

(j) *Immigration Officer.* Any immigration officer, immigration inspector, immigration examiner, adjudications officers, Border Patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention enforcement officer, detention guard, investigator, special agent, investigative assistant, intelligence officer, intelligence agent, general attorney, applications adjudicator, contact representative, chief legalization officer, supervisory legalization officer, legalization adjudicator, legalization officer and legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, or senior or supervisory officer of such employees is hereby designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

[59 FR 60070, Nov. 22, 1994, as amended at 61 FR 13072, Mar. 26, 1996; 61 FR 28010, June 4, 1996]

§ 103.2 Applications, petitions, and other documents.

(a) *Filing.* (1) *General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions, which include where an application or petition should be filed, being hereby incorporated into the particular section of the regulations requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. Such fees are non-refundable and, except as otherwise provided in this chapter, must be paid when the application or petition is filed.

(2) *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted

with it, either at the time of filing or thereafter, is true and correct.

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter. A beneficiary of a petition is not a recognized party in such a proceeding. An application or petition presented in person by someone who is not the applicant or petitioner, or his or her representative as defined in this paragraph, shall be treated as if received through the mail, and the person advised that the applicant or petitioner, and his or her representative, will be notified of the decision. Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted.

(4) *Oath.* Any required oath may be administered by an immigration officer or person generally authorized to administer oaths, including persons so authorized by Article 136 of the Uniform Code of Military Justice.

(5) *Translation of name.* If a document has been executed in an anglicized version of a name, the native form of the name may also be required.

(6) *Where to file.* Except as otherwise provided in this chapter, an application or petition should be filed with the INS office or Service Center with jurisdiction over the application or petition and the place of residence of the applicant or petitioner as indicated in the instructions with the respective form.

(7) *Receipt date.* (i) *General.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as filed when so stamped, if it is properly signed and executed and the required fee is attached or a fee waiver is granted. An application which is not properly signed or is submitted with the wrong fee shall be rejected as improperly filed. Rejected applications, and ones in which the check or other financial instrument is returned as not payable, will not retain a filing date.

An application or petition taken to a local Service office for the completion of biometric information prior to filing at a Service Center shall be considered received when physically received at the appropriate Service Center.

(ii) *Non-payment.* If a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter shall be notified and requested to immediately pay the filing fee and associated service charge within 14 days, without extension. If the application or petition is pending and these charges are not paid, it shall be rejected as improperly filed. If it was already approved, and these charges are not paid, it shall be automatically revoked because it was improperly filed. If it was already denied, revoked, or abandoned, that decision will not be affected by the non-payment of the filing fee. A new fee will be required with any new application or petition. Any fee and service charges collected as the result of collection activities or legal action on the prior application or petition shall be used to cover the cost of the previous rejection, revocation, or other action.

(b) *Evidence and processing.* (1) *General.* An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form. Any evidence submitted is considered part of the relating application or petition.

(2) *Submitting secondary evidence and affidavits.* (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who

have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where the Service finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

(iii) *Evidence provided with a self-petition filed by a spouse or child of abusive citizen or resident.* The Service will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(3) *Translations.* Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she

is competent to translate from the foreign language into English.

(4) *Submitting copies of documents.* Application and petition forms must be submitted in the original. Forms and documents issued to support an application or petition, such as labor certifications, Form IAP-66, medical examinations, affidavits, formal consultations, and other statements, must be submitted in the original unless previously filed with the Service. When submission is required, expired Service documents must be submitted in the original, as must Service documents required to be annotated to indicate the decision. In all other instances, unless the relevant regulations or instructions specifically require that an original document be filed with an application or petition, an ordinary legible photocopy may be submitted. Original documents submitted when not required will remain a part of the record, even if the submission was not required.

(5) *Request for an original document.* Where a copy of a document is submitted with an application or petition, the Service may at any time require that the original document be submitted for review. If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked. There shall be no appeal from a denial or revocation based on the failure to submit an original document upon the request of the Service to substantiate a previously submitted copy. Further, an applicant or petitioner may not move to reopen or reconsider the proceeding based on the subsequent availability of the document. An original document submitted pursuant to a Service request shall be returned to the petitioner or applicant when no longer required.

