

§ 1208.25

shall be provided the opportunity to present evidence showing that he or she is still eligible for asylum or withholding of deportation or removal. If the asylum officer determines that the alien is no longer eligible for asylum or withholding of deportation or removal, the alien shall be given written notice that asylum status or withholding of deportation or removal and any employment authorization issued pursuant thereto, are terminated.

(d) *Termination of derivative status.* The termination of asylum status for a person who was the principal applicant shall result in termination of the asylum status of a spouse or child whose status was based on the asylum application of the principal. Such termination shall not preclude the spouse or child of such alien from separately asserting an asylum or withholding of deportation or removal claim.

(e) *Removal proceedings.* When an alien's asylum status or withholding of removal or deportation is terminated under this section, the Service shall initiate removal proceedings, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings. Removal proceedings may take place in conjunction with a termination hearing scheduled under § 1208.24(f).

(f) *Termination of asylum, or withholding of deportation or removal, by an immigration judge or the Board of Immigration Appeals.* An immigration judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 3.23 of this chapter for the purpose of terminating a grant of asylum, or a withholding of deportation or removal. In such a reopened proceeding, the Service must establish, by a preponderance of evidence, one or more of the grounds set forth in paragraphs (a) or (b) of this section. In addition, an immigration judge may terminate a grant of asylum, or a withholding of deportation or removal, made under the jurisdiction of the Service at any time after the alien has been provided a notice of intent to terminate by the Service. Any termination under this paragraph may occur in conjunction with an exclusion, deportation, or removal proceeding.

8 CFR Ch. V (1–1–23 Edition)

(g) *Termination of asylum for arriving aliens.* If the Service determines that an applicant for admission who had previously been granted asylum in the United States falls within conditions set forth in § 1208.24 and is inadmissible, the Service shall issue a notice of intent to terminate asylum and initiate removal proceedings under section 240 of the Act. The alien shall present his or her response to the intent to terminate during proceedings before the immigration judge.

[62 FR 10337, Mar. 6, 1997. Redesignated at 64 FR 8490, Feb. 19, 1999 and further redesignated and amended at 65 FR 76136, Dec. 6, 2000]

§ 1208.25 Severability.

The provisions of part 1208 are separate and severable from one another. In the event that any provision in part 1208 is stayed, enjoined, not implemented, or otherwise held invalid, the remaining provisions shall nevertheless be implemented as an independent rule and continue in effect.

[85 FR 80399, Dec. 11, 2020]

§§ 1208.26–1208.29 [Reserved]

Subpart B—Credible Fear of Persecution

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

(a) *Jurisdiction.* The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, DHS has exclusive jurisdiction to make the determinations described in this subpart. Except as otherwise provided in this subpart, paragraphs (b) through (g) of this section are the exclusive procedures applicable to stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act and who receive fear interviews, determinations, and reviews under section 235(b)(1)(B) of the Act. Prior to January 1, 2030, an alien physically 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 regulations in §§ 1208.16(c) through (f), 1208.17, and 1208.18 issued pursuant to the Convention Against Torture's implementing legislation.

(b) *Treatment of dependents.* A spouse or child of an alien may be included in that alien's 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 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) of this section and §§ 1003.42 and 1240.17 of this chapter.

(f) [Reserved]

(g) *Procedures for negative fear determinations—*(1) *Review by immigration judge of a mandatory bar finding.* (i) If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 8 CFR 1208.13(c)(3) and is determined to lack a credible fear of persecution or a reasonable possibility of persecution or torture under 8 CFR 208.30(e)(5)(ii), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 8 CFR 1208.13(c)(3). If the immigration judge finds that the alien is not described in 8 CFR 208.13(c)(3) or 8 CFR 1208.13(c)(3), then the immigration judge shall vacate the determination of the asylum officer, and DHS may commence asylum-and-withholding-only proceedings under 8 CFR 1208.2(c)(1). If the immigration judge concurs with the determination that the alien is an alien described in 8 CFR 208.13(c)(3) or 8 CFR 1208.13(c)(3), the immigration judge will then review the asylum officer's negative determinations regarding credible fear and regarding reasonable possibility made under 8 CFR 208.30(e)(5)(iv) consistent with para-

graph (g)(2) of this section, except that the immigration judge will review the fear of persecution or torture findings under the reasonable possibility standard instead of the credible fear ("significant possibility") standard described in paragraph (g)(2).

(ii) If the alien is determined to be an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4) and is determined to lack a reasonable possibility of persecution or torture under 8 CFR 208.30(e)(5)(v), the immigration judge shall first review de novo the determination that the alien is described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4). If the immigration judge finds that the alien is not described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4), then the immigration judge shall vacate the determination of the asylum officer, and DHS may commence asylum-and-withholding-only proceedings under 8 CFR 1208.2(c)(1). If the immigration judge concurs with the determination that the alien is an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4), the immigration judge will then review the asylum officer's negative decision regarding reasonable possibility made under 8 CFR 208.30(e)(5)(v) consistent with paragraph (g)(2) of this section, except that the immigration judge will review the fear of persecution or torture findings under the reasonable possibility standard instead of the credible fear of persecution standard described in paragraph (g)(2).

(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 or failure either to request or to decline the review after being given such opportunity, in accordance with section 235(b)(1)(B)(iii)(III) of the Act. The immigration judge shall not have the authority to remand the case to the asylum officer.

(ii) The record of the negative credible fear determination, including copies of the Form I-863, Notice of Referral to Immigration Judge, the asylum

§ 1208.30, Nt.

