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# IMMIGRATION COURT PRACTICE

WBASNY IMMIGRATION COMMITTEE

Co-Chairs: Tina Hartwell, Esq. & Carmelia Taylor, Esq.

2024



*Presents*

# **Nuts & Bolts of Immigration Court Practice**

April 11, 2024  
5:30 pm – 7:00 pm

Presenters:      Melissa M. Desvarieux, Esq  
                         Carmelia Taylor, Esq.

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# About the Presenter



**Melissa Desvarieux, Esq.**  
**PRESENTER**

## BIO

Melissa M. Desvarieux is an attorney licensed to practice in New York State since 2006 specialize in all aspects of Immigration Law, including Removal Defense, Asylum, Criminal Removal Defense, Family Law, Employment and Federal Litigation, Mandamus Actions and APA Claims.

Melissa grew up in Port au Prince Haiti, before coming to the United States to attend college. She is a graduate of the University of Pennsylvania and holds a Juris Doctor from Tulane Law School. Growing up in a country with many challenges, Melissa developed a passion for international development and politics which eventually led to her desire to practice and focus on immigration law.

She is admitted in the Court of Appeals for the 2nd Circuit, as well as the U.S District Courts for the Southern District (SDNY) and the Eastern District (EDNY). AILA Members. Melissa fluent in the following languages: English, Spanish, French, Haitian Creole..



# About the Moderator



**Carmelia Taylor, Esq.**  
Moderator

## Education & Practice Area

Carmelia Taylor grew up in Long Island, New York, but was raised in Barbados during her primary years. She is a graduate of the State University of Binghamton and Vanderbilt University School of Law. Since graduation, she has handled immigration matters working at public interest organizations and in private practice for 20 plus years. Her area of focus is asylum law and removal defense. She served as an Adjunct Professor at Lehman College.

## Memberships & Leadership Experience

She served on several boards and held numerous positions therein. Most notably, she served in numerous roles within Jack & Jill of America, Inc., including chapter president, vice president, program director, and recording secretary; Parliamentarian and Bylaws chair in the Links, Incorporated; and as the National representative and United Nations NGO representative for the Links, Incorporated. She is a member of Delta Sigma Theta Sorority, Incorporated and the American Immigration Lawyers Association (AILA). And currently serves as co-chair of WBASNY's Immigration Committee.



# Legal Authorities

- **Statutes**
  - Immigration and Nationality Act (INA), Title 8 of the U.S. Code
- **Regulations**
  - Title 8 of the Code of Federal Regulations (8 C.F.R.)
- **Board of Immigration Appeals (BIA or the Board) precedent decisions**
- **Attorney General (AG) precedent decisions**
- **Federal court decisions**
- **UNHCR Handbook**
- **Kurzban's Immigration Law Sourcebook**

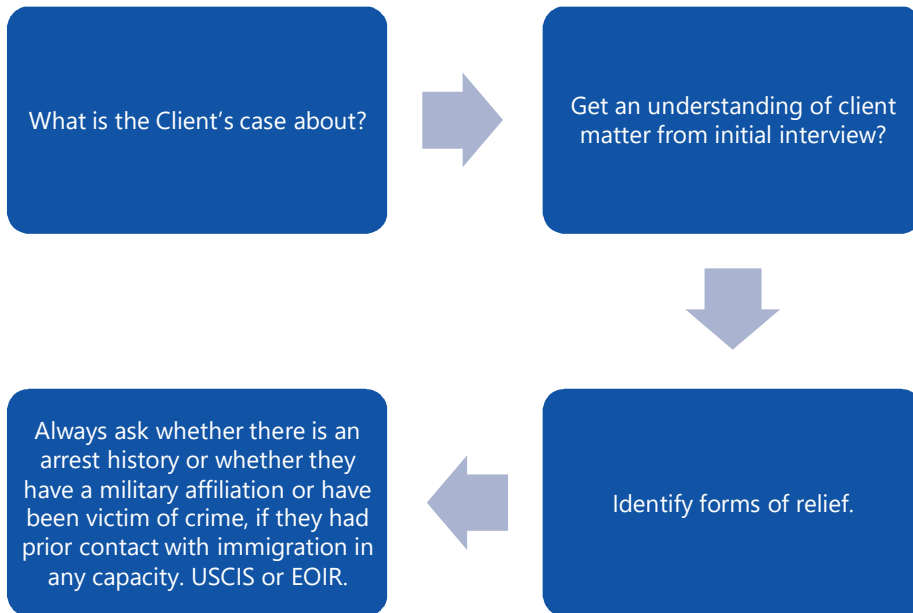






# INITIAL INTAKE

# REVIEW CLIENT'S NEEDS





# WHAT HAPPENS WHEN THE CLIENT ALREADY APPEARED ALONE?

- Has the client has already appeared at a master calendar hearing? o If so, what happened at the prior hearing(s)?

