

Department of Homeland Security

§ 103.2

remain in effect. Unauthorized employment will not remove an otherwise eligible alien from G-4 status for residence and physical presence requirements, provided the qualifying G-4 status is maintained.

[54 FR 5927, Feb. 7, 1989]

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

Subpart A—Applying for Benefits, Surety Bonds, Fees

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SOURCE: 40 FR 44481, Sept. 26, 1975, unless otherwise noted.

Subpart A—Applying for Benefits, Surety Bonds, Fees

§ 103.1 [Reserved]

§ 103.2 Submission and adjudication of benefit requests.

(a) *Filing.* (1) *Preparation and submission.* Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission. Each benefit request or other document must be filed with fee(s) as required by regulation. Benefit requests which require a person to submit biometric information must also be filed with the biometric service fee in 8 CFR 103.7(b)(1), for each individual who is required to provide biometrics. Filing fees and biometric service fees are non-refundable and, except as otherwise provided in this chapter I, must be paid when the benefit request is filed.

(2) *Signature.* An applicant or petitioner must sign his or her benefit request. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the benefit request, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an benefit request that is being filed with the USCIS is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.2 of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter. A beneficiary of a petition is not a recognized party in such a proceeding. A benefit request presented in person by someone

who is not the applicant or petitioner, or his or her representative as defined in this paragraph, shall be treated as if received through the mail, and the person advised that the applicant or petitioner, and his or her representative, will be notified of the decision. Where a notice of representation is submitted that is not properly signed, the benefit request will be processed as if the notice had not been submitted.

(4) *Oath.* Any required oath may be administered by an immigration officer or person generally authorized to administer oaths, including persons so authorized by Article 136 of the Uniform Code of Military Justice.

(5) *Translation of name.* If a document has been executed in an anglicized version of a name, the native form of the name may also be required.

(6) *Where to file.* All benefit requests must be filed in accordance with the form instructions.

(7) *Receipt date.* (i) *Benefit requests submitted.* A benefit request which is not signed and submitted with the correct fee(s) will be rejected. A benefit request that is not executed may be rejected. Except as provided in 8 CFR parts 204, 245, or 245a, a benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format. The receipt date shall be recorded upon receipt by USCIS.

(ii) *Non-payment.* If a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter shall be notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension. If the benefit request is pending and these charges are not paid within 14 days, the benefit request shall be rejected as improperly filed. If the benefit request was already approved, and these charges are not paid, the approval shall be automatically revoked because it was improperly filed. If the benefit request was already denied, revoked, or abandoned, that decision will not be affected by the non-payment of the filing or fingerprinting fee. New fees will be required with any new benefit request. Any fee and service charges collected as the result of collection activities or

legal action on the prior benefit request shall be used to cover the cost of the previous rejection, revocation, or other action.

(iii) *Rejected benefit requests.* A benefit request which is rejected will not retain a filing date. There is no appeal from such rejection.

(b) *Evidence and processing.* (1) *Demonstrating eligibility.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.

(2) *Submitting secondary evidence and affidavits—*(i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification

from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

(iii) *Evidence provided with a self-petition filed by a spouse or child of abusive citizen or resident.* The USCIS will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS.

(3) *Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

(4) *Supporting documents.* Original or photocopied documents which are required to support any benefit request must be submitted in accordance with the form instructions.

(5) *Request for an original document.* USCIS may, at any time, request submission of an original document for review. The request will set a deadline for submission of the original document. Failure to submit the requested original document by the deadline may result in denial or revocation of the underlying benefit request. An original document submitted in response to such a request, when no longer required by USCIS, will be returned to

the petitioner or applicant upon completion of the adjudication. If USCIS does not return an original document within a reasonable time after completion of the adjudication, the petitioner or applicant may request return of the original document in accordance with instructions provided by USCIS.

(6) *Withdrawal.* An applicant or petitioner may withdraw an benefit request at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

(7) *Testimony.* The USCIS may require the taking of testimony, and may direct any necessary investigation. When a statement is taken from and signed by a person, he or she shall, upon request, be given a copy without fee. Any allegations made subsequent to filing an benefit request which are in addition to, or in substitution for, those originally made, shall be filed in the same manner as the original benefit request, or document, and acknowledged under oath thereon.

