

TITLE 41 – CITIZENSHIP, ALIENAGE AND IMMIGRATION

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Editor’s Note: The prior chapters of this title were derived from immigration regulations effective prior to 1975 as amended by Rule 10-75, effective January 5, 1976, Rule 2-76, effective March 10, 1976 and Rule 7-83, effective May 23, 1983. The Attorney General is of the opinion that the provisions of Rule 3-86, codified in this title, repeal prior Title 41 by implication.

Editor’s Update: April 25, 2022 – copies of APA compliant immigration amendments promulgated in 2003 and 2010 were recovered. These rules were therefore revised accordingly.

TITLE 41 – CHAPTER 02 – GENERAL PROVISIONS

Sections:

- 41.0201 Definitions.
- 41.0203 Interpreter.

41.0201 Definitions.

As used in this title:

- (a) The terms defined in 41.0202 A.S.C.A., shall have the meanings ascribed to them in that section and as supplemented, explained, and further defined in this chapter.
- (b) “Act” means the immigration act, as amended.
- (c) “Office” means the immigration office.

- (d) “Chief Immigration Officer” means the chief immigration officer of the immigration office.
- (e) “Board” means the immigration board.
- (f) “Attorney General” means the Attorney General of American Samoa.
- (g) “Attorney” means any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia, and is not under any order to any court suspending, enjoining, restraining, disbaring, or otherwise restricting him/her in the practice of law.
- (h) Unless the context otherwise requires, “case” means any proceeding arising under any immigration law of American Samoa, Executive Order, or preparation for or incident to such proceeding, including preliminary steps by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the office or the board is initiated.
- (i) “Day” when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays and legal holidays, except when the last day of the period so computed falls on a Saturday, Sunday or legal holiday, the period shall run until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.
- (j) “Practice” means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the office, or any officer of the office, or the board.
- (k) “Representative” refers to a person who is entitled to represent others as provided in 41.0307 of this chapter.
- (l) “Preparation”, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental

preparation of papers, but does not include the lawful function of a notary public or services consisting solely of assistance in the completion of blank spaces on printed office forms by one whose remuneration, if any, is nominal and who does not hold himself or herself out as qualified in legal matters or in immigration procedures.

- (m) “Representation” before the board and the office includes practice and preparation as defined in paragraphs (j) and (i) of this section.

History: Rule 3-86, eff 7 Dec 86.

41.0203 Interpreter.

Any person acting as interpreter in a hearing before the board shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the Attorney General or the High Court, in which event no such oath shall be required.

History: Rule 3-86, eff Dec. 86.

TITLE 41 – CHAPTER 03 – IMMIGRATION BOARD OF AMERICAN SAMOA

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41.0301 Authority.

The immigration board of American Samoa has its authority from 41.0203 to. 41.0205 A.S.C.A. The members of the board shall elect one of its members as chairman annually in March. Rules created by the board are made pursuant to authority granted at 41.0205 (7), (8), (9), (11) and (12) A.S.C.A., and other sections of the Act as noted below. The board hereby delegates to the Attorney General the authority to investigate any matter pertaining to enforcement of the Act. 41.0205 (4) A.S.C.A.

History: Rule 3-86, eff 7 Dec 86.

41.0302 Delegation.

The board hereby delegates all of its administrative duties to the Attorney General and such immigration officers of American Samoa as he/she deems necessary.

History: Rule 3-86, eff 7 Dec 86.