- Have pleadings been taken? Review NTA if they have it.

- Has the client filed an application for relief from removal?

- Is there an upcoming due date to file an application?

- In such a case, you will likely need to review the prior record of proceedings. See FOIA information below



# OBTAIN THE HEARING DATE & TIME?

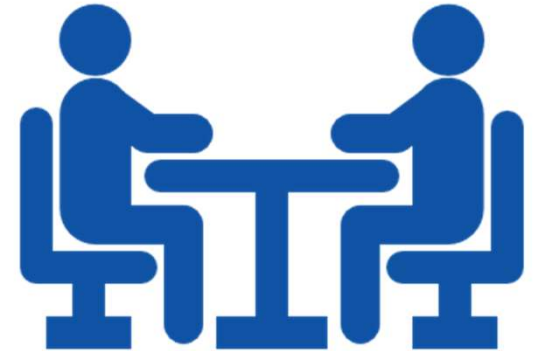
3 Methods

You will need the A#

Call 800.898.7180.

EOIR Case Status  
webpage

Call the Immigration  
Court the client is  
assigned to



# CLIENT INTERVIEW

Explain both factual allegations and charges to the client.

Ask how the client received the NTA from DHS

Ask about the client's manner of apprehension by ICE or referral to immigration court.

Has the client filed an application for relief from removal?

Ask the client about their manner of entry and any current or prior forms of lawful status





# CASE REVIEW

- Explore all forms of relief and possible derived or acquired citizenship.

- Review options for relief based on the client's current status, or through obtaining lawful status for a family member.

- Evaluate possible bars to relief such as grounds of inadmissibility and criminal issues.

- Evaluate possible post-conviction relief to vacate criminal convictions that bar eligibility or cause the client to be removable

- Consider multiple forms of relief, including long-term and short-term strategies.

- Ask the client about their manner of entry and any current or prior forms of lawful status



# DETERMINE THE LEGAL ISSUES

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# REVIEW THE NTA

**CHARGES:** Did DHS fail to prove the charges against the client?

**ALLEGATIONS:** Are the factual allegations accurate?

**SERVICE IS REQUIRED:** Proper Service of the NTA - Did DHS properly serve the NTA on the client?

**WHAT DO I ADMIT:** Do not admit facts that are uncertain or that are alleged as written in vague or confusing language.

In removal proceedings under section 240 of the Immigration and Nationality Act.

Subject ID : 12345678

FIN # : 112233445

File No: 123 456 789

DOB : 01/01/0000

Event No: AAA12345678

In the Matter of:

Respondent: FIRST AND LAST NAME

currently residing at:

STREET ADDRESS, CITY, STATE, ZIP

(Number, street, city, state and ZIP code)

(XXX) XXX-XXXX

(Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of COUNTRY and a citizen of COUNTRY;
3. You were admitted to the United States at or near New York, New York on or about February 14, 2011 as a nonimmigrant B2 Temporary Visitor for Pleasure with authorization to remain in the United States for a temporary period not to exceed August 14, 2011.
4. You have remained in the United States beyond August 14, 2011 without authorization from the Secretary of Homeland Security.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to:  8 CFR 208.30(f)(2)  8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: Office of the Immigration Judge, Street Address, Suite Number, City, State Zip

on a date to be set at a time to be set to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: Month ##, 2018

First and Last Name, Field Office Director  
(Signature and Title of Issuing Officer)

City, State  
(City and State)

See reverse for important information

# REVIEW THE NTA

**SIGNATURE:** Was the NTA signed by a DHS official?

**PLEADINGS:** Determine how the client should plea and explain to the client the consequences of making such a plea

**NAME:** Proper Service of the NTA - Did DHS properly serve the NTA on the client?

**DATE & TIME TO APPEAR:** Did DHS provide a date and time to appear in Court/Was the date and time fictitious

## Notice to Respondent

**Warning:** Any statement you make may be used against you in removal proceedings.

**Alien Registration:** This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

**Representation:** If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

**Conduct of the hearing:** At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

**Failure to appear:** You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

**Mandatory Duty to Surrender for Removal:** If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific address on locations for surrender can be obtained from your local DHS office or over the internet at <http://ice.dhs.gov/about/dhs/contact.htm>. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as Required, fail to post a bond in connection with voluntary departure, or fail to comply with any other conditions or terms in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

### Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

Before:

(Signature of Respondent)

Date:

(Signature and Title of DHS Officer)

### Certificate of Service

This Notice to Appear was served on the respondent by me on September 28, 2018 in the following manner and in compliance with section 239(a)(1)(F) of the Act:

in person  by certified mail, return receipt requested  by regular mail

Attached is a credible fear worksheet.

