.S. CITIZENSHIP & IMMIGRATION SERV., AAO PRACTICE MANUAL, TABLE OF CHANGES, <https://www.uscis.gov/tools/practice-manual/table-changes> (March 11, 2019).

on Form I-290B, Notice of Appeal or Motion, **but there is no appeal available from such a determination.**⁸

- Please note that a change to the Form I-290B webpage subtly indicating a change in the rules and relegating review of an unfavorable Adam Walsh Act risk determination from an appeal to a motion is not proper notice of such a fundamental change, nor was there an opportunity for comment.
- On August 2, 2019, USCIS eliminated from the AAO website any reference to the AAO handling Adam Walsh Act “no risk” determinations.⁹

To date, given the agency’s lack of notice and comment regarding the agency’s elimination of an appellants’ AWA risk determination appeal right to the AAO, AILA continues to receive reports from AILA member and stakeholders who are unaware of the agency’s elimination of this appeal right and are confused about the review process for I-130 petitions denied by USCIS based on a AWA risk determination.

In particular, please note that such confusion among stakeholders and the immigration community has been exacerbated by denial notices issued by USCIS that erroneously instruct those seeking to file an appeal of the AWA risk determination to appeal the decision to the Board of Immigration Appeals (BIA) using Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer. Specifically, USCIS’s denial templates contain the following language:

If you disagree with this decision, or if you have additional evidence that shows this decision is incorrect, you may appeal this decision to the Board of Immigration Appeals (BIA). If an appeal is not received within 30 days of the date of this notice, this decision will be final.

To file an appeal, complete Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer. Although the appeal will be decided by the BIA, you must send the Form EOIR-29, supporting documentation, and appropriate filing fee to:

USCIS
ATTN: EOIR-29
PO Box 660939
Dallas TX 75266

⁸ *I-290B, Notice of Appeal or Motion*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/i-290b> (last updated July 15, 2019) (emphasis added).

⁹ *See The Administrative Appeals Office (AAO)*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-ao> (last updated Aug. 2, 2019).

AILA has received reports from its members that those who have attempted to follow these USCIS instructions are having their Form EOIR-29 rejected by the USCIS Lockbox. The USCIS Lockbox is claiming that “this office does not have jurisdiction to accept the application/petition you submitted.” AILA will be submitting case examples to the Office of the CIS Ombudsman shortly of stakeholders encountering this issue.

In light of the foregoing, AILA is concerned regarding what appears to be the agency’s attempt to eliminate appellants’ right to appeal an AWA risk determination to the AAO without proper notice and comment procedures.

Comments on Proposed Instructions for Form I-290B

Page 1, *Who May Not File Form I-290B?*

While limited, there are some instances where a beneficiary may have standing to file an appeal or motion with USCIS. *See e.g., Matter of V-S-G- Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017); *see also* Administrative Appeals Office Practice Manual, Chapter 3. Appeals (March 11, 2019); USCIS Policy Memorandum PM-602-0152, Guidance on Notice to, and Standing for, AC21 Beneficiaries about I-140 Approvals Being Revoked After *Matter of V-S-G- Inc.* (Nov. 11, 2017) (noting that beneficiaries, who are affected parties, as defined in the *Matter of V-S-G- Inc.* decision, may file an appeal or motion on Form I-290B with respect to a revoked Form I-140, even though existing form instructions generally preclude beneficiary filings).

Moreover, as AILA previously noted in our comments submitted to USCIS on May 10, 2018,¹⁰ AILA requests that USCIS make clear in the Form I-290B instructions that the beneficiary of an I-140 petition that has been revoked by USCIS is permitted to file an appeal to the AAO. Accordingly, AILA suggests that Part 1 of the Form I-290B instructions entitled “Who May Not File Form I-290B?” be revised as follows to provide additional clarity:

Language proposed by USCIS: If you are the **beneficiary** of a petition or application, you **MAY NOT** file an appeal or motion unless instructed by USCIS and as specifically permitted by law.

