

Department of Homeland Security

§ 208.9

(3) If the Board of Immigration Appeals has dismissed the alien's appeal of a denial of asylum, or sustained an appeal by the Service of a grant of asylum, a copy of the petition for judicial review or for habeas corpus pursuant to section 242 of the Act, date stamped by the appropriate court.

(d) In order for employment authorization to be renewed before its expiration, the application for renewal must be received by the Service 90 days prior to expiration of the employment authorization.

[87 FR 57797, Sept. 22, 2022]

§ 208.8 Limitations on travel outside the United States.

(a) An applicant who leaves the United States without first obtaining advance parole under § 212.5(f) of this chapter shall be presumed to have abandoned his or her application under this section.

(b) An applicant who leaves the United States pursuant to advance parole under § 212.5(f) of this chapter and returns to the country of claimed persecution shall be presumed to have abandoned his or her application, unless the applicant is able to establish compelling reasons for such return.

[62 FR 10337, Mar. 6, 1997, as amended at 65 FR 82255, Dec. 28, 2000]

§ 208.9 Procedure for interview before an asylum officer.

(a) *Claims adjudicated.* USCIS shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(a)(2) or (c)(3), when applicable, and is within the jurisdiction of USCIS pursuant to § 208.2(a). In all cases, such proceedings shall be conducted in accordance with section 208 of the Act.

(1) *Timing of interview.* For interviews on asylum applications within the jurisdiction of USCIS pursuant to § 208.2(a)(1)(ii), USCIS shall not schedule the interview to take place fewer than 21 days after the applicant has been served with a record of the positive credible fear determination pursuant to § 208.30(f), unless the applicant requests in writing that an interview be scheduled sooner. The asylum officer shall conduct the interview within

45 days of the applicant being served with a positive credible fear determination made by an asylum officer pursuant to § 208.30(f) or made by an immigration judge pursuant to 8 CFR 1208.30, subject to the need to reschedule an interview due to exigent circumstances, such as the unavailability of an asylum officer to conduct the interview, the inability of the applicant to attend the interview due to illness, the inability to timely secure an appropriate interpreter pursuant to paragraph (g)(2) of this section, or the closure of the asylum office.

(2) [Reserved]

(b) *Conduct and purpose of interview.* The asylum officer shall conduct the interview in a nonadversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for asylum. For interviews on applications within the jurisdiction of USCIS pursuant to § 208.2(a)(1)(ii), the asylum officer shall also elicit all relevant and useful information bearing on the applicant's eligibility for withholding of removal under the Act and protection under the Convention Against Torture, and, as appropriate, elicit sufficient information to make a determination whether there is a significant possibility that the applicant's spouse or child, if included in the request for asylum, has experienced or fears harm that would be an independent basis for asylum, withholding of removal under the Act, or protection under the Convention Against Torture in the event that the principal applicant is not granted asylum. If the asylum officer determines that there is a significant possibility that the applicant's spouse or child has experienced or fears harm that would be an independent basis for asylum, withholding of removal under the Act, or protection under the Convention Against Torture, the asylum officer shall inform the spouse or child of that determination. At the time of the interview, the applicant must provide complete information regarding the applicant's identity, including name, date and place of birth, and nationality, and

may be required to register this identity. The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(c) *Authority of asylum officer.* The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present evidence, receive evidence, and question the applicant and any witnesses.

(d) *Completion of the interview.* Upon completion of the interview before an asylum officer:

(1) The applicant or the applicant's representative will have an opportunity to make a statement or comment on the evidence presented. The representative will also have the opportunity to ask follow-up questions of the applicant and any witness. The asylum officer may, in the asylum officer's discretion, limit the length of any statement or comment and may require its submission in writing.

(2) USCIS shall inform the applicant that the applicant must appear in person to receive and to acknowledge receipt of the decision of the asylum officer and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer. An applicant's failure to appear to receive and acknowledge receipt of the decision will be treated as delay caused by the applicant for purposes of § 208.7.

(e) *Extensions.* The asylum officer will consider evidence submitted by the applicant together with the applicant's asylum application.

(1) For applications being considered under § 208.2(a)(1)(i), the applicant must submit any documentary evidence at least 14 calendar days in advance of the interview date. As a matter of discretion, the asylum officer may consider evidence submitted within the 14-day period prior to the interview date or may grant the applicant a brief extension of time during which the applicant may submit additional evidence. Any such extension will be treated as a delay caused by the applicant for purposes of § 208.7.

(2) For applications being considered under § 208.2(a)(1)(ii), the asylum officer

may grant the applicant a brief extension of time during which the applicant may submit additional evidence, but the asylum officer shall not grant any extension to submit additional evidence that would prevent a decision from being issued on the application within 60 days of service of the positive credible fear determination made by an asylum officer pursuant to § 208.30(f) or made by an immigration judge pursuant to 8 CFR 1208.30 except when the interview has been rescheduled due to exigent circumstances pursuant to paragraph (a)(1) of this section.

(f) *Record.* (1) The asylum application, as defined in § 208.3(a), all supporting information provided by the applicant, any comments submitted by the Department of State or by DHS, and any other unclassified information considered by the asylum officer in the written decision shall comprise the record.

(2) For interviews on asylum applications within the jurisdiction of USCIS pursuant to § 208.2(a)(1)(ii), except for statements made off the record with the permission of the asylum officer, the interview shall be recorded. A verbatim transcript of the interview shall be prepared and included in the referral package to the immigration judge as described in § 208.14(c)(1), with a copy also provided to the applicant.

(g) *Interpreters.* (1) Except as provided in paragraph (g)(2) of this section, an applicant unable to proceed with the interview in English must provide, at no expense to USCIS, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph (g)(1) may be considered a failure to appear for the interview for purposes of § 208.10.

(2) Notwithstanding paragraph (h) of this section, for interviews on asylum applications within the jurisdiction of

USCIS pursuant to §208.2(a)(1)(ii), if the applicant is unable to proceed effectively in English, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. If a USCIS interpreter is unavailable, USCIS will attribute any resulting delay to USCIS for the purposes of employment authorization pursuant to § 208.7.

(h) *Asylum applicant interpreters.* For asylum interviews conducted between March 16, 2022, through March 16, 2023:

(1) Asylum applicants unable to proceed with the interview in English must use USCIS's telephonic interpreter services, so long as the applicant is fluent in one of the following languages: Akan, Albanian, Amharic, Arabic, Armenian, Azerbaijani, Bengali, Burmese, Cantonese, Creole/Haitian Creole, Farsi-Afghani/Dari, Farsi-Iranian, Foo Chow/Fuzhou, French, Georgian, Gujarati, Hindi, Hmong, Hungarian, Indonesia/Bahasa, Konjobal, Korean, Kurdish, Lingala, Mam, Mandarin, Nepali, Pashto/Pushtu, Portuguese, Punjabi, Quiche/K'iche, Romanian, Russian, Serbian, Sinhalese, Somali, Spanish, Swahili, Tagalog, Tamil, Tigrinya, Turkish, Twi, Ukrainian, Urdu, Uzbek, or Vietnamese.

(i) If a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to §208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter.

(ii) Except as provided in paragraph (h)(1)(iii) of this section, if an applicant is fluent in a language listed in this paragraph (h)(1) but refuses to proceed with the USCIS interpreter in order to use his or her own interpreter, USCIS will consider this a failure without good cause to comply with this paragraph (h)(1). The applicant will be considered to have failed to appear for the

interview for the purposes of 8 CFR 208.10.

(iii) If the applicant elects to proceed in a language that is not listed in this paragraph (h)(1), the applicant must provide a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent. If an applicant is unable to provide an interpreter fluent in English and the elected language not listed in this paragraph (h)(1), the applicant may provide an interpreter fluent in the elected language and one found in this paragraph (h)(1). USCIS will provide a relay interpreter to interpret between the language listed in this paragraph (h)(1) and English. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of 8 CFR 208.10.

(2) [Reserved]

(i) *Dependents of applicants being considered under §208.2(a)(1)(ii).* This paragraph (i) governs when an applicant whose application for asylum is being considered under §208.2(a)(1)(ii) is not granted asylum pursuant to §208.14(c) and has included a spouse or children within their request for asylum. The asylum officer will make a determination whether there is a significant possibility that the spouse or child has experienced or fears harm that would be an independent basis for asylum, withholding of removal under the Act, or protection under the Convention Against Torture, based on the information elicited pursuant to paragraph (b) of this section. This determination will be included in the record, as otherwise described in paragraph (f) of this section. Referral of the principal applicant's application to an immigration judge, along with the appropriate charging documents, will not be made until any pending application by the

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spouse or child as a principal applicant is adjudicated.

[62 FR 10337, Mar. 6, 1997, as amended at 65 FR 76133, Dec. 6, 2000; 76 FR 53784, Aug. 29, 2011; 85 FR 38627, June 26, 2020; 85 FR 59660, Sept. 23, 2020; 86 FR 15076, Mar. 22, 2021; 86 FR 51788, Sept. 17, 2021; 87 FR 14763, Mar. 16, 2022; 87 FR 18216, Mar. 29, 2022]

EFFECTIVE DATE NOTE: At 85 FR 59660, Sept. 23, 2020, § 208.9 was amended by adding paragraph (h), effective Sept. 23, 2020, through Mar. 22, 2021. At 86 FR 15076, Mar. 22, 2021, the expiration date for § 208.9(h) was extended to Sept. 20, 2021. At 86 FR 51788, Sept. 17, 2021, the paragraph was amended and the expiration date for § 208.9(h) was further extended to Mar. 16, 2022. At 87 FR 14763, Mar. 16, 2022, § 208.9(h) was amended and the effective date was further extended from Mar. 16, 2022, through Mar. 16, 2023.

§ 208.10 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprint processing.

Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the right to an interview. Failure to comply with fingerprint processing requirements without good cause may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer. Failure to appear shall be excused if the notice of the interview or fingerprint appointment was not mailed to the applicant's current address and such address had been provided to the USCIS by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview or fingerprinting appointment. Failure to appear at the interview or fingerprint appointment will be excused if the applicant demonstrates that such failure was the result of exceptional circumstances.

[87 FR 57798, Sept. 22, 2022]

§ 208.11 Comments from the Department of State.

(a) U.S. Citizenship and Immigration Services (USCIS) may request, at its discretion, specific comments from the Department of State regarding individual cases or types of claims under

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consideration, or such other information as USCIS deems appropriate.

(b) With respect to any asylum application, the Department of State may provide, at its discretion, to USCIS:

(1) Detailed country conditions information relevant to eligibility for asylum or withholding of removal;

(2) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her particular situation;

(3) Information about whether persons who are similarly situated to the applicant are persecuted or tortured in the applicant's country of nationality or habitual residence and the frequency of such persecution or torture; or

(4) Such other information as it deems relevant.

(c) Any comments received pursuant to paragraph (b) of this section shall be made part of the record. Unless the comments are classified under the applicable Executive Order, the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of any decision to deny the application.

[74 FR 15369, Apr. 6, 2009]

§ 208.12 Reliance on information compiled by other sources.

(a) In deciding an asylum application, or in deciding whether the alien has a credible fear of persecution or torture pursuant to § 208.30 of this part, or a reasonable fear of persecution or torture pursuant to § 208.31, the asylum officer may rely on material provided by the Department of State, other USCIS offices, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State. Persons may continue to seek documents