

Department of Homeland Security

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necessary to continue to withhold adjudication pending completion of the investigation, it will review that determination every six months.

(19) *Notification*—(i) *Unrepresented applicants or petitioners*. USCIS will only send original notices and documents evidencing lawful status based on the approval of a benefit request directly to the applicant or petitioner if the applicant or petitioner is not represented.

(ii) *Represented applicants or petitioners*—(A) *Notices*. When an applicant or petitioner is represented, USCIS will send original notices both to the applicant or petitioner and his or her authorized attorney or accredited representative. If provided in this title, on the applicable form, or on form instructions, an applicant or petitioner filing a paper application or petition may request that all original notices, such as requests for evidence and notices of decision, only be sent to the official business address of the applicant's or petitioner's authorized attorney or accredited representative, as reflected on a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative. In such instances, a courtesy copy of the original notice will be sent to the applicant or petitioner.

(B) *Electronic notices*. For applications or petitions filed electronically, USCIS will notify both the applicant or petitioner and the authorized attorney or accredited representative electronically of any notices or decisions. Except as provided in paragraph (b)(19)(ii)(C) of this section, USCIS will not issue paper notices or decisions for electronically-filed applications or petitions, unless:

(1) The option exists for the applicant or petitioner to request to receive paper notices or decisions by mail through the U.S. Postal Service, by indicating this preference in his or her electronic online account profile in USCIS's electronic immigration system; or

(2) USCIS, in its discretion, determines that issuing a paper notice or decision for an electronically-filed application or petition is warranted.

(C) *Approval notices with attached Arrival-Departure Records*. USCIS will send an original paper approval notice

with an attached Arrival-Departure Record, reflecting USCIS's approval of an applicant's request for an extension of stay or change of status, to the official business address of the applicant's or petitioner's attorney or accredited representative, as reflected on a properly executed Notice of Entry of Appearance as Attorney or Accredited Representative or in the address section of the online representative account profile in USCIS's electronic immigration system, unless the applicant specifically requests that the original approval notice with an attached Arrival-Departure Record be sent directly to his or her mailing address.

(iii) *Secure identity documents*. (A) USCIS may send secure identification documents, such as a Permanent Resident Card or Employment Authorization Document, only to the applicant or self-petitioner unless the applicant or self-petitioner specifically consents to having his or her secure identification document sent to a designated agent, their attorney or accredited representative or record, as specified on the form instructions.

(B) The designated agent, or attorney or accredited representative, will be required to provide identification and sign for receipt of the secure document.

(c)–(d) [Reserved]

[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.govinfo.gov.

§ 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

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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.

(C) *Record of proceeding*. An appeal and any cross-appeal or briefs become part of the record of proceeding.

(D) *Appeal filed by Service officer in case within jurisdiction of Board*. If an appeal is filed by a Service officer, a copy must be served on the affected party.

(iv) *Function of Administrative Appeals Unit (AAU)*. The AAU is the appellate body which considers cases under the appellate jurisdiction of the Associate Commissioner, Examinations.

(v) *Summary dismissal*. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The filing by an attorney or representative accredited under 8 CFR 292.2(d) of an appeal which is summarily dismissed under this section may constitute frivolous behavior as defined in 8 CFR 292.3(a)(15). Summary dismissal of an appeal under § 103.3(a)(1)(v) in no way limits the other grounds and procedures for disciplinary action against attorneys or representatives provided in 8 CFR 292.2 or in any other statute or regulation.

(2) *AAU appeals in other than special agricultural worker and legalization cases*—(i) *Filing appeal*. The affected party must submit an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must

pay the fee required by 8 CFR 106.2. The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions within 30 days after service of the decision.

(ii) *Reviewing official*. The official who made the unfavorable decision being appealed shall review the appeal unless the affected party moves to a new jurisdiction. In that instance, the official who has jurisdiction over such a proceeding in that geographic location shall review it.

(iii) *Favorable action instead of forwarding appeal to AAU*. The reviewing official shall decide whether or not favorable action is warranted. Within 45 days of receipt of the appeal, the reviewing official may treat the appeal as a motion to reopen or reconsider and take favorable action. However, that official is not precluded from reopening a proceeding or reconsidering a decision on his or her own motion under § 103.5(a)(5)(i) of this part in order to make a new decision favorable to the affected party after 45 days of receipt of the appeal.

(iv) *Forwarding appeal to AAU*. If the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of proceeding to the AAU in Washington, DC.

(v) *Improperly filed appeal*—(A) *Appeal filed by person or entity not entitled to file it*—(1) *Rejection without refund of filing fee*. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) *Appeal by attorney or representative without proper Form G-28*—(i) *General*. If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

(ii) *When favorable action warranted*. If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that

official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under § 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.

(iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

(B) *Untimely appeal—(1) Rejection without refund of filing fee.* An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) *Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

(vi) *Brief.* The affected party may submit a brief with Form I-290B.

(vii) *Additional time to submit a brief.* The affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one.