Revised language proposed by AILA: If you are the **beneficiary** of a petition or application, generally you **MAY NOT** file an appeal or motion unless instructed by USCIS and as specifically permitted by law. **EXCEPTION:** If you are the beneficiary of a Form I-140, Immigrant Petition for Alien Worker and USCIS has revoked your approved Form I-140 and advised you that you may file a motion or appeal, you may file a Form I-290B.

¹⁰ *See AILA Submits Comment on Proposed Changes to Form I-290B, Notice of Appeal or Motion*, AM. IMMIGRATION LAWYERS ASS’N (May 10, 2018), published on AILA InfoNet at Doc. No. 18080131.

Please include a copy of the USCIS revocation notice with your Form I-290B. For further information about this exception, please see the USCIS webpage entitled “Petition Filing and Processing Procedures for Form I-140, Immigrant Petition for Alien Worker.” For further information, please also see the USCIS webpage entitled “[Questions and Answers: Appeals and Motions.](#)”

Page 2, *Timeliness*

AILA appreciates the **NOTE** on page 2 of the Form I-290B instructions explaining that the “date of service” is the date USCIS mailed the decision, not the date it is received. However, although USCIS contends that “[d]ecisions are normally mailed the same date as they are issued,” AILA regularly receives reports of USCIS decisions that are postmarked more than 5 days after the date written on the decision. AILA urges USCIS to mail decisions on the same day that decisions are issued, or as close to the decision date as possible.

Page 2, *Signature*

AILA appreciates the addition of a **NOTE** on page 2 of the Form I-290B instructions explaining that “USCIS will consider a photocopied, faxed, or scanned copy of the original handwritten signature acceptable for filing purposes. The photocopy, fax, or scan must be of the original documentation containing the handwritten ink signature.” AILA respectfully requests that USCIS ensure that the USCIS Lockboxes, International Field Offices, and USCIS Service Centers which accept Form I-290Bs are properly trained regarding this procedure so that Form I-290Bs are not improperly rejected when submitted with a photocopied, faxed, or scanned copy of the original handwritten signature.

Page 3, *How to Fill Out Form I-290B*

In Item 3 of the Form I-290B instructions entitled “How to Fill Out Form I-290B”, AILA suggests that USCIS provide further clarification regarding how to fill out Form I-290B, particularly for affected parties who may file a motion or appeal *pro se*:

Revised language proposed by AILA: 3. Answer all question fully and accurately. If a question does not apply to you (for example, if you have never been married and the question asks, “Provide the name of your current spouse”), type or print “N/A,” unless otherwise directed. If your answer to a question which requires a numeric response is zero or none (for example, “How many children do you have” or “How many times have you departed the United States”), type or print “None,” unless otherwise directed. Each question or item requires a response. A question or item left blank or unanswered does not mean “N/A” or “None”.

Page 3, Part 1. *Information About the Applicant or Petitioner*

Language proposed by USCIS: **Item Number 3. Business or Organization Name** (If applicable.) If a business or organization is filing this appeal or motion, provide its complete name, without abbreviations.

Revised language proposed by AILA: **Item Number 3. Business or Organization Name** (If applicable.) If a business or organization is filing this appeal or motion, provide its complete name, without abbreviations. If there is not enough space to the complete name of the business or organization, you may use **Part 7. Additional Information** or attach a separate sheet of paper. If you attach a separate sheet of paper, type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answers refer; and sign and date each sheet.

Page 4, Part 2. *Information About the Appeal or Motion*

Item Number 3. Immigration Form that is the Subject of This Appeal or Motion.

Language proposed by USCIS: **Item Number 3. Immigration Form that is the Subject of This Appeal or Motion.** Provide the form number for the application or petition that is the subject of your appeal or motion (for example, Form I-140, Form I-360, Form I-129, Form I-485, Form I-601). You may only file an appeal or motion for one application or petition at a time. If multiple applications or petitions are being appealed or motioned, you must file a separate Form I-290B for each application or petition.