41.0303 Appellate jurisdiction.

An appeal shall lie to the board from the following:

- (1) a decision by the Attorney General or his designee in exclusion cases;
- (2) a decision by the Attorney General or his designee in deportation cases, except that no appeal shall lie from an order of the Attorney General or his designee granting voluntary departure within a period of at least 10 days, if the sole grant of appeal is that a greater period of departure time should have been fixed;
- (3) a decision on application for entrance to American Samoa under numerical limitation contained in 41.0301 and 41.0303 A.S.C.A.;

- (4) a determination relating to bond, parole or detentions of an alien;
- (5) a decision relating to adjustment of status cases;
- (6) a decision by the Attorney General or his designee concerning sponsorship and employment of aliens pursuant to 41.0408, 41.0410 and 41.0902 A.S.C.A.;
- (7) an application by a person born outside of the American Samoa one of whose parents was born in American Samoa of Samoan ancestry pursuant to 41.0202(1)(c)(ii) A.S.C.A.;
- (8) a decision by the Attorney General on an application by a person other than an American Samoan desiring permanent resident status pursuant to 41.0404 A.S.C.A.;
- (9) a decision by the Attorney General regarding an application by a permanent resident other than an American Samoan to reside outside of American Samoa in excess of 6 months;
- (10) a decision by the Attorney General on whether a permanent resident other than an American Samoan is to lose his/her status as a permanent resident pursuant to 41.0405 A.S.C.A.

History: Rule 3-86. eff 7 Dec 86.; amd 2010, eff 3 May 2010.

Amendments: 2010, subsections (1),(2), and (6) – deleted “his/her delegate,” added “designee;” subsection (5) deleted “of”, added “relating to;” subsection (6) – deleted “and 41.0409,” added “41.0410 and 41.0902; ” subsections (7),(8),(9) and (10) – new subsections added as indicated above.

41.0304 Original jurisdiction.

The board shall have original jurisdiction in the following matters:

- (1) an application by certain adopted children pursuant to 41.0406(b) A.S.C.A.;
- (2) conducting hearings on petition of the Attorney General or his delegate against an employer allegedly employing an alien illegally or against an alien allegedly employed illegally pursuant to 41.0409(c) A.S.C.A.
- (3) deportation hearings;

- (4) application to enter and remain in a professional, skill and unskilled labor (P45);
- (5) application by a partnership or corporation, licensed to do business in American Samoa, to sponsor an alien for employment or other purpose pursuant to 41.0301(d).

History: Rule 3-46, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, subsections (1), (2), (3), and (4) deleted; subsection (5) and (6) renumbered (1) and (2); subsections (3), (4) and (5) added (see current language).

41.0305 Summary dismissal of appeals.

Notwithstanding the provisions of 41.0308 of this chapter, the board may deny oral argument concerning, and summarily dismiss any appeal in any deportation or exclusion proceeding in any case in which:

- (1) the party concerned fails to specify the reason for the appeal;
- (2) the only reason specified by the party concerned for his/her appeal involves a finding of fact or a conclusion of law which was conceded by the party at the hearing;
- (3) the appeal is from an order that granted the party concerned the relief which he requested; or
- (4) the board is satisfied from a view of the record that the appeal is frivolous filed solely for purpose of delay.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (3) added “or.”

41.0306 Finality of decisions.

The decisions of the board shall be final except in those cases that the board may return a case to the Attorney General for such action as may be appropriate without entering a final decision on the merits of the case.

History: Rule 3-86, eff 7 Dec 86.

41.0307 Rules of practice.

- (a) The board hereby permits attorneys admitted to the High Court of American Samoa to appear before it. Law students, law graduates, legal practitioners and reputable individuals of good

moral character may appear on an individual case basis at the request of the person entitled to representation, if he/she is appearing without direct or indirect remuneration and files a written declaration to that effect and if the board approves his/her appearance.

