**Model Briefing Inserts:**

**Misuse of Legal Form Addenda in the Third Circuit**

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| These model briefing inserts provide arguments for objecting to and preserving the issue of an Immigration Judge’s misuse of legal form addenda of law (“form addenda”) under Third Circuit law. Three common issues are covered in these inserts: (1) an IJ appending a form addendum to a barebones decision, but not conducting an individualized application of the law to the facts of the particular case; (2) an IJ failing to provide a copy of the form addendum that they relied on in their decision; and (3) an IJ relying on a form addendum that contains an inaccurate statement of the relevant law.  While you will need to tailor these model inserts to describe the specific facts of your own client’s case, this model briefing provides templates to address these issues on appeal before the Board of Immigration Appeals and, if necessary, also preserve these arguments for a future petition for review. |

1. **The Immigration Judge Substituted the Form Addendum for an Individualized Legal Analysis of the Facts of This Case.**

By substituting the form addendum for an individualized legal analysis of the issues and facts presented in this particular case, the Immigration Judge (“IJ”) failed (1) to comply with the requirements of 8 C.F.R. § 1240.12(a), (2) to fully develop the record and meaningfully review the Respondent’s claims, and (3) to satisfy the fundamental requirements of administrative law. [The Immigration Judge provided only cursory and barebones treatment of the issues raised by the Respondent’s application because. . . ./ by stating only. . . .] [**PRACTITIONER NOTE**: The yellow-highlighted section here should be a fulsome description of the IJ’s inadequate analysis. Throughout the remainder of the section, you should point to specific aspects of the inadequate analysis to emphasize the points made in the legal analysis section.].

First, 8 C.F.R. § 1240.12(a) requires that the IJ’s “decision shall . . . contain reasons for granting or denying the request.” An IJ can only issue a “summary decision” in the three limited situations enumerated in 8 C.F.R. § 1240.12(b), which are not applicable here. In all other cases, the IJ must provide a “separate oral or written decision . . . stating the reasons for his or her conclusions.” *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1032 (BIA 1999).

While Section 1240.12(b) was not applicable here, even if the IJ *could have* issued a more truncated summary decision in this case, the IJ’s decision would nevertheless still have fallen short of those more basic requirements. As the BIA held a quarter century ago, while a “summary decision” under Section 1240.12(b) does not require “a full discussion of the relevant facts and lengthy analysis of the law,” the IJ still must “adequately link the respondent’s admissions to the statutory provisions and/or legal precedent that are dispositive of the issues of his or her removability and relief.” *Matter of A-P-*, 22 I&N Dec. 468, 474–75 (BIA 1999). “A ‘generic’ form” that “does not meaningfully reflect any individualized assessment of the law applicable to the respondent’s case undermines the very crucial role played by Immigration Judges in the implementation of our nation’s immigration laws” and does not suffice even where a “summary decision” is permitted. *Id*. at 474. Such a barebones decision frustrates the respondent’s ability to understand the basis for the decision and contest it on appeal, and also leaves the BIA “without adequate means of performing its primary appellate function of reviewing the bases stated for the Immigration Judge’s decision in light of the arguments advanced on appeal.”  *Id.*; *see* *Matter of M-M-A-*, 28 I&N Dec. 494, 497 (BIA 2022) (“Immigration Judges must make sufficient findings of fact and conclusions of law on issues raised before them to ensure the Board can conduct effective appellate review.”).

The IJ’s approach in this case did not satisfy even the requirements for a “summary decision” under 8 C.F.R. § 1240.12(b), and certainly did not satisfy the more rigorous requirements of 8 C.F.R. § 1240.12(a) that governed here. As a result, the IJ’s failure in this case to provide the “reasons for [] denying the request” by meaningfully analyzing the issues presented or otherwise contending with the evidence, and instead merely relying on a generic form addendum, requires remand under 8 C.F.R. § 1240.12(a).

