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; or

(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 (c)(2) of this section shall be conducted in accordance with the same rules of procedure as proceedings conducted under 8 CFR part 240, 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 55736, Oct. 28, 2009; 76 FR 53784, Aug. 29, 2011; 85 FR 29310, May 14, 2020; 85 FR 80386, Dec. 11, 2020; 87 FR 18215, Mar. 29, 2022]

### § 208.3 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) For asylum applicants, other than stowaways, who are awaiting further consideration of an asylum application pursuant to section 235(b)(1)(B)(ii) of the Act following a positive credible fear determination, the written record of a positive credible fear finding issued in accordance with § 208.30(f) or 8

CFR 1003.42 or 1208.30 satisfies the application filing requirements in paragraph (a)(1) of this section for purposes of consideration by USCIS pursuant to the jurisdiction provided at §208.2(a)(1)(ii). The written record of the positive credible fear determination shall be considered a complete asylum application for purposes of §§208.4(a), 208.7, and 208.9(a); shall not be subject to the requirements of 8 CFR 103.2; and shall be subject to the conditions and consequences in paragraph (c) of this section upon signature at the asylum interview. The date that the positive credible fear determination is served on the alien shall be considered the date of filing and receipt. Application information collected electronically will be preserved in its native format. 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 §208.30(c), or also presently have an application for asylum pending adjudication with USCIS pursuant to §208.2(a)(1)(ii). If USCIS does not grant the applicant's asylum application after an interview conducted in accordance with §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 also be deemed to satisfy the application filing requirements of 8 CFR 1208.4(b) for a spouse or child who was included in the request for asylum. The biometrics captured during expedited removal for the principal applicant and any dependents may be used to verify identity and for criminal and other background checks for purposes of an asylum application under the jurisdiction of USCIS pursuant to §208.2(a)(1) and any subsequent immigration benefit.

(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;

(3) An asylum application that does not include a response to each of the questions contained in the Form I–589, is unsigned, or is unaccompanied by the required materials specified in paragraph (a)(1) of this section is incomplete. The filing of an incomplete application shall not commence the 150-day period after which the applicant may file an application for employment authorization in accordance with §208.7. An application that is incomplete shall be returned by mail to the applicant within 30 days of the receipt of the application by the Service. If the Service has not mailed the incomplete application back to the applicant within 30 days, it shall be deemed complete. An application returned to the applicant as incomplete shall be resubmitted by the applicant with the additional information if he or she wishes to have the application considered;

(4) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil or criminal penalties under section 274C of the Act; and

(5) Knowingly filing a frivolous application on or after April 1, 1997, so long as the applicant has received the notice required by section 208(d)(4) of the Act, shall render the applicant permanently ineligible for any benefits under the Act pursuant to § 208.20.

[62 FR 10337, Mar. 6, 1997, as amended at 65 FR 76131, Dec. 6, 2000; 85 FR 38626, June 26, 2020; 87 FR 18216, Mar. 29, 2022; 87 FR 57797, Sept. 22, 2022]

### § 208.4 Filing the application.

Except as prohibited in paragraph (a) of this section, asylum applications shall be filed in accordance with paragraph (b) of this section.

(a) *Prohibitions on filing.* Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under § 208.16. If an applicant files an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer, in an interview, or an immigration judge, in a hearing, shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing to determine if the application should be rejected. For the purpose of making determinations under section 208(a)(2) of the Act, the following rules shall apply:

(1) *Authority.* Only an asylum officer, an immigration judge, or the Board of Immigration Appeals is authorized to make determinations regarding the prohibitions contained in section 208(a)(2)(B) or (C) of the Act.

(2) *One-year filing deadline.* (i) For purposes of section 208(a)(2)(B) of the Act, an applicant has the burden of proving:

(A) By clear and convincing evidence that the application has been filed within 1 year of the date of the alien's arrival in the United States, or

(B) To the satisfaction of the asylum officer, the immigration judge, or the Board that he or she qualifies for an exception to the 1-year deadline.

(ii) The 1-year period shall be calculated from the date of the alien's last arrival in the United States or April 1, 1997, whichever is later. When the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. For the purpose of making determinations under section 208(a)(2)(B) of the Act only, an application is considered to have been filed on the date it is received by the Service, pursuant to § 103.2(a)(7) of this chapter. In a case in which the application has not been received by the Service within 1 year from the applicant's date of entry into the United States, but the applicant provides clear and convincing documentary evidence of mailing the application within the 1-year period, the mailing date shall be considered the filing date. For cases before the Immigration Court in accordance with § 3.13 of this chapter, the application is considered to have been filed on the date it is received by the Immigration Court. For cases before the Board of Immigration Appeals, the application is considered to have been filed on the date it is received by the Board. In the case of an application that appears to have been filed more than a year after the applicant arrived in the United States, the asylum officer, the immigration judge, or the Board will determine whether the applicant qualifies for an exception to the deadline. For aliens present in or arriving in the Commonwealth of the Northern Mariana Islands, the 1-year period shall be calculated from either January 1, 2030 or the date of the alien's last arrival in the United States (including the Commonwealth of the Northern Mariana Islands), whichever is later. No period of physical presence in the Commonwealth of the Northern Mariana Islands prior to January 1, 2030, shall count toward the 1-year period. After November 28, 2009, any travel to the Commonwealth of the Northern Mariana Islands from any other State shall not re-start the calculation of the 1-year period.

(3) *Prior denial of application.* For purposes of section 208(a)(2)(C) of the Act,