§ 1208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) Jurisdiction. The provisions of this subpart B apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B), asylum officers have exclusive jurisdiction to make credible fear determinations, and the immigration judges have exclusive jurisdiction to review such determinations. Prior to January 1, 2015, an alien present in or arriving in the Commonwealth of the Northern Mariana Islands is ineligible to apply for asylum and may only establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture. (b) Treatment of dependents. A spouse or child of an alien may be included in that alien’s credible fear evaluation and determination, if such spouse or child:

(1) Arrived in the United States concurrently with the principal alien; and

(2) Desires to be included in the principal alien’s determination. However, any alien may have his or her credible fear evaluation and determination made separately, if he or she expresses such a desire.

(c)–(d) [Reserved]

(e) Determination. For the standards and procedures for asylum officers in conducting credible fear interviews and in making positive and negative credible fear determinations, see 8 CFR 208.30. The immigration judges will review such determinations as provided in paragraph (g)(2) of this section and 8 CFR 1003.42.

(f) [Reserved]

(g) Procedures for a negative credible fear finding. (1) [Reserved]

(2) Review by immigration judge of a negative credible fear finding. (i) The asylum officer’s negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant’s request, or upon the applicant’s refusal either to request or to decline the review after being given such opportunity, in accordance with section 235(b)(1)(B)(iii)(I) of the Act.

(ii) The record of the negative credible fear determination, including copies of the Form I-863, the asylum officer’s notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination.

(iii) A credible fear hearing shall be closed to the public unless the alien states for the record or submits a written statement that the alien is waiving that requirement; in that event the hearing shall be open to the public.
§ 1208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.

(a) Jurisdiction. This section shall apply to any alien ordered removed under section 238(b) of the Act or whose deportation, exclusion, or removal order is reinstated under section 241(a)(5) of the Act who, in the course of the administrative removal or reinstatement process, expresses a fear of returning to the country of removal. The Service has exclusive jurisdiction to make reasonable fear determinations, and EOIR has exclusive jurisdiction to review such determinations.

(b) Initiation of reasonable fear determination process. Upon issuance of a Final Administrative Removal Order under §238.1 of this chapter, or notice under §1241.8(b) of this chapter that an alien is subject to removal, an alien described in paragraph (a) of this section shall be referred to an asylum officer for a reasonable fear determination. In the absence of exceptional circumstances, this determination will be conducted within 10 days of the referral.

(c) Interview and procedure. The asylum officer shall conduct the interview in a non-adversarial manner, separate and apart from the general public. At the time of the interview, the asylum officer shall determine that the alien has an understanding of the reasonable fear determination process. The alien may be represented by counsel or an accredited representative at the interview, at no expense to the Government, and may present evidence, if available, relevant to the possibility of persecution or torture. The alien’s representative may present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of persons who may be present at the interview and the length of the statement. If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter...