

chapter and may reconsider any decision rendered in such proceeding. The new decision must be served on the appellant within 45 days of receipt of any brief and/or new evidence, or upon expiration of the time allowed for the submission of a brief. The Associate Commissioner, Examinations, or the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that Unit under part 210 or 245a of this chapter and reconsider any decision rendered in such proceeding. Motions to reopen a proceeding or reconsider a decision under part 210 or 245a of this chapter shall not be considered.

(c) *Motions to reopen or reconsider decisions on replenishment agricultural worker petitions.* (1) The director of a regional processing facility may *sua sponte* reopen any proceeding under part 210a of this title which is within his or her jurisdiction and may render a new decision. This decision may reverse a prior favorable decision when it is determined that there was fraud during the registration or petition processes and the petitioner was not entitled to the status granted. The petitioner must be given an opportunity to offer evidence in support of the petition and in opposition to the grounds for reopening the petition before a new decision is rendered.

(2) The Associate Commissioner, Examinations or the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that unit under part 210a of this title and reconsider any decision rendered in such proceeding.

(3) Motions to reopen a proceeding or reconsider a decision under part 210a of this title shall not be considered.

[27 FR 7562, Aug. 1, 1962, as amended at 30 FR 12772, Oct. 7, 1965; 32 FR 271, Jan. 11, 1967; 52 FR 16193, May 1, 1987; 54 FR 29881, July 17, 1989; 55 FR 20770, 20775, May 21, 1990; 55 FR 25931, June 25, 1990; 56 FR 41782, Aug. 23, 1991; 59 FR 1463, Jan. 11, 1994; 61 FR 18909, Apr. 29, 1996; 62 FR 10336, Mar. 6, 1997; 70 FR 50957, Aug. 29, 2005; 85 FR 46914, Aug. 3, 2020]

§ 103.6 Immigration bonds.

(a) *Posting of surety bonds*—(1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases shall be executed on

Form I-352, Immigration Bond, a copy of which, and any rider attached thereto, shall be furnished the obligor. A district director is authorized to approve a bond, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I-312, Designation of Attorney in Fact. All other matters relating to bonds, including a power of attorney not executed on Form I-312 and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, shall be forwarded to the regional director for approval.

(2) *Bond riders*—(i) *General.* Bond riders shall be prepared on Form I-351, Bond Riders, and attached to Form I-352. If a condition to be included in a bond is not on Form I-351, a rider containing the condition shall be executed.

(ii) [Reserved]

(b) *Acceptable sureties*—(1) *Acceptable sureties generally.* Immigration bonds may be posted by a company holding a certificate from the Secretary of the Treasury under 31 U.S.C. 9304-9308 as an acceptable surety on Federal bonds (a Treasury-certified surety). They may also be posted by an entity or individual who deposits cash or cash equivalents, such as postal money orders, certified checks, or cashier's checks, in the face amount of the bond.

(2) *Authority to decline bonds underwritten by Treasury-certified surety.* In its discretion, ICE may decline to accept an immigration bond underwritten by a Treasury-certified surety when—

(i) Ten or more invoices issued to the surety on administratively final breach determinations are past due at the same time;

(ii) The surety owes a cumulative total of \$50,000 or more on past-due invoices issued to the surety on administratively final breach determinations, including interest and other fees assessed by law on delinquent debt; or

(iii) The surety has a breach rate of 35 percent or greater in any Federal fiscal year after August 31, 2020. The surety's breach rate will be calculated in the month of January following each

Federal fiscal year after the effective date of this rule by dividing the sum of administratively final breach determinations for that surety during the fiscal year by the total of such sum and bond cancellations for that surety during that same year. For example, if 50 bonds posted by a surety company were declared breached from October 1 to September 30, and 50 bonds posted by that same surety were cancelled during the same fiscal year (for a total of 100 bond dispositions), that surety would have a breach rate of 50 percent for that fiscal year.

(iv) Consistent with 31 CFR 223.17(b)(5)(i), ICE may not decline a future bond from a Treasury-certified surety when a court of competent jurisdiction has stayed or enjoined enforcement of a breach determination that would support ICE's decision to decline future bonds. For example, if collection of a past-due invoice has been stayed by a court, it cannot be counted as one of the ten or more invoices under paragraph (b)(1)(i) of this section.

(3) *Definitions.* For purposes of paragraphs (b)(2)(i) and (ii) of this section—

(i) A breach determination is administratively final when the time to file an appeal with the Administrative Appeals Office (AAO) has expired or when the appeal is dismissed or rejected.

(ii) An invoice is past due if it is delinquent, meaning either that it has not been paid or disputed in writing within 30 days of issuance of the invoice; or, if it is a debt upon which the surety has submitted a written dispute within 30 days of issuance of the invoice, ICE has issued a written explanation to the surety of the agency's determination that the debt is valid, and the debt has not been paid within 30 days of issuance of such written explanation that the debt is valid.

