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Representation in Section 207 Processing

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This is with reference to your memorandum of December 23, 1985 in which you requested that we review the October 1, 1985 memorandum of the Officer-in-Charge, Mexico City relating to representation of refugee applicants by attorneys in overseas Service offices.

We have reviewed the memorandum as requested and believe that our previous September 10, 1985 memorandum to you on this subject is correct: Present regulations allow for representation by an attorney or other representative.

The position of the Officer-in-Charge is that an applicant for refugee status is an alien who is making an application for admission to the United States. As such, the applicant is not entitled to representation under the terms of 8 C.F.R. 292.5(b). The basis for this interpretation are the numerous references in 8 C.F.R. 207 to the "admission of" refugees, and other variations on the term "admission" or "admit" used throughout that section.

While it is true that this language is used, the language this office focussed on in the September 10, 1985 memorandum was the language used in 8 C.F.R. 207.2(b). That provision states:

Each applicant 14 years of age or older shall appear in person before an immigration officer for inquiry under oath to determine his/her eligibility for admission as a refugee.

It was our view that this language appeared to constitute an "examination" under the terms of 8 C.F.R. 292.1 and 292.5 which provide for representation "whenever an examination is provided for in this chapter."

In our view, this is an entirely reasonable interpretation. The language cited from 8 C.F.R. 207.2(b) is virtually identical to or very similar to, that found in other provisions in the regulations, where the right to representation is clear. For example, in 8 C.F.R. 204.1(d)(4), describing the procedures applicable to third

and sixth preference immigrant visa petitions, it is stated that a district director may require both the beneficiary and the petitioner to:

. . . appear in person before an immigration or consular officer and be interrogated under oath concerning the allegations in the petition.

Likewise, in 8 C.F.R. 245.8, relating to adjustment of status, it is stated that:

Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. The interview may be waived in the case of a child under the age of 14 . . .

Similarly, in 8 C.F.R. 209.1(a), every alien in the United States as a refugee under section 207 of the Immigration and Nationality Act:

. . . is required to appear before an immigration officer one year after entry to determine his/her admissibility under sections 235, 236 and 237 of the Act. The applicant shall be examined under oath to determine admissibility.

In 8 C.F.R. 208.6, dealing with applications for asylum, there is a requirement for the applicant to be "examined in person by an immigration officer or judge." The personal appearance of children may be waived.

Finally, in 8 C.F.R. 209.2(e), relating to procedures for adjustment of status of asylees, there is the following language:

(e) Interview. Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. The interview may be waived for a child under 14 years of age.

Clearly, in this last provision it would be extremely difficult to defend the interpretation that the applicant for adjustment of status is not entitled to representation. It is obvious that the term "examination" is not used, but under the terms of section 209 of the Act, the applicant to be "interviewed" is an alien who is required to establish that he is "admissible to the United States." 8 C.F.R. 209.2(a).

CONCLUSION

For the reasons outlined above, it is our view that an applicant for refugee status is entitled to representation under the terms of 8 C.F.R. 292, because there is no substantial difference between the language used in 8 C.F.R. 207.2(b) and that used in other proceedings in which representation is accorded as of right.

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