(viii) *Where to submit supporting brief if additional time is granted.* If the AAU grants additional time, the affected party shall submit the brief directly to the AAU.

(ix) *Withdrawal of appeal.* The affected party may withdraw the appeal, in writing, before a decision is made.

(x) *Decision on appeal.* The decision must be in writing. A copy of the decision must be served on the affected

party and the attorney or representative of record, if any.

(3) *Denials and appeals of special agricultural worker and legalization applications and termination of lawful temporary resident status under sections 210 and 245A.* (i) Whenever an application for legalization or special agricultural worker status is denied or the status of a lawful temporary resident is terminated, the alien shall be given written notice setting forth the specific reasons for the denial on Form I-692, Notice of Denial. Form I-692 shall also contain advice to the applicant that he or she may appeal the decision and that such appeal must be taken within 30 days after service of the notification of decision accompanied by any additional new evidence, and a supporting brief if desired. The Form I-692 shall additionally provide a notice to the alien that if he or she fails to file an appeal from the decision, the Form I-692 will serve as a final notice of ineligibility.

(ii) Form I-694, Notice of Appeal, in triplicate, shall be used to file the appeal, and must be accompanied by the appropriate fee. Form I-694 shall be furnished with the notice of denial at the time of service on the alien.

(iii) Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Unit as provided by § 103.1(f)(2) of this part for review and decision. The decision on the appeal shall be in writing, and if the appeal is dismissed, shall include a final notice of ineligibility. A copy of the decision shall be served upon the applicant and his or her attorney or representative of record. No further administrative appeal shall lie from this decision, nor may the application be filed or reopened before an immigration judge or the Board of Immigration Appeals during exclusion or deportation proceedings.

(iv) Any appeal which is filed that:

(A) Fails to state the reason for appeal;

(B) Is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner; or

(C) Is patently frivolous; will be summarily dismissed. An appeal received after the thirty (30) day period has

tolled will not be accepted for processing.

(4) *Denials and appeal of Replenishment Agricultural Worker petitions and waivers and termination of lawful temporary resident status under section 210A.*

(i) Whenever a petition for Replenishment Agricultural Worker status, or a request for a waiver incident to such filing, is denied in accordance with the provisions of part 210a of this title, the alien shall be given written notice setting forth the specific reasons for the denial on Form I-692, Notice of Denial. Form I-692 shall also contain advice to the alien that he or she may appeal the decision and that such appeal must be taken within thirty (30) days after service of the notification of decision accompanied by any additional new evidence, and a supporting brief if desired. The Form I-692 shall additionally provide a notice to the alien that if he or she fails to file an appeal from the decision, the Form I-692 shall serve as a final notice of ineligibility.

(ii) Form I-694, Notice of Appeal, in triplicate, shall be used to file the appeal, and must be accompanied by the appropriate fee. Form I-694 shall be furnished with the notice of denial at the time of service on the alien.

(iii) Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Unit as provided by §103.1(f)(2) of this part for review and decision. The decision on the appeal shall be in writing, and if the appeal is dismissed, shall include a final notice of ineligibility. A copy of the decision shall be served upon the petitioner and his or her attorney or representative of record. No further administrative appeal shall lie from this decision, nor may the petition be filed or reopened before an immigration judge or the Board of Immigration Appeals during exclusion or deportation proceedings.

(iv) Any appeal which is filed that: Fails to state the reason for the appeal; is filed solely on the basis of a denial for failure to file the petition for adjustment of status under part 210a of this title in a timely manner; or is patently frivolous, will be summarily dismissed. An appeal received after the thirty (30) day period has tolled will not be accepted for processing.

(b) *Oral argument regarding appeal before AAU—(1) Request.* If the affected party desires oral argument, the affected party must explain in writing specifically why oral argument is necessary. For such a request to be considered, it must be submitted within the time allowed for meeting other requirements.

(2) *Decision about oral argument.* The Service has sole authority to grant or deny a request for oral argument. Upon approval of a request for oral argument, the AAU shall set the time, date, place, and conditions of oral argument.

(c) *Service precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. In addition to Attorney General and Board decisions referred to in §1003.1(g) of chapter V, designated Service decisions are to serve as precedents in all proceedings involving the same issue(s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. Precedent decisions must be published and made available to the public as described in 8 CFR 103.10(e).

[31 FR 3062, Feb. 24, 1966, as amended at 37 FR 927, Jan. 21, 1972; 48 FR 36441, Aug. 11, 1983; 49 FR 7355, Feb. 29, 1984; 52 FR 16192, May 1, 1987; 54 FR 29881, July 17, 1989; 55 FR 20769, 20775, May 21, 1990; 55 FR 23345, June 7, 1990; 57 FR 11573, Apr. 6, 1992; 68 FR 9832, Feb. 28, 2003; 76 FR 53781, Aug. 29, 2011; 85 FR 46914, Aug. 3, 2020]

§ 103.4 Certifications.

(a) *Certification of other than special agricultural worker and legalization cases—(1) General.* The Commissioner or the Commissioner's delegate may direct that any case or class of cases be