(6) *Withdrawal.* An applicant or petitioner may withdraw an application or petition at any time until a decision is issued by the Service or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

(7) *Testimony.* The Service may require the taking of testimony, and may

direct any necessary investigation. When a statement is taken from and signed by a person, he or she shall, upon request, be given a copy without fee. Any allegations made subsequent to filing an application or petition which are in addition to, or in substitution for, those originally made, shall be filed in the same manner as the original application, petition, or document, and acknowledged under oath thereon.

(8) *Request for evidence.* If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. If the application or petition was pre-screened by the Service prior to filing and was filed even though the applicant or petitioner was informed that the required initial evidence was missing, the application or petition shall be denied for failure to contain the necessary evidence. Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence, including blood tests. In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted. Within this period the applicant or petitioner may:

(i) Submit all the requested initial or additional evidence;

(ii) Submit some or none of the requested additional evidence and ask for a decision based on the record; or

(iii) Withdraw the application or petition.

(9) *Request for appearance.* An applicant, a petitioner, and/or a beneficiary may be required to appear for an interview. A petitioner shall also be notified when an interview notice is mailed or issued to a beneficiary. The person may appear as requested by the Service or, prior to the date and time of the interview:

(i) The person to be interviewed may, for good cause, request that the interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the application or petition.

(10) *Effect of a request for initial or additional evidence or for interview rescheduling.* (i) *Effect on processing.* The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If an application or petition is missing required initial evidence, or an applicant, petitioner, or beneficiary requests that an interview be rescheduled, any time period imposed on Service processing will start over from the date of receipt of the required initial evidence or request for interview rescheduling. If the Service requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on the Service for processing will be suspended as of the date of the request. It will resume at the same point where it stopped when the Service receives the requested evidence or response, or a request for a decision based on the evidence submitted.

(ii) *Effect on interim benefits.* Interim benefits will not be granted based on an application or petition held in suspense for the submission of requested initial evidence, except that the applicant or beneficiary will normally be allowed to remain while an application or petition to extend or obtain status while in the United States is pending. The Service may choose to pursue other actions to seek removal of a person notwithstanding the pending application. Employment authorization previously accorded based on the same status and employment as that requested in the current application or petition may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) during the suspense period.

(11) *Submission of evidence in response to a Service request.* All evidence submitted in response to a Service request must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record.

(12) *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. An application or petition shall be denied where any application or petition upon which it was based was filed subsequently.

(13) *Effect of failure to respond to a request for evidence or appearance.* If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. Except as provided in §335.6 of this chapter, if a person requested to appear for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied.

(14) *Effect of request for decision.* When an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. Failure to appear for a required interview, or to give required testimony, shall result in the denial of any related application or petition.

(15) *Effect of withdrawal or denial due to abandonment.* The Service's acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and

circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.

(16) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.

(iii) *Discretionary determination.* Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the regional commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

(iv) *Classified information.* An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such dis-

closure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the regional commissioner should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The regional commissioner's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(17) *Verifying claimed citizenship or permanent resident status.* The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States will be verified from official records of the Service. The term official records, as used herein, includes Service files, arrival manifests, arrival records, Service index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Alien Registration Receipt Cards Forms AR-3, AR-103, I-151 or I-551), passports, and reentry permits. To constitute an official record a Service index card must bear a designated immigrant visa symbol and must have been prepared by an authorized official of the Service in the course of processing immigrant admissions or adjustments to permanent resident status. Other cards, certificates, declarations, permits, and passports must have been issued or endorsed by the Service to show admission for permanent residence. Except as otherwise provided in 8 CFR part 101, and in the absence of countervailing evidence, such official records shall be regarded as establishing lawful admission for permanent residence. If a self-petitioner filing under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, the Service will attempt to electronically verify the abuser's citizenship or immigration status from information contained in Service computerized records. Other Service records may also be reviewed

at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

(18) *Withholding adjudication.* A district director may authorize withholding adjudication of a visa petition or other application if the district director determines that an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the application or petition, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the application or petition would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, the district director shall review the matter and determine whether adjudication of the petition or application should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of the district director's determination, the investigation has not been completed, the matter shall be reviewed again by the district director and, if he/she concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, the matter shall be referred to the regional commissioner, who may authorize that adjudication be held in abeyance for another six months. Thereafter, if the Associate Commissioner, Examinations, with the concurrence of the Associate Commissioner, Enforcement, determines it is necessary to continue to withhold adjudication pending completion of the investigation, he/she shall review that determination every six months.