Revised language proposed by AILA: **Item Number 3. Immigration Form that is the Subject of This Appeal or Motion.** Provide the form number for the application or petition that is the subject of your appeal or motion (for example, Form I-140, Form I-360, Form I-129, Form I-485, Form I-601). You may only file an appeal or motion for one application or petition at a time. A petition or application having multiple beneficiaries (for example, an H-2B petition) is a single application or petition. If multiple applications or petitions are being appealed or motioned, you must file a separate Form I-290B for each application or petition.

Page 7, *Address Change*

USCIS is proposing to delete information regarding how to file an address change for a motion or appeal that is pending before the AAO.

Language proposed by USCIS to be **deleted** from Form I-290B: If you move while you have a pending appeal or motion **before the AAO**, please also send the AAO a written

change of address notice to ensure that your decision is sent to your new address. Your change of address notice should state the type or application or petition that is the subject of the appeal or motion and reference any relevant receipt numbers and A-Numbers. The AAO's mailing address is available at www.uscis.gov/ao or by calling the USCIS National Customer Service Center at the number below.

AILA recommends including language regarding how to file an address change for a motion or appeal that is pending before the AAO. AILA proposes adding the following language to the Form I-290B instructions:

Language proposed by AILA to be **added** to Form I-290B: If you move while you have a pending appeal or motion **before the AAO**, please follow the procedures in Chapter 2 of the AAO Practice Manual to notify the AAO of an address change. The AAO Practice Manual is available at <https://www.uscis.gov/ao-practice-manual>.

Comments on Proposed Form I-290B

Page 1, Part 1, *Alternate or Safe Mailing Address*

AILA thanks USCIS for providing the option for certain individuals to provide an “alternate or safe mailing address” on Page 1, Part 1 of the Form I-290B.

Page 2, Part 2. *Information About the Appeal or Motion*

AILA also appreciates the efforts made by USCIS to clarify Part 2 of the Form I-290B entitled “Information About the Appeal or Motion.” However, we believe that the form is still unnecessarily confusing regarding which box should be checked in Part 2. We would recommend the following minor changes to better clarify this section.

First, USCIS should move the language from the Form I-290B instructions to the face of the Form I-290B itself regarding the fact that an appeal is treated in the first instance as a motion to reconsider. The form instructions are very helpful in clarifying this, but because of the importance of which box in Part 2 is checked, it would warrant moving the following language into the introductory section of Part 2 of the Form I-290B:

If you file an appeal of a USCIS decision, the office that issued the decision will review the appeal before sending it to the AAO. See 8 CFR 103.3. If the office determines that favorable action is warranted, it may treat your appeal as a motion and approve your application or petition, making further AAO review unnecessary. If the office decides that favorable action is not warranted, it will forward your appeal to the AAO for review.

By making this explanation more visible, applicants would better recognize that if they want the office that denied the case to review it again *and* they want to appeal if that office does not reverse the denial, simply checking **Box 1.a** and providing a brief and/or additional evidence would achieve this outcome.

Second, in the Form I-290B instructions, USCIS should note that if the petitioner or applicant selects **Box 1.b** in Part 2, the office that denied the petition will **not** see or review the brief and/or additional evidence being sent directly to the AAO. Because efficiency in the process is improved by allowing the office that denied the case to see an explanation of the reason for the appeal so that it can, in appropriate cases, correct an erroneous denial, the instructions should make clear that the only opportunity for the office issuing the denial to see the argument in the brief is by checking **Box 1.a**.

Third, AILA believes that it is unnecessary and overly complicated to provide separate boxes for a “Motion to Reopen,” a “Motion to Reconsider,” and a “Motion to Reopen and a Motion to Reconsider.” From a processing standpoint, all three of these options are treated the same way. The office that denied the petition will review the additional legal argument and/or the new facts or documentary evidence provided, and will consider whether those warrant approving the petition or application. It would create less confusion if USCIS were to eliminate Box 1.d and Box 1.e, and simply change Box 1.f to “I am filing a **motion to reopen** and/or a **motion to reconsider**. My brief and/or additional evidence is attached.” This change would simplify the form and avoid confusion about what is being requested.

Page 2, Part 3. *Basis for the Appeal or Motion*

AILA reiterates our recommendation that USCIS include a sentence on the Form I-290B or its instructions that clarifies that new evidence may be included in an appeal to the AAO.¹¹ This recommendation failed to be incorporated by USCIS into its proposed revisions to Form I-290B and instructions. AILA reiterates the importance of this recommendation as this additional language would help to distinguish the evidence that may be submitted in support of an appeal from a motion to reopen or motion to reconsider, for which USCIS has provided language confirming that a motion to reopen must be supported by documentary evidence “demonstrating eligibility for the requested immigration benefit at the time you filed the application or petition,” and a motion to reconsider must demonstrate that the decision was incorrect “based on the evidence of record at the time of the decision.”

AILA proposes that USCIS revise the language in Part 3 of the Form I-290B as follows:

¹¹AILA previously provided such a recommendation in a comment submitted to USCIS on May 10, 2018. *See AILA Submits Comment on Proposed Changes to Form I-290B, Notice of Appeal or Motion*, AM. IMMIGRATION LAWYERS ASS’N (May 10, 2018), published on AILA InfoNet at Doc. No. 18080131.

Language proposed by USCIS: **Appeal:** Provide a statement that specifically identifies an erroneous conclusion of law or statement of fact in the decision you are appealing. **You MUST provide this information with your Form I-290B even if you intend to submit a brief later.**

Revised language proposed by AILA: **Appeal:** Provide a statement that specifically identifies an erroneous conclusion of law or statement of fact in the decision you are appealing. **You MUST provide this information with your Form I-290B even if you intend to submit a brief later.** The AAO will accept new evidence on appeal. The evidence need not be new or previously available. Please see the AAO Practice Manual at <https://www.uscis.gov/aao-practice-manual>.

Conclusion

We appreciate the opportunity to comment on the agency's proposed revisions to Form I-290B and instructions and look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

EXHIBIT A



U.S. Citizenship and Immigration Services

The Administrative Appeals Office (AAO)

Leadership

Barbara Q. Velarde is the chief of the Administrative Appeals Office.

What We Do

Petitioners and applicants for certain categories of immigration benefits may appeal a negative decision to the AAO. We conduct administrative review of those appeals to ensure consistency and accuracy in the interpretation of immigration law and policy. We generally issue “non-precedent” decisions, which apply existing law and policy to the facts of a given case. After review by the Attorney General, we may also issue “precedent” decisions to provide clear and uniform guidance to adjudicators and the public on the proper interpretation of law and policy.

Jurisdiction

Under authority that the Secretary of the Department of Homeland Security (DHS) has delegated to USCIS, we exercise appellate jurisdiction over approximately 50 different immigration case types. Not every type of denied immigration benefit request may be appealed, and some appeals fall under the jurisdiction of the Board of Immigration Appeals (BIA), part of the U.S. Department of Justice. Our jurisdiction is listed by both [subject matter](#) and [form number](#) and includes the following categories:

- Most employment-based immigrant and nonimmigrant visa petitions (Forms I-129 and I-140);
- Immigrant petitions by alien entrepreneurs (Form I-526);
- Applications for Temporary Protected Status (TPS) (Form I-821);
- Fiancé(e) petitions (Form I-129F);
- Applications for waiver of ground of inadmissibility (Form I-601);
- Applications for permission to reapply for admission after deportation (Form I-212);
- Certain special immigrant visa petitions (Form I-360, except for Form I-360 widower appeals, which are appealable to the BIA);
- Orphan petitions (Forms I-600 and I-600A);
- T and U visa applications and petitions (Forms I-914 and I-918) and the related adjustment of status applications;
- Applications to preserve residence for naturalization purposes (Form N-470);
- Immigration and Customs Enforcement (ICE) determinations that a surety bond has been breached; and
- Adam Walsh Act risk determinations (may arise in several form types, such as Forms I-129F and I-130).

