

termination as to disclosure will be forthcoming. An extended deadline will be considered reasonable in all cases if it does not exceed 10 additional working days. If a longer extended deadline is designated, the notice of extension shall state the special circumstances which warrant it and shall be approved by the Commissioner. If the request is not responded to or acknowledged within the 30-day period, or if it is not responded to within an extended deadline, or if the requester considers an extended deadline of more than 10 additional working days unreasonable, the requester may petition the Deputy Attorney General to take appropriate measures to assure prompt action on the request. In order for a requester to treat a failure by the Service to respond as a denial and to file an appeal with the Attorney General, he must have filed a petition with the Deputy Attorney General complaining of the delay, and must have allowed time for action on such petition as prescribed in 28 CFR 16.5(c) (1).

(d) *Disposition of requests.* When a requested record is available, appropriate notification, including notice of any applicable additional fees, shall be furnished the requester. A reply denying a request shall be in writing signed by the Commissioner and shall include: (1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record, and such further explanation, if any, as is deemed appropriate; and (2) a statement that the denial may be appealed within 30 days to the Attorney General as prescribed by 28 CFR 16.7, and that judicial review will be thereafter available either in the district in which the requester resides or has a principal place of business or in which the agency records are situated.

(e) *Copies of responses to Deputy Attorney General.* A copy of each notification to a requester of an extended deadline, of a grant (other than in any of the five types of requests enumerated in paragraph (b) (1) of this section), of a denial, or of inability to locate a requested record shall be furnished to the Deputy Attorney General.

[38 FR 6806, Mar. 13, 1973]

PART 108—ASYLUM

- Sec.
108.1 Application.
108.2 Decision.

AUTHORITY: Sec. 103; 66 Stat. 173 (8 U.S.C. 1103).

SOURCE: 39 FR 41832, Dec. 3, 1974, unless otherwise noted.

§ 108.1 Application.

An application for asylum by an alien who is seeking admission to the United States at a land border port or preclearance station shall be referred to the nearest American consul. An application for asylum by any other alien who is within the United States or who is applying for admission to the United States at an airport or seaport of entry shall be submitted on Form I-589 to the district director having jurisdiction over his place of residence in the United States or over the port of entry. The applicant's accompanying spouse and unmarried children under the age of 18 years may be included in the application.

§ 108.2 Decision.

The applicant shall appear in person before an immigration officer prior to adjudication of the application, except that the personal appearance of any children included in the application may be waived by the district director. The district director shall request the views of the Department of State before making his decision unless in his opinion the application is clearly meritorious or clearly lacking in substance. The district director may approve or deny the application in the exercise of discretion. The district director's decision shall be in writing, and no appeal shall lie therefrom. If an application is denied for the reason that it is clearly lacking in substance, notification shall be given to the Department of State, with opportunity to supply a statement containing matter favorable to the application, and departure shall not be enforced until 30 days following the date of notification. A case shall be certified to the regional commissioner for final decision if the Department of State has made a favorable statement, but, notwithstanding, the district director has chosen to deny the application. If any decision will be based in whole or in part upon a statement furnished by the Department of State, the statement shall be made a part of the record of proceeding, and the applicant shall have an opportunity for inspection, explanation, and rebuttal thereof as prescribed in § 103.2(b) (2) of this chapter. A denial under this part shall not preclude the alien, in a subsequent expulsion hearing, from ap-

plying for the benefits of section 243(h) of the Act and of Articles 32 and 33 of the Convention Relating to the Status of Refugees.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

- Sec.
 204.1 Petition.
 204.2 Documents.
 204.3 Disposition of approved petitions.
 204.4 Validity of approved petitions.
 204.5 Automatic conversion of classification of beneficiary.
 204.6 Effect of changed employment on priority date for sixth preference classification.

AUTHORITY: The provisions of this Part 204 issued under secs. 101, 103, 201, 203, 204, 212, 245, 66 Stat. 166, 173, 175, 178, 179, 182, 217; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255.

§ 204.1 Petition.

(a) *Relative.* A petition to accord preference classification under section 203(a) (1), (2), (4), or (5) of the Act or classification as an immediate relative under section 201(b) of the Act, other than a child as defined in section 101(b) (1)(F) of the Act, shall be filed on a separate Form I-130 for each beneficiary and shall be accompanied by a fee of \$10. The petition shall be filed in the office of the Service having jurisdiction over the place where the petitioner is residing in the United States. When the petitioner resides outside of the United States, the petition shall be filed with the foreign office of the Service designated to act on the petition which can be ascertained by consulting the nearest American consul. American consular officers assigned to visa-issuing posts abroad, except those in Austria, Germany, Greece, Italy, Japan, the Philippines, Hong Kong, and Mexico are also authorized to approve any petition on Form I-130 when the petitioner and beneficiary are physically present in the area over which the consular officers have jurisdiction; while such consular officers are authorized to approve such petitions, they shall refer any petition which is not clearly approvable to the appropriate Service office outside the United States for decision. The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of his right to appeal to the Board

within 15 days after mailing of the notification of the decision in accordance with the provisions of Part 3 of this chapter. Without the approval of a separate petition in his behalf, an alien spouse or a child defined in section 101(b) (1), (A), (B), (C), (D), or (E) of the Act, may be accorded the same preference classification under section 203(a) as his spouse or parent whom he is accompanying or following to join, if the immediate issuance of a visa or conditional entry is not otherwise available under the provisions of section 203(a) (1) through (8) of the Act. However, the alien spouse or child of an alien parent who has been classified as an immediate relative is not within the purview of section 203(a) (9) of the Act and may not be accorded derivative immediate relative status. No alien may be classified as an immediate relative unless he himself is entitled to such status and is the beneficiary of an approved visa petition according him such classification. Notwithstanding the fact that the beneficiary may be a native of an independent foreign country of the Western Hemisphere or of the Canal Zone, a petition to accord the beneficiary classification as an immediate relative under section 201 (b) of the Immigration and Nationality Act (including an immediate relative referred to in section 21(e) of the Act of October 3, 1965) shall be filed when the beneficiary is the parent of a United States citizen who is at least 21 years of age, or is the spouse or child of a United States citizen. Also, notwithstanding the fact that the beneficiary may be a native of an independent country of the Western Hemisphere or the Canal Zone, a petitioner to accord him classification under section 203(a) (1), (2), (4), or (5) of the Act may be filed when the petitioner claims that the beneficiary is alternatively chargeable under section 202(b) of the Act to a foreign state in the Eastern Hemisphere or a dependent area of such state; however, in addition to the documents required to establish eligibility for the preference classification sought, such a petition must be accompanied by documentary evidence of the beneficiary's claimed chargeability under section 202(b) of the Act as prescribed in § 204.2(e-1).

(b) *Orphan.* A petition in behalf of a child defined in section 101(b) (1) (F) of the Act shall be filed by the United States citizen spouse in the office of the Service having jurisdiction over the place