# IDENTIFYING ISSUES FOR A BIA APPEAL

By Aruna Sury

## I. Introduction

Filing an appeal with the Board of Immigration Appeals (BIA) is a crucial step for many noncitizens facing removal because it is the last opportunity to obtain a favorable decision from the Executive Office for Immigration Review (EOIR), the agency that houses the immigration courts and the BIA. In many cases where the immigration judge rules against your client, a timely-filed BIA appeal is the only opportunity to get the decision reversed.[1]

The Board should review factual and legal issues involved in a case. The BIA must review legal issues *de novo* and can reverse factual findings if there's clear error. The federal courts can only review issues properly raised before the Board, and federal courts will usually defer to the BIA's reasonable interpretation of laws and facts. Therefore, comprehensively and accurately identifying issues to raise during a BIA appeal is an important step in competently representing a client.

Often, reviewing the immigration judge's decision for errors is a daunting task. It can be difficult to separate identifying issues to appeal, from the overwhelming sense of injustice that can result from a negative decision. This advisory will focus on reviewing decisions by Immigration Judges (IJs) and identifying issues to raise on appeal to the BIA. The goal is to equip practitioners with a framework to look for errors where the IJ has denied relief or otherwise ordered removal. But

[1] Some decisions can be reviewed by the district courts, for instance where a person files a habeas petition challenging detention, and some decisions can be reviewed by the federal circuit courts, such as the merits of an asylum claim and legal and constitutional claims. See INA § 242. Generally, however, where the immigration judge orders your client removed based on the application of laws to findings of fact, the BIA may be the last adjudicative body to have a say on the client's claim.

practices discussed here can be applied to most other contexts in which appeals to the BIA are filed, such as denial of visa petitions by the Department of Homeland Security (DHS).

# II. Reserving and Filing the Appeal

## A. Reserving the Right to Appeal after the IJ's Decision

Before an appeal can be filed with the BIA, the respondent or their representative must "reserve" appeal after the IJ renders the oral decision. This is accomplished by simply stating after the IJ renders the decision that the respondent wishes to "reserve" appeal, which will start a 30-day appeal period during which the IJ's decision will be automatically stayed.[2] Usually, the immigration judge will ask both parties if they wish to appeal, or will ask whether the parties "waive" or "reserve" appeal after rendering the decision. If the IJ issues a written decision and serves it in-person to the parties, appeal can be "reserved" by the parties orally at the time the decision is served. If the IJ mails the written decision to the parties, appeal will automatically be marked as reserved by both parties. Reserving appeal does not mean that you are required to file an appeal, it means that you reserve the right to file an appeal if you decide to do so. If appeal is "waived" at this early stage, then no further appeal can be taken.

Except in very limited circumstances, it is normally beneficial to a respondent who has lost their case on the merits to at least reserve appeal so that the decision can be reviewed in detail in the following weeks before deciding whether to appeal. Declining to reserve appeal in cases where there is a removal order against the respondent will result in the removal order becoming final, thus starting a mandatory 90-day period of detention.[3] This means a respondent who declines to reserve appeal can be detained and processed for removal on the same day the IJ renders the decision. Unless the client specifically wants to speed up their removal, waiving appeal is not in the client's best interest since it generally will result in their immediate detention and subsequent removal. So even if the respondent is uncertain whether to appeal, it is generally advisable to at least reserve appeal.

If the respondent has won some part of their case but lost another, they can still appeal the decision to the BIA. But doing so may have a strategic downside, since DHS may decide to appeal the IJ's decision to grant a certain aspect of the respondent's case. If the respondent has won some argument or relief and lost another, whether to appeal the decision will depend on whether DHS will also appeal if respondent appeals, as well as other strategic considerations. In these situations, the respondent might opt to not reserve the right to appeal if there is an agreement that ICE will also waive appeal.

[2] 8 C.F.R. § 1003.38(b).

[3] INA § 241(a); 8 C.F.R. § 241.3(a).

