

Part II: Procedural and Substantive Issues Concerning the Petition for Review Process

B. Forms, Instructions and Notices

Blank Petition for Review from the U.S. Court of Appeals for the Second Circuit

Blank Pre-Argument Statement (Form C-A)

Sample Petition for Review, with Sample Addendum A, Addendum B and Form C-A

Sample Rule 28(j) Fed. R. App. P. Letter

Notice to Appear from Department of Homeland Security

Acknowledgement and Notice of Appearance Form

Notice to Bar – Reduced Time to File Briefs

Petitioner’s Requested Briefing Schedule

Motion Information Statement Form T-1080

Oral Argument Statement LR 34.1(a)

Second Circuit Night Depository Form

CAMP Stipulation Without Prejudice - - Agency Cases

Board of immigration Appeals – Sample Decision

Federal Rules of Appellate Procedure Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer

United States Court of Appeals for the _____ Circuit

)	
<i>Petitioner</i>)	
)	
v.)	Petition for Review
)	
)	
))	
<i>Respondent.</i>)	

_____, hereby petition the court for review of the Order of the XYZ Commission (describe the order) entered on the _____ day of _____ 19____.

/s/ _____
Attorney for Petitioners _____
Address _____

*See Rule 15.

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)**

APPLICATION FOR ENFORCEMENT

PETITION FOR REVIEW

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES.

CAPTION:	AGENCY NAME:	AGENCY NO.:
	DATE THE ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT WAS ENTERED BELOW:	ALIEN NO : (Immigration Only)
	DATE THE PETITION OR APPLICATION WAS FILED:	Is this a cross-petition for review / cross-application for enforcement? <input type="checkbox"/> YES <input type="checkbox"/> NO

Contact Information for Petitioner(s) Attorney:	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:

Contact Information for Respondent(s) Attorney:	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:

JURISDICTION OF THE COURT OF APPEALS (provide U.S.C. title and section):	APPROX. NUMBER OF PAGES IN THE RECORD:	APPROX. NUMBER OF EXHIBITS IN THE RECORD:	Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input type="checkbox"/> No
			If Yes, provide the following:
			Case Name:
			2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)

ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; AND (3) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT.

ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM: (1) THE RELIEF REQUESTED; (2) A LIST OF THE PROPOSED ISSUES; AND (3) THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.

PART A: STANDING AND VENUE

<u>STANDING</u>	<u>VENUE</u>
PETITIONER / APPLICANT IS: <input type="checkbox"/> AGENCY <input type="checkbox"/> OTHER PARTY <input type="checkbox"/> NON-PARTY (SPECIFY STANDING):	COUNSEL MUST PROVIDE IN THE SPACE BELOW THE FACTS OR CIRCUMSTANCES UPON WHICH VENUE IS BASED:

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: NATURE OF ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT
(Check as many as apply)

TYPE OF CASE:

- | | |
|---|--|
| _____ ADMINISTRATIVE REGULATION/ RULEMAKING | _____ IMMIGRATION-includes denial of an asylum claim |
| _____ BENEFITS REVIEW | _____ IMMIGRATION-does NOT include denial of an asylum claim |
| _____ UNFAIR LABOR | _____ TARIFFS |
| _____ HEALTH & SAFETY | _____ OTHER: |
| _____ COMMERCE | (SPECIFY) |
| _____ ENERGY | |

1. Is any matter relative to this petition or application still pending below? Yes, specify: _____ No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this petition or application ? Yes No

(B) Involves an issue that is substantially similar or related to an issue in this petition or application ? Yes No

If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name:	Docket No.	Citation:	Court or Agency:
Name of Petitioner or Applicant:			

Date:	Signature of Counsel of Record:
-------	---------------------------------

NOTICE TO COUNSEL

Once you have filed your Petition for Review or Application for Enforcement, you have only 14 days in which to complete the following important steps:

1. Complete this Agency Appeal Pre-Argument Statement (Form C-A); serve it upon your adversary, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. Pay the \$450 docketing fee to the Clerk of the Second Circuit, unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 CALENDAR DAYS, YOUR PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT WILL BE DISMISSED. SEE LOCAL RULE 12.1.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

A [REDACTED]
Petitioner,
v.
Eric H. HOLDER, Attorney General
UNITED STATES DEPARTMENT
OF JUSTICE

Respondent.