(8) *Request for Evidence; Notice of Intent to Deny—(i) Evidence of eligibility or ineligibility.* If the evidence submitted with the benefit request establishes eligibility, USCIS will approve the benefit request, except that in any case in which the applicable statute or regulation makes the approval of a benefit request a matter entrusted to USCIS discretion, USCIS will approve the benefit request only if the evidence of record establishes both eligibility and that the petitioner or applicant warrants a favorable exercise of discretion. If the record evidence establishes ineligibility, the benefit request will be denied on that basis.

(ii) *Initial evidence.* If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

(iii) *Other evidence.* If all required initial evidence has been submitted but

the evidence submitted does not establish eligibility, USCIS may: deny the benefit request for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the benefit request and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

(iv) *Process.* A request for evidence or notice of intent to deny will be communicated by regular or electronic mail and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and sufficient information to respond. The request for evidence or notice of intent to deny will indicate the deadline for response, but in no case shall the maximum response period provided in a request for evidence exceed twelve weeks, nor shall the maximum response time provided in a notice of intent to deny exceed thirty days. Additional time to respond to a request for evidence or notice of intent to deny may not be granted.

(9) *Request for appearance.* An applicant, a petitioner, a sponsor, a beneficiary, or other individual residing in the United States at the time of filing an benefit request may be required to appear for fingerprinting or for an interview. A petitioner shall also be notified when a fingerprinting notice or an interview notice is mailed or issued to a beneficiary, sponsor, or other individual. The applicant, petitioner, sponsor, beneficiary, or other individual may appear as requested by USCIS, or prior to the dates and times for fingerprinting or of the date and time of interview:

(i) The individual to be fingerprinted or interviewed may, for good cause, request that the fingerprinting or interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the benefit request.

(10) *Effect of a request for initial or additional evidence for fingerprinting or interview rescheduling—(i) Effect on proc-*

essing. The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If an benefit request is missing required initial evidence, or an applicant, petitioner, sponsor, beneficiary, or other individual who requires fingerprinting requests that the fingerprinting appointment or interview be rescheduled, any time period imposed on USCIS processing will start over from the date of receipt of the required initial evidence or request for fingerprint or interview rescheduling. If USCIS requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on USCIS for processing will be suspended as of the date of request. It will resume at the same point where it stopped when USCIS receives the requested evidence or response, or a request for a decision based on the evidence.

(ii) *Effect on interim benefits.* Interim benefits will not be granted based on an benefit request held in suspense for the submission of requested initial evidence, except that the applicant or beneficiary will normally be allowed to remain while an benefit request to extend or obtain status while in the United States is pending. The USCIS may choose to pursue other actions to seek removal of a person notwithstanding the pending application. Employment authorization previously accorded based on the same status and employment as that requested in the current benefit request may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) during the suspense period.

(11) *Responding to a request for evidence or notice of intent to deny.* In response to a request for evidence or a notice of intent to deny, and within the period afforded for a response, the applicant or petitioner may: submit a complete response containing all requested information at any time within the period afforded; submit a partial response and ask for a decision based on the record; or withdraw the benefit request. All requested materials must be submitted together at one time, along with the original USCIS request for evidence or notice of intent to

deny. Submission of only some of the requested evidence will be considered a request for a decision on the record.

(12) *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* An benefit request shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the benefit request was filed. An benefit request shall be denied where any benefit request upon which it was based was filed subsequently.

(13) *Effect of failure to respond to a request for evidence or a notice of intent to deny or to appear for interview or biometrics capture—(i) Failure to submit evidence or respond to a notice of intent to deny.* If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the processing and approval of a case, such as photographs, are not submitted by the required date, the application may be summarily denied as abandoned.

(ii) *Failure to appear for biometrics capture, interview or other required in-person process.* Except as provided in 8 CFR 335.6, if USCIS requires an individual to appear for biometrics capture, an interview, or other required in-person process but the person does not appear, the benefit request shall be considered abandoned and denied unless by the appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear.

(14) *Effect of request for decision.* Where an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. Failure to appear for required fingerprinting or for a required interview, or to give required testimony, shall result in the denial of the related benefit request.

(15) *Effect of withdrawal or denial due to abandonment.* The USCIS acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new benefit request with a new fee. However, the priority or processing date of a withdrawn or abandoned benefit request may not be applied to a later application petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior benefit request shall otherwise be material to the new benefit request.

(16) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.

