

(h) An alien in deportation proceedings who has been convicted of an aggravated felony shall not be released from custody on bond or other conditions. Nevertheless, an alien who has been lawfully admitted to the United States and who establishes to the satisfaction of the Immigration Judge that the alien is not a threat to the community and that the alien is likely to appear at any scheduled hearings, may be released on bond or other conditions designed to guarantee such appearance.

[57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995]

§ 3.20 Change of venue.

(a) Venue shall lie at the Immigration Court where the charging document is filed pursuant to 8 CFR 3.14.

(b) The Immigration Judge, for good cause, may change venue only upon motion by one of the parties, after the charging document has been filed with the Immigration Court. The Immigration Judge may grant a change of venue only after the other party has been given notice and an opportunity to respond to the motion to change venue.

(c) No change of venue shall be granted without identification of a fixed street address, including city, state and ZIP code, where the respondent/applicant may be reached for further hearing notification.

[57 FR 11572, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995]

§ 3.21 Pre-hearing conferences and statement.

(a) Pre-hearing conferences may be scheduled at the discretion of the Immigration Judge. The conference may be held to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding.

(b) The Immigration Judge may order any party to file a pre-hearing statement of position that may include, but is not limited to: A statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible; a list of pro-

posed witnesses and what they will establish; a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction; the estimated time required to present the case; and, a statement of unresolved issues involved in the proceedings.

(c) If submission of a pre-hearing statement is ordered under paragraph (b) of this section, an Immigration Judge also may require both parties, in writing prior to the hearing, to make any evidentiary objections regarding matters contained in the pre-hearing statement. If objections in writing are required but not received by the date for receipt set by the Immigration Judge, admission of all evidence described in the pre-hearing statement shall be deemed unopposed.

[57 FR 11572, Apr. 6, 1992]

§ 3.22 Interpreters.

Any person acting as an interpreter in a hearing shall swear or affirm to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath or affirmation shall be required.

[52 FR 2936, Jan. 29, 1987. Redesignated at 57 FR 11571, Apr. 6, 1992]

§ 3.23 Motions.

(a) *Pre-decision motions.* Unless otherwise permitted by the Immigration Judge, motions submitted prior to the final order of an Immigration Judge shall be in writing and shall state, with particularity the grounds therefore, the relief sought, and the jurisdiction. The Immigration Judge may set and extend time limits for the making of motions and replies thereto. A motion shall be deemed unopposed unless timely response is made.

(b) *Reopening/Reconsideration.* (1) The Immigration Judge may upon his or her own motion, or upon motion of the trial attorney or the alien, reopen or reconsider any case in which he or she has made a decision, unless jurisdiction in the case is vested in the Board of Immigration Appeals under part 3 of this chapter. If the Immigration Judge is unavailable or unable to adjudicate

the motion to reopen, the Chief Immigration Judge or his delegate shall reassign such motion to another Immigration Judge. Motions to reopen or reconsider a decision of the Immigration Judge must be filed with the Immigration Court having administrative control over the record of proceeding. Such motions shall comply with applicable provisions of 8 CFR 208.4, 208.19, and 242.22. The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made. A motion to reconsider shall state the reasons for the motion and shall be supported by pertinent authority. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents.

(2) Upon request by an alien in conjunction with a motion to reopen or a motion to reconsider, the Immigration Judge may stay the execution of a final order of deportation or exclusion. The filing of a motion to reopen pursuant to the provisions of paragraph (b)(4)(iii) of this section shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.

(3) A motion to reconsider must be filed within 30 days after the date on which the decision for which reconsideration is being sought was rendered, or on or before July 31, 1996, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider.

(4) A motion to reopen will not be granted unless the Immigration Judge 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. A motion to reopen will not be granted for the purpose of providing the alien an opportunity to apply for any form of discretionary relief if the alien's rights to make such application were fully explained to him or her by the Immigration Judge and he or she was afforded an opportunity to apply at the hearing, unless the relief is sought on the basis of circumstances that have arisen sub-

sequent to the hearing. Subject to the other requirements and restrictions of this section, and notwithstanding the provisions in 1.1(p) of this chapter, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act (8 U.S.C. 1182(c)) may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(i) Except as provided in paragraph (b)(4)(ii) of this section, a party may file only one motion to reopen proceedings (whether before the Board or the Immigration Judge) and that motion must be filed not later than 90 after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or on or before September 30, 1996, whichever is later.

