

APPENDIX A

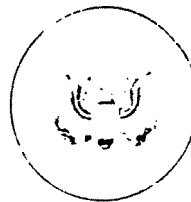
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Foreign Relations

22

PARTS 1 TO 299

Revised as of April 1, 1989



**PART 7—BOARD OF APPELLATE
REVIEW**

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SOURCE: 44 FR 68825, Nov. 30, 1979, unless otherwise noted.

§ 7.1 Definitions.

(a) "Board" means the Board of Appellate Review or the panel of three members considering an appeal.

(b) "Department" means the Department of State.

(c) "Party" means the appellant or the Department of State.

§ 7.2 Establishment of Board of Appellate Review; purpose.

(a) There is hereby established the Board of Appellate Review of the Department of State to consider and determine appeals within the purview of § 7.3. The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.

(b) For administrative purposes, the Board shall be part of the Office of the Legal Adviser. The merits of appeals or decisions of the Board shall not be subject to review by the Legal Adviser or any other Department official.

§ 7.3 Jurisdiction.

The jurisdiction of the Board shall include appeals from decisions in the following cases:

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(a) Appeals from administrative determinations of loss of nationality or expatriation under Subpart C of Part 50 of this chapter.

(b) Appeals from administrative decisions denying, revoking, restricting or invalidating a passport under §§ 51.70 and 51.71 of this chapter.

(c) Appeals from final decisions of contracting officers arising under contracts or grants of the Department of State, not otherwise provided for in the Department of State contract appeal regulations (Part 6-60 of Title 41).

(d) Appeals from administrative determinations under § 64.1(a) of this chapter, denying U.S. Government assistance to U.S. nationals who do not comply with the Fair Labor Standards in § 61.2 of this chapter.

(e) Appeals from administrative decisions of the Department of State in such other cases and under such terms of reference as the Secretary of State may authorize.

[44 FR 68825, Nov. 30, 1959, as amended at 51 FR 15319, Apr. 23, 1986]

§ 7.1 Membership and organization.

(a) Membership. The Board shall consist of regular and ad hoc members as the Legal Adviser may designate. Regular members shall serve on a full-time basis. Ad hoc members may be designated from among senior officers of the Department of State or from among persons not employed by the Department. Regular and ad hoc members shall be attorneys in good standing admitted to practice in any State of the United States, the District of Columbia, or any Territory or possession of the United States.

(b) *Chairperson*. The Legal Adviser shall designate a regular member of the Board as chairperson. A member designated by the chairperson shall act in the absence of the chairperson. The chairperson or designee shall preside at all proceedings before the Board, regulate the conduct of such proceedings, and pass on all issues relating thereto.

(c) *Composition*. In considering an appeal, the Board shall act through a panel of three members, not more than two of whom shall be ad hoc members.

(d) *Rules of procedure*. The Board may adopt and promulgate rules of procedure approved by the Secretary of State as may be necessary to govern its proceedings.

(22 U.S.C. 2658 and 3926)

[44 FR 68825, Nov. 30, 1979, as amended at 49 FR 16989, Apr. 23, 1984]

§ 7.5 Procedures.

(a) *Filing of appeal*. A person who has been the subject of an adverse decision in a case falling within the purview of 47.3 shall be entitled upon written request made within the prescribed time to appeal the decision to the Board. The appeal shall be in writing and shall state with particularity reasons for the appeal. The appeal may be accompanied by a legal brief. An appeal filed after the prescribed time shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time.

(b) *Time limit on appeal*. (1) A person who contends that the Department's administrative determination of loss of nationality or expatriation under Subpart C of Part 50 of this chapter is contrary to law or fact, shall be entitled to appeal such determination to the Board upon written request made within one year after approval by the Department of the certificate of loss of nationality or a certificate of expatriation.

(2) A person who has been subject of an adverse decision under § 51.89, of this Chapter shall be entitled to appeal the decision to the Board upon written request made within 60 days after receipt of notice of such decision.

(3) A national who has been subject of an adverse decision under § 64.1(a) of this chapter shall be entitled to appeal the decision to the Board within 30 days after receipt of notice of such decision.

(4) Time limits for other appeals shall be established by the Board as appropriate.

