

Maintaining G-4 status for this purpose is defined as maintaining qualified employment with a “G” international organization or maintaining the qualifying family relationship with the G-4 international organization officer or employee. Maintaining status as an N nonimmigrant for this purpose requires the qualifying family relationship to remain in effect. Unauthorized employment will not remove an otherwise eligible alien from G-4 status for residence and physical presence requirements, provided the qualifying G-4 status is maintained.

[54 FR 5927, Feb. 7, 1989]

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

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SOURCE: 40 FR 44481, Sept. 26, 1975, unless otherwise noted.

§ 103.1 Delegations of authority.

(a) *Deputy Commissioner.* Without divesting the Commissioner of any of the powers, duties, and privileges delegated by the Attorney General, coextensive authority is delegated to the Deputy Commissioner. The Deputy Commissioner is delegated responsibility for providing overall supervision and direction to the four Executive Associate Commissioners of the Service.

(b) *General Counsel—(1) General.* Under the direction and supervision of the Commissioner, the General Counsel is delegated the authority to carry out the duties of the chief legal officer for the Service, and is assisted by the deputy general counsel(s) and staff. The General Counsel advises the Commissioner, the Deputy Commissioner, and staff on legal matters; prepares legislative reports; and assists in litigation. The General Counsel is delegated the authority to oversee the professional activities of all Service attorneys assigned to field offices and to make recommendations to the Department of Justice on all personnel matters involving Service attorneys, including attorney discipline which requires final action or approval by the Deputy Attorney General or other designated Department of Justice official. The General Counsel is delegated authority to perform the functions conferred upon the Commissioner with respect to production or disclosure of material in Federal and state proceedings as provided in 28 CFR 16.24(a).

(2) *Regional Counsel.* In addition to other legal activities performed under the direction and supervision of the General Counsel, Regional Counsel are

delegated authority within their respective regional areas, concurrent with that of the General Counsel, to perform the functions conferred upon the Commissioner with respect to production or disclosure of material in Federal and state proceedings as provided in 28 CFR 16.24(a).

(c) *Director of Congressional Relations.* Under the direction and supervision of the Commissioner, the Director of Congressional Relations is delegated authority to respond to Congressional inquiries and advise the Commissioner and staff concerning legislative matters of the Service.

(d) *Director of Public Affairs.* Under the direction and supervision of the Commissioner, the Director of Public Affairs is delegated authority to direct and coordinate public affairs policy, public information, news releases, public liaison, and outreach; to advance public affairs and Service initiatives such as naturalization and employer education; and to produce information products.

(e) *Director of Internal Audit.* Under the direction and supervision of the Commissioner, the Director of the Office of Internal Audit is delegated authority to plan, direct, and coordinate the Service's internal audit program and compliance review program; to initiate and to conduct or direct the conduct of investigations of alleged mismanagement by Service employees; to initiate and to conduct or direct the conduct of investigations of alleged misconduct by Service employees, subject to agreements with the Department's Office of Professional Responsibility and Office of Inspector General (OIG); to exercise those powers and authorities necessary to investigate matters which are material and relevant to the administration of the Service, including the power and authority to administer oaths and to take and consider evidence; to collect information concerning the efficiency and effectiveness of Service operations and programs and Service systems to eliminate fraud, waste, and abuse in the workplace; and to act as the Service's liaison with outside audit/inspection agencies.

(f) *Executive Associate Commissioner for Programs—(1) General.* Under the direc-

tion and supervision of the Deputy Commissioner, the Executive Associate Commissioner for Programs is delegated authority for policy development, review and integration of the Service's enforcement and examinations programs, and for providing general direction to, and supervision of, the Associate Commissioners for Enforcement and Examinations.

(2) *Associate Commissioner for Enforcement—(i) General.* Under the direction and supervision of the Executive Associate Commissioner for Programs, the Associate Commissioner for Enforcement is delegated authority and responsibility for program and policy planning, development, coordination, evaluation, and staff direction to the Border Patrol, Investigations, Detention and Deportation, Intelligence, and Asset Forfeiture programs, and to impose administrative fines, penalties, and forfeitures under sections 274, 274A and 274C of the Act. The Associate Commissioner for Enforcement is responsible for providing general direction and supervision to the:

(A) Assistant Commissioner for Border Patrol;

(B) Assistant Commissioner for Investigations;

(C) Assistant Commissioner for Detention and Deportation;

(D) Assistant Commissioner for Intelligence; and

(E) Director of Asset Forfeiture.

(ii) *Director of Asset Forfeiture.* Under the direction and supervision of the Associate Commissioner for Enforcement, the Director of Asset Forfeiture is delegated the authority to direct and coordinate the Service program under section 274(b) of the Act which provides for the seizure and forfeiture of conveyances used in violation of section 274(a) of the Act.

(3) *Associate Commissioner for Examinations.* (i) *General.* Under the direction and supervision of the Executive Associate Commissioner for Programs, the Associate Commissioner for Examinations is delegated authority and responsibility for program and policy planning, development, coordination, evaluation, and staff direction to the Adjudications and Nationality, Inspections, Administrative Appeals, Service

Center Operations, and Records programs, and to direct and supervise the:

(A) Assistant Commissioner for Adjudications and Nationality;

(B) Assistant Commissioner for Inspections;

(C) Assistant Commissioner for Service Center Operations;

(D) Assistant Commissioner for Records; and

(E) Director of Administrative Appeals.

(ii) *Administrative Fines*. The Associate Commissioner for Examinations is delegated the authority to impose administrative fines under provisions of the Act in any case which is transmitted to the National Fines Office by a district director.

(iii) *Appellate Authorities*. In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on;

(A) Breaching of bonds under § 103.6(e);

(B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§ 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act;

(C) Indochinese refugee applications for adjustment of status under section 103 of the Act of October 28, 1977;

(D) Revoking approval of certain petitions under § 205.2 of this chapter.;

(E) Applications for permission to re-apply for admission to the United States after deportation or removal under § 212.2 of this chapter;

(F) Applications for waiver of certain grounds of excludability under § 212.7(a) of this chapter;

(G) Applications for waiver of the two-year foreign residence requirement under § 212.7(c) of this chapter;

(H) Petitions for approval of schools under § 214.3 of this chapter;

(I) Decisions of district directors regarding withdrawal of approval of schools for attendance by foreign students under § 214.4 of this chapter;

(J) Petitions for temporary workers or trainees and fiancées or fiancés of U.S. citizens under §§ 214.2 and 214.6 of this chapter;

(K) Applications for issuance of re-entry permits under 8 CFR part 223;

(L) Applications for refugee travel documents under 8 CFR part 223;

(M) Applications for benefits of section 13 of the Act of September 11, 1957, as amended, under § 245.3 of this chapter;

(N) Adjustment of status of certain resident aliens to nonimmigrants under § 247.12(b) of this chapter;

(O) Applications to preserve residence for naturalization purposes under § 316a.21(c) of this chapter;

(P) Applications for certificates of citizenship under § 341.6 of this chapter;

(Q) Administration cancellation of certificates, documents, and records under § 342.8 of this chapter;

(R) Applications for certificates of naturalization or repatriation under § 343.1 of this chapter;

(S) Applications for new naturalization or citizenship papers under § 343a.1(c) of this chapter;

(T) Applications for special certificates of naturalization under § 343b.11(b) of this chapter;

(U) [Reserved]

(V) Petitions to classify Amerasians under Public Law 97-359 as the children of United States citizens;

(W) Revoking approval of certain petitions, as provided in §§ 214.2 and 214.6 of this chapter;

(X) Orphan petitions under 8 CFR 204.3;

(Y) Applications for advance process of orphan petitions under 8 CFR 204.3;

(Z) Invalidation of a temporary labor certification issued by the governor of Guam under § 214.2(h)(3)(v) of this chapter;

(AA) Application for status as temporary or permanent resident under §§ 245a.2 or 245a.3 of this chapter;

(BB) Application for status as temporary resident under § 210.2 of this chapter;

(CC) Termination of status as temporary resident under § 210.4 of this chapter;

(DD) Termination of status as temporary resident under § 245a.2 of this chapter;

(EE) Application for waiver of grounds of excludability under Parts 210, 210a, and 245a of this chapter;

(FF) Application for status of certain Cuban and Haitian nationals under section 202 of the Immigration Reform and Control Act of 1986;

(GG) A self-petition filed by a spouse or child based on the relationship to an abusive citizen or lawful permanent resident of the United States for classification under section 201(b)(2)(A)(i) of the Act or section 203(a)(2)(A) of the Act;

(HH) Application for Temporary Protected Status under part 240 of this chapter;

(II) Petitions for special immigrant juveniles under part 204 of this chapter;

(JJ) Applications for adjustment of status under part 245 of this title when denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act;

(KK) Petition for Armed Forces Special Immigrant under §204.9 of this chapter;

(LL) Request for participation as a regional center under §204.6(m) of this chapter;

(MM) Termination of participation of regional center under §204.6(m) of this chapter; and

(NN) Application for certification for designated fingerprinting services under §103.2(e) of this chapter.

(iv) *Director of the National Fines Office.* Under the direction of the Assistant Commissioner for Inspections, the Director of the National Fines Office has program, administrative, and supervisory responsibility for all personnel assigned to the National Fines Office. The Director of the National Fines Office is delegated the authority by the Associate Commissioner for Examinations to impose fines, penalties, and liquidated damages under sections 214, 231, 233, 237, 238, 239, 243, 251, 252, 253, 254, 255, 256, 257, 258, 271, 272, 273 and 274C of the Act.

(v) *Service Center directors.* Under the direction and supervision of the Assistant Commissioner for Service Center Operations, the service center directors are delegated the authority to control all activities conducted within their offices and supervisory responsibility for all personnel assigned to their offices. Center directors are delegated the authority to grant or deny any applica-

tion or petition submitted to the Service, except for matters delegated to asylum officers pursuant to part 208 and §253.1(f) of this chapter, or exclusively delegated to district directors.

(g) *Executive Associate Commissioner for Field Operations—(1) General.* Under the direction and supervision of the Deputy Commissioner, the Executive Associate Commissioner for Field Operations is delegated authority and responsibility for implementing policies of the Service's field operations, and for providing general direction to and supervision of the regional directors and the Director of International Affairs.

(2) *Regional directors—(i) General.* Under the direction and supervision of the Executive Associate Commissioner for Field Operations, the regional directors are delegated authority and responsibility for the Service's field operations within their respective geographical areas, and for providing direction to and supervision of the district directors and chief patrol agents within their respective regions.

(ii) *District directors.* (A) District directors of offices located within the United States are under the direction and supervision of the regional director. District directors of foreign offices are under the direction and supervision of the Director of International Affairs. District directors are delegated authority to control all activities conducted within their offices and to supervise all personnel, except Service attorneys, assigned to their offices.

(B) District directors are delegated the authority to grant or deny any application or petition submitted to the Service, except for matters delegated to asylum officers pursuant to part 208 and §253.1(f) of this chapter, or exclusively delegated to service center directors, to initiate any authorized proceeding in their respective districts, and to exercise the authorities under §§242.1(a), 242.2(a) and 242.7 of this chapter without regard to geographical limitations. District directors are delegated authority to conduct the proceeding provided for in §252.2 of this chapter.

(C) Applications filed for special agricultural worker or legalization status pursuant to sections 210 and 245a of the

Act, respectively, may be approved by the district director having jurisdiction of the office where a second interview is required by the service center, if the alien in the second interview can establish eligibility for approval. District directors may deny applications for special agricultural worker or legalization status at offices under their jurisdiction.

(D) *Officers in charge—(1) General.* Under the direction and supervision of the district director, officers in charge are delegated authority to control all activities conducted within their offices and to supervise all personnel assigned to their office. Officers in charge direct inspection activities at ports-of-entry and the authorization of extensions of nonimmigrant admission periods and of voluntary departure prior to the commencement of deportation hearings. The Officers in charge in the places enumerated in §212.1(i) of this chapter are delegated the authority to act on requests for waiver of visa and passport requirements under the provisions of section 212(d)(4)(A) of the Act.

(2) The offices located in Oranjestaad, Aruba; Calgary, Alberta, Canada; Edmonton, Alberta, Canada; Freeport, Bahamas; Hamilton, Bermuda; Nassau, Bahamas; Shannon, Ireland; Toronto, Ontario, Canada; Vancouver, British Columbia, Canada; Victoria, British Columbia, Canada; Winnipeg, Manitoba, Canada; Dublin, Ireland; and such other preinspection or preclearance sites as the Service may establish in the future, are delegated authority to perform the function of preinspection of passengers and crews on aircraft and surface vessels, as appropriate, which are departing directly to the United States mainland.

(3) The Officer in charge of the office in Montreal, Canada, is authorized to perform preinspection of passengers and crew of aircraft departing directly to the United States mainland and to authorize or deny waivers of grounds of excludability under section 212 (h) and (i) of the Act; also, to approve or deny applications for permission to reapply for admission to the United States after deportation or removal, when filed in conjunction with an application for waiver of grounds of exclud-

ability under section 212 (h) or (i) of the Act.

(iii) *Chief patrol agents.* Under the direction and supervision of a regional director, chief patrol agents are delegated authority to direct the Border Patrol activities of the Service within their respective sectors, including exercising the authority in section 242(b) of the Act to permit aliens to depart voluntarily from the United States prior to commencement of a hearing.

