

an order modifying, vacating, or remanding an interlocutory order, shall not be considered a final agency order. If the Chief Administrative Hearing Officer does not modify, vacate, or remand an interlocutory order reviewed pursuant to paragraph (a) within thirty (30) days of the date that the order is entered, the Administrative Law Judge's interlocutory order is deemed adopted.

(d) *Effect of interlocutory review.* (1) An order by the Chief Administrative Hearing Officer modifying or vacating an interlocutory order shall also remand the case to the Administrative Law Judge. Further proceedings in the case shall be conducted consistent with the Chief Administrative Hearing Officer's order.

(2) Whether or not an interlocutory order is reviewed by the Chief Administrative Hearing Officer, all parties retain the right to request administrative review of the final order of the Administrative Law Judge pursuant to § 68.54 with respect to all issues in the case.

[Order No. 2203-99, 64 FR 7081, Feb. 12, 1999]

§ 68.54 Administrative review of a final order of an Administrative Law Judge in cases arising under section 274A or 274C.

(a) *Authority of the Chief Administrative Hearing Officer.* In a case arising under section 274A or 274C of the INA, the Chief Administrative Hearing Officer has discretionary authority, pursuant to sections 274A(e)(7) and 274C(d)(4) of the INA and 5 U.S.C. 557, to review any final order of an Administrative Law Judge in accordance with the provisions of this section.

(1) A party may file with the Chief Administrative Hearing Officer a written request for administrative review within ten (10) days of the date of entry of the Administrative Law Judge's final order, stating the reasons for or basis upon which it seeks review.

(2) The Chief Administrative Hearing Officer may review an Administrative Law Judge's final order on his or her own initiative by issuing a notification of administrative review within ten (10) days of the date of entry of the Administrative Law Judge's order. This noti-

fication shall state the issues to be reviewed.

(b) *Written and oral arguments.* (1) In any case in which administrative review has been requested or ordered pursuant to paragraph (a) of this section, the parties may file briefs or other written statements within twenty-one (21) days of the date of entry of the Administrative Law Judge's order.

(2) At the request of a party, or on the Officer's own initiative, the Chief Administrative Hearing Officer may, at the Officer's discretion, permit or require additional filings or may conduct oral argument in person or telephonically.

(c) *Filing and service of documents relating to administrative review.* All requests for administrative review, briefs, and other filings relating to review by the Chief Administrative Hearing Officer shall be filed and served by facsimile or same-day hand delivery, or if such filing or service cannot be made, by overnight delivery, as provided in § 68.6(c). A notification of administrative review by the Chief Administrative Hearing Officer shall also be served by facsimile or same-day hand delivery, or if such service cannot be made, by overnight delivery service.

(d) *Review by the Chief Administrative Hearing Officer.* (1) On or before thirty (30) days subsequent to the date of entry of the Administrative Law Judge's final order, but not before the time for filing briefs has expired, the Chief Administrative Hearing Officer may enter an order that modifies or vacates the Administrative Law Judge's order, or remands the case to the Administrative Law Judge for further proceedings consistent with the Chief Administrative Hearing Officer's order. However, the Chief Administrative Hearing Officer is not obligated to enter an order unless the Administrative Law Judge's order is modified, vacated or remanded.

(2) If the Chief Administrative Hearing Officer enters an order that remands the case to the Administrative Law Judge, the Administrative Law Judge will conduct further proceedings consistent with the Chief Administrative Hearing Officer's order. Any administrative review of the Administrative Law Judge's subsequent order

shall be conducted in accordance with this section.

(3) The Chief Administrative Hearing Officer may make technical corrections to the Officer's order up to and including thirty (30) days subsequent to the issuance of that order.

(e) *Final agency order.* If the Chief Administrative Hearing Officer enters a final order that modifies or vacates the Administrative Law Judge's final order, and the Chief Administrative Hearing Officer's order is not referred to the Attorney General pursuant to § 68.55, the Chief Administrative Hearing Officer's order becomes the final agency order thirty (30) days subsequent to the date of the modification or vacation.

[Order No. 2203–99, 64 FR 7082, Feb. 12, 1999]

§ 68.55 Referral of cases arising under sections 274A or 274C to the Attorney General for review.

(a) *Referral of cases by direction of the Attorney General.* Within thirty (30) days of the entry of a final order by the Chief Administrative Hearing Officer modifying or vacating an Administrative Law Judge's final order, or within sixty (60) days of the entry of an Administrative Law Judge's final order, if the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's final order, the Chief Administrative Hearing Officer shall promptly refer to the Attorney General for review any final order in cases arising under section 274A or 274C of the INA if the Attorney General so directs the Chief Administrative Hearing Officer. When a final order is referred to the Attorney General in accordance with this paragraph, the Chief Administrative Hearing Officer shall give the Administrative Law Judge and all parties a copy of the referral.

(b) *Request by Commissioner of Immigration and Naturalization for review by the Attorney General.* The Chief Administrative Hearing Officer shall promptly refer to the Attorney General for review any final order in cases arising under sections 274A or 274C of the INA at the request of the Commissioner of Immigration and Naturalization within thirty (30) days of the entry of a final order modifying or vacating the Administrative Law Judge's final order or

within sixty (60) days of the entry of an Administrative Law Judge's final order, if the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's final order.

(1) The Immigration and Naturalization Service must first seek review of an Administrative Law Judge's final order by the Chief Administrative Hearing Officer, in accordance with § 68.54 before the Commissioner of Immigration and Naturalization may request that an Administrative Law Judge's final order be referred to the Attorney General for review.

(2) To request referral of a final order to the Attorney General, the Commissioner of Immigration and Naturalization must submit a written request to the Chief Administrative Hearing Officer and transmit copies of the request to all other parties to the case and to the Administrative Law Judge at the time the request is made. The written statement shall contain a succinct statement of the reasons the case should be reviewed by the Attorney General and the grounds for appeal.

(3) The Attorney General, in the exercise of the Attorney General's discretion, may accept the Commissioner's request for referral of the case for review by issuing a written notice of acceptance within sixty (60) days of the date of the request. Copies of such written notice shall be transmitted to all parties in the case and to the Chief Administrative Hearing Officer.

(c) *Review by the Attorney General.* When a final order of an Administrative Law Judge or the Chief Administrative Hearing Officer is referred to the Attorney General pursuant to paragraph (a) of this section, or a referral is accepted in accordance with paragraph (b)(3) of this section, the Attorney General shall review the final order pursuant to section 274A(e)(7) or 274C(d)(4) of the INA and 5 U.S.C. 557. No specific time limit is established for the Attorney General's review.

(1) All parties shall be given the opportunity to submit briefs or other written statements pursuant to a schedule established by the Chief Administrative Hearing Officer or the Attorney General.