

EOIR & JUDICIAL REVIEW

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WHAT TO DO IF YOUR CASE IS DENIED?

- Within 30 days:
 - File an appeal to the BIA
 - File a Motion to Reconsider
- Within 90 days:
 - File a Motion to Reopen if newly available evidence

APPEALS TO THE BIA

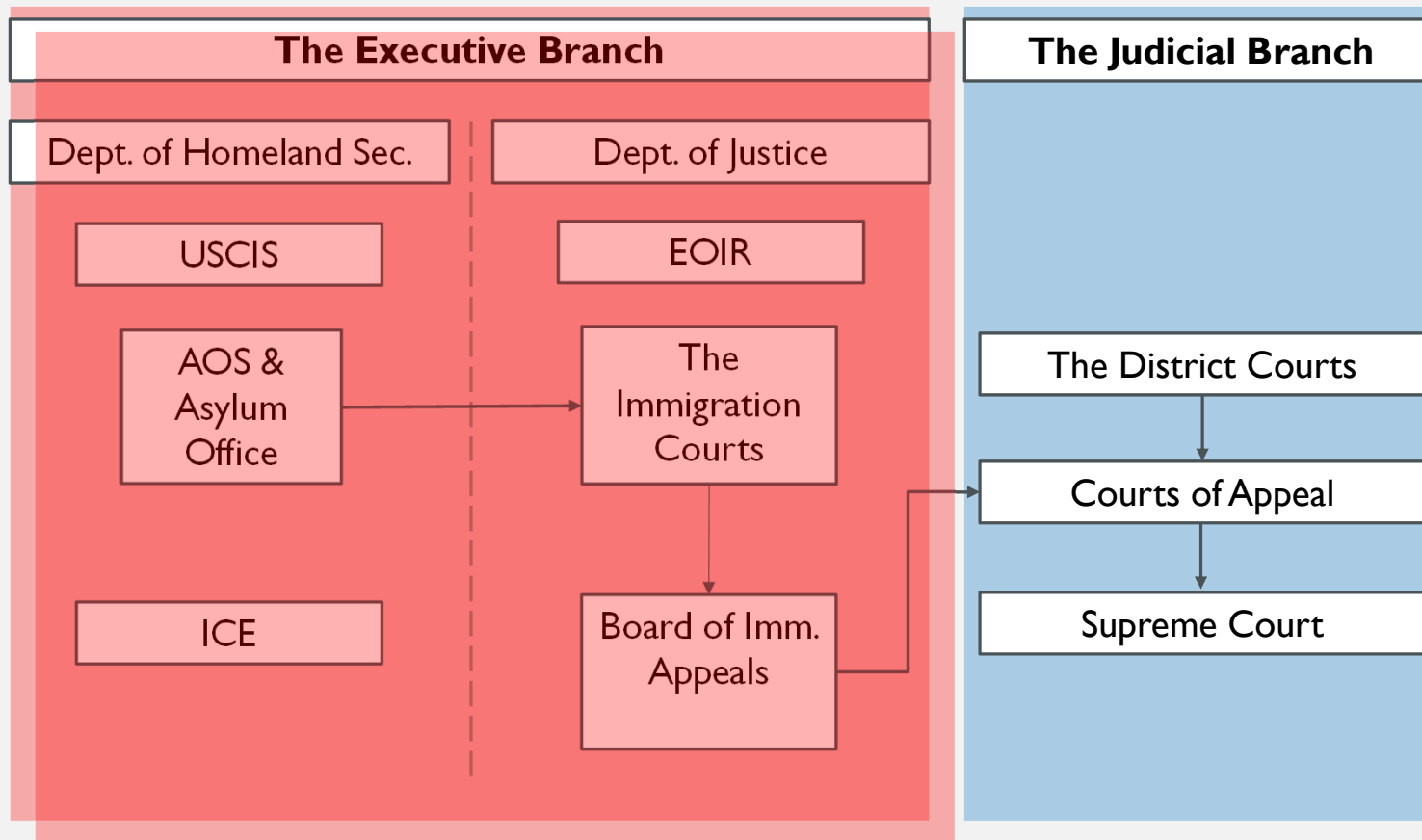
- Notice of Appeal (EOIR-26) must be filed within 30 days (on blue paper) along with an EOIR-27 Entry of Appearance (yellow paper)
- Briefing schedules can take months to be issued, although the wait time will be shorter in detained cases
- One 21-day extension is routinely granted upon request
- **Very** difficult to get an extra extension beyond 21 days
- **Filing an appeal grants your client an automatic stay of removal**

