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

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 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, DC, 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 a 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 constitute 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

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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 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 pro-

ceedings. 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 §§ 7.2(b) and 7.10. Copies of the Board's decision shall be forwarded promptly to the parties.

[56 FR 55457, Oct. 28, 1991]

§ 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 included, 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]