(c) *Department case record*. Upon the written request of the Board, the office or bureau in the Department of State responsible for the decision from which the appeal was taken shall assemble and transmit to the Board

within 45 days the record on which the Department's decision in the case was based. The case record may be accompanied by a memorandum setting forth the position of the Department on the case.

(d) *Briefs.* Briefs in support of or in opposition to an appeal shall be submitted in triplicate to the Board. The appellant shall submit his or her brief within 60 days after filing of the appeal. The Department shall then file a brief within 60 days after receipt of a copy of appellant's brief. Reply briefs, if any, shall be filed within 30 days after the date the Department's brief is filed with the Board. Extension of time for submission of a reply brief may be granted by the Board for good cause shown. Posthearing briefs may be submitted upon such terms as may be agreed to by the parties and the presiding member of the Board at the conclusion of a hearing.

(e) *Hearing.* An appellant shall be entitled to a hearing upon written request to the Board. An appellant may elect to waive a hearing and submit his or her appeal for decision on the basis of the record before the Board.

(f) *Pre-hearing conference.* Whether there is a hearing before the Board on an appeal or whether an appeal is submitted for decision on the record without a hearing the Board may call upon the parties to appear before a member of the Board for a conference to consider the simplification or clarification of issues and other matters as may aid in the disposition of the appeal. The results of the conference shall be reduced to writing by the presiding Board member, and this writing shall constitute a part of the record.

(g) *Admissibility of evidence.* Except as otherwise provided in § 7.7 and § 7.8, the parties may introduce such evidence as the Board deems proper. Formal rules of evidence shall not apply, but reasonable restrictions shall be imposed as to the relevancy, competency and materiality of evidence presented.

(h) *Depositions.* The Board may, upon the written request of either party or upon agreement by the parties, permit the taking of the testimony of any person by deposition upon oral examination or written interroga-

tories for use as evidence in the appeal proceedings. The deponent shall be subject to cross-examination either by oral examination or by written interrogatories by the opposing party or by the Board. Leave to take a deposition shall not be granted unless it appears impracticable to require the deponent's testimony at the hearing on the appeal, or unless the taking of a deposition is deemed to be warranted for other valid reasons.

(i) *Record of proceedings.* The record of proceedings before the Board shall consist of the Department's case record, briefs and other written submissions of the parties, the stipulation of facts, if any, the evidence admitted, and the transcript of the hearing if there is a hearing. The record shall be available for inspection by the parties at the Office of the Board.

(j) *Scope of review.* Except as otherwise provided in § 7.7 and § 7.8, the Board shall review the record in the case before it. The Board shall not consider argument challenging the constitutionality of any law or of any regulation of the Department of State or take into consideration any classified or administratively controlled material.

(k) *Appearance before the Board.* Any party to any proceeding before the Board is entitled to appear in person or by or with his or her attorney, who must possess the requisite qualifications, set forth in § 7.12, to practice before the Board.

(l) *Failure to prosecute an appeal.* Whenever the record discloses the failure of an appellant to file documents required by these regulations, respond to notices or correspondence from the Board, or otherwise indicates an intention not to continue the prosecution of an appeal, the Board may in its discretion terminate the proceedings without prejudice to the later reinstatement of the appeal for good cause shown.

[44 FR 68825 Nov 30 1979 as amended at 51 FR 15319 Apr 23 1986 52 FR 41560 (Oct 29 1987)]

§ 7.6 Hearings.

(a) *Notice and place of hearing.* The parties shall be given at least 15 days

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notice in writing of the scheduled date and place of a hearing on an appeal. The Board shall have final authority to fix or change any hearing date giving consideration to the convenience of the parties. Hearings shall be held at the Department of State, Washington, D.C., unless the Board determines otherwise.

(b) *Conduct of hearing.* The appellant may appear and testify on his own behalf. The parties may present witnesses, offer evidence and make argument. The appellant and witnesses may be examined by any member of the Board, by the Department and by the appellant's attorney, if any. If any witness whom the appellant or the Department wishes to call is unable to appear personally, the Board in its discretion, may accept an affidavit by the witness or grant leave to take the deposition of such witness. Any such witness will be subject to cross examination by means of sworn responses to interrogatories posed by the opposing party. The appellant and the Department shall be entitled to be informed of all evidence before the Board and of the source of such evidence, and to confront and cross-examine any adverse witness. The Board may require stipulation of facts prior to or at the beginning of the hearing and may require supplemental statements on issues presented to it or confirmation, verification or authentication of any evidence submitted by the parties. The parties shall be entitled to reasonable continuances upon request for good cause shown.

