

to reopen filed pursuant to the provisions of paragraph (b)(4)(iii)(A) of this section.

(iv) *Jointly filed motions.* The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply to a motion to reopen agreed upon by all parties and jointly filed.

[52 FR 2936, Jan. 29, 1987, as amended at 55 FR 30680, July 27, 1990. Redesignated at 57 FR 11571, Apr. 6, 1992, as amended at 60 FR 34089, June 30, 1995; 61 FR 18908, Apr. 29, 1996; 61 FR 19976, May 3, 1996; 61 FR 21228, May 9, 1996; 62 FR 10332, Mar. 6, 1997; 62 FR 15362, Apr. 1, 1997; 62 FR 17048, Apr. 9, 1997; 64 FR 8487, Feb. 19, 1999]

§ 1003.24 Fees pertaining to matters within the jurisdiction of an immigration judge.

(a) *Generally.* All fees for the filing of motions and applications in connection with proceedings before the immigration judges are paid to the Department of Homeland Security in accordance with 8 CFR 103.7, including fees for applications published by the Executive Office for Immigration Review. The immigration court does not collect fees.

(b) *Motions to reopen or reconsider—(1) When a fee is required.* Except as provided in paragraph (b)(2) of this section, a filing fee prescribed in 8 CFR 1103.7, or a fee waiver request pursuant to paragraph (d) of this section, is required in connection with the filing of a motion to reopen or a motion to reconsider.

(2) *When a fee is not required.* A filing fee is not required in the following instances:

(i) A motion to reopen that is based exclusively on an application for relief that does not require a fee;

(ii) A motion to reconsider that is based exclusively on a prior application for relief that did not require a fee;

(iii) A motion filed while proceedings are already pending before the immigration court;

(iv) A motion requesting only a stay of removal, deportation, or exclusion;

(v) A motion to reopen a deportation or removal order entered in absentia if the motion is filed pursuant to section 242B(c)(3)(B) of the Act (8 U.S.C. 1252b(c)(3)(B)), as it existed prior to April 1, 1997, or section 240(b)(5)(C)(ii)

of the Act (8 U.S.C. 1229a(b)(5)(C)(ii)), as amended;

(vi) Any motion filed by the Department of Homeland Security;

(vii) A motion that is agreed upon by all parties and is jointly filed; or

(viii) A motion filed under a law, regulation, or directive that specifically does not require a filing fee.

(c) *Applications for relief—(1) When filed during proceedings.* When an application for relief is filed during the course of proceedings, the fee for that application must be paid in advance to the Department of Homeland Security in accordance with 8 CFR 103.7. The fee receipt must accompany the application when it is filed with the immigration court.

(2) *When submitted with a motion to reopen.* When a motion to reopen is based upon an application for relief, the fee for the motion to reopen shall be paid to the Department of Homeland Security and the fee receipt shall accompany the motion. Payment of the fee for the application for relief must be paid to the Department of Homeland Security within the time specified by the immigration judge.

(d) *Fee waivers.* The immigration judge has the discretion to waive a fee for a motion or application for relief upon a showing that the filing party is unable to pay the fee. The request for a fee waiver must be accompanied by a properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. 1746 substantiating the filing party's inability to pay the fee. If the request for a fee waiver is denied, the application or motion will not be deemed properly filed.

[69 FR 44906, July 28, 2004]

§ 1003.25 Form of the proceeding.

(a) *Waiver of presence of the parties.* The Immigration Judge may, for good cause, and consistent with section 240(b) of the Act, waive the presence of the alien at a hearing when the alien is represented or when the alien is a minor child at least one of whose parents or whose legal guardian is present. When it is impracticable by reason of an alien's mental incompetency for the alien to be present, the presence of the alien may be waived provided that the alien is represented at the hearing by