

shall be made on Form I-485. The application date of the I-485 shall be the date of acceptance by the Service as properly filed. If the application date is other than the fee receipt date it must be noted and initialed by a Service officer. The date of application for adjustment of status is the closing date for computing the residence and physical presence requirement. The applicant must have complied with all requirements as of the date of application.

(b) *Documentation.* All documents must be submitted in accordance with §103.2(b) of this chapter. The application shall be accompanied by documentary evidence establishing the aggregate residence and physical presence required. Documentary evidence may include official employment verification, records of official or personnel transactions or recordings of events occurring during the period of claimed residence and physical presence. Affidavits of credible witnesses may also be accepted. Persons unable to furnish evidence in their own names may furnish evidence in the names of parents or other persons with whom they have been living, if affidavits of the parents or other persons are submitted attesting to the claimed residence and physical presence. The claimed family relationship to the principle G-4 international organization officer or employee must be substantiated by the submission of verifiable civil documents.

(c) *Residence and physical presence requirements.* All applicants applying under sections 101(a)(27)(I) (i), (ii), and (iii) of the INA must have resided and been physically present in the United States for a designated period of time.

For purposes of this section only, an absence from the United States to conduct official business on behalf of the employing organization, or approved customary leave shall not be subtracted from the aggregated period of required residence or physical presence for the current or former G-4 officer or employee or the accompanying spouse and unmarried sons or daughters of such officer or employee, provided residence in the United States is maintained during such absences, and the duty station of the principle G-4 nonimmigrant continues to be in the

United States. Absence from the United States by the G-4 spouse or unmarried son or daughter without the principle G-4 shall not be subtracted from the aggregate period of residence and physical presence if on customary leave as recognized by the international organization employer. Absence by the unmarried son or daughter while enrolled in a school outside the United States will not be counted toward the physical presence requirement.

(d) *Maintenance of nonimmigrant status.* Section 101(a)(27)(I) (i), and (ii) requires the applicant to accrue the required period of residence and physical presence in the United States while maintaining status as a G-4 or N nonimmigrant. Section 101(a)(27)(I)(iii) requires such time accrued only in G-4 nonimmigrant status.

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 1103—APPEALS, RECORDS, AND FEES

Sec.

1103.3 Denials, appeals, and precedent decisions.

1103.4 Certifications.

1103.7 Fees.

AUTHORITY: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

SOURCE: 40 FR 44481, Sept. 26, 1975, unless otherwise noted. Duplicated from part 103 at 68 FR 9833, Feb. 28, 2003.

EDITORIAL NOTE: Nomenclature changes to part 1103 appear at 68 FR 9846, Feb. 28, 2003, and at 68 FR 10351, Mar. 5, 2003.

§ 1103.3 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 § 1003.1(b) of this chapter. Decisions under the appellate jurisdiction of the Associate Commissioner, Examinations, are listed in § 1103.1(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 §§ 1103.4 of this part and 103.5 of 8 CFR chapter I, *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 1292 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 1292.2(d) of an appeal which is summarily dismissed under this section may constitute frivolous behavior as defined in 8 CFR 1292.3(a)(15). Summary dismissal of an appeal under § 1103.3(a)(1)(v) in no way limits the other grounds and procedures for disciplinary action against attorneys or representatives provided in 8 CFR 1292.2 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 § 1103.7 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 8 CFR chapter I 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 8 CFR chapter I, 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.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. In addition to Attorney General and Board decisions referred to in §1003.1(g) of chapter V, 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; 68 FR 9832, Feb. 28, 2003]

§ 1103.4 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 off-

ficial to whom the case is certified (whether made initially or upon review) is the decision which may be appealed to the Board under § 1003.1(b) of this chapter.

(7) *Other applicable provisions*. The provisions of § 1103.3(a)(2)(x) of this part also apply to decisions on certified cases. The provisions of § 1103.3(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]

§ 1103.7 Fees.

(a) *Remittances*—(1) *In general*. Fees shall be submitted in connection with any formal appeal, motion, or application prescribed in this chapter in the amount prescribed by law or regulation. Payment of any fee under this section does not constitute filing of the appeal, motion, or application with the Board of Immigration Appeals or with the immigration court.

