

shall not be appealable but shall be without prejudice to renewal of an application and reconsideration in proceedings before the immigration judge.

[29 FR 6002, May 7, 1964, as amended at 56 FR 38333, Aug. 13, 1991]

#### § 242.8 Immigration judges.

(a) *Authority.* In any proceeding conducted under this part the immigration judge shall have the authority to determine deportability and to make decisions, including orders of deportation, as provided by section 242(b) and 242B of the Act; to reinstate orders of deportation as provided by section 242(f) of the Act; to determine applications under sections 208, 212(k), 241(a)(1)(E)(iii), 241(a)(1)(H), 244, 245 and 249 of the Act; to determine the country to which an alien's deportation will be directed in accordance with section 243(a) of the Act; to order temporary withholding of deportation pursuant to section 243(h) of the Act; and to take any other action consistent with applicable law and regulations as may be appropriate. An immigration judge may certify his or her decision in any case to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under section 103 of the Act.

(b) *Withdrawal and substitution of special inquiry officers.* The special inquiry officer assigned to conduct the hearing shall at any time withdraw if he deems himself disqualified. If a hearing has begun but no evidence has been adduced other than by the respondent's pleading pursuant to § 242.16(b), or if a special inquiry officer becomes unavailable to complete his duties within a reasonable time, or if at any time the respondent consents to a substitution, another special inquiry officer may be assigned to complete the case. The new special inquiry officer shall familiarize himself with the record in the case and shall state for the record that he has done so.

[22 FR 9797, Dec. 6, 1957, as amended at 47 FR 44237, Oct. 7, 1982; 56 FR 38333, Aug. 13, 1991; 57 FR 11574, Apr. 6, 1992; 59 FR 26594, May 23, 1994]

#### § 242.9 Trial attorney.

(a) *Authority.* When an additional immigration officer is assigned to a proceedings under this part to perform the duties of a trial attorney, he shall present on behalf of the Government evidence material to the issues of deportability and any other issues which may require disposition by the special inquiry officer. The trial attorney is authorized to appeal from a decision of the special inquiry officer pursuant to § 242.21 and to move for reopening or reconsideration pursuant to § 242.22.

(b) *Assignment.* The district director shall direct the chief legal officer to assign a general attorney to each case within the provisions of § 242.16(c) of this part, and to each case in which an unrepresented respondent is incompetent or under 16 years of age, and is not accompanied by a guardian, relative or friend. A general attorney shall be assigned to every case in which the Commissioner approves the submission of nonrecord information under § 242.17(a) of this part. In his discretion, whenever he deems such assignment necessary or advantageous, the district director may direct the chief legal officer to assign a general attorney to any other case at any stage of the proceeding.

[27 FR 9646, Sept. 29, 1962, as amended at 32 FR 9631, July 4, 1967; 46 FR 43956, Sept. 2, 1981]

#### § 242.10 Representation by counsel.

The respondent may be represented at the hearing by an attorney or other representative qualified under part 292 of this chapter.

[22 FR 9797, Dec. 6, 1957]

#### § 242.11 Incompetent respondents.

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the guardian, near relative, or friend who was served with a copy of the order to show cause shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the