

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 §103.3(a)(2)(x) of this part also apply to decisions on motions. The provisions of §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.

(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 work-*

er 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.

(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.

[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; 55 FR 20770, 20775, May 21, 1990; 55 FR 25931, June 25, 1990; 56 FR 41782, Aug. 23, 1991; 59 FR 1463, Jan. 11, 1994; 61 FR 18909, Apr. 29, 1996; 62 FR 10336, Mar. 6, 1997]

§ 103.5a Service of notification, decisions, and other papers by the Service.

This section states authorized means of service by the Service on parties and on attorneys and other interested persons of notices, decisions, and other papers (except warrants and subpoenas) in administrative proceedings before Service officers as provided in this chapter.

(a) *Definitions*—(1) *Routine service.* Routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address.

(2) *Personal service.* Personal service, which shall be performed by a Government employee, consists of any of the following, without priority or preference:

(i) Delivery of a copy personally;

(ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;

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(iii) Delivery of a copy at the office of an attorney or other person, including a corporation, by leaving it with a person in charge;

(iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

(3) *Personal service involving notices of intention to fine.* In addition to any of the methods of personal service listed in paragraph (a)(2) of this section, personal service of Form I-79, Notice of Intention to Fine, may also consist of delivery of the Form I-79 by a commercial delivery service at the carrier's address on file with the National Fines Office, the address listed on the Form I-849, Record for Notice of Intent to Fine, or to the office of the attorney or agent representing the carrier, provided that such a commercial delivery service requires the addressee or other responsible party accepting the package to sign for the package upon receipt.

(b) *Effect of service by mail.* Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing.

(c) *When personal service required—(1) Generally.* In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service, except as provided in section 239 of the Act.

(2) *Persons confined, minors, and incompetents—(i) Persons confined.* If a person is confined in a penal or mental institution or hospital and is competent to understand the nature of the proceedings initiated against him, service shall be made both upon him and upon the person in charge of the institution or the hospital. If the confined person is not competent to understand, service shall be made only on the person in charge of the institution or hospital in which he is confined, such service being deemed service on the confined person.

(ii) *Incompetents and minors.* In case of mental incompetency, whether or not

confined in an institution, and in the case of a minor under 14 years of age, service shall be made upon the person with whom the incompetent or the minor resides; whenever possible, service shall also be made on the near relative, guardian, committee, or friend.

(d) *When personal service not required.* Service of other types of papers in proceedings described in paragraph (c) of this section, and service of any type of papers in any other proceedings, may be accomplished either by routine service or by personal service.

[37 FR 11470, June 8, 1972, as amended at 39 FR 23247, June 27, 1974; 62 FR 10336, Mar. 6, 1997; 64 FR 17944, Apr. 13, 1999]

§ 103.5b Application for further action on an approved application or petition.

(a) *General.* An application for further action on an approved application or petition must be filed on Form I-824 by the applicant or petitioner who filed the original application or petition. It must be filed with the fee required in § 103.7 and the initial evidence required on the application form. Form I-824 may accompany the original application or petition, or may be filed after the approval of the original application or petition.

(b) *Requested actions.* A person whose application was approved may, during its validity period, apply for a duplicate approval notice or any other action specifically provided for on the form. A petitioner whose petition was approved may, during the validity of the petition, request that the Service:

(1) Issue a duplicate approval notice;

(2) Notify another consulate of the approved petition;

(3) Notify a consulate of the person's adjustment of status for the purpose of visa issuance to dependents; or

(4) Take any other action specifically provided for on the form.

(c) *Processing.* The application shall be approved if the Service determines the applicant has fully demonstrated eligibility for the requested action. There is no appeal from the denial of an application filed on Form I-824.

[59 FR 1463, Jan. 11, 1994]