

§ 7.1

- 7.2 Establishment of Board of Appellate Review; purpose.
- 7.3 Jurisdiction.
- 7.4 Membership and organization.
- 7.5 Procedures.
- 7.6 Hearings.
- 7.7 Passport cases.
- 7.8 South African Fair Labor Standards cases.
- 7.9 Decisions.
- 7.10 Motion for reconsideration.
- 7.11 Computation of time.
- 7.12 Attorneys.

AUTHORITY: Sec. 1, 44 Stat. 887, sec. 4, 63 Stat. 111, as amended, 22 U.S.C. 211a, 2658; secs. 104, 360, 66 Stat. 174, 273, 8 U.S.C. 1104, 1503; E.O. 11295, 36 FR 10603; 3 CFR 1966-1970 Comp., page 507; 22 CFR 60-65; E.O. 12532, 50 FR 36861 7.4 also issued under 22 U.S.C. 3926.

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, except that the Department may administratively vacate a Certificate of Loss of Nationality on its own initiative at any time, notwithstanding an intervening decision by the Board sustaining the Department's original determination.

[44 FR 68825, Nov. 30, 1979, as amended at 56 FR 55457, Oct. 28, 1991]

§ 7.3 Jurisdiction.

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

22 CFR Ch. I (4-1-04 Edition)

(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, 1979, as amended at 51 FR 15319, Apr. 23, 1986]

§ 7.4 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 fulltime 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

Department of State

§ 7.5

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 § 7.3 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 interrogatories 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.