(4) *Notice of intention to decline future bonds.* When one or more of the for cause standards provided in paragraph (b)(2) of this section applies to a Treasury-certified surety, ICE may, in its discretion, initiate the process to notify the surety that it will decline future bonds. To initiate this process, ICE will issue written notice to the surety stating ICE's intention to decline bonds underwritten by the surety

and the reasons for the proposed non-acceptance of the bonds. This notification will inform the surety of its opportunity to rebut the stated reasons set forth in the notice, and its opportunity to cure the stated reasons, *i.e.*, deficient performance.

(5) *Surety's response.* The Treasury-certified surety must send any response to ICE's notice in writing to the office that sent the notice. The surety's response must be received by the designated office on or before the 30th calendar day following the date the notice was issued. If the surety or agent fails to submit a timely response, the surety will have waived the right to respond, and ICE will decline any future bonds submitted for approval that are underwritten by the surety.

(6) *Written determination.* After considering any timely response submitted by the Treasury-certified surety to the written notice issued by ICE, ICE will issue a written determination stating whether future bonds issued by the surety will be accepted or declined. This written determination constitutes final agency action. If the written determination concludes that future bonds will be declined from the surety, ICE will decline any future bonds submitted for approval that are underwritten by the surety.

(7) *Effect of decision to decline future bonds.* Consistent with 31 CFR 223.17(b)(4), ICE will use best efforts to ensure persons conducting business with the agency are aware that future bonds underwritten by the surety will be declined by ICE. For example, ICE will notify any bonding agents who have served as co-obligors with the surety that ICE will decline future bonds underwritten by the surety.

(c) *Cancellation and breach—(1) Public charge bonds.* A public charge bond posted for an alien will be cancelled when the alien dies, departs permanently from the United States, or is naturalized, provided the alien did not breach such bond by receiving either public cash assistance for income maintenance or long-term institutionalization at government expense prior to death, permanent departure, or naturalization. USCIS may cancel a public charge bond at any time after determining that the alien is not likely

at any time to become a public charge. A bond may also be cancelled in order to allow substitution of another bond. A public charge bond will be cancelled by USCIS upon review following the fifth anniversary of the admission or adjustment of status of the alien, provided that the alien has filed Form I-356, Request for Cancellation of Public Charge Bond, and USCIS finds that the alien did not receive either public cash assistance for income maintenance or long-term institutionalization at government expense prior to the fifth anniversary. If Form I-356 is not filed, the public charge bond will remain in effect until the form is filed and USCIS reviews the evidence supporting the form, and renders a decision regarding the breach of the bond, or a decision to cancel the bond.

(2) *Maintenance of status and departure bonds.* When the status of a nonimmigrant who has violated the conditions of his admission has been adjusted as a result of administrative or legislative action to that of a permanent resident retroactively to a date prior to the violation, any outstanding maintenance of status and departure bond shall be canceled. If an application for adjustment of status is made by a nonimmigrant while he is in lawful temporary status, the bond shall be canceled if his status is adjusted to that of a lawful permanent resident or if he voluntarily departs within any period granted to him. As used in this paragraph, the term *lawful temporary status* means that there must not have been a violation of any of the conditions of the alien's nonimmigrant classification by acceptance of unauthorized employment or otherwise during the time he has been accorded such classification, and that from the date of admission to the date of departure or adjustment of status he must have had uninterrupted Service approval of his presence in the United States in the form of regular extensions of stay or dates set by which departure is to occur, or a combination of both. An alien admitted as a nonimmigrant shall not be regarded as having violated his nonimmigrant status by engaging in employment subsequent to his proper filing of an application for adjustment of status under section 245

of the Act and part 245 of this chapter. A maintenance of status and departure bond posted at the request of an American consular officer abroad in behalf of an alien who did not travel to the United States shall be canceled upon receipt of notice from an American consular officer that the alien is outside the United States and the nonimmigrant visa issued pursuant to the posting of the bond has been canceled or has expired.

(3) *Substantial performance.* Substantial performance of all conditions imposed by the terms of a bond shall release the obligor from liability.

(d) *Bond schedules*—(1) *Blanket bonds for departure of visitors and transits.* The amount of bond required for various numbers of nonimmigrant visitors or transits admitted under bond on Forms I-352 shall be in accordance with the following schedule:

Aliens

1 to 4—\$500 each.
5 to 9—\$2,500 total bond.
10 to 24—\$3,500 total bond.
25 to 49—\$5,000 total bond.
50 to 74—\$6,000 total bond.
75 to 99—\$7,000 total bond.
100 to 124—\$8,000 total bond.
125 to 149—\$9,000 total bond.
150 to 199—\$10,000 total bond.
200 or more—\$10,000 plus \$50 for each alien over 200.

