HOW TO ADDRESS EVIDENTIARY ISSUES IN BOND PROCEEDINGS

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This practice advisory focuses on evidentiary issues in bond proceedings for adults and discusses practice tips for handling those issues and challenges. For information related to bond proceedings generally, *see* ILRC, *Representing Clients in Bond Proceedings: An Introductory Guide* (September 2017).[1] For other removal defense resources, *see* www.ilrc.org/removal-defense and *Defending Immigrants in Immigration Court* (ILRC 2019).

I. Introduction

When Immigration and Customs Enforcement (ICE) assumes custody of an individual, an ICE officer makes the initial custody determination regarding whether that person should continue to be detained or released on a bond, parole, or under a supervised community custody program.[2] After ICE has made the initial custody determination, the detained non-citizen may seek review of the decision before an immigration judge (IJ).[3] An IJ can lower or increase the bond which was initially set by ICE. An IJ may also set a bond when ICE did not set any bond at all, or deny bond. The minimum bond that an IJ may set is generally $1,500.[4] There is no maximum amount.

An individual may request a bond hearing orally or in writing.[5] Bond proceedings are separate from removal proceedings.[6] An IJ can consider "any information that is available…or that is presented to him or her by the alien or the Service" in making a bond determination.[7] Any evidence that is "probative and specific" can be considered during the bond hearing.[8] Documents submitted and testimony taken during a bond hearing are not automatically included as part of removal proceedings, but could be used to impeach a respondent during removal proceedings.

First, when preparing for a bond hearing, you should explain to your client what a bond hearing is and what is going to happen. Often, respondents are confused about the difference between a bond hearing and master calendar hearing, so it is helpful to explain that during a bond hearing, the IJ will only assess factors related to a bond and custody release redetermination. While your client is detained, rely on their family, friends and loved ones to collect much of the evidence that you will need. In general, gather any evidence that demonstrates your client's good character. Specific factors are discussed below.

II. Proving Your Bond Case

Your non-citizen client has the burden of proving that they merit bond by showing that they:

1. Do not pose a danger to the community; and
2. Are not a flight risk.[9]

The non-citizen may also be required to prove that they are not a threat to national security.[10] An IJ may deny bond based on a finding of danger to the community *or* flight risk; they do not have to make a determination as to both. In making a bond determination, the IJ takes into consideration a large number of factors collectively known as bond equities, including, *but not limited to* the following factors:

1. Whether the person has a fixed address in the United States;
2. the length of residence in the United States;
3. family ties;
4. employment history;
5. record of appearance in court;
6. criminal history (including the extensiveness, recency and seriousness of the criminal activity);
7. history of immigration violations;
8. attempts to flee prosecution; and
9. manner of entry into the United States.[11]

Other common factors include eligibility for immigration relief, community ties, and having a sponsor. An IJ has broad discretion in deciding the factors that they may consider in custody redeterminations, and they may choose to give greater weight to one factor over others, as long as the decision is reasonable.[12] Thus, in preparing for the hearing, practitioners should collect evidence addressing as many bond equities as possible. Furthermore, practitioners should always be prepared to point back to the record and supporting documents (including page and exhibit number) when making oral arguments during a bond hearing.

A. Danger to the Community

When evaluating whether your client is a danger to the community, the primary focus is criminal history. A history of gang involvement and substance abuse may also raise red flags for the immigration court, particularly if the gang activity and substance abuse led to the commission of crimes. Family and community ties generally do not mitigate dangerousness, so it is important that you do not conflate factors related to dangerousness with flight risk factors, discussed below.[13]

During initial preparation, it is necessary to research the facts and mitigate. Time permitting, find out as much as possible about what happened during the commission, or alleged commission, of the crime(s). Request police reports, talk to others with knowledge of the crime, talk to the criminal defense attorney, and question your client extensively. If your client has substance abuse issues, note that substance abuse can affect memory and the ability to recall important details. It is better to have a clear understanding of the criminal history, even if you do not intend to talk about all the underlying facts during the bond hearing, than to be surprised at the hearing by undiscovered facts. The Office of Chief Counsel (OCC) for ICE may attempt to introduce police reports, probation reports and other evidence of the underlying criminal activity, so having all the information ahead of time will allow you to be prepared to rebut, respond and mitigate. You should object to the submission of such evidence (e.g. based on hearsay), but should prepare for its submission nonetheless. Note, you should not rely on the Notice to Appear or Form I-213 as a comprehensive or accurate representation of your client's criminal history. Instead, you will have to research your client's criminal history on your own, for example, by requesting files from the prior criminal defense attorney and criminal court. *See* further discussion at Part III, *Defending Against Bad Evidence*.