Case File No. _____

Immigration No.: A [REDACTED]

PETITION FOR REVIEW

I.

The above-named Petitioner hereby respectfully petitions for review by this Court of the decision of Board of Immigration Appeals (BIA) of the Executive Office for Immigration Review dated December 2, 2010, which granted the DHS's appeal of the September 30, 2008 decision of the Immigration Judge granting Petitioner's application for asylum, reversed the IJ's decision, and ordered Petitioner removed from the U.S. A copy of the decision of the BIA is attached. This decision is the final administrative decision for the purposes of the instant Petition. No court has previously ruled on the validity of this decision. A copy of the decision of the BIA is attached.

II.

The jurisdiction of this Court to review the agency's decision is provided by section 242 of the INA (8 U.S.C. § 1252).

III.

Venue is properly before this Court pursuant to 8 U.S.C. §1252(b)(2) because the final hearing in this matter was completed at the Immigration Court in New York, New York, and the United States Court of Appeals for the Second Circuit has jurisdiction over New York State.

This petition is timely filed pursuant to 8 U.S.C. §1252(b)(1) as it is filed within 30 days of the Board's decision.

IV.

WHEREFORE, Petitioner requests that:

- a. The Petition for Judicial Review be granted;
- b. The Decision of the Board of Immigration Appeals in this matter be reversed and Petitioner's application for asylum be granted pursuant to the IJ's order;
- c. In the alternative, the Court remand the case to the Board for further proceedings;
- d. The Court grant such other and further relief as may be appropriate.

RESPECTFULLY SUBMITTED this 30th Day of December, 2010

LAW OFFICES OF BARST MUKAMAL & KLEINER, LLP

BY: s/ _____
Daniel B. Lundy, Esq.
2 Park Avenue, 19th Floor
New York, New York 10016
212-686-3838

CERTIFICATE OF SERVICE

RE: 

I hereby certify that on December 30, 2010, I sent a copy of the Petition for Review and supporting documents on behalf of the above-referenced individual via Certified Mail to:

Mr. Eric H. Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C. 20530-0001

Thomas W. Hussey, Director
Office of Immigration Litigation
U.S. Department of Justice / Civil Division
1331 Pennsylvania Avenue, NW
Washington DC, 20004

Office of the Chief Counsel/NY
Immigration and Customs Enforcement
26 Federal Plaza
New York, NY 10278

DATE: 12/30/10

BY: s/
Daniel B. Lundy, Esq.

ADDENDUM A

[REDACTED])	
A [REDACTED])	
Petitioner,)	Case File No. _____
v.)	Immigration No.: A [REDACTED]
Eric H. HOLDER, Attorney General)	
UNITED STATES DEPARTMENT)	
OF JUSTICE)	
Respondent.)	
)	

- (1) Nature of Action
- (2) Result Below
- (3) Copy of BIA Decision

The above-named Petitioner hereby respectfully petitions for review by this Court of the decision of Board of Immigration Appeals of the Executive Office for Immigration Review dated December 2, 2010 granting DHS's appeal of the September 30, 2008 decision of the Immigration Judge, which granted Petitioner's application for asylum, and ordering Petitioner removed from the U.S. To date, no court has upheld the validity of the order. A copy of the decision of the Board of Immigration Appeals is attached.

ADDENDUM B

[REDACTED])	
A [REDACTED])	
Petitioner,)	Case File No. _____
v.)	Immigration No.: A [REDACTED]
Eric H. HOLDER, Attorney General)	
UNITED STATES DEPARTMENT)	
OF JUSTICE)	
Respondent.)	