(2) *Blanket bonds for importation of workers classified as nonimmigrants under section 101(a)(15)(H).* The following schedule shall be employed by district directors when requiring employers or their agents or representatives to post bond as a condition to importing alien laborers into the United States from the West Indies, the British Virgin Islands, or from Canada:

Less than 500 workers—\$15 each
500 to 1,000 workers—\$10 each
1,000 or more workers—\$5 each

A bond shall not be posted for less than \$1,000 or for more than \$12,000 irrespective of the number of workers involved. Failure to comply with conditions of the bond will result in the employer's liability in the amount of \$200 as liquidated damages for each alien involved.

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(e) *Breach of bond.* A bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released or discharged by a Service officer. The district director having custody of the file containing the immigration bond executed on Form I-352 shall determine whether the bond shall be declared breached or cancelled, and shall notify the obligor on Form I-323 or Form I-391 of the decision, and, if declared breached, of the reasons therefor, and of the right to appeal in accordance with the provisions of this part.

(f) *Appeals of Breached Bonds Issued by Treasury-Certified Sureties*—(1) *Final agency action.* Consistent with section 10(c) of the Administrative Procedure Act, 5 U.S.C. 704, the AAO's decision on appeal of a breach determination constitutes final agency action. The initial breach determination remains inoperative during the administrative appeal period and while a timely administrative appeal is pending. Dismissal of an appeal is effective upon the date of the AAO decision. Only the granting of a motion to reopen or reconsider by the AAO makes the dismissal decision no longer final.

(2) *Exhaustion of administrative remedies.* The failure by a Treasury-certified surety or its bonding agent to exhaust administrative appellate review before the AAO, or the lapse of time to file an appeal to the AAO without filing an appeal to the AAO, constitutes waiver and forfeiture of all claims, defenses, and arguments involving the bond breach determination. A Treasury-certified surety's or its agent's failure to move to reconsider or to reopen a breach decision does not constitute failure to exhaust administrative remedies.

(3) *Requirement to raise all issues.* A Treasury-certified surety or its bonding agent must raise all issues and present all facts relied upon in the appeal to the AAO. A Treasury-certified surety's or its agent's failure to timely raise any claim, defense, or argument before the AAO in support of reversal or remand of a breach decision waives

and forfeits that claim, defense, or argument.

(4) *Failure to file a timely administrative appeal.* If a Treasury-certified surety or its bonding agent does not timely file an appeal with the AAO upon receipt of a breach notice, a claim in favor of ICE is created on the bond breach determination, and ICE may seek to collect the amount due on the breached bond.

[31 FR 11713, Sept. 7, 1966, as amended at 32 FR 9622, July 4, 1967; 33 FR 5255, Apr. 2, 1968; 33 FR 10504, July 24, 1968; 34 FR 1008, Jan. 23, 1969; 34 FR 14760, Sept. 25, 1969; 39 FR 12334, Apr. 5, 1974; 40 FR 42852, Sept. 17, 1975; 48 FR 51144, Nov. 7, 1983; 49 FR 24011, June 11, 1984; 60 FR 21974, May 4, 1995; 62 FR 10336, Mar. 6, 1997; 84 FR 41500, Aug. 14, 2019; 85 FR 45989, July 31, 2020; 86 FR 14227, Mar. 15, 2021; 87 FR 55636, Sept. 9, 2022]

§ 103.7 Fees.

(a) *DOJ fees.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are described in 8 CFR 1003.8, 1003.24, and 1103.7.

(1) *USCIS may accept DOJ fees.* Except as provided in 8 CFR 1003.8, or as the Attorney General otherwise may provide by regulation, any fee relating to any EOIR proceeding may be paid to USCIS. Payment of a fee under this section does not constitute filing of the document with the Board or with the immigration court. DHS will provide the payer with a receipt for a fee and return any documents submitted with the fee relating to any immigration court proceeding.

(2) *DHS-EOIR biometric services fee.* Fees paid to and accepted by DHS relating to any immigration proceeding as provided in 8 CFR 1103.7(a)(3) must include an additional \$30 for DHS to collect, store, and use biometric information.

(3) *Waiver of Immigration Court fees.* An immigration judge or the Board may waive any fees prescribed under this chapter for cases under their jurisdiction to the extent provided in 8 CFR 1003.8 and 1003.24.

(b) *USCIS fees.* USCIS fees will be required as provided in 8 CFR part 106.

(c) *Remittances.* Remittances to the Board of Immigration Appeals must be made payable to the "United States Department of Justice," in accordance with 8 CFR 1003.8.