**Example:** Your client, Dora, has been an LPR for 10 years. But after she is convicted of a battery offense against her husband, DHS charges her with removability under the domestic violence deportability provision, INA § 237(a)(2)(E)(i). You argue that the battery offense is not a crime of domestic violence, but the IJ disagrees. He does, however, grant Dora LPR cancellation of removal. Even though Dora ultimately won relief, you still feel it is unfair that she was found removable in the first place and as a result, that she had to "use up" her one chance to apply for cancellation of removal.[4] But whether to appeal the IJ's decision finding Dora removable will depend on several factors, including how strong the argument against removability is and whether DHS is also likely to appeal the IJ's grant of LPR cancellation of removal if Dora appeals the removability finding. In situations like this, it often makes strategic sense to reserve appeal and then use the following weeks to discuss the pros and cons of each option with your client as well as DHS counsel. In some situations, before making the decision to reserve or waive, DHS counsel will stipulate to waive appeal if the respondent does the same.

## B. Filing the Notice to Appeal

### 1. The Filing Deadline

A BIA appeal starts with the filing of a Notice of Appeal, Form EOIR-26, which must be filed within 30 days of the IJ's decision.[5] The BIA considers the date it *receives* the Notice of Appeal as the date it is filed, not the date it is post-marked.[6] According to the Board, it does not have the authority to extend this "strict" deadline, even in cases where there was a delay caused by a detention facility's internal mail system.[7]

---

[4] INA § 240A(c)(6) prohibits a person from obtaining cancellation of removal if they were previously granted cancellation of removal or suspension of deportation.

[5] 8 C.F.R. § 1003.38(b). The form and instructions can be accessed at the EOIR website: http://www.justice.gov/eoir/eoirforms/eoir26.pdf.

[6] BIA Practice Manual, Ch. 3.1 (https://www.justice.gov/eoir/eoir-policy-manual/iii/3/1 )

[7] BIA Practice Manual, Ch. 4.5 (https://www.justice.gov/eoir/eoir-policy-manual/iii/4/5). But see *Attipoe v. Barr*, 945 F.3d 76, 80–82 (2d Cir. 2019) (finding 30-day Notice of Appeal deadline can be equitably tolled); *James v. Garland*, 16 F.4th 320, 325 (1st Cir. 2021) (same); *Boch-Saban v. Garland*, 30 F.4th 411, 413 (5th Cir. 2022) (same).

The only small exception to the 30-day deadline is where a fee waiver request is denied. In such cases, the BIA will grant an additional 15 days to re-submit the Notice of Appeal with the filing fee or with a new fee waiver request. 8 C.F.R. § 1003.8(a)(3).

The Notice of Appeal will not be accepted as filed unless it is filed with the filing fee (or receipt if filed electronically) [8] or a fee waiver request. [9] If the respondent is represented, the representative's Notice of Entry of Appearance on Form EOIR-27 should also be included in order for it to be accepted as filed.

### 2. Stating Basis for Appeal in Form E-26

Advocates should identify all issues for appeal and list them in the Notice of Appeal to preserve arguments with the BIA and for further litigation. In one case where the respondent, an asylum applicant, only made a generalized statement that the IJ had erred in finding that the respondent failed to prove a well-founded fear of persecution, the BIA explained:

> We are unable to determine from the respondent's stated reason for his appeal whether the error he alleges relates to the particular facts of his case, the law applied to them by the immigration judge, or both. By presenting only a generalized statement without filing a supporting brief to explain the specific aspects of the immigration judge's order that the respondent considers to be incorrect, he has failed to meaningfully identify the reasons for taking an appeal . . . . It is essential to the Board's adjudication of an appeal that the reasons given on the Notice of Appeal be as detailed as possible so that the alleged error can be identified and addressed. Without a specific statement, the Board can only guess at how the alien disagrees with the immigration judge's decision. It is therefore insufficient to merely assert that the immigration judge improperly found that deportability had been established or denied an application for relief from deportation. Where eligibility for discretionary relief is at issue, it should be stated whether the error relates to grounds of statutory eligibility or to the exercise of discretion. Furthermore, it should be clear whether the alleged impropriety in the decision lies with the immigration judge's interpretation of the facts or his application of legal standards.[10]

---

[8] The current filing fee for a BIA appeal is $110.00 (https://www.justice.gov/eoir/types-appeals-and-required-fees). It can be filed electronically, or by check or money order. See BIA Practice Manual, Ch. 3.4 (https://www.justice.gov/eoir/eoir-policy-manual/iii/3/4).

[9] A request for a waiver of the $110 filing fee must be submitted on Form EOIR 26-A and accompanied by a declaration by the respondent establishing their inability to pay the filing fee. 8 C.F.R. § 1003.8(a)(3).

