

to §§246.1 and 246.2, or if an immigration judge becomes unavailable to complete his or her duties within a reasonable time, or if at any time the respondent consents to a substitution, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she is familiar with the record in the case.

§246.5 Hearing.

(a) *Service counsel.* The Government shall be represented at the hearing by a Service counsel who shall have authority to present evidence, and to interrogate, examine, and cross-examine the respondent and other witnesses. The Service counsel is authorized to appeal from a decision of the immigration judge pursuant to §246.7 and to move for reopening or reconsideration pursuant to §3.23 of this chapter.

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

(c) *Pleading by respondent.* The immigration judge shall require the respondent to state for the record whether he or she admits or denies the allegations contained in the notice, or any of them, and whether he or she concedes that his or her adjustment of status should be rescinded. If the respondent admits all of the allegations and concedes that the adjustment of status in

his or her case should be rescinded under the allegations set forth in the notice, and the immigration judge is satisfied that no issues of law or fact remain, he or she may determine that rescission as alleged has been established by the respondent's admissions. The allegations contained in the notice shall be taken as admitted when the respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the hearing.

§246.6 Decision and order.

The decision of the immigration judge may be oral or written. The formal enumeration of findings is not required. The order shall direct either that the proceeding be terminated or that the adjustment of status be rescinded. Service of the decision and finality of the order of the immigration judge shall be in accordance with, and as stated in §§240.13 (a) and (b) and 240.14 of this chapter.

§246.7 Appeals.

Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge under this part to the Board of Immigration Appeals. An appeal shall be taken within 30 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be specifically identified in the Notice of Appeal (Form EOIR 26); failure to do so may constitute a ground for dismissal of the appeal by the Board.

§246.8 [Reserved]

§246.9 Surrender of Form I-551.

A respondent whose status as a permanent resident has been rescinded in accordance with section 246 of the Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken, the Form I-551 issued to him or her at the time of the grant of permanent resident status.

PART 247—ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS

Sec.
247.1 Scope of part.

§ 247.1

- 247.11 Notice.
- 247.12 Disposition of case.
- 247.13 Disposition of Form I-508.
- 247.14 Surrender of documents.

AUTHORITY: 8 U.S.C. 1101, 1103, and 1257.

§ 247.1 Scope of part.

The provisions of this part apply to an alien who is lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15)(A) or (15)(G) of section 101(a) of the Act, and to his immediate family; also, an alien who was lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15)(E) of section 101(a) of the Act, and to his spouse and children.

[22 FR 9801, Dec. 6, 1957]

§ 247.11 Notice.

If it appears to a district director that an alien residing in his district, who was lawfully admitted for permanent residence, has an occupational status described in section 247 of the Act, he shall cause a notice on Form I-509 to be served on such alien by personal service informing him that it is proposed to adjust his status, unless the alien requests that he be permitted to retain his status as a resident alien and executes and files with such district director a Form I-508 (Waiver of Rights, Privileges, Exemptions and Immunities) and, if a French national receiving salary from the French Republic, Form I-508F (election as to tax exemption under the Convention between the United States and the French Republic), within 10 days after service of the notice, or the alien, within such 10-day period, files with the district director a written answer under oath setting forth reasons why his status should not be adjusted. The notice shall also advise the person that he may, within such period and upon his request have an opportunity to appear in person, in support or in lieu of his written answer, before an immigration officer designated for that purpose. The person shall further be advised that he may

8 CFR Ch. I (1-1-01 Edition)

have the assistance of counsel without expense to the Government of the United States in the preparation of his answer or in connection with such personal appearance, and may examine the evidence upon which it is proposed to base such adjustment.

[22 FR 9801, Dec. 6, 1957, as amended at 37 FR 11471, June 8, 1972]

§ 247.12 Disposition of case.

