Model Form EOIR-29

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB No. _____

Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer

WHERE TO FILE THIS APPEAL:

Do not file this directly with the Board of Immigration Appeals.

This Notice of Appeal must be filed with the Department of Homeland Security (DHS) within 30 calendar days after service of the decision of the DHS Officer. Fraud Appeals are subject to equitable tolling. Please read the complete instructions on the back of this form.

Appeal Type

1. Identify which type of appeal you are filing by checking the appropriate box:

☐ **I am filing an appeal from a decision of a DHS Officer** (e.g., Visa Petition (I-130) decision), **not involving fraud**:

Name of Beneficiary:
A-Number, if any, of Beneficiary:
Petition Form Number:

☐ **I am filing an appeal from a decision of a DHS Officer** (e.g., Visa Petition (I-130) decision) **based on newly discovered evidence of marriage fraud**:

Name of Beneficiary:
A-Number, if any, of Beneficiary:
Petition Form Number:

☐ **I am filing a different type of appeal from a decision of a DHS Officer** (e.g., carrier and fine decision, INA § 212(d)(3)(A)(ii) waiver decision, permissible DHS bond decisions):

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Name:
A-Number, if any:
Carrier and fine number:
Any other relevant information:

2. I hereby appeal to the Board of Immigration Appeals from the decision of the _____ issued by _____,
(Title of DHS Officer) (Office Where DHS Decision was Issued)

dated _____ in the above titled case.
(Title of DHS Officer)

3. Specify reasons for this appeal and continue on separate sheets if necessary. Please refer to Instruction #2 for further guidance.

***Warning**: If the factual or legal basis for the appeal is not sufficiently described, the appeal may be summarily dismissed.*

_____
_____
_____
_____
_____

4. Do you desire oral argument before the Board of Immigration Appeals?

☐ Yes ☐ No

5. Do you intend to file a separate written brief or statement after filing this Notice of Appeal?

***Warning**: If you indicate "yes" and fail to do so the appeal may be summarily dismissed. Please refer to the Instructions for further information.*

☐ Yes ☐ No

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Fraud Appeals (if applicable)

This section applies to any appeal filed pursuant to BIA Practice Manual § 9.3(c)(2), in which the petitioner seeks appellate review of a previously approved visa petition based on newly discovered evidence of marriage fraud.

1. **Representation Requirement**: For fraud appeals, a petitioner must be represented by a licensed attorney practitioner, as defined in 8 C.F.R. § 1001.1(f), who is subject to the EOIR rules and procedures governing professional conduct.

2. **Practitioner Certification**: By signing below, the practitioner hereby certifies, pursuant to BIA Practice Manual § 9.3(d)(5)(ii), under penalty of perjury under the laws of the United States, that they have:

    - Carefully reviewed the evidence of fraud presented on appeal;
    - The evidence is credible and warrants the Board's review; and
    - Petitioner has acted with diligence in pursuing their rights.

3. **Evidence Submission**: Petitioners must submit all fraud-related evidence concurrently with this Notice of Appeal. When such evidence is reviewed by USCIS prior to transmittal to the Board, it will not be considered "new evidence" for purposes of Board review, and no separate motion to remand is required.

Signature Block

By signing below, I certify under penalty of perjury under the laws of the United States that the information provided in this Notice of Appeal is true and correct.

_____ _____

Date Signature of Appellant/Petitioner (or Attorney or Representative)

_____

Print or Type Name

_____

Address (Number, Street, City, State, Zip Code)

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GENERAL INSTRUCTIONS

(Please read carefully before completing and filing Form EOIR-29)

1. General Information

You are the "appellant" if you are filing an appeal from a decision of a Department of Homeland Security (DHS) Officer. This form allows you to request review by the Board of Immigration Appeals (the "Board") of certain DHS decisions, including visa petition determinations. Only the petitioner, or a qualified self-petitioner, may file this appeal.

2. Appeal Type

You must indicate the nature of the appeal by checking one of the following boxes on the form:

☐ I am filing an appeal from a decision of a DHS Officer (e.g., Visa Petition (I-130) decision), not involving fraud.

☐ I am filing an appeal from a decision of a DHS Officer (e.g., Visa Petition (I-130) decision) based on newly discovered evidence of marriage fraud.

☐ I am filing a different type of appeal from a decision of a DHS Officer (e.g., carrier and fine decision, INA § 212(d)(3)(A)(ii) waiver decision, permissible DHS bond decisions).

If you are appealing a decision by a USCIS Officer denying a visa petition (I-130), list the name and "A" number of the beneficiary. The beneficiary is not allowed to sign Form EOIR-29. Only the petitioner, a self-petitioner, or an authorized representative is allowed to sign the form.

3. Filing Deadline

For most appeals, you must file Form EOIR-29 within 30 calendar days of the date the DHS decision was served (physically or by mail). If mailed, the appeal must be *received* within 30 days, not merely postmarked.

For fraud appeals filed under BIA Practice Manual § 9.3(c)(2), the 30-day deadline is subject to equitable tolling where the petitioner acted with diligence after discovering newly available evidence of marriage fraud. *See* section 6 below.

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4. Where to File

For most appeals, you must file this form with the DHS office that issued the decision, in accordance with the instructions included with the decision. Do *not* file this form directly with the Board.