(3) *Director of International Affairs—(i) General.* Under the direction and supervision of the Executive Associate Commissioner for Field Operations, the Director of International Affairs is delegated authority to direct and supervise the foreign office district directors, to maintain the integrity and efficiency of the Service's international operations, and to administer programs related to refugee, asylum, and parole benefits. The Director of International Affairs is also responsible for the direction and supervision of overseas preinspection at sites, if any, for which the Commissioner has specifically delegated inspection authority to the Office of International Affairs. The Director serves as the principal liaison with foreign governments and other agencies of the United States in overseas locations.

(ii) *Asylum officers.* Asylum officers constitute a professional corps of officers who serve under the supervision and direction of the Director of International Affairs and shall be specially trained as required in §208.1(b) of this chapter. Asylum officers are delegated the authority to hear and adjudicate credible fear of persecution determinations under section 235(b)(1)(B) of the Act and applications for asylum and for withholding of removal, as provided under 8 CFR part 208.

(iii) *Officer in Charge.* The officers in charge of the offices located at Athens, Greece; Mexico City, Mexico; Ciudad Juarez, Mexico; Rome, Italy; Frankfurt, Germany; Moscow, Russia; Vienna, Austria; Tegucigalpa, Honduras; Bangkok, Thailand; Hong Kong, BCC; London, England; Manila, Philippines; Monterrey, Mexico; Nairobi, Kenya; New Delhi, India; Seoul, Korea; Singapore, Republic of Singapore; Tijuana, Mexico; Port-au-Prince, Haiti; Karachi,

Pakistan; and such other overseas sub-offices as the Service may establish in the future, are delegated authority to perform the following functions:

(A) Authorize waivers of grounds of excludability under sections 212 (h) and (i) of the Act;

(B) Adjudicate applications for permission to reapply for admission to the United States after deportation or removal, if filed by an applicant for an immigrant visa in conjunction with an application for waiver of grounds of excludability under section 212 (h) or (i) of the Act, or if filed by an applicant for a nonimmigrant visa under section 101(a)(15)(K) of the Act;

(C) Approve or deny visa petitions for any relative;

(D) Approve recommendations made by consular officers for waiver of grounds of excludability in behalf of nonimmigrant visa applicants under section 212(d)(3) of the Act and concur in proposed waivers by consular officers of the requirement of visa or passport by a nonimmigrant on the basis of unforeseen emergency in cases in which the Department of State had delegated recommending power to the consular officers;

(E) Exercise discretion to grant or deny applications for the benefits set forth in sections 211 and 212(c) of the Act;

(F) Process Form I-90 applications and deliver duplicate Forms I-551;

(G) Process Form N-565 applications and deliver certificates issued thereunder; and

(H) Grant or deny applications of aliens seeking classification as refugees under section 207 of the Act.

(h) *Executive Associate Commissioner for Policy and Planning.* Under the direction and supervision of the Deputy Commissioner, the Executive Associate Commissioner for Policy and Planning is delegated the authority to oversee the development and coordination of long-range planning activities, and policy formulation, codification, and dissemination within the Agency. The Executive Associate Commissioner is also responsible for informing and advising the Commissioner and the Deputy Commissioner on other issues which cross program lines or bear inter-agency implications. The Executive Associ-

ate Commissioner also serves as liaison with, and representative of, the Service to other organizations engaged in policy development in matters affecting the mission of the Service, research and statistics, and the exchange of statistical, scientific, technological data and research.

(i) *Executive Associate Commissioner for Management—(1) General.* Under the direction and supervision of the Deputy Commissioner, the Executive Associate Commissioner for Management is delegated authority to plan, direct, and manage all aspects of the administration of the Service. The delegation includes the authority to develop and promulgate administrative policies and programs for all financial, human resource, administrative, and information resource matters of the Service. The Executive Associate Commissioner for Management is delegated the authority to settle tort claims of \$25,000 or less than 28 U.S.C. 2672, and to compromise, suspend, or terminate collection of claims of the United States not exceeding \$100,000 (exclusive of interest) under 31 U.S.C. 3711. The Executive Associate Commissioner for Management supervises the Directors of Security, Equal Employment Opportunity, and Files and Forms Management, the Associate Commissioner for Human Resources and Administration, the Associate Commissioner for Finance, the Associate Commissioner for Information Resources Management, and the Directors, Administrative Centers.

(2) *Director of Security.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Director of the Office of Security is delegated authority to develop policy, plan, direct, and coordinate the Service's security program. The Security program includes the application of safeguards in program areas of personnel security, physical security, information and document security, automated data processing and telecommunications security, and contingency planning related to threat, loss, or other serious emergency in any of these areas.

(3) *Director of Equal Employment Opportunity.* Under the direction and supervision of the Executive Associate

Commissioner for Management, the Director of Equal Employment Opportunity is delegated authority to develop policies and to implement and direct the Service's programs relating to equal employment opportunity for all employees and applicants. The Director is responsible for the Service's efforts to comply with provisions of the Civil Rights Act of 1964 and Department of Justice programs and directives affecting discrimination in employment. The Director supervises, coordinates, directs, and evaluates the affirmative employment and discrimination complaint program of the Service.

(4) *Director of Files and Forms Management.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Director of Files and Forms Management is delegated authority to develop policies, plan, coordinate, evaluate, counsel, and direct the Service's National Records Center, Forms Center, SAVE Program, centralized FOIA/PA, records policy, and correspondence files programs.

(5) *Associate Commissioner for Human Resources and Administration.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Associate Commissioner for Human Resources and Administration is delegated authority to develop policies, plan, develop, coordinate, evaluate, counsel, and direct the personnel, career development, contracting, engineering, facility, and administrative programs of the Service. The Associate Commissioner for Human Resources and Administration provides direction to, and supervision of, the:

(i) Assistant Commissioner for Human Resources and Development; and

(ii) Assistant Commissioner for Administration.

(6) *Associate Commissioner for Finance.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Associate Commissioner for Finance is delegated authority to develop policies, plan, develop, coordinate, evaluate, counsel, and direct the Service's resource requirements and utilization. The Associate Commissioner for Finance is responsible for all aspects of financial management, including budgeting, re-

porting, internal controls, and analysis. The Associate Commissioner for Finance is responsible for the presentation of internal reports to management, the preparation of external reports and certifications required by statute or regulation, and the representation of the Service before the Congress, and agencies of the Executive Branch on matters related to financial activities. The Associate Commissioner for Finance is also delegated authority to settle claims of \$10,000 or less under 28 U.S.C. 2672 and to compromise, suspend, or terminate collection of claims of the United States not exceeding \$50,000 (exclusive of interest) under 31 U.S.C. 3711. The Associate Commissioner for Finance provides direction to, and supervision of, the:

(i) Associate Commissioner for Budget; and (ii) Assistant Commissioner for Financial Management.

(7) *Associate Commissioner for Information Resources Management.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Associate Commissioner for Information Resources Management is delegated authority to develop policies, plan, develop, coordinate, evaluate, counsel, manage and direct the Service's Automated Data Processing, Telecommunication, Radio, and Electronic programs. The Associate Commissioner for Information Resources Management provides direction to, and supervision of, the:

(i) Assistant Commissioner for Data Systems; and

(ii) Assistant Commissioner for Systems Integration.

(8) *Directors of Administrative Centers.* Under the direction and supervision of the Executive Associate Commissioner for Management, the directors are delegated authority over the human resources, administrative, information resource, security, and financial activities of the Service within their respective area of responsibility. They are also delegated the authority to: (i) Settle tort claims of \$10,000 or less under 28 U.S.C. 2672; and

(ii) Compromise, suspend, or terminate collection of claims of the United States not exceeding \$50,000 (exclusive of interest) under 31 U.S.C. 3711.

(j) *Immigration Officer.* Any immigration officer, immigration inspector, immigration examiner, adjudications officers, Border Patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention enforcement officer, detention guard, investigator, special agent, investigative assistant, intelligence officer, intelligence agent, general attorney, applications adjudicator, contact representative, chief legalization officer, supervisory legalization officer, legalization adjudicator, legalization officer and legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, or senior or supervisory officer of such employees is hereby designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

[59 FR 60070, Nov. 22, 1994, as amended at 61 FR 13072, Mar. 26, 1996; 61 FR 28010, June 4, 1996; 62 FR 9074, Feb. 28, 1997; 62 FR 10336, Mar. 6, 1997]

§ 103.2 Applications, petitions, and other documents.

(a) *Filing.* (1) *General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions, which include where an application or petition should be filed, being hereby incorporated into the particular section of the regulations requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. Such fees are non-refundable and, except as otherwise provided in this chapter, must be paid when the application or petition is filed.

(2) *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted

with it, either at the time of filing or thereafter, is true and correct.

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter. A beneficiary of a petition is not a recognized party in such a proceeding. An application or petition presented in person by someone who is not the applicant or petitioner, or his or her representative as defined in this paragraph, shall be treated as if received through the mail, and the person advised that the applicant or petitioner, and his or her representative, will be notified of the decision. Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted.

(4) *Oath.* Any required oath may be administered by an immigration officer or person generally authorized to administer oaths, including persons so authorized by Article 136 of the Uniform Code of Military Justice.

(5) *Translation of name.* If a document has been executed in an anglicized version of a name, the native form of the name may also be required.

(6) *Where to file.* Except as otherwise provided in this chapter, an application or petition should be filed with the INS office or Service Center with jurisdiction over the application or petition and the place of residence of the applicant or petitioner as indicated in the instructions with the respective form.

(7) *Receipt date.* (i) *General.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as filed when so stamped, if it is properly signed and executed and the required fee is attached or a fee waiver is granted. An application which is not properly signed or is submitted with the wrong fee shall be rejected as improperly filed. Rejected applications, and ones in which the check or other financial instrument is returned as not payable, will not retain a filing date.

An application or petition taken to a local Service office for the completion of biometric information prior to filing at a Service Center shall be considered received when physically received at the appropriate Service Center.

(ii) *Non-payment.* If a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter shall be notified and requested to immediately pay the filing fee and associated service charge within 14 days, without extension. If the application or petition is pending and these charges are not paid, it shall be rejected as improperly filed. If it was already approved, and these charges are not paid, it shall be automatically revoked because it was improperly filed. If it was already denied, revoked, or abandoned, that decision will not be affected by the non-payment of the filing fee. A new fee will be required with any new application or petition. Any fee and service charges collected as the result of collection activities or legal action on the prior application or petition shall be used to cover the cost of the previous rejection, revocation, or other action.

(b) *Evidence and processing.* (1) *General.* An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form. Any evidence submitted is considered part of the relating application or petition.

(2) *Submitting secondary evidence and affidavits.* (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who

have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where the Service finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

(iii) *Evidence provided with a self-petition filed by a spouse or child of abusive citizen or resident.* The Service will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(3) *Translations.* Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she

is competent to translate from the foreign language into English.

(4) *Submitting copies of documents.* Application and petition forms must be submitted in the original. Forms and documents issued to support an application or petition, such as labor certifications, Form IAP-66, medical examinations, affidavits, formal consultations, and other statements, must be submitted in the original unless previously filed with the Service. When submission is required, expired Service documents must be submitted in the original, as must Service documents required to be annotated to indicate the decision. In all other instances, unless the relevant regulations or instructions specifically require that an original document be filed with an application or petition, an ordinary legible photocopy may be submitted. Original documents submitted when not required will remain a part of the record, even if the submission was not required.

(5) *Request for an original document.* Where a copy of a document is submitted with an application or petition, the Service may at any time require that the original document be submitted for review. If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked. There shall be no appeal from a denial or revocation based on the failure to submit an original document upon the request of the Service to substantiate a previously submitted copy. Further, an applicant or petitioner may not move to reopen or reconsider the proceeding based on the subsequent availability of the document. An original document submitted pursuant to a Service request shall be returned to the petitioner or applicant when no longer required.

(6) *Withdrawal.* An applicant or petitioner may withdraw an application or petition at any time until a decision is issued by the Service or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

(7) *Testimony.* The Service may require the taking of testimony, and may

direct any necessary investigation. When a statement is taken from and signed by a person, he or she shall, upon request, be given a copy without fee. Any allegations made subsequent to filing an application or petition which are in addition to, or in substitution for, those originally made, shall be filed in the same manner as the original application, petition, or document, and acknowledged under oath thereon.

(8) *Request for evidence.* If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. If the application or petition was pre-screened by the Service prior to filing and was filed even though the applicant or petitioner was informed that the required initial evidence was missing, the application or petition shall be denied for failure to contain the necessary evidence. Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence, including blood tests. In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted. Within this period the applicant or petitioner may:

(i) Submit all the requested initial or additional evidence;

(ii) Submit some or none of the requested additional evidence and ask for a decision based on the record; or

(iii) Withdraw the application or petition.

(9) *Request for appearance.* An applicant, a petitioner, and/or a beneficiary may be required to appear for an interview. A petitioner shall also be notified when an interview notice is mailed or issued to a beneficiary. The person may appear as requested by the Service or, prior to the date and time of the interview:

(i) The person to be interviewed may, for good cause, request that the interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the application or petition.

(10) *Effect of a request for initial or additional evidence or for interview rescheduling.* (i) *Effect on processing.* The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If an application or petition is missing required initial evidence, or an applicant, petitioner, or beneficiary requests that an interview be rescheduled, any time period imposed on Service processing will start over from the date of receipt of the required initial evidence or request for interview rescheduling. If the Service requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on the Service for processing will be suspended as of the date of the request. It will resume at the same point where it stopped when the Service receives the requested evidence or response, or a request for a decision based on the evidence submitted.