(19) *Notification.* An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to § 103.2(a), that representative shall also be notified. Doc-

uments produced after an approval notice is sent, such as an alien registration card, shall be mailed directly to the applicant or petitioner.

(c) *Filing of applications for adjustment of status under sections 210 and 245A of the Act, as amended.* (1) The filing of an application for temporary resident status under section 245A(a) of the Act must conform to the provisions of § 245a.2 of this chapter. The filing of an application for permanent resident status under section 245A(b)(1) of the Act must conform to the provisions of § 245a.3 of this chapter. The filing of an application for adjustment of status to that of a temporary resident under section 210(a) of the Act must conform to the provisions of § 210.2 of this chapter.

(2) An application for adjustment to temporary or permanent resident status pursuant to section 245A (a) or (b)(1) or section 210(a) of the Act may be accepted on behalf of the Attorney General by designated state, local and community organizations as well as designated voluntary organizations and persons. Each such application shall contain a certification signed by both the alien and the preparing member of the designated organization or entity, that the applicant has approved transmittal of the application to the Service for adjudication.

(3) An application accepted by any of the designated entities shall be stamped with an endorsement as to the date of preparation and authorization for transmittal, and may be brought to the legalization office with the applicant as an application ready for adjudication. However, such application shall not be considered as complete until accepted for adjudication by and until the appropriate fee has been paid to the Immigration and Naturalization Service.

(d) *Filing of petitions for adjustment of status under section 210A of the Act, as amended.* (1) The filing of a petition for temporary resident status as a Replenishment Agricultural Worker, and waivers incident to such filing, under section 210A of the Act must conform to the provisions of part 210a of this title.

(2) A petition for adjustment to temporary resident status pursuant to section 210A of the Act shall be accepted

only by the Service, or by personnel employed under contract to the Service, who are under Service supervision, and are specifically designated responsibility for the initial processing of petitions and waivers. Only Service officers may make decisions with respect to the granting or denial of petitions and waivers filed under section 210A of the Act and part 210a of this title.

(3) Petitions and waivers filed with the Service pursuant to part 210a of this title shall not be considered as complete until accepted for adjudication by and until the appropriate fee has been paid to the Immigration and Naturalization Service.

(e) *Fingerprinting.* Service regulations require that applicants for various types of immigration benefits submit their fingerprints with the applications. To ensure they have access to reputable fingerprinting services, the fingerprinting of these benefit applicants must be carried out pursuant to the fingerprinting service provisions established in this paragraph.

(1) *Fingerprinting by the Service.* Where feasible, a local Service office shall provide fingerprinting service to applicants for immigration benefits. Also, the district director shall consider all qualified applicants for DFS certification and certify applicants who meet the regulatory standards to supplement the district's efforts. Where district Service personnel are providing fingerprinting services, the district director may end such services when he or she determines that there are sufficient outside or private fingerprinting services available at a reasonable fee.

(2) *Designated fingerprinting services—*

(i) *Law enforcement agencies.* Federal, state, or local police, or military police, in the United States are not required to apply for DFS certification. However, it is essential that any Federal, state, and local police, or military police, that provide fingerprinting services to applicants for immigration benefits be familiar with the Service's fingerprinting regulations and requirements. In order to receive updates on such regulations and requirements, a policy agency that does provide such services must register with the Service pursuant to procedures prescribed by

§ 103.2(e)(9). Campus police departments having general arrest powers pursuant to a State statute and meeting training requirements established by law or ordinance for law enforcement officers are included within the category of state or local police departments for purposes of § 103.2(e).

(ii) *Other business entities or individuals.* Businesses and individuals who apply and qualify shall, subject to the requirements of § 103.2(e), be approved by the Service to provide fingerprinting services.

(3) *Transition to use designated fingerprinting services.* As of March 1, 1997, the Service will not accept fingerprint cards for immigration benefits unless they are taken by:

(i) A DFS accompanied by a completed attestation, Form I-850A, Attestation by Designated Fingerprinting Services Certified to Take Fingerprints;

(ii) An intending DFS or organization that has completed and filed an application for DFS status prior to March 1, 1997, which may, pending the Service's action upon its application, take fingerprints and complete the Form I-850A, indicating that its application for DFS status is pending. This provisional authority for an outside entity shall cease when its application is denied;

(iii) A recognized law enforcement agency that is registered as a DFS; or

(iv) Designated Service employees.

