

# Rules and Regulations

Federal Register

Vol. 78, No. 61

Friday, March 29, 2013

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## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

#### 8 CFR Parts 1208 and 1240

[EOIR Docket No. 173; AG Order No. 3375–2013]

RIN 1125–AA65

### Forwarding of Asylum Applications to the Department of State

**AGENCY:** Executive Office for Immigration Review, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts without substantive change the proposed rule with request for comments published in the **Federal Register** on October 31, 2011, and includes several non-substantive, technical corrections. The Department of Justice (Department) is amending its regulations to alter the process by which the Executive Office for Immigration Review (EOIR) forwards asylum applications for consideration by the Department of State (DOS), Bureau of Democracy, Human Rights, and Labor. Currently, EOIR forwards to DOS all asylum applications that are submitted initially in removal proceedings before an immigration judge. The final rule amends the regulations to provide for sending asylum applications to DOS on a discretionary basis. For example, EOIR may forward an application in order to ascertain whether DOS has information relevant to the applicant's eligibility for asylum. This change increases the efficiency of DOS' review of asylum applications and is consistent with similar changes already made by U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

**DATES:** This rule is effective April 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0470 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

On October 31, 2011, the Department published in the **Federal Register** a rule proposing to amend EOIR's regulations by removing the mandatory submission of all asylum applications to DOS. *See* 76 FR 67099 (Oct. 31, 2011). The comment period ended December 30, 2011. The Department received three public comments. As explained below, the Department is adopting all amendments in the proposed rule, as well as making several non-substantive, technical corrections.

##### II. Background

The current regulations require that EOIR send a copy of all defensive asylum applications to DOS.<sup>1</sup> The Department is amending the regulations at 8 CFR 1208.11, 1240.11, 1240.33, and 1240.49 in order to remove this mandatory requirement. Under this rule, an immigration court has the discretion to forward a defensively filed asylum application to DOS, but is not required to do so. For example, EOIR may forward an application in order to ascertain whether DOS has information relevant to the adjudication of a particular case or type of claims. By consolidating certain paragraphs, the

<sup>1</sup> EOIR receives and adjudicates asylum applications submitted directly to the immigration judge (known as defensive asylum applications) and those that are referred for consideration in proceedings before an immigration judge after initially being adjudicated through DHS USCIS' affirmative asylum process (known as affirmative asylum applications). We note that the regulations at 8 CFR 1208.1(a)(1) provide, in part, that subpart A of part 1208 "shall apply to all applications for asylum under section 208 of the Immigration and Nationality Act (Act) or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture." Thus, the terms "asylum application" or "application for asylum," as used in the current regulations and in this final rule, refer to an application for: (1) Asylum under section 208 of the Act; (2) withholding of removal under section 241(b)(3) of the Act; (3) withholding or deferral of removal under the Convention Against Torture as provided in 8 CFR 1208.16 and 1208.17; and (4) withholding of deportation under former section 243(h) of the Act.

final rule also removes redundant references to the types of information that DOS may provide to EOIR. These amendments increase the efficiency of DOS' review of asylum applications and are consistent with similar changes USCIS has already made. *See* 74 FR 15367 (Apr. 6, 2009).

EOIR's changes to the regulations do not require additional resources, either in the hiring of personnel at EOIR or DOS or in the expenditure of material or financial resources. Amending the regulations permits both EOIR and DOS to conserve resources. EOIR will no longer be required to expend resources on mailing to DOS every properly filed defensive asylum application it receives. Rather, an immigration judge may request, in his or her discretion, specific comments from DOS regarding individual cases or types of claims under consideration, or other information the immigration judge deems appropriate. By focusing on select cases forwarded by EOIR, DOS officers can better utilize their time and resources toward accomplishing their asylum responsibilities. These regulatory changes will also result in resource savings for asylum applicants, as an applicant will no longer be required to make an extra copy of his or her application for EOIR to forward to DOS, pursuant to current instructions to the Form I–589, Application for Asylum and for Withholding of Removal.

Under this rule, the types of comments that DOS may provide will not change. At its option, DOS may provide detailed country conditions information relevant to the applicant's eligibility for asylum and withholding of removal. DOS may also provide an assessment of the accuracy of the applicant's assertions about conditions in the applicant's country of nationality or habitual residence and the applicant's particular situation, information about whether persons who are similarly situated to the applicant are persecuted or tortured in the applicant's country of nationality or habitual residence and the frequency of such persecution or torture, or such other information as DOS deems relevant.