If your client has criminal history, it is necessary to mitigate it by tying it back to the *Matter of Guerra* language regarding criminal history: extensiveness, seriousness and recency.[14]

- For clients with an **extensive record**, practitioners should frame the criminal history as not serious and not recent. Always tie the criminal record to factors that are no longer present in the client's life which may have led to the criminal history, or factors that will be concretely addressed, such as substance abuse, unstable housing, undiagnosed mental illness, and lack of support. If these factors are still present, and sometimes even if they are not, ensure that you have a plan of support in the event that these factors arise again in the future.

- For clients with a **recent record**, frame the history as not extensive and not serious. Provide context for the criminal history and evidence of positive equities. Most importantly, submit evidence of a release plan. For example, demonstrate the client's rehabilitation plan, which may include inpatient or outpatient drug or alcohol treatment, anger management classes, job placement, etc., depending on the facts of the case. Discuss your client's transportation plan for attending the treatment or classes. Show that your client has supports in place to ensure that they follow through with the rehabilitation plan. Explain that the risks that were present at the time of the criminal contact will be addressed. For example, if the client had unstable housing, provide a letter from family, friends or a shelter showing that your client will have stable housing when they are released from detention. Provide evidence of available case management services, if applicable. Create rehabilitation, even if there is none. Proactively contact rehabilitation centers and see if you can secure a letter guarantying admission. Depending on your client's degree of addiction, a residential treatment center may be preferable over meetings or counseling. If your client is detained in a facility that provides treatment programs or classes, make sure that your client is enrolled in such courses.

- For clients with a **serious record**, frame it as not extensive or recent. Again, provide context for the criminal history and find facts to show that the offense was not as serious as it sounds, such as highlighting a relatively low sentence imposed and/or non-violent nature of the offense. Most importantly, show evidence that your client has taken responsibility for their actions and is rehabilitated (e.g., evidence of treatment program completion, probation compliance, letters from family and/or community members regarding the person's good character and rehabilitation, etc.). In addition to submitting a respondent statement, prepare your client for testimony demonstrating responsibility and remorse. Clients sometimes state that they did not commit the offense for which they were convicted, which often occurs as a result of plea bargaining during criminal proceedings. However, immigration court is not another opportunity to litigate the criminal case, and it will hurt your client to deny responsibility if there is a criminal conviction. You may need to discuss the criminal conviction in detail to determine for which conduct your client will be able to take responsibility. It is important to explain to your client that they cannot revisit the criminal conviction, and a finding of guilt is already part of the record.

1. DUIs

In recent years, immigration judges and ICE have become especially strict on alcohol abuse and particularly offenses involving Driving Under the Influence (DUI) of alcohol or a controlled substance. In *Matter of Siniauskas*, the Board of Immigration Appeals (BIA) held that "driving under the influence is a significant adverse consideration in determining whether an alien is a danger to the community in bond proceedings."[15] In that case, the BIA made note of the respondent's multiple convictions in a 10-year span, as well as a recent DUI arrest.[16] While a DUI does not signify that your client will be denied bond, especially if it was a single conviction from several years ago, practitioners must put extra effort into demonstrating rehabilitation or a plan for rehabilitation (if the offense is recent) and a strong system of accountability, especially if the offense is recent and/or there are multiple offenses.

2. Pending Charges

An IJ may consider all criminal history when assessing dangerousness, not solely criminal history that results in conviction.[17] In *Matter of Guerra*, the BIA found that the IJ had properly denied immigration bond when the judge gave

greater weight to criminal history that did not result in convictions than to other factors.[18] However, if the charges were never filed, dismissed or are pending, you should always fight back against any characterization of your client as guilty.

