

§ 1240.12

and that the alien has failed to demonstrate that it is more likely than not that the alien would be persecuted on account of a protected ground or tortured in those third countries, then the alien is ineligible to apply for withholding of removal pursuant to section 241(b)(3) of the Act and the Convention Against Torture notwithstanding any other provision in this chapter. However, the alien may apply for any other relief from removal for which the alien may be eligible. If an alien who is subject to section 208(a)(2)(A) of the Act is ordered removed, the alien shall be ordered removed to the relevant third country in which the alien will be able to pursue his or her claims for asylum or protection against persecution or torture under the laws of that country.

[62 FR 10367, Mar. 6, 1997, as amended at 62 FR 45150, Aug. 26, 1997; 63 FR 27829, May 21, 1998; 64 FR 25766, May 12, 1999; 69 FR 69497, Nov. 29, 2004; 71 FR 35757, June 21, 2006; 73 FR 76937, Dec. 18, 2008; 78 FR 19080, Mar. 29, 2013; 84 FR 64010, Nov. 19, 2019]

§ 1240.12 Decision of the immigration judge.

(a) *Contents.* The decision of the immigration judge may be oral or written. The decision of the immigration judge shall include a finding as to inadmissibility or deportability. The formal enumeration of findings is not required. The decision shall also contain reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where inadmissibility or deportability is determined on the pleadings pursuant to § 1240.10(b) and the respondent does not make an application under § 1240.11, the alien is statutorily ineligible for relief, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision or, if voluntary departure is granted, a summary decision with an alternate order of removal.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's removal from the United States, or the termination

8 CFR Ch. V (1–1–20 Edition)

of the proceedings, or other such disposition of the case as may be appropriate. The immigration judge is authorized to issue orders in the alternative or in combination as he or she may deem necessary.

(d) *Removal.* When a respondent is ordered removed from the United States, the immigration judge shall identify a country, or countries in the alternative, to which the alien's removal may in the first instance be made, pursuant to the provisions of section 241(b) of the Act. In the event that the Department of Homeland Security is unable to remove the alien to the specified or alternative country or countries, the order of the immigration judge does not limit the authority of the Department of Homeland Security to remove the alien to any other country as permitted by section 241(b) of the Act.

[62 FR 10367, Mar. 6, 1997. Redesignated in part and duplicated in part from part 240 at 68 FR 9838, 9840, Feb. 28, 2003; 70 FR 674, Jan. 5, 2005]

§ 1240.13 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the Service counsel, together with the notice referred to in § 1003.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the immigration judge in the presence of the respondent and the Service counsel, if any, at the conclusion of the hearing. A copy of the summary written order shall be furnished at the request of the respondent or the Service counsel.

(c) *Summary decision.* When the immigration judge renders a summary decision as provided in § 1240.12(b), he or she shall serve a copy thereof upon the respondent and the Service counsel at the conclusion of the hearing.

(d) *Decision to remove.* If the immigration judge decides that the respondent is removable and orders the respondent to be removed, the immigration judge shall advise the respondent of such decision, and of the consequences for failure to depart under the order of removal, including civil and criminal penalties described at sections 274D and 243 of the Act. Unless appeal from