For fraud appeals, you must file this form with the DHS office having administrative control over the petition record, or through any online portal DHS may designate. If DHS fails to confirm the location of the petition record after reasonable inquiry from the petitioner's representative, the petitioner may file the appeal with the DHS Office of Chief Counsel. This constitutes constructive service if the representative certifies under penalty of perjury that DHS failed to disclose the record's location despite good-faith efforts. *See* BIA Practice Manual § 9.3(d)(2)(ii)(aa).

5. Review by the Board

Most appeals are reviewed by a single Board Member. You may request review by a three-member panel if your appeal involves:

- Precedent-setting legal or procedural questions;
- A decision by DHS not in conformity with law or precedent;
- A case or controversy of major national import; or
- A reversal of DHS's decision, other than under 8 C.F.R § 1003.1(e)(5).

Appeals are generally reviewed in the order received unless expedited review is granted. Fraud Appeals filed under BIA Practice Manual § 9.3(c)(2) are subject to a presumption of expedited review, and no motion is required if the appeal is certified by counsel under § 9.3(d)(5)(ii). For all other appeals, expedited review must be requested by motion and justified by urgent and compelling circumstances.

6. Fees

A fee of one hundred and ten U.S. dollars ($110.00) must be paid for filing this appeal. It cannot be refunded regardless of the action taken on the appeal. **All fees must be submitted in the exact amount. Do not mail cash.**

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- Payment by bank drafts, cashier's checks, certified checks, personal checks, and money orders must be drawn on U.S. financial institutions and payable in U.S. funds.

- If you live in the United States or its territories, make the check or money order payable to U.S. Department of Homeland Security (not "USDHS" or "DHS").

- If you live outside the United States or its territories, and are filing your application or petition where you live, contact the nearest U.S. Embassy or consulate for instructions on the method of payment.

- When a check is drawn on the account of a person other than the appellant, the name of the appellant must be entered on the face of the check. Personal checks are accepted subject to collectability. If you pay by check, USCIS will convert it into an electronic funds transfer (EFT). This means USCIS will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and your bank will show it on your regular account statement. You will not receive your original check back. USCIS will destroy your original check, but will keep a copy of it. If USCIS cannot process the EFT for technical reasons, you authorize USCIS to process the copy in place of your original check.

- If you are filing your form at a USCIS Lockbox facility, you have the option to pay for your form filing fees using a credit card. Please see Form G-1450, Authorization for Credit Card Transactions, athttps://www.uscis.gov/g- 1450 for more information.

- If you are filing your form at a USCIS Field Office, cash, a cashier's check or money order cannot be used to pay for the filing fee. The only payment options accepted at a field office are payment through pay.gov via a credit card, debit card or with a personal check.

- Payment that is uncollectable does not satisfy a fee requirement and may result in the rejection of the appeal.

7. Counsel

An appellant may be represented, at no expense to the Government, by an attorney or other duly authorized representative. An attorney or authorized representative must

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file Form EOIR-27, Notice of Entry of Appearance, with this EOIR-29, Notice of Appeal. In presenting and prosecuting this appeal, DHS may be represented by appropriate counsel.

Fraud appeals must be filed by a licensed attorney practitioner, as defined in 8 C.F.R. § 1001.1(f) and who is subject to the EOIR rules and procedures governing professional conduct. The practitioner must certify under penalty of perjury that they have: 1) carefully reviewed the evidence of fraud presented on appeal; 2) the evidence is credible and warrants the Board's review; and 3) petitioner has acted with diligence in pursuing their rights.

8. Briefs & Fraud Evidence

Supporting briefs (if any) are filed with DHS at the same location where the appeal was filed, within the time frame specified by DHS. *See* 8 C.F.R § 1003.3(c)(2). If you state on the form that a brief will be filed but fail to do so, the appeal may be dismissed. For fraud appeals, evidence of the fraud must be submitted with EOIR-29. Failure to submit the fraud evidence with the appeal may also result in dismissal.

9. Oral Argument

You may request oral argument, which will be granted at the discretion of the Board. The Board will decide all appeals based on the written record unless oral argument is specifically approved.

10. Summary Dismissal of Appeal

The Board may summarily dismiss an appeal if:

- The appellant fails to specify the reasons for the appeal;
- The only reason specified by the appellant for his/her appeal involves a finding of fact or conclusion of law which was conceded by him/her at a prior proceeding;
- The appeal is from an order that granted the appellant the relief that had been requested;
- The appeal is filed for an improper purpose, such as to cause unnecessary delay, or lacks an arguable basis in fact or law, unless the Board determines that it is

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supported by a good faith argument for extension, modification, or reversal of existing law;

- The appellant indicates on Form EOIR-29 that he/she will file a separate brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his/her failure to do so, within the time set for filing;
- The appeal does not fall within the Board's jurisdiction;
- The appeal is untimely or barred by an affirmative waiver of the right to appeal that is clear on the record; or
- The appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

11. Privacy Act and Paperwork Reduction Action Notice

The information requested on this form is authorized by 8 C.F.R § 1003.3(a)(2) in order to appeal a decision of a DHS officer. The information you provide is mandatory and required to file an appeal. Failure to provide the requested information may result in rejection of your appeal. EOIR may share this information with others in accordance with approved routine uses described in EOIR's system of records notices, EOIR- 00l, Records and Management Information System, 69 Fed. Reg. 26,179 (May 11, 2004), and EOIR-003, Practitioner Complaint-Disciplinary Files, 64 Fed. Reg. 49237 (September 1999), or their successors.

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is thirty (30) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

For further guidance please see the Board of Immigration Appeals Practice Manual which is available on the EOIR website at www.justice.gov/eoir.

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