

## Department of Homeland Security

## § 103.2

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EFFECTIVE DATE NOTE: At 75 FR 79275, Dec. 20, 2010, the authority citation to Part 103 was revised, effective Jan. 19, 2011. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 48 U.S.C. 1806; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*), E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

SOURCE: 40 FR 44481, Sept. 26, 1975, unless otherwise noted.

### § 103.1 Delegations of authority; designation of immigration officers.

(a) *Delegations of authority.* Delegations of authority to perform functions and exercise authorities under the immigration laws may be made by the Secretary of Homeland Security as provided by § 2.1 of this chapter.

(b) *Immigration Officer.* The following employees of the Department of Homeland Security, including senior or supervisory officers of such employees, are designated as immigration officers authorized to exercise the powers and duties of such officer as specified by the Act and this chapter I: Immigration officer, immigration inspector, immigration examiner, adjudications officer, Border Patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention enforcement officer, detention officer, investigator, special agent, investigative assistant, immigration enforcement agent, intelligence officer, intelligence agent, general attorney (except with respect to CBP, only to the extent that the attorney is performing any immigration function), applications adjudicator, contact representative, legalization adjudicator, legalization officer, legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, other officer or employee of the Department of Homeland Security or of the United States as designated by the Secretary of Homeland Security as provided in § 2.1 of this chapter. Any customs officer, as defined in 19 CFR 24.16, is hereby authorized to exercise the powers and duties of an immigration officer as specified by the Act and this chapter.

[68 FR 10923, Mar. 6, 2003, as amended at 68 FR 35275, June 13, 2003; 69 FR 35234, June 24, 2004]

### § 103.2 Applications, petitions, and other documents.

(a) *Filing—(1) General.* Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. Except as exempted by paragraph (e) of this section, forms which

require an applicant, petitioner, sponsor, beneficiary, or other individual to complete Form FD–258, Applicant Card, must also be filed with the service fee for fingerprinting, as required by § 103.7(b)(1), for each individual who requires fingerprinting. Filing fees and fingerprinting service fees are non-refundable and, except as otherwise provided in this chapter, must be paid when the application is filed.

(2) *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter. A beneficiary of a petition is not a recognized party in such a proceeding. An application or petition presented in person by someone who is not the applicant or petitioner, or his or her representative as defined in this paragraph, shall be treated as if received through the mail, and the person advised that the applicant or petitioner, and his or her representative, will be notified of the decision. Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted.

(4) *Oath.* Any required oath may be administered by an immigration officer or person generally authorized to administer oaths, including persons so

authorized by Article 136 of the Uniform Code of Military Justice.

(5) *Translation of name.* If a document has been executed in an anglicized version of a name, the native form of the name may also be required.

(6) *Where to file.* An application or petition must be filed as indicated in the instructions on the respective form.

(7) *Receipt date—(i) General.* An application or petition received in a USCIS office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date. An application or petition taken to a local USCIS office for the completion of biometric information prior to filing at a service center shall be considered received when physically received at a service center.

(ii) *Non-payment.* If a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter shall be notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension. If the application or petition is pending and these charges are not paid within 14 days, the application or petition shall be rejected as improperly filed. If the application or petition was already approved, and these charges are not paid, the approval shall be automatically revoked because it was improperly filed. If the application or petition was already denied, revoked, or abandoned, that decision will not be affected by the non-payment of the filing or fingerprinting fee. New fees will be required with any new application or petition. Any fee and service charges collected as the result of collection activities or legal action on the prior application or petition shall be used to

cover the cost of the previous rejection, revocation, or other action.

(b) *Evidence and processing*—(1) *Demonstrating eligibility at time of filing.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

(2) *Submitting secondary evidence and affidavits*—(i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally

does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

(iii) *Evidence provided with a self-petition filed by a spouse or child of abusive citizen or resident.* The USCIS will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS.

(3) *Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

(4) *Submitting copies of documents.* Application and petition forms, and documents issued to support an application or petition (such as labor certifications, Form DS 2019, medical examinations, affidavits, formal consultations, letters of current employment and other statements) must be submitted in the original unless previously filed with USCIS. Official documents issued by the Department or by the former Immigration and Naturalization Service need not be submitted in the original unless required by USCIS. Unless otherwise required by the applicable regulation or form's instructions, a legible photocopy of any other supporting document may be submitted. Applicants and petitioners need only submit those original documents necessary to support the benefit sought. However, original documents

submitted when not required will remain a part of the record.

