

§ 236.1

Controlled Substance Act (21 U.S.C. §802).

(xi) That a participant will be subject to random checks or inspections that may be conducted by the Service at any time and at any location, to ensure compliance.

(xii) That current vehicle registration and, if applicable, current permission to use the vehicle in PORTPASS, and evidence of current vehicle insurance, shall be in the vehicle at all times during use of PORTPASS.

(xiii) Participant agrees to notify the Service if a vehicle approved for use in a PORTPASS program is sold, stolen, damaged, or disposed of otherwise. If a vehicle is sold, it is the responsibility of the participant to remove or obliterate any identifying device or other authorization for participation in the program or at the time of sale unless otherwise notified by the Service. If any license plates are replaced on an enrolled vehicle, the participant must submit a properly executed Form I-823, without fee, prior to use of the vehicle in the PORTPASS program.

(xiv) That APP-approved participants who wish to enter the United States through a POE other than one designated as an APP through which they may pass must present themselves for inspection or examination by an immigration officer during normal business hours. Entry to the United States during hours when a Port of Entry is not staffed may be made only through a POE designated as an APP.

(b) *Violation of condition of the PORTPASS program.* A PORTPASS program participant who violates any condition of the PORTPASS program, or who has violated any immigration law or regulation, or a law or regulation of the United States Customs Service or other Federal Inspection Service, or who is otherwise determined by an immigration officer to be inadmissible to the United States or ineligible to participate in PORTPASS, may have the PORTPASS access revoked at the discretion of the district director or the chief patrol agent and may be subject to other applicable sanctions, such as criminal and/or administrative prosecution or deportation, as well as possible seizure of goods and/or vehicles.

(c) *Judicial review.* Nothing in this section is intended to create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the Department of Justice, the Immigration and Naturalization Service, their officers or any employees of the Department of Justice.

[61 FR 53831, Oct. 16, 1996]

PART 236—EXCLUSION OF ALIENS

Sec.

- 236.1 Authority of immigration judges.
- 236.2 Hearing.
- 236.3 Applications for asylum or withholding of deportation.
- 236.4 Renewal of application for adjustment of status under section 245 of the Act.
- 236.5 Decision of the immigration judge; notice to the applicant.
- 236.6 Finality of order.
- 236.7 Appeals.
- 236.8 Fingerprinting of excluded aliens.
- 236.9 Visa Waiver Pilot Program.
- 236.10 Exclusion of alien seeking admission under section 101(a)(15)(S) of the Act.

AUTHORITY: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

§ 236.1 Authority of immigration judges.

In determining cases referred for further inquiry as provided in section 235 of the Act, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases.

[42 FR 46045, Sept. 14, 1977]

§ 236.2 Hearing.

(a) *Opening.* Exclusion hearings shall be closed to the public, unless the alien at his own instance requests that the public, including the press, be permitted to attend; in that event, the hearing shall be open, provided that the alien states for the record that he is waiving the requirement in section 236 of the Act that the inquiry shall be

kept separate and apart from the public. When the hearing is to be open, depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public. The Immigration Judge shall ascertain whether the applicant for admission is the person to whom Form I-122 was previously delivered by the examining immigration officer as provided in part 235 of this chapter; enter a copy of such form in evidence as an exhibit in the case; inform the applicant of the nature and purpose of the hearing; advise him of the privilege of being represented by an attorney of his own choice at no expense to the Government, and of the availability of free legal services programs qualified under part 292a of this chapter and organizations recognized pursuant to §292.2, of this chapter located in the district where his exclusion hearing is to be held; and shall ascertain that the applicant has received a list of such programs; and request him to ascertain then and there whether he desires representation; advise him that he will have a reasonable opportunity to present evidence in his own behalf, to examine and object to evidence against him, and to cross-examine witnesses presented by the Government; and place the applicant under oath.

(b) *Procedure.* The immigration judge shall receive and adduce material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing.

(c) *General attorney.* The district director shall direct the chief legal officer to assign a general attorney to each case in which an applicant's nationality is in issue. The district director may direct the chief legal officer to assign a general attorney to any case in which the district director deems such assignment necessary or advantageous. The duties of the general attorney include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the applicant and other witnesses. Nothing contained herein diminishes the authority of an immigration judge to conduct proceedings under this part.

(d) *Depositions.* The procedures specified in §242.14(e) of this chapter shall apply.

(e) *Record.* The hearing before the immigration judge, including the testimony and exhibits, the immigration judge's decision, and all written orders, motions, appeals, and other papers filed in the proceeding shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge.

[42 FR 46045, Sept. 14, 1977, as amended at 44 FR 4653, Jan. 23, 1979; 46 FR 43956, Sept. 2, 1981]

§236.3 Applications for asylum or withholding of deportation.

(a) If the alien expresses fear of persecution or harm upon return to his or her country of origin or to a country to which the alien may be deported after a determination of excludability from the United States pursuant to part 237 of this chapter, and the alien has not been referred to the immigration judge by an asylum officer in accordance with §208.14(b) of this chapter, the immigration judge shall:

(1) Advise the alien that he may apply for asylum in the United States or withholding of deportation to that other country; and

(2) Make available the appropriate application forms.

(b) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to §208.4(c) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to §208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), shall be given to both the applicant and to the trial attorney representing the government.

(c) Applications for asylum or withholding of deportation so filed will be decided by the immigration judge pursuant to the requirements and standards established in part 208 of this chapter after an evidentiary hearing