

§ 1208.2

8 CFR Ch. V (1–1–23 Edition)

nationality, or gender, shall not be admissible in adjudicating that application, provided that nothing in this paragraph shall be construed as prohibiting the submission of evidence that an alleged persecutor holds stereotypical views of the applicant.

[64 FR 8487, Feb. 19, 1999, as amended at 74 FR 55741, Oct. 28, 2009; 85 FR 23904, Apr. 30, 2020; 85 FR 80394, Dec. 11, 2020]

§ 1208.2 Jurisdiction.

(a) *U.S. Citizenship and Immigration Services (USCIS)*. (1) Except as provided in paragraph (b) or (c) of this section, USCIS shall have initial jurisdiction over:

(i) An asylum application filed by an alien physically present in the United States or seeking admission at a port-of-entry; and

(ii) Interviews provided in accordance with section 235(b)(1)(B)(ii) of the Act to further consider the application for asylum of an alien, other than a stowaway, found to have a credible fear of persecution or torture in accordance with 8 CFR 208.30(f) and retained by USCIS, or referred to USCIS by an immigration judge pursuant to §§ 1003.42 of this chapter and 1208.30, after the immigration judge has vacated a negative credible fear determination. Interviews to further consider applications for asylum under this paragraph (a)(1)(ii) are governed by the procedures provided for under 8 CFR 208.9. Further consideration of an asylum application filed by a stowaway who has received a positive credible fear determination will be under the jurisdiction of an immigration judge pursuant to paragraph (c) of this section.

(2) USCIS shall also have initial jurisdiction over credible fear determinations under 8 CFR 208.30 and reasonable fear determinations under 8 CFR 208.31.

(b) *Jurisdiction of Immigration Court in general*. Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a Form I-221, Order to Show Cause; Form I-122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I-862, Notice to Appear, after the charging document has been filed with the Immigration Court. Immigration judges shall also have jurisdiction

over any asylum applications filed prior to April 1, 1997, by alien crewmembers who have remained in the United States longer than authorized, by applicants for admission under the Visa Waiver Pilot Program, and by aliens who have been admitted to the United States under the Visa Waiver Pilot Program. Immigration judges shall also have the authority to review reasonable fear determinations referred to the Immigration Court under § 1208.31, and credible fear determinations referred to the Immigration Court under § 1208.30.

(c) *Certain aliens not entitled to proceedings under section 240 of the Act*—(1) *Asylum applications and withholding of removal applications only*. After Form I-863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any asylum application filed on or after April 1, 1997, by:

(i) An alien crewmember who:

(A) Is an applicant for a landing permit;

(B) Has been refused permission to land under section 252 of the Act; or

(C) On or after April 1, 1997, was granted permission to land under section 252 of the Act, regardless of whether the alien has remained in the United States longer than authorized;

(ii) An alien stowaway who has been found to have a credible fear of persecution or torture pursuant to the procedures set forth in subpart B of this part;

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Program under section 217 of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2030;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall

not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2030;

(v) An alien who has been ordered removed under §235(c) of the Act, as described in §235.8(a) of this chapter (applicable only in the event that the alien is referred for proceedings under this paragraph by the Regional Director pursuant to section 235.8(b)(2)(ii) of this chapter);

(vi) An alien who is an applicant for admission, or has been admitted, as an alien classified under section 101(a)(15)(S) of the Act (applicable only in the event that the alien is referred for proceedings under this paragraph by the district director);

(vii) An alien who is an applicant for admission to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act, except that if such an alien is an applicant for admission to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum prior to January 1, 2030; or

(viii) An alien who was admitted to Guam or the Commonwealth of the Northern Mariana Islands pursuant to the Guam-CNMI Visa Waiver Program under section 212(l) of the Act and has remained longer than authorized or has otherwise violated his or her immigration status, except that if such an alien was admitted to the Commonwealth of the Northern Mariana Islands, then he or she shall not be eligible for asylum in the Commonwealth of the Northern Mariana Islands prior to January 1, 2030.

(ix) [Reserved]

(2) *Withholding of removal applications only.* After Form I-863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any application for withholding of removal filed by:

(i) An alien who is the subject of a reinstated removal order pursuant to section 241(a)(5) of the Act; or

(ii) An alien who has been issued an administrative removal order pursuant to section 238 of the Act as an alien convicted of committing an aggravated felony.