(4) *Eligibility for DFS.* An outside entity applying for DFS status may be a business, a not-for-profit organization, or an individual.

(i) An individual must establish that he or she is a United States citizen or lawful permanent resident, and has not been convicted of an aggravated felony or any crime related to dishonesty or false statements involving a civil penalty for fraud.

(ii) A business or a not-for-profit organization must establish the identity of its chief operations officer, who exercises primary and oversight control over the organization's operations, and its fingerprinting employees; and the business or a not-for-profit organization must establish that the chief operations officer and fingerprinting employees are United States citizens or lawful permanent resident(s), and that

its principal officers, directors, or partners meet the standard for individual applicants.

(iii) A Federal, state, or local law enforcement agency may register as a designated fingerprinting service. However, a law enforcement agency is not required to comply with the operating license(s), identification and training of employees, criminal record history check, attestation, or application fee provisions in this paragraph.

(5) *Criminal history records check.* (i) An identification and criminal history record check is required for each employee or person as otherwise described in paragraphs (e)(4) (i) and (ii) of this section who will take fingerprints listed on the application for DFS certification. The district director shall designate Service personnel of the district office to obtain and transmit fingerprints to the Federal Bureau of Investigation (FBI) for such checks. If a DFS needs to add new or replacement employees to the personnel approved by the Service, it must file a new application with the district director having jurisdiction over the DFS's place of business. That new application must be accompanied by the required fee for the FBI fingerprint check. The Service will accept fingerprints from an applicant for DFS certification only if the fingerprints were taken by designated Service personnel.

(ii) An employee who has been convicted of an aggravated felony or a crime involving dishonestly or false statement, or who has been subjected to a civil penalty for fraud, may not be assigned to take fingerprints unless the DFS can establish to the Service's satisfaction that the circumstances of the offense are such (because of the person's youth at the time of the offense, and/or the number of years that have passed since its commission) that there can be no reasonable doubt as to the person's reliability in taking fingerprints in conformity with these rules.

(6) *Requirements.* Except as provided under paragraph(e)(9) of this section, an outside entity seeking certification as a DFS must agree that it will:

(i) Abide by Service regulations governing certification of DFS(s);

(ii) Permit Service personnel and Service contract personnel to make on-

site inspections to ensure compliance with required procedures;

(iii) Ensure that the personnel responsible for taking fingerprints received training in fingerprinting procedures by the Service or FBI (exceptions can be made for those who have previously received training from the FBI or the Service or who can otherwise demonstrate equivalent training);

(iv) Notify the district director where the application was filed when the completion of fingerprinting training occurred prior to the approval of the application, if such training was not completed but was in progress or had been scheduled at the filing of the application;

(v) Use only FBI or Service-trained employees to train its new employees on fingerprinting procedures (exceptions can be made for those who have previously received training from the FBI or the Service) and to conduct periodic refresher training as needed;

(vi) Make every reasonable effort to take legible and classifiable fingerprints, using only black ink;

(vii) Retake the applicants' prints free of charge if the DFS initially fails to take legible and classifiable prints;

(viii) Use only the fingerprint card(s), Form(s) FD-258, or other Service-designated documents to take fingerprints for immigration purposes;

(ix) Ensure that the fingerprint card(s) or other Service-designated fingerprint documents are completed in accordance with the instructions provided, using FBI prescribed personal descriptor codes;

(x) Ensure that the fingerprint card(s) or other Service-designated forms are signed by the applicants in their presence and by the fingerprinter;

(xi) Verify the identification of the person being fingerprinted by comparing the information on the fingerprint card, Form FD-258, or other Service-designated forms with the applicant's passport, national ID, military ID, driver's license or state-issued photo-ID, alien registration card, or other acceptable Service-issued photo-ID;

(xii) Complete an attestation on Form I-850A, Attestation by Designated Fingerprinting Service Certified to Take Fingerprints, and provide it to the person being fingerprinted;

(xiii) Note (legibly by hand or using a rubber stamp) on the back of the fingerprint card, Form FD-258, or a Service designated fingerprint document, the DFS's name and address, certification number, expiration date, the DFS fingerprinter's ID number and signature, and the date on which the fingerprints are taken. The DFS fingerprint shall seal the completed fingerprint card or fingerprint document, and sign or imprint a stamp with an original signature crossing the sealed area.