(ii) *Effect on interim benefits.* Interim benefits will not be granted based on an application or petition held in suspense for the submission of requested initial evidence, except that the applicant or beneficiary will normally be allowed to remain while an application or petition to extend or obtain status while in the United States is pending. The Service may choose to pursue other actions to seek removal of a person notwithstanding the pending application. Employment authorization previously accorded based on the same status and employment as that requested in the current application or petition may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) during the suspense period.

(11) *Submission of evidence in response to a Service request.* All evidence submitted in response to a Service request must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record.

(12) *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. An application or petition shall be denied where any application or petition upon which it was based was filed subsequently.

(13) *Effect of failure to respond to a request for evidence or appearance.* If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. Except as provided in §335.6 of this chapter, if a person requested to appear for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied.

(14) *Effect of request for decision.* When an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. Failure to appear for a required interview, or to give required testimony, shall result in the denial of any related application or petition.

(15) *Effect of withdrawal or denial due to abandonment.* The Service's acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and

circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.

(16) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.

(iii) *Discretionary determination.* Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the regional commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

(iv) *Classified information.* An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such dis-

closure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the regional commissioner should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The regional commissioner's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(17) *Verifying claimed citizenship or permanent resident status.* The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States will be verified from official records of the Service. The term official records, as used herein, includes Service files, arrival manifests, arrival records, Service index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Alien Registration Receipt Cards Forms AR-3, AR-103, I-151 or I-551), passports, and reentry permits. To constitute an official record a Service index card must bear a designated immigrant visa symbol and must have been prepared by an authorized official of the Service in the course of processing immigrant admissions or adjustments to permanent resident status. Other cards, certificates, declarations, permits, and passports must have been issued or endorsed by the Service to show admission for permanent residence. Except as otherwise provided in 8 CFR part 101, and in the absence of countervailing evidence, such official records shall be regarded as establishing lawful admission for permanent residence. If a self-petitioner filing under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, the Service will attempt to electronically verify the abuser's citizenship or immigration status from information contained in Service computerized records. Other Service records may also be reviewed

at the discretion of the adjudicating officer. If the Service is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

(18) *Withholding adjudication.* A district director may authorize withholding adjudication of a visa petition or other application if the district director determines that an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the application or petition, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the application or petition would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, the district director shall review the matter and determine whether adjudication of the petition or application should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of the district director's determination, the investigation has not been completed, the matter shall be reviewed again by the district director and, if he/she concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, the matter shall be referred to the regional commissioner, who may authorize that adjudication be held in abeyance for another six months. Thereafter, if the Associate Commissioner, Examinations, with the concurrence of the Associate Commissioner, Enforcement, determines it is necessary to continue to withhold adjudication pending completion of the investigation, he/she shall review that determination every six months.

(19) *Notification.* An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to § 103.2(a), that representative shall also be notified. Doc-

uments produced after an approval notice is sent, such as an alien registration card, shall be mailed directly to the applicant or petitioner.

(c) *Filing of applications for adjustment of status under sections 210 and 245A of the Act, as amended.* (1) The filing of an application for temporary resident status under section 245A(a) of the Act must conform to the provisions of § 245a.2 of this chapter. The filing of an application for permanent resident status under section 245A(b)(1) of the Act must conform to the provisions of § 245a.3 of this chapter. The filing of an application for adjustment of status to that of a temporary resident under section 210(a) of the Act must conform to the provisions of § 210.2 of this chapter.

(2) An application for adjustment to temporary or permanent resident status pursuant to section 245A (a) or (b)(1) or section 210(a) of the Act may be accepted on behalf of the Attorney General by designated state, local and community organizations as well as designated voluntary organizations and persons. Each such application shall contain a certification signed by both the alien and the preparing member of the designated organization or entity, that the applicant has approved transmittal of the application to the Service for adjudication.

(3) An application accepted by any of the designated entities shall be stamped with an endorsement as to the date of preparation and authorization for transmittal, and may be brought to the legalization office with the applicant as an application ready for adjudication. However, such application shall not be considered as complete until accepted for adjudication by and until the appropriate fee has been paid to the Immigration and Naturalization Service.

(d) *Filing of petitions for adjustment of status under section 210A of the Act, as amended.* (1) The filing of a petition for temporary resident status as a Replenishment Agricultural Worker, and waivers incident to such filing, under section 210A of the Act must conform to the provisions of part 210a of this title.

(2) A petition for adjustment to temporary resident status pursuant to section 210A of the Act shall be accepted

only by the Service, or by personnel employed under contract to the Service, who are under Service supervision, and are specifically designated responsibility for the initial processing of petitions and waivers. Only Service officers may make decisions with respect to the granting or denial of petitions and waivers filed under section 210A of the Act and part 210a of this title.

(3) Petitions and waivers filed with the Service pursuant to part 210a of this title shall not be considered as complete until accepted for adjudication by and until the appropriate fee has been paid to the Immigration and Naturalization Service.

(e) *Fingerprinting.* Service regulations require that applicants for various types of immigration benefits submit their fingerprints with the applications. To ensure they have access to reputable fingerprinting services, the fingerprinting of these benefit applicants must be carried out pursuant to the fingerprinting service provisions established in this paragraph.

(1) *Fingerprinting by the Service.* Where feasible, a local Service office shall provide fingerprinting service to applicants for immigration benefits. Also, the district director shall consider all qualified applicants for DFS certification and certify applicants who meet the regulatory standards to supplement the district's efforts. Where district Service personnel are providing fingerprinting services, the district director may end such services when he or she determines that there are sufficient outside or private fingerprinting services available at a reasonable fee.

(2) *Designated fingerprinting services—*

(i) *Law enforcement agencies.* Federal, state, or local police, or military police, in the United States are not required to apply for DFS certification. However, it is essential that any Federal, state, and local police, or military police, that provide fingerprinting services to applicants for immigration benefits be familiar with the Service's fingerprinting regulations and requirements. In order to receive updates on such regulations and requirements, a policy agency that does provide such services must register with the Service pursuant to procedures prescribed by

§ 103.2(e)(9). Campus police departments having general arrest powers pursuant to a State statute and meeting training requirements established by law or ordinance for law enforcement officers are included within the category of state or local police departments for purposes of § 103.2(e).

(ii) *Other business entities or individuals.* Businesses and individuals who apply and qualify shall, subject to the requirements of § 103.2(e), be approved by the Service to provide fingerprinting services.

(3) *Transition to use designated fingerprinting services.* As of March 1, 1997, the Service will not accept fingerprint cards for immigration benefits unless they are taken by:

(i) A DFS accompanied by a completed attestation, Form I-850A, Attestation by Designated Fingerprinting Services Certified to Take Fingerprints;

(ii) An intending DFS or organization that has completed and filed an application for DFS status prior to March 1, 1997, which may, pending the Service's action upon its application, take fingerprints and complete the Form I-850A, indicating that its application for DFS status is pending. This provisional authority for an outside entity shall cease when its application is denied;

(iii) A recognized law enforcement agency that is registered as a DFS; or

(iv) Designated Service employees.

(4) *Eligibility for DFS.* An outside entity applying for DFS status may be a business, a not-for-profit organization, or an individual.

(i) An individual must establish that he or she is a United States citizen or lawful permanent resident, and has not been convicted of an aggravated felony or any crime related to dishonesty or false statements involving a civil penalty for fraud.

(ii) A business or a not-for-profit organization must establish the identity of its chief operations officer, who exercises primary and oversight control over the organization's operations, and its fingerprinting employees; and the business or a not-for-profit organization must establish that the chief operations officer and fingerprinting employees are United States citizens or lawful permanent resident(s), and that

its principal officers, directors, or partners meet the standard for individual applicants.

(iii) A Federal, state, or local law enforcement agency may register as a designated fingerprinting service. However, a law enforcement agency is not required to comply with the operating license(s), identification and training of employees, criminal record history check, attestation, or application fee provisions in this paragraph.

(5) *Criminal history records check.* (i) An identification and criminal history record check is required for each employee or person as otherwise described in paragraphs (e)(4) (i) and (ii) of this section who will take fingerprints listed on the application for DFS certification. The district director shall designate Service personnel of the district office to obtain and transmit fingerprints to the Federal Bureau of Investigation (FBI) for such checks. If a DFS needs to add new or replacement employees to the personnel approved by the Service, it must file a new application with the district director having jurisdiction over the DFS's place of business. That new application must be accompanied by the required fee for the FBI fingerprint check. The Service will accept fingerprints from an applicant for DFS certification only if the fingerprints were taken by designated Service personnel.

(ii) An employee who has been convicted of an aggravated felony or a crime involving dishonestly or false statement, or who has been subjected to a civil penalty for fraud, may not be assigned to take fingerprints unless the DFS can establish to the Service's satisfaction that the circumstances of the offense are such (because of the person's youth at the time of the offense, and/or the number of years that have passed since its commission) that there can be no reasonable doubt as to the person's reliability in taking fingerprints in conformity with these rules.

(6) *Requirements.* Except as provided under paragraph(e)(9) of this section, an outside entity seeking certification as a DFS must agree that it will:

(i) Abide by Service regulations governing certification of DFS(s);

(ii) Permit Service personnel and Service contract personnel to make on-site inspections to ensure compliance with required procedures;

(iii) Ensure that the personnel responsible for taking fingerprints received training in fingerprinting procedures by the Service or FBI (exceptions can be made for those who have previously received training from the FBI or the Service or who can otherwise demonstrate equivalent training);

(iv) Notify the district director where the application was filed when the completion of fingerprinting training occurred prior to the approval of the application, if such training was not completed but was in progress or had been scheduled at the filing of the application;

(v) Use only FBI or Service-trained employees to train its new employees on fingerprinting procedures (exceptions can be made for those who have previously received training from the FBI or the Service) and to conduct periodic refresher training as needed;

(vi) Make every reasonable effort to take legible and classifiable fingerprints, using only black ink;

(vii) Retake the applicants' prints free of charge if the DFS initially fails to take legible and classifiable prints;

(viii) Use only the fingerprint card(s), Form(s) FD-258, or other Service-designated documents to take fingerprints for immigration purposes;

(ix) Ensure that the fingerprint card(s) or other Service-designated fingerprint documents are completed in accordance with the instructions provided, using FBI prescribed personal descriptor codes;

(x) Ensure that the fingerprint card(s) or other Service-designated forms are signed by the applicants in their presence and by the fingerprinter;

(xi) Verify the identification of the person being fingerprinted by comparing the information on the fingerprint card, Form FD-258, or other Service-designated forms with the applicant's passport, national ID, military ID, driver's license or state-issued photo-ID, alien registration card, or other acceptable Service-issued photo-ID;

(xii) Complete an attestation on Form I-850A, Attestation by Designated Fingerprinting Service Certified to Take Fingerprints, and provide it to the person being fingerprinted;

(xiii) Note (legibly by hand or using a rubber stamp) on the back of the fingerprint card, Form FD-258, or a Service designated fingerprint document, the DFS's name and address, certification number, expiration date, the DFS fingerprinter's ID number and signature, and the date on which the fingerprints are taken. The DFS fingerprint shall seal the completed fingerprint card or fingerprint document, and sign or imprint a stamp with an original signature crossing the sealed area.

(xiv) Charge only reasonable fees for fingerprinting services, and the current fee status is to be made known to the Service;

(xv) Notify the director having jurisdiction over the applicant's place of business within 2 working days, on Form I-850 without fee, of any changes in personnel responsible for taking fingerprints;

(xvi) Request approval for any new personnel to take fingerprints according to the procedures set forth in paragraphs (e) (4), (5), (6), (8), and (9) of this section;

(xvii) Notify the Service of any conviction for an aggravated felony or for a crime involving dishonesty or false statement, or of any civil penalty for fraud subsequent to the DFS certification of an employee authorized to take fingerprints; and

(xviii) Maintain facilities which are permanent and accessible to the public. The use of the terms permanent and accessible to the public shall not include business or organizational operations in private homes, vans or automobiles, mobile carts, and removable stands or portable storefronts.

(7) *Attestation.* (i) To ensure the integrity of the fingerprint cards submitted by applicants for benefits, all DFS fingerprinters must fill out an attestation on Form I-850A each time they take fingerprints for an immigration benefit applicant. Such attestation must be signed and dated by the fingerprinter and show:

(A) The fingerprinter's name and ID number (as assigned by the Service) and a statement that the requirements of § 103.2(e) have been met;

(B) The name, address, certification number (as assigned by the Service), and expiration date of the DFS certification;

(C) That he or she has checked the identity of the person he or she fingerprinted and has listed the identification number from the individual's passport, national ID, military ID, driver's license or state-issued photo-ID, alien registration card, or other acceptable Service-issued photo-ID; and

(D) That it is signed and dated by the benefit applicant.

(ii) DFS fingerprinters must execute the attestations in duplicate in the presence of the applicant. The original must be given to the applicant to be filed with the Service with his or her fingerprint card, and the copy, which may be a reproduced copy of the original, must be kept on file at the DFS for at least 3 months for Service inspection.

(8) *Application.* An outside organization seeking certification as a DFS, or a DFS seeking approval for personnel change, must submit an application on Form I-850, Application for Certification for Designated Fingerprinting Services, to the district director having jurisdiction over the applicant's place of business. The application must include the following:

(i) The required fee;

(ii) A copy of all business licenses or permits required for its operations and if the organization is a not-for-profit entity, documented evidence of such status;

(iii) The names and signatures of personnel who will take fingerprints of applicants for immigration benefits;

(iv) A set of fingerprints taken by a Service employee on Form FD-258 for each employee whose name appears on the application form pursuant to paragraph (e)(4) of this section, and the required fee (for each employee) for the FBI criminal history record check;

(v) A statement on Form I-850 indicating the fee, if any, it will charge for the fingerprinting service; and

(vi) A signed statement on Form I-850 attesting that the DFS will abide

by the Service regulation governing fingerprinting and the certification of designated fingerprinting services.