(b) The following shall be grounds for not permitting attorneys and others to appear before the board, although the following categories do not establish the exclusive grounds for suspension or disbarment in the public interest:

- (1) any attorney who has been disbarred or under an order of suspension of the highest court of any state, possession, territory, commonwealth, or the District of Columbia or in any other way is restricted in the practice of law; and any person
- (2) who, with intent to defraud or deceive, bribes, attempts to bribe, coerces, or attempts to coerce, by any means whatsoever, any person, including a party to a case, or an officer or employee of the Office of the Attorney General or the board, to commit an act or to refrain from performing an act in connection with any case;
- (3) who wilfully misleads, misinforms, or deceives an officer or an employee of the Office of the Attorney General or the board concerning any material and relevant fact in connection with a case;
- (4) who wilfully deceives) misleads or threatens any party to a case concerning any matter relating to the case;
- (5) who solicits practice in any unethical or unprofessional manner including, but not limited to, the use of runners, or advertising his/her availability to handle immigration matters;
- (6) who represents, as an associate, any person who, known to him/her, solicits practice in any ethical or unprofessional manner, including but not limited to, the use of runners, or advertising his/her availability to handle immigration matters;

- (7) who, by use of name, personal appearance, or any device, aids and abets any person to practice during the period of his/her suspension or disbarment, such suspension or disbarment being known to him/her;
- (8) who wilfully make false and material statements or representations with respect to his/her qualifications or authority to represent others in any case;
- (9) who charges or receives either directly or indirectly, any fee or compensation for services which may be deemed to be grossly excessive in relation to the services performed, or any non-attorney who charges or receives either directly or indirectly any fee or compensation for services rendered to any person, except that an accredited representative of an organization may be regularly compensated by the organization of which he/she is an accredited representative;
- (10) who engages in contumelious or otherwise obnoxious conduct with respect to a case in which he/she acts in a representative capacity, which in the opinion of the board would constitute cause for suspension or disbarment if the case pending before a court, or which, in such a judicial proceeding would constitute a contempt of court;
- (11) who, having been furnished with a copy of any portion of the record in a case, wilfully fails to surrender such copy upon final disposition of the case or upon demand, or wilfully and without authorization makes and retains a copy of the material furnished;
- (12) who has been convicted of a felony or, having been convicted of any crime is sentenced to imprisonment for a term of more than one year;
- (13) who has falsely certified a copy of the document as being a true and complete copy of an original.

History: Rule 3-86, eff 7 Dec 86.

41.0308 Oral argument.

Oral argument shall be heard by the board upon request, in any case over which the board acquires jurisdiction by appeal as provided in these rules. If an appeal has been taken, request for oral argument, if desired, shall be included in the notice of appeal. The board shall have the authority to fix any date or change any date upon which oral argument is to be heard. The Attorney General or the immigration office may be represented in argument before the board by an officer of the Attorney General or the immigration office.

History: Rule 3-86, eff 7 Dec 86.

41.0309 Service of board decision.

The decision of the board shall be in writing and copies thereof shall be transmitted by the board to the immigration office, the Attorney General, and a copy shall be served upon the alien or party affected by the decision and the legal representative of the alien or party affected.

History: Rule 3-86, eff 7 Dec 86.

41.0310 Decision of the board as precedent.

Accept as may be modified or overruled by the board or a court, decisions of the board shall be binding on the immigration office in the administration of the Act, and selected decisions designated by the board shall serve as precedents in all proceedings involving the same issue or issues.

History: Rule 3-86, eff 7 Dec 86.

41.0311 Referral of cases to the Attorney General.

- (a) The board shall refer to the Attorney General for review of its decision all cases which:
- (1) the Attorney General directs the board to refer to him/her;
 - (2) the chair or the majority of the board believes should be referred to the Attorney General for review.
- (b) In any case which the Attorney General reviews the decision of the board, the decision of the Attorney General shall be stated in writing and shall be transmitted to the board for transmittal and service as provided in 41.0309 of this chapter.

History: Rule 3-86, eff 7 Dec 86.