(xiv) Charge only reasonable fees for fingerprinting services, and the current fee status is to be made known to the Service;

(xv) Notify the director having jurisdiction over the applicant's place of business within 2 working days, on Form I-850 without fee, of any changes in personnel responsible for taking fingerprints;

(xvi) Request approval for any new personnel to take fingerprints according to the procedures set forth in paragraphs (e) (4), (5), (6), (8), and (9) of this section;

(xvii) Notify the Service of any conviction for an aggravated felony or for a crime involving dishonesty or false statement, or of any civil penalty for fraud subsequent to the DFS certification of an employee authorized to take fingerprints; and

(xviii) Maintain facilities which are permanent and accessible to the public. The use of the terms permanent and accessible to the public shall not include business or organizational operations in private homes, vans or automobiles, mobile carts, and removable stands or portable storefronts.

(7) *Attestation.* (i) To ensure the integrity of the fingerprint cards submitted by applicants for benefits, all DFS fingerprinters must fill out an attestation on Form I-850A each time they take fingerprints for an immigration benefit applicant. Such attestation must be signed and dated by the fingerprinter and show:

(A) The fingerprinter's name and ID number (as assigned by the Service) and a statement that the requirements of § 103.2(e) have been met;

(B) The name, address, certification number (as assigned by the Service), and expiration date of the DFS certification;

(C) That he or she has checked the identity of the person he or she fingerprinted and has listed the identification number from the individual's passport, national ID, military ID, driver's license or state-issued photo-ID, alien registration card, or other acceptable Service-issued photo-ID; and

(D) That it is signed and dated by the benefit applicant.

(ii) DFS fingerprinters must execute the attestations in duplicate in the presence of the applicant. The original must be given to the applicant to be filed with the Service with his or her fingerprint card, and the copy, which may be a reproduced copy of the original, must be kept on file at the DFS for at least 3 months for Service inspection.

(8) *Application.* An outside organization seeking certification as a DFS, or a DFS seeking approval for personnel change, must submit an application on Form I-850, Application for Certification for Designated Fingerprinting Services, to the district director having jurisdiction over the applicant's place of business. The application must include the following:

(i) The required fee;

(ii) A copy of all business licenses or permits required for its operations and if the organization is a not-for-profit entity, documented evidence of such status;

(iii) The names and signatures of personnel who will take fingerprints of applicants for immigration benefits;

(iv) A set of fingerprints taken by a Service employee on Form FD-258 for each employee whose name appears on the application form pursuant to paragraph (e)(4) of this section, and the required fee (for each employee) for the FBI criminal history record check;

(v) A statement on Form I-850 indicating the fee, if any, it will charge for the fingerprinting service; and

(vi) A signed statement on Form I-850 attesting that the DFS will abide

by the Service regulation governing fingerprinting and the certification of designated fingerprinting services.

(9) *Registration of police stations or military police agencies.* (i) Federal, state, or local police stations, or military police agencies, may individually register to take fingerprints of applicants for immigration benefits by filing a Form I-850, application for Certification for Designated Fingerprinting Services, completing only the relevant parts of the form. No fee or fingerprint cards need to be submitted for their personnel charged with the fingerprinting responsibility; nor are these personnel required to have additional training in fingerprinting techniques and procedures. Furthermore, law enforcement agencies registered to take fingerprints under this paragraph are not subject to on-site inspections by the Service. The Service will communicate with these agencies through regular liaison channels at the local level.

(ii) A police department may request registration on behalf of all of its subordinate stations on a single application by listing their precinct numbers and addresses. Once registered, the Service will include the individual police stations and military police agencies on the Service's list of DFS organizations. The Service will make available to these agencies the fingerprinting regulations, related instruction material or other relevant information when appropriate.

(10) *Confidentiality.* A DFS is prohibited from releasing fingerprints taken pursuant to certification, other than to the Service or to the applicant or as otherwise provided in the Service's regulations. Law enforcement agencies enumerated under paragraph (e)(9) of this section are not precluded from using the fingerprints they have collected for immigration purposes in other law enforcement efforts.