We also have jurisdiction to review decisions by the USCIS service centers to revoke certain previously approved petitions.

How to File

If we deny your benefit, we will send a letter to the petitioner or applicant that explains the reason for the denial and, if applicable, how to file a motion or appeal. Most appeals must be filed on [Form I-290B](#) (with a fee) within 30 days of the initial denial. Some immigration categories have different appeal requirements, so please carefully review the denial letter and the [USCIS website](#) for specific and current instructions.

Appeal Process

Initially, the USCIS office that denied the benefit will review the appeal and determine whether to take favorable action and grant the benefit request. If that office does not take favorable action, it will forward the appeal to the AAO for appellate review. The initial field review should be completed within 45 days. The appellate review should be completed within six months of when the AAO receives the appeal.

Non-Precedent Decisions

We generally issue non-precedent decisions. These apply existing law and policy to the facts of a given case. A non-precedent decision is binding on the parties involved in the case, but does not create or modify agency guidance or practice. We do not announce new constructions of law nor 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.

Please see the [AAO's non-precedent decisions](#).

Adopted Decisions

We occasionally “adopt” an AAO non-precedent decision as policy guidance for USCIS personnel. Please see the [AAO's adopted decisions](#).

Precedent Decisions

The Secretary of DHS may, with the Attorney General’s approval, designate AAO or other DHS decisions to serve as precedents in all future proceedings involving the same issue or issues. These precedent decisions are binding on DHS employees except as modified or overruled by later precedent decisions, statutory changes, or regulatory changes. AAO precedent decisions may announce new legal interpretations or agency policy, or they may reinforce existing law and policy by demonstrating how it applies to a unique set of facts.

Please see the [AAO's precedent decisions](#), located in the Virtual Law Library of the Department of Justice’s Executive Office for Immigration Review (EOIR).

History of the AAO

The Immigration and Naturalization Service (INS) established the Administrative Appeals Unit (AAU) in 1983 to centralize the review of administrative appeals. Prior to 1983, responsibility for the adjudication of administrative appeals and the issuance of precedent decisions was shared by the INS commissioner, four regional commissioners and three overseas district directors.

The INS later established the Legalization Appeals Unit to adjudicate appeals of denied Legalization and Special Agricultural Worker applications under the Immigration Reform and Control Act of 1986. In 1994, INS consolidated the two units to create the AAO. The Homeland Security Act of 2002 separated the INS into three components within the new DHS, and on March 1, 2003, the AAO became a part of USCIS.

Last Reviewed/Updated: 05/14/2018

EXHIBIT B



U.S. Citizenship and Immigration Services

Chapter 1. The Administrative Appeals Office

[Home](#) | [Table of Contents](#) | [Table of Changes](#) | [INA](#) | [8 CFR](#)

[PDF Version \(PDF, 425 KB\)](#)

- 1** The AAO
- 2** Representation of Parties before the AAO
- 3** Appeals
- 4** Motions to Reopen and Reconsider
- 5** Certifications to the AAO
- 6** Contacting the AAO
- 7** Resources

Chapter 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.^[1]

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/aa0.

The AAO welcomes and encourages the public to provide comments and propose improvements to this Practice Manual.^[2]

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^[3] of USCIS officers' decisions, the AAO is not independent of its parent agency, USCIS.^[4] The AAO applies USCIS policies and legal interpretations to matters before it.

For more information about the AAO, please visit www.uscis.gov/aa0.