(9) *Registration of police stations or military police agencies.* (i) Federal, state, or local police stations, or military police agencies, may individually register to take fingerprints of applicants for immigration benefits by filing a Form I-850, application for Certification for Designated Fingerprinting Services, completing only the relevant parts of the form. No fee or fingerprint cards need to be submitted for their personnel charged with the fingerprinting responsibility; nor are these personnel required to have additional training in fingerprinting techniques and procedures. Furthermore, law enforcement agencies registered to take fingerprints under this paragraph are not subject to on-site inspections by the Service. The Service will communicate with these agencies through regular liaison channels at the local level.

(ii) A police department may request registration on behalf of all of its subordinate stations on a single application by listing their precinct numbers and addresses. Once registered, the Service will include the individual police stations and military police agencies on the Service's list of DFS organizations. The Service will make available to these agencies the fingerprinting regulations, related instruction material or other relevant information when appropriate.

(10) *Confidentiality.* A DFS is prohibited from releasing fingerprints taken pursuant to certification, other than to the Service or to the applicant or as otherwise provided in the Service's regulations. Law enforcement agencies enumerated under paragraph (e)(9) of this section are not precluded from using the fingerprints they have collected for immigration purposes in other law enforcement efforts.

(11) *Approval of application.* The district director shall consider all supporting documents submitted and may request additional documentation as he or she may deem necessary. When the application has been approved, the district director shall assign a certification number to the DFS and individual ID numbers to its approved

fingerprinters. The approval will be valid for a period of 3 years and may be renewed in accordance with paragraph (e)(13) of this section. The district director shall notify the applicant of the approval and include in the notice of approval the following items:

(i) Instructions on how to prepare Applicant Fingerprint Cards, Form FD-258;

(ii) A listing of acceptable Service-issued photo-IDs; and

(iii) A statement detailing the DFS(s) responsibilities and rights, including the renewal and revocation procedures as provided by paragraphs (e) (12) and (13) of this section.

(12) *Denial of the application.* The applicant shall be notified of the denial of an application, the reasons for the denial, and the right to appeal to the AAO under 8 CFR part 103.

(13) *Renewal.* (i) Subject to paragraph (e)(13)(ii) of this section, a DFS must apply for renewal of its certification at least ninety (90) days prior to the expiration date to prevent interruption in its ability to provide fingerprinting services. An application for renewal must be made on Form I-850 with the required fee and documentation as contained in paragraph (e)(8) of this section. In considering an application for renewal, the Service will give appropriate weight to the volume, nature, and the substance of complaints or issues raised in the past regarding that particular DFS and or relevant circumstances which are made known to the Service by the general public, other governmental or private organizations, or through Service inspections. Also, the Service will favorably consider the absence of such complaints or issues. Each renewal shall be valid for 3 years. Failure to apply for renewal will result in the expiration of the outside entity's DFS status.

(ii) The Service will certify and renew DFS(s) as long as the need for their service exists. Following the development of an automated fingerprint information system, the Service will determine if there is a continued need for the DFS' services and, if so, whether they should switch to newer technologies, such as acquiring compatible automated fingerprinting equipment. In either event, the Service shall issue

a public notification or issue a new rule, as appropriate. Nothing in this paragraph shall preclude the Service, in its discretion, from discontinuing the DFS certification program after the initial 3 years or from requiring, as a condition of continued certification, that the DFS incorporate automated fingerprinting equipment.

(14) *Revocation of certification.* The district director shall revoke an approval of application for DFS status under the following circumstances:

(i) *Automatic revocation.* The approval of any application is automatically revoked if the DFS:

(A) Goes out of business prior to the expiration of the approval; or

(B) Files a written withdrawal of the application.

(ii) *Revocation on notice.* The Service shall revoke on notice the certification of a DFS which has violated the regulations governing the fingerprinting process as established in paragraph (e) of this section.

(A) If the district director finds that a DFS has failed to meet the required standards, he or she will issue a notice of intent to revoke detailing reasons for the intended revocation. Within 30 days of the receipt of the notice, the DFS may submit evidence in rebuttal or request an inspection following corrective actions. The district director shall cancel the notice of intent to revoke if he or she is satisfied with the evidence presented by the DFS or the results of a reinspection.

(B) For flagrant violations, such as failure to verify the identity of the persons seeking fingerprinting, the district director may, in his or her discretion, issue a suspension order and place the DFS on immediate suspension. During the suspension period, the DFS may not take fingerprints, and the Service will not accept fingerprints taken by the suspended DFS. The DFS under suspension may submit a plan for corrective action to the district director within 30 days and request a reinspection. If the district director approves the plan, he or she shall permit the DFS to resume fingerprinting on probation pending the results of the reinspection and the Service will resume accepting submitted fingerprints. The district director shall cancel the sus-

pension order if he or she finds the results of a reinspection satisfactory.

(C) If the DFS fails to submit evidence of rebuttal or corrective actions within the 30-day period, or if unsatisfactory conditions persist at the second inspection, the district director shall notify the DFS of the revocation decision, detailing the reasons, and of its right to appeal.

(D) The district director shall consider all timely submitted evidence and decide whether to revoke the DFS approval. The district director shall also decide whether any such revocation shall preclude accepting fingerprints taken by that DFS (or any of its offices or employees) during some or all of the period of its certification.

(iii) If the Service's investigation uncovers evidence of material misconduct, the Service may, in addition to revocation, refer the matter for action pursuant to section 274C of the Act (Penalties for Document Fraud), or 18 U.S.C. 1001 (false statement), or for other appropriate enforcement action.

(15) *Appeal of revocation of approval.* The revocation of approval may be appealed to the Service's Administrative Appeals Office (AAO). There is no appeal from an automatic revocation.

(16) *List of DFS(s).* Each district office shall make available a list of the DFS(s) it has certified to take fingerprints. Such list shall contain the name, address, telephone number, if available, and the fingerprinting fee charge, if any, of each DFS certified in the district.

(17) *Change of address or in fee.* A DFS shall notify the Service, on Form I-850, without an application fees, of any change(s) of address or change(s) in the fee charged for fingerprinting at least 10 working days before such a change takes place. The district office shall update its DFS list, including any fingerprinting fee changes, upon receipt of the notice of change(s).

(18) *False advertising or misrepresentation by a DFS.* Designated fingerprinting services are prohibited from exploiting their DFS status by creating the impression that they are authorized by the Service to do more than fingerprinting. DFS(s) are prohibited from using the Service logo on

their stationery, flyers, or advertisements. When dealing with the public or advertising for business, a DFS may refer to itself only as “an INS-Authorized Fingerprinting Service.” DFS(s) found in violation of this requirement are subject to suspension or revocation actions pursuant to § 103.2(e)(14).

[29 FR 11956, Aug. 21, 1964, as amended at 30 FR 14772, Nov. 30, 1965; 32 FR 9622, July 4, 1967; 33 FR 11644, Aug. 16, 1968; 39 FR 43055, Dec. 10, 1974; 44 FR 52169, Sept. 7, 1979; 47 FR 44990, Oct. 13, 1982; 50 FR 11841, Mar. 26, 1985; 52 FR 16192, May 1, 1987; 53 FR 26034, July 11, 1988; 54 FR 29881, July 17, 1989; 56 FR 624, Jan. 7, 1991; 59 FR 1460, 1461, Jan. 11, 1994; 59 FR 33905, July 1, 1994; 61 FR 13072, Mar. 26, 1996; 61 FR 28010, June 4, 1996; 61 FR 57584, Nov. 7, 1996]

§ 103.3 Denials, appeals, and precedent decisions.

(a) *Denials and appeals*—(1) *General*—(i) *Denial of application or petition*. When a Service officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial. If Form I-292 (a denial form including notification of the right of appeal) is used to notify the applicant or petitioner, the duplicate of Form I-292 constitutes the denial order.

(ii) *Appealable decisions*. Certain unfavorable decisions on applications, petitions, and other types of cases may be appealed. Decisions under the appellate jurisdiction of the Board of Immigration Appeals (Board) are listed in § 3.1(b) of this chapter. Decisions under the appellate jurisdiction of the Associate Commissioner, Examinations, are listed in § 103.1(f)(2) of this part.

(iii) *Appeal*—(A) *Jurisdiction*. When an unfavorable decision may be appealed, the official making the decision shall state the appellate jurisdiction and shall furnish the appropriate appeal form.

(B) *Meaning of affected party*. For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

(C) *Record of proceeding*. An appeal and any cross-appeal or briefs become part of the record of proceeding.

(D) *Appeal filed by Service officer in case within jurisdiction of Board*. If an appeal is filed by a Service officer, a copy must be served on the affected party.

(iv) *Function of Administrative Appeals Unit (AAU)*. The AAU is the appellate body which considers cases under the appellate jurisdiction of the Associate Commissioner, Examinations.

(v) *Summary dismissal*. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The filing by an attorney or representative accredited under 8 CFR 292.2(d) of an appeal which is summarily dismissed under this section may constitute frivolous behavior as defined in 8 CFR 292.3(a)(15). Summary dismissal of an appeal under § 103.3(a)(1)(v) in no way limits the other grounds and procedures for disciplinary action against attorneys or representatives provided in 8 CFR 292.2 or in any other statute or regulation.

(2) *AAU appeals in other than special agricultural worker and legalization cases*—(i) *Filing appeal*. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

(ii) *Reviewing official*. The official who made the unfavorable decision being appealed shall review the appeal unless the affected party moves to a new jurisdiction. In that instance, the official who has jurisdiction over such a proceeding in that geographic location shall review it.

(iii) *Favorable action instead of forwarding appeal to AAU*. The reviewing official shall decide whether or not favorable action is warranted. Within 45 days of receipt of the appeal, the reviewing official may treat the appeal as a motion to reopen or reconsider and take favorable action. However, that

official is not precluded from reopening a proceeding or reconsidering a decision on his or her own motion under § 103.5(a)(5)(i) of this part in order to make a new decision favorable to the affected party after 45 days of receipt of the appeal.

(iv) *Forwarding appeal to AAU.* If the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of proceeding to the AAU in Washington, DC.

(v) *Improperly filed appeal—(A) Appeal filed by person or entity not entitled to file it—(1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) *Appeal by attorney or representative without proper Form G-28—(i) General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

(ii) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under § 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.

(iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative

submits a properly executed Form G-28 entitling that person to file the appeal.

(B) *Untimely appeal—(1) Rejection without refund of filing fee.* An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) *Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

(vi) *Brief.* The affected party may submit a brief with Form I-290B.

(vii) *Additional time to submit a brief.* The affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one.

(viii) *Where to submit supporting brief if additional time is granted.* If the AAU grants additional time, the affected party shall submit the brief directly to the AAU.

(ix) *Withdrawal of appeal.* The affected party may withdraw the appeal, in writing, before a decision is made.

(x) *Decision on appeal.* The decision must be in writing. A copy of the decision must be served on the affected party and the attorney or representative of record, if any.

(3) *Denials and appeals of special agricultural worker and legalization applications and termination of lawful temporary resident status under sections 210 and 245A.* (i) Whenever an application for legalization or special agricultural worker status is denied or the status of a lawful temporary resident is terminated, the alien shall be given written notice setting forth the specific reasons for the denial on Form I-692, Notice of Denial. Form I-692 shall also contain advice to the applicant that he or she may appeal the decision and that such appeal must be taken within 30 days after service of the notification of decision accompanied by any additional new evidence, and a supporting brief if desired. The Form I-692 shall additionally provide a notice to the

alien that if he or she fails to file an appeal from the decision, the Form I-692 will serve as a final notice of ineligibility.

(ii) Form I-694, Notice of Appeal, in triplicate, shall be used to file the appeal, and must be accompanied by the appropriate fee. Form I-694 shall be furnished with the notice of denial at the time of service on the alien.

(iii) Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Unit as provided by §103.1(f)(2) of this part for review and decision. The decision on the appeal shall be in writing, and if the appeal is dismissed, shall include a final notice of ineligibility. A copy of the decision shall be served upon the applicant and his or her attorney or representative of record. No further administrative appeal shall lie from this decision, nor may the application be filed or reopened before an immigration judge or the Board of Immigration Appeals during exclusion or deportation proceedings.

(iv) Any appeal which is filed that:

(A) Fails to state the reason for appeal;

(B) Is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner; or

(C) Is patently frivolous; will be summarily dismissed. An appeal received after the thirty (30) day period has tolled will not be accepted for processing.

(4) *Denials and appeal of Replenishment Agricultural Worker petitions and waivers and termination of lawful temporary resident status under section 210A.*

(i) Whenever a petition for Replenishment Agricultural Worker status, or a request for a waiver incident to such filing, is denied in accordance with the provisions of part 210a of this title, the alien shall be given written notice setting forth the specific reasons for the denial on Form I-692, Notice of Denial. Form I-692 shall also contain advice to the alien that he or she may appeal the decision and that such appeal must be taken within thirty (30) days after service of the notification of decision accompanied by any additional new evidence, and a supporting brief if desired. The Form I-692 shall additionally

provide a notice to the alien that if he or she fails to file an appeal from the decision, the Form I-692 shall serve as a final notice of ineligibility.

(ii) Form I-694, Notice of Appeal, in triplicate, shall be used to file the appeal, and must be accompanied by the appropriate fee. Form I-694 shall be furnished with the notice of denial at the time of service on the alien.