Additionally, these regulatory amendments are consistent with changes effected by implementation of the Homeland Security Act of 2002. The Homeland Security Act authorized the

creation of DHS and transferred the functions of the former Immigration and Naturalization Service (INS) to DHS, while retaining EOIR under the authority of the Attorney General. In order to accommodate these changes, title 8 of the Code of Federal Regulations was reorganized into separate chapters, chapter I for DHS and chapter V for the Department of Justice. See 68 FR 9824, 9834 (Feb. 28, 2003). The provisions governing procedures for asylum and withholding of removal in part 208 were duplicated into a new part 1208. As a result, part 208 governs asylum adjudications before DHS's USCIS and part 1208 governs asylum adjudications before EOIR. As this final rule only addresses submissions of asylum applications from EOIR to DOS, it is limited to amending 8 CFR 1208.11, 1240.11, 1240.33, and 1240.49. To be consistent with changes that effected implementation of the Homeland Security Act, references in EOIR's regulations to "The Service" and USCIS "asylum officers" forwarding asylum applications to DOS are removed, as those matters are now governed by the DHS regulations at 8 CFR 208.11.

### III. Technical Corrections

This rule also includes several technical corrections. The regulations currently refer to 8 U.S.C. 1101 and Title VII of Public Law 110-229 as authority for 8 CFR part 1208. The proposed rule that was published on October 31, 2011, inadvertently omitted citations to 8 U.S.C. 1101 and Title VII of Public Law 110-229 in the authority section of 8 CFR part 1208. The proposed rule did not intend to remove those references. This final rule corrects these typographical omissions and includes citations to 8 U.S.C. 1101 and Title VII of Public Law 110-229 in the authority section of 8 CFR part 1208. The regulations currently refer to 8 U.S.C. 1224, 1251, 1252a, 1228 as authority for 8 CFR part 1240, but 8 U.S.C. 1224 is no longer directly applicable to part 1240 following the creation of DHS and related changes in the regulations. Sections 1251 and 1252a have been transferred to 8 U.S.C. 1227 and 1228, respectively, and 8 U.S.C. 1252b has been repealed. Additionally, the regulations currently do not include the following authorities, which are applicable to part 1240: 8 U.S.C. 1158, 1186b, 1229a, 1229b, 1229c, and 1361. This final rule updates the authority for 8 CFR part 1240 to reflect these changes. This final rule also includes two minor, non-substantive changes to 8 CFR 1208.11(a): Deleting the words "such" and "as an" and inserting the word

"the" before "immigration judge." Additionally, 8 CFR 1208.11(b)(3) is revised to duplicate 8 CFR 208.11(b)(3) by deleting the words "their respective" and inserting the words "the applicant's." 8 CFR 1208.11(c) is also revised to change the word "the" to the word "an" before "applicable Executive Order." The regulations at 8 CFR 1240.11(c)(2), 1240.33(b), and 1240.49(c)(3) are also revised to change the word "the" to the word "an" before "applicable Executive Order." As announced in the proposed rule, the Department is also amending part 1240 to cite to the correct regulatory provision regarding filing of an asylum application as provided in 8 CFR 1208.4(b). The regulations at 8 CFR 1240.11(c)(2) and 8 CFR 1240.33(b) are corrected to cite to 8 CFR 1208.4(b). This change is consistent with 8 CFR 1240.49(c)(3). These amendments are technical corrections and do not make any substantive changes to parts 1208 and 1240.

### IV. Responses to Comments

The Department of Justice provided an opportunity for comment, which ended on December 30, 2011. The Department received three comments: One from an anonymous individual; one from a candidate for a Master of Social Work degree; and one from a candidate for a *juris doctor* degree. The Department considered these comments in preparing this final rule. The comments are numbered one through three in order of receipt. All comments and other docket materials are available for viewing by making arrangements with the EOIR Office of the General Counsel as discussed above.

The first comment is general in nature and expresses the view that the United States should withdraw from its international protection obligations towards applicants for asylum and withholding of removal and should, instead, impose a general immigration moratorium. As this comment does not address the changes set forth in the proposed rule, the comment does not require a response.

The second commenter supports this rulemaking initiative. The commenter notes that while the DOS serves as an informational resource tool for immigration judges, the information provided by DOS is not normally dispositive of the outcome of a given case. This commenter recognizes EOIR's proposed regulatory changes will allow both the Department and the DOS to utilize DOS as an information resource and "not as a storage locker for thousands of filed defensive applications; many of which they are

unable to review in a reasonably timely manner." The commenter also expresses concern that the existing regulatory construct requiring DOS mandatory review of all defensive asylum and withholding applications filed with EOIR creates system inefficiencies, duplication of effort, and delays that may inadvertently extend the time an asylum applicant must remain in immigration detention during his or her immigration proceedings before EOIR. The commenter notes that the efficiencies to be gained by these regulatory changes outweigh possible negative considerations. Finally, the commenter notes that the direct and indirect cost savings to the government agencies directly affected by the regulation, as well as the cost savings to the public, allow for "a redirecting of tax dollars to other areas in need." The Department agrees with this commenter that the proposed regulatory changes will make the DOS asylum application review process more economical and efficient.

