

the proviso of section 103(a)(1) of the Act, 8 U.S.C. 1103(a)(1), relating to the Attorney General's resolution of legal issues. At the same time, the Attorney General has specified the reservation of the parallel authority to refer cases to himself for decision at any time.

Similarly, the authority to publish precedential decisions of the Service in *Administrative Decisions under the Immigration and Nationality Laws of the United States* is set forth in new 8 CFR §§ 103.37 and 1003.1(i). New § 103.37 is added to ensure that the Secretary of Homeland Security can continue to publish appropriate precedent decisions. See, e.g., *Matter of Safetran*, 20 I&N Dec. 49 (Comm. 1989).

The fees that are charged for applications for relief filed with the INS are also collected in conjunction with applications filed with the immigration judges and, on occasion, on motions to reopen before the Board of Immigration Appeals. A specific authorization is included in chapter V, referencing the fees charged by the Service for these applications. A separate table is not developed within EOIR for the simple reason that the INS must recalculate the fees periodically to conform them to the actual costs, as more fully explained in each of the fee change regulations. Rather than coordinate each change, in a situation in which EOIR does not have an interest in the substance of the fee calculation, but only in the actual fee imposed, it makes more sense to reference the fees charged by the Service as established in 8 CFR 103.7. This provision does not alter the filing fee for appeals and motions before the Board of Immigration Appeals.

Finally, some specific provisions are moved or not moved, duplicated or not duplicated, because that process provides the simplest means of effecting the division of the regulations without substantive effect. For example, part 240 of chapter I is moved to part 1240 of chapter V, with the exception of § 240.25, which deals with the Service's authority to grant voluntary departure. Similarly, § 240.21 and Subpart H are duplicated because these provisions affect both INS and EOIR.

F. Summary of the Changes From 8 CFR Chapter I to Chapter V

Set out below are general descriptions of the sets of changes in chapter I to chapter V and the rationale for each set of changes.

Part 1—Definitions, is duplicated in part 1001, because the same definitions apply to INS and EOIR.

Part 3—Executive Office for Immigration Review, is transferred to part 1003, because this part is the

organic regulation for EOIR.

Additionally, provisions have been added to clarify certification procedures and the authority of the Secretary of Homeland Security to designate specific officials to certify cases and questions of law to the Attorney General pursuant to redesignated 8 CFR 1003.1(h). These provisions are provided in parallel for the Department of Homeland Security in a new section of part 3. Finally, savings provisions are added to part 103 and part 1003 to clarify that the jurisdiction and procedures in effect on February 28, 2003, continue in effect after the transition on March 1, 2003.

Part 101—Presumption of lawful admission, is duplicated as part 1101, because it establishes a necessary presumption under the Act for both INS and EOIR.

Part 103—Powers and duties of service officers; availability of service records, is partially duplicated and is amended in several sections to ensure that the existing practices of EOIR are not changed through the transfer of functions.

Part 205—Revocation of approval of petitions, is duplicated as part 1205 because the revocation of petitions involves substantial appeals to the Board of Immigration Appeals and the provisions intermingle the jurisdiction and procedures before the Board of Immigration Appeals with the substantive provisions for revocation of approval of petitions.

Part 207—Admission of refugees, is duplicated in part in part 1207. Only § 207.3 necessarily involves procedure before the Executive Office for Immigration Review and this is the only section that is duplicated.

Part 208—Proceedings for asylum and withholding of removal, is duplicated in part 1208 because these provisions relate to both INS and EOIR and are so interrelated that no simple division of jurisdiction is possible. The Department of Justice expects that further division will be accomplished by the Department of Homeland Security and the Department of Justice at a later time.

Part 209—Adjustment of status of refugees and aliens granted asylum, is duplicated as part 1209. For the most part, adjustment of status is accomplished administratively by INS, but provisions that are affected by EOIR are intermingled in this part.

Part 211—Documentary requirements; immigrants; waivers, is duplicated in part in part 1211. The only section that is duplicated is § 211.4, Waiver of documents of returning residents, and this section is duplicated because the section contains the predicate jurisdiction of immigration judges to

consider an renewed application in proceedings.

Part 212—Documentary requirements; nonimmigrants; waivers; admission of certain inadmissible aliens; parole, is duplicated in part 1212 because these provisions relate to both INS and EOIR and are so interrelated that no simple division of jurisdiction is possible. Part 212 provides the predicates and standards for proceedings to exclude aliens from the United States.

Part 214—Nonimmigrant classes, is duplicated in part in part 1214, because the specific duplicated provisions provide the jurisdictional predicates for review of certain waiver applications by immigration judges.

Part 215—Controls of aliens departing from the United States, is duplicated in part 1215. Although these provisions have been rarely used, they include a number of jurisdictional predicates for review of administrative decisions by an immigration judge, called a special inquiry officer in these sections. These regulations are joint regulations with the Secretary of State, see 22 CFR part 46, and may require further refinement in the future.

Part 216—Conditional basis of lawful permanent residence status, is duplicated in part 1216. This part contains both the administrative and adjudicatory process for revoking the conditional basis for lawful permanent residence based upon marriage.

Part 235—Inspection of persons applying for admission, is duplicated in part 1235 because nearly all of the provisions of this part affect bond hearings before immigration judges.

Part 236—Apprehension and detention of inadmissible and deportable aliens, removal of aliens ordered removed, is duplicated in part in part 1236. Subpart A relates to the determinations of inadmissibility and deportability of aliens and is duplicated in part 1236. Subpart B of part 236, however, relates to the INS Family Unity Program, which does not relate to EOIR processes. Accordingly, Subpart B is not duplicated, although it may be interpreted in appropriate proceedings.

Part 238—Expedited removal of aggravated felons, is duplicated in part 1238 because the expedited removal under this part can be converted to ordinary removal proceedings before an immigration judge under part 240, and initiated proceedings under part 240 may, upon approval of the immigration judge, be terminated and the INS may then file expedited removal proceedings under part 238.

Part 239—Initiation of removal proceedings, is duplicated as part 1239 because the initiation of proceedings