(3) *Rules of procedure*—(i) *General.* Except as provided in this section, proceedings falling under the jurisdiction of the immigration judge pursuant to paragraph (c)(1) or (2) of this section shall be conducted in accordance with the same rules of procedure as proceedings conducted under 8 CFR part 1240, subpart A. The scope of review in proceedings conducted pursuant to paragraph (c)(1) of this section shall be limited to a determination of whether the alien is eligible for asylum or withholding or deferral of removal, and whether asylum shall be granted in the exercise of discretion. The scope of review in proceedings conducted pursuant to paragraph (c)(2) of this section shall be limited to a determination of whether the alien is eligible for withholding or deferral of removal. During such proceedings, all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief.

(ii) *Notice of hearing procedures and in-absentia decisions.* The alien will be provided with notice of the time and place of the proceeding. The request for asylum and withholding of removal submitted by an alien who fails to appear for the hearing shall be denied. The denial of asylum and withholding of removal for failure to appear may be reopened only upon a motion filed with the immigration judge with jurisdiction over the case. Only one motion to reopen may be filed, and it must be filed within 90 days, unless the alien establishes that he or she did not receive notice of the hearing date or was in Federal or State custody on the date directed to appear. The motion must include documentary evidence, which demonstrates that:

(A) The alien did not receive the notice;

(B) The alien was in Federal or State custody and the failure to appear was through no fault of the alien; or

(C) “Exceptional circumstances,” as defined in section 240(e)(1) of the Act, caused the failure to appear.

(iii) *Relief.* The filing of a motion to reopen shall not stay removal of the alien unless the immigration judge issues an order granting a stay pending

disposition of the motion. An alien who fails to appear for a proceeding under this section shall not be eligible for relief under section 240A, 240B, 245, 248, or 249 of the Act for a period of 10 years after the date of the denial, unless the applicant can show exceptional circumstances resulted in his or her failure to appear.

[65 FR 76130, Dec. 6, 2000, as amended at 74 FR 55741, Oct. 28, 2009; 85 FR 23904, Apr. 30, 2020; 85 FR 80395, Dec. 11, 2020; 87 FR 18221, Mar. 29, 2022]

§ 1208.3 Form of application.

(a)(1) Except for applicants described in paragraph (a)(2) of this section, an asylum applicant must file Form I-589, Application for Asylum and for Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States. One additional copy of the principal applicant's Form I-589 must be submitted for each dependent included in the principal's application.

(2) In proceedings under § 1240.17 of this chapter, the written record of a positive credible fear determination issued in accordance with 8 CFR 208.30(f), and §§ 1003.42 of this chapter and 1208.30, shall be construed as the asylum application and satisfies the application filing requirements and § 1208.4(b). The written record of the positive credible fear determination shall be considered a complete asylum application for purposes of § 1208.4(a), with the date of service of the positive credible fear determination on the alien considered the date of filing and receipt, and shall be subject to the conditions and consequences provided for in paragraph (c) of this section following the applicant's signature at the asylum merits interview before the USCIS asylum officer. The applicant's spouse and children may be included in the request for asylum only if they were included in the credible fear determination pursuant to 8 CFR 208.30(c), or also presently have an application for asylum pending adjudication with USCIS pursuant to 8 CFR 208.2(a)(1)(ii). If USCIS does not grant

the applicant's asylum application after an interview conducted in accordance with 8 CFR 208.9 and if a spouse or child who was included in the request for asylum does not separately file an asylum application that is adjudicated by USCIS, the application will be deemed to satisfy the application filing requirements of § 1208.4(b) for a spouse or child who was included in the request for asylum. The asylum applicant may subsequently seek to amend, correct, or supplement the record of proceedings created before the asylum officer or during the credible fear review process as set forth in § 1240.17(g) of this chapter concerning the consideration of documentary evidence and witness testimony.

(b) An asylum application shall be deemed to constitute at the same time an application for withholding of removal, unless adjudicated in deportation or exclusion proceedings commenced prior to April 1, 1997. In such instances, the asylum application shall be deemed to constitute an application for withholding of deportation under section 243(h) of the Act, as that section existed prior to April 1, 1997. Where a determination is made that an applicant is ineligible to apply for asylum under section 208(a)(2) of the Act, an asylum application shall be construed as an application for withholding of removal.

(c) Form I-589 shall be filed under the following conditions and shall have the following consequences:

(1) If the application was filed on or after January 4, 1995, information provided in the application may be used as a basis for the initiation of removal proceedings, or to satisfy any burden of proof in exclusion, deportation, or removal proceedings;

(2) The applicant and anyone other than a spouse, parent, son, or daughter of the applicant who assists the applicant in preparing the application must sign the application under penalty of perjury. The applicant's signature establishes a presumption that the applicant is aware of the contents of the application. A person other than a relative specified in this paragraph who assists the applicant in preparing the application also must provide his or her full mailing address;