

shall file the answer with the Office of the Chief Immigration Judge. Failure of the attorney/representative to answer the written charges in a timely manner shall constitute an admission that the facts and legal statements in the written charges are correct. The attorney/representative shall also serve a copy of the answer on the General Counsel. Proof of service on the opposing party must be included with all documents filed.

(iv) *Hearing.* The Chief Immigration Judge shall designate an Immigration Judge to hold a hearing and render a decision in the matter. The designated Immigration Judge shall notify the attorney/representative and the Service as to the time and the place of the hearing. At the hearing, the attorney/representative may be represented by an attorney at no expense to the Government and the Service shall be represented by an attorney. At the hearing, the attorney/representative shall have a reasonable opportunity to examine and object to the evidence presented by the Service, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Service. The Service shall bear the burden of proving the grounds for disciplinary action by clear, convincing, and unequivocal evidence. The record of the hearing shall conform to the requirements of 8 CFR 242.15.

(v) *Decision.* The Immigration Judge shall consider the record and render a decision in the case, including that the evidence presented does not sufficiently prove grounds for disciplinary action or that disciplinary action is justified. If the Immigration Judge finds that the evidence presented does sufficiently prove grounds for disciplinary action, the appropriate sanction shall be ordered. If the Immigration Judge orders a suspension, the Immigration Judge shall set an amount of time for the suspension.

(vi) *Appeal.* Either party may appeal the decision of the Immigration Judge to the Board. The appeal must be filed within ten (10) days from the date of the decision, if oral, or thirteen (13) days from the date of mailing of the decision, if written. The appeal must be filed with the Immigration Court holding the hearing. If an appeal is not filed

in a timely manner, or if the appeal is waived, the decision of the Immigration Judge is final. If a case is appealed in a timely manner, the Board shall consider the record and render a decision. Receipt of briefs and the hearing of oral argument shall be at the discretion of the Board. The Board's decision shall be final except when a case is certified to the Attorney General pursuant to 8 CFR 3.1(h).

(2) *Service attorneys.* Complaints regarding the frivolous behavior of Service attorneys within the scope of § 292.3(a)(15) shall be directed to, and investigated by, the Office of Professional Responsibility of the Department of Justice. If disciplinary action is warranted, it shall be administered pursuant to the attorney disciplinary procedures of the Department of Justice.

[23 FR 2672, Apr. 23, 1958, as amended at 23 FR 9124, Nov. 26, 1958; 34 FR 12213, July 24, 1969; 36 FR 11903, June 23, 1971; 52 FR 24981, July 2, 1987; 57 FR 11574, Apr. 6, 1992; 60 FR 34090, June 30, 1995]

§ 292.4 Appearances.

(a) An appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. During Immigration Judge or Board proceedings, withdrawal and/or substitution of counsel is permitted only in accordance with §§ 3.16 and 3.36 respectively. During proceedings before the Service, substitution may be permitted upon the written withdrawal of the attorney or representative of record, or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature shall constitute a representation that under the provisions of this chapter he or she is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.

(b) *Availability of records.* During the time a case is pending, and except as otherwise provided in § 103.2(b) of this

§ 292.5

chapter, a party to a proceeding or his attorney or representative shall be permitted to examine the record of proceeding in a Service office. He may, in conformity with § 103.10 of this chapter, obtain copies of Service records or information therefrom and copies of documents or transcripts of evidence furnished by him. Upon request, he may in addition, be loaned a copy of the testimony and exhibits contained in the record of proceeding upon giving his receipt for such copies and pledging that it will be surrendered upon final disposition of the case or upon demand. If extra copies of exhibits do not exist, they shall not be furnished free on loan; however, they shall be made available for copying or purchase of copies as provided in § 103.10 of this chapter.

[23 FR 2673, Apr. 23, 1958, as amended at 32 FR 9633, July 4, 1967; 52 FR 2941, Jan. 29, 1987; 59 FR 1466, Jan. 11, 1994]

§ 292.5 Service upon and action by attorney or representative of record.

(a) *Representative capacity.* Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

(b) *Right to representation.* Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs. Provided, that nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a

8 CFR Ch. I (1–1–99 Edition)

criminal investigation and has been taken into custody.

[37 FR 11471, June 8, 1972 and 45 FR 81733, Dec. 12, 1980; 46 FR 2025, Jan. 8, 1981; 58 FR 49911, Sept. 24, 1993]

§ 292.6 Interpretation.

Interpretations of this part will be made by the Board of Immigration Appeals, subject to the provisions of part 3 of this chapter.

[32 FR 9633, July 4, 1967]

PART 293—DEPOSIT OF AND INTEREST ON CASH RECEIVED TO SECURE IMMIGRATION BONDS

Sec.

293.1 Computation of interest.

293.2 Interest rate.

293.3 Simple interest table.

293.4 Payment of interest.

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103. Interprets and applies sec. 293, 84 Stat. 413.

SOURCE: 36 FR 13677, July 23, 1971, unless otherwise noted.

§ 293.1 Computation of interest.

Interest shall be computed from the date of deposit occurring after April 27, 1966, or from the date cash deposited in the postal savings system ceased to accrue interest, to and including the date of withdrawal or date of breach of the immigration bond, whichever occurs first. For purposes of this section, the date of deposit shall be the date shown on the Receipt of Immigration Officer for the cash received as security on an immigration bond. The date of withdrawal shall be the date upon which the interest is certified to the Treasury Department for payment. The date of breach shall be the date as of which the immigration bond was concluded to have been breached as shown on Form I-323, Notice—Immigration Bond Breached. In counting the number of days for which interest shall be computed, the day on which the cash was deposited, or the day which cash deposited in the postal savings system ceased to accrue interest, shall not be