(1) Relief Requested:

- a. The Petition for Judicial Review be granted;
- b. The decision of the BIA be reversed and the IJ's grant of asylum be upheld;
- c. In the alternative, the case remanded to the BIA;
- d. The Court grant such other and further relief as may be appropriate.

(2) List of Proposed Issues

- a. Whether the BIA erred by engaging in de novo factfinding on appeal and completely ignoring the IJ's findings of fact- and especially the IJ's findings of fact relating to the credibility of Petitioner's documentary evidence;
- b. Whether the BIA erred by selectively citing to only evidence supporting its denial of Petitioner's application while ignoring, overlooking,

mischaracterizing or failing to consider evidence relied upon by the IJ and favorable to Petitioner;

- c. Whether the BIA erred by finding Petitioner had not established a well founded fear of persecution or that it is more likely than not that she will face persecution or torture in China.

(3) Applicable Appellate Standard of Review

Questions of law are reviewed *de novo* by the courts. *McNary v. Haitian Refugee Center*, 498 U.S. 479, 493 (1991). Factual findings are reviewed under the substantial evidence standard.

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)**

APPLICATION FOR ENFORCEMENT

PETITION FOR REVIEW

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES.

CAPTION: [REDACTED] v. Holder	AGENCY NAME: Board of Immigration Appeals	AGENCY NO.: _____			
	DATE THE ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT WAS ENTERED BELOW: 12/2/2010	ALIEN NO : (Immigration Only) A [REDACTED]			
	DATE THE PETITION OR APPLICATION WAS FILED: 12/30/2010	Is this a cross-petition for review / cross-application for enforcement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
Contact Information for Petitioner(s) Attorney:	Counsel's Name: Address: Telephone No.: Fax No.: E-mail: Daniel B. Lundy 2 Park Ave. (212) 686-3838 (212) 481-9362 dlundy@bmkllp.com New York, NY 10016 Barst Mukamal & Kleiner				
Contact Information for Respondent(s) Attorney:	Counsel's Name: Address: Telephone No.: Fax No.: E-mail:				
JURISDICTION OF THE COURT OF APPEALS (provide U.S.C. title and section): 8 USC 1252	APPROX. NUMBER OF PAGES IN THE RECORD: 500	APPROX. NUMBER OF EXHIBITS IN THE RECORD: 50	Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide the following: Case Name: 2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)		
ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; AND (3) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT.					
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PART A: STANDING AND VENUE					
<u>STANDING</u>			<u>VENUE</u>		
PETITIONER / APPLICANT IS: <input type="checkbox"/> AGENCY <input checked="" type="checkbox"/> OTHER PARTY <input type="checkbox"/> NON-PARTY (SPECIFY STANDING):			COUNSEL MUST PROVIDE IN THE SPACE BELOW THE FACTS OR CIRCUMSTANCES UPON WHICH VENUE IS BASED: Final Hearing in New York		

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: NATURE OF ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT
(Check as many as apply)

TYPE OF CASE:

- | | | |
|---|-------------------------------------|--|
| _____ ADMINISTRATIVE REGULATION/ RULEMAKING | <input checked="" type="checkbox"/> | IMMIGRATION-includes denial of an asylum claim |
| _____ BENEFITS REVIEW | _____ | IMMIGRATION-does NOT include denial of an asylum claim |
| _____ UNFAIR LABOR | _____ | TARIFFS |
| _____ HEALTH & SAFETY | _____ | OTHER: |
| _____ COMMERCE | | (SPECIFY) |
| _____ ENERGY | | |

1. Is any matter relative to this petition or application still pending below? Yes, specify: _____ No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this petition or application ? Yes No

(B) Involves an issue that is substantially similar or related to an issue in this petition or application ? Yes No

If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name:	Docket No.	Citation:	Court or Agency:
Name of Petitioner or Applicant:			

Date: 12/30/2010	Signature of Counsel of Record: s/Daniel B. Lundy
---------------------	--

NOTICE TO COUNSEL

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1. Complete this Agency Appeal Pre-Argument Statement (Form C-A); serve it upon your adversary, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Petitioner,

v.

Michael B. Mukasey, Attorney General
UNITED STATES DEPARTMENT
OF JUSTICE

Respondents.

Docket # _____

**PETITIONER'S STATEMENT OF
SUPPLEMENTAL AUTHORITIES
PURSUANT TO FRAP 28(j)**

Petitioner, _____, hereby submits this statement of supplemental authority pursuant to Rule 28(j) of the FRAP. Petitioner respectfully refers the Court's attention to the following case, decided on July 9, 2008:

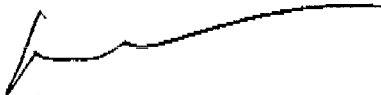
Nethagani v. Mukasey, 532 F.3d 150 (2d Cir. 2008): The Court, in determining its jurisdiction to review determinations of the Attorney General pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii) held"

"Given the 'strong presumption in favor of judicial review of administrative action,' we hold that, when a statute authorizes the Attorney General to make a determination, but lacks additional language specifically rendering that determination to be within his discretion (e.g., 'in the discretion of the Attorney General,' 'to the satisfaction of the Attorney General,' etc.), the decision is not one that is 'specified ... to be in the discretion of the Attorney General' for purposes of § 1252(a)(2)(B)(ii)." *Id.*, at 154-55 (citation omitted).

This decision is in direct conflict with the Court's decision in *De La Vega v. Gonzales*, 436 F.3d 141 (2d Cir. 2006) and supports Petitioner's arguments before the Court and his Petition for Rehearing *En Banc* by further evidencing a split in authority within the published decisions of this Circuit. *De La Vega* held that the determination whether an alien "(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's

spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence” under INA § 240A(b)(1)(D) was a matter of the Attorney General’s discretion and barred from review by this Court, despite the lack of the language required by *Nethagani* which would indicate that the determination was specified to be in the discretion of the Attorney General. The conflict between *Nethagani* and *De La Vega* is irreconcilable as the decisions are fundamentally at odds. Rehearing en banc is necessary to resolve this conflict.

Respectfully Submitted,



Daniel B. Lundy, Esq.
Barst & Mukamal
Counsel for Petitioner
2 Park Avenue
New York, NY 10016
(212) 686-3838

CERTIFICATIONS

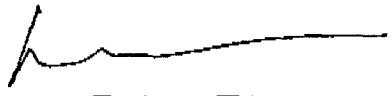
I, the undersigned, hereby certify that the body of this statement contains 311 words of text in compliance with FRAP 28(j).

I, the undersigned, hereby certify that the PDF copy of this document is identical to the original filed with the Court.

I, the undersigned, hereby certify that on 8/25 2008, I served a copy of the attached Statement on counsel for Respondent by mail at the following address:

Jennifer Paisner, Esq.
U.S. Department of Justice
Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

Date 8/25/08

Signed 
Daniel B. Lundy, Esq.

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 INS, 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 INS.

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.

(Signature of Respondent)

Before:

Date:

(Signature and Title of INS Officer)

Certificate of Service

This Notice to Appear was served on the respondent by me on AUG 14 2007, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

(Date)

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.

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.

(Signature of Respondent if Personally Served)


BRIAN LIBBY
ADJUDICATIONS OFFICER

(Signature and Title of Officer)

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

File No: [REDACTED]
Case No: [REDACTED]

In the Matter of:

Respondent: [REDACTED] currently residing at:

[REDACTED]

(Number, street, city state and ZIP code)

(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 [REDACTED] and a citizen of [REDACTED];
- 3) You were admitted to the United States at [REDACTED] on or about [REDACTED] as a nonimmigrant visitor with authorization to remain in the United States for a temporary period not to exceed [REDACTED];
- 4) You remained in the United States beyond [REDACTED] without authorization from the Immigration and Naturalization Service.

2007 AUG 20 12:12

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: 25 Federal Plaza 12th Floor Room 1237 New York NEW YORK US 10278

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.

