7 Bond

7.1 Bond Appeals Generally

In certain circumstances, an alien detained by the Department of Homeland Security (DHS) can be released from custody. When an alien asks an Immigration Judge to review a DHS custody decision, it is called a "bond redetermination." Appeals from custody decisions are commonly called "bond appeals." Bond proceedings are separate from removal proceedings. See generally 8 C.F.R. §§ 1003.19, 1236.1.

Bond proceedings differ procedurally from other immigration proceedings. For example, an alien can request a bond redetermination without a formal motion, without paying a fee, and without the usual filing deadlines.

7.2 Jurisdiction

(a) ***Continuing jurisdiction.*** — An alien may ask the Immigration Judge or DHS to change a bond decision if:

- the alien is in detention (or was in detention within the last seven days),
- the alien's removal or deportation proceedings are still open before an Immigration Judge or the Board, and
- the request for a change in bond is not moot as described in Chapter 7.4 (Mootness)

The alien may ask even if:

- the alien has previously asked the Immigration Judge to change a bond decision, *provided* the alien can show that his or her circumstances have changed materially since the last bond decision
- the alien appealed a previous bond decision to the Board

(b) ***Appellate jurisdiction.*** **—**

(i) ***Immigration Judge decisions.*** **—** The Board has jurisdiction over appeals of Immigration Judge bond rulings. See 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3)(i). The Board also has general emergency stay authority when DHS appeals an Immigration Judge's custody decision. See 8 C.F.R. § 1003.19(h)(4)(i).

(ii) ***DHS decisions.*** **—** The Board has jurisdiction over certain appeals involving DHS bond decisions made subsequent to an Immigration Judge ruling. See 8 C.F.R. § 1236.1(d)(3). The Board does *not* have jurisdiction over appeals from DHS custody decisions involving:

- aliens in exclusion proceedings
- arriving aliens in removal proceedings
- aliens ineligible for release on security or related grounds
- aliens ineligible for release on certain criminal grounds

8 C.F.R. § 1003.19(h)(2)(i).

(iii) ***Jurisdictional issues.*** **—** The Board has jurisdiction to rule on whether an Immigration Judge has jurisdiction to make a bond determination.

(c) ***No jurisdiction.*** **—** The Board does not have authority to review a bond decision when the alien:

- departs the United States, whether voluntarily or involuntarily
- is granted relief by the Immigration Judge and DHS does not appeal
- is granted relief from removal by the Board
- is denied relief from removal by the Immigration Judge and the alien does not appeal
- is denied relief from removal by the Board
- is released on the conditions requested in the bond appeal
- is released on conditions more favorable than those requested in the bond appeal

- has a subsequent bond redetermination request granted by an Immigration Judge and DHS does not appeal

7.3 Procedure

(a) ***Filing.*** — When an alien may appeal the bond decision of an Immigration Judge, the appeal is filed in the same manner as any other appeal of an Immigration Judge decision. See Chapters 3 (Filing with the Board), 4 (Appeals of Immigration Judge Decisions). In those few instances in which an alien may appeal to the Board from the custody determination of DHS, the appeal is filed in the same manner as a visa petition appeal. See Chapters 7.2(b)(ii) (DHS decisions), 9 (Visa Petitions).

(i) ***Separate Notice of Appeal.*** — A bond appeal must be filed on its own Notice of Appeal (Form EOIR-26, if an Immigration Judge decision, or Form EOIR-29, if a DHS decision) and *must not* be combined with an appeal of a decision regarding the alien's removal or deportation (often referred to as the decision "on the merits" of the case). The Notice of Appeal should be completed in full and specify the date of the bond decision being appealed.

(ii) ***Deadline.*** —

(A) ***Immigration Judge decision.*** — When an Immigration Judge renders the bond decision, the appeal has the same 30-day deadline as any other appeal from an Immigration Judge decision. See Chapter 4.5 (Appeal Deadlines).

(B) ***Department of Homeland Security decision.*** — In the limited instances in which the Board has jurisdiction over the appeal from a DHS bond decision, the deadline for filing an appeal is 10 days from the date of the DHS bond decision. See 8 C.F.R. § 1236.1(d)(3). See also Chapter 3.1(b) (Must be "timely").

(iii) ***Fee.*** — Generally, there is no filing fee for a bond appeal. However, when an alien is appealing the amount of a voluntary departure bond in removal proceedings, there is a $110 filing fee.

(iv) ***Stays.*** —

(A) ***Stays of deportation or removal.*** — Stays of deportation or removal are not available in bond proceedings. See 8 C.F.R. § 1236.1(d)(4). See also Chapter 6 (Stays and Expedite Requests).

(B) ***Stays of bond decisions.*** — If an alien appeals a bond decision, that decision remains in effect while the appeal is pending. The same is true for a DHS appeal, unless the decision is "stayed" by regulation (which here means that the Immigration Judge's decision does not go into effect and the DHS decision to detain the alien remains in effect until the Board decides the appeal). See 8 C.F.R. § 1003.19(i)(2).

A bond decision is stayed by regulation when either:

- DHS has determined that an alien should not be released, but the Immigration Judge authorizes the alien's release, or
- DHS sets a bond of $10,000 or more, but the Immigration Judge sets a bond lower than $10,000

For such a stay to take effect, DHS must file a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) with the Immigration Court within one business day of the Immigration Judge's bond order.

When a stay is not automatic, DHS may ask the Board to grant an emergency stay. See 8 C.F.R. § 1003.19(i)(1), *Matter of Joseph*, 22 I&N Dec. 660 (BIA 1999).

(b) ***Processing.*** — Appeals of bond decisions made by Immigration Judges are briefed and processed in the same manner as appeals of Immigration Judge removal decisions, except that bond hearings are not transcribed. See Chapters 3 (Filing with the Board), 4 (Appeals of Immigration Judge Decisions). Appeals of bond decisions made by DHS officers are briefed and processed in the same manner as visa petition appeals. See Chapter 9 (Visa Petitions).

(i) ***Briefing schedule.*** — Where the appeal is taken from an Immigration Judge decision, the Board issues a filing receipt and a briefing schedule. See Chapter 4.2(e) (Briefing schedule). Where the appeal is taken from a DHS decision, DHS is responsible for the briefing. See Chapter 9.3(d)(ii) (Briefing schedule). Briefs, when submitted, should comply with the general rules for briefing. See Chapter 4.6 (Appeal Briefs).

(ii) ***Transcripts.*** — Bond proceedings are less formal than other Immigration Court proceedings. See *Matter of Chirinos*, 16 I&N Dec. 276 (BIA 1977). Bond hearings are seldom recorded and are not routinely transcribed. See generally Chapter 4.2(f) (Transcription).

(iii) ***Decision.*** — Upon entry of a decision regarding a bond appeal, the Board serves the decision on the parties by regular mail.

7.4 Mootness

A bond appeal is deemed moot whenever the alien:

- departs the United States, whether voluntarily or involuntarily
- is granted relief by the Immigration Judge and the INS does not appeal
- is granted relief by the Board
- is denied relief by the Immigration Judge and the alien does not appeal
- is denied relief by the Board
- is released on the conditions requested in the appeal
- is released on conditions more favorable than those requested in the appeal
- has a subsequent bond redetermination request granted by an Immigration Judge

When a bond appeal is moot, the Board issues an order to that effect.