(a) *Allegations admitted or no answer filed.* If the waiver Form I-508 and, if applicable, Form I-508F is not filed by the alien within the time prescribed, and the answer admits the allegations in the notice, or no answer is filed, the district director shall place a notation on the notice describing the alien's adjusted nonimmigrant status and shall cause a set of Forms I-94 to be prepared evidencing the nonimmigrant classification to which the alien has been adjusted and no appeal shall lie from such decision. Form I-94A shall be delivered to the alien and shall constitute notice to him of such adjustment. The alien's nonimmigrant status shall be for such time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status granted and shall be subject to such other terms and conditions, including the exaction of bond as the district director may deem appropriate.

(b) *Answer filed; personal appearance.* Upon receipt of an answer asserting a defense to the allegations made in the notice without requesting a personal appearance, or if a personal appearance is requested or directed, the case shall be assigned to an immigration officer. Pertinent evidence, including testimony of witnesses, shall be incorporated in the record. The immigration officer shall prepare a report summarizing the evidence and containing his findings and recommendation. The record, including the report and recommendation of the immigration officer, shall be forwarded to the district director who caused the notice to be served. The district director shall note on the report of the immigration officer whether he approves or disapproves the recommendation of the immigration officer. If the decision of the district director is that the matter be terminated, the alien shall be informed of

such decision. If the decision of the district director is that the status of the alien should be adjusted to that of a nonimmigrant, his decision shall provide that unless the alien, within 10 days of receipt of notification of such decision, requests permission to retain his status as an immigrant and files with the district director Form I-508 and, if applicable, Form I-508F, the alien's immigrant status be adjusted to that of a nonimmigrant. The alien shall be informed of such decision and of the reasons therefor, and of his right to appeal in accordance with the provisions of part 103 of this chapter. If the alien does not request that he be permitted to retain status and file the Form I-508 and, if applicable, Form I-508F within the period provided therefor, the district director, without further notice to the alien, shall cause a set of Forms I-94 to be prepared evidencing the nonimmigrant classification to which the alien has been adjusted. Form I-94A shall be delivered to the alien. The alien's nonimmigrant status shall be for such time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status created and shall be subject to such other terms and conditions, including the exaction of bond, as the district director may deem appropriate.

[22 FR 9801, Dec. 6, 1957, as amended at 23 FR 9124, Nov. 26, 1958; 35 FR 13829, Sept. 1, 1970]

§ 247.13 Disposition of Form I-508.

If Form I-508 is executed and filed, the duplicate copy thereof (noted to show the election made on Form I-508F, if applicable) shall be filed in the office of the Assistant Commissioner, Administrative Division, and may be made available for inspection by any interested officer or agency of the United States.

[35 FR 13829, Sept. 1, 1970]

§ 247.14 Surrender of documents.

An alien whose status as a permanent resident has been adjusted to that of a nonimmigrant in accordance with section 247 of the Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the of-

fice in which the action under this part was taken any documents (such as Form I-151 or I-551 or any other form of Permanent Resident Card, immigrant identification card, resident alien's border-crossing identification card (Form I-187), certificate of registry, or certificate of lawful entry) in his possession evidencing his former permanent resident status.

[22 FR 9802, Dec. 6, 1957, as amended at 45 FR 32657, May 19, 1980; 63 FR 70316, Dec. 21, 1998]

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

Sec.

248.1 Eligibility.

248.2 Ineligible classes.

248.3 Application.

AUTHORITY: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

§ 248.1 Eligibility.

(a) *General.* Except for those classes enumerated in § 248.2, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status pursuant to section 247 of the Act, who is continuing to maintain his nonimmigrant status, may apply to have his nonimmigrant classification changed to any nonimmigrant classification other than that of a fiancée or fiancé under section 101(a)(15)(K) of the Act, or as an alien in transit under section 101(a)(15)(C) of the Act.

(b) *Timely filing and maintenance of status.* A change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service, and without separate application, where it is demonstrated at the time of filing that:

(1) The failure to file a timely application was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;

(2) The alien has not otherwise violated his or her nonimmigrant status;