[Signature]
ASSISTANT CENTER DIRECTOR
(Signature and Title of Issuing Officer)

Date: AUG 14 2007

VSC St. Albans, Vermont
(City and State)

See reverse for important information

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 FOLEY SQUARE
NEW YORK, NY 10007
212-857-8500

DENNIS G. JACOBS
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

ACKNOWLEDGMENT AND NOTICE OF APPEARANCE INSTRUCTIONS

The Acknowledgment and Notice of Appearance form requires all parties to provide contact information, any required corrections to the caption, a review of the parties' appellate designations, and information regarding any related cases before this Court. Counsel must also certify that they have been admitted to this Court and have complied with all rules regarding admission renewal or that they have applied for admission to this Court. If the Court has not yet admitted counsel or approved counsel for renewed admission, personal contact information for each represented client must be provided on Addendum A. In accordance with Local Rule 12.3(a), this form must be completed and returned within 14 calendar days of receipt of the docketing notice.

Each lead counsel of record or individual appearing *pro se* must complete this form. Any attorney acting as a substitution or amicus counsel or any attorney other than lead counsel of record wishing to enter the case must file a separate notice of appearance on the Notice of Appearance for Substitution, Additional, or Amicus Counsel form provided on the court's website.

Counsel of record must be admitted to the bar of this Court or be otherwise eligible to argue an appeal. The Court requires written *pro hac vice* motions filed before filing the notice of appearance. Admission *pro hac vice* will be extended as a matter of course to a member of the bar of a district court within the circuit who has represented a criminal defendant at trial and continues representation on an appeal taken pursuant to the Criminal Justice Act. See Local Rule 46.1(d)(1). Counsel, however, are encouraged to apply for general admission to this Court as soon as they meet the qualifications.

For information concerning attorney admissions and renewals, visit the court's website at www.ca2.uscourts.gov or contact Admissions in the Clerk's Office at 212-857-8603 or 212-857-8640.

ACKNOWLEDGMENT AND NOTICE OF APPEARANCE

Short Title: _____ Docket No.: _____

Lead Counsel of Record (name/firm) or Pro se Party (name): _____

Appearance for (party/designation): _____

DOCKET SHEET ACKNOWLEDGMENT/AMENDMENTS

Caption as indicated is:

- Correct
- Incorrect. See attached caption page with corrections.

Appellate Designation is:

- Correct
- Incorrect. The following parties do not wish to participate in this appeal:

Parties: _____

- Incorrect. Please change the following parties' designations:

<u>Party</u>	<u>Correct Designation</u>
--------------	----------------------------

Contact Information for Lead Counsel/Pro Se Party is:

- Correct
- Incorrect or Incomplete, and should be amended as follows:

Name: _____

Firm: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____

RELATED CASES

- This case has not been before this Court previously.
- This case has been before this Court previously. The short title, docket number, and citation are: _____

Matters related to this appeal or involving the same issue have been or presently are before this Court. The short titles, docket numbers, and citations are: _____

CERTIFICATION

I certify that I am admitted to practice in this Court and, if required by LR 46.1(a)(2), have renewed my admission on _____ OR that I applied for admission on _____ or renewal on _____. If the Court has not yet admitted me or approved my renewal, I have completed Addendum A.

Signature of Lead Counsel of Record: _____

Type or Print Name: _____

OR

Signature of pro se litigant: _____

Type or Print Name: _____

- I am a pro se litigant who is not an attorney.
 - I am an incarcerated pro se litigant.
-
-

ADDENDUM A TO ACKNOWLEDGMENT AND NOTICE OF APPEARANCE

Instructions: This addendum must be (1) completed by counsel whom the Court has not yet admitted or approved for renewed admission, (2) submitted in CM/ECF as a separate attachment when filing the Acknowledgment and Notice of Appearance (use the multiple attachments option in CM/ECF when filing the Acknowledgment and Notice of Appearance) with client personal contact information redacted, and (3) submitted in unredacted form in accordance with the procedures outlined in Interim Local Rule 25.2(c) and (d). If counsel represents multiple parties in the same appeal for which the Acknowledgment and Notice of Appearance is being filed, the attorney must separately list each client and provide the client's personal contact information. Attach additional pages as necessary.

