

DEPARTMENT OF JUSTICE

8 CFR Parts 1, 3, 101, 103, 204, 205, 207, 208, 209, 211, 212, 214, 215, 216, 235, 236, 238, 239, 240, 241, 244, 245, 246, 249, 270, 274a, 280, 287, 292, 337, 507, 1001, 1003, 1101, 1103, 1204, 1205, 1207, 1208, 1209, 1211, 1212, 1214, 1215, 1216, 1235, 1236, 1238, 1239, 1240, 1241, 1244, 1245, 1246, 1249, 1270, 1274a, 1280, 1287, 1292, 1299, 1337

28 CFR Part 200

[EOIR No. 137F; AG Order No. 2662–2003]

RIN 1125–AA42

Aliens and Nationality; Homeland Security; Reorganization of Regulations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002, as amended, transfers the functions of the Immigration and Naturalization Service to the Department of Homeland Security. The Homeland Security Act of 2002, as amended, retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review and other functions related to immigration that are indigenous to the functions of the Attorney General. These changes require reorganization of title 8 of the Code of Federal Regulations. This final rule reflects the transfer of functions of the Immigration and Naturalization Service through the division of jurisdiction over regulations currently codified in 8 CFR chapter I, by establishing a new chapter V in 8 CFR, by transferring or duplicating certain parts and sections to the new chapter V and to 28 CFR chapter I, and by making other amendments as are necessary to continue existing authorities after the transfer of functions to the Department of Homeland Security on March 1, 2003.

DATES: This rule is effective on February 28, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

The Homeland Security Act of 2002, as amended (“HSA”), transfers the functions of the Immigration and Naturalization Service (“Service” or “INS”) to the Department of Homeland Security (“DHS”). Pub. L. 107–296, tit. IV, subtit. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended (“HSA”). The HSA retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review (“EOIR”). HSA, 116 Stat. at 2273. This rule reflects that transfer through the division of jurisdiction over regulations currently codified in 8 CFR Chapter I.

EOIR was created by the Attorney General in 1983 to combine the functions of immigration judges and the Board of Immigration Appeals into a single administrative component of the Department of Justice under the Attorney General. 48 FR 8038 (Feb. 25, 1983). The Office of the Chief Administrative Hearing Officer (“OCAHO”) and its administrative law judges were added to EOIR in 1987. 52 FR 44971 (Nov. 24, 1987). This administrative structure separated the administrative adjudication functions from the enforcement and service functions of the INS, both for administrative efficiency and to foster independent judgment in adjudication. However, because both INS and EOIR were elements of the Department of Justice, the regulations affecting these components were included in the same chapter. The Attorney General, as the head of the Department, amended regulations affecting both components in a coordinated manner. The enactment of the Homeland Security Act of 2002, and its transfer of functions to the Department of Homeland Security, now requires that the INS regulations and the EOIR regulations be placed in separate chapters.

As explained more fully below, this final rule transfers certain parts that relate to the jurisdiction and procedures of EOIR to a new chapter V, *i.e.* administrative review provisions. This rule duplicates certain parts and sections of the regulations that relate to proceedings before both the INS and EOIR in both chapter I and chapter V, respectively, *i.e.*, shared provisions. The rule also makes a number of technical amendments to both chapters I and V to ensure that the authorities existing in the INS and EOIR prior to the transfer of functions of the INS to the Department of Homeland Security continue in effect after March 1, 2003.

A. Homeland Security Act of 2002 Division of Jurisdiction and Continuing Relationship

The HSA transfers the enforcement, services, and administrative functions of the INS to the Department of Homeland Security. HSA §§ 441, 451, 455, 456. In addition, the HSA abolishes the INS. HSA § 471. The new structure for immigration enforcement, services and shared services is more fully explained by the HSA, the President’s Reorganization Plan under HSA § 1512, and amendments thereto.¹ For the purposes of this rule, and to provide the Secretary of Homeland Security maximum flexibility in the further division of immigration regulations between components of the Department of Homeland Security, if he deems appropriate, this rule makes no changes in the immigration regulations for functions that are being transferred to DHS other than those necessary to effectuate the division of regulations between the functions being transferred to DHS and the functions being retained in the Department of Justice. For purposes of simplicity, this rule continues to refer to the transferred functions as functions held by the INS.

Section 103(g) of the Immigration and Nationality Act, as amended by section 1102 of the HSA provides:

(1) *In General.* The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date [of the Act].

(2) *Powers.* The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.

The final rule creates, a new chapter V within 8 CFR and moves the relevant functions to that chapter. The rule also makes other necessary conforming amendments.

After this rule makes the necessary division of regulations within title 8 CFR to reflect the transfer of INS authorities, the Secretary of DHS can

¹ The Supplementary Information refers to the successor entities to the INS collectively as the INS for the ease of the reader. The Secretary of Homeland Security has further refined the reorganization of functions within the Department of Homeland Security and a further division of the regulations is expected to be made. That division of regulations, on or after March 1, 2003, is not affected by this rule.