

§ 246.5 Hearing.

(a) *Trial attorney.* The Government shall be represented at the hearing by a trial attorney who shall have authority to present evidence, and to interrogate, examine, and cross-examine the respondent and other witnesses. The trial attorney is authorized to appeal from a decision of the special inquiry officer pursuant to § 246.7 and to move for reopening or reconsideration pursuant to § 246.8.

(b) *Opening.* The special inquiry officer shall advise the respondent of the nature of the proceeding and the legal authority under which it is conducted; advise the respondent of his right to representation, at no expense to the Government, by counsel of his own choice qualified under part 292 of this chapter and require him to state then and there whether he desires representation; advise the respondent that he will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the allegations in the notice to the respondent and explain them in nontechnical language, and enter the notice and respondent's answer, if any, as exhibits in the record.

(c) *Pleading by respondent.* The special inquiry officer shall require the respondent to state for the record whether he admits or denies the allegations contained in the notice, or any of them, and whether he concedes that his adjustment of status should be rescinded. If the respondent admits all of the allegations and concedes that the adjustment of status in his case should be rescinded under the allegations set forth in the notice, and the special inquiry officer is satisfied that no issues of law or fact remain, he may determine that rescission as alleged has been established by the respondent's admissions. The allegations contained in the notice shall be taken as admitted when the respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the hearing.

§ 246.6 Decision and order.

The decision of the special inquiry officer may be oral or written. Except

when a determination of rescission is based on the respondent's admissions pursuant to § 246.5(c), the decision shall include a discussion of the evidence and findings as to rescission. The formal enumeration of findings is not required. The order shall direct either that the proceeding be terminated or that the adjustment of status be rescinded. If status was adjusted through suspension of deportation, the rescission order shall further provide that the matter be referred to Congress pursuant to section 246 of the Immigration and Nationality Act. Service of the decision and finality of the order of the special inquiry officer shall be in accordance with, and as stated in §§ 242.19 (a) and (b) and 242.20 of this chapter.

§ 246.7 Appeals.

Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge under this part to the Board of Immigration Appeals. An appeal shall be taken within 30 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be specifically identified in the Notice of Appeal (Form EOIR-26); failure to do so may constitute a ground for dismissal of the appeal by the Board.

[61 FR 18910, Apr. 29, 1996; 61 FR 32924, June 26, 1996]

§ 246.8 Reopening or reconsideration.

Except as otherwise provided in this section, a motion to reopen or reconsider shall be subject to the requirements of § 103.5 of this chapter. The special inquiry officer may upon his own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which he has made a decision, unless jurisdiction in the case is vested in the Board under part 3 of this chapter. A motion to reopen will not be granted by a special inquiry officer unless he is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing.

§ 246.9 Surrender of Form I-151 or I-551.

A respondent whose status as a permanent resident has been rescinded in