Case Information:

Short Title: _____ Docket Number: _____

Personal Contact Information:

Client 1:

Name: _____
Address: _____
Telephone: _____ Fax: _____
Email: _____

Client 2:

Name: _____
Address: _____
Telephone: _____ Fax: _____
Email: _____

Client 3:

Name: _____
Address: _____
Telephone: _____ Fax: _____
Email: _____

Client 4:

Name: _____
Address: _____
Telephone: _____ Fax: _____
Email: _____

Client 5:

Name: _____
Address: _____
Telephone: _____ Fax: _____
Email: _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

212.857.8585

DENNIS JACOBS
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Notice to the Bar - Reduced Time to File Briefs

Effective December 15, 2010, appellant's main brief will be due no later than 91 days after the "ready date" as that term is defined in [FRAP 15](#) and [LR 31.2 \(a\)\(1\)\(A\)](#). Appellee's brief will be due no later than 91 days after the filing of the last appellant's brief. The new filing deadline applies to new cases and cases pending as of December 15, 2010. The deadline does not apply to cases placed on the Court's Expedited Appeals Calendar under revised [LR 31.2\(b\)](#). This notice addresses the application of the rule to cases currently pending before the Court.

Appeals commenced before December 15, 2010 in which no scheduling notification has been filed. An appellant who files a scheduling notification prior to December 15, 2010 may request a brief filing date pursuant to the prior 120-day rule. An appellant who files a scheduling notification on December 15, 2010 or thereafter must request a brief filing date pursuant to the new 91-day rule, unless the record is voluminous or the deadline poses an extreme hardship pursuant to [LR 31.2\(a\)\(1\)\(D\)](#).

Appeals commenced before December 15, 2010 in which Appellant filed its main brief pursuant to the prior 120-day rule. An appellee who files a scheduling notification prior to December 15, 2010 may request a brief filing date pursuant to the 120-day rule. An appellee who files a scheduling notification on December 15, 2010 or thereafter must request a brief filing date pursuant to the new 91-day rule, unless the record is voluminous or the deadline poses an extreme hardship pursuant to [LR 31.2\(a\)\(1\)\(D\)](#).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

[REDACTED]

Petitioner,

v.

Eric H. HOLDER, Attorney General
UNITED STATES DEPARTMENT
OF JUSTICE

Respondents.

ELECTRONICALLY FILED

Case File No. [REDACTED]

Petitioner's Requested Briefing
Schedule

Request for Briefing Deadline

The administrative record in this case was filed on June 10, 2010. Petitioner respectfully requests that the Court set the deadline for filing Petitioner's Brief and the Joint Appendix as September 20, 2010, which is within 120 days of the filing of the record in this matter.

Respectfully submitted

s/
Daniel B. Lundy, Esq.
Barst Mukamal & Kleiner
2 Park Avenue
New York, NY 10016
(212) 686-3838
(212) 48-9362 fax
dlundy@bmkllp.com

On June 24, 2010, a copy of this document was filed and served electronically via the Court's ECF system on counsel for Respondent:

Margaret O'Donnell, Esq.
Office of Immigration Litigation
Civil Division, Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044

MOTION INFORMATION STATEMENT

Docket Number(s): _____ Caption [use short title] _____

Motion for: _____

Set forth below precise, complete statement of relief sought:

MOVING PARTY: _____
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: _____

MOVING ATTORNEY: _____
[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: _____

Court-Judge/Agency appealed from: _____

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency: _____

Opposing counsel's position on motion:
 Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
 Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney: _____ Date: _____

Has service been effected? Yes No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____ By: _____

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ORAL ARGUMENT STATEMENT (Local Rule 34.1(a))

TO REQUEST ORAL ARGUMENT, FILL OUT THIS FORM AND FILE IT WITH THE CLERK
WITHIN 14 DAYS AFTER THE FILING OF THE LAST APPELLEE BRIEF.
IF THIS FORM IS NOT TIMELY FILED, YOU WILL NOT BE PERMITTED TO ARGUE IN PERSON.