(11) *Approval of application.* The district director shall consider all supporting documents submitted and may request additional documentation as he or she may deem necessary. When the application has been approved, the district director shall assign a certification number to the DFS and individual ID numbers to its approved

fingerprinters. The approval will be valid for a period of 3 years and may be renewed in accordance with paragraph (e)(13) of this section. The district director shall notify the applicant of the approval and include in the notice of approval the following items:

(i) Instructions on how to prepare Applicant Fingerprint Cards, Form FD-258;

(ii) A listing of acceptable Service-issued photo-IDs; and

(iii) A statement detailing the DFS(s) responsibilities and rights, including the renewal and revocation procedures as provided by paragraphs (e) (12) and (13) of this section.

(12) *Denial of the application.* The applicant shall be notified of the denial of an application, the reasons for the denial, and the right to appeal to the AAO under 8 CFR part 103.

(13) *Renewal.* (i) Subject to paragraph (e)(13)(ii) of this section, a DFS must apply for renewal of its certification at least ninety (90) days prior to the expiration date to prevent interruption in its ability to provide fingerprinting services. An application for renewal must be made on Form I-850 with the required fee and documentation as contained in paragraph (e)(8) of this section. In considering an application for renewal, the Service will give appropriate weight to the volume, nature, and the substance of complaints or issues raised in the past regarding that particular DFS and or relevant circumstances which are made known to the Service by the general public, other governmental or private organizations, or through Service inspections. Also, the Service will favorably consider the absence of such complaints or issues. Each renewal shall be valid for 3 years. Failure to apply for renewal will result in the expiration of the outside entity's DFS status.

(ii) The Service will certify and renew DFS(s) as long as the need for their service exists. Following the development of an automated fingerprint information system, the Service will determine if there is a continued need for the DFS' services and, if so, whether they should switch to newer technologies, such as acquiring compatible automated fingerprinting equipment. In either event, the Service shall issue

a public notification or issue a new rule, as appropriate. Nothing in this paragraph shall preclude the Service, in its discretion, from discontinuing the DFS certification program after the initial 3 years or from requiring, as a condition of continued certification, that the DFS incorporate automated fingerprinting equipment.

(14) *Revocation of certification.* The district director shall revoke an approval of application for DFS status under the following circumstances:

(i) *Automatic revocation.* The approval of any application is automatically revoked if the DFS:

(A) Goes out of business prior to the expiration of the approval; or

(B) Files a written withdrawal of the application.

(ii) *Revocation on notice.* The Service shall revoke on notice the certification of a DFS which has violated the regulations governing the fingerprinting process as established in paragraph (e) of this section.

(A) If the district director finds that a DFS has failed to meet the required standards, he or she will issue a notice of intent to revoke detailing reasons for the intended revocation. Within 30 days of the receipt of the notice, the DFS may submit evidence in rebuttal or request an inspection following corrective actions. The district director shall cancel the notice of intent to revoke if he or she is satisfied with the evidence presented by the DFS or the results of a reinspection.

(B) For flagrant violations, such as failure to verify the identity of the persons seeking fingerprinting, the district director may, in his or her discretion, issue a suspension order and place the DFS on immediate suspension. During the suspension period, the DFS may not take fingerprints, and the Service will not accept fingerprints taken by the suspended DFS. The DFS under suspension may submit a plan for corrective action to the district director within 30 days and request a reinspection. If the district director approves the plan, he or she shall permit the DFS to resume fingerprinting on probation pending the results of the reinspection and the Service will resume accepting submitted fingerprints. The district director shall cancel the sus-

pension order if he or she finds the results of a reinspection satisfactory.

(C) If the DFS fails to submit evidence of rebuttal or corrective actions within the 30-day period, or if unsatisfactory conditions persist at the second inspection, the district director shall notify the DFS of the revocation decision, detailing the reasons, and of its right to appeal.

(D) The district director shall consider all timely submitted evidence and decide whether to revoke the DFS approval. The district director shall also decide whether any such revocation shall preclude accepting fingerprints taken by that DFS (or any of its offices or employees) during some or all of the period of its certification.

(iii) If the Service's investigation uncovers evidence of material misconduct, the Service may, in addition to revocation, refer the matter for action pursuant to section 274C of the Act (Penalties for Document Fraud), or 18 U.S.C. 1001 (false statement), or for other appropriate enforcement action.