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.^[5] Before 1983, the INS 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.^[6]

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 a person or entity with legal standing in a proceeding (an “affected party”) may file an appeal or motion, or submit a brief in response to a Notice of Certification (Form I-290C).^[7] Affected parties may include petitioners, self-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^[8] 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.^[9]

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).^[10]

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, except for Form I-360 widower appeals, which are appealable to the Board);
- 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); [\[11\]](#)
- 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);
- Immigration and Customs Enforcement determinations that a surety bond has been breached; and
- Adam Walsh Act risk determinations (may arise in several form types, such as Forms I-129F and I-130).

The AAO also has jurisdiction to review USCIS field office decisions revoking the approval of certain petitions. [\[12\]](#)

For more information about appeals to the AAO, see [Chapter 3](#).

(b) Motions to Reopen and Motions to Reconsider

The AAO has jurisdiction over motions to reopen and motions to reconsider its own decisions. [\[13\]](#) If the AAO issues an unfavorable decision, the appellant may file a motion to reopen or a motion to reconsider that decision. The AAO may also reopen or reconsider one of its prior decisions on its own motion. [\[14\]](#)

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. [\[15\]](#)

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 BIA's appellate jurisdiction, USCIS officers may certify any decision type to the AAO, including decisions that do not convey appeal rights. [\[16\]](#)

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](#) webpage on the USCIS website.

USCIS may also “adopt” an AAO non-precedent decision to provide policy guidance to USCIS employees in making determinations on applications and petitions for immigration benefits. Adopted AAO decisions are available for review at the [Adopted AAO Decisions](#) webpage on the USCIS website.

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, must be followed by 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](#) webpage 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). [\[17\]](#)

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.

Footnotes

[1] [\[A\]](#) 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.

[2] [\[A\]](#) 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.

[3] [\[A\]](#) For more information about the AAO’s standard of review, see [Chapter 3.4](#).

[4] [\[A\]](#) USCIS oversees lawful immigration to the United States by adjudicating immigration benefit requests. For more information about USCIS, see www.uscis.gov.

- [5] [\[△\]](#) Powers and Duties of Service Officers; Availability of Service Records, 48 Fed. Reg. 43,160 (Sept. 22, 1983).
- [6] [\[△\]](#) 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.
- [7] [\[△\]](#) 8 C.F.R. § 103.3(a)(1)(iii)(B). See [Chapter 3.7\(a\)](#) for more information about persons or entities eligible to file an appeal.
- [8] [\[△\]](#) 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](#) webpage.
- [9] [\[△\]](#) 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).
- [10] [\[△\]](#) 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.
- [11] [\[△\]](#) In most cases, there are no administrative appeal rights for denied Form I-485 applications. See the USCIS webpage [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.
- [12] [\[△\]](#) 8 C.F.R. § 205.2(d).
- [13] [\[△\]](#) 8 C.F.R. § 103.5(a)(1)(ii).
- [14] [\[△\]](#) 8 C.F.R. § 103.5(a)(5).
- [15] [\[△\]](#) 8 C.F.R. § 103.5(a)(2)-(3).
- [16] [\[△\]](#) Since the AAO’s *certification* jurisdiction is broader than its *appeal* jurisdiction, some of the case types listed on the [AAO Non-Precedent Decisions](#) webpage are not appealable to the AAO but have been included because the AAO has issued decisions upon certification for those case types.
- [17] [\[△\]](#) The regulations outlining EOIR’s role and authority are located at 8 C.F.R. §§ 1001-1337.

Last Reviewed/Updated: 04/18/2018

EXHIBIT C



U.S. Citizenship and Immigration Services

I-290B, Notice of Appeal or Motion

[Versión en español](#)

- [Form I-290B \(PDF, 944 KB\)](#)
- [Instructions for Form I-290B \(PDF, 240 KB\)](#)
- [Form G-1145, E-Notification of Acceptance of Application/Petition \(PDF, 238 KB\)](#)

Purpose of Form

Use this form to file:

- An **appeal** with the Administrative Appeals Office (AAO); or
- A **motion** with the USCIS office that issued the latest decision in your case (including a field office, service center, or the AAO).
- Certain appeals of the denial of an Immigration and Customs Enforcement (ICE) Form I-17, "Petition for Approval of School for Attendance by Nonimmigrant Student" with the ICE Student and Exchange Visitor Program.

