

approval or denial of applications for withholding of deportation:

(1) Subject to paragraph (c)(2) of this section, an application for withholding of deportation to a country of proposed deportation shall be granted if the applicant's eligibility for withholding is established pursuant to paragraph (b) of this section.

(2) An application for withholding of deportation shall be denied if:

(i) The alien 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;

(ii) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States. An alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime and to constitute a danger to the community of the United States;

(iii) There are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to arrival in the United States; or

(iv) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

(3) If the evidence indicates that one or more of the grounds for denial of withholding of deportation enumerated in paragraph (c)(2) of this section apply, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(4) In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him, the denial of asylum shall be reconsidered. Factors to be so considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his spouse or minor children in a third country.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62301, Dec. 5, 1994; 60 FR 44264, Aug. 25, 1995]

§ 208.17 Decision.

The decision of an asylum officer to grant or to deny asylum or withholding of deportation, or to refer an application in accordance with § 208.14(b), shall be communicated in writing to the applicant, to the Assistant Commissioner, Refugees, Asylum, and Parole, and to the district director having jurisdiction over the place of the applicant's residence or over the port of entry from which the applicant sought admission to the United States. A letter communicating denial of the application shall state why asylum or withholding of deportation was denied. The letter also shall contain an assessment of the applicant's credibility, unless the application was denied pursuant to § 208.14(d)(4) or § 208.16(c)(2)(ii).

Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision.

[59 FR 62301, Dec. 5, 1994]

§ 208.18 Review of decisions and appeal.

(a) The Assistant Commissioner, Office of Refugees, Asylum, and Parole, may review decisions by asylum officers. Parties shall have no right of appeal to or right to appear before the Assistant Commissioner in the course of such review.

(b) Except as provided in § 253.1(f) of this chapter, there shall be no appeal from a decision of an asylum officer. In a case referred to an immigration judge in accordance with § 208.14(b), the supervisory asylum officer, pursuant to the authority set forth in §§ 235.6(a) and 242.1(a) of this chapter, shall issue respectively a Notice to Applicant for Admission Detained for Hearing Before Immigration Judge (Form I-122) or an Order to Show Cause (Form I-221).

(c) A denial of asylum or withholding of deportation may only be reviewed by the Board of Immigration Appeals in conjunction with an appeal taken under 8 CFR part 3.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62301, Dec. 5, 1994]

§ 208.19 Motion to reopen or reconsider.

(a) A proceeding in which asylum or withholding of deportation was denied