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U.S. GOVERNMENT
INFORMATION
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§ 1235.5 [Reserved]

§ 1235.6 Referral to immigration judge.

(a) *Notice*—(1) *Referral by Form I–862, Notice to Appear.* An immigration officer or asylum officer will sign and deliver a Form I–862 to an alien in the following cases:

(i) If, in accordance with the provisions of section 235(b)(2)(A) of the Act, the examining immigration officer detains an alien for a proceeding before an immigration judge under section 240 of the Act; or

(ii) If an immigration officer verifies that an alien subject to expedited removal under section 235(b)(1) of the Act has been admitted as a lawful permanent resident or refugee, or granted asylum, or, upon review pursuant to §235.3(b)(5)(iv) of chapter I, an immigration judge determines that the alien was once so admitted or granted asylum, provided that such status has not been terminated by final administrative action, and DHS initiates removal proceedings against the alien under section 240 of the Act.

(2) *Referral by Form I–863, Notice of Referral to Immigration Judge.* An immigration officer will sign and deliver a Form I–863 to an alien in the following cases:

(i) If an asylum officer determines that an alien does not have a credible fear of persecution or torture, and the alien requests a review of that determination by an immigration judge;

(ii) If, in accordance with section 235(b)(1)(C) of the Act, an immigration officer refers an expedited removal order entered on an alien claiming to be a lawful permanent resident, refugee, asylee, or U.S. citizen for whom the officer could not verify such status to an immigration judge for review of the order; or

(iii) If an immigration officer refers an applicant in accordance with the provisions of 8 CFR 208.2(b) to an immigration judge.

(b) *Certification for mental condition; medical appeal.* An alien certified under sections 212(a)(1) and 232(b) of the Act shall be advised by the examining immigration officer that he or she may appeal to a board of medical examiners of the United States Public Health Service pursuant to section 232 of the Act. If such appeal is taken, the district director shall arrange for the convening of the medical board.

(c) The provisions of part 1235 are separate and severable from one another. In the event that any provision in part 1235 is stayed, enjoined, not implemented, or otherwise held invalid, the remaining provisions shall nevertheless be implemented as an independent rule and continue in effect.

[62 FR 10358, Mar. 6, 1997, as amended at 64 FR 8494, Feb. 19, 1999; 74 FR 55744, Oct. 28, 2009; 85 FR 23904, Apr. 30, 2020; 85 FR 80400, Dec. 11, 2020; 86 FR 1737, Jan. 11, 2021; 87 FR 18223, Mar. 29, 2022]

EFFECTIVE DATE NOTE: At 85 FR 84198, Dec. 23, 2020, §1235.6 was amended by revising paragraph (a)(2)(i), 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:

§ 1235.6 Referral to immigration judge.

(a) * * *

(2) * * *

(i) If an asylum officer determines that an alien does not have a credible fear of persecution, reasonable possibility of persecution, reasonable possibility of torture, or has not established that he or she is more likely than not to be tortured in the prospective country of removal, and the alien requests a review of that determination by an immigration judge; or

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§ 1235.8 Inadmissibility on security and related grounds.

(a) *Report.* When an immigration officer or an immigration judge suspects that an arriving alien appears to be inadmissible under section 212(a)(3)(A) (other than clause (ii)), (B), or (C) of the Act, the immigration officer or immigration judge shall order the alien removed and report the action promptly to the district director who has administrative jurisdiction over the place where the alien has arrived or where the hearing is being held. The immigration officer shall, if possible, take a brief sworn question-and-answer statement from the alien, and the alien