Second, the IJ abused her discretion by failing to provide “meaningful explanation” of her decision. *See Valarezo-Tirado v. Att’y Gen. of U.S.*, 21 F.4th 256, 263 (3d Cir. 2021). As the Third Circuit has repeatedly held, the IJ must do more than simply state her decision; the IJ not only “must explain [the] decision,” *id.* at 261, but do so “with such clarity as to be understandable,” *id.* (quoting *Wang v. Att’y Gen. of U.S.*, 423 F.3d 260, 270 (3d Cir. 2005)). Therefore, it is the IJ’s duty to “support her factual determinations with specific, cogent reasons such that her conclusions flow in a reasoned way from the evidence of record and are [not] arbitrary and conjectural in nature,” and it is the reviewing court’s corresponding duty to ensure that “the findings [are] sufficiently well-developed and grounded in the record,” *Toure v. Att’y Gen. of U.S.*, 443 F.3d 310, 316, 327 (3d Cir. 2006) (first brackets in original).

In this case, the IJ’s reliance on a form addendum in place of individualized review and consideration of the evidence presented was an abuse of discretion requiring remand, because the IJ failed to provide a “meaningful explanation” for denying the requested relief. *Valarezo-Tirado*, 21 F.4th at 263 (“[W]e will not permit crowded dockets or a backlog of cases to excuse an IJ or the BIA from providing a meaningful explanation of why someone has been denied relief.”). The failure to meaningfully explain the decision and engage with relevant evidence requires remand. *Id.*; *see Toure*, 443 F.3d at 326 (remanding because “the record is barren of support for the IJ’s conclusion”); *Nsimba v. Att’y Gen. of U.S.*, 21 F.4th 244, 249 (3d Cir. 2021) (remanding because the agency supported its decision “by cherry-picking evidence rather than viewing the entirety of the record”); *Dia v. Ashcroft*, 353 F.3d 228, 251 (3d Cir. 2003) (remanding because the IJ’s “conclusion is not explained” and ignored relevant evidence); *Awolesi v. Ashcroft*, 341 F.3d 227, 228–29 (3d Cir. 2003) (remanding because “the BIA does not explain how it came to its conclusion”).

Finally, the IJ’s decision similarly violated foundational requirements of administrative law. The Supreme Court long ago held that “the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.” *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943). A decision cannot be reviewed, let alone sustained, “where appropriate reasons are not set forth by the administrative agency itself.” *Wang*, 423 F.3d at 271; *Kayembe v. Ashcroft*, 334 F.3d 231, 238 (3d Cir.2003) (“When deficiencies in the BIA’s decision make it impossible for us to meaningfully review its decision, we must vacate the decision.”); *Matter of M-P-*,20 I&N Dec. 786, 787 (BIA 1994) (“However summary, [the IJ’s decision] should state the basis for decision sufficiently, so that an appellate tribunal can appraise it.”). Here, by relying on the addendum in place of individualized adjudication, the IJ’s decision failed to provide a “meaningful explanation,” *see Valarezo-Tirado*, 21 F.4th at 263,”and so under both BIA and Third Circuit precedent and fundamental principles of administrative law, the case must now be remanded to the IJ.

1. **The Immigration Judge Failed to Provide a Copy of the Form Addendum She Relied on.**

By not providing the Respondent with a copy of the form addendum that she relied on in her decision, the Immigration Judge (“IJ”) failed to (1) comply with the requirements of 8 C.F.R. § 1240.12, (2) to fully develop the record and provide a meaningful adjudication of the issues presented, and (3) to satisfy the fundamental requirements of administrative law. [The Immigration Judge failed to provide the Respondent with the form addendum she explicitly stated she was relying on in her oral decision / that is referenced in the decision.] [**PRACTITIONER NOTE**: In this section, you should note any additional, relevant details. For example, if you contacted the clerk or chambers to ask for the addendum or if you were told the addendum was going to be shared with you but it was not, you should include that information.].

First, 8 C.F.R. § 1240.12(a) requires that the IJ’s “decision shall . . . contain reasons for granting or denying the request.” An IJ can only issue a “summary decision” in the three limited situations enumerated in 8 C.F.R. § 1240.12(b), which are not applicable here. In all other cases, the IJ must provide a “separate oral or written decision . . . stating the reasons for his or her conclusions.” *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1032 (BIA 1999).

