

§ 103.4

provide a notice to the alien that if he or she fails to file an appeal from the decision, the Form I-692 shall serve as a final notice of ineligibility.

(ii) Form I-694, Notice of Appeal, in triplicate, shall be used to file the appeal, and must be accompanied by the appropriate fee. Form I-694 shall be furnished with the notice of denial at the time of service on the alien.

(iii) Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Unit as provided by §103.1(f)(2) of this part for review and decision. The decision on the appeal shall be in writing, and if the appeal is dismissed, shall include a final notice of ineligibility. A copy of the decision shall be served upon the petitioner and his or her attorney or representative of record. No further administrative appeal shall lie from this decision, nor may the petition be filed or reopened before an immigration judge or the Board of Immigration Appeals during exclusion or deportation proceedings.

(iv) Any appeal which is filed that: Fails to state the reason for the appeal; is filed solely on the basis of a denial for failure to file the petition for adjustment of status under part 210a of this title in a timely manner; or is patently frivolous, will be summarily dismissed. An appeal received after the thirty (30) day period has tolled will not be accepted for processing.

(b) *Oral argument regarding appeal before AAU—(1) Request.* If the affected party desires oral argument, the affected party must explain in writing specifically why oral argument is necessary. For such a request to be considered, it must be submitted within the time allowed for meeting other requirements.

(2) *Decision about oral argument.* The Service has sole authority to grant or deny a request for oral argument. Upon approval of a request for oral argument, the AAU shall set the time, date, place, and conditions of oral argument.

(c) *Service precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to

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the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. In addition to Attorney General and Board decisions referred to in §1003.1(g) of chapter V, designated Service decisions are to serve as precedents in all proceedings involving the same issue(s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. Precedent decisions must be published and made available to the public as described in §103.9(a) of this part.

[31 FR 3062, Feb. 24, 1966, as amended at 37 FR 927, Jan. 21, 1972; 48 FR 36441, Aug. 11, 1983; 49 FR 7355, Feb. 29, 1984; 52 FR 16192, May 1, 1987; 54 FR 29881, July 17, 1989; 55 FR 20769, 20775, May 21, 1990; 55 FR 23345, June 7, 1990; 57 FR 11573, Apr. 6, 1992; 68 FR 9832, Feb. 28, 2003]

§ 103.4 Certifications.

(a) *Certification of other than special agricultural worker and legalization cases—(1) General.* The Commissioner or the Commissioner's delegate may direct that any case or class of cases be certified to another Service official for decision. In addition, regional commissioners, regional service center directors, district directors, officers in charge in districts 33 (Bangkok, Thailand), 35 (Mexico City, Mexico), and 37 (Rome, Italy), and the Director, National Fines Office, may certify their decisions to the appropriate appellate authority (as designated in this chapter) when the case involves an unusually complex or novel issue of law or fact.

(2) *Notice to affected party.* When a case is certified to a Service officer, the official certifying the case shall notify the affected party using a Notice of Certification (Form I-290C). The affected party may submit a brief to the officer to whom the case is certified within 30 days after service of the notice. If the affected party does not wish

to submit a brief, the affected party may waive the 30-day period.

(3) *Favorable action.* The Service officer to whom a case is certified may suspend the 30-day period for submission of a brief if that officer takes action favorable to the affected party.

(4) *Initial decision.* A case within the appellate jurisdiction of the Associate Commissioner, Examinations, or for which there is no appeal procedure may be certified only after an initial decision is made.

(5) *Certification to AAU.* A case described in paragraph (a)(4) of this section may be certified to the AAU.

(6) *Appeal to Board.* In a case within the Board's appellate jurisdiction, an unfavorable decision of the Service official to whom the case is certified (whether made initially or upon review) is the decision which may be appealed to the Board under §3.1(b) of this chapter.

(7) *Other applicable provisions.* The provisions of §103.3(a)(2)(x) of this part also apply to decisions on certified cases. The provisions of §103.3(b) of this part also apply to requests for oral argument regarding certified cases considered by the AAU.

(b) *Certification of denials of special agricultural worker and legalization applications.* The Regional Processing Facility director or the district director may, in accordance with paragraph (a) of this section, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) (the appellate authority designated in §103.1(f)(2)) of this part, when the case involves an unusually complex or novel question of law or fact.

[52 FR 661, Jan. 8, 1987, as amended at 53 FR 43985, Oct. 31, 1988; 55 FR 20770, May 21, 1990]

§ 103.5 Reopening or reconsideration.

(a) *Motions to reopen or reconsider in other than special agricultural worker and legalization cases—*(1) *When filed by affected party—*(i) *General.* Except where the Board has jurisdiction and as otherwise provided in 8 CFR parts 3, 210, 242 and 245a, when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision. Motions to reopen or reconsider are not applicable to

proceedings described in §274a.9 of this chapter. Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

(ii) *Jurisdiction.* The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction. In that instance, the new official having jurisdiction is the official over such a proceeding in the new geographical locations.

(iii) *Filing Requirements—* A motion shall be submitted on Form I-290A, and may be accompanied by a brief. It must be—

(A) In writing and signed by the affected party or the attorney or representative of record, if any;

(B) Accompanied by a nonrefundable fee as set forth in §103.7;

(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

(D) Addressed to the official having jurisdiction; and

(E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

(iv) *Effect of motion or subsequent application or petition.* Unless the Service directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition does not stay the execution of any decision in a case or extend a previously set departure date.

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A