IJs often want details of the alleged criminal activity and underlying arrest for respondents with pending charges, even if the respondent has no prior criminal history. In this situation, you should always push back by reminding the IJ of your client's Fifth Amendment right to remain silent and explain that any information about the underlying incident could be used against your client in criminal proceedings. If the IJ indicates they will not set a bond without that information and will not accept your arguments, you may want to offer some limited details that highlight the lack of severity and mitigating factors surrounding the arrest, giving you the opportunity to frame the incident. For example, you may want to demonstrate the alleged victim's support, if applicable. If the prosecutor has not even filed formal charge(s) against your client yet, it is important to let the IJ know that the prosecutor may never file charges. You may want to include other evidence of the underlying arrest, such as statements from witnesses that have been introduced in the criminal proceedings. Because information in immigration proceedings could be used against your client in criminal proceedings, make sure that whatever you submit to the Immigration Court has been reviewed by the respondent's criminal defense attorney for any possible issues or inconsistencies. For IJs who indicate they will not set bond without information about the underlying arrest and pending charge(s), the best course of action is often dependent on the IJ and/or the jurisdiction, so talk to local, experienced practitioners about best practices in this scenario.

Respondents are usually released from criminal custody under specific conditions, such as alcohol monitoring, classes, house arrest, drug testing, etc. Submitting evidence of these conditions demonstrates that safeguards are already in place that mitigate against danger concerns and any risk of recidivism. Additionally, if your client obtained a personal bond (a release on their own recognizance) in criminal proceedings, highlight that a criminal judge found your client to be such a low risk that a monetary bond was not required at all. In other words, another court of law has already found your client eligible for release on their own recognizance.

3. Alleged Gang Involvement

Mitigating evidence of gang involvement is especially difficult in immigration court, but not impossible. First, emphasize where there is no criminal history tied to the alleged gang affiliation. If your client swears that they were never in a gang, consider submitting an affidavit or testimony from an expert demonstrating the lack of reliability of gang databases. If gang involvement does exist, provide context. For example, many individuals join gangs at a young age under circumstances of coercion. Additionally, some individuals join voluntarily to obtain protection in a dangerous environment, to find community, or to escape problems in their home life. Once they mature or become older, they try to distance themselves from the gang. In these scenarios, it is important to demonstrate the context of the gang affiliation, as well evidence of dissociation and changed circumstances.

B. Flight Risk

In determining flight risk, the court is attempting to assess your client's incentives and likelihood to appear at future hearings. The more evidence you present to show that your client is not a flight risk through these factors, the lower the bond. Remember to always tie your flight risk argument back to the *Matter of Guerra* factors listed above.[19] The following details flight risk factors.

- **Permanent Address and Length of Residence**: A stable address is very important. The longer a client has resided at one address, or in one town, the better. Examples of evidence demonstrating permanent address include lease agreements, utility bills, letters from a landlord, title to a home, mortgage documents, evidence of property tax payments, letters of support from individuals residing in the home with the respondent and other documents or correspondence containing the respondent's address.

- **Family Ties**: If a client has relatives (a spouse or children, for example) who are U.S. citizens or lawful permanent residents, the judge will be more likely to believe that a client's ties to the community are real and

strong. This is especially true if the family has lived in the area for a considerable length of time, or if the family is able to confer immigration benefits to the client. Examples of evidence demonstrating family ties include birth certificates of children, marriage certificate, proof of status of family members and documents demonstrating the relationship, letters of support from family, evidence of the children's achievements and school records, and photos of the family together. It is helpful to have family members in lawful status present at the hearing, and to make note of their attendance on the court record.

- **School and Employment History**: If a client is currently employed or in school, it tends to show that they have a strong reason to remain in the area. The length and stability of the job or schooling are also important. Before submitting evidence of employment history, such as tax returns and paychecks, check for any fake social security numbers that might appear on the documents. In addition, submit letters of support from employers and co-workers, evidence of certifications and special skills, degrees, and school records.

- **History of Failure to Comply with Court Hearings or Immigration Law**: The IJ may also take into consideration a history of non-compliance with immigration laws and failure to appear for other court hearings. These are facts that you should screen for because if they exist, there is a good chance that the government will bring them up at the hearing. As with crimes, you should know all bad facts prior to the hearing and be prepared to provide an explanation, such as lack of stable housing, lack of knowledge about the hearing, ineffective assistance of counsel, emergency, illness, etc., and mitigate the consequences. If your client has failed to appear for past cases because they were in immigration custody or outside the country, explain those overlapping histories to demonstrate that the failure to appear was out of your client's control. Lastly, if your client has a past history of court attendance and compliance in any of type of court (criminal, immigration, family, etc.), highlight that record to the IJ and explain that it serves as evidence that your client understands the court system and their responsibility to appear for any future hearings.

