

§ 1246.6

(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contained in the notice, or any of them, and whether he or she concedes that his or her adjustment of status should be rescinded. If the respondent admits all of the allegations and concedes that the adjustment of status in his or her case should be rescinded under the allegations set forth in the notice, and the immigration judge is satisfied that no issues of law or fact remain, he or she may determine that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.

§ 1246.6 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 The order shall direct either that the proceeding be terminated or that the adjustment of status be rescinded.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 §§ 1240.13 (a) and (b) and 1240.14 of this chapter.

§ 1246.7 Appeals.

Pursuant to 8 CFR part 1003, 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.

§ 1246.8 [Reserved]

§ 1246.9 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A respondent whose status as a permanent resident has been rescinded in accordance with section 246 of the Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdic-

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tion 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 1249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

Sec.

1249.1 Waiver of inadmissibility.

1249.2 Application.

1249.3 Reopening and reconsideration.

AUTHORITY: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

SOURCE: Duplicated from part 249 at 68 FR 9843, Feb. 28, 2003.

EDITORIAL NOTE: Nomenclature changes to part 1249 appear at 68 FR 9846, Feb. 28, 2003.

§ 1249.1 Waiver of inadmissibility.

In conjunction with an application under section 249 of the Act, an otherwise eligible alien who is inadmissible under paragraph (9), (10), or (12) of section 212(a) of the Act or so much of paragraph (23) of section 212(a) of the Act as relates to a single offense of simple possession of 30 grams or less of marihuana may request a waiver of such ground of inadmissibility under section 212(h) of the Act. Any alien within the classes described in subparagraphs (B) through (H) of section 212(a)(28) of the Act may apply for the benefits of section 212(a)(28)(I)(ii) in conjunction with an application under section 249 of the Act.

[47 FR 44238, Oct. 7, 1982]

§ 1249.2 Application.

(a) *Jurisdiction.* An application by an alien, other than an arriving alien, who has been served with a notice to appear or warrant of arrest shall be considered only in proceedings under 8 CFR part 1240. In any other case, an alien who believes he or she meets the eligibility requirements of section 249 of the Act shall apply to the district director having jurisdiction over his or her place of residence. The application shall be made on Form I-485 and shall be accompanied by Form G-325A, which shall be considered part of the application. The application shall also be accompanied by documentary evidence