(c) *Privacy of hearing.* The hearing shall be private unless an appellant requests in writing that the hearing be open to the public. Attendance at the hearing shall be limited to the appellant, attorneys of the parties, the members of the Board, Department personnel who are directly involved in the presentation of the case, official stenographers, and the witnesses. Witnesses shall be present at the hearing only while they are giving testimony or when otherwise directed by the Board.

(d) *Transcript of hearing.* A complete verbatim transcript shall be made of the hearing by a qualified reporter, and the transcript shall consti-

tute a permanent part of the record. Upon request, the appellant shall have the right to inspect the complete transcript and to purchase a copy thereof.

(e) *Nonappearance of a party.* The unexcused absence of a party at the time and place set for a hearing shall not be occasion for delay. In the event of such absence, the case will be regarded as having been submitted by the absent party on the record before the Board.

[44 FR 68825, Nov. 30, 1979, as amended at 53 FR 39589, Oct. 11, 1988]

§ 7.7 Passport cases

(a) *Scope of review.* With respect to appeals taken from decisions of the Assistant Secretary for Consular Affairs denying, revoking, restricting, or invalidating a passport under §§ 51.70 and 51.71 of this chapter, the Board's review, except as provided in paragraph (b) of this section, shall be limited to the record on which the Assistant Secretary's decision was based.

(b) *Admissibility of evidence.* The Board shall not receive or consider evidence or testimony not presented at the hearing held under §§ 51.81-51.89 of this chapter unless it is satisfied that such evidence or testimony was not available or could not have been discovered by the exercise of reasonable diligence prior to such hearing.

[44 FR 68825, Nov. 30, 1979, as amended at 53 FR 39589, Oct. 11, 1988]

§ 7.8 South African Fair Labor Standards Cases.

(a) *Scope of review.* With respect to appeals taken from decisions of the Assistant Secretary for African Affairs denying assistance to U.S. nationals operating in South Africa which do not comply with the Fair Labor Standards outlined in § 61.2 of the chapter, the Board's review except as provided in paragraph (b) of this section shall be limited to the record on which the Assistant Secretary's decision was based.

(b) *Admissibility of evidence.* The Board shall not receive or consider evidence or testimony not presented pursuant to § 63.3(a) or § 63.3(b) of this chapter unless it is satisfied that such evidence was not available or could not

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have been discovered by the exercise of reasonable diligence prior to entry of the decision of the Assistant Secretary for African Affairs.

[51 FR 15319, Apr. 23, 1986, as amended at 52 FR 41560, Oct. 29, 1987; 53 FR 39589, Oct. 11, 1988]

§ 7.9 Decisions.

The Board shall decide the appeal on the basis of the record of the proceedings. The decision shall be by majority vote in writing and shall include findings of fact and conclusions of law on which it is based. The decision of the Board shall be final, subject to **§ 7.10**. Copies of the Board's decision shall be forwarded promptly to the parties.

[44 FR 68825, Nov. 30, 1979, Redesignated at 51 FR 15319, Apr. 23, 1986, and amended at 52 FR 41560, Oct. 29, 1987]

§ 7.10 Motion for reconsideration.

The Board may entertain a motion for reconsideration of a Board's decision, if filed by either party. The motion shall state with particularity the grounds for the motion, including any facts or points of law which the filing party claims the Board has overlooked or misapprehended, and shall be filed within 30 days from the date of receipt of a copy of the decision of the Board by the party filing the motion. Oral argument on the motion shall not be permitted. However, the party in opposition to the motion will be given opportunity to file a memorandum in opposition to the motion within 30 days of the date the Board forwards a copy of the motion to the party in opposition. If the motion to reconsider is granted, the Board shall review the record, and, upon such further reconsideration, shall affirm, modify, or reverse the original decision of the Board in the case.

[44 FR 68825, Nov. 30, 1979, Redesignated at 51 FR 15319, Apr. 23, 1986]

§ 7.11 Computation of time.