- **Manner of Entry**: If your client entered unlawfully, the judge may see this as a negative factor in terms of the propensity to follow rules. Here, emphasize examples of the client as a responsible individual and compliance with laws in other areas of their life. If your client entered lawfully, highlight that lawful admission to the judge.

- **Other Community Ties**: Any other evidence to show that a client has strong ties to the community and therefore is likely to attend future hearings (rather than abscond) is helpful. For example, submit evidence of church membership or attendance, enrollment in classes, membership in organizations or sports clubs, and involvement in children's school activities.

- **Eligibility for Immigration Relief**: An important consideration is whether a client is eligible for immigration relief in order to remain in the United States. For example, if the person soon will immigrate through a family member or is eligible to apply for relief from removal, they are more invested in coming to court and are less likely to abscond. Additionally, the likelihood of success on the merits will be weighed; if there is relief, but the likelihood of winning the case is extremely weak, this factor may carry less weight. If necessary, be creative about arguments of eligibility for immigration relief. Furthermore, using immigration relief can be helpful to overcome other negative factors. For example, a strong asylum claim and fleeing past persecution may provide mitigating context for past immigration violations.

- **Sponsor**: Although a sponsor is not required by law, in recent years, IJs have increasingly requested sponsor documents during bond proceedings, including proof of sponsor's immigration status, relationship to the respondent, willingness to ensure the respondent attends all future hearings (e.g. a letter of support from the sponsor), and proof of income. Make sure your client knows who the sponsor is and can speak to their relationship. It can also be helpful to demonstrate the sponsor's attendance at the bond hearing.

C. Hernandez v. Sessions Factors (Ninth Circuit)

In 2017, the Ninth Circuit issued *Hernandez v. Sessions*, which states that when making a bond determination, ICE and the IJ must: (1) consider the person's financial ability to pay a bond; (2) not set a higher bond than that needed to ensure the respondent's appearance; and (3) consider whether the respondent may be released on alternative conditions of supervision that are sufficient to mitigate flight risk (either in lieu of a bond or in conjunction with a low bond).[20] *Hernandez* applies to all ICE custody determinations and IJ bond hearings conducted pursuant to INA § 236(a), including bond hearings that occur in the context of prolonged detention.[21] Although *Hernandez* is not binding outside the Ninth Circuit, it can serve as persuasive authority in other circuits.

Practitioners in the Ninth Circuit should make full use of the decision and include evidence of the respondent's ability to pay (or lack thereof), such as: proof of income (if any), tax documents, letters of support from individuals who have direct knowledge of the respondent's financial situation, and a declaration from the respondent with information about what type of work they did prior to detention, their ability to return to the same job or type of work, their income, if they are the head of the household, number of dependents, ability to obtain outside financial assistance from other sources, etc. If you are new to utilizing *Hernandez*, ask local practitioners about how to present the *Hernandez* factors to specific judges.

III. Defending Against Bad Evidence

OCC may attempt to introduce evidence of underlying criminal activity or bad facts, such as Form I-213, police reports, probation reports, and juvenile records. This type of evidence is rarely helpful to your client. Always object to the admission of these documents, arguing that they are unreliable, contain hearsay (without the opportunity to cross examine the officer(s) who wrote the account), biased, and contain inconsistencies. For probation reports, if there is other evidence of the conviction, object based on the best/cumulative evidence, stating that the conviction speaks for itself, and therefore the probation report is not necessary. For juvenile records, explain that juvenile adjudications do not constitute convictions for immigration purposes.[22] Furthermore, research your state's juvenile confidentiality laws and argue how they apply to the admission of evidence in immigration proceedings. Many states have robust laws protecting the confidentiality of juvenile records and outline very specific processes for obtaining records. If OCC cannot demonstrate that they were entitled to the records and/or followed the proper protocols to obtain them, object to the admission of the document(s) as a Fourth Amendment due process violation. For records obtained from another country, force OCC to prove their authenticity. If the IJ admits evidence over your objection, ask for the evidence to be given limited weight due to the issues you expressed in your objection.