(5) *Request for an original document.* USCIS may, at any time, request submission of an original document for review. The request will set a deadline for submission of the original document. Failure to submit the requested original document by the deadline may result in denial or revocation of the underlying application or benefit. An original document submitted in response to such a request, when no longer required by USCIS, will be returned to the petitioner or applicant upon completion of the adjudication. If USCIS does not return an original document within a reasonable time after completion of the adjudication, the petitioner or applicant may request return of the original document by submitting a properly completed and signed Form G-884 to the adjudicating USCIS office.

(6) *Withdrawal.* An applicant or petitioner may withdraw an application or petition at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

(7) *Testimony.* The USCIS may require the taking of testimony, and may direct any necessary investigation. When a statement is taken from and signed by a person, he or she shall, upon request, be given a copy without fee. Any allegations made subsequent to filing an application or petition which are in addition to, or in substitution for, those originally made, shall be filed in the same manner as the original application, petition, or document, and acknowledged under oath thereon.

(8) *Request for Evidence; Notice of Intent to Deny—(i) Evidence of eligibility or ineligibility.* If the evidence submitted with the application or petition establishes eligibility, USCIS will approve the application or petition, except that in any case in which the applicable statute or regulation makes the approval of a petition or application a matter entrusted to USCIS discretion, USCIS will approve the petition or application only if the evidence of record establishes both eligibility and that

the petitioner or applicant warrants a favorable exercise of discretion. If the record evidence establishes ineligibility, the application or petition will be denied on that basis.

(ii) *Initial evidence.* If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

(iii) *Other evidence.* If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

(iv) *Process.* A request for evidence or notice of intent to deny will be in writing and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and sufficient information to respond. The request for evidence or notice of intent to deny will indicate the deadline for response, but in no case shall the maximum response period provided in a request for evidence exceed twelve weeks, nor shall the maximum response time provided in a notice of intent to deny exceed thirty days. Additional time to respond to a request for evidence or notice of intent to deny may not be granted.

(9) *Request for appearance.* An applicant, a petitioner, a sponsor, a beneficiary, or other individual residing in the United States at the time of filing an application or petition may be required to appear for fingerprinting or for an interview. A petitioner shall also be notified when a fingerprinting notice or an interview notice is mailed or

issued to a beneficiary, sponsor, or other individual. The applicant, petitioner, sponsor, beneficiary, or other individual may appear as requested by USCIS, or prior to the dates and times for fingerprinting or of the date and time of interview:

(i) The individual to be fingerprinted or interviewed may, for good cause, request that the fingerprinting or interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the application or petition.

(10) *Effect of a request for initial or additional evidence for fingerprinting or interview rescheduling*—(i) *Effect on processing*. The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If an application or petition is missing required initial evidence, or an applicant, petitioner, sponsor, beneficiary, or other individual who requires fingerprinting requests that the fingerprinting appointment or interview be rescheduled, any time period imposed on USCIS processing will start over from the date of receipt of the required initial evidence or request for fingerprint or interview rescheduling. If USCIS requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on USCIS for processing will be suspended as of the date of request. It will resume at the same point where it stopped when USCIS receives the requested evidence or response, or a request for a decision based on the evidence.

(ii) *Effect on interim benefits*. Interim benefits will not be granted based on an application or petition held in suspense for the submission of requested initial evidence, except that the applicant or beneficiary will normally be allowed to remain while an application or petition to extend or obtain status while in the United States is pending. The USCIS may choose to pursue other actions to seek removal of a person notwithstanding the pending application. Employment authorization previously accorded based on the same status and employment as that requested in the current application or petition may continue uninterrupted

as provided in 8 CFR 274a.12(b)(20) during the suspense period.

(11) *Responding to a request for evidence or notice of intent to deny*. In response to a request for evidence or a notice of intent to deny, and within the period afforded for a response, the applicant or petitioner may: submit a complete response containing all requested information at any time within the period afforded; submit a partial response and ask for a decision based on the record; or withdraw the application or petition. All requested materials must be submitted together at one time, along with the original USCIS request for evidence or notice of intent to deny. Submission of only some of the requested evidence will be considered a request for a decision on the record.

(12) *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing*. An application or petition shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the application or petition was filed. An application or petition shall be denied where any application or petition upon which it was based was filed subsequently.