(iii) Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Unit as provided by §103.1(f)(2) of this part for review and decision. The decision on the appeal shall be in writing, and if the appeal is dismissed, shall include a final notice of ineligibility. A copy of the decision shall be served upon the petitioner and his or her attorney or representative of record. No further administrative appeal shall lie from this decision, nor may the petition be filed or reopened before an immigration judge or the Board of Immigration Appeals during exclusion or deportation proceedings.

(iv) Any appeal which is filed that: Fails to state the reason for the appeal; is filed solely on the basis of a denial for failure to file the petition for adjustment of status under part 210a of this title in a timely manner; or is patently frivolous, will be summarily dismissed. An appeal received after the thirty (30) day period has tolled will not be accepted for processing.

(b) *Oral argument regarding appeal before AAU—(1) Request.* If the affected party desires oral argument, the affected party must explain in writing specifically why oral argument is necessary. For such a request to be considered, it must be submitted within the time allowed for meeting other requirements.

(2) *Decision about oral argument.* The Service has sole authority to grant or deny a request for oral argument. Upon approval of a request for oral argument, the AAU shall set the time, date, place, and conditions of oral argument.

(c) *Service precedent decisions.* In addition to Attorney General and Board decisions referred to in §3.1(g) of this chapter, designated Service decisions are to serve as precedents in all proceedings involving the same issue(s).

Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. Precedent decisions must be published and made available to the public as described in § 103.9(a) of this part.

[31 FR 3062, Feb. 24, 1966, as amended at 37 FR 927, Jan. 21, 1972; 48 FR 36441, Aug. 11, 1983; 49 FR 7355, Feb. 29, 1984; 52 FR 16192, May 1, 1987; 54 FR 29881, July 17, 1989; 55 FR 20769, 20775, May 21, 1990; 55 FR 23345, June 7, 1990; 57 FR 11573, Apr. 6, 1992]

§ 103.4 Certifications.

(a) *Certification of other than special agricultural worker and legalization cases*—(1) *General*. The Commissioner or the Commissioner's delegate may direct that any case or class of cases be certified to another Service official for decision. In addition, regional commissioners, regional service center directors, district directors, officers in charge in districts 33 (Bangkok, Thailand), 35 (Mexico City, Mexico), and 37 (Rome, Italy), and the Director, National Fines Office, may certify their decisions to the appropriate appellate authority (as designated in this chapter) when the case involves an unusually complex or novel issue of law or fact.

(2) *Notice to affected party*. When a case is certified to a Service officer, the official certifying the case shall notify the affected party using a Notice of Certification (Form I-290C). The affected party may submit a brief to the officer to whom the case is certified within 30 days after service of the notice. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(3) *Favorable action*. The Service officer to whom a case is certified may suspend the 30-day period for submission of a brief if that officer takes action favorable to the affected party.

(4) *Initial decision*. A case within the appellate jurisdiction of the Associate Commissioner, Examinations, or for which there is no appeal procedure may be certified only after an initial decision is made.

(5) *Certification to AAU*. A case described in paragraph (a)(4) of this section may be certified to the AAU.

(6) *Appeal to Board*. In a case within the Board's appellate jurisdiction, an unfavorable decision of the Service official to whom the case is certified (whether made initially or upon review) is the decision which may be appealed to the Board under § 3.1(b) of this chapter.

(7) *Other applicable provisions*. The provisions of § 103.3(a)(2)(x) of this part also apply to decisions on certified cases. The provisions of § 103.3(b) of this part also apply to requests for oral argument regarding certified cases considered by the AAU.

(b) *Certification of denials of special agricultural worker and legalization applications*. The Regional Processing Facility director or the district director may, in accordance with paragraph (a) of this section, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) (the appellate authority designated in § 103.1(f)(2)) of this part, when the case involves an unusually complex or novel question of law or fact.

[52 FR 661, Jan. 8, 1987, as amended at 53 FR 43985, Oct. 31, 1988; 55 FR 20770, May 21, 1990]

§ 103.5 Reopening or reconsideration.

(a) *Motions to reopen or reconsider in other than special agricultural worker and legalization cases*—(1) *When filed by affected party*—(i) *General*. Except where the Board has jurisdiction and as otherwise provided in 8 CFR parts 3, 210, 242 and 245a, when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision. Motions to reopen or reconsider are not applicable to proceedings described in § 274a.9 of this chapter. Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

(ii) *Jurisdiction.* The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction. In that instance, the new official having jurisdiction is the official over such a proceeding in the new geographical locations.

(iii) *Filing Requirements.*— A motion shall be submitted on Form I-290A, and may be accompanied by a brief. It must be—

(A) In writing and signed by the affected party or the attorney or representative of record, if any;

(B) Accompanied by a nonrefundable fee as set forth in § 103.7;

(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

(D) Addressed to the official having jurisdiction; and

(E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

(iv) *Effect of motion or subsequent application or petition.* Unless the Service directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition does not stay the execution of any decision in a case or extend a previously set departure date.

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

(i) The requested evidence was not material to the issue of eligibility;

(ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or

(iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or peti-

tioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed. Where a motion to reopen is granted, the proceeding shall be reopened. The notice and any favorable decision may be combined.

(5) *Motion by Service officer.*—(i) *Service motion with decision favorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision in order to make a new decision favorable to the affected party, the Service officer shall combine the motion and the favorable decision in one action.

(ii) *Service motion with decision that may be unfavorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(6) *Appeal to AAU from Service decision made as a result of a motion.* A field office decision made as a result of a motion may be applied to the AAU only if the original decision was appealable to the AAU.

(7) *Other applicable provisions.* The provisions of § 103.3(a)(2)(x) of this part also apply to decisions on motions. The

provisions of §103.3(b) of this part also apply to requests for oral argument regarding motions considered by the AAU.

(8) *Treating an appeal as a motion.* The official who denied an application or petition may treat the appeal from that decision as a motion for the purpose of granting the motion.

(b) *Motions to reopen or reconsider denials of special agricultural worker and legalization applications.* Upon the filing of an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit), the Director of a Regional Processing Facility or the consular officer at an Overseas Processing Office may *sua sponte* reopen any proceeding under his or her jurisdiction opened under part 210 or 245a of this chapter and may reconsider any decision rendered in such proceeding. The new decision must be served on the appellant within 45 days of receipt of any brief and/or new evidence, or upon expiration of the time allowed for the submission of a brief. The Associate Commissioner, Examinations, or the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that Unit under part 210 or 245a of this chapter and reconsider any decision rendered in such proceeding. Motions to reopen a proceeding or reconsider a decision under part 210 or 245a of this chapter shall not be considered.

(c) *Motions to reopen or reconsider decisions on replenishment agricultural worker petitions.* (1) The director of a regional processing facility may *sua sponte* reopen any proceeding under part 210a of this title which is within his or her jurisdiction and may render a new decision. This decision may reverse a prior favorable decision when it is determined that there was fraud during the registration or petition processes and the petitioner was not entitled to the status granted. The petitioner must be given an opportunity to offer evidence in support of the petition and in opposition to the grounds for reopening the petition before a new decision is rendered.

(2) The Associate Commissioner, Examinations or the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by

that unit under part 210a of this title and reconsider any decision rendered in such proceeding.

(3) Motions to reopen a proceeding or reconsider a decision under part 210a of this title shall not be considered.

[27 FR 7562, Aug. 1, 1962, as amended at 30 FR 12772, Oct. 7, 1965; 32 FR 271, Jan. 11, 1967; 52 FR 16193, May 1, 1987; 54 FR 29881, July 17, 1989; 55 FR 20770, 20775, May 21, 1990; 55 FR 25931, June 25, 1990; 56 FR 41782, Aug. 23, 1991; 59 FR 1463, Jan. 11, 1994; 61 FR 18909, Apr. 29, 1996; 62 FR 10336, Mar. 6, 1997]

§103.5a Service of notification, decisions, and other papers by the Service.

This section states authorized means of service by the Service on parties and on attorneys and other interested persons of notices, decisions, and other papers (except warrants and subpoenas) in administrative proceedings before Service officers as provided in this chapter.

(a) *Definitions*—(1) *Routine service.* Routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address.

(2) *Personal service.* Personal service, which shall be performed by a Government employee, consists of any of the following, without priority or preference:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person, including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

(b) *Effect of service by mail.* Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing.

(c) *When personal service required*—(1) *Generally.* In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by

a Service officer shall be accomplished by personal service, except as provided in section 239 of the Act.

(2) *Persons confined, minors, and incompetents*—(i) *Persons confined*. If a person is confined in a penal or mental institution or hospital and is competent to understand the nature of the proceedings initiated against him, service shall be made both upon him and upon the person in charge of the institution or the hospital. If the confined person is not competent to understand, service shall be made only on the person in charge of the institution or hospital in which he is confined, such service being deemed service on the confined person.

(ii) *Incompetents and minors*. In case of mental incompetency, whether or not confined in an institution, and in the case of a minor under 14 years of age, service shall be made upon the person with whom the incompetent or the minor resides; whenever possible, service shall also be made on the near relative, guardian, committee, or friend.

(d) *When personal service not required*. Service of other types of papers in proceedings described in paragraph (c) of this section, and service of any type of papers in any other proceedings, may be accomplished either by routine service or by personal service.

[37 FR 11470, June 8, 1972, as amended at 39 FR 23247, June 27, 1974; 62 FR 10336, Mar. 6, 1997]

§ 103.5b Application for further action on an approved application or petition.

(a) *General*. An application for further action on an approved application or petition must be filed on Form I-824 by the applicant or petitioner who filed the original application or petition. It must be filed with the fee required in § 103.7 and the initial evidence required on the application form. Form I-824 may accompany the original application or petition, or may be filed after the approval of the original application or petition.

(b) *Requested actions*. A person whose application was approved may, during its validity period, apply for a duplicate approval notice or any other action specifically provided for on the form. A petitioner whose petition was

approved may, during the validity of the petition, request that the Service:

(1) Issue a duplicate approval notice;

(2) Notify another consulate of the approved petition;

(3) Notify a consulate of the person's adjustment of status for the purpose of visa issuance to dependents; or

(4) Take any other action specifically provided for on the form.

(c) *Processing*. The application shall be approved if the Service determines the applicant has fully demonstrated eligibility for the requested action. There is no appeal from the denial of an application filed on Form I-824.

[59 FR 1463, Jan. 11, 1994]

§ 103.6 Surety bonds.

(a) *Posting of surety bonds*—(1) *Extension agreements; consent of surety; collateral security*. All surety bonds posted in immigration cases shall be executed on Form I-352, Immigration Bond, a copy of which, and any rider attached thereto, shall be furnished the obligor. A district director is authorized to approve a bond, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I-312, Designation of Attorney in Fact. All other matters relating to bonds, including a power of attorney not executed on Form I-312 and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, shall be forwarded to the regional director for approval.

(2) *Bond riders*—(i) *General*. Bond riders shall be prepared on Form I-351, Bond Riders, and attached to Form I-352. If a condition to be included in a bond is not on Form I-351, a rider containing the condition shall be executed.

(ii) [Reserved]

(b) *Acceptable sureties*. Either a company holding a certificate from the Secretary of the Treasury under 6 U.S.C. 6-13 as an acceptable surety on Federal bonds, or a surety who deposits cash or U.S. bonds or notes of the class described in 6 U.S.C. 15 and Treasury Department regulations issued pursuant thereto and which are not redeemable within 1 year from the date they

are offered for deposit is an acceptable surety.

(c) *Cancellation*—(1) *Public charge bonds*. A public charge bond posted for an immigrant shall be cancelled when the alien dies, departs permanently from the United States or is naturalized, provided the immigrant did not become a public charge prior to death, departure, or naturalization. The district director may cancel a public charge bond at any time if he/she finds that the immigrant is not likely to become a public charge. A bond may also be cancelled in order to allow substitution of another bond. A public charge bond shall be cancelled by the district director upon review following the fifth anniversary of the admission of the immigrant, provided that the alien has filed Form I-356, Request for Cancellation of Public Charge Bond, and the district director finds that the immigrant did not become a public charge prior to the fifth anniversary. If Form I-356 is not filed, the bond shall remain in effect until the form is filed and the district director reviews the evidence supporting the form and renders a decision to breach or cancel the bond.

(2) *Maintenance of status and departure bonds*. When the status of a non-immigrant who has violated the conditions of his admission has been adjusted as a result of administrative or legislative action to that of a permanent resident retroactively to a date prior to the violation, any outstanding maintenance of status and departure bond shall be canceled. If an application for adjustment of status is made by a nonimmigrant while he is in lawful temporary status, the bond shall be canceled if his status is adjusted to that of a lawful permanent resident or if he voluntarily departs within any period granted to him. As used in this paragraph, the term *lawful temporary status* means that there must not have been a violation of any of the conditions of the alien's nonimmigrant classification by acceptance of unauthorized employment or otherwise during the time he has been accorded such classification, and that from the date of admission to the date of departure or adjustment of status he must have had uninterrupted Service approval of his presence in the United States in the

form of regular extensions of stay or dates set by which departure is to occur, or a combination of both. An alien admitted as a nonimmigrant shall not be regarded as having violated his nonimmigrant status by engaging in employment subsequent to his proper filing of an application for adjustment of status under section 245 of the Act and part 245 of this chapter. A maintenance of status and departure bond posted at the request of an American consular officer abroad in behalf of an alien who did not travel to the United States shall be canceled upon receipt of notice from an American consular officer that the alien is outside the United States and the non-immigrant visa issued pursuant to the posting of the bond has been canceled or has expired.