IV. Preparing Your Client for Testimony

Some immigration judges take oral testimony from respondents during bond hearings. Others do not take testimony and instead prefer to hear only from the respondent's attorney. If you are before a judge who takes testimony during bond hearings, it is extremely important that you prepare your client for testimony ahead of time and practice with them. If you are not sure if the assigned judge will take oral testimony, it is a good idea to prepare your client regardless, but let them know that they may not be required to testify. If your client has convictions, it is important for your client to talk about remorse and rehabilitation, and to come across as credible. For clients with recent criminal history, prepare them to testify about steps they have already taken to rehabilitate while in detention and their plans for continued rehabilitation. They should explain the context for the criminal history, the changed circumstances and support in place when released.

If your client has pending criminal charges and the IJ indicates they will not set a bond without hearing from your client first, make sure to advise your client ahead of time of their Fifth Amendment right to remain silent and the consequences of admitting guilt. Although practitioners should never coach their clients to lie, it is important that the client understands the effect of incriminating statements, both on immigration proceedings and criminal proceedings. Furthermore, if you are submitting other evidence of the underlying incident, such as witness statements, make sure that your client is aware of that other evidence and can corroborate it.

Although it is generally a good idea to be the first to present bad facts with mitigating evidence, especially when specific criminal history is alleged on the Notice to Appear, be aware that OCC attorneys carry heavy caseloads and often are not prepared ahead of time for a hearing. In that situation, their lack of preparedness might work to your favor, as they may not be aware of or prepared to make an argument about the negative factors in your client's case.

Lastly, remind your client not to answer a question they do not understand. They should ask for clarification if the question is confusing, even if the question is coming from their own counsel. Clients should never guess at answers.

V. Local Idiosyncrasies

Knowing the IJ, the ICE attorney, and the preferred local court practices can make all the difference in obtaining bond for your client. If you are new to bond proceedings or the jurisdiction, reach out to experienced local practitioners who regularly handle bond cases to obtain information about local idiosyncrasies. Some questions to keep in mind include:

- Does your IJ have a preference about when they want all supporting evidence submitted? There is no Immigration Court Practice Manual deadline for submitting bond materials.
- Where will your client physically be in relation to you and the IJ? Will there be a possibility for a private conversation with your client? Will the hearing occur via video teleconferencing ("televideo")? If so, will you physically appear with your client, or with the IJ?
- Will the IJ request testimony from your client?
- Does the IJ require any specific worksheets or type of evidence?
- What makes your IJ tick? Do they have a preference for certain factors or types of evidence (i.e. medical information, evidence of paying taxes, penance, proof of family ties)?
- What does your IJ get hung up on? Does your IJ have a problem with certain types of criminal offenses over others? If so, make an additional effort to include as much mitigating evidence as possible.
- Will the IJ allow you to confer with the OCC attorney before the hearing? If so, will the IJ be listening to your conversation? Does the IJ have a particular time during the docket that they reserve for those conversations?
- Does the local OCC office stipulate to bond amounts, or do the OCC attorneys have marching orders not to do so?
- Does the assigned OCC attorney have any of their own preferences or hang-ups? Does the assigned attorney do their homework and come prepared, or are they more likely to open the file for the first time during the hearing? If your client testifies, will the OCC attorney conduct an aggressive cross examination? If so, spend extra time preparing for cross examination with your client.

VI. Bond Case Example

The following provides a brief example of some of the above factors in action.

Example: Jose, who is undocumented and from El Salvador, is in ICE custody after being transferred directly from criminal custody. ICE did not set a bond for him. Jose was recently convicted of misdemeanor theft, but only spent a few days in jail since it was his first offense. He has worked in a cafeteria for the past two years, has been a good worker, and has had no other brushes with the law. He is not married. He lives at home with his mother, who is a lawful permanent resident

(LPR), and his undocumented younger brother, who is twelve. He has resided in the United States for four years, and he came to the U.S. due to threats he received based on past political statements he made. You are representing Jose at his bond redetermination hearing.

What Sort of Things Do You Want to Tell the Judge? You should tell the judge that: (1) Jose has a good, steady employment record; (2) his crime was a non-violent, low-level offense with a short sentence, and he has had no other problems with the law; (3) his mother is a lawful permanent resident; (4) he has a fixed address, where he lives with his brother and mother, who is willing to post bond and vouch for him; and (5) he is eligible for relief (at the very least, asylum).