(13) *Effect of failure to respond to a request for evidence or a notice of intent to deny or to appear for interview or biometrics capture*—(i) *Failure to submit evidence or respond to a notice of intent to deny*. If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the processing and approval of a case, such as photographs, are not submitted by the required date, the application may be summarily denied as abandoned.

(ii) *Failure to appear for biometrics capture, interview or other required in-person process*. Except as provided in 8 CFR 335.6, if USCIS requires an individual to appear for biometrics capture, an interview, or other required in-person process but the person does not appear, the application or petition shall be considered abandoned and denied unless by

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the appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear.

(14) *Effect of request for decision.* Where an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. Failure to appear for required fingerprinting or for a required interview, or to give required testimony, shall result in the denial of the related application or petition.

(15) *Effect of withdrawal or denial due to abandonment.* The USCIS acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.

(16) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation,

rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.

(iii) *Discretionary determination.* Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the USCIS Director or his or her designee has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

(iv) *Classified information.* An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the USCIS Director or his or her designee should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The USCIS Director's or his or her designee's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(17) *Verifying claimed permanent resident status—(i) Department records.* The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States or was formerly a permanent resident of the United States will be verified from

official Department records. These records include alien and other files, arrival manifests, arrival records, Department index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Permanent Resident Cards (Form I-551), Alien Registration Receipt Cards (Form I-151), other registration receipt forms (Forms AR-3, AR-3a, and AR-103, provided that such forms were issued or endorsed to show admission for permanent residence), passports, and reentry permits. An official record of a Department index card must bear a designated immigrant visa symbol and must have been prepared by an authorized official of the Department in the course of processing immigrant admissions or adjustments to permanent resident status. Other cards, certificates, declarations, permits, and passports must have been issued or endorsed to show admission for permanent residence. Except as otherwise provided in 8 CFR part 101, and in the absence of countervailing evidence, such official records will be regarded as establishing lawful admission for permanent residence.

(ii) *Assisting self-petitioners who are spousal-abuse victims.* If a self-petitioner filing a petition under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, USCIS will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

(18) *Withholding adjudication.* A district director may authorize withholding adjudication of a visa petition or other application if the district director determines that an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable,

in connection with the application or petition, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the application or petition would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, the district director shall review the matter and determine whether adjudication of the petition or application should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of the district director's determination, the investigation has not been completed, the matter shall be reviewed again by the district director and, if he/she concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, the matter shall be referred to the regional commissioner, who may authorize that adjudication be held in abeyance for another six months. Thereafter, if the Associate Commissioner, Examinations, with the concurrence of the Associate Commissioner, Enforcement, determines it is necessary to continue to withhold adjudication pending completion of the investigation, he/she shall review that determination every six months.

(19) *Notification.* An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to §103.2(a), that representative shall also be notified. Documents produced after an approval notice is sent, such as an alien registration card, shall be mailed directly to the applicant or petitioner.

(c)-(d) [Reserved]

(e) *Fingerprinting*—(1) *General.* USCIS regulations in this chapter, including the instructions to benefit applications and petitions, require certain applicants, petitioners, beneficiaries, sponsors, and other individuals to be fingerprinted on Form FD-258, Applicant Card, for the purpose of conducting criminal background checks. On and after December 3, 1997, USCIS

will accept Form FD-258, Applicant Card, only if prepared by a USCIS office, a registered State or local law enforcement agency designated by a cooperative agreement with USCIS to provide fingerprinting services (DLEA), a United States consular office at United States embassies and consulates, or a United States military installation abroad.

(2) *Fingerprinting individuals residing in the United States.* Beginning on December 3, 1997, for naturalization applications, and on March 29, 1998, for all other applications and petitions, applications and petitions for immigration benefits shall be filed as prescribed in this chapter, without completed Form FD-258, Applicant Card. After the filing of an application or petition, USCIS will issue a notice to all individuals who require fingerprinting and who are residing in the United States, as defined in section 101(a)(38) of the Act, and request their appearance for fingerprinting at a USCIS office or other location designated by USCIS, to complete Form FD-258, Applicant Card, as prescribed in paragraph (b)(9) of this section.