[10] *Matter of Valencia*, 19 I&N Dec. 354, 354–55 (BIA 1986); see also *Matter of Cespedes*, 19 I&N Dec. 730, 732 (BIA 1988) ("We note, however, that the statement on the Notice of Appeal . . . in this case is so general as to provide no guidance as to the reasons for taking the appeal. By stating only that there was a 'denial of constitutional due process,' the respondent has not meaningfully identified the aspect of the immigration judge's decision that is challenged and the reasons underlying the challenge.").

The BIA then summarily dismissed the appeal for failure to adequately specify the reasons for appeal. Therefore, it is crucial to identify the issues being appealed and to specify in the Notice of Appeal the errors committed by the IJ. This is true even where a brief is later filed and oral argument is requested.[11]

Preparing a detailed Notice of Appeal can sometimes be a challenge where the Immigration Judge issued an oral decision rather than a written decision. Even where an advocate is present during the oral decision and has taken notes while the IJ rendered the decision, it can be challenging to ensure that issues for appeal are not missed since the oral decision is not transcribed until the entire hearing is transcribed before the briefing schedule is set.[12]

**Practice Tip:** If you were not present during the oral decision or if your notes are not reliably accurate or comprehensive, you can typically go to the immigration court in-person and review an audio recording of the oral decision. Courts now have systems set up to request audio files of cases without in-person review through email. It is important to check in with local procedures and processing times to determine whether they are accepting in-person appointments (given COVID protocols) or providing audio files in a different way. Some courts may also require a short form to be filled out containing the client's information and the reason for the review request.

***How detailed does the Notice of Appeal need to be?*** The Notice of Appeal should be detailed enough to include each issue being appealed, with an indication of what type of error the IJ committed, i.e., factual, legal, mixed, etc. Note that your responses do not need to fit into the box provided on the Notice of Appeal form and you may use additional pages in your response. At the same time, the Notice of Appeal is not a substitute for a brief, which is prepared after the hearing and oral decision is transcribed. Submitting a brief also has the added benefit of providing you more time to formulate your arguments, as well as more space (25 pages) to make those arguments.

***What if I need to file a Notice of Appeal before I can access the IJ's full decision?*** As a practical matter, advocates sometimes must file the Notice of Appeal before they are able to access the IJ's decision. In such situations, you must do your best to preserve issues for appeal based on the information you have available. Generally, a good rule of thumb is to err on the side of over-inclusion rather than under-inclusion. The reason is that failing to include arguments in the Notice of Appeal can result in permanent waiver of those issues for the BIA appeal as well

[11] *Matter of Lodge*, 19 I&N Dec. 500, 501 (BIA 1987) ("Simply indicating on the Notice of Appeal that oral argument is desired does not relieve the respondent of the responsibility for meaningfully informing the Board of the reason for the appeal.').

[12] See BIA Practice Manual, Ch. 4.2 (https://www.justice.gov/eoir/eoir-policy-manual/iii/4/2).

as any future appeals. On the other hand, over-including arguments will generally not legally prejudice your client since you will have the opportunity to abandon certain issues as the case moves along. At a minimum, the BIA requires the appealing party to state that a transcript of proceedings is required before all the reasons for appeal can be identified. [13]

At the same time, the reasons stated in the Notice of Appeal should be as specific as possible regarding the errors committed by the IJ, instead of making "conclusory" statements.[14] We will see below how to analyze an IJ's decision for the purpose of drafting an effective argument for appeal.

## III. Three Steps to Drafting an Effective Argument

### A. STEP ONE: Identify the Type of Error

Issues to raise in a BIA appeal can be separated into five main categories:

(1) Incorrect factual findings, including credibility findings;

(2) Incorrect legal standard applied;

(3) Discretionary determinations;

(4) Due process and procedural violations; and

(5) Mixed questions of law and fact.

Any of these categories can overlap with each other. For example, although an adverse credibility determination is a factual finding, if the IJ reached that finding after depriving the respondent of the opportunity to explain a perceived discrepancy, there is likely also a legal and due process violation. How to identify the types of error in the IJ's decision is discussed in more detail at Section IV, below.

[13] See *Matter of Cespedes*, 19 I&N Dec. 730, 732 (BIA 1988) (appealing party must provide a "meaningful statement of the reasons for appeal or an adequate explanation of why a transcript of the proceedings is necessary before such reasons can be set forth").

[14] See *Matter of Lodge*, 19 I&N Dec. at 501 ("In the present case the respondent's Notice of Appeal is conclusory and does not in any way apprise the Board of the particular basis for his claim that the immigration judge's decision is wrong.").