Attached is a list of organizations and attorneys which provide free legal services and form EOIR-33.

The alien was provided oral notice in the \_\_\_\_\_ Language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Initial, Last Name Immigration Services Officer

(Signature of Respondent if Personally Served)

(Signature and Title of Officer)



# INITIAL CASE STRATEGY

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Determine the burden of proof in this client's case

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Can the client file a motion to terminate or motion to suppress?

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What grounds of deportability or inadmissibility are charged against the client?

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Was the arrest, detention, or interrogation a violation of the Constitution or a regulation?





# DETERMINE WHAT FORM OF RELIEF THE CLIENT WILL SEEK

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# FORMS OF RELIEF CLIENT MAY APPLY FOR

**Asylum, Withholding of Removal, Convention of Torture Relief**

**Cancellation of Removal EOIR 42A & B**

**Adjustment of Status**

**Waivers of Inadmissibility**

**Voluntary Departure**

**Review of Applications Denied by USCIS—I-751 Removal of Condition & Temporary Protected Status (TPS)**

**NACARA, HRIFA, Registry**

# VOLUNTARY DEPARTURE Pre-hearing (Basic Elements)

Requested before the end of removal proceedings

- voluntary departure is the only relief client seeks

- waive the right to appeal all issues, and

- may not have been convicted of an aggravated felony or be deportable for national security or public safety reasons



# VOLUNTARY DEPARTURE Post-hearing (Basic Elements)

Have the financial means to leave the country at your own expense & the financial means to post a bond if requested

- be a person of good moral character 5 years before the application

- be present in the US at least 1 year before making the application

- Have a valid passport for DHS inspection & authentication

- may not have been convicted of an aggravated felony or be deportable for national security or public safety reasons



# LPR CANCELLATION OF REMOVAL EOIR-40 (Basic Elements)

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien

1. Has been an alien lawfully admitted for permanent residence for not less than 5 years

2. Has resided in the United States continuously for 7 years after having been admitted in any status and

3. Has not been convicted of any aggravated felony





# CANCELLATION OF REMOVAL EOIR-42B (Basic Elements)

- Has been continuously present in the US for 10 years before service of the NTA:

1. commission of an offense that results in him/her being removable on criminal grounds, or

2. being placed in removal proceedings• has demonstrated “good moral character” for at least 10 years, *and*

3. Can show that his/her deportation would cause exceptional & unusual hardship to a US citizen or lawful permanent resident *spouse, child, or parent*

Discretion is an element



# VAWA CANCELLATION OF REMOVAL (Basic Elements)

**Respondent can apply if:**

- 1. Abused by a citizen or permanent resident spouse or parent**
- 2. Has been continuously present in the US for 3 years. No Stop Time rule**
- 3. Demonstrates “good moral character,” and**
- 4. Is admissible and does not have any aggravated felonies.**

**Discretionary relief**



# ADJUSTMENT OF STATUS (Basic Elements)

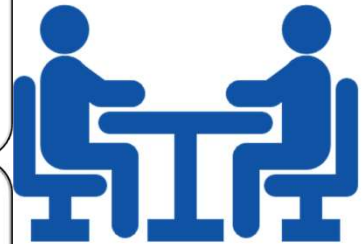
Must have been admitted or paroled and who has an approved petition can adjust status if s/he:

1. is eligible for an immigrant visa and is admissible  
(convictions/conduct/public charge can make client inadmissible & must consider if eligible for waiver of inadmissibility)

2. and has an immigrant visa immediately available.

3. if the immigrant Entered Without Inspection, a petition must meet section 245i.

Discretionary form of relief



# WAIVERS OF INADMISSIBILITY & REMOVABILITY (Basic forms of relief)

Respondent can apply if:

1. Abused by a citizen or permanent resident spouse or parent
2. Has been continuously present in the US for 3 years, No Stop Time rule (NTA doesn't stop accrual of 3 years.
3. Demonstrates "good moral character," and
4. is admissible and does not have any aggravated felonies.



