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Title 8 / Chapter V / Subchapter B / Part 1208 / Subpart B / § 1208.30

§ 1208.30 Credible fear determinations involving stowaways and applicant admission who are found inadmissible pursuant to section 212(a)(6)(C) or (7) of the Act ~~or~~, whose entry is limited or suspended under section 212(f) or 215(a)(1) of the Act, or who failed to apply for protection from persecution in a third country where potential relief is available while en route to the United States.

- (a) **Jurisdiction.** The provisions of this subpart B apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B), asylum officers have exclusive jurisdiction to make credible fear determinations, and the immigration judges have exclusive jurisdiction to such determinations. Prior to January 1, ~~2015~~**2030**, an alien present in or arriving in the Commonwealth of the Northern Mariana Islands is ineligible to apply for asylum and may not establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or with or deferral of removal under the Convention Against Torture.
- (b) **Treatment of dependents.** A spouse or child of an alien may be included in that alien's credible fear evaluation and determination, if such spouse or child:
- (1) Arrived in the United States concurrently with the principal alien; and
 - (2) Desires to be included in the principal alien's determination. However, any alien may have her credible fear evaluation and determination made separately, if he or she expresses such desire.
- (c-d) [Reserved]
- (e) **Determination.** For the standards and procedures for asylum officers in conducting credible fear interviews and in making positive and negative credible fear determinations, see 8 CFR 208.13. Immigration judges will review such determinations as provided in paragraph (g)(2) of this section and 8 CFR 1003.42.

(f) [Reserved]

(g) *Procedures for a negative credible fear finding -*

(1) *Review by immigration judge of a mandatory bar finding.*

(i) If the alien is determined to be an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described in 8 CFR 208.13(c)(3) or 1208.13(c)(3). If the immigration judge finds that the alien is not described in 8 CFR 208.13(c)(3) or 1208.13(c)(3), then the immigration judge shall vacate the order of the asylum officer, and DHS may commence removal proceedings under section 235(b)(1)(B)(iii)(III) of the Act. If the immigration judge concurs with the credible fear determination that the alien is an alien described in 8 CFR 208.13(c)(3) or 1208.13(c)(3), the immigration judge shall review the asylum officer's negative decision regarding reasonable fear made under 8 CFR 208.30(e)(5) consistent with paragraph (g)(2) of this section, except that the immigration judge will review the findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g)(2).

(ii) *If the alien is determined to be an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4) and is determined to lack a reasonable fear under 8 CFR 208.30(e)(5), the immigration judge shall first review de novo the determination that the alien is described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4). If the immigration judge finds that the alien is not described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4), then the immigration judge shall vacate the order of the asylum officer, and DHS may commence removal proceedings under section 235(b)(1)(B)(iii)(III) of the Act. If the immigration judge concurs with the credible fear determination that the alien is an alien described as ineligible for asylum in 8 CFR 208.13(c)(4) or 1208.13(c)(4), the immigration judge will then review the asylum officer's negative decision regarding reasonable fear made under 8 CFR 208.30(e)(5) consistent with paragraph (g)(2) of this section, except that the immigration judge will review the findings under the reasonable fear standard instead of the credible fear standard described in paragraph (g)(2).*

(2) *Review by immigration judge of a negative credible fear finding.*

(i) The asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant's request, or upon the applicant's refusal to request review or to decline the review after being given such opportunity, in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

(ii) The record of the negative credible fear determination, including copies of the Form I-855, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination.

- (iii) A credible fear hearing shall be closed to the public unless the alien states for the record that the alien is waiving that requirement; in that event the hearing shall be open to the public, subject to the immigration judge's discretion as provided in § 1003.27.
- (iv) Upon review of the asylum officer's negative credible fear determination:
 - (A) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to the Service for removal of the alien. The immigration judge's decision shall be final and may not be appealed. The Service, however, may reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing notice of its reconsideration to the immigration judge.
 - (B) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution or torture, the immigration judge shall vacate the decision of the asylum officer issued on Form I-860 and the Service may commence removal proceedings under section 240 of the Act, during which time the alien may file an application for asylum and withholding of removal in accordance with § 1208.
 - (C) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution or torture, the alien shall be allowed to file an application for asylum and withholding of removal before the immigration judge in accordance with § 1208 (iii). The immigration judge shall decide the application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If a denial of the application for asylum and for withholding of removal becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If an approval of the application for asylum or for withholding of removal becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

[65 FR 76136, Dec. 6, 2000, as amended at 69 FR 69497, Nov. 29, 2004; 74 FR 55742, Oct. 28, 2009; 78 FR 55952, Nov. 9, 2013; 84 FR 33844, July 16, 2019; 85 FR 23904, Apr. 30, 2020]

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