

§ 236.4

that is necessary to resolve material factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to 8 CFR 208.14 or 208.16 is not necessary once the immigration judge has determined that such a denial is required.

(1) Evidentiary hearings on applications for asylum or withholding of deportation will be closed to the public unless the applicant expressly requests that it be open pursuant to 8 CFR 236.2.

(2) Nothing in this section is intended to limit the authority of the immigration judge properly to control the scope of any evidentiary hearing.

(3) During the exclusion hearing, the applicant shall be examined under oath on his application and may present evidence and witnesses on his own behalf. The applicant has the burden of establishing that he is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in §208.13 of this chapter.

(4) The trial attorney for the government may call witnesses and present evidence for the record, including information classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), provided the immigration judge or the Board has determined that such information is relevant to the hearing. When the immigration judge receives such classified information he shall inform the applicant. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the applicant whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision.

(d) The decision of an immigration judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the trial attorney for the government. An adverse decision will state why asylum

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or withholding of deportation was denied.

[55 FR 30686, July 27, 1990, as amended at 59 FR 62302, Dec. 5, 1994; 60 FR 34090, June 30, 1995]

§ 236.4 Renewal of application for adjustment of status under section 245 of the Act.

An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the district director, may be renewed in exclusion proceedings under section 236 of the Act before an immigration judge under the following two conditions: First, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I-512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

[43 FR 16445, Apr. 19, 1978]

§ 236.5 Decision of the immigration judge; notice to the applicant.

(a) *Decision.* The Immigration Judge shall inform the applicant of his or her decision in accordance with §3.35 of this chapter.

(b) *Advice to alien ordered excluded.* An alien ordered excluded shall be furnished with Form I-296, Notice to Alien Ordered Excluded by Immigration Judge, at the time of an oral decision by the immigration judge or upon service of a written decision.

(c) *Holders of refugee travel documents.* Aliens who are the holders of valid unexpired refugee travel documents may be ordered excluded only if they are found to be inadmissible under section 212(a) (9), (10), (12), (23), (27), (28), (29), or (31) of the Act, and it is determined that on the basis of the acts for which they are inadmissible there are compelling reasons of national security or public order for their exclusion. If the immigration judge finds that the alien is inadmissible but determines that there are no compelling reasons of national security or public order for exclusion, the immigration judge shall

remand the case to the district director for parole.

[42 FR 46045, Sept. 14, 1977. Redesignated at 43 FR 16445, Apr. 19, 1978, and amended at 52 FR 2939, Jan. 29, 1987]

§ 236.6 Finality of order.

The decision of the Immigration Judge shall become final in accordance with § 3.37 of this chapter.

[52 FR 2939, Jan. 29, 1987]

§ 236.7 Appeals.

Except as limited by section 236 of the Act, an appeal from a decision of an Immigration Judge under this part may be taken by either party pursuant to § 3.38 of this chapter.

[61 FR 18909, Apr. 29, 1996]

§ 236.8 Fingerprinting of excluded aliens.

Every alien 14 years of age or older who is excluded from admission to the United States by an immigration judge shall be fingerprinted, unless during the preceding year he has been fingerprinted at an American consular office.

[42 FR 46045, Sept. 14, 1977. Redesignated at 43 FR 16445, Apr. 19, 1978]

§ 236.9 Visa Waiver Pilot Program.

Pursuant to section 217(b)(4)(A) of the Act, an alien who applies for admission to the United States under the provisions of that section must waive any right to review or appeal an immigration officer's determination as to the admissibility of the alien at a port of entry, other than on the basis of an application for asylum. An alien applicant for admission under section 217 of the Act shall be removed from the United States upon a determination by an immigration officer (port director, officer-in-charge, or officer acting in either capacity) that the alien is inadmissible in accordance with procedures in § 217.4(b) of this chapter except that such an alien who applies for asylum in the United States shall be referred to an immigration judge for further inquiry as provided in section 235 of the Act and § 236.3 of this part.

[53 FR 24903, June 30, 1988]

§ 236.10 Exclusion of alien seeking admission under section 101(a)(15)(S) of the Act.

An alien who applies for admission under the provisions of section 101(a)(15)(S) of the Act who is determined by an immigration officer not to be eligible for admission under that section or to be excludable from the United States under one or more of the grounds of excludability listed in section 212 of the Act, which have not been previously waived by the Commissioner, will be taken into custody and will be subject to the exclusion procedures contained in 8 CFR part 236.

[60 FR 44268, Aug. 25, 1995]

PART 237—DEPORTATION OF EXCLUDED ALIENS

Sec.

- 237.1 Stay of deportation of excluded alien.
- 237.2 Notice to surrender for deportation.
- 237.3 Cost of maintenance not assessed.
- 237.4 [Reserved]
- 237.5 Notice to transportation line of alien's exclusion.
- 237.6 Deportation.

AUTHORITY: 8 U.S.C. 1103, 1227, and 1255.

§ 237.1 Stay of deportation of excluded alien.

The district director in charge of the port of arrival may stay the immediate deportation of an excluded alien pursuant to sections 237 (a) and (d) of the act under such conditions as he may prescribe.

[23 FR 5818, Aug. 1, 1958]

§ 237.2 Notice to surrender for deportation.

An alien who has been finally excluded pursuant to part 236 of this chapter may at any time surrender himself to the custody of the Service and shall surrender himself to such custody upon notice in writing of the time and place for his surrender. The Service may take the alien into custody at any time. An alien taken into custody either upon notice to surrender or by arrest shall not be deported less than 72 hours thereafter without his consent thereto filed in writing with the district director in charge of the place of his detention. An alien in