# REVIEW OF DENIED APPLICATION: TPS I-751

## Request a Review of Denial:

1. Removal of Condition Application can be reviewed by the Immigration Judge

2. IJ can review Temporary Protected Status decision made by USCIS



**NACARA,  
HRIFA,  
REGISTRY,  
CUBAN  
ADJUSTMENT ACT:  
Relief based on  
date of entry**

**HRIFA: Haitian Foreign Nationals:  
On or before December 31, 1995.**

NACARA: Salvadoran & Guatemalans  
have different requirements.

Registry is foreign nationals that  
entered prior to January 1, 1972.

Cuban Adjustment Act: Adjust after 1  
year of continuous presence.

Check for specific requirements for  
each benefit.







# ADDITIONAL CONSIDERATIONS FOR RELIEF

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You can proceed even before hearing with filing I-130 petition, I-360 petitions, and post-conviction relief.

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“status docket” while USCIS processes a collateral application

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Continuance is helpful to meeting strategic goals

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Prosecutorial Discretion (PD) & Administrative Closure & Motion to Terminate (Matter of Cruz-Valdez, 28 I&N Dec. 326 (A.G. 2021) or terminate under Matter of Coronado Acevedo, 28 I&N Dec. 648 (A.G. 2022)

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Review the Requirements of Voluntary Departure (VD) with client.

# PROSECUTORIAL DISCRETION

**Respondent can apply if:**

- 1. Not a priority for removal**
- 2. Make an argument that there will be some hardship created in the event of the respondent's removal**
- 3. DHS has a wide-range of discretionary ability, requiring a gentle approach for this benefit.**
- 4. Criminal history of the client will be at issue.**

May need to do an FBI report to satisfy DHS that there is no criminal history. Do it online.



# SPECIAL IMMIGRANT JUVENILE STATUS

## Respondent can apply if:

1. Subjected to Abandonment, Abuse, or Neglect by one or both parents
2. Special Findings: Family Court finds that it is not in your best interest to return the client to their home country
3. In New York, must be under 21 years old
4. May request administrative closure or prosecutorial discretion



# TEMPORARY PROTECTED STATUS

Designated by the Secretary of Homeland Security to nationals of a country where it will be difficult/unsafe to return.

**1. An ongoing armed conflict; An environmental disaster; Extraordinary and temporary conditions**

**4. Cannot be convicted of one aggravated felony or 2 misdemeanors to qualify.**

**Can seek administrative closure or Prosecutorial discretion.**

**CURRENT COUNTRIES: Afghanistan, Burma, Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Nepal, Somalia, Sudan, Syria, Ukraine, Venezuela, and Yemen**



# U VISA

**1. Was a Victim of a crime or spouse or parent of a child who was the victim**

2. List of crimes

3. Have suffered substantial harm as a result of being the victim of a crime

4. Cooperated with Law enforcement agency (LEA)

5. Is admissible and does not have any aggravated felonies.





# PREPARE FOR THE MASTER CALENDAR HEARING

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# WHAT YOU NEED TO DO IN ADVANCE OF THE MASTER CALENDAR HEARING

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ECAS System

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Make sure that you file an EOIR-28, Notice of Entry as Attorney with EOIR & DHS

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Scheduling Orders may be issued – prepare to file relief and do pleadings in writing

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Review or call IJ clerk to find out if particular judge has rules relating to written pleadings or format that they prefer.

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Consult Practice Manual for proper way of addressing evidence and applications to be filed



# WHAT YOU NEED TO DO IN ADVANCE OF THE MASTER CALENDAR HEARING

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Verify the client's current mailing address.

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Prepare Form E-33, Change of Address to bring to court in case the court has an incorrect address.

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Duty to inform the court of changes within 5 days of change

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Verify your client's best language in order to request a court-appointed interpreter for future hearings.

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Confirm that the client is aware of the date, time, and place of the hearing.

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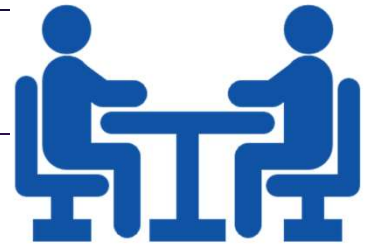
Explain the consequences of failing to appear on time for the hearing.

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Make sure client has a way to contact you in the event of an emergency.

