

Immigration Court: What to Expect

A comprehensive guide from EB5 Attorneys

Immigration court proceedings take place before an immigration judge within the Executive Office for Immigration Review (EOIR), a division of the Department of Justice. Proceedings begin when the Department of Homeland Security (DHS) files a Notice to Appear (NTA) charging the respondent with removability under INA section 237 (deportability) or INA section 212 (inadmissibility). The respondent may apply for relief from removal during proceedings. As of early 2026, the EOIR backlog exceeds 3.5 million cases nationwide.

Contents

1. How Cases Enter Immigration Court
 2. Master Calendar Hearings
 3. Individual Merits Hearings
 4. Forms of Relief from Removal
 5. Appeals to the Board of Immigration Appeals
 6. Preparing for Your Court Date
 7. Frequently Asked Questions
-

How Cases Enter Immigration Court

Immigration court proceedings are initiated when DHS files a Notice to Appear (NTA, Form I 862) with the immigration court that has jurisdiction over the respondent's location. The NTA lists the factual allegations against the respondent and the charges of removability. Common bases for NTA issuance include: overstaying a nonimmigrant visa, entering without inspection, criminal convictions that trigger deportability grounds, and asylum referrals from USCIS when an affirmative asylum application is denied.

The NTA must be personally served on the respondent. Under *Pereira v. Sessions*, 138 S.Ct. 2105 (2018), an NTA that does not include the date and time of the hearing may be defective for purposes of triggering the stop time rule for cancellation of removal. However, courts have split on the broader implications of defective NTAs.

After the NTA is filed, the immigration court schedules a master calendar hearing, which is the first appearance. The time between NTA filing and first hearing varies enormously by court location: some courts schedule initial hearings within weeks, while courts with severe backlogs may not schedule the first hearing for one to three years. Detained cases are prioritized and typically move more quickly through the system.

Master Calendar Hearings

A master calendar hearing is a short procedural appearance, typically lasting 10 to 30 minutes, before an immigration judge. Multiple cases are scheduled during the same session. At the master calendar hearing, the judge confirms the respondent's identity, verifies service of the NTA, takes pleadings (the respondent admits or denies the factual allegations and concedes or contests removability), and identifies what forms of relief from removal the respondent intends to pursue.

The respondent has the right to be represented by counsel at their own expense (INA section 240(b)(4)(A)), but the government is not required to provide free counsel. If the respondent needs time to find an attorney, the judge will typically grant one or two continuances. Respondents who appear without counsel and indicate they are seeking representation are generally given 30 to 60 days.

Common outcomes of a master calendar hearing include: the case is continued for the respondent to obtain counsel; the respondent files applications for relief (asylum, cancellation of removal, adjustment of status, voluntary departure); the judge sets a deadline for filing applications; the judge schedules an individual merits hearing; or if the respondent concedes removability and does not seek relief, the judge may enter a removal order at the master calendar hearing.

Individual Merits Hearings

The individual merits hearing is the trial phase of immigration proceedings. The respondent presents evidence and testimony to support their application for relief from removal. DHS, represented by a trial attorney from ICE, cross examines the respondent and any witnesses and may present its own evidence.

For asylum cases, the respondent testifies about their persecution claim, and the judge evaluates credibility, country conditions evidence, and legal eligibility. Expert witnesses (country conditions experts, medical professionals, psychologists) may testify. The respondent bears the burden of proving eligibility for asylum under INA section 208(b)(1)(B).

For cancellation of removal cases (INA section 240A), the respondent must demonstrate continuous physical presence (10 years for non LPRs, 7 years for LPRs), good moral character, and that removal would cause exceptional and extremely unusual hardship to a qualifying U.S. citizen or LPR relative (for non LPRs) or that the positive factors outweigh the negative (for LPRs).

Merits hearings typically last two to four hours but can extend to full day or multi day hearings in complex cases. The immigration judge issues a decision either orally at the conclusion of the hearing or in writing within days to weeks. The decision may grant or deny the requested relief, order removal, or grant voluntary departure.

Forms of Relief from Removal

Respondents in removal proceedings may apply for several forms of relief, depending on their individual circumstances:

Asylum (INA section 208): available to individuals who have been persecuted or fear persecution based on race, religion, nationality, political opinion, or membership in a particular social group. Defensive asylum is filed in immigration court on Form I 589.

Withholding of Removal (INA section 241(b)(3)): requires a higher standard of proof than asylum (clear probability rather than well founded fear) but provides protection from removal to the specific country where persecution would occur. It does not lead to permanent resident status or a green card.

Convention Against Torture (CAT) Protection (8 CFR 1208.16 and 1208.18): available to individuals who can demonstrate it is more likely than not that they would be tortured by or with the acquiescence of a government official in the country of removal.

Cancellation of Removal (INA section 240A): available to certain long term residents with qualifying relationships. Non LPR cancellation requires 10 years of continuous physical presence and exceptional and extremely unusual hardship to a qualifying relative. LPR cancellation requires 7 years of continuous residence and 5 years as an LPR.

Adjustment of Status (INA section 245): if the respondent has an approved or pending immigrant visa petition and a visa number is available, they may apply for adjustment in removal proceedings.

Voluntary Departure (INA section 240B): allows the respondent to leave the United States at their own expense within a specified period, avoiding a formal removal order and its consequences (10 year bar on reentry).