While Section 1240.12(b) was not applicable here, even if the IJ *could have* issued a more truncated summary decision in this case, the IJ’s decision would nevertheless still have fallen short of those more basic requirements.

As the BIA held a quarter century ago, while a “summary decision” under Section 1240.12(b) does not require “a full discussion of the relevant facts and lengthy analysis of the law,” the IJ still must “adequately link the respondent’s admissions to the statutory provisions and/or legal precedent that are dispositive of the issues of his or her removability and relief.” *Matter of A-P-*, 22 I&N Dec. 468, 474–75 (BIA 1999). A decision that fails to include the case law and analysis it relied on leaves the BIA “without adequate means of performing its primary appellate function of reviewing the bases stated for the Immigration Judge’s decision in light of the arguments advanced on appeal.”  *Id*. at 472–73; *see Matter of M-M-A-*, 28 I&N Dec. 494, 497 (BIA 2022) (“Immigration Judges must make sufficient findings of fact and conclusions of law on issues raised before them to ensure the Board can conduct effective appellate review.”).

Furthermore, there is the foundational issue that an IJ’s decision should not “leave[] the parties and the Board to speculate as to where the decision begins and ends, and whether additional legal and factual determinations have been pronounced elsewhere.” *Matter of A-P-*, 22 I&N Dec. at 476. The Board has long criticized decisions “where the Immigration Judge’s findings of fact and conclusions of law are scattered throughout the transcript and made piecemeal.” *Id.* And, here, it is not even a matter of the IJ’s decision being scattered across the transcript. Rather, the basis for the conclusions of law is in a wholly different document that the petitioner and Board do not even have the opportunity to sift through to determine why the IJ made the decision she did, as the addendum was not provided.

The IJ’s approach in this case did not satisfy even the requirements for a “summary decision” under 8 C.F.R. § 1240.12(b), and certainly did not satisfy the more rigorous requirements of 8 C.F.R. § 1240.12(a) that governed here. The IJ’s failure to provide the “reasons for [] denying the request” by failing to even include a copy of the addendum, requires remand under 8 C.F.R. § 1240.12(a).

Second, the IJ abused her discretion by failing to provide “meaningful explanation” of her decision. *See Valarezo-Tirado v. Att’y Gen. of U.S.*, 21 F.4th 256, 263 (3d Cir. 2021). As the Third Circuit has repeatedly held, the IJ must do more than simply state her decision; the IJ not only “must explain [the] decision,” *id.* at 261, but do so “with such clarity as to be understandable,” *id.* (quoting *Wang v. Att’y Gen. of U.S.*, 423 F.3d 260, 270 (3d Cir. 2005)). And, as part of her decision, the IJ must correctly apply the law.  *See Nsimba v. Att’y Gen. of U.S.*, 21 F.4th 244, 254 (3d Cir. 2021) (remanding decision because the factual findings were based on “a clear error of law); *Filja v. Gonzales*, 447 F.3d 241, 254 (3d Cir. 2006).

The failure to even provide a copy of the addendum upon which the IJ relied was an abuse of discretion that denied the Respondent “meaningful explanation” of her decision. *See Valarezo-Tirado*, 21 F.4th 256, 263. The IJ’s omission prevented the Respondent from identifying the basis for the decision—let alone whether that basis was built on overturned cases, inapplicable precedent, or any other error of law—and rendered the decision impermissibly conclusory. *Id.*; *see also Pareja v. Att’y Gen. of U.S.*, 615 F.3d 180, 196–97 (3d Cir. 2010) (remanding because the “uncertainty over the meaning of the BIA’s decision” meant there was “more than just a remote possibility that the BIA” misapplied the law); *Matter of A-P-*, 22 I&N Dec. at 474 (holding that a “decision that lacks reference to the controlling law may not provide an adequate opportunity to the alien . . . to contest the Immigration Judge’s determinations on appeal.”).