**Example**: You represent Malik in his claim for asylum before the immigration judge. When the IJ denied Malik's application, you reserved appeal. One of the IJ's findings was: "The respondent, who has established past persecution perpetrated by the government of Pakistan, has failed to establish that he cannot relocate to a different region of that country. As such, he has failed to establish a well-founded fear of future persecution." You identify three legal errors in this statement: (1) the IJ misapplied the burden of proof in requiring your client to affirmatively prove that he has a well-founded fear of future persecution despite having established past persecution; (2) the IJ erred in requiring Malik to prove that he cannot relocate, rather than determining whether he can *reasonably* relocate; and (3) the IJ failed to apply a presumption that relocation would be unreasonable, since the persecutor was the government.[15]

## B. STEP TWO: Identify the Proper Standard of Review

Once the errors in the IJ's decision have been identified, the Notice of Appeal and subsequent brief should clearly indicate which standard of review applies to each issue. Different standards apply depending on whether the immigration judge erred on a factual issue or legal issue.

The BIA reviews an IJ's factual findings, including credibility determinations, for "clear error."[16] Under this standard, "[a] factfinding may not be overturned simply because the Board would have weighed the evidence differently or decided the facts differently had it been the factfinder."[17] Instead, a factual finding is clearly erroneous only where the BIA is "'left with the definite and firm conviction that a mistake has been committed.'"[18]

The BIA must review legal findings (including due process violations) and discretionary decisions *de novo*, which the BIA has described as "reviewing the appellate record anew."[19] Questions of legal interpretation and whether a respondent's due process rights have been violated are questions of law, which are reviewed *de novo* by the BIA. Thus, the Board does not defer to the immigration judge's legal findings, and will apply the law to the case with fresh eyes.

---

[15] 8 C.F.R. § 1208.13(b).

[16] 8 C.F.R. § 1003.1(d)(3).

[17] *Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) (quoting Board of Immigration Appeals: Procedural Reforms To Improve Case Management, 67 Fed. Reg. 54,878, 54,889 (Aug. 26, 2002) (Supplementary Information)).

[18] *Matter of R-S-H-*, 23 I&N Dec. at 637 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

[19] *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996).

Finally, the BIA reviews mixed questions of fact and law under both standards of review, by reviewing underlying factual determinations under the clear error standard and the underlying legal determinations under the *de novo* standard.[20]

## C. STEP THREE: Identify the Remedy

Once you have identified the issue and the proper standard of review, clearly articulate what you would like the Board to do if it sustains your appeal. If the Board agrees that that the IJ committed a legal or factual error, it can either reverse the case or remand the matter back to the IJ. Typically, in cases where there was a legal error, the Board can reverse the IJ's finding and issue a new decision correcting the error, without need for a remand. The regulations state that a case may be remanded to the IJ where a factual error was committed by the IJ or further factfinding is necessary after correction of a legal error.[21]

> **Example:** In the example above, the Notice of Appeal you file for Malik could state: "The IJ legally erred in failing to apply a presumption of well-founded fear, where past persecution has been established. Furthermore, the IJ legally erred in requiring Respondent to prove that 'he cannot relocate' within Pakistan, thus failing to apply the proper legal standard of reasonableness of relocation. Finally, the IJ legally erred in failing to apply a presumption that Respondent cannot reasonably relocate within Pakistan, where he suffered past persecution at the hands of the government. See 8 C.F.R. § 1208.13(b). The Board should reverse the IJ's decision and grant Respondent's application for asylum. Alternatively, it should remand the matter for the IJ to consider whether DHS has rebutted the legal presumptions by a preponderance of the evidence."

This is a good example of being clear on what error was committed by the IJ, identifying whether it was legal, factual, or procedural, and being specific on what the Board should do if it agrees with the respondent that an error has occurred.

[20] *Matter of Z-Z-O-*, 26 I&N Dec. 586, 590-91 (BIA 2015) ("an Immigration Judge's predictive findings of what may or may not occur in the future are findings of fact, which are subject to a clearly erroneous standard of review . . . . However, whether an asylum applicant has established an objectively reasonable fear of persecution based on the events that the Immigration Judge found may occur upon the applicant's return to the country of removal is a legal determination that remains subject to de novo review.").

[21] 8 C.F.R. § 1003.1(d)(3)(D).