Please visit our [When to Use Form I-290B, Notice of Appeal or Motion](#) page for the forms that you can appeal or file a motion for using this form.

Do not use this form if you:

- Are the beneficiary of a petition. Generally, only an applicant or petitioner may file an appeal or motion.
 - **EXCEPTION:** If you are the beneficiary of a [Form I-140, Immigrant Petition for Alien Worker](#) and USCIS has revoked your approved Form I-140 and advised you that you may file a motion or appeal, you may then file a Form I-290B. Please include the USCIS revocation notice with your Form I-290B. For further information about this exception, please see the Motions and Appeals section of the [I-140 Filing and Processing Procedures webpage](#).
- Want to file an appeal with the Board of Immigration Appeals (BIA). Appeals of Form I-130, Petition for Alien Relative, are under the appellate jurisdiction of the BIA (except for reviews of USCIS "no risk" determinations under the Adam Walsh Act). The BIA also has jurisdiction over appeals of immigrant petitions filed by widow(er)s on Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. You may file an appeal with the BIA using [Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals](#).
- Want to appeal a Department of State consular officer's denial of your U.S. visa application (for example, Forms DS-156, DS-156E, DS-156K, DS-117, DS-157, DS-230, or DS-260). For information about U.S. visa application denials, please visit the [Department of State website](#).

Want to appeal a Special Agricultural Worker or Legalization application. You must file these appeals on [Form I-694, Notice of Appeal of Decision, Under Sections 245A or 210 of the Immigration and Nationality Act](#).

Number of Pages

Form 5; instructions 9.

Edition Date

04/10/17. No previous editions accepted. You can find the edition date at the bottom of the page on the form and instructions.

Where to File

File your appeal or motion at the appropriate address listed on our [Direct Filing Addresses for Form I-290B, Notice of Appeal or Motion](#) page.

We recommend reading our [Tips for Filing Forms with USCIS](#).

Do not file Form I-290B directly with the Administrative Appeals Office.

Filing Tips for Form I-290B, Notice of Appeal or Motion

- Complete **all sections** of the form that apply to you. We will reject the form if it is the incorrect version, if the fee is incorrect or not paid, or if the following fields are left blank:
 - Part 1 – Information About the Applicant or Petitioner
 - If you are the beneficiary of a revoked Form I-140 with a favorably adjudicated porting request, and USCIS has advised you that you may file an appeal using Form I-290B, provide the information about you in Part 1.
 - Family Name or Complete Name of Business/Organization
 - Mailing Address
 - Part 2 – Information About the Appeal or Motion
 - You must select only one box indicating that you are filing an **appeal** or **motion**, not both. **If more than one box is selected, we may reject your filing.**
 - For additional filing assistance, please visit the AAO's Practice Guide at <https://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-ao/practice-manual/chapter-3-appeals>.

\$675. You may pay the fee with a money order, personal check, or cashier's check. When filing at a USCIS Lockbox facility, you may also pay by credit card using [Form G-1450, Authorization for Credit Card Transactions](#). If you pay by check, you must make your check payable to the U.S. Department of Homeland Security. Please note that service centers are not able to process credit card payments.

Please note that we will not refund the Form I-290B filing fee or the fee paid for the form you are appealing or filing a motion on, regardless of the action we take in your case.

If you are a special immigrant Iraqi or Afghan national who worked for or on behalf of the U.S. government: You do not need to pay a fee when you file Form I-290B to appeal a denial of a petition for a special immigrant visa.

Special Instructions

We will send you an email or text when your form has been accepted if you complete [Form G-1145, e-Notification of Application/Petition Acceptance](#) and clip it to the front of the form.

Last Reviewed/Updated: 04/11/2018