

## **8 U.S.C. §1103. Powers and duties of the Secretary, the Under Secretary, and the Attorney General**

### **(a) Secretary of Homeland Security**

(1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however,* That determination and ruling by the Attorney General with respect to all questions of law shall be controlling.

(2) He shall have control, direction, and supervision of all employees and of all the files and records of the Service.

(3) He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter.

(4) He may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon any other employee of the Service.

(5) He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper.

(6) He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Service.

(7) He may, with the concurrence of the Secretary of State, establish offices of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this chapter, detail employees of the Service for duty in foreign countries.

(8) After consultation with the Secretary of State, the Attorney General may authorize officers of a foreign country to be stationed at preclearance facilities in the United States for the purpose of ensuring that persons traveling from or through the United States to that foreign country comply with that country's immigration and related laws.

(9) Those officers may exercise such authority and perform such duties as United States immigration officers are authorized to exercise and perform in that foreign country under reciprocal agreement, and they shall enjoy such reasonable privileges and immunities necessary for the performance of their duties as the government of their country extends to United States immigration officers.

(10) In the event the Attorney General determines that an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response, the Attorney General may authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Service.

(11) The Attorney General, in support of persons in administrative detention in non-Federal institutions, is authorized—

(A) to make payments from funds appropriated for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration for necessary clothing, medical care, necessary guard hire, and the housing, care, and security of persons detained by the Service pursuant to Federal law under an agreement with a State or political subdivision of a State; and

(B) to enter into a cooperative agreement with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention services in any State or unit of local government which agrees to provide guaranteed bed space for persons detained by the Service.

(June 27, 1952, ch. 477, title I, §103, 66 Stat. 173; Pub. L. 100-525, §9(c), Oct. 24, 1988, 102 Stat. 2619; Pub. L. 101-649, title I, §142, Nov. 29, 1990, 104 Stat. 5004; Pub. L. 104-208, div. C, title I, §§102(d), 125, 134(a), title III, §§308(d)(4)(C), (e)(4), 372, 373, Sept. 30, 1996, 110 Stat. 3009-555, 3009-562, 3009-564, 3009-618, 3009-620, 3009-646, 3009-647; Pub. L. 107-296, title XI, §1102, Nov. 25, 2002, 116 Stat. 2273; Pub. L. 108-7, div. L, §105(a)(1), (2), Feb. 20, 2003, 117 Stat. 531; Pub. L. 108-458, title V, §5505(a), Dec. 17, 2004, 118 Stat. 3741; Pub. L. 111-122, §2(a), Dec. 22, 2009, 123 Stat. 3480.)

## 8 CFR § Sec. 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. (Paragraph (a)(1)(i) amended 4/29/96; [61 FR 18900](#) )

(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-290B and may be accompanied by a brief. It must be: (Introductory text revised effective 9/28/05; [70 FR 50954](#) )

(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](#); (Redesignated as (B), previously (C) effective 4/1/97; [62 FR 10312](#) )

(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; (Redesignated as (C), previously (D) effective 4/1/97; [62 FR 10312](#) )

(D) Addressed to the official having jurisdiction; and (Redesignated as (D), previously (E) effective 4/1/97; [62 FR 10312](#) )

(E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction. (Redesignated as (E), previously (F) effective 4/1/97; [62 FR 10312](#) )

(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 proved in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

(i) The requested evidence was not material to the issue of eligibility;

(ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or

(iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address. (Paragraph (a)(2) revised 2/10/94; 59 FR 1463)

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. (Paragraph (a)(3) revised 2/10/94; 59 FR 1463)

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed. Where a motion to reopen is granted, the proceeding shall be reopened. The notice and any favorable decision may be combined. (Paragraph (a)(4) revised 2/10/94; 59 FR 1463)

(5) Motion by Service officer--

(i) Service motion with decision favorable to affected party. When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision in order to make a new decision favorable to the affected party, the Service officer shall combine the motion and the favorable decision in one action.

(ii) Service motion with decision that may be unfavorable to affected party. When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(6) Appeal to AAU from Service decision made as a result of a motion. A field office decision made as a result of a motion may be applied to the AAU only if the original decision was appealable to the AAU.

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

(8) Treating an appeal as a motion. The official who denied an application or petition may treat the appeal from that decision as a motion for the purpose of granting the motion. (Paragraph (a) (8) added 2/10/94; 59 FR 1463)

(b) Motions to reopen or reconsider denials of special agricultural worker and legalization applications. Upon the filing of an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit), the Director of a Regional Processing Facility or the consular officer at an Overseas Processing Office may sua sponte reopen any proceeding under his or her jurisdiction opened under Part 210 or 245a of this chapter and may reconsider any decision rendered in such proceeding. The new decision must be served on the appellant within 45 days of receipt of any brief and/or new evidence, or upon expiration of the time allowed for the submission of a brief. The Associate Commissioner, Examinations, or the Chief of the Administrative Appeals Unit may sua sponte reopen any proceeding conducted by that Unit under Part 210 or 245a of this chapter and reconsider any decision rendered in such proceeding. Motions to reopen a proceeding or reconsider a decision under Part 210 or 245a of this chapter shall not be considered.

(c) Motions to reopen or reconsider decisions on replenishment agricultural worker petitions.

(1) The director of a regional processing facility may sua sponte reopen any proceeding under Part 210a of this title which is within his or her jurisdiction and may render a new decision. This decision may reverse a prior favorable decision when it is determined that there was fraud during the registration or petition processes and the petitioner was not entitled to the status granted. The petitioner must be given an opportunity to offer evidence in support of the petition and in opposition to the grounds for reopening the petition before a new decision is rendered. (TM 5/90)

(2) The Associate Commissioner, Examinations or the Chief of the Administrative Appeals Unit may sua sponte reopen any proceeding conducted by that unit under Part 210a of this title and reconsider any decision rendered in such proceeding.

(3) Motions to reopen a proceeding or reconsider a decision under Part 210a of this title shall not be considered. (TM 9/89)

[27 FR 7562, Aug. 1, 1962, as amended at 30 FR 12772, Oct. 7, 1965; 32 FR 271, Jan. 11, 1967; 52 FR 16193, May 1, 1987; 54 FR 29881, July 17, 1989]