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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

8 CFR Parts 3, 103, 208, 235, 238, 240, 241, 253, and 507

[INS No. 1976-99; AG Order No. 2207-99]

RIN 1115-AF39

### Regulations Concerning the Convention Against Torture

**AGENCY:** Immigration and Naturalization Service, and Executive Office for Immigration Review, Justice.

**ACTION:** Correction to interim rule.

**SUMMARY:** This document contains corrections to the interim regulation, published Friday, February 19, 1999 at 64 FR 8477, relating to the Convention Against Torture.

**EFFECTIVE DATE:** March 22, 1999.

**FOR FURTHER INFORMATION CONTACT:**

For matters relating to the Immigration and Naturalization Service: Dorothea Lay, 425 I Street, NW, Washington, DC 20536, telephone number (202) 514-2895. For matters relating to the Executive Office for Immigration Review: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305-0470 (not a toll free call).

**SUPPLEMENTARY INFORMATION:**

#### Background

The interim regulation that is the subject of these corrections amends Department of Justice regulations by establishing procedures for raising a claim for protection from torture, as directed by the Foreign Affairs Reform and Restructuring Act of 1998. Section 2242 of that Act requires the heads of appropriate agencies to prescribe regulations to implement United States obligations under the United Nations

Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture). Under Article 3 of the Convention Against Torture, the United States has agreed not to "expel, return ("refouler") or extradite" a person to another state where he or she would be tortured. The interim rule establishes procedures for ensuring compliance with Article 3 with respect to removal of aliens from the United States by integrating Convention Against Torture requests, as far as possible, into existing removal procedures.

#### Need for Correction

As published, the interim regulation contains errors which may prove to be misleading and are in need of clarification. First, this correction deletes the phrase in § 208.4(b)(2) that permits an alien whose case has been referred to the asylum office for purposes of conducting a reasonable fear determination to file a Form I-589, Application for Asylum and for Withholding of Removal, with an asylum office. This provision is being removed, because aliens who are referred for a reasonable fear screening will not be required to file such an application for purposes of the screening. An alien referred for a reasonable fear screening will only be required to file an application (Form I-589) if an asylum officer finds that the alien has a reasonable fear of persecution or torture. In such cases, the alien will be required to file an application with the immigration judge to apply for withholding of removal or deferral of removal, after he or she has been referred to an immigration judge.

Second, this correction clarifies the language in § 208.18(b)(2) of the interim rule which provides an opportunity to file a motion to reopen "to seek" protection under Article 3 of the Convention Against Torture for aliens who were ordered removed or whose removal orders became final prior to March 22, 1999. The phrase "to seek" needs to be changed to "for the sole purpose of seeking" in order to clarify that the reason the Department afforded the opportunity for such a motion in the interim rule was only to allow eligible aliens to move to reopen to seek protection under Article 3, and not to seek any other form of protection or relief.

Third, this correction moves the language in § 208.31(e) of the interim rule, which places a 10-day time limit on hearings before immigration judges to consider only the claim for withholding/protection against torture, to § 208.31(g). The 10-day time limit was inadvertently placed in § 208.31(e). Consistent with its intent to model the "reasonable fear" screening process on the "credible fear" screening process, the Department's intent was to place the 10-day time limit on immigration judge reviews of asylum officer "no reasonable fear" determinations in § 208.31(g). This is analogous to the 7-day time limit placed on immigration judge reviews of asylum officer "no credible fear" determinations.

#### Corrections

##### § 208.4 [Corrected]

1. On page 8488, in the first column, in § 208.4(b)(2), the phrase "or in the case of an alien whose case has been referred to the asylum office for purposes of conducting a reasonable fear determination under § 208.31 of this part" is removed.

##### § 208.18 [Corrected]

2. On page 8491, in the first column, in § 208.18(b)(2), line 7, the phrase "to seek" should read "for the sole purpose of seeking".

##### § 208.31 [Corrected]

3. On page 8493, in the third column, in § 208.31(e), lines 12 and 13, remove the phrase "within 10 days of the issuance of the I-863".

4. On page 8493, in the third column, in § 208.31(g), line 15, add a new sentence "In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Form I-863 with the immigration court." immediately before the last sentence in the introductory text.

Dated: March 17, 1999.

**Rosemary Hart,**

*Federal Register Liaison Officer.*

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