MOTION TO RECONSIDER

- Filed directly with the immigration judge who heard the case
- Must be filed within 30 days
- Must argue errors in fact or law made by the prior decision
- Does not stay removal
- 8 C.F.R. § 1003.23(b)(2)

MOTIONS TO REOPEN

- Must be filed with the immigration judge who heard the case
- Must be filed within 90 days (with some exceptions)
- Limited to one motion
- Must contain new facts supported by affidavits or evidence
- If filing new relief, must include a copy of the application
- Does not stay removal *unless* it was an in absentia removal order
- If filed while appeal is pending, treated as a Motion to Remand



WHAT IF YOUR BIA APPEAL IS DENIED?

- Within 30 days:
 - File Petition for Review with the Circuit Court of Appeals, or
 - File Motion to Reconsider with BIA
- Within 90 days:
 - File Motion to Reopen with BIA

IN THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

- Lulu: VAWA, “Connected to,” and Chevron deference
- Sueli & Varley: Asylum, and Prisoners/Detainees as a Social Group
- Luis: 42B Cancellation, and what the meaning of “Consummation” of a Marriage
- Anna: Fraud & Deceit, and “Tethering” Monetary Losses to the Conviction
- (Next Up) Nelida: “Sex Abuse of a Minor,” “Child Abuse”

LULU'S "VAWA SPECIAL RULE
CANCELLATION OF REMOVAL" CASE INA §
240A(B)(2)
INA § 240A(B)(2) STATUTORY
REQUIREMENTS:

- battered or subjected to extreme cruelty by spouse
- 3 years physical presence
- good moral character
- not inadmissible/deportable
- extreme hardship to person, parent, child
- WAIVER if WARRANTED and if
- "act or conviction" was "connected to" the extreme cruelty or abuse
- IJ: encouraged, induced
- BIA: ask, encourage, compel, coerce, or "on behalf of or for (her husband)"

“CHEVRON” DEFERENCE

- Chevron, U.S.A., Inc., v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984)
- CD requires precedential value-- De Leon-Ochoa v. Att’y Gen. 622 F.3d 341, 350 (3rd Cir. 2010)
- has Congress spoken directly on the issue (or silent)?
- is the term clear and unambiguous?
- is agency’s interpretation a “permissible construction,” reasonable?
- ASISTA amicus

SUELI & VARLEY'S ASYLUM CASE

Detainees/Prisoners as a “particular social group”?

- immutable
- socially distinct
- particular
- pre-existing the persecution, not defined by it
- nexus

LUIS: DID HE “CONSUMMATE” HIS MARRIAGE?

INA § 101(a)(35) -The term “spouse,” “wife,” or “husband,” does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.”

- ACLU amicus
- Matter of B-, 5 I&N Dec. (BIA 1954)
- IJ Honeyman and the BIA: “heterosexual intercourse”
- but United States v. Windsor; Obergefell v. Hodges; Griswold v. CT; Loving v. Virginia
- Matter of McKee, 17 I&N Dec. 332 (BIA 1980), “intent to establish life together”
- Franklin v. Franklin, 154 Mass. 515, 516 (1891) “The consummation of a marriage by coition is not necessary to its validity.”
- 1979 and the “mental disorder” of homosexuality; DOMA
- Fundamental right; Due Process; Void for Vagueness;
- “Stepchild” created upon marriage of the parents, child < 18

ANNA AND THE “TETHERING” OF LOSSES IN
FRAUD & DECEIT CRIMES, INA §
101(A)(43)(M)(I)

- Conviction for “an offense that involves fraud or deceit in which the loss to the victim or victim exceeds \$10,000”
- Information, Count, Restitution, Plea Agreement, Date of Offense

NELIDA: SEX WITH A MINOR AS “ABUSIVE” PER SE?

- Removal charge of aggravated felony “sexual abuse of a minor” INA 101(a)(43)(A)
- Removal charge of “child abuse” INA 237(a)(2)(E)(i)
- What did Congress mean by “abuse”?
- Restrepo v. Att’y Gen., 617 F.3d 787, 791, 796 (3d Cir. 2010), and Cadapan v. Att’y Gen., 749 F.3d 157 (3d Cir. 2014).
- 18 USC § 3509(a)(8)
- Esquivel-Quintana v. Sessions, 137 S. Ct. 1562, 1568-1569 (2017)