In computing the period of time for taking any action under this part, the day of the act, event, or notice from which the specified period of time begins to run shall not be included. The last day of the period shall be in-

cluded, unless it falls on a Saturday, Sunday, or a Legal holiday, in which event the period shall extend to the end of the next day which is not a Saturday, Sunday, or a legal holiday. The Board for good cause shown may in its discretion enlarge the time prescribed by this part for the taking of any action.

[44 FR 68825, Nov. 30, 1979, Redesignated at 51 FR 15319, Apr. 23, 1986]

§ 7.12 Attorneys.

(a) Attorneys at law who are admitted to practice in any State of the United States, the District of Columbia, or any Territory or possession of the United States, and who are members of the Bar in good standing, may practice before the Board unless disqualified under paragraph (b) of this section or for some other valid reason.

(b) No attorney shall be permitted to appear before the Board as attorney representing an appellant if he or she is subject to the conflict of interest provisions of Chapter 11 of Title 18 of the United States Code.

[44 FR 68825, Nov. 30, 1979, Redesignated at 51 FR 15319, Apr. 23, 1986]

Subpart C—Loss of Nationality

5 50.40 Revocation of naturalization under section 340(d).

(a) Whenever a diplomatic or consular officer determines that an individual, within 5 years of the date upon which he was naturalized, has established permanent residence abroad, and has failed to overcome the presumption set forth in section 340(d) of the Immigration and Nationality Act,

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the officer shall prepare and forward to the Department an affidavit setting forth his findings. Before forwarding the affidavit to the Department, the diplomatic or consular officer shall give written notice to the person affected of his contemplated action and afford the person a reasonable opportunity to present countervailing evidence.

(b) If the Department agrees that the provisions of section 340(d) of the Immigration and Nationality Act are applicable, it shall forward an authenticated copy of the consular officer's affidavit, and other relevant evidence to the Department of Justice for appropriate action.

§ 50.41 Certification of loss of U.S. nationality.

(a) Whenever a diplomatic or consular officer has reason to believe that a person, while in a foreign country, has lost his U.S. nationality under any provision of Chapter 3 of Title III of the Immigration and Nationality Act of 1952, or under any provision of Chapter IV of the Nationality Act of 1940, as amended, he shall prepare a certificate of loss of nationality containing the facts upon which such belief is based and shall forward the certificate to the Department.

(b) If the diplomatic or consular officer determines that any document containing information relevant to the statements in the certificate of loss of nationality should not be attached to the certificate, he may summarize the pertinent information in the appropriate section of the certificate and send the documents together with the certificate to the Department.

(c) Whenever a person admits that he has expatriated himself by the voluntary performance of one of the acts or fulfillment of one of the conditions specified in Chapter 3, Title III of the Immigration and Nationality Act of 1952 or section 401 of the Nationality Act of 1940, and consents to the execution of an affidavit to that effect, the diplomatic or consular officer shall recite in or attach to the certificate the person's affidavit.

(d) If the certificate of loss of nationality is approved by the Department, a copy shall be forwarded to the

Immigration and Naturalization Service, Department of Justice. The diplomatic or consular office in which the certificate was prepared shall then forward a copy of the certificate to the Person to whom it relates or his representative.

§ 50.42 Determination of loss of nationality abroad in connection with application for passport in the United States.

The Department shall determine that a person in the United States has lost his U.S. citizenship while abroad only in connection with an application for a passport.

§ 50.50 Renunciation of nationality.

(a) A person desiring to renounce his U.S. nationality under section 349(a)(6) of the Immigration and Nationality Act shall appear before a diplomatic or consular officer of the United States in the manner and form prescribed by the Department. The renunciant must include on the form he signs a statement that he absolutely and entirely renounces his U.S. nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

(b) The diplomatic or consular officer shall forward to the Department for approval the oath of renunciation together with a certificate of loss of nationality as provided by section 358 of the Immigration and Nationality Act. If the officer's report is approved by the Department, copies of the certificate shall be forwarded to the Immigration and Naturalization Service, Department of Justice, and to the person to whom it relates or his representative.

§ 50.51 Certification of expatriation.

The procedures under this part shall also apply to the preparation, approval or disapproval of certificates of expatriation. Where loss of nationality occurs under provisions of law other than those specified in section 358 of the Immigration and Nationality Act of 1952, the diplomatic or consular officer shall prepare a certificate of expatriation instead of a certificate of loss of nationality.