(3) *Substantial performance*. Substantial performance of all conditions imposed by the terms of a bond shall release the obligor from liability.

(d) *Bond schedules*—(1) *Blanket bonds for departure of visitors and transits*. The amount of bond required for various numbers of nonimmigrant visitors or transits admitted under bond on Forms I-352 shall be in accordance with the following schedule:

Aliens

1 to 4—\$500 each.
5 to 9—\$2,500 total bond.
10 to 24—\$3,500 total bond.
25 to 49—\$5,000 total bond.
50 to 74—\$6,000 total bond.
75 to 99—\$7,000 total bond.
100 to 124—\$8,000 total bond.
125 to 149—\$9,000 total bond.
150 to 199—\$10,000 total bond.
200 or more—\$10,000 plus \$50 for each alien over 200.

(2) *Blanket bonds for importation of workers classified as nonimmigrants under section 101(a)(15)(H)*. The following schedule shall be employed by district directors when requiring employers or their agents or representatives to post bond as a condition to importing alien laborers into the United States from the West Indies, the British Virgin Islands, or from Canada:

Less than 500 workers—\$15 each
500 to 1,000 workers—\$10 each
1,000 or more workers—\$5 each

A bond shall not be posted for less than \$1,000 or for more than \$12,000 irrespective of the number of workers involved. Failure to comply with conditions of the bond will result in the employer's liability in the amount of \$200 as liquidated damages for each alien involved.

(e) *Breach of bond.* A bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released or discharged by a Service officer. The district director having custody of the file containing the immigration bond executed on Form I-352 shall determine whether the bond shall be declared breached or cancelled, and shall notify the obligor on Form I-323 or Form I-391 of the decision, and, if declared breached, of the reasons therefor, and of the right to appeal in accordance with the provisions of this part.

[31 FR 11713, Sept. 7, 1966, as amended at 32 FR 9622, July 4, 1967; 33 FR 5255, Apr. 2, 1968; 33 FR 10504, July 24, 1968; 34 FR 1008, Jan. 23, 1969; 34 FR 14760, Sept. 25, 1969; 39 FR 12334, Apr. 5, 1974; 40 FR 42852, Sept. 17, 1975; 48 FR 51144, Nov. 7, 1983; 49 FR 24011, June 11, 1984; 60 FR 21974, May 4, 1995; 62 FR 10336, Mar. 6, 1997]

§ 103.7 Fees.

(a) *Remittances.* (1) Fees prescribed within the framework of 31 U.S.C. 483a shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or regulation. Except for fees remitted directly to the Board pursuant to the provisions of § 3.8(a) of this chapter, any fee relating to any Executive Office for Immigration Review proceeding shall be paid to, and accepted by, any Service office authorized to accept fees. Payment of any fee under this section does not constitute filing of the document with the Board or with the Immigration Court. The Service shall return to the payer, at the time of payment, a receipt for any fee paid. The Service shall also return to the payer any documents, submitted with the fee, relating to any Immigration Judge proceeding. A charge of \$30.00 will be imposed if a check in pay-

ment of a fee is not honored by the bank on which it is drawn. Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. Fees in the form of postage stamps shall not be accepted. Remittances to the Service shall be made payable to the "Immigration and Naturalization Service," except that in case of applicants residing in the Virgin Islands of the United States, the remittances shall be made payable to the "Commissioner of Finance of the Virgin Islands" and, in the case of applicants residing in Guam, the remittances shall be made payable to the "Treasurer, Guam." If application to the Service is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the Immigration and Naturalization Service in United States currency. Remittances to the Board shall be made payable to the "United States Department of Justice."

(2) A charge of \$30.00 will be imposed if a check in payment of a fee, fine, penalty, and/or any other matter is not honored by the bank or financial institution on which it is drawn. A receipt issued by a Service officer for any such remittance shall not be binding upon the Service if the remittance is found uncollectible. Furthermore, credit for meeting legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business days after notification by the Service of the dishonored check.

(b) *Amounts of fees*—(1) The following fees and charges are prescribed:

For certification of true copies, each—\$2.00

For attestation under seal—\$2.00

DCL System Costs Fee. For use of a Dedicated Commuter Lane (DCL) located at specific Ports of Entry of the United States by an approved participant in a designated vehicle—\$80.00, with the maximum amount of \$160.00 payable by a family (husband, wife, and minor children under 18 years-of-age). Payable following approval of the application but before use of the DCL by each participant. This fee is non-refundable, but may be waived by the district director. If a participant wishes to enroll more than one vehicle for use in the

- PORTPASS system, he or she will be assessed with an additional fee of—\$42 for each additional vehicle enrolled.
- Form EOIR-40. For filing application for suspension of deportation under section 244 of the Act—\$100.00. (A single fee of \$100.00 will be charged whenever suspension of deportation applications are filed by two or more aliens in the same proceeding).
- Form EOIR-42. For filing application for cancellation of removal under section 240A of the Act—\$100.00. (A single fee of \$100.00 will be charged whenever cancellation of removal applications are filed by two or more aliens in the same proceedings).
- Form I-17. For filing an application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—\$140.
- Form I-68. For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act—\$16.00. The maximum amount payable by a family (husband, wife, unmarried children under 21 years of age, parents of either husband or wife) shall be \$32.00.
- Form I-90. For filing an application for Alien Registration Receipt Card (Form I-551) in lieu of an obsolete card or in lieu of one lost, mutilated or destroyed, or in a changed name—\$75.
- Form I-94. For issuance of Arrival/Departure Record at a land border Port-of-Entry—\$6.00.
- Form I-94W. For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border Port-of-Entry under section 217 of the Act—\$6.00.
- Form I-102. For filing an application (Form I-102) for Arrival-Departure Record (Form I-94) or Crewman's Landing (Form I-95), in lieu of one lost, mutilated, or destroyed—\$65.
- Form I-129. For filing a petition for a non-immigrant worker—If a petition with unnamed beneficiaries, a fee of \$75 per petition. If a petition with named beneficiaries, a base fee of \$75 plus: —\$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission; —\$80 per worker if requesting a change of status; or —\$50 per worker if requesting an extension of stay. If filing an extension of stay or change of status for one worker, dependents may be included for a fee of \$10 per dependent.
- Form I-129F. For filing petition to classify nonimmigrant as fiancée or fiancé under section 214(d) of the Act—\$75.00.
- Form I-129H. For filing a petition to classify nonimmigrant as temporary worker or trainee under section 214(c) of the Act—\$80.00.
- Form I-129L. Petition to employ intracompany transferee—\$80.00.
- Form I-130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—\$80.
- Form I-131. For filing an application for issuance of reentry permit—\$70.
- Form I-140. For filing a petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act—\$75.
- Form I-175. For issuance of Nonresident Alien Canadian Border Crossing Card (Form I-185)—\$30.00.
- Form I-190. For issuance of replacement Nonresident Alien Mexican Border Crossing Card (Form I-586) in lieu of one lost, stolen, or mutilated—\$26.00.
- Form I-191. For filing application for discretionary relief under section 212(c) of the Act—\$90.00.
- Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except, in an emergency case, or where the approval of the application is in the interest of the United States Government—\$90.
- Form I-193. For filing an application for waiver of passport and/or visa—\$95.
- Form I-212. For filing an application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—\$95.
- Form I-246. For filing application for stay of deportation under part 243 of this chapter—\$155.00
- Form I-290A. For filing appeal from any decision under the immigration laws in any type of proceedings (except a bond decision) over which the Board of Immigration Appeals has appellate jurisdiction in accordance with §3.1(b) of this chapter. (The fee of \$110 will be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision)—\$110.00
- Form I-290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. (The fee of \$50 will be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision)—\$110.00
- Form I-360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—\$80, except there is no fee for a petition seeking classification as an Amerasian.
- Form I-485. For filing application for permanent resident status or creation of a record of lawful permanent residence—\$130 for an applicant 14 years of age or older;

- \$100 for an applicant under the age of 14 years.
- Supplement A to Form I-485. Supplement to Form I-485 for persons seeking to adjust status under the provisions of section 245(i) of the Act—\$1000, except that payment of this additional sum is not required when the applicant is an unmarried child who is less than 17 years of age, or when the applicant is the spouse or the unmarried child less than 21 years of age of a legalized alien and is qualified for and has applied for voluntary departure under the family unity program.
- Form I-485A. For filing application by Cuban refugee for permanent residence—\$120.00 for an applicant 14 years of age or older; \$95.00 for an applicant under the age of 14 years.
- Form I-506. For filing application for change of nonimmigrant classification under section 248 of the Act—\$70.00.
- Form I-526. For filing a petition for an alien entrepreneur—\$155.
- Form I-538. For filing application by a non-immigrant student (F-1) for an extension of stay, a school transfer or permission to accept or continue employment or practical training—\$70.00.
- Form I-539. For filing an application to extend or change nonimmigrant status—\$75 plus \$10 per coapplicant.
- Form I-570. For filing application for issuance or extension of refugee travel document—\$45.00.
- Form I-600. For filing a petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$155.
- Form I-600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$155.
- Form I-601. For filing an application for waiver of ground of excludability under section 212 (h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those sub-sections.)—\$95.
- Form I-612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—\$95.
- Form I-687. For filing application for status as a temporary resident under section 245A (a) of the Immigration and Nationality Act as amended—to be remitted in the form of a cashier's check, certified bank check or money order. A fee of one hundred and eighty-five dollars (\$185.00) for each application or fifty dollars (\$50.00) for each application for a minor child (under 18 years of age) is required at the time of filing with the Immigration and Naturalization Service. The maximum amount payable by a family (husband, wife, and any minor children) shall be four hundred and twenty dollars (\$420.00).
- Form I-690. For filing application for waiver for ground of excludability under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under §210A. A fee of thirty-five dollars (\$35.00) is to be remitted in the form of a cashier's check, certified bank check or money order.
- Form I-694. For appealing the denial of application under sections 210 or 245A of the Act, or a petition under §210A. A fee of fifty dollars (\$50.00) is to be remitted in the form of a cashier's check, certified bank check or money order.
- Form I-695. For filing application for replacement of temporary resident card (Form I-688) to be remitted in the form of a cashier's check, certified bank check or a money order—\$15.00.
- Form I-698. For filing application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act, as amended—to be remitted in the form of a cashier's check, certified bank check or money order. For applicants filing within thirty-one months from the date of adjustment to temporary resident status, a fee of eighty dollars (\$80.00) for each application is required at the time of filing with the Immigration and Naturalization Service. The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be two hundred and forty dollars—(\$240.00). For applicants filing after thirty-one months from the date of approval of temporary resident status, who file their applications on or after July 9, 1991, a fee of \$120.00 (a maximum of \$360.00 per family) is required. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.
- Form I-700. For filing application for status as a temporary resident under section 210(a)(1) of the Act, as amended—to be remitted in the form of a cashier's check, certified bank check or a money order. A fee of one hundred and eighty-five dollars (\$185.00) for each application or fifty dollars (\$50.00) for each application for a minor child (under 18 years of age) is required at the time of filing with the Immigration and Naturalization Service. The maximum amount payable by a family (husband, wife, and any minor children) shall be four hundred and twenty dollars (\$420.00).

- Form I-751. For filing a petition to remove the conditions on residence which is based on marriage—\$80.
- Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—\$70, unless otherwise noted on the instructions attached to the application form.
- Form I-805. For filing a petition for status as a temporary resident under §210A. A fee of one hundred and seventy-five dollars (\$175.00) for each petition, is to be remitted in the form of a cashier's check, certified bank check or money order at the time of filing with the Immigration and Naturalization Service.
- Form I-807. For filing a request for consideration as a replenishment agricultural worker (RAW) during an announced period of registration under 8 CFR 210a.3. A fee of ten dollars (\$10.00) is to be remitted in the form of a cashier's check, certified bank check or money order at the time of mailing to the Immigration and Naturalization Service.
- Form I-817. For filing an application for voluntary departure under the Family Unity Program—\$80. The maximum amount payable by the members of a family filing their applications concurrently shall be \$225.
- Form I-821. For filing an initial application for Temporary Protected Status under section 244A of the Act, as amended by the Immigration Act of 1990, to be remitted in the form of a cashier's check, certified bank check, or money order. The exact amount of the fee, not to exceed fifty dollars (\$50.00), will be determined at the time a foreign state is designated for Temporary Protected Status.
- Form I-823. For application to a PORTPASS program under section 286 of the Act—\$25.00, with the maximum amount of \$50.00 payable by a family (husband, wife, and minor children under 18 years of age). The application fee may be waived by the district director. If fingerprints are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks prior to accepting the application fee. Both the application fee (if not waived) and the fingerprint fee must be paid to the Immigration and Naturalization Service before the application will be processed. The fingerprint fee may not be waived. For replacement of PORTPASS documentation during the participation period—\$25.00.
- Form I-824. For filing for action on an approved application or petition—\$30.00.
- Form I-829. For filing petition by entrepreneur to remove conditions—\$90.00.
- Form I-850. For filing an application for certification as a designated fingerprinting service—\$370 plus \$23 for each fingerprint check for initial certification; \$200 for renewal of certification; and \$23 for each fingerprint check for adding or replacing employees. No fee will be charged to police stations, military police or campus police agencies registering pursuant to §103.2(e)(9).
- Form N-300. For filing an application for declaration of intention—\$75.
- Form N-336. For filing request for hearing on a decision in naturalization proceedings under section 336 of the Act—\$110.00
- Form N-400. For filing an application for naturalization—\$95. For filing an application for naturalization under section 405 of the Immigration Act of 1990, if the applicant will be interviewed in the Philippines—\$120.
- Form N-410. For filing motion for amendment of petition for naturalization when motion is for the convenience of the petitioner—\$50.00
- Form N-455. For filing application for transfer of petition for naturalization under section 335(i) of the Act, except when transfer is of a petition for naturalization filed under the Act of October 24, 1968, Pub. L. 90-633—\$90.00.
- Form N-470. For filing an application for section 316(b) or 317 of the Act benefits—\$115.
- Form N-565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(b) or (d) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act—\$65.
- Form N-600. For filing an application for certificate of citizenship under section 309(c) or section 341 of the Act—\$100.
- Form N-643. For filing an application for a certificate of citizenship on behalf of an adopted child—\$80.
- Form N-644. For filing an application for posthumous citizenship—\$80.
- Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals has appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable, for any motion to reopen or reconsider made concurrently with any initial application for relief under the immigration laws for which no fee is chargeable, or for a motion to reopen a deportation or removal order entered in absentia if that motion is filed pursuant to 8 U.S.C. 1252b(c)(3)(B) as it existed prior to April 1, 1997, or section 240b(5)(C)(ii) of the Immigration and Nationality Act, as amended. (The fee of \$110

shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the fee of \$110 will be charged when the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)—\$110.