(2) *Board of Immigration Appeals*. The fee for filing an appeal or a motion with the Board of Immigration Appeals shall be paid pursuant to the provisions of 8 CFR 1003.8 when a fee is required.

(3) *All other fees payable in connection with immigration proceedings*. Except as provided in 8 CFR 1003.8, the Executive Office for Immigration Review does not accept the payment of any fee relating to Executive Office for Immigration Review proceedings. Instead, such fees, when required, shall be paid to, and accepted by, an office of the Department of Homeland Security authorized to accept fees, as provided in 8 CFR 103.7(a)(1). The Department of Homeland Security shall return to the payer, at the time of payment, a receipt for any fee paid, and shall also return to the payer any documents, submitted

with the fee, relating to any immigration proceeding. The fee receipt and the application or motion shall then be submitted to the Executive Office for Immigration Review. Remittances to the Department of Homeland Security for applications, motions, or forms filed in connection with immigration proceedings shall be payable subject to the provisions of 8 CFR 103.7(a)(2).

(b) *Amounts of fees—(1) Appeals.* For filing an appeal to the Board of Immigration Appeals, when a fee is required pursuant to 8 CFR 1003.8, as follows:

Form EOIR-26. For filing an appeal from a decision of an immigration judge—\$110.

Form EOIR-29. For filing an appeal from a decision of an officer of the Department of Homeland Security—\$110.

Form EOIR-45. For filing an appeal from a decision of an adjudicating official in a practitioner disciplinary case—\$110.

(2) *Motions.* For filing a motion to reopen or a motion to reconsider, when a fee is required pursuant to 8 CFR 1003.8 or 1003.24—\$110.

(3) *Multiple parties.* When an appeal or motion is filed on behalf of two or more aliens and the aliens are covered by one decision, only one fee is required.

(4) *Applications for Relief—(i) Forms published by the Executive Office for Immigration Review.* Fees for applications for relief shall be paid in accordance with 8 CFR 1003.8(b) and 1003.24(c) as follows:

Form EOIR-40. Application for Suspension of Deportation—\$100.

Form EOIR-42A. Application for Cancellation of Removal for Certain Permanent Residents—\$100.

Form EOIR-42B. Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents—\$100.

(ii) *Forms published by the Department of Homeland Security.* The fees for applications published by the Department of Homeland Security and used in immigration proceedings are governed by 8 CFR 103.7.

(c) *Fee waivers.* For provisions relating to the authority of the Board or the immigration judges to waive any of the fees prescribed in paragraph (b) of this section, see 8 CFR 1003.8 and 1003.24. No waiver may be granted with respect to the fee prescribed for a Department of Homeland Security form or action that is identified as non-waivable in regula-

tions of the Department of Homeland Security.

(d) *Requests for records under the Freedom of Information Act.* Fees for production or disclosure of records under 5 U.S.C. 552 may be waived or reduced in accordance with 28 CFR 16.11.

[69 FR 44907, July 28, 2004]

PART 1204—IMMIGRANT PETITIONS

AUTHORITY: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

§ 1204.1 Single level of appellate review.

The decision of the Board of Immigration Appeals concerning the denial of a relative visa petition under 8 CFR chapter I, part 204 because the petitioner failed to establish eligibility for the bona fide marriage exemption contained in that part will constitute the single level of appellate review established by statute.

[68 FR 9833, Feb. 28, 2003]

PART 1205—REVOCATION OF APPROVAL OF PETITIONS

Sec.

1205.1 Automatic revocation.

1205.2 Revocation on notice.

AUTHORITY: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

SOURCE: Duplicated from part 205 at 68 FR 9833, Feb. 28, 2003.

EDITORIAL NOTE: Nomenclature changes to part 1205 appear at 68 FR 9846, Feb. 28, 2003.

§ 1205.1 Automatic revocation.

(a) *Reasons for automatic revocation.* The approval of a petition or self-petition made under section 204 of the Act and in accordance with part 204 of 8 CFR chapter I is revoked as of the date of approval:

(1) If the Secretary of State shall terminate the registration of the beneficiary pursuant to the provisions of section 203(e) of the Act before October 1, 1991, or section 203(g) of the Act on or after October 1, 1994;

(2) If the filing fee and associated service charge are not paid within 14 days of the notification to the remitter that his or her check or other financial