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Explain to the client what documents they will need to enter the building or court and where they will meet the advocate on the day of the hearing.



# WHAT YOU NEED TO DO IN ADVANCE OF THE MASTER CALENDAR HEARING

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Describe what the client should expect at the hearing and when the client will be asked to speak, including to verify their address, to consent to the advocate's representation in court, or to answer other questions under oath.

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You should have already done a full intake with your client that covers relief, manner of entry and potential arguments for a motion to suppress!





# REPRESENTATION AT A MASTER CALENDAR HEARING

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# ATTENDING THE MASTER CALENDAR HEARING

## WEBEX OR IN-PERSON

Upon arrival in the courtroom, advocates should file an E-28 with the immigration judge's legal assistant, if this is the advocate's first appearance for the case. Advocates are also encouraged to submit a motion for substitution of counsel, if the client had prior counsel for the case.

When the case is called, the advocate will enter an appearance. The immigration judge will verify the client's address. Note that the immigration judge may ask the respondent's consent to be represented by counsel. Judge asks client if it is ok to proceed with attorney speaking on behalf of client



# ATTENDING THE MASTER CALENDAR

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File an E-33 if the client's address has changed

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Also note that some judges also require proof of enrollment in school for respondents under 18. Clients' appearance could be waived if sick or a minor prepare to ask for this and show proof if warranted

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Before proceeding with pleadings, the immigration judge may verify the respondent's consent to be represented by counsel. Judge asks client if it is ok to proceed with attorney speaking on behalf of client

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Concede or deny proper service of the NTA.

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Enter pleadings and explain any relevant arguments in support of denying allegations or contesting the charges.

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Reserve any necessary appeal, if the immigration judge denies any motions or finds that the client is removable as charged.

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State relief that the client will seek and ask for continuance for attorney prep or file relevant applications.





**PHEW! YOU COMPLETED  
THE MASTER CALENDAR  
HEARING—NOW WHAT?**

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# AFTER THE MASTER CALENDAR HEARING

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File applications for relief. (can be done at hearing or prior through ECAS or by mail for older cases)

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It is important for advocates to bring three copies of any filed applications: one will be filed with the court, one will be served on DHS, one should be stamped as filed to keep in the client's file.

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Note the next hearing date, any issues objected or stipulated to by DHS counsel, and any "call-up" deadlines for filing applications or motions that are set by the immigration judge.

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In the alternative, request a continuance for attorney preparation, if the advocate is not prepared to enter pleadings or file applications for relief.

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Can file an [interlocutory appeal](#) if there is an issue that the judge ruled upon that is urgent in nature.





# PREPARING FOR THE INDIVIDUAL HEARING

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# PREPARING FOR THE INDIVIDUAL HEARING

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Schedule appointments to ensure proper preparation

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Document everything you tell your client

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Provide client with checklists of any outstanding documents

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Evidence must be submitted according to the Practice Manual

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Evidence to prove hardship or rehabilitation should be updated to ensure the most recent evidence is less than 1 year old.

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Schedule time to prepare your client for direct and potential questioning by DHS or the Judge

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Witness list and proffer is required





# THE INDIVIDUAL HEARING

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# THE INDIVIDUAL HEARING

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Judge will swear in the client & the interpreter

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Judge will name and number all proposed exhibits

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On direct, same rules apply: Don't ask a question you don't know how the client will answer.

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Rehabilitation may be necessary on redirect

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Client's Credibility is always important

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Judge will make the decision at the end of the hearing, send a written decision or continue the hearing to give the decision on another date





# POST INDIVIDUAL HEARING STEPS

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# POST- HEARING STEPS TO TAKE

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If the Immigration Judge granted relief explain next steps to obtaining the benefit.

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If granted, explain to the client that convictions or negative immigration conduct could jeopardize their new status.

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If the case was denied, discuss appealing the case to the Board of Appeals.

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30 days to appeal

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Post-hearing collateral relief

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After filing the notice of appeal, a briefing schedule will be sent to the attorney anywhere from 6 months to 2 years





# POST- HEARING STEPS TO TAKE

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Motion to Reopen

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Motion to Recalendar

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Appeal granted: case is remanded to the Immigration Court for further proceedings or case is decided outright by the Board.

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Can file a Motion to Reopen/Reconsider with BIA

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Appeal dismissed: Can file petition for review with federal circuit court.

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Judge will make the decision at the end of the hearing, send a written decision or continue the hearing to give the decision on another date



# We Thank You For Attending!



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