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AUTHORITY: 8 U.S.C. 1103, 1158, 1226, 1252, 1252 note, 1252b, 1253, 1282 and 1283; 31 U.S.C. 9701; and 8 CFR part 2.

SOURCE: 55 FR 30680, July 27, 1990, unless otherwise noted.

§ 208.1 General.

(a) This part shall apply to all applications for asylum or withholding of deportation, whether before an asylum officer or an immigration judge, that are filed on or after January 4, 1995 or pending as of January 4, 1995. No application for asylum or withholding of deportation that has been filed with a District Director or Immigration Judge prior to January 4, 1995, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an Immigration Judge or an Asylum Officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of 8 CFR 3.2, 3.8, 3.22, 103.5, and 242.22 where applicable. The provisions of this part shall not affect the finality or validity of any decision made by District Directors, Immigration Judges, or the Board of Immigration Appeals in any asylum or withholding of deportation case prior to January 4, 1995. The provisions of this part relating to a person convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43), shall apply to applications for asylum or withholding of deportation that are filed on or after November 29, 1990.

(b) There shall be attached to the Office of Refugees, Asylum, and Parole such number of employees as the Commissioner, upon recommendation from the Assistant Commissioner, shall di-

rect. These shall include a corps of professional asylum officers who are to receive special training in international human rights law, conditions in countries of origin, and other relevant national and international refugee laws. The Assistant Commissioner shall be further responsible for general supervision and direction in the conduct of the asylum program, including evaluation of the performance of the employees attached to the Office.

(c) As an ongoing component of the training required by paragraph (b) of this section, the Assistant Commissioner, Office of Refugees, Asylum and Parole, shall coordinate with the Department of State, and in cooperation with other appropriate sources, to compile and disseminate to Asylum Officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, as well as other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62297, Dec. 5, 1994]

§ 208.2 Jurisdiction.

(a) Except as provided in paragraph (b) of this section, the Office of Refugees, Asylum, and Parole shall have initial jurisdiction over applications for asylum and withholding of deportation filed by an alien physically present in the United States or seeking admission at a port of entry. An application that is complete within the meaning of § 208.3(c)(5) shall be either adjudicated or referred by asylum officers under this part in accordance with § 208.14. With the exception of cases involving crewmen, stowaways, or aliens temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c), which are within the jurisdiction of an asylum officer pursuant to § 253.1(f) of this chapter, and aliens classified pursuant to section 101(a)(15)(S) of the Act, an asylum officer shall not decide whether an alien is entitled to withholding of deportation under section 243(h) of the Act, 8 U.S.C. 1253(h). An application that is incomplete within the meaning

of § 208.3(c)(5) shall be returned to the applicant.

(b) Immigration Judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served notice of referral to exclusion proceedings under part 236 of this chapter, or served an order to show cause under part 242 of this chapter, after a copy of the charging document has been filed with the Immigration Court. The immigration judge shall make a determination on such claims. In cases where the adjudication of an application has been referred in accordance with § 208.14, that application shall be forwarded with the charging document to the Immigration Court by the Asylum Office. As a matter of discretion, the immigration judge may permit the applicant to amend the application, but any delay caused by such a request shall extend the period within which the applicant may not apply for employment authorization in accordance with § 208.7(a).

[55 FR 30680, July 27, 1990, as amended at 59 FR 62298, Dec. 5, 1994; 60 FR 34090, June 30, 1995; 60 FR 44264, Aug. 25, 1995]

§ 208.3 Form of application.

(a) An application for asylum or withholding of deportation shall be made on Form I-589 (Application for Asylum and for Withholding of Deportation) and shall be submitted, together with any additional supporting material, in triplicate, meaning the original plus two copies. The applicant's spouse and children as defined in section 101 of the Act, 8 U.S.C. 1101(a)(35) and 1101(b)(1), may be included on the application if they are in the United States. One additional copy of the principal applicant's I-589 must be submitted for each dependent listed on the principal's application. An application shall be accompanied by one completed Form FD-258 (Fingerprint Card) for every individual included on the application who is 14 years of age or older. Forms I-589 and FD-258 are available from the INS and from the Immigration Court. The application for asylum or withholding of deportation also shall be accompanied by a total of two photographs of each applicant and two photographs of each dependent included on the application.

(b) An application for asylum shall be deemed to constitute at the same time an application for withholding of deportation, pursuant to §§ 208.16, 236.3, and 242.17 of this chapter.

(c) The application (Form I-589) shall be filed under the following conditions and shall have the following consequences, as shall be noted in the instructions on the application:

(1) Information provided in completing the application may be used as a basis for the institution of, or as evidence in, exclusion proceedings in accordance with part 236 of this chapter or deportation proceedings in accordance with part 242 of this chapter;

(2) Information provided in the application may be used to satisfy the burden of proof of the INS in establishing the applicant's deportability under part 242 of this chapter;

(3) Mailing to the address provided by the applicant on the application or the last change of address form (INS Form AR-11), if any, received by the INS shall constitute adequate service of all notices or other documents, except a Notice to Alien Detained for Hearing by an Immigration Judge (Form I-122), service of which is governed by § 235.6 of this chapter, and an Order to Show Cause (Form I-221), service of which is governed by section 242B(a)(1) of the Act, 8 U.S.C. 1252b(a)(1);

(4) The applicant and anyone other than an immediate relative who assists the applicant in preparing the application must sign the application under penalty of perjury. The applicant's signature is evidence that the applicant is aware of the contents of the application. A person other than an immediate relative who assists the applicant in preparing the application also must provide his or her full mailing address;

(5) An application for asylum and for withholding of deportation that does not include a response to each of the questions contained in the Form I-589, that is unsigned, or that is unaccompanied by the required materials specified in paragraph (a) of this section is incomplete. An application that is incomplete shall be returned by mail to the applicant within 30 days of the receipt of the application by the INS. The filing of an incomplete application shall not commence the 150-day period