

Department of Homeland Security

§ 246.7

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the respondent and other witnesses, to present and receive evidence, to determine whether adjustment of status shall be rescinded, to make decisions thereon, including an appropriate order, and to take any other action consistent with applicable provisions of law and regulations as may be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 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