8 CFR Ch. V (1–1–23 Edition)

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 will 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, subject to the immigration judge's discretion as provided in §1003.27 of this chapter.

(iv) Upon review of the asylum officer's negative credible fear determination:

(A) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to DHS for removal of the alien. The immigration judge's decision is final and may not be appealed. USCIS may nevertheless reconsider a negative credible fear finding as provided at 8 CFR 208.30(g)(1)(i).

(B) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution or torture, the immigration judge shall vacate the Notice and Order of Expedited Removal and refer the case back to DHS for further proceedings consistent with § 1208.2(a)(1)(ii). Alternatively, DHS may commence removal proceedings under section 240 of the Act, during which time the alien may file an application for asylum and withholding of removal in accordance with § 1208.4(b)(3)(i).

(C) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution or torture, the alien shall be allowed to file an application for asylum and withholding of removal before the immigration judge in accordance with §1208.4(b)(3)(iii). The immigration judge shall decide the application as provided in that section. Such decision may be appealed by either the stowaway or DHS to the Board of Immigration Appeals. If a denial of the application for asylum and for withholding of removal becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the

Act. If an approval of the application for asylum or for withholding of removal becomes final, DHS shall terminate removal proceedings under section 235(a)(2) of the Act.

[65 FR 76136, Dec. 6, 2000, as amended at 69 FR 69497, Nov. 29, 2004; 74 FR 55742, Oct. 28, 2009; 83 FR 55952, Nov. 9, 2018; 84 FR 33844, July 16, 2019; 85 FR 23904, Apr. 30, 2020; 85 FR 80399, Dec. 11, 2020; 87 FR 18222, Mar. 29, 2022]

EFFECTIVE DATE NOTE: At 85 FR 84197, Dec. 23, 2020, §1208.30 was amended by revising paragraphs (e), (g)(1)(ii), (g)(2)(i), and (g)(2)(iv)(A) and (B), effective Jan. 22, 2021. The amendments to §1208.30 were delayed until Mar. 22, 2021, at 86 FR 6847, Jan. 25, 2021, further delayed until Dec. 31, 2021, at 86 FR 15076, Mar. 22, 2021, further delayed until Dec. 31, 2022, at 86 FR 73615, Dec. 28, 2021, and further delayed until Dec. 31, 2024, at 87 FR 79789, Dec. 28, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 1208.30 Credible fear determinations of persecution, reasonable possibility of persecution, and reasonable possibility of torture determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act, whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act, or who failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States.

* * * * *

(e) *Determination.* For the standards and procedures for asylum officers in conducting credible fear of persecution, reasonable possibility of persecution, and reasonable possibility of torture interviews, and interviews to determine whether an alien has established that he or she is more likely than not to be tortured in the prospective country of removal, and in making positive and negative fear determinations, see 8 CFR 208.30. The immigration judges will review such determinations as provided in paragraph (g) of this section and 8 CFR 1003.42.

* * * * *

(g) * * *

(1) * * *

(ii) If the alien is determined to be an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4) and is determined to lack a reasonable possibility of persecution or torture under 8 CFR 208.30(e)(5)(iii), the immigration judge shall first review de novo the determination that the alien is described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4). If

the immigration judge finds that the alien is not described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4), then, except as provided in 8 CFR 208.30(e)(iv), the immigration judge shall vacate the order of the asylum officer, and DHS may commence asylum-and-withholding-only proceedings under 8 CFR 1208.2(c)(1). If the immigration judge concurs with the determination that the alien is an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 8 CFR 1208.13(c)(4), the immigration judge will then review the asylum officer's negative decision regarding reasonable possibility made under 8 CFR 208.30(e)(5) and regarding whether the alien has established that it is more likely than not that he or she would be tortured in the prospective country of removal, consistent with paragraph (g)(2) of this section, except that the immigration judge will review the fear of persecution or torture findings under the reasonable possibility standard, and the determination that the alien has not established that he or she is more likely than not to be tortured in the prospective country of removal under the more likely than not standard, instead of the credible fear of persecution standard described in paragraph (g)(2).

(2) * * *

(i) The asylum officer's negative decision regarding a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, and whether the alien has established that he or she is more likely than not to be tortured in the prospective country of removal shall be subject to review by an immigration judge upon the applicant's request, in accordance with section 235(b)(1)(B)(iii)(III) of the Act. If the alien refuses to make an indication, DHS will consider such a response as a decision to decline review.

* * * * *

(iv) * * *

(A) If the immigration judge concurs with the determination of the asylum officer that the alien has not established a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or that he or she is more likely than not to be tortured in the prospective country of removal, except as provided in § 208.30(e)(5)(iii) and (iv), the case shall be returned to DHS for removal of the alien. The immigration judge's decision is final and may not be appealed.

(B) If the immigration judge finds that the alien, other than an alien stowaway, establishes a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or that he or she is more likely than not to be tortured in the prospective country of removal, the immigration judge shall, except as provided in

§ 208.30(e)(5)(iii) and (iv), vacate the Notice and Order of Expedited Removal and DHS may commence asylum-and-withholding-only proceedings under 8 CFR 1208.2(c)(1), during which time the alien may file an application for asylum and for withholding of removal in accordance with 8 CFR 1208.4(b)(3)(i). Such application shall be considered de novo in all respects by an immigration judge regardless of any determination made under this paragraph.

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§ 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