Short Title of Case: _____ Docket No.: _____

Name of Party: _____

Status of Party (e.g., appellant, cross-appellee, etc.): _____

Check one of the three options below:

I want oral argument.

I want oral argument only if
at least one other party does.

I do not want oral argument.

An attorney whose preference depends on whether other attorneys will argue should consider conferring before requesting argument. After the appeal has been scheduled for oral argument, a motion by counsel to forgo oral argument, even on consent, may be denied.

If no party wants oral argument, the case will be decided on the basis of the written briefs. If you want oral argument, you must appear in Court on the date set by the Court for oral argument.

The Court may determine to decide a case without oral argument even if the parties request it.

If you want oral argument, state the name of the person who will argue:

Name: _____

(An attorney must be admitted to practice before the Court in accordance with Local Rule 46.1.)

If you want oral argument, list any dates (including religious holidays), that fall in the interval from 6 to 12 weeks after the due date of this form, that the person who will argue is not available to appear in Court:

ANYONE WHO WANTS TO ARGUE MUST UPDATE THE COURT IN WRITING OF ANY CHANGE IN AVAILABILITY. FAILURE TO DO SO MAY BE CONSIDERED BY THE COURT IN DECIDING MOTIONS FOR POSTPONEMENT OF THE ARGUMENT DATE SET BY THE COURT.

Filed by:

Print Name: _____ Date: _____

Signature: _____

Please time stamp below.

**U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT
NIGHT DEPOSITORY FORM**

**4:30 P.M. - 8:30 A.M. EACH BUSINESS DAY
24 HOURS ON SATURDAYS, SUNDAYS & HOLIDAYS**

INSTRUCTIONS

1. For all appeals commenced on or after January 1, 2010, a counseled party may submit only briefs and appendices in the night depository. This submission does not substitute for CM/ECF filing. Motions may be filed in the night depository only in pre-2010 appeals.
2. Complete the case title and identify the submitted documents.
3. Stamp 1 copy of the brief and appendix or the original motion.
4. Stamp this completed form and affix it to the entire package submitted.
5. Documents are deemed filed on the business day they are date/time stamped or on the next business day if date/time stamped on a Saturday, Sunday or Federal Holiday.
6. Documents date/time stamped after the date they are due must be accompanied by a motion for permission to file out of time.
7. The correct number of copies of all documents must be included.

Please complete the following information

Case Title (short title) _____ Case Number: _____

Documents Included

Required Copies

___ Briefs	6 copies
___ Appendices/Transcript Volumes	3 copies
___ Motions (T-1080 form + affidavit)	original + 2 copies
___ Other (Please identify): _____	original + 2 copies
___ Proof of service	original only

**FAILURE TO COMPLY WITH THE ABOVE INSTRUCTIONS MAY UNDULY
DELAY FILING WITH THE COURT.**

The night depository box is located at the Worth Street entrance of the United States District Court, the Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, NY near the Court Security office.

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the _____ day of _____, two thousand and _____,

STIPULATION

Docket Number:

The undersigned counsel for the parties stipulate that the above-captioned petition for review is withdrawn without costs or attorneys' fees and pursuant to Local Rule 42.1. Petitioner may reinstate the case by filing written notice with the Clerk, and serving such notice upon the undersigned respondent, by _____. The time tolled under LR 31.2 if any, begins to run again from the date of petitioner's reinstatement notice to the Clerk.

If not timely reinstated, the appeal shall be mandated pursuant to FRAP 41.

Date:

Attorney for Petitioner

Print Name and Firm

Date:

Attorney for Respondent

Print Name and Firm

Matter of Ernesto Javier MORALES, Respondent

File A075 533 095 - Los Angeles, California

Decided January 27, 2010

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

A stepparent who qualifies as a “parent” under section 101(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(2) (2006), at the time of the proceedings is a qualifying relative for purposes of establishing exceptional and extremely unusual hardship for cancellation of removal under section 240A(b)(1)(D) of the Act, 8 U.S.C. § 1229b(b)(1)(D) (2006).

