

§ 240.12

(4) The decision of an immigration judge to grant or deny asylum or withholding of removal shall be communicated to the alien and to the Service counsel. An adverse decision shall state why asylum or withholding of removal was denied.

(d) *Application for relief under sections 237(a)(1)(H) and 237(a)(1)(E)(iii) of the Act.* The respondent may apply to the immigration judge for relief from removal under sections 237(a)(1)(H) and 237(a)(1)(E)(iii) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his or her alienage or deportability. However, nothing in this section shall prohibit the Service from using information supplied in an application for asylum or withholding of deportation or removal submitted to the Service on or after January 4, 1995, as the basis for issuance of a charging document or to establish alienage or deportability in a case referred to an immigration judge under § 208.14(b) of this chapter. The alien shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. Nothing contained in this section is intended to foreclose the respondent from applying for any benefit or privilege that he or she believes himself or herself eligible to receive in proceedings under this part. Nothing in this section is intended to limit the Attorney General's authority to remove an alien to any country permitted by section 241(b) of the Act.

(f) *Fees.* The alien shall not be required to pay a fee on more than one application within paragraphs (a) and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee. When a motion to reopen or reconsider is made concurrently with an application for relief seeking one of the immigration benefits set forth in paragraphs (a) and (c) of this section, only the fee set forth in § 103.7(b)(1) of this chapter for the motion must accompany the motion and

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application for relief. If such a motion is granted, the appropriate fee for the application for relief, if any, set forth in 8 CFR 103.7(b)(1), must be paid within the time specified in order to complete the application.

[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]

§ 240.12 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 § 240.10(b) and the respondent does not make an application under § 240.11, 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, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When removal is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's removal shall be directed. The immigration judge is authorized to issue orders in the alternate or in combination as he or she may deem necessary.

§ 240.13 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 § 3.3 of this chapter. Service by mail is complete upon mailing.