The third commenter opposes this rulemaking initiative. The commenter asserts that the proposed cost savings do not outweigh the possible harm to defensive asylum and withholding applicants. This commenter views the mandatory submission to DOS of all defensively received applications for asylum and withholding of removal as a safeguard against possible abuses of discretion by immigration judges making credibility determinations on asylum applicants' protection claims. The commenter notes that asylum applicants often suffer from some form of post-traumatic stress or depression that affects long-term memory, making credibility determinations very difficult and prone to error. The commenter further notes that DOS' cultural and country condition information may safeguard against immigration judges making incorrect adverse credibility determinations based upon asylum applicants' behavior and information that does not easily transfer across cultures.

The Department appreciates this commenter's concerns. However, EOIR provides training to its adjudicators on cultural sensitivity and makes available numerous resources on country condition information, which more directly address the commenter's concerns. Moreover, continuing the current mandatory submission of all defensively filed asylum and withholding applications is not sustainable. DOS is tasked with numerous reporting and country condition responsibilities. DOS' review and comment on defensive asylum and

withholding applications is a small part of its overall mission. Revising the regulations to allow for immigration judges to exercise their discretion to request DOS review and comment on specific protection claims will allow DOS to better focus its limited resources. The existing process is neither efficient nor efficacious in producing the results originally contemplated by the regulation. In a time of dwindling resources, both human and monetary, the Department has determined that it is best to amend the regulations to provide immigration judges with the discretion to determine when and for which cases to seek DOS review. The final rule also provides DOS with the ability to focus its resources on providing review and comment for the cases that immigration judges have identified as most in need of DOS' expertise. Additionally, DOS is required to provide to Congress annually Country Reports on Human Rights Practices and International Religious Freedom Reports, which provide world-wide country conditions information that continue to be useful to the adjudication of asylum applications. This rule does not alter these DOS responsibilities, nor affect how immigration judges utilize these DOS country condition resources.

Accordingly, the Department is adopting as a final rule the proposed rule amending 8 CFR parts 1208 and 1240 that was published on October 31, 2011, including the non-substantive, technical corrections discussed in this rule.

## V. Regulatory Requirements

### A. Regulatory Flexibility Act

The Department has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and has determined that this rule will not have a significant economic impact on a substantial number of small entities for the following reason: This rule affects only the process by which EOIR forwards and DOS receives asylum applications. The rule will not regulate "small entities" as that term is defined in 5 U.S.C. 601(6).

### B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995.

### C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

### D. Executive Orders 12866 and 13563

The Department has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and Executive Order 13563. Accordingly, this rule has not been submitted to the Office of Management and Budget for review. Nevertheless, the Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563.

### E. Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### F. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

### G. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, apply to this rule. The information collection requirement (Form I-589, Application for Asylum and for Withholding of Removal) discussed in this rule has been previously approved by the Office of Management and Budget (OMB. No. 1615-0067) as provided by the Paperwork Reduction Act. This rule will

require revisions to the existing information collection. The Form I-589 instructions will be revised to reduce the number of form copies that must be submitted by applicants on and after the effective date of these regulations. Once a final rule is issued, EOIR and USCIS will work to modify the instructions to the Form I-589 to reflect the changes.

### List of Subjects

#### 8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

#### 8 CFR Part 1240

Administrative practice and procedure, Aliens.

Accordingly, for the reasons set forth in the preamble, part 1208 and part 1240 of chapter V of title 8 of the Code of Federal Regulations are amended as follows:

## PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

- 1. The authority citation for part 1208 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1225, 1231, 1282; Title VII of Public Law 110-229.

- 2. Revise § 1208.11 to read as follows:

### § 1208.11 Comments from the Department of State.

(a) The immigration judge may request, in his or her discretion, specific comments from the Department of State regarding individual cases or types of claims under consideration, or other information the immigration judge deems appropriate.

(b) With respect to any asylum application, the Department of State may provide, at its discretion, to the Immigration Court:

(1) Detailed country conditions information relevant to eligibility for asylum, withholding of removal under section 241(b)(3) of the Act, and withholding of removal under the Convention Against Torture;

(2) An assessment of the accuracy of the applicant's assertions about conditions in the applicant's country of nationality or habitual residence and the applicant's particular situation;

(3) Information about whether persons who are similarly situated to the applicant are persecuted or tortured in the applicant's country of nationality or habitual residence and the frequency of such persecution or torture; or

(4) Such other information as it deems relevant.

