

(1) Section 240B(d) of the Act, Voluntary Departure.

(2) Section 243(c)(1)(A) and (B) of the Act, Penalties Related to Removal.

(3) Section 274C(a)(5) and (a)(6) of the Act, Penalties for Document Fraud.

(4) Section 274D of the Act, Penalties for Failure to Depart.

(5) Section 275(b) of the Act, Entry of Alien at Improper Time or Place.

[64 FR 47102, Aug. 30, 1999]

PART 1287—FIELD OFFICERS; POWERS AND DUTIES

Sec.

1287.4 Subpoena.

1287.6 Proof of official records.

AUTHORITY: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357.

SOURCE: Duplicated from part 287 at 68 FR 9845, Feb. 28, 2003.

EDITORIAL NOTE: Nomenclature changes to part 1287 appear at 68 FR 9846, Feb. 28, 2003.

§ 1287.4 Subpoena.

(a) *Who may issue—(1) Criminal or civil investigations.* For provisions relating to the authority of immigration officers to issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations, see 8 CFR 287.4(a)(1).

(2) *Proceedings other than naturalization proceedings—(i) Prior to commencement of proceedings.* For provisions relating to who may issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this title, other than under 8 CFR part 335, or any application made ancillary to the proceeding, see 8 CFR 287.4(a)(2)(i).

(ii) *Subsequent to commencement of any proceeding.* (A) In any proceeding under this chapter and in any proceeding ancillary thereto, an immigration judge having jurisdiction over the matter may, upon his/her own volition or upon application of government counsel, the alien, or other party affected, issue subpoenas requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both.

(B) *Application for subpoena.* A party applying for a subpoena shall be re-

quired, as a condition precedent to its issuance, to state in writing or at the proceeding, what he/she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he/she has made diligent effort, without success, to produce the same.

(C) *Issuance of subpoena.* Upon being satisfied that a witness will not appear and testify or produce documentary evidence and that the witness' evidence is essential, the immigration judge shall issue a subpoena.

(D) *Appearance of witness.* If the witness is at a distance of more than 100 miles from the place of the proceeding, the subpoena shall provide for the witnesses' appearance at the Service office nearest to the witness to respond to oral or written interrogatories, unless the Service indicates that there is no objection to bringing the witness the distance required to enable him/her to testify in person.

(b) *Form of subpoena.* All subpoenas shall be issued on Form I-138.

(1) *Criminal or civil investigations.* The subpoena shall command the person or entity to which it is addressed to attend and to give testimony at a time or place specified. A subpoena shall also command the person or entity to which it is addressed to produce the books, papers, or documents specified in the subpoena. A subpoena may direct the taking of a deposition before an officer of the Service.

(2) *Proceedings other than naturalization proceedings.* Every subpoena issued under the provisions of this section shall state the title of the proceeding and shall command the person to whom it is directed to attend and to give testimony at a time and place specified. A subpoena shall also command the person to whom it is directed to produce the books, papers, or documents specified in the subpoena. A subpoena may direct the making of a deposition before an officer of the Service.

(c) *Service.* For provisions relating to who may serve a subpoena issued under this section, see 8 CFR 287.4(c).

(d) *Invoking aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him or her in accordance with the

provisions of this section, the immigration judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers, or documents designated in the subpoena.

[50 FR 30134, July 24, 1985; 50 FR 47205, Nov. 15, 1985, as amended at 60 FR 56937, Nov. 13, 1995; 62 FR 10390, Mar. 6, 1997; 67 FR 39260, June 7, 2002; 69 FR 44907, July 28, 2004]

§ 1287.6 Proof of official records.

(a) *Domestic.* In any proceeding under this chapter, an official record or entry therein, when admissible for any purpose, shall be evidenced by an official publication thereof, or by a copy attested by the official having legal custody of the record or by an authorized deputy.

(b) *Foreign: Countries not Signatories to Convention.* (1) In any proceeding under this chapter, an official record or entry therein, when admissible for any purpose, shall be evidenced by an official publication thereof, or by a copy attested by an officer so authorized. This attested copy in turn may but need not be certified by any authorized foreign officer both as to the genuineness of the signature of the attesting officer and as to his/her official position. The signature and official position of this certifying foreign officer may then likewise be certified by any other foreign officer so authorized, thereby creating a chain of certificates.

(2) The attested copy, with the additional foreign certificates if any, must be certified by an officer in the Foreign Service of the United States, stationed in the foreign country where the record is kept. This officer must certify the genuineness of the signature and the official position either of (i) the attesting officer; or (ii) any foreign officer whose certification of genuineness of signature and official position relates directly to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation.

(c) *Foreign: Countries Signatory to Convention Abolishing the Requirement of Legislation for Foreign Public Document.*

(1) In any proceeding under this chapter, a public document or entry therein, when admissible for any purpose, may be evidenced by an official publication, or by a copy properly certified under the Convention. To be properly certified, the copy must be accompanied by a certificate in the form dictated by the Convention. This certificate must be signed by a foreign officer so authorized by the signatory country, and it must certify (i) the authenticity of the signature of the person signing the document; (ii) the capacity in which that person acted, and (iii) where appropriate, the identity of the seal or stamp which the document bears.

(2) No certification is needed from an officer in the Foreign Service of public documents.

(3) In accordance with the Convention, the following are deemed to be public documents:

(i) Documents emanating from an authority or an official connected with the courts of tribunals of the state, including those emanating from a public prosecutor, a clerk of a court or a process server;

(ii) Administrative documents;

(iii) Notarial acts; and

(iv) Official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date, and official and notarial authentication of signatures.

(4) In accordance with the Convention, the following are deemed not to be public documents, and thus are subject to the more stringent requirements of § 1287.6(b) above:

(i) Documents executed by diplomatic or consular agents; and

(ii) Administrative documents dealing directly with commercial or customs operations.

(d) *Canada.* In any proceedings under this chapter, an official record or entry therein, issued by a Canadian governmental entity within the geographical boundaries of Canada, when admissible for any purpose, shall be evidenced by