# IV. Identifying Errors in the IJ's Decision

The findings and reasoning provided by the IJ usually require multiple read-throughs before all the errors in the decision can be identified. In reading the decision (or your notes of the oral decision) several times, you can gain more clarity as to the errors committed by the IJ. Following is an effective process for making sure all issues have been identified:

- Read through the opinion multiple times while noting potential areas of factual and legal error.
- Determine whether citations to record evidence and caselaw are accurate.
- Consider any procedural issues during the hearings that may not be reflected in the decision, to determine whether due process violations or procedural errors may have occurred.
- Make a list of potential errors and determine whether there is a factual or legal basis to challenge each error.

## A. Factual Errors

Factual findings are any conclusions by the IJ as to what occurred in the past or will occur in the future. As mentioned, credibility determinations are typically considered questions of fact. So if the IJ made an adverse credibility finding against a witness, including the respondent, that would be challenged as a factual error on appeal. Other examples of factual findings are details regarding a person's entry into the United States, biographical details about an individual, assessments about future harm or other future events, and other explicit findings about what a witness' testimony or documents in the record state. If the IJ erred in his or her apprehension of the facts, these should be challenged under the clear error standard as previously mentioned.

*Example of Factual Error*: "Respondent did not testify consistently regarding the beatings he sustained in the Chinese prison."

*Example of Argument in Response:* "The BIA should reverse the IJ's adverse credibility finding as clearly erroneous. Respondent's testimony and supporting documents were entirely consistent regarding the beatings he sustained while detained. The inconsistencies perceived by the IJ are not borne out by the record and, instead, reflect the IJ's own confusion between Respondent's two arrests."

## B. Legal Errors

Legal findings are those that interpret laws before applying them to the facts. Examples of legal findings are whether DHS or the respondent has the burden of proof on a particular issue, whether the IJ has jurisdiction over a certain claim, whether a criminal conviction bars a

respondent from a relief application, and whether a law should apply retroactively. Legal errors can generally be identified by statements that are followed by citations to a statute, regulation, or case (or other legal source). In fact, sometimes the IJ's very reliance on a specific law or case can be legally erroneous and give rise to an appealable issue.

*Example of Legal Error*: "It is Respondent's burden to prove eligibility for asylum. 8 C.F.R. §§ 1208.13(a), 1208.15(b). Therefore, he must prove that he was not firmly re-settled in Brazil before he entered the United States."

*Example of Argument in Response*: "The IJ legally erred in requiring Respondent to prove that he was not firmly re-settled in Brazil. DHS has the initial burden to make a *prima facie* showing of an offer of firm resettlement, which it did not do in Respondent's case. *Matter of A-G-G-*, 25 I&N Dec. 486, 501 (BIA 2011). The BIA should, therefore, reverse the IJ's finding regarding firm resettlement as legally erroneous."

## C. Error in Discretionary Determinations

Discretionary decisions are determinations based on what is fair and what a party deserves, rather than what they're legally entitled to. Such decisions are subject to *de novo* review by the Board. Examples of discretionary determinations are whether a respondent deserves discretionary relief such as adjustment of status or cancellation of removal, and whether to grant a *sua sponte* motion to reopen as a matter of discretion.

*Example of Error in Discretionary Determination*: "Respondent is not deserving of a positive exercise of discretion because the seriousness of his theft-related criminal convictions outweigh the extreme hardship his wife and children would suffer without him. Therefore, his adjustment of status application is denied."

*Example of Argument in Response:* "The IJ legally erred in denying Respondent's adjustment of status application as a matter of discretion. The criminal court exercised its discretion favorably in reducing Respondent's three felony theft convictions to misdemeanors after his successful completion of probation. The last of the three convictions occurred over five years ago, and Respondent's rehabilitation is reflected in his lack of arrests since that time. Respondent has accepted responsibility for his actions and has expressed genuine remorse. Additionally, Respondent has not minimized the impact of his crimes on the victims, whom he acknowledged must have suffered after the theft incidents. At the same time, the BIA should consider that Respondent's actions did not include violence or force against his victims. These mitigating factors, when weighed against the positive factors and hardship demonstrated to his wife and children, weigh heavily in favor of a positive exercise of discretion. The BIA should, therefore, reverse the IJ's negative exercise of discretion."