(c) Any comments received pursuant to paragraph (b) of this section shall be made part of the record. Unless the comments are classified under an applicable Executive Order, the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of any decision to deny the application.

**PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES**

■ 3. The authority citation for part 1240 is revised to read as follows:

**Authority:** 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

■ 4. Amend § 1240.11 by revising paragraph (c)(2) to read as follows:

**§ 1240.11 Ancillary matters, applications.**

\* \* \* \* \*

(c) \* \* \*

(2) An application for asylum or withholding of removal must be filed with the Immigration Court, pursuant to § 1208.4(b) of this chapter. Upon receipt of an application, the Immigration Court may forward a copy to the Department of State pursuant to § 1208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under an applicable Executive Order, shall be given to both the alien and to DHS counsel and shall be included in the record.

\* \* \* \* \*

■ 5. Amend § 1240.33 by revising paragraph (b) to read as follows:

**§ 1240.33 Applications for asylum or withholding of deportation.**

\* \* \* \* \*

(b) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 1208.4(b) of this chapter. Upon receipt of an application, the Immigration Court may forward a copy to the Department of State pursuant to § 1208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under an applicable Executive Order, shall be given to both the applicant and to DHS counsel and shall be included in the record.

\* \* \* \* \*

■ 6. Amend § 1240.49 by revising paragraph (c)(3) to read as follows:

**§ 1240.49 Ancillary matters, applications.**

\* \* \* \* \*

(c) \* \* \*

(3) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 1208.4(b) of this chapter. Upon receipt of an application, the Immigration Court may forward a copy to the Department of State pursuant to § 1208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, of the Department of State, unless classified under an applicable Executive Order, shall be given to both the applicant and to DHS counsel and shall be included in the record.

\* \* \* \* \*

Dated: March 22, 2013.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2013–07252 Filed 3–28–13; 8:45 am]

**BILLING CODE 4410–30–P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Parts 53, 71, 82, 93, 94, 95, and 104**

[Docket No. APHIS–2009–0094]

RIN 0579–AD45

**Importation of Live Birds and Poultry, Poultry Meat, and Poultry Products From a Region in the European Union**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of animals and animal products by recognizing 25 Member States of the European Union (EU) as the Animal and Plant Health Inspection Service (APHIS)-defined EU poultry trade region and adding it to the list of regions we consider to be free of Newcastle disease. We are taking this action based on a risk evaluation that we prepared in which we determined that the region meets our requirements for being considered free of Newcastle disease. We also determined that the region meets our requirements for being considered free of highly pathogenic avian influenza (HPAI). In addition, we are establishing requirements governing the importation of live birds and poultry and poultry meat and products from the APHIS-defined EU poultry trade region and updating avian disease terms and definitions. We are also allowing

importation from the APHIS-defined EU poultry trade region of hatching eggs under official seal, including those that have transited a restricted zone established because of detection of HPAI within the boundaries of the APHIS-defined EU poultry trade region. These actions will facilitate the importation of live birds and poultry, including hatching eggs, and poultry meat and products from the APHIS-defined EU poultry trade region while maintaining safeguards to protect the United States from the introduction of communicable avian diseases.

**DATES:** *Effective Date:* April 15, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Javier Vargas, Case Manager, Regionalization and Evaluation, National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3300.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Animal and Plant Health Inspection Service (APHIS) regulations in title 9 of the Code of Federal Regulations (CFR), parts 93, 94, and 95, govern the importation into the United States of specified animals and animal products and byproducts to prevent the introduction of various animal diseases, including Newcastle disease and highly pathogenic avian influenza (HPAI). These are dangerous and destructive communicable diseases of birds and poultry. The regulations in § 94.6 restrict the importation of carcasses, parts of products of carcasses, and eggs (other than hatching eggs) <sup>1</sup> of poultry, game birds, and other birds, from all regions where Newcastle disease or any subtype of HPAI are considered to exist.

On July 19, 2011, we published in the **Federal Register** (76 FR 42595–42602, Docket No. APHIS–2009–0094) a proposal <sup>2</sup> to amend the regulations governing the importation of live birds and poultry, and poultry meat and products, by recognizing 25 Member States of the European Union (EU) as the APHIS-defined EU poultry trade region and adding it to the list of regions we consider to be free of Newcastle disease. We also determined that the region meets our requirements for being considered free of HPAI. In addition, we proposed to establish requirements for the importation of live birds and poultry, including hatching eggs, and poultry meat and products to the United

<sup>1</sup> Regulations for importing hatching eggs are included in §§ 93.104, 93.205, and 93.209.

<sup>2</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2009-0094>.