What Work Should You Do Ahead of Time? (1) Get proof of employment, such as taxes, pay stubs and letters of support from his employer and co-workers describing how long Jose has worked there, his job duties, and his character; (2) reach out to his prior criminal defense attorney and the criminal court and confirm that there are no other criminal convictions; (3) ask Jose about the circumstances around the theft, including what he stole and why; (4) submit proof of his mother's LPR status and have his mother submit a letter of support and appear at the hearing (and possibly testify); (5) provide a copy of the lease as well as any bills or other documentation to show that Jose lives at a fixed address with his mother and brother (his mother can also testify to the same in person or via her letter of support); and (6) include evidence of immigration relief. You will also want to find out if Jose's mother had petitioned for him in the past (as well as explore other avenues for relief). In addition to asylum, Jose might be eligible to adjust status.

VII. Reserving Appeal and Getting a New Bond Hearing

During a bond hearing, even if the IJ indicates that they are prepared to make a decision, request permission to make any remaining arguments for the record. This helps to build the record for appeal and demonstrates to your client that you are a zealous advocate.

If your client is denied bond, reserve appeal. Reserving appeal preserves the opportunity to appeal within 30 days, even if your client ultimately decides not to. It is helpful to have this discussion with your client ahead of time as well. The BIA must receive the notice of appeal within 30 days of the IJ's decision.[23] While the bond appeal is pending, removal proceedings will continue.

There may be a possibility to seek rehearing if your client's circumstances have materially changed since the initial bond hearing.[24] However, this is often difficult to prove, and many IJs generally tend to deny rehearing requests, so ensure you are ready to proceed during the initial hearing. If you are not ready, it may be appropriate to ask for a continuance or withdraw the bond application and resubmit it when you are ready to proceed. Make sure to have this discussion with your client, as it may also depend on the length of time that your client has already been detained and the average wait time for the local court to schedule the next hearing.

VIII. Conclusion

As it has become increasingly difficult to obtain bond in recent years, practitioners need to be prepared to present a strong bond case and address all possible factors, both positive and negative. Certain factors which may not have been determinative in the past, especially criminal history, are now more important to IJs than ever. However, all hope is not lost. By getting creative with supporting evidence and arguments, and following the tips in this practice advisory, you can greatly increase your chances of obtaining an immigration bond for your client.

End Notes

[1] *Available at* https://www.ilrc.org/sites/default/files/resources/bond_practice_guide-20170919.pdf.
[2] 8 C.F.R. § 236.1(d), § 1236.1(d).
[3] *See* 8 C.F.R. §§ 3.19, 236.1, 1003.19 and 1236.1.
[4] However, *see* part II, subsection C of this advisory for a discussion of possible alternatives to setting a bond in the Ninth Circuit.
[5] 8 C.F.R. § 1003.19(b).
[6] 8 C.F.R. § 1003.19(d) (2006); *see also Matter of Chirinos*, 16 I. & N. Dec. 276 (BIA 1977).
[7] 8 C.F.R. § 1003.19(d).
[8] *Matter of Guerra,* 24 I. & N. Dec. 37 (BIA 2006).
[9] *Matter of Patel,* 15 I. & N. Dec. 666 (BIA 1976).
[10] *Id.*
[11] *Matter of Guerra,* 24 I. & N. Dec. 37 (BIA 2006).
[12] *Id.*
[13] *Matter of Siniauskas*, 27 I. & N. Dec. 207 (BIA 2018).
[14] *See Guerra* at 40.
[15] *Matter of Siniauskas*, 27 I. & N. Dec. 207 (BIA 2018).
[16] *Id.*
[17] *Matter of Guerra,* 24 I. & N. Dec. 37 (BIA 2006).
[18] *Id*. at 40.
[19] *Id.*
[20] *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).
[21] *Id.*
[22] *Matter of Devison-Charles*, 22 I. & N. Dec. 1362 (BIA 2000).
[23] 8 C.F.R. § 236.1(d)(3)(i), § 1003.19(f); 8 C.F.R. § 1003.38.
[24] 8 C.F.R. § 1003.19(e); *Matter of Uluocha*, 20 I. & N. 133 (BIA 1989).

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