

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.

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(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

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 may not be a representative or employee of the applicant's country or nationality, or if the applicant is stateless, the applicant's country of last habitual residence. The asylum officer shall create a summary of the material facts as stated by the applicant. At the conclusion of the interview, the officer shall review the summary with the alien and provide the alien with an opportunity to correct errors therein. The asylum officer shall create a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officers, and the officer's determination of whether, in light of such facts, the alien has established a reasonable fear of persecution or torture. The alien shall be determined to have a reasonable fear of persecution or torture if the alien establishes a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal. For purposes of the screening determination, the bars to eligibility for withholding of removal under section 241(b)(3)(B) of the Act shall not be considered.

(d) *Authority.* Asylum officers conducting screening determinations under this section shall have the authority described in § 1208.9(c).

(e) *Referral to Immigration Judge.* If an asylum officer determines that an alien described in this section has a reasonable fear of persecution or torture, the officer shall so inform the alien and issue a Form I-863, Notice of Referral to the Immigration Judge, for full consideration of the request for withholding of removal only. Such

cases shall be adjudicated by the immigration judge in accordance with the provisions of § 1208.16. Appeal of the immigration judge's decision shall lie to the Board of Immigration Appeals.

(f) *Removal of aliens with no reasonable fear of persecution or torture.* If the asylum officer determines that the alien has not established a reasonable fear of persecution or torture, the asylum officer shall inform the alien in writing of the decision and shall inquire whether the alien wishes to have an immigration judge review the negative decision, using the Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge, on which the alien must indicate whether he or she desires such review. If the alien refuses to make an indication, DHS shall consider such a response as a decision to decline review.

(g) *Review by Immigration Judge.* The asylum officer's negative decision regarding reasonable fear shall be subject to review by an immigration judge upon the alien's request. If the alien requests such review, the asylum officer shall serve him or her with a Notice of Referral to the Immigration Judge. The record of determination, including copies of the Notice of Referral to the Immigration Judge, 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. In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Notice of Referral to the Immigration Judge with the immigration court. Upon review of the asylum officer's negative reasonable fear determination:

(1) If the immigration judge concurs with the asylum officer's determination that the alien does not have a reasonable fear of persecution or torture, the case shall be returned to DHS for removal of the alien. No appeal shall lie from the immigration judge's decision.

(2) If the immigration judge finds that the alien has a reasonable fear of persecution or torture, the alien may submit an Application for Asylum and

for Withholding of Removal. Such application shall be considered de novo in all respects by an immigration judge regardless of any determination made under this paragraph.

(i) The immigration judge shall consider only the alien's application for withholding of removal under 8 CFR 1208.16 and shall determine whether the alien's removal to the country of removal must be withheld or deferred.

(ii) Appeal of the immigration judge's decision whether removal must be withheld or deferred lies with the Board of Immigration Appeals. If the alien or DHS appeals the immigration judge's decision, the Board shall review only the immigration judge's decision regarding the alien's eligibility for withholding or deferral of removal under 8 CFR 1208.16.

[64 FR 8493, Feb. 19, 1999; 64 FR 13881, Mar. 23, 1999, as amended at 85 FR 80400, Dec. 11, 2020]

PART 1209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

Sec.

1209.1 Adjustment of status of refugees.

1209.2 Adjustment of status of alien granted asylum.

AUTHORITY: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Title VII of Pub. L. 110-229; Pub. L. 115-218.

SOURCE: Duplicated from part 209 at 68 FR 9835, Feb. 28, 2003

EDITORIAL NOTE: Nomenclature changes to part 1209 appear at 68 FR 9846, Feb. 28, 2003.

§ 1209.1 Adjustment of status of refugees.

The provisions of this section shall provide the sole and exclusive procedure for adjustment of status by a refugee admitted under section 207 of the Act whose application is based on his or her refugee status.

(a) *Eligibility.* (1) Every alien in the United States who is classified as a refugee under part 207 of this chapter, whose status has not been terminated, is required to apply to the Service 1 year after entry in order for the Service to determine his or her admissibility under section 212 of the Act.

(2) Every alien processed by the Immigration and Naturalization Service

abroad and paroled into the United States as a refugee after April 1, 1980, and before May 18, 1980, shall be considered as having entered the United States as a refugee under section 207(a) of the Act.

(b) *Application.* Upon admission to the United States, every refugee entrant shall be notified of the requirement to submit an application for permanent residence 1 year after entry. An application for the benefits of section 209(a) of the Act shall be filed on Form I-485, without fee, with the director of the appropriate Service office identified in the instructions which accompany the Form I-485. A separate application must be filed by each alien. Every applicant who is 14 years of age or older must submit a completed Form G-325A (Biographical Information) with the Form I-485 application. Following submission of the Form I-485 application, a refugee entrant who is 14 years of age or older will be required to execute a Form FD-258 (Applicant Fingerprint Card) at such time and place as the Service will designate.

(c) *Medical examination.* A refugee seeking adjustment of status under section 209(a) of the Act is not required to repeat the medical examination performed under § 207.2(c) of chapter I, unless there were medical grounds of inadmissibility applicable at the time of admission. The refugee is, however, required to establish compliance with the vaccination requirements described under section 212(a)(1)(A)(ii) of the Act, by submitting with the adjustment of status application a vaccination supplement, completed by a designated civil surgeon in the United States.

(d) *Interview.* The Service director having jurisdiction over the application will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

(e) *Decision.* The director will notify the applicant in writing of the decision of his or her application for admission to permanent residence. If the applicant is determined to be inadmissible or no longer a refugee, the director will deny the application and notify the applicant of the reasons for the denial.