41.0312 Reopening or reconsideration.

The board may on its own motion reopen or office, or by the party affected by the decision, shall be only upon written motion to the board. Motions to reopen in deportation proceedings shall not be granted unless it appears to the board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the formal hearing; nor shall any motion to reopen for the purpose of affording the alien an opportunity reconsider any case in which it has rendered a decision. Reopening or reconsideration of any case in which a decision has been made by the board, whether requested by the Attorney General or any other duly authorized officer of the Attorney General's to apply for any form of discretionary relief be granted if it appears that the alien's right to apply for such relief was fully explained to him or her and an opportunity to apply therefor was afforded him or her at the formal hearing unless relief is sought on the basis of circumstances which has arisen subsequent to the hearing. A motion to reopen or a motion to reconsider shall not be made by or in behalf of a person who is a subject of deportation proceedings subsequent to his departure from American Samoa. Any departure from American Samoa of a person who is the subject of deportation proceedings occurring after the making of the motion to reopen or a motion to reconsider shall constitute a withdrawal of such motion.

History: Rule 3-86, eff 7 Dec 86.

41.0313 Notice of appeal:

- (a) A party affected by a decision who is entitled under this chapter to appeal to the board shall be given notice of his/her right to appeal. An appeal shall be taken by filing notice of appeal with the immigration office within the time specified in the governing sections of this chapter. Certification of a case as provided in this rule shall not relieve the party affected from compliance with provision of this section in the event that he/she is entitled, and desires, to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal. Departure from American Samoa of a person under deportation proceedings prior to the taking

of an appeal from a decision in his/her case shall constitute a waiver of his/her right to appeal.

- (b) Fees. Except as otherwise provided in this section, a notice of appeal or a motion filed under this rule by any person other than the Attorney General or the immigration office shall be accompanied by the appropriate fee specified by and remitted, in accordance with, the provisions of 41.0319 of this chapter. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or a motion, he/she shall file with a notice of appeal or the motion his/her affidavit stating the nature of the motion or appeal, the belief that he/she is entitled to redress, and his/her ability to pay the required fee, and shall request permission to prosecute the appeal or motion without prepayment of such fee. When such an affidavit is filed with the immigration office an officer shall, if he/she believes that the appeal or motion is not taken or made in good faith, certify in writing his/her reasons for such belief for consideration. The board may, in its discretion, authorize the prosecution of any appeal or motion without prepayment of fee.
- (c) Briefs. Briefs in support of or in opposition to an appeal shall be filed in with the office within the time fixed for an appeal or within any other additional period designated by the board. The board for good cause may extend the time for filing a brief or reply brief. The board in its discretion may authorize the filing of a brief directly with it in which event the opposing party shall be allowed a specified time to respond.

History: Rule 3-86, eff 7 Dec 86.

41.0314 Withdrawal of appeal.

In any, case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office. The withdrawal of an appeal shall result in the initial decision being final to the same extent as though no appeal had been taken. Departure from American Samoa of the person who is the subject to deportation proceedings subsequent to taking of an appeal but prior to a decision thereon shall constitute a withdrawal of the appeal and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

History: Rule 3-86, eff 7 Dec 86.

41.0315 Meetings and hearings.

All regular meetings and hearings of the board shall be held in the immigration office unless otherwise announced each Friday as needed at 9:00 a.m. Such other meetings and hearings as are necessary for the efficient conduct of its business may be held at such times and places as determined by the chair.

History: Rule 3-86, eff 7 Dec 86.

41.0316 Election of chairperson.

A chairperson shall be elected by the board on the first Friday of March each year.

History: Rule 3-86, eff 7 Dec 86.

41.0317 Attendance.

The board shall recommend to the Governor the need for a replacement for any member who misses 3 consecutive meetings without cause. Cause shall include health and off-island business trips.

History: Rule 3-86, eff 7 Dec 86.

41.0318 Denials and appeals.

(a) Denials and Appeals. Whenever a formal application or petition filed with the office is denied, the applicant shall be given written notice setting forth the specific reasons for such denial. When the applicant so desires, such an appeal to the board may be taken within 15 days after the service of notification of decision accompanied by a supporting brief if desired and any fee established for filing the notice of appeal which shall be furnished with the written notice. For good cause shown, the time within which the brief may be submitted may be extended. The party taking the appeal may, prior to appearing before the board, file a written withdrawal of such appeal. An appeal, cross appeal, answer thereto and accompanying brief, if any, shall become part of the record of proceeding and, if filed by an officer of the office, a copy shall be served on the party affected.