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable or for any motion to reopen or reconsider made concurrently with any initial application for relief under the immigration laws for which no fee is chargeable. (The fee of \$110 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the fee of \$110 will be charged when the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)—\$110.

Request. For special statistical tabulations a charge will be made to cover the cost of the work involved—Cost

Request. For set of monthly, semiannual, or annual tables entitled "Passenger Travel Reports via Sea and Air"¹—\$7.00

Request. For classification of a citizen of Canada to be engaged in business activities at a professional level pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement)—\$50.00

Request. For requesting authorization for parole of an alien into the United States—\$65.00.

(2) Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the regulations of the Department of Justice, 28 CFR 16.10.

¹Available from Immigration & Naturalization Service for years 1975 and before. Later editions are available from the United States Department of Transportation, contact: United States Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(c) *Waiver of fees.* (1) Except as otherwise provided in this paragraph and in §3.3(b) of this chapter, any of the fees prescribed in paragraph (b) of this section relating to applications, petitions, appeals, motions, or requests may be waived by the Immigration Judge in any case under his/her jurisdiction in which the alien or other party affected is able to substantiate that he or she is unable to pay the prescribed fee. The person seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the applicant, petition, appeal, motion, or request, and stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay. The officer of the Service having jurisdiction to render a decision on the application, petition, appeal, motion, or request may, in his discretion, grant the waiver of fee. Fees for "Passenger Travel Reports via Sea and Air" and for special statistical tabulations may not be waived. The payment of the additional sum prescribed by section 245(i) of the Act when applying for adjustment of status under section 245 of the Act may not be waived.

(2) Fees under the Freedom of Information Act, as amended, may be waived or reduced where the Service determines such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(3) When the prescribed fee is for services to be performed by the clerk of court under section 344(a) of the Act, the affidavit for waiver of the fee shall be filed with the district director or officer in charge of the Service having administrative jurisdiction over the place in which the court is located at least 7 days prior to the date the fee is required to be paid. If the waiver is granted, there shall be delivered to the clerk of court by a Service representative on or before the date the fee is required to be paid, a notice prepared on Service letterhead and signed by the officer granting the waiver, that the fee has been waived pursuant to this paragraph.

(4) Fees for applications for Temporary Protected Status may be waived pursuant to 8 CFR 240.20.

(d) *Authority to certify records.* Whenever authorized under 5 U.S.C. 552 or any other law to furnish information from records to persons entitled thereto, the following officials, or their designees authorized in writing as specified below, have authority to make certification, as follows:

(1) The Associate Commissioner, Information Systems, the Assistant Commissioner, Records Systems Division, the Director, Records Management Branch, or their designee, authorized in writing to make certification in their absence—copies of files, documents, and records in the custody of the Central Office.

(2) A regional commissioner, or district director, or the designee of either, authorized in writing to make certification in his absence—copies of files, documents, and records in the custody of his office.

(3) The Immigration and Naturalization Service Program Coordinator, El Paso Intelligence Center, or the designee, authorized in writing to make certification in event of the Program Coordinator's absence—copies of files, documents, and records of the Immigration and Naturalization Service in the custody of that office.

(4) The Assistant Commissioner, Records Systems Division, the Director, Records Management Branch, or the Chief, Records Operations Section, Central Office, or their designee, authorized in writing to make certification in their absence—the non-existence of an official Service records.

[38 FR 35296, Dec. 27, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 103.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 103.8 Definitions pertaining to availability of information under the Freedom of Information Act.

Sections 103.8, 103.9, and 103.10 of this part comprise the Service regulations under the Freedom of Information Act, 5 U.S.C. 552. These regulations supplement those of the Department of Justice, 28 CFR part 16, subpart A. As used

in this part the following definitions shall apply:

(a) The term *access* means providing a copy of the record requested or affording the opportunity for an in-person review of the original record or a copy thereof. The determination to permit an in-person review is discretionary and will only be made when specifically requested. Whenever providing in-person access will unreasonably disrupt the normal operations of an office, the requester may be sent a copy of the requested records that are nonexempt in lieu of the in-person review.

(b) The term *decision* means a final written determination in a proceeding under the Act accompanied by a statement of reasons. Orders made by check marks, stamps, or brief endorsements which are not supported by a reasoned explanation, or those incorporating preprinted language on Service forms are not *decisions*.

(c) The term *records* includes records of proceedings, documents, reports, and other papers maintained by the Service.

(d) The term *record of proceeding* is the official history of any hearing, examination, or proceeding before the Service, and in addition to the application, petition or other initiating document, includes the transcript of hearing or interview, exhibits, and any other evidence relied upon in the adjudication; papers filed in connection with the proceedings, including motions and briefs; the Service officer's determination; notice of appeal or certification; the Board or other appellate determination; motions to reconsider or reopen; and documents submitted in support of appeals, certifications, or motions.

[32 FR 9623, July 4, 1967, as amended at 40 FR 7236, Feb. 19, 1975; 52 FR 2942, Jan. 29, 1987; 58 FR 31148, June 1, 1993]

§ 103.9 Availability of decisions and interpretive material under the Freedom of Information Act.

(a) *Precedent decisions.* There may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, bound

volumes of designated precedent decisions entitled "Administrative Decisions Under Immigration and Nationality Laws of the United States," each containing a cumulative index. Prior to publication in volume from current precedent decisions, known as interim decisions, are obtainable from the Superintendent of Documents on a single copy or yearly subscription basis. Bound volumes and current precedent decisions may be read at principal Service offices.

(b) *Unpublished decisions.* Each district director in the United States will maintain copies of unpublished Service and Board decisions relating to proceedings in which the initial decision was made in his district. Each regional commissioner will maintain copies of unpublished decisions made by him. The Central Office will maintain copies on a national basis of unpublished Service decisions.

(c) *Deletion of identifying details.* To the extent that information in decisions is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the deciding officer shall provide for deletion of identifying details, as appropriate, from copies of decisions made available to the public.

(d) *Statements of policy, interpretations, manuals, instructions to staff.* Statements of policy, interpretations, and those manuals and instructions to staff (or portions thereof), affecting the public, will be made available at district offices in the United States and at the Central Office with an accompanying index of any material which is issued on or after July 4, 1967.

(e) *Public reading rooms.* The Central Office and each district office in the United States will provide a reading room or reading area where the material described in this section will be made available to the public. Additional material will be made available in the public reading rooms, including the immigration and nationality laws, title 8 of the United States Code Annotated, title 8 of the Code of Federal Regulations—Chapter I, a complete set of the forms listed in parts 299 and 499 of this chapter, and the Department of State Foreign Affairs Manual, Volume 9—Visas. Fees will not be charged for providing access to any of these mate-

rials, but fees in accordance with § 103.7(b) will be charged for furnishing copies.

[32 FR 9623, July 4, 1967, as amended at 36 FR 20151, Oct. 16, 1971; 40 FR 7237, Feb. 19, 1975; 48 FR 49652, Oct. 27, 1983]

§ 103.10 Requests for records under the Freedom of Information Act.

(a) *Place and manner of requesting records—(1) Place.* Records should be requested from the office that maintains the records sought, if known, or from the Headquarters of the Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Records are maintained in the Headquarters, regional offices, service centers, district offices and the following suboffices: Agana, Guam; Albany, NY; Charlotte, NC; Cincinnati, OH; Hartford, CT; Indianapolis, IN; Las Vegas, NV; Louisville, KY; Memphis, TN; Milwaukee, WI; Norfolk, VA; Pittsburgh, PA; Providence, RI; Reno, NV; St. Louis, MO; Salt Lake City, UT; Spokane, WA; and St. Albans, VT. In certain cases, a district director may designate another Service office as a file control office. For locations of the Service's regional offices, service centers, district offices, and sub-offices see 8 CFR 100.4.

(2) *Manner of requesting records.* All Freedom of Information Act requests must be in writing. Requests may be submitted in person or by mail. If a request is made by mail, both the envelope and its contents must be clearly marked: "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." Any request for information not marked and addressed as specified will be so marked by Service personnel as soon as it is properly identified and shall be forwarded immediately to the appropriate office designated to control Freedom of Information Act requests. A request will not be deemed to have been received for purposes of the time period under 5 U.S.C. 552(a)(6) until the request has been received by the appropriate office, or would have been received with the exercise of due diligence by Service personnel. Service Form G-639, Freedom of Information/Privacy Act Request, may be used for rapid identification as a Freedom of Information matter and

to ensure expeditious handling; however, a request may be submitted in any written form. Each request made under this section pertaining to the availability of a record must describe the record with sufficient specificity with respect to names, dates, subject matter and location to permit it to be identified and located. A request for all records falling within a reasonably specific category shall be regarded as reasonably described if the description enables the records to be identified by any process not unreasonably burdensome. If it is determined that the request does not reasonably describe the records sought, the response rejecting the request on that ground shall specify the reason why the request failed to meet requirements and shall extend to the requester an opportunity to confer with Service personnel to reformulate the request. Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number if applicable.

(b) *Authority to grant and deny requests*—(1) *Grant or deny*. The Associate Commissioner for Information Resources Management, regional administrators, district directors, service center directors, and heads of sub-offices specified in paragraph (a)(1) of this section, or their designees, may grant or deny requests under exemptions in 5 U.S.C. 552 (b) and (c).

(2) [Reserved]

(3) *Authority to state that a record cannot be located or does not exist*. The head of any office specified in paragraph (a)(1) of this section has authority to notify a requester that a record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of.

(c) *Prompt response*—(1) *Response within 10 days*. Within 10 days (excluding Saturdays, Sundays, and legal holidays) of the receipt of a request by the Service (or in the case of an improperly addressed request, of its receipt by the appropriate office as specified in paragraph (a) of this section), the authorized Service official shall either comply with or deny the request unless an extension of time is requested as re-

quired under 28 CFR 16.1(d). A request improperly addressed will not be deemed to have been received for purposes of 5 U.S.C 552 (a)(6) until it has been or would have been received by the appropriate office with the exercise of due diligence by Service personnel.

(2) *Treatment of delay as a denial*. If no substantive reply is made at the end of the 10 working day period, and any properly invoked extension period, requesters may deem their request to be denied and exercise their right to appeal in accordance with 28 CFR 16.8 and paragraph (d)(3) of this section.

(d) *Disposition of requests*—(1) *Form of grant*. When a requested record is available, the responsible office shall notify the requester when and where the record will be available. The notification shall also advise the requester of any applicable fees under 28 CFR 16.10. The Service shall have fulfilled its duty to grant access whenever it provides a copy of the record, or, at its discretion, makes the original record or a copy available for in-person review in response to an express request for such review. In-person review is discretionary and shall not be granted when doing so would unreasonably disrupt the normal operations of a Service office.

(2) *Form of denial*. A reply denying a written request for a record in whole or in part shall be in writing, signed by one of the officials specified in paragraph (b)(1) of this section. The reply shall include a reference to the specific exemption under the Freedom of Information Act authorizing withholding of the records. The notice of denial shall contain a brief explanation of how the exemption applies to the record withheld and, if the deciding official considers it appropriate, a statement of why the exempt record is being withheld. The notice of denial shall include a statement of the right of appeal to the Attorney General under 28 CFR 16.8, and that judicial review will thereafter be available in the district in which the requester resides or has a principal place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Right of appeal*. When a request for records has been denied in whole or in part, the requester may, within 30 days

of its receipt, appeal the denial to the Assistant Attorney General, Office of Legal Policy, (Attention: Office of Information and Privacy), Department of Justice, Washington, DC 20530. Both the envelope and letter must be clearly marked: “FREEDOM OF INFORMATION APPEAL” or “INFORMATION APPEAL.”

(e) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to \$25.00 by filing a Freedom of Information Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgment must confirm the requester’s obligation to pay.

[40 FR 7237, Feb. 19, 1975, as amended at 41 FR 34938, Aug. 18, 1976; 42 FR 15408, March 22, 1977; 43 FR 22332, May 25, 1978; 44 FR 23514, Apr. 20, 1979; 48 FR 49652, Oct. 27, 1983; 48 FR 51430, Nov. 9, 1983; 52 FR 2942, Jan. 29, 1987; 58 FR 31148, 31149, June 1, 1993]

§ 103.11 Business information.