FOR RESPONDENT: Alejandro Garcia, Esquire, Commerce, California

BEFORE: Board Panel: COLE, PAULEY, and GREER, Board Members.

PAULEY, Board Member:

In a decision dated July 14, 2008, an Immigration Judge found the respondent removable, denied his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b) (2006), and granted his request for voluntary departure. The respondent has appealed from the Immigration Judge’s denial of cancellation of removal. The appeal will be sustained and the record will be remanded to the Immigration Judge.

On appeal, the respondent argues that the Immigration Judge erred in not considering his stepfather as a qualifying relative in evaluating the hardship that would result from his removal from the United States. With regard to hardship, the Immigration Judge stated that the only qualifying relative in this case is the respondent’s lawful permanent resident mother. The Immigration Judge noted that the respondent has a United States citizen stepfather who has been married to his mother for “20 plus” years, but he did not consider the respondent’s stepfather as a qualifying relative.

We first look to the relevant definitions of a “parent” and “child” in sections 101(b)(1) and (2) of the Act, 8 U.S.C. § 1101(b)(1) and (2) (2006). Under section 101(b)(2), the term “parent” means a parent “only where the relationship exists by reason of any of the circumstances” set forth in section 101(b)(1). Section 101(b)(1) of the Act defines a “child” as “an unmarried person under twenty-one years of age.” This definition includes a stepchild,

“provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.” Section 101(b)(1)(B) of the Act.

In the context of adjudicating visa petitions, we have long held that once the required steprelationship has been established, a stepparent remains a parent, even if the “child” has married or is over 21 years of age, provided the marriage creating the steprelationship continues to exist. *See Matter of Mourillon*, 18 I&N Dec. 122, 125-26 (BIA 1981) (noting that a steprelationship may be terminated by the death, divorce, or legal separation of the parties whose marriage created the steprelationship); *Matter of Citino*, 12 I&N Dec. 427, 428 (BIA 1967) (stating that where a valid steprelationship has been created, a stepparent remains a stepparent despite the marriage of the “child”); *see also Matter of Mowrer*, 17 I&N Dec. 613, 615 (BIA 1981); *Matter of C-*, 8 I&N Dec. 592, 593-94 (BIA 1960). Furthermore, we have followed this reasoning for purposes of determining hardship to family members in the context of considering eligibility for discretionary relief. *See Matter of G-*, 8 I&N Dec. 355, 359 (BIA 1959); *cf. Matter of Portillo-Gutierrez*, 25 I&N Dec. 148 (BIA 2009) (holding that a stepchild who meets the definition of a “child” under section 101(b)(1)(B) of the Act *at the time of the proceedings* is a qualifying relative for purposes of establishing exceptional and extremely unusual hardship for cancellation of removal under section 240A(b)(1)(D)). Therefore, in accord with our prior precedents, we conclude that a stepfather who qualifies as a “parent” under section 101(b)(2) of the Act at the time of the proceedings is a qualifying relative for purposes of establishing exceptional and extremely unusual hardship for cancellation of removal under section 240A(b)(1)(D) of the Act.

At the time of the respondent’s hearing on July 14, 2008, his stepfather had been married to his mother for over 20 years. The respondent was born on November 7, 1972. Therefore, under the facts as determined by the Immigration Judge, the respondent would have been, at most, 15 years old when his stepfather became his parent. Consequently, the required steprelationship was validly created pursuant to law because it was established prior to the time the respondent reached the age of 18 years. Accordingly, the respondent’s stepfather should have been given full consideration as a qualifying relative in evaluating the hardship in this case. We therefore find it appropriate to remand the record for the Immigration Judge to reevaluate his findings concerning the hardship required for cancellation of the respondent’s removal under section 240A(b)(1)(D) of the Act.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.