(iii) *Discretionary determination.* Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the USCIS Director or his or her designee has determined that such

information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

(iv) *Classified information.* An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the USCIS Director or his or her designee should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The USCIS Director's or his or her designee's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(17) *Verifying claimed permanent resident status—(i) Department records.* The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States or was formerly a permanent resident of the United States will be verified from official Department records. These records include alien and other files, arrival manifests, arrival records, Department index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Permanent Resident Cards, or other registration receipt forms (provided that such forms were issued or endorsed to show admission for permanent residence), passports, and reentry permits. An official record of a Department index card must bear a designated immigrant visa symbol and must have been prepared by an authorized official of the Department in the course of processing immigrant admissions or adjustments to permanent resident status. Other cards, certificates, declarations, permits, and passports must have been issued or en-

dorsed to show admission for permanent residence. Except as otherwise provided in 8 CFR part 101, and in the absence of countervailing evidence, such official records will be regarded as establishing lawful admission for permanent residence.

(ii) *Assisting self-petitioners who are spousal-abuse victims.* If a self-petitioner filing a petition under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, USCIS will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

(18) *Withholding adjudication.* USCIS may authorize withholding adjudication of a visa petition or other application if USCIS determines that an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the benefit request, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the benefit request would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, USCIS will review the matter and determine whether adjudication of the benefit request should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of USCIS's determination, the investigation has not been completed, the matter will be reviewed again by USCIS and, if it concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, USCIS may authorize that adjudication be held in

abeyance for another six months. Thereafter, if USCIS determines it is necessary to continue to withhold adjudication pending completion of the investigation, it will review that determination every six months.

(19) *Notification of decision.* The Service will notify applicants, petitioners, and their representatives as defined in 8 CFR part 1 in writing of a decision made on a benefit request. Documents issued based on the approval of a request for benefits will be sent to the applicant or petitioner.

(c)–(d) [Reserved]

[29 FR 11956, Aug. 21, 1964]

EDITORIAL NOTES: 1. For FEDERAL REGISTER citations affecting § 103.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

2. At 72 FR 19106, Apr. 17, 2007, § 103.2 (d)(2) was amended by revising the terms “the Service” or “Service” to read “USCIS”; however, the amendment could not be incorporated because paragraph (d)(2) had earlier been removed and reserved.

§ 103.3 Denials, appeals, and precedent decisions.

(a) *Denials and appeals*—(1) *General*—(i) *Denial of application or petition.* When a Service officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial. If Form I-292 (a denial form including notification of the right of appeal) is used to notify the applicant or petitioner, the duplicate of Form I-292 constitutes the denial order.

(ii) *Appealable decisions.* Certain unfavorable decisions on applications, petitions, and other types of cases may be appealed. Decisions under the appellate jurisdiction of the Board of Immigration Appeals (Board) are listed in § 3.1(b) of this chapter. Decisions under the appellate jurisdiction of the Associate Commissioner, Examinations, are listed in § 103.1(f)(2) of this part.

(iii) *Appeal*—(A) *Jurisdiction.* When an unfavorable decision may be appealed, the official making the decision shall state the appellate jurisdiction and shall furnish the appropriate appeal form.

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and

103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

(C) *Record of proceeding.* An appeal and any cross-appeal or briefs become part of the record of proceeding.

(D) *Appeal filed by Service officer in case within jurisdiction of Board.* If an appeal is filed by a Service officer, a copy must be served on the affected party.

(iv) *Function of Administrative Appeals Unit (AAU).* The AAU is the appellate body which considers cases under the appellate jurisdiction of the Associate Commissioner, Examinations.

(v) *Summary dismissal.* An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The filing by an attorney or representative accredited under 8 CFR 292.2(d) of an appeal which is summarily dismissed under this section may constitute frivolous behavior as defined in 8 CFR 292.3(a)(15). Summary dismissal of an appeal under § 103.3(a)(1)(v) in no way limits the other grounds and procedures for disciplinary action against attorneys or representatives provided in 8 CFR 292.2 or in any other statute or regulation.

(2) *AAU appeals in other than special agricultural worker and legalization cases*—(i) *Filing appeal.* The affected party must submit an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions within 30 days after service of the decision.

(ii) *Reviewing official.* The official who made the unfavorable decision being appealed shall review the appeal unless the affected party moves to a new jurisdiction. In that instance, the official who has jurisdiction over such a proceeding in that geographic location shall review it.