## D. Due Process Violations and Procedural Errors

To establish a reversible due process violation the respondent must show that they were deprived of a fundamentally fair hearing and that they were prejudiced by the error.[22] Examples of due process violations are deprivation of the right to cross-examine the government's witnesses, the right to counsel, or the right to an interpreter. Usually, identifying due process errors will require familiarity with what occurred during the proceedings, not just what is reflected in the IJ's final decision. If you were not the advocate present during proceedings before the IJ, speaking with your client and former counsel about the fairness of the proceedings is highly recommended since it can help you gauge whether the proceedings were fundamentally fair.

*Example of Procedural/Due Process Error*: The IJ indicated to respondent, who was detained, that he should go forward without counsel or risk losing his chance to present a claim for relief, thus implying that asking for time to find counsel would harm his case.

*Example of Argument in Response:* "By depriving Respondent of the right to counsel during his removal proceedings, the IJ violated Respondent's statutory and due process right to counsel. It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993). This includes the right to counsel and a reasonable period of time to obtain counsel. *Ram v. Mukasey*, 529 F.3d 1238, 1241-42 (9th Cir. 2008). The Board should reverse the IJ's decision denying Respondent his relief applications and remand the matter so that he can present his claims with the assistance of counsel."

## E. Mixed Issues of Fact and Law

Oftentimes, IJ decisions contain mixed findings of fact and law. Examples of such mixed questions are whether a set of facts meets the legal definition of "persecution" in the asylum context, whether a foreign government "acquiesces" in torture in the context of applications under the Convention Against Torture, and whether an application for cancellation of removal has established "exceptional and extremely unusual hardship" to their qualifying relatives.

*Example of Mixed Issue of Fact and Law*: "While the Respondent will have difficulty finding employment in Mexico, thus resulting in financial hardship to his disabled wife, he has not met

[22] *Matter of D-*, 20 I&N Dec. 827, 831 (BIA 1994) (per curiam) (noting that an alien has been denied a fair hearing "only if he has been prejudiced by some deficiency so as to deprive him of due process"); *Matter of Santos*, 19 I&N Dec. 105, 107 (BIA 1984) (stating that "an alien must demonstrate that he has been prejudiced by a violation of a procedural rule or regulation before his deportation proceeding will be invalidated").

the high threshold of proving 'exceptional and extremely unusual hardship' required for applications for cancellation of removal.

*Example of Argument in Response:* "The IJ made both factual and legal errors in denying Respondent's application. Respondent did not merely state that he would have "difficulty" finding employment in Mexico. Rather, Respondent, witnesses, and other record evidence demonstrates that it will be virtually impossible for Respondent to find work that would allow him to provide for his family. Also, the uncontroverted facts in this case establish that Respondent's wife will not merely experience financial hardship, but that she relies on Respondent for her physical care and mental well-being. The BIA should reverse the IJ's factual determinations as clearly erroneous. Additionally, the IJ legally erred in failing to consider the hardship factors cumulatively, particularly Respondent's wife's health problems. See *Matter of J-J-G-*, 27 I&N Dec. 808 (BIA 2020)."

## V. Conclusion

Appealing a case can be an important step, regardless of whether you believe the issues on appeal are strong. An appeal can provide critical additional time in the U.S., and during that time the facts of the case and legal options available to your client may change for the better. Sometimes, due to the BIA's precedential or non-precedential caselaw, you may be fairly certain that the BIA will reject your legal argument. But if you have a *bona fide* legal argument, it is generally advisable to include the argument in the Notice of Appeal and appeal brief in order to preserve it for a potential federal appeal. This is true especially if it is an issue in which there is a circuit split, which highlights inconsistent positions by the BIA, or which is reliant on basic principles of statutory construction or the Constitution. Your client has the right to appeal any decision they believe is wrongfully decided by the immigration judge and filing the appeal is often the next best step in a client's case, regardless of your legal assessment of the likely outcome. By noting factual, legal and due process errors as you read and re-read the immigration judge's decision, you can present a viable notice of appeal the Board.

**San Francisco**
1458 Howard Street
San Francisco, CA 94103
t: 415.255.9499
f: 415.255.9792

**ilrc@ilrc.org**
**www.ilrc.org**

**Washington D.C.**
600 14th Street NW
Suite 502
Washington, DC 20005
t: 202.777.8999
f: 202.293.2849

**Austin**
6633 East Hwy 290
Suite 102
Austin, TX 78723
t: 512.879.1616

**San Antonio**
500 6th Street
Suite 204
San Antonio, TX 78215
t: 210.760.7368

## About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend