

(3) The alien, upon whose status Family Unity benefits under the LIFE Act were based, fails to apply for LIFE Legalization by June 4, 2003, has his or her LIFE Legalization application denied, or loses his or her LPR status; or

(4) A qualifying relationship to the alien, upon whose status Family Unity benefits under the LIFE Act Amendments were based, no longer exists.

(b) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of 8 CFR 103.8. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of 8 CFR 103.8. Nothing in this section shall preclude the Service from commencing removal proceedings prior to termination of Family Unity benefits.

(c) *Effect of termination.* Termination of Family Unity benefits under the LIFE Act Amendments shall render the alien amenable to removal under any ground specified in section 237 of the Act (including those grounds described in § 245a.34(a)). In addition, the alien will no longer be considered to be in a period of stay authorized by the Attorney General as of the date of such termination.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38352, June 4, 2002; 76 FR 53794, Aug. 29, 2011]

PART 246—RESCISSON OF ADJUSTMENT OF STATUS

Sec.

246.1 Notice.

246.2 Allegations admitted; no answer filed; no hearing requested.

246.3 Allegations contested or denied; hearing requested.

246.4 Immigration judge's authority; withdrawal and substitution.

246.5 Hearing.

246.6 Decision and order.

246.7 Appeals.

246.8 [Reserved]

246.9 Surrender of Form I-551.

AUTHORITY: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

SOURCE: 62 FR 10385, Mar. 6, 1997, unless otherwise noted.

§ 246.1 Notice.

If it appears to a district director that a person residing in his or her district was not in fact eligible for the adjustment of status made in his or her case, or it appears to an asylum office director that a person granted adjustment of status by an asylum officer pursuant to 8 CFR 240.70 was not in fact eligible for adjustment of status, a proceeding shall be commenced by the personal service upon such person of a notice of intent to rescind, which shall inform him or her of the allegations upon which it is intended to rescind the adjustment of his or her status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he or she may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he or she may, within such period, request a hearing before an immigration judge in support of, or in lieu of, his or her written answer. The respondent shall further be informed that he or she may have the assistance of or be represented by counsel or representative of his or her choice qualified under part 292 of this chapter, at no expense to the Government, in the preparation of his or her answer or in connection with his or her hearing, and that he or she may present such evidence in his or her behalf as may be relevant to the rescission.

[62 FR 10385, Mar. 6, 1997, as amended at 64 FR 27881, May 21, 1999]

§ 246.2 Allegations admitted; no answer filed; no hearing requested.

If the answer admits the allegations in the notice, or if no answer is filed within the thirty-day period, or if no hearing is requested within such period, the district director or asylum office director shall rescind the adjustment of status previously granted, and no appeal shall lie from his decision.

[62 FR 10385, Mar. 6, 1997, as amended at 64 FR 27881, May 21, 1999]

Department of Homeland Security**§ 246.6****§ 246.3 Allegations contested or denied; hearing requested.**

If, within the prescribed time following service of the notice pursuant to § 246.1, the respondent has filed an answer which contests or denies any allegation in the notice, or a hearing is requested, a hearing pursuant to § 246.5 shall be conducted by an immigration judge, and the requirements contained in §§ 240.3, 240.4, 240.5, 240.6, 240.7, and 240.9 of this chapter shall be followed.

§ 246.4 Immigration judge's authority; withdrawal and substitution.

In any proceeding conducted under this part, the immigration judge shall have authority to interrogate, examine, and cross-examine the respondent and other witnesses, to present and receive evidence, to determine whether adjustment of status shall be rescinded, to make decisions thereon, including an appropriate order, and to take any other action consistent with applicable provisions of law and regulations as may be appropriate to the disposition of the case. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges by the Act. The immigration judge assigned to conduct a hearing shall, at any time, withdraw if he or she deems himself or herself disqualified. If a hearing has begun but no evidence has been adduced other than the notice and answer, if any, pursuant to §§ 246.1 and 246.2, or if an immigration judge becomes unavailable to complete his or her duties within a reasonable time, or if at any time the respondent consents to a substitution, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she is familiar with the record in the case.

§ 246.5 Hearing.

(a) *Service counsel.* The Government shall be represented at the hearing by a Service counsel who shall have authority to present evidence, and to interrogate, examine, and cross-examine the respondent and other witnesses. The Service counsel is authorized to appeal from a decision of the immigration

judge pursuant to § 246.7 and to move for reopening or reconsideration pursuant to § 3.23 of this chapter.

(b) *Opening.* The immigration judge shall advise the respondent of the nature of the proceeding and the legal authority under which it is conducted; advise the respondent of his or her right to representation, at no expense to the Government, by counsel or representative of his or her own choice qualified under part 292 of this chapter and require him or her to state then and there whether he or she desires representation; advise the respondent that he or she will have a reasonable opportunity to examine and object to the evidence against him or her, to present evidence in his or her own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the allegations in the notice to the respondent and explain them in nontechnical language, and enter the notice and respondent's answer, if any, as exhibits in the record.

(c) *Pleading by respondent.* The immigration judge shall require the respondent to state for the record whether he or she admits or denies the allegations contained in the notice, or any of them, and whether he or she concedes that his or her adjustment of status should be rescinded. If the respondent admits all of the allegations and concedes that the adjustment of status in his or her case should be rescinded under the allegations set forth in the notice, and the immigration judge is satisfied that no issues of law or fact remain, he or she may determine that rescission as alleged has been established by the respondent's admissions. The allegations contained in the notice shall be taken as admitted when the respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the hearing.

§ 246.6 Decision and order.

The decision of the immigration judge may be oral or written. The formal enumeration of findings is not required. The order shall direct either that the proceeding be terminated or that the adjustment of status be rescinded. Service of the decision and finality of the order of the immigration

§ 246.7

8 CFR Ch. I (1-1-25 Edition)

judge shall be in accordance with, and as stated in §§ 240.13 (a) and (b) and 240.14 of this chapter.

§ 246.7 Appeals.

Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge under this part to the Board of Immigration Appeals. An appeal shall be taken within 30 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be specifically identified in the Notice of Appeal (Form EOIR 26); failure to do so may constitute a ground for dismissal of the appeal by the Board.

§ 246.8 [Reserved]

§ 246.9 Surrender of Form I-551.

A respondent whose status as a permanent resident has been rescinded in accordance with section 246 of the Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken, the Form I-551 issued to him or her at the time of the grant of permanent resident status.

PART 247—ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS

Sec.

- 247.1 Scope of part.
- 247.11 Notice.
- 247.12 Disposition of case.
- 247.13 Disposition of Form I-508.
- 247.14 Surrender of documents.

AUTHORITY: 8 U.S.C. 1101, 1103, and 1257.

§ 247.1 Scope of part.

The provisions of this part apply to an alien who is lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15)(A) or (15)(G) of section 101(a) of the Act, and to his immediate family; also, an alien who was lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15)(E) of section

101(a) of the Act, and to his spouse and children.

[22 FR 9801, Dec. 6, 1957]

§ 247.11 Notice.

If it appears to a district director that an alien residing in his district, who was lawfully admitted for permanent residence, has an occupational status described in section 247 of the Act, he shall cause a notice on Form I-509 to be served on such alien by personal service informing him that it is proposed to adjust his status, unless the alien requests that he be permitted to retain his status as a resident alien and executes and files with such district director a Form I-508 (Waiver of Rights, Privileges, Exemptions and Immunities) and, if a French national receiving salary from the French Republic, Form I-508F (election as to tax exemption under the Convention between the United States and the French Republic), within 10 days after service of the notice, or the alien, within such 10-day period, files with the district director a written answer under oath setting forth reasons why his status should not be adjusted. The notice shall also advise the person that he may, within such period and upon his request have an opportunity to appear in person, in support or in lieu of his written answer, before an immigration officer designated for that purpose. The person shall further be advised that he may have the assistance of counsel without expense to the Government of the United States in the preparation of his answer or in connection with such personal appearance, and may examine the evidence upon which it is proposed to base such adjustment.

[22 FR 9801, Dec. 6, 1957, as amended at 37 FR 11471, June 8, 1972]

§ 247.12 Disposition of case.

(a) *Allegations admitted or no answer filed.* If the waiver Form I-508 and, if applicable, Form I-508F is not filed by the alien within the time prescribed, and the answer admits the allegations in the notice, or no answer is filed, the district director shall place a notation on the notice describing the alien's adjusted nonimmigrant status and shall cause a set of Forms I-94 (see § 1.4) to