

§ 68.53

in document fraud cases. Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed. An award of attorney's fees shall not be made if the Administrative Law Judge determines that the complainant's position was substantially justified or special circumstances make the award unjust.

(f) *Corrections to orders.* An Administrative Law Judge may, in the interest of justice, correct any clerical mistakes or typographical errors contained in a final order entered in a case arising under section 274A or 274C of the INA at any time within thirty (30) days after the entry of the final order. Changes other than clerical mistakes or typographical errors will be considered in cases arising under sections 274A and 274C of the INA by filing a request for review to the Chief Administrative Hearing Officer by a party under § 68.54, or the Chief Administrative Hearing Officer may exercise discretionary review to make such changes pursuant to § 68.54. In cases arising under section 274B of the INA, an Administrative Law Judge may correct any substantive, clerical, or typographical errors or mistakes in a final order at any time within sixty (60) days after the entry of the final order.

(g) *Final agency order.* In a case arising under section 274A or 274C of the INA, the Administrative Law Judge's order becomes the final agency order sixty (60) days after the date of the Administrative Law Judge's order, unless the Chief Administrative Hearing Officer modifies, vacates, or remands the Administrative Law Judge's final order pursuant to § 68.54, or unless the order is referred to the Attorney General pursuant to § 68.55. In a case arising under section 274B of the INA, the Administrative Law Judge's order becomes the final agency order on the date the order is issued.

[Order No. 2203-99, 64 FR 7079, Feb. 12, 1999, as amended by Order No. 2255-99, 64 FR 49660, Sept. 14, 1999; Order No. 2944-2008, 73 FR 10136, Feb. 26, 2008]

28 CFR Ch. I (7-1-10 Edition)

§ 68.53 Review of an interlocutory order of an Administrative Law Judge in cases arising under section 274A or 274C.

(a) *Authority.* In a case arising under section 274A or 274C of the Immigration and Nationality Act, the Chief Administrative Hearing Officer may, within thirty (30) days of the date of an Administrative Law Judge's interlocutory order, issue an order that modifies or vacates the interlocutory order. The Chief Administrative Hearing Officer may review an Administrative Law Judge's interlocutory order if:

(1) An Administrative Law Judge, when issuing an interlocutory order, states in writing that the Judge believes:

(i) That the order concerns an important question of law on which there is a substantial difference of opinion; and

(ii) That an immediate appeal will advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy; or

(2) Within ten (10) days of the date of the entry of an interlocutory order a party requests by motion that the Chief Administrative Hearing Officer review the interlocutory order. This motion shall contain a clear statement of why interlocutory review is appropriate under the standards set out in paragraph (a)(1) of this section; or

(3) Within ten (10) days of the entry of the interlocutory order, the Chief Administrative Hearing Officer, upon the Officer's own initiative, determines that such order is appropriate for interlocutory review pursuant to the standards set out in paragraph (a)(1) and issues a notification of review. This notification shall state the issues to be reviewed.

(b) *Stay of proceedings.* Review of an Administrative Law Judge's interlocutory order will not stay the proceeding unless the Administrative Law Judge or the Chief Administrative Hearing Officer determines that the circumstances require a postponement.

(c) *Review by Chief Administrative Hearing Officer.* Review by the Chief Administrative Hearing Officer of an interlocutory order shall be conducted in the same manner as is provided for review of final orders in § 68.54(b) through (d). An interlocutory order, or

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