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§ 50.52 Notice of right to appeal.

When an approved certificate of loss of nationality or certificate of expatriation is forwarded to the person to whom it relates or his or her representative, such person or representative shall be informed of the right to appeal the Department's determination to the Board of Appellate Review (Part 7 of this chapter) within one year after approval of the certificate of loss of nationality or the certificate of expatriation.

[44 FR 68827. Nov. 30, 1979]

Subpar) E—Limitation on Issuance or Extension of Passports

§ 51.70 Denial of passports.

(a) A passport, except for direct return to the United States, shall not be issued in any case in which the Secretary of State determines or is informed by competent authority that:

(1) The applicant is the subject of an outstanding Federal warrant of arrest for a felony, including a warrant issued under the Federal Fugitive Felon Act (18 U.S.C.1073); or

(2) The applicant is subject to a criminal court order, condition of probation, or condition of parole, any of which forbids departure from the United States and the violation of which could result in the issuance of a Federal warrant of arrest, including a warrant issued under the Federal Fugitive Felon Act; or

(3) The applicant is subject to a court order committing him or her to a mental institution; or

(4) The applicant is the subject of a request for extradition or provisional arrest for extradition which has been presented to the government of a foreign country; or

(5) The applicant is the subject of a subpoena issued pursuant to section 1783 of Title 28, United States Code, in a matter involving Federal prosecution for, or grand jury investigation of, a felony; or

(6) The applicant has not repaid a loan received from the United States as prescribed under §§ 71.10 and 71.11 of this chapter, or

(7) The applicant is in default on a loan received from the United States to effectuate his or her return from a

foreign country in the course of travel abroad.

(b) A passport may be refused in any case in which the Secretary of State determines or is informed by competent authority that:

(1) The applicant has not repaid a loan received from the United States to effectuate his or her return from a foreign country in the course of travel abroad; or

(2) The applicant has been legally declared incompetent, unless accompanied on his or her travel abroad by the guardian or other person responsible for the national's custody and well being; or

(3) The applicant is under the age of 18 years, unmarried and not in the military service of the United States unless a person having legal custody of such national authorizes issuance of the passport and agrees to reimburse the United States for any monies advanced by the United States for the minor to return to the United States; or

(4) The Secretary determines that the national's activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States; or

(5) The applicant has been the subject of a prior adverse action under this section or § 51.71 and has not shown that a change in circumstances since the adverse action warrants issuance of a passport; or

(6) The applicant is subject to an order of restraint or apprehension issued by an appropriate officer of the United States Armed Forces pursuant to Chapter 47 of Title 10 of the United States Code.

(Approved by the Office of Management and Budget under control number 1405-0077)

[54 FR 8531, Mar. 1, 1989]

§ 51.71 Denial of passports to certain convicted drug traffickers.

(a) A passport shall not be issued in any case in which the Secretary of State determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a felony conviction for a Federal or

state drug offense if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, including a felony conviction arising under:

(1) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.); or

(2) Any Federal law involving controlled substances as defined in section 802 of the Controlled Substances Act (21 U.S.C. 801 et seq.); or

(3) The Bank Secrecy Act (31 U.S.C. 5311 et seq.) or the Money Laundering Act (18 U.S.C. 1956 et seq.) if the Secretary of State is in receipt of information that supports the determination that the violation involved is related to illicit production of or trafficking in a controlled substance; or

(4) Any state law involving the manufacture, distribution, or possession of a controlled substance.

(b) A passport may be refused in any case in which the Secretary of State determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a misdemeanor conviction of a Federal or state drug offense if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, other than a first conviction for possession of a controlled substance, including a misdemeanor conviction arising under:

(1) The federal statutes described in section 51.71 (a); or

(2) Any state law involving the manufacture, distribution, or possession of a controlled substance.

(c) Notwithstanding subsections (a) and (b), the Secretary of State may issue a passport when the competent authority confirms, or the Secretary of State otherwise finds, that emergency circumstances or humanitarian reasons exist.

(Approved by the Office of Management and Budget under control number 1405-0077)

[54 FR 8532, Mar. 1, 1989]

§ 51.72 Revocation or restriction of passport—

A passport may be revoked or restricted or limited where:

(a) The national would not be entitled to issuance of a new passport under § 51.70 or § 51.71; or

(b) The passport has been obtained by fraud, or has been fraudulently altered, or has been fraudulently misused.