Appeals to the Board of Immigration Appeals

Either party (the respondent or DHS) may appeal the immigration judge's decision to the Board of Immigration Appeals (BIA) within 30 days of the decision. The appeal is filed on Form EOIR 26 with a \$110 filing fee (fee waiver available for indigent respondents).

The BIA reviews the immigration judge's decision for legal error. It generally defers to the immigration judge's credibility findings unless they are clearly erroneous. The BIA may affirm, reverse, or remand the decision for further proceedings. BIA decisions are typically issued within 6 to 18 months, though some cases take longer.

If the BIA affirms the removal order, the respondent may seek review in the federal circuit court of appeals where the immigration court is located, by filing a Petition for Review within 30 days of the BIA decision (INA section 242(b)(1)). Federal courts review BIA decisions for legal error and may remand cases where the BIA applied the wrong legal standard. Filing a petition for review does not automatically stay removal; the respondent must request a stay of removal separately.

A final removal order carries significant consequences: a 10 year bar on readmission (INA section 212(a)(9)(A)(ii)), potential criminal prosecution for reentry after removal (INA section 276), and ineligibility for certain forms of immigration relief.

Preparing for Your Court Date

Preparation for an immigration court hearing should begin immediately after receiving the NTA. Key steps include:

Obtain legal representation as soon as possible. Respondents with attorneys are significantly more likely to obtain relief than those appearing pro se. If you cannot afford an attorney, contact legal aid organizations, law school immigration clinics, and nonprofit immigrant services organizations in your area. EOIR maintains a list of free legal services providers at [justice.gov/eoir/list-pro-bono-legal-service-providers](https://www.justice.gov/eoir/list-pro-bono-legal-service-providers).

Gather all relevant documents: passport, I 94, any prior immigration applications, employment records, tax returns, lease agreements, birth certificates of U.S. citizen children, medical records, and any evidence supporting your claim for relief. Documents in foreign languages must be translated into English by a certified translator.

Prepare your testimony. If applying for asylum, write a detailed declaration describing the persecution you experienced or fear. If applying for cancellation of removal, document your continuous presence, ties to the community, and the hardship removal would cause to your qualifying relatives.

Arrive at court early. Immigration courts are formal proceedings. Dress appropriately. Bring all documents in organized folders. Turn off your phone. Address the judge as "Your Honor." Answer questions directly and honestly. Do not argue with the DHS trial attorney during cross examination; your attorney will handle objections.

Frequently Asked Questions

1. Do I need a lawyer for immigration court?

The law does not require it, but statistics strongly favor represented respondents. Studies by the American Immigration Lawyers Association and academic researchers consistently show that respondents with attorneys are four to five times more likely to obtain relief from removal than those without. Immigration court procedures are adversarial, and DHS is always represented by a trained trial attorney. An unrepresented respondent faces a significant procedural disadvantage.

2. What happens if I miss my court date?

Failure to appear at a scheduled hearing without good cause results in an in absentia removal order under INA section 240(b)(5). The immigration judge will order your removal in your absence, and the order carries the same consequences as any final removal order: 10 year bar on reentry and potential criminal prosecution for illegal reentry. An in absentia order may be rescinded if you can show the failure to appear was due to exceptional circumstances (such as serious illness or ineffective assistance of counsel) or that you did not receive proper notice of the hearing. You must file a motion to reopen within 180 days of the order, or at any time if you did not receive the hearing notice.

3. How long do immigration court cases take?

Timelines vary dramatically by court location and whether the respondent is detained. Detained cases are typically resolved within weeks to months because EOIR prioritizes them. Non detained cases in courts with severe backlogs may take two to five years from NTA to final merits hearing. The BIA appeal process adds 6 to 18 months. Federal circuit court review adds additional months to years. The total duration from NTA to final resolution can range from a few months (detained, no appeal) to over seven years (non detained with federal court review).

4. Can I apply for a green card while in removal proceedings?

Yes, in certain circumstances. If you have an approved immigrant visa petition (I 130, I 140, or I 526E) and a visa number is immediately available, you may apply for adjustment of status before the immigration judge under INA section 245. The immigration judge has jurisdiction to adjudicate the adjustment application as part of the removal proceedings. You may also pursue other forms of relief that lead to lawful status, such as asylum (which leads to asylee status and eventual green card eligibility) or cancellation of removal (which directly grants LPR status if approved).

5. What is voluntary departure and should I request it?

Voluntary departure (INA section 240B) allows you to leave the United States at your own expense within a set period (typically 60 to 120 days) instead of being formally removed. The advantage is that voluntary departure does not carry the 10 year reentry bar that accompanies a removal order, preserving your ability to seek lawful admission in the future. The disadvantage is that you must leave, and failure to depart by the deadline converts the grant into a removal order with additional penalties. Voluntary departure is most appropriate when you have no viable claim for relief and want to preserve future immigration options.

6. Can I be detained during immigration court proceedings?

Yes. DHS has authority to detain individuals in removal proceedings under INA section 236. Certain categories are subject to mandatory detention without bond (INA section 236(c)), including those convicted of aggravated felonies, certain drug offenses, and firearms offenses. Others may request a bond hearing before the immigration judge. At the bond hearing, the judge considers flight risk, danger to the community, ties to the United States, and other factors. Bond amounts typically range from \$1,500 to \$25,000 or more.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

© 2026 EB5 Attorneys. All rights reserved.

Source: <https://eb5attorneys.com/guides/immigration-court-hearing>