Finally, the IJ’s decision similarly violated foundational requirements of administrative law. The Supreme Court long ago held that “the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.” *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943). Where the agency fails to explain the basis for its decision, “the proper course is to remand,” because the reviewing court “*will not supply the basis for its decision where appropriate reasons are not set forth by the [IJ] itself*.” Valarezo-Tirado, 21 F.4th at 262 (emphasis and brackets in original); *Kayembe v. Ashcroft*, 334 F.3d 231, 238 (3d Cir. 2003) (“When deficiencies in the BIA’s decision make it impossible for us to meaningfully review its decision, we must vacate the decision.”); *Awolesi v. Ashcroft*, 341 F.3d 227, 228–29 (3d Cir. 2003) (“[W]e cannot give meaningful review to a decision in which the BIA does not explain how it came to its conclusion.”); *Matter of M-P-*,20 I&N Dec. 786, 787 (BIA 1994) (“However summary, [the IJ’s decision] should state the basis for decision sufficiently, so that an appellate tribunal can appraise it.”). Here, by failing to provide a copy of the form addendum upon which she relied, the IJ’s decision failed to include the basis for her decision or otherwise give a “meaningful explanation,” see *Valarezo-Tirado*, 21 F.4th at 263,” and so under both BIA and Third Circuit precedent and fundamental principles of administrative law, the case must now be remanded to the IJ.

1. **The Immigration Judge Relied on an Addendum That Contained Inaccurate Statements of the Law.**

The Immigration Judge (“IJ”) erred as a matter of law by relying on a form addendum that misstated the applicable law and legal standards. [The form addendum stated . . . , which is incorrect because . . . .] [**PRACTITIONER NOTE**: This should be a short summary of the incorrect statement(s) with a more in-depth explanation of the specific case law and why it is wrong in the later section on the next page].

Relying on an inaccurate statement of law—or even the possibility that the IJ applied the wrong legal standard where there is “uncertainty over the meaning of the [] decision”—constitutes legal error. *Pareja v. Att’y Gen. of U.S.*, 615 F.3d 180, 196–97 (3d Cir. 2010) (remanding where it was unclear whether the BIA had properly applied a regulation in denying the petition); *Matter of R-A-F-*, 27 I&N Dec. 778, 779 (A.G. 2020) (remanding because the BIA applied the wrong legal standard when it “improperly merged the factual and legal questions presented”); *Matter of Baires-Larios*, 24 I&N Dec. 467, 469–70 (BIA 2008) (remanding where the IJ “incorrectly” denied the respondents’ requested relief by applying the wrong Circuit’s precedent). And an IJ’s error of law necessarily constitute an abuse of discretion that the reviewing court must address. *Nsimba v. Att’y Gen. of U.S.*, 21 F.4th 244, 254 (3d Cir. 2021) (remanding because the agency’s interpretation of certain evidence was “a clear error of law”); *Filja v. Gonzales*, 447 F.3d 241, 254 (3d Cir. 2006) (remanding because the agency applied an incorrect legal standard in denying the requested relief).

[The IJ case / legal principle the IJ relied on in rendering its decision was incorrect. The case / legal principle is incorrect, because. . . . The IJ relied on this case / legal principle by. . . .] [**PRACTITIONER NOTE**: Providing a full explanation of why the statement of law is inaccurate *and* that the IJ relied on the inaccurate law in rendering the decision is critical for prevailing on this argument. This is because an inaccurate statement of law in an addendum is likely not actionable if the IJ did not rely on that statement in rendering her decision. For example, an addendum may misstate the law regarding past persecution, but if there is no past persecution claim at issue in the case, and there is no reason to think that the IJ relied on or used that misstated case law in rendering the decision, then the argument that the IJ committed legal error will likely fail.].

Because [the IJ’s decision cited inaccurate statements of law in the addendum / relied on an addendum with inaccurate statements of law], the IJ committed an error of law that the BIA must address by [reviewing the legal errors de novo and reversing / remanding to the IJ to apply the correct legal standard in making new findings]. [**PRACTITIONER NOTE**: You will want to adjust the remedy requested to reflect the legal issue implicated by the IJ’s reliance on an inaccurate statement of law. If the issue can be addressed by the BIA without need for further fact finding, then you should request that the BIA review the issue de novo and grant the relief sought. If the issue will require additional fact finding—such as if the IJ relied on inaccurate case law to hold that the petitioner was precluded from asylum and, on that basis, refused to find any facts—then you should request that the BIA remand to the IJ to complete the necessary fact finding.].