[54 FR 8532, Mar. 1, 1989]

§ 51.73 Passports invalid for travel into or through restricted areas.

(a) Unless specifically validated therefore, U.S. passports shall cease to be valid for travel into or through a country or area which the Secretary has determined is:

(1) A country with which the United States is at war, or

(2) A country or area where armed hostilities are in progress; or

(3) A country or area in which there is imminent danger to the public health or physical safety of United States travelers.

(b) Any determination made under paragraph (a) of this section shall be published in the FEDERAL REGISTER along with a statement of the circumstances requiring this restriction.

(c) Unless limited to a shorter period, any such restriction shall expire at the end of one year from the date of publication of such notice in the FEDERAL REGISTER, unless extended or sooner revoked by the Secretary by public notice.

[45 FR 11128, Feb. 20, 1980. Redesignated at 54 FR 8532, Mar. 1, 1989]

§ 51.74 Special validation of passports for travel to restricted areas.

(a) A United States National wishing a validation of his passport for travel to, in, or through a restricted country or area may apply for a special validation to the Office of Passport Services, a passport agency, or a foreign service post authorized to issue passports. The application shall be accompanied by evidence that the applicant falls within the standards set out in paragraph (c) of this section.

(b) The Assistant Secretary of State for Consular Affairs or an authorized designee of that official shall decide whether or not to grant a special validation. The special validation shall be granted only when such action is de-

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terminated to be in the national interest of the United States.

(c) An application may be considered if:

(1) The applicant is a professional reporter, the purpose of whose trip is to obtain, and make available to the public, information about the restricted area; or

(2) The applicant is a representative of the American Red Cross; or

(3) The applicant establishes that his or her trip is justified by compelling humanitarian considerations; or

(4) The applicant's request is otherwise in the national interest.

(Sec. 1. 44 Stat. 887, as amended (22 U.S.C. 211a); sec. 4. 63 Stat. 111, as amended (22 U.S.C. 26581; E.O. 11295, 36 FR 10603; 3 CFR 1966-70 Comp., 507; E.O. 12211, 45 FR 26685)

[45 FR 30619, May 9, 1980. Redesignated at 54 FR 8532, Mar. 1, 1989]

§ 51.75 Notification of denial or withdrawal of passport.

Any person whose application for issuance of a passport has been denied, or who has otherwise been the subject of an adverse action taken on an individual basis with respect to his or her right to receive or use a passport shall be entitled to notification in writing of the adverse action. The notification shall set forth the specific reasons for the adverse action and the procedures for review available under §§ 51.81 through 51.105.

(22 U.S.C.2658 and 3926)

[33 FR 12043, Aug. 24, 1968, as amended at 49 FR 16989, Apr. 23, 1984]

§ 51.76 Surrender of passport.

The bearer of a passport which is revoked shall surrender it to the Department or its authorized representative upon demand and upon his or her refusal to do so such passport may be invalidated by notifying the bearer in writing of the invalidation.

(22 U.S.C.2658 and 3926)

[31 FR 13540, Oct. 20, 1966, as amended at 49 FR 16989, Apr. 23, 1984]

Subpart F—Procedures for Review of Adverse Action

§ 51.80 Applicability of 9951.81 through 51.89.

The provisions of §§ 51.81 through 51.89 apply to any action of the Secretary taken on an individual basis in denying, restricting, revoking or invalidating a passport or in any other way adversely affecting the ability of a person to receive or use a passport except action taken by reason of non-citizenship, refusal to grant a discretionary exception under the emergency or humanitarian relief provisions of § 51.71(c) or refusal to grant a discretionary exception from geographical limitations of general applicability. The provisions of this subpart shall constitute the administrative remedies provided by the Department to persons who are the subject of adverse action under §§ 51.70, 51.71 or 51.72.

(The information collection implications contained in this rule have been approved by OMB (1405-0077, 6/90))

[54 FR 8532, Mar. 1, 1989]

§ 51.81 Time limits on hearing to review adverse action.

