

by the Asylum Officer shall comprise the record.

(g) An applicant unable to proceed with the interview in English must provide, at no expense to the INS, a competent interpreter fluent in both English and the applicant's native language. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record nor a witness testifying on the applicant's behalf may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure without good cause to appear for the interview for purposes of § 208.10.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62299, Dec. 5, 1994]

§ 208.10 Failure to appear.

The failure without good cause of an applicant to appear for a scheduled interview under § 208.9(a) may be deemed to constitute a waiver of the right to an interview with an asylum officer or, in the case of an alien crewman, stowaway, alien temporarily excludable under section 235(c) of the Act, 8 U.S.C. 1225, or alien currently in lawful immigration status, may be deemed to constitute an abandonment of the application. Failure to appear shall be excused if the notice of the interview was not mailed to the applicant's current address and such address had been provided to the Office of Refugees, Asylum, and Parole by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview. Such failure to appear may be excused for other serious reasons in the discretion of the asylum officer.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62300, Dec. 5, 1994]

§ 208.11 Comments from the Department of State.

(a) At its option, the Department of State may provide detailed country conditions information addressing the specific conditions relevant to eligibility for refugee status according to the grounds specified in section

101(a)(42) of the Act, 8 U.S.C. 1101(a)(42). Any such information relied upon by an immigration judge in deciding a claim for asylum or withholding of deportation shall be made part of the record and the parties shall be provided an opportunity to review and respond to such information prior to the issuance of a decision.

(b) At its option, the Department of State also may comment on an application it receives pursuant to § 208.4(a), § 236.3, or § 242.17 of this chapter by providing:

(1) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her particular situation;

(2) Information about whether persons who are similarly situated to the applicant are persecuted in his or her country of nationality or habitual residence and the frequency of such persecution;

(3) Such other information as it deems relevant.

(c) Asylum officers and immigration judges may request specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as they deem appropriate. Any such comments shall be made part of the record. Unless the comments are classified under Executive Order 12356 (3 CFR, 1982 Comp., p. 166), the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of an adverse decision.

[59 FR 62300, Dec. 5, 1994]

§ 208.12 Reliance on information compiled by other sources.

(a) In deciding applications for asylum or withholding of deportation, the asylum officer may rely on material provided by the Department of State, the Office of Refugees, Asylum, and Parole, the district director having jurisdiction over the place of the applicant's residence or the port of entry from which the applicant seeks admission to the United States, or other credible sources, such as international organizations, private voluntary agencies, or academic institutions.

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62300, Dec. 5, 1994]

§ 208.13 Establishing refugee status; burden of proof.

(a) The burden of proof is on the applicant for asylum to establish that he is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or last habitual residence, may be sufficient to sustain the burden of proof without corroboration.

(b) The applicant may qualify as a refugee either because he has suffered actual past persecution or because he has a well-founded fear of future persecution.

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if he can establish that he has suffered persecution in the past in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, and that he is unable or unwilling to return to or avail himself of the protection of that country owing to such persecution.

(i) If it is determined that the applicant has established past persecution, he shall be presumed also to have a well-founded fear of persecution unless a preponderance of the evidence establishes that since the time the persecution occurred conditions in the applicant's country of nationality or last habitual residence have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he were to return.

(ii) An application for asylum shall be denied if the applicant establishes past persecution under this paragraph but is determined not also to have a well-founded fear of future persecution under paragraph (b)(2) of this section, unless it is determined that the applicant has demonstrated compelling reasons for being unwilling to return to

his country of nationality or last habitual residence arising out of the severity of the past persecution. If the applicant demonstrates such compelling reasons, he may be granted asylum unless such a grant is barred by paragraph (c) of this section or § 208.14(d).

(2) *Well-founded fear of persecution.* An applicant shall be found to have a well-founded fear of persecution if he can establish first, that he has a fear of persecution in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, second, that there is a reasonable possibility of actually suffering such persecution if he were to return to that country, and third, that he is unable or unwilling to return to or avail himself of the protection of that country because of such fear.

(i) In evaluating whether the applicant has sustained his burden of proving that he has a well-founded fear of persecution, the Asylum Officer or Immigration Judge shall not require the applicant to provide evidence that he would be singled out individually for persecution if:

(A) He establishes that there is a pattern or practice in his country of nationality or last habitual residence of persecution of groups of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) He establishes his own inclusion in and identification with such group of persons such that his fear of persecution upon return is reasonable.

(ii) The asylum officer or immigration judge shall give due consideration to evidence that the government of the applicant's country of nationality or last habitual residence persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country.

(c) An applicant shall not qualify as a refugee if he ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. If the evidence indicates that the applicant engaged in such conduct, he shall have the burden