(b) Dismissal of Appeals. Notwithstanding the provisions of subsection (c) of this section, the board may deny oral argument and dismiss any appeal when (1) the party concerned fails to

specify the reasons for his/her appeal, or (2) the appeal is patently frivolous.

- (c) Oral Argument. if an appeal is taken, request for oral argument, if desired, shall be included in a notice of appeal. The board shall have the authority to designate the time, date and place where oral argument may be heard.

History: Rule 3-86, eff 7 Dec 86.

41.0319 Fees.

(a) Remittances. Fees shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or rule. When any discretionary relief in exclusion or deportation proceedings is granted absent an application and fee therefor, the chief immigration officer shall require the filing of the application and the payment of the fee. Every remittance shall be accepted subject to collection. A charge of \$25.00 will be imposed if a check in payment of the fee is not honored by the bank on which it is drawn. A receipt, issued by an officer for any such remittance shall not be binding if a remittance if found uncollectible. Remittances must be drawn on a bank or other institution located in American Samoa or the United States and be payable in United States currency. Fees in a form of postage stamps shall not be accepted. Remittance shall be made payable to the “Treasurer-American Samoa Government.” If application is submitted from outside American Samoa and the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in American Samoa or in the United States and payable to “Treasurer-American Samoa Government” in United States currency.

- (b) Amounts of fees. The following fees and charges are prescribed:
- (1) the fee for a case of original jurisdiction before the board shall be \$20.00 unless otherwise provided below;
 - (2) the fee for an appeal to the board shall be \$50.00;

(3) a fee of \$75.00 shall be charged for the following applications: permanent residency, all priorities under 41.0301 and 41.0303 A.S.C.A. and temporary or seasonal workers; and

(4) a fee of \$35.00 shall be charged for the following application: a lost, stolen, destroyed, mutilated registration receipt card, a new registration receipt card for a name change; and application for extension of time to remain under numerical limitations.

- (c) Waiver of Fees. Except as otherwise provided in this subsection and in 41.0313 of this chapter, any of the fees prescribed in subsection (b) of this section relating to applications, petitions, appeals, motions, or requests may be waived in any case in which the alien or other party affected is unable to pay the prescribed fee if he/she files his/her affidavit asking for permission to prosecute without payment of fee, the application, petition, appeal, motion or request, and stating his/her belief that he/she is entitled to or deserving of the benefit and the reasons for the inability to pay. The chief immigration officer or the board may, in its discretion, grant the waiver of fee.

History: Rule 3-86, eff 7 Dec 86; amd 2003, eff 1 Apr 2003.

Amendments: 2003, subsection (a) – deleted “10.00;” added “25.00;” subsection (b)(1) – deleted “10.00;” added “20.00;” subsection (b)(2) – deleted “25.00;” added “50.00;” subsection (b)(3) – deleted “50.00;” added “75.00;” added “and temporary or seasonal workers;” subsection (b)(4) – deleted “25.00;” added “35.00;” deleted “temporary or seasonal workers.”

