

not agree that the new decision disposes of the matter, the record of proceeding shall be immediately forwarded to the Board.

[61 FR 18907, Apr. 29, 1996]

§ 3.6 Stay of execution of decision.

(a) Except as provided under § 242.2(d) of this chapter and paragraph (b) of this section, the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

(b) The provisions of paragraph (a) of this section shall not apply to an order of an Immigration Judge under § 3.23 or § 242.22 of this chapter denying a motion to reopen or reconsider or to stay deportation, except where such order expressly grants a stay or where the motion was filed pursuant to the provisions of § 3.23(b)(4)(iii). The Board may, in its discretion, stay deportation while an appeal is pending from any such order if no stay has been granted by the Immigration Judge or a Service officer.

[61 FR 18907, Apr. 29, 1996; 61 FR 21065, May 9, 1996]

§ 3.7 Notice of certification.

Whenever, in accordance with the provisions of § 3.1(c), a case is certified to the Board, the alien or other party affected shall be given notice of certification. An Immigration Judge or Service officer may certify a case only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is rendered that the case will be certified, the office of the Service or the Immigration Court having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice

shall inform the parties that the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of the Service or the Immigration Court having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in § 3.3(c). The case shall be certified and forwarded to the Board by the office of the Service or Immigration Court having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date the Board declined to accept the case.

[61 FR 18907, Apr. 29, 1996]

§ 3.8 Fees.

(a) *Appeal from decision of an Immigration Judge or motion within the jurisdiction of the Board.* Except as provided in paragraph (c) of this section or when filed by an officer of the Service, a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR-26) filed pursuant to § 3.3(a), or a motion related to Immigration Judge proceedings that is within the jurisdiction of the Board and is filed directly with the Board pursuant to § 3.2(g), shall be accompanied by the fee specified in applicable provisions of § 103.7(b)(1) of this chapter. Fees shall be paid by check or money order payable to the "United States Department of Justice." Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. A remittance shall not satisfy the fee requirements of this section if the remittance is found uncollectible.

(b) *Appeal from decision of a Service officer or motion within the jurisdiction of*

the Board. Except as provided in paragraph (c) of this section, a Notice of Appeal to the Board of Immigration Appeals of Decision of District Director (Form EOIR-29), or a motion related to such a case filed under this part by any person other than an officer of the Service, filed directly with the Service shall be accompanied by the appropriate fee specified, and remitted in accordance with the provisions of §103.7 of this chapter.

(c) *Waiver of fees.* The Board may, in its discretion, authorize the prosecution of any appeal or any motion over which the Board has jurisdiction without payment of the required fee. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or motion, he or she shall file with the Notice of Appeal (Form EOIR-26 or Form EOIR-29) or motion, an Appeal Fee Waiver Request, (Form EOIR-26A). If the request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed.

[61 FR 18907, Apr. 29, 1996]

Subpart B—Immigration Court

SOURCE: 62 FR 10331, Mar. 6, 1997, unless otherwise noted.

§ 3.9 Chief Immigration Judge.

The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:

- (a) Establishment of operational policies; and
- (b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

§ 3.10 Immigration Judges.

Immigration Judges, as defined in 8 CFR part 1, shall exercise the powers and duties in this chapter regarding the conduct of exclusion, deportation,

removal, and asylum proceedings and such other proceedings which the Attorney General may assign them to conduct.

§ 3.11 Administrative control Immigration Courts.

An administrative control Immigration Court is one that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area. All documents and correspondence pertaining to a Record of Proceeding shall be filed with the Immigration Court having administrative control over that Record of Proceeding and shall not be filed with any other Immigration Court. A list of the administrative control Immigration Courts with their assigned geographical areas will be made available to the public at any Immigration Court.

Subpart C—Immigration Court— Rules of Procedure

SOURCE: 52 FR 2936, Jan. 29, 1987, unless otherwise noted.

§ 3.12 Scope of rules.

These rules are promulgated to assist in the expeditious, fair, and proper resolution of matters coming before Immigration Judges. Except where specifically stated, the rules in this subpart apply to matters before Immigration Judges, including, but not limited to, deportation, exclusion, removal, bond, rescission, departure control, asylum proceedings, and disciplinary proceedings under §292.3 of this chapter. The sole procedures for review of credible fear determinations by Immigration Judges are provided for in §3.42.

[57 FR 11571, Apr. 6, 1992, as amended at 62 FR 10331, Mar. 6, 1997]

§ 3.13 Definitions.

As used in this subpart:

Administrative control means custodial responsibility for the Record of Proceeding as specified in §3.11.

Charging document means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order