Business information provided to the Service by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with 28 CFR 16.7.

[58 FR 31149, June 1, 1993]

§ 103.12 Definition of the term “lawfully present” aliens for purposes of applying for Title II Social Security benefits under Public Law 104–193.

(a) *Definition of the term an “alien who is lawfully present in the United States.”* For the purposes of section 401(b)(2) of Pub. L. 104–193 only, an “alien who is lawfully present in the United States” means:

(1) A qualified alien as defined in section 431(b) of Pub. L. 104–193;

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Act for less than 1 year, except:

(i) Aliens paroled for deferred inspection or pending exclusion proceedings under 236(a) of the Act; and

(ii) Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(a)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the Act;

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244A of the Act;

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603, as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649, as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22);

(vii) Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the Act and applicants for withholding of deportation under section 243(h) of the Act who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

(b) *Non-issuance of an Order to Show Cause and non-enforcement of deportation and exclusion orders.* An alien may not be deemed to be lawfully present solely on the basis of the Service’s decision not to, or failure to, issue an Order to Show Cause or solely on the basis of the Service’s decision not to, or failure to, enforce an outstanding order of deportation or exclusion.

[61 FR 47041, Sept. 6, 1996]

§ 103.20 Purpose and scope.

(a) Sections 103.20 through 103.36 comprise the regulations of the Service implementing the Privacy Act of 1974, Public Law 93–597. The regulations

apply to all records contained in systems of records maintained by the Service which are identifiable by individual name or identifier and which are retrieved by individual name or identifier, except those personnel records governed by regulations of the Office of Personnel Management. The regulations set forth the procedures by which individuals may seek access to records pertaining to themselves and request correction of those records. The regulations also set forth the requirements applicable to Service employees maintaining, collecting, using or disseminating such records.

(b) The Associate Commissioner, Information Systems, shall ensure that the provisions of §§ 103.20 through 103.36 of this title and 28 CFR 16.40 through 16.58, and any revisions, are brought to the attention of and made available to:

(1) Each employee at the time of issuance of the regulations and at the time of any amendments; and

(2) Each new employee at the time of employment.

(c) The Associate Commissioner, Information Systems, shall be responsible for ensuring that employees of the Service are trained in the obligations imposed by the Privacy Act of 1974 (5 U.S.C 522a) and by these regulations.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49652, Oct. 27, 1983; 58 FR 31149, June 1, 1993]

§ 103.21 Access by individuals to records maintained about them.

(a) *Access to available records.* An individual who seeks access to records about himself or herself in a system of records must submit a written request in person or by mail to the Freedom of Information/Privacy Act Officer at the location where the records are maintained. If the location is unknown, the request may be submitted to the nearest Service office or to the Headquarters FOIA/PA Officer, 425 I Street, NW., Washington, DC 20536. The outside of the envelope should be marked "Privacy Act Request." A Form G-639, Freedom of Information/Privacy Act Request may be used for convenience and to facilitate identification of the record requested. However, a request may be made in any written form and

should clearly identify the record sought by the name and any other personal identifiers for the individual (such as the alien file number or Social Security Account Number), date and place of birth, and type of file in which the record is believed to be located.

(b) *Verification of identity.* The following standards are applicable to any individual who requests records concerning himself, unless other provisions for identity verification are specified in the published notice pertaining to the particular system of records.

(1) An individual seeking access to records about himself in person shall establish his identity by the presentation of a single document bearing a photograph (such as a passport, alien registration receipt card or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license, or credit card).

(2) Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number if applicable. Form DOJ 361, Certification of Identity, may be obtained from any Service office and used to obtain the notarized signature needed to verify identity.

(c) *Verification of guardianship.* The parent or guardian of a child or of a person judicially determined to be incompetent and seeking to act on behalf of such child or incompetent, shall, in addition to establishing his own identity, establish the identity of the child or other person he represents as required in paragraph (b) of this section, and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) *Accompanying persons.* An individual seeking to review records pertaining to himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign the required form

indicating that the Service is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) *Specification of records sought.* Requests for access to records, either in person or by mail, shall describe the nature of the records sought, the approximate dates covered by the record, the system in which it is thought to be included as described in the "Notice of Systems of Records" published in the FEDERAL REGISTER, and the identity of the individual or office of the Service having custody of the system of records. In addition, the published "Notice of Systems of Records" for individual systems may include further requirements of specification, where necessary, to retrieve the individual record from the system.

(f) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to \$25.00 by filing a Privacy Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgement must confirm the requester's obligation to pay.

[40 FR 44481, Sept. 26, 1975; 40 FR 46092, Oct. 6, 1975, as amended at 42 FR 33025, June 29, 1977; 48 FR 49653, Oct. 27, 1983; 58 FR 31149, June 1, 1993]

§ 103.22 Records exempt in whole or in part.

(a) When individuals request records about themselves which are exempt from access pursuant to the Privacy Act exemptions in 5 U.S.C. 552a(d)(5), (j) or (k), their requests shall also be considered under the Freedom of Information Act, 5 U.S.C. 552, and, unless the records are exempt under both Acts, the request shall be granted. If exemptions under both Acts permit the denial of the records sought and there is good reason to invoke the exemptions, the individual shall be provided a denial of his/her request in writing with the governing exemptions cited. If the disclosure of the existence of a criminal law enforcement proceeding record could itself interfere with a pending law enforcement proceeding of which there is reason to believe the subject is unaware, the Service may, during only such time as the circumstance continues, treat the records

as not subject to the requirements of 5 U.S.C. 552.

(b) Individual requests for access to records which have been exempted from access pursuant to 5 U.S.C. 552a(k) shall be processed as follows:

(1) A request for information classified by the Service under *Executive Order 12356 on National Security Information* requires the Service to review the information to determine whether it continues to warrant classification under the criteria of the Executive Order. Information which no longer warrants classification shall be declassified and made available to the individual, if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified; that it has been reviewed and continues to warrant classification; and that it has been exempted from access under 5 U.S.C. 552a(k)(1). Information which has been exempted under 5 U.S.C. 552a(j) and which is also classified, shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (a) of this section.

(2) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) shall be responded to in the manner provided in paragraph (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under Federal law. In that event, the individual shall be advised of the existence of the record and shall be provided the information except to the extent it would identify a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(3) Information compiled as part of an employee background investigation which has been exempted pursuant to 5

U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that it identifies a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(4) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process but shall be made available if no such compromise possibility exists.

(5) The Service records which are exempted and the reasons for the exemptions are enumerated in 28 CFR 16.99.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31149, June, 1, 1993]

§ 103.23 Special access procedures.

(a) *Records of other agencies.* When information sought from a system of records of the Service includes information from other agencies or components of the Department of Justice that has been classified under Executive Order 12356, the request and the requested documents shall be referred to the appropriate agency or other component for classification review and processing. Only with the consent of the responsible agency or component, may the requester be informed of the referral as specified in section 3.4(f) of E.O. 12356.

(b) *Medical records.* When an individual requests medical records concerning himself, which are not otherwise exempt from disclosure, the responsible official as specified in § 103.10(a) of this part shall, if deemed necessary, advise the individual that records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the responsible official as specified in § 103.10(a) of this part will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity. The determination of which records should be made

available directly to the individual and which records should not be disclosed because of possible harm to the individual shall be made by the physician.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31149, 31150, June, 1, 1993]

§ 103.24 Requests for accounting of record disclosure.

At the time of his request for access or correction or at any other time, an individual may request an accounting of disclosures made of his record outside the Department of Justice. Requests for accounting shall be directed to the appropriate responsible official as specified in § 103.10(a) of this part listed in the "Notice of Systems of Records". Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975, shall be made available to the individual except that an accounting need not be made available if it relates to: (a) A disclosure with respect to which no accounting need be kept (see § 103.30(c) of this part); (b) A disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a(b)(7); (c) An accounting which has been exempted from disclosure pursuant to 5 U.S.C. 552a (j) or (k).

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.25 Notice of access decisions; time limits.

(a) *Responsibility for notice.* The responsible official as specified in § 103.10(a) of this part has responsibility for determining whether access to records is available under the Privacy Act and for notifying the individual of that determination in accordance with these regulations. If access is denied because of an exemption, the responsible person shall notify the individual that he may appeal that determination to the Deputy Attorney General within thirty working days of the receipt of the determination.

(b) *Time limits for access determinations.* The time limits provided by 28

§ 103.26

CFR 16.1(d) shall be applicable to requests for access to information pursuant to the Privacy Act of 1974.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.26 Fees for copies of records.

The fees charged by the Service under the Privacy Act shall be those specified in 28 CFR 16.47. Remittances shall be made in accordance with § 103.7(a) of this part.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.27 Appeals from denials of access.

An individual who has been denied access by the Service to the records concerning him may appeal that decision in the manner prescribed in 28 CFR 16.48.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.28 Requests for correction of records.

(a) *How made.* A request for amendment or correction is made by the individual concerned, either in person or by mail, by addressing the written request to the FOIA/PA Officer at the location where the record is maintained. The requester's identity must be established as provided in § 103.21 of this part. The request must indicate the particular record involved, the nature of the correction sought, and the justification. A request made by mail should be addressed to the FOIA/PA Officer at the location where the system of records is maintained and the request and envelope must be clearly marked "Privacy Correction Request." Where the requester cannot determine the precise location of the system of records or believes that the same record appears in more than one system, the request may be addressed to the Headquarters FOIA/PA Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. That officer will assist the requester in identifying the location of the records.

(b) *Initial determination.* Within 10 working days of the receipt of the request, the appropriate Service official

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shall advise the requester that the request has been received. If a correction is to be made, the requester shall be advised of the right to obtain a copy of the corrected record upon payment of the standard fee, established in 28 CFR 16.47. If a correction or amendment is refused, in whole or in part, the requester shall be given the reasons and advised of the right to appeal to the Assistant Attorney General under 28 CFR 16.50.

(c) *Appeals.* A refusal, in whole or in part, to amend or correct a record may be appealed as provided in 28 CFR 16.50.

(d) *Appeal determinations.* 28 CFR 16.50 provides for appeal determinations.

(e) *Statements of disagreement.* Statements of disagreement may be furnished by the individual in the manner prescribed in 28 CFR 16.50.

(f) *Notices of correction or disagreement.* When a record has been corrected, the responsible official as specified in § 103.10(a) of this part shall, within thirty working days thereof, advise all prior recipients of the record whose identity can be determined pursuant to the accounting required by the Privacy Act or any other accounting previously made, of the correction. Any dissemination of a record after the filing of a statement of disagreement shall be accompanied by a copy of that statement. Any statement of the Service giving reasons for refusing to correct shall be included in the file.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 48 FR 51431, Nov. 9, 1983; 58 FR 31150, June 1, 1993]

§ 103.29 Records not subject to correction.

The following records are not subject to correction or amendment by individuals:

(a) Transcripts or written statements made under oath;

(b) Transcripts of Grand Jury Proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings;

(c) Pre-sentence reports comprising the property of the courts but maintained in Service files; and

(d) Records duly exempted from correction by notice published in the FEDERAL REGISTER.

§ 103.30 Accounting for disclosures.

(a) An accounting of each disclosure of information for which accounting is required (see § 103.24 of this part) shall be attached to the relating record. A copy of Form G-658, Record of Information Disclosure (Privacy Act), or other disclosure document shall be used for this accounting. The responsible official as specified in § 103.10(a) of this part shall advise the requester, promptly upon request as described in § 103.24, of the persons or agencies outside the Department of Justice to which records concerning the requester have been disclosed.

(b) Accounting records, at a minimum, shall include the identification of the particular record disclosed, the name and address of the person or agency to which disclosed, and the date of the disclosure. Accounting records shall be maintained for at least 5 years, or until the record is destroyed or transferred to the Archives, whichever is later.

(c) Accounting is not required to be kept for disclosures made within the Department of Justice or disclosures made pursuant to the Freedom of Information Act.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31150, June 1, 1993]

§ 103.31 Notices of subpoenas and emergency disclosures.

(a) *Subpoenas.* When records concerning an individual are subpoenaed by a Grand Jury, court, or a quasijudicial agency, the official served with the subpoena shall be responsible for assuring that notice of its issuance is provided to the individual. Notice shall be provided within 10 days of the service of the subpoena or, in the case of a Grand Jury subpoena, within 10 days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: The date the subpoena is returnable, the court in which it is returnable, the name and number of the case or proceeding, and the nature of the information sought. Notice of the issuance of subpoenas is not required if the system of records has been exempted from the notice requirement pursu-

ant to 5 U.S.C. 552a(j), by a Notice of Exemption published in the FEDERAL REGISTER.

(b) *Emergency disclosures.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the individual shall be notified at his last known address within 10 working days of the disclosure. Notification shall include the following information: The nature of the information disclosed, the person or agency to whom it was disclosed, the date of the disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure.

§ 103.32 Information forms.

(a) *Review of forms.* The Service shall be responsible for the review of forms it uses to collect information from and about individuals.

(b) *Scope of review.* The Service Forms Control Unit shall review each form to assure that it complies with the requirements of 28 CFR 16.52.

§ 103.33 Contracting record systems.

Any contract by the Service for the operation of a record system shall be in compliance with 28 CFR 16.55.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.34 Security of records systems.

The security of records systems shall be in accordance with 28 CFR 16.54.

§ 103.35 Use and collection of Social Security numbers.

The use and collection of Social Security numbers shall be in accordance with 28 CFR 16.56.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.36 Employee standards of conduct with regard to privacy.

Service employee standards of conduct with regard to privacy shall be in compliance with 28 CFR 16.57.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]