

(iii) During the deportation hearing, the applicant shall be examined under oath on his application and may present evidence and witnesses in 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.

(iv) 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 whether such information is material to the decision.

(5) 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 or withholding of deportation was denied.

(d) *Application for relief under sections 241(a)(1)(H) and 241(a)(1)(E)(iii).* The respondent may apply to the immigration judge for relief from deportation under sections 241(a)(1)(H) and 241(a)(1)(E)(iii) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his alienage or deportability. However, nothing in this section shall prohibit the INS from using information supplied in an application for asylum or withholding of de-

portation submitted to an asylum officer pursuant to § 208.2 of this chapter on or after January 4, 1995 as the basis for issuance of an Order to Show Cause under § 242.1 or to establish alienage or deportability in a case referred to an immigration judge under § 208.14(b) of this chapter. The respondent shall have the burden of establishing that he is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. The respondent shall not be required to pay a fee on more than one application within paragraphs (a) and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee. When a motion to reopen or reconsider is made concurrently with an application for relief seeking one of the immigration benefits set forth in paragraphs (a) and (c) of this section, only the fee set forth in § 103.7(b)(1) of this chapter for the motion must accompany the motion and application for relief. If such a motion is granted, the appropriate fee for the application for relief, if any, set forth in 8 CFR 103.7(b)(1), must be paid within the time specified in order to complete the application. Nothing contained herein is intended to foreclose the respondent from applying for any benefit or privilege which he believes himself eligible to receive in proceedings under this part.

[26 FR 12112, Dec. 19, 1961, as amended at 34 FR 13921, Aug. 30, 1969; 39 FR 25642, July 12, 1974; 39 FR 43055, Dec. 10, 1974; 43 FR 18644, May 2, 1978; 45 FR 41393, June 19, 1980; 47 FR 12133, Mar. 22, 1982; 47 FR 44237, Oct. 7, 1982; 47 FR 44990, Oct. 13, 1982; 53 FR 30022, Aug. 10, 1988; 55 FR 30687, July 27, 1990; 56 FR 38333, Aug. 13, 1991; 59 FR 26593, 26594, May 23, 1994; 59 FR 62302, Dec. 5, 1994; 60 FR 34090, June 30, 1995; 61 FR 46374, Sept. 3, 1996]

§ 242.18 Decision of the immigration judge.

(a) *Contents.* The decision of the immigration judge may be oral or written. Except when deportability is determined on the pleadings pursuant to § 242.16(b), the decision of the immigration judge shall include a discussion of the evidence and findings as to deportability. The formal enumeration of findings is not required. The decision

§ 242.19

shall also contain a discussion of the evidence pertinent to any application made by the respondent under § 242.17 and the reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where deportability is determined on the pleadings pursuant to § 242.16(b) and the respondent does not make an application under § 242.17, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision on Form I-38, if deportation is ordered, or on Form I-39, if voluntary departure is granted with an alternate order of deportation.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's deportation, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When deportation is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's deportation shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he may deem necessary.

[26 FR 12112, Dec. 19, 1961, as amended at 59 FR 62302, Dec. 5, 1994]

§ 242.19 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the trial attorney, together with the notice referred to in § 3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the special inquiry officer in the presence of the respondent and the trial attorney, if any, at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Notice of Appeal, Form EOIR-26, and advised of the provisions of § 242.21. A typewritten copy of the oral decision shall be furnished at the request of the respondent or the trial attorney.

(c) *Summary decision.* When the special inquiry officer renders a summary

8 CFR Ch. I (1–1–97 Edition)

decision as provided in § 242.18(b), he shall serve a copy thereof upon the respondent at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Notice of Appeal, Form EOIR-26, and advised of the provisions of § 242.21.

[26 FR 12212, Dec. 19, 1961, as amended at 27 FR 9647, Sept. 29, 1962; 61 FR 18909, Apr. 29, 1996]

§ 242.20 Finality of order.

The decision of the Immigration Judge shall become final in accordance with § 3.39 of this chapter.

[52 FR 2941, Jan. 29, 1987, as amended at 59 FR 26595, May 23, 1994]

§ 242.21 Appeals.

(a) Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Notice of Appeal (Form EOIR-26), fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board of Immigration Appeals. The reasons for the appeal shall be stated in the Notice of Appeal (Form EOIR-26) in accordance with the provisions of § 3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 3.1(d)(1-a) of this chapter.

(b) *Prohibited appeals; legalization or applications.* An alien respondent defined in § 245a.2(c) (6) or (7) of this chapter who fails to file an application for adjustment of status to that of a temporary resident within the prescribed period(s), and who is thereafter found to be deportable by decision of an immigration judge, shall not be permitted to appeal the finding of deportability