(15) *Appeal of revocation of approval.* The revocation of approval may be appealed to the Service's Administrative Appeals Office (AAO). There is no appeal from an automatic revocation.

(16) *List of DFS(s).* Each district office shall make available a list of the DFS(s) it has certified to take fingerprints. Such list shall contain the name, address, telephone number, if available, and the fingerprinting fee charge, if any, of each DFS certified in the district.

(17) *Change of address or in fee.* A DFS shall notify the Service, on Form I-850, without an application fees, of any change(s) of address or change(s) in the fee charged for fingerprinting at least 10 working days before such a change takes place. The district office shall update its DFS list, including any fingerprinting fee changes, upon receipt of the notice of change(s).

(18) *False advertising or misrepresentation by a DFS.* Designated fingerprinting services are prohibited from exploiting their DFS status by creating the impression that they are authorized by the Service to do more than fingerprinting. DFS(s) are prohibited from using the Service logo on

their stationery, flyers, or advertisements. When dealing with the public or advertising for business, a DFS may refer to itself only as “an INS-Authorized Fingerprinting Service.” DFS(s) found in violation of this requirement are subject to suspension or revocation actions pursuant to § 103.2(e)(14).

[29 FR 11956, Aug. 21, 1964, as amended at 30 FR 14772, Nov. 30, 1965; 32 FR 9622, July 4, 1967; 33 FR 11644, Aug. 16, 1968; 39 FR 43055, Dec. 10, 1974; 44 FR 52169, Sept. 7, 1979; 47 FR 44990, Oct. 13, 1982; 50 FR 11841, Mar. 26, 1985; 52 FR 16192, May 1, 1987; 53 FR 26034, July 11, 1988; 54 FR 29881, July 17, 1989; 56 FR 624, Jan. 7, 1991; 59 FR 1460, 1461, Jan. 11, 1994; 59 FR 33905, July 1, 1994; 61 FR 13072, Mar. 26, 1996; 61 FR 28010, June 4, 1996; 61 FR 57584, Nov. 7, 1996]

§ 103.3 Denials, appeals, and precedent decisions.

(a) *Denials and appeals*—(1) *General*—(i) *Denial of application or petition*. When a Service officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial. If Form I-292 (a denial form including notification of the right of appeal) is used to notify the applicant or petitioner, the duplicate of Form I-292 constitutes the denial order.

(ii) *Appealable decisions*. Certain unfavorable decisions on applications, petitions, and other types of cases may be appealed. Decisions under the appellate jurisdiction of the Board of Immigration Appeals (Board) are listed in § 3.1(b) of this chapter. Decisions under the appellate jurisdiction of the Associate Commissioner, Examinations, are listed in § 103.1(f)(2) of this part.

(iii) *Appeal*—(A) *Jurisdiction*. When an unfavorable decision may be appealed, the official making the decision shall state the appellate jurisdiction and shall furnish the appropriate appeal form.

(B) *Meaning of affected party*. For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

(C) *Record of proceeding*. An appeal and any cross-appeal or briefs become part of the record of proceeding.

(D) *Appeal filed by Service officer in case within jurisdiction of Board*. If an appeal is filed by a Service officer, a copy must be served on the affected party.

(iv) *Function of Administrative Appeals Unit (AAU)*. The AAU is the appellate body which considers cases under the appellate jurisdiction of the Associate Commissioner, Examinations.

(v) *Summary dismissal*. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The filing by an attorney or representative accredited under 8 CFR 292.2(d) of an appeal which is summarily dismissed under this section may constitute frivolous behavior as defined in 8 CFR 292.3(a)(15). Summary dismissal of an appeal under § 103.3(a)(1)(v) in no way limits the other grounds and procedures for disciplinary action against attorneys or representatives provided in 8 CFR 292.2 or in any other statute or regulation.

(2) *AAU appeals in other than special agricultural worker and legalization cases*—(i) *Filing appeal*. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

(ii) *Reviewing official*. The official who made the unfavorable decision being appealed shall review the appeal unless the affected party moves to a new jurisdiction. In that instance, the official who has jurisdiction over such a proceeding in that geographic location shall review it.

(iii) *Favorable action instead of forwarding appeal to AAU*. The reviewing official shall decide whether or not favorable action is warranted. Within 45 days of receipt of the appeal, the reviewing official may treat the appeal as a motion to reopen or reconsider and take favorable action. However, that