(3) *Fingerprinting individuals residing abroad.* Individuals who require fingerprinting and whose place of residence is outside of the United States, must submit a properly completed Form FD-258, Applicant Card, at the time of filing the application or petition for immigration benefits. In the case of individuals who reside abroad, a properly completed Form FD-258, Applicant Card, is one prepared by USCIS, a United States consular office at a United States embassy or consulate or a United States military installation abroad. If an individual who requires fingerprinting and is residing abroad fails to submit a properly completed Form FD-258, Applicant Card, at the time of filing an application or petition, USCIS will issue a notice to the individual requesting submission of a properly completed Form FD-258, Applicant Card. The applicant or petitioner will also be notified of the request for submission of a properly completed Form FD-258, Applicant Card. Failure to submit a properly completed Form FD-258, Applicant Card, in response to such a request within the

time allotted in the notice will result in denial of the application or petition for failure to submit a properly completed Form FD-258, Applicant Card. There is no appeal from denial of an application or petition for failure to submit a properly completed Form FD-258, Applicant Card. A motion to re-open an application or petition denied for failure to submit a properly completed Form FD-258, Applicant Card, will be granted only on proof that:

(i) A properly completed Form FD-258, Applicant Card, was submitted at the time of filing the application or petition;

(ii) A properly completed Form FD-258, Applicant Card, was submitted in response to the notice within the time allotted in the notice; or

(iii) The notice was sent to an address other than the address on the application or petition, or the notice of representation, or that the applicant or petitioner notified USCIS, in writing, of a change of address or change of representation subsequent to filing and before the notice was sent and USCIS notice was not sent to the new address.

(4) *Submission of service fee for fingerprinting—(i) General.* The USCIS will charge a fee, as prescribed in §103.7(b)(1), for fingerprinting at a USCIS office or a registered State or local law enforcement agency designated by a cooperative agreement with the USCIS to provide fingerprinting services. Applications and petitions for immigration benefits shall be submitted with the service fee for fingerprinting for all individuals who require fingerprinting and who reside in the United States at the time of filing the application or petition.

(ii) *Insufficient service fee for fingerprinting; incorrect fees.* Applications and petitions for immigration benefits received by USCIS without the correct service fee for fingerprinting will not be rejected as improperly filed, pursuant to paragraph (a)(7)(i) of this section. However, the application or petition will not continue processing and USCIS will not issue a notice requesting appearance for fingerprinting to the individuals who require fingerprinting until the correct service

fee for fingerprinting has been submitted. The USCIS will notify the remitter of the filing fee for the application or petition of the additional amount required for the fingerprinting service fee and request submission of the correct fee. The USCIS will also notify the applicant or petitioner, and, when appropriate, the applicant or petitioner's representative, as defined in paragraph (a)(3) of this section, of the deficiency. Failure to submit the correct fee for fingerprinting in response to a notice of deficiency within the time allotted in the notice will result in denial of the application or petition for failure to submit the correct service fee for fingerprinting. There is no appeal from the denial of an application or petition for failure to submit the correct service fee for fingerprinting. A motion to re-open an application or petition denied for failure to submit the correct service fee for fingerprinting will be granted only on proof that:

(A) The correct service fee for fingerprinting was submitted at the time of filing the application or petition;

(B) The correct service fee for fingerprinting was submitted in response to the notice of deficiency within the time allotted in the notice; or

(C) The notice of deficiency was sent to an address other than the address on the application or petition, or the notice of representation, or that the applicant or petitioner notified USCIS, in writing, of a change of address or change of representation subsequent to filing and before the notice of deficiency was sent and USCIS notice of deficiency was not sent to the new address.

(iii) *Non-payment of service fee for fingerprinting.* If a check or other financial instrument used to pay a service fee for fingerprinting is subsequently returned as not payable, the remitter shall be notified and requested to pay the correct service fee for fingerprinting and any associated service charges within 14 calendar days. The USCIS will also notify the applicant or petitioner and, when appropriate, the applicant or petitioner's representative as defined in paragraph (a)(3) of this section, of the non-pay-

ment and request to pay. If the correct service fee for fingerprinting and associated service charges are not paid within 14 calendar days, the application or petition will be denied for failure to submit the correct service fee for fingerprinting.

[29 FR 11956, Aug. 21, 1964]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §103.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

EDITORIAL NOTE: At 72 FR 19106, Apr. 17, 2007, §103.2 (d)(2) was amended by revising the terms "the Service" or "Service" to read "USCIS"; however, the amendment could not be incorporated because paragraph (d)(2) was removed and reserved.

### § 103.3 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 §3.1(b) of this chapter. Decisions under the appellate jurisdiction of the Associate Commissioner, Examinations, are listed in §103.1(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 §§103.4 and 103.5 of this part, *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 292 of this chapter.