(ii) The time and numerical limitations set forth in paragraph (b)(4)(i) of this section shall not apply to a motion to reopen filed pursuant to the provisions of paragraph (b)(4)(iii) of this section, or to a motion to reopen proceedings to apply or reapply for asylum or for withholding of deportation based on changed circumstances, which arise subsequent to the conclusion of proceedings, in the country of nationality or in the country to which deportation has been ordered, or to a motion to reopen agreed upon by all parties and jointly filed.

(iii) A motion to reopen deportation proceedings to rescind an order of deportation entered in absentia must be filed:

(A) Within 180 days after the date of the order of deportation. The motion must demonstrate that the failure to appear was because of exceptional circumstances beyond the control of the alien (e.g., serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances); or

(B) At any time if the alien demonstrates that the alien did not receive notice in accordance with subsection 242B(a)(2) of the Act (8 U.S.C. 1252b(a)(2)) and notice was required pursuant to such subsection; or the alien demonstrates that the alien was

in federal or state custody and did not appear through no fault of the alien.

(iv) A motion to reopen exclusion hearings on the basis that the Immigration Judge improperly entered an order of exclusion in absentia must be supported by evidence that the alien had reasonable cause for his failure to appear.

[52 FR 2936, Jan. 29, 1987, as amended at 55 FR 30680, July 27, 1990. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995; 61 FR 18908, Apr. 29, 1996; 61 FR 19976, May 3, 1996; 61 FR 21228, May 9, 1996]

§ 3.24 Fees pertaining to matters within the jurisdiction of the Immigration Judge.

Unless waived by the Immigration Judge, any fee pertaining to a matter within the jurisdiction of the Immigration Judge shall be remitted in accordance with the provisions of § 103.7 of this chapter. Any such fee may be waived by the Immigration Judge upon a showing that the respondent/applicant is incapable of paying the fees because of indigency. A properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. 1746 by the respondent/applicant must accompany the request for waiver of fees and shall substantiate the indigency of the respondent/application.

[61 FR 18908, Apr. 29, 1996]

§ 3.25 Waiver of presence of the parties.

(a) *Good cause shown.* The Immigration Judge may, for good cause, waive the presence of a respondent/applicant at the hearing when the alien is represented or when the alien is a minor child at least one of whose parents or whose legal guardian is present. In addition, *in absentia* hearings may be held pursuant to sections 1252(b) and 1252b(c) of title 8, United States Code with or without representation.

(b) *Stipulated request for order; waiver of hearing.* Notwithstanding any other provision of this chapter, upon the written request of the respondent/applicant and upon concurrence of the government, the Immigration Judge may conduct hearings in the absence of the parties and enter an order of deportation or exclusion on the written record if the Immigration Judge deter-

mines, upon a review of the charging document, stipulation document, and supporting documents, if any, that a represented respondent/applicant voluntarily, knowingly, and intelligently entered into a stipulated request for an order of deportation or exclusion. The stipulation document shall include:

(1) An admission that all factual allegations contained in the charging document are true and correct as written;

(2) A concession of deportability or excludability as charged;

(3) A statement that the respondent/applicant makes no application for relief from deportation or exclusion, including, but not limited to, voluntary departure, asylum, adjustment of status, registry, de novo review of a termination of conditional resident status, de novo review of a denial or revocation of temporary protected status, relief under 8 U.S.C. 1182(c), suspension of deportation, or any other possible relief under the Act;

(4) A designation of a country for deportation under 8 U.S.C. 1253(a);

(5) A concession to the introduction of the written statements of the respondent/applicant as an exhibit to the record or proceedings;

(6) A statement that the attorney/representative has explained the consequences of the stipulated request to the respondent/applicant and that the respondent/applicant enters the request voluntarily, knowingly and intelligently;

(7) A statement that the respondent/applicant will accept a written order for his or her deportation or exclusion as a final disposition of the proceedings; and

(8) A waiver of appeal of the written order of deportation or exclusion.

The stipulated request and required waivers shall be signed on behalf of the government and by both the respondent/applicant and his or her attorney or other representative qualified under part 292 of this chapter. The attorney or other representative shall file a Notice of Appearance in accordance with § 3.16(b) of this part.

(c) *Telephonic or video electronic media hearing.* An Immigration Judge may conduct hearings via video electronic media or by telephonic media in any proceeding under 8 U.S.C. 1226, 1252, or