A person who has been the subject of an adverse action with respect to his or her right to receive or use a passport shall be entitled, upon request made within 60 days after receipt of notice of such adverse action, to require the Department or the appropriate Foreign Service post, as the case may be, to establish the basis for its action in a proceeding before a hearing officer. If no such request is made within 60 days, the adverse action will be considered final and not subject to further administrative review. If such request is made within 60 days, the adverse action shall be automatically vacated unless such proceeding is initiated by the Department or the appropriate Foreign Service post, as the case may be, within 60 days after request, or such longer period as is requested by the person adversely affected and agreed to by the hearing officer.

(22 U.S.C. 2658 and 3926)

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(31 FR 13540, Oct. 20, 1968, as amended at 49 FR 16989, Apr. 23, 1984)

1) 51.82 Notice of hearing.

The Person adversely affected shall receive not less than 5 business days' notice in writing of the scheduled date and place of the hearing.

1) 51.83 Functions of the hearing officer.

The hearing officer shall act on all requests for review under § 51.81. He shall make findings of fact and submit recommendations to the Administrator of the Bureau of Security and Consular Affairs. In making his or her findings and recommendations, the hearing officer shall not consider confidential security information unless that information is made available to the person adversely affected and is made part of the record of the hearing.

(22 U.S.C. 2658 and 3926)

(31 FR 13540, Oct. 20, 1966, as amended at 49 FR 16989, Apr. 23, 1984)

1) 51.84 Appearance at hearing.

The person adversely affected may appear at the hearing in person or with his or her attorney, or by his or her attorney. The attorney must possess the qualifications prescribed for practice before the Board of Appellate Review or be admitted to practice before the courts of the country in which the hearing is to be held.

(22 U.S.C. 2658 and 3926)

(36 FR 9068, May 19, 1971, as amended at 49 FR 16989, Apr. 23, 1984)

§ 51.85 Proceedings before the hearing officer.

The person adversely affected may appear and testify in his or her own behalf and may himself, or by his or her attorney, present witnesses and offer other evidence and make argument. If any witness whom the person adversely affected wishes to call is unable to appear in person, the hearing officer may, in his or her discretion, accept an affidavit by the witness or order evidence to be taken by deposition. The person adversely affected shall be entitled to be informed of all the evidence before the hearing officer and of the source of such evidence.

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and shall be entitled to confront and cross-examine any adverse witness. The person shall, upon request by the hearing officer, confirm his or her oral statements in an affidavit for the record.

(22 U.S.C. 2658 and 3926)

(31 FR 13540, Oct. 20, 1966, as amended at 49 FR 16989, Apr. 23, 1984)

§ 51.86 Admissibility of evidence.

The person adversely affected and the Department may introduce such evidence as the hearing officer deems proper. Formal rules of evidence shall not apply, but reasonable restrictions shall be imposed as to relevancy, competency and materiality of evidence presented.

§ 51.87 Privacy of hearing.

The hearing shall be private. There shall be present at the hearing only the person adversely affected, his or her attorney, the hearing officer, official stenographers, employees of the Department directly concerned with the presentation of the case, and the witnesses. Witnesses shall be present at the hearing only while actually giving testimony or when otherwise directed by the hearing officer.

(22 U.S.C. 2658 and 3926)

(31 FR 13540, Oct. 20, 1966, as amended at 49 FR 16989, Apr. 23, 1984)

§ 51.88 Transcript of hearing.

A complete verbatim stenographic transcript shall be made of the hearing by a qualified reporter, and the transcript shall constitute a permanent part of the record. Upon request, the appellant or his or her counsel shall be entitled to inspect the complete transcript and to purchase a copy thereof.

(22 U.S.C. 2658 and 3926)

(31 FR 13540, Oct. 20, 1966, as amended at 49 FR 16989, Apr. 23, 1984)

§ 51.89 Decision of Assistant Secretary for Consular Affairs: notice of right to appeal.

The person adversely affected shall be promptly notified in writing of the decision of the Assistant Secretary for Consular Affairs and, if the decision is

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adverse to him or her, the notification shall state the reasons for the decision and inform him or her of the right to appeal the decision to the Board of Appellate Review (Part 7 of this chapter) within **60** days after receipt of notice of the adverse decision. If no appeal is made within **60** days, the decision will **be** considered final **and** not subject to further administrative review.

t44 FR 68827, Nov. 30, 1979]