41.0320 Access by individuals to records maintained about them.

- (a) Access to Available Records. An individual seeking records about him/herself shall present the request in person or in writing to the chief immigration officer. The person requesting information shall to the extent possible assist in identifying the request as precisely as possible to insure expeditious handling and rapid identification.
- (b) Verification of Identity. The following standards are applicable to any individual who requests

records concerning him/herself unless other provisions for identity verification are specified in the published notice pertaining to the particular system of records:

- (1) An individual seeking access to records about him/herself in person shall establish identity by the presentation of a single document bearing a photograph (such as a passport, alien registration receipt card or identification) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license, or credit card).
 - (2) An individual seeking access to records about him/herself by mail shall establish identity by a signature, address, date of birth, place of birth, alien or employee identification, if any and one other identifier such as a photocopy of an identifying document.
 - (3) An individual seeking access to records about him/herself by mail or in person who cannot provide the necessary documentation of identification may provide a notarized statement swearing or affirming to his/her identity and to the fact that he/she understands the penalty for false statement pursuant to 41.0701 A.S.C.A. See also 41.0702, 41.0703, 41.0704 and 41.0313 A.S.C.A.
- (c) Verification of Guardianship. The parent or guardian of a child or of a person judicially determined to be incompetent and seeking to act on behalf of such child or incompetent, shall, in addition to establishing his/her own identity, establish the identity of the child or other person he/she represents as required in subsection (b) of this section, and establish his/her own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing a guardianship.
- (d) Accompanying Persons. An individual seeking to review records pertaining to him/herself may be accompanied by another individual of his/her

own choosing. Both the individual seeking access and the individual accompanying him/her shall be required to sign a form indicating that the office is authorized to discuss the contents of the subject record in the presence of both individuals.

- (e) Specification of Records Sought. Request for access to records, either in person or by mail shall describe the nature of the records sought, the approximate dates covered by the record, and the identity of any individual or officers who may have had contact with this record.

History: Rule 3-86, eff 7 Dec 86.

41.0321 Records exempt in whole or in part.

- (a) When an individual requests records about him/herself which have been exempted from individual access or which have been compiled in reasonable anticipation of a civil action or proceeding either in a court or before an administrative tribunal, the office will neither confirm nor deny the existence of the record which is presently available to him/her.
- (b) Individual requests for access to records which have been exempted from access shall be processed as follows:
 - (1) Requests for information classified by the office shall be reviewed by the office to determine whether it continues to warrant classification. Information which no longer warrants classification under criteria shall be declassified and made available to the individual, if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified; that it has been reviewed and continue to warrant classification; and that it has been exempted from access. Information which has been exempted and which is also classified shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by subsection (a) of this section.
 - (2) Requests for information which have been exempted from disclosure shall be responded to in the manner provided in

subsection (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he/she is eligible or to which he/she would otherwise be eligible under American Samoa law. In that event, the individual shall be advised of the existence of the record and shall be provided the information except to the extent it would identify a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requestor.

- (3) Information compiled as part of an employee background investigation shall be made available to an individual upon request except to the extent that it identifies a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletion made or the summary shall be furnished to the requestor.
- (4) Testing or examination materials which have been exempted shall not be made available to an individual if disclosures would compromise the objectivity or fairness of the testing or examination process but shall be made available if no such compromise possibility exists.

History: Rule 3-86, eff 7 Dec 86.

41.0322 Fees for copies of records.

The fees charged by the office of the Attorney General and the immigration office for records pursuant to this chapter shall be \$.75 per page. See 41.0404(b) for an exception for certain statements.

History: Rule 3-86, eff 7 Dec 86.

41.0323 Appeals from denials of access.

An individual who has been denied access by the office to the records concerning him/her may appeal that decision to the board in accordance with procedures in this chapter.

History: Rule 3-86, eff 7 Dec 86.

41.0324 Request for correction of records.

- (a) How made. Unless a record is exempt from corrections, an individual may request amendment or correction of a record concerning him/her by addressing his/her request to the chief immigration officer either in person or by mail, his/her identity to be established as provided in 41.0320(b) of this chapter. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. Requests made by mail should be addressed to the chief immigration officer and shall be clearly marked on the request and on the envelope "Privacy Correction Request".
- (b) Initial Determination. Within 15 working days of the receipt of the request, the office shall advise the individual that his/her record request has been received. If a record is to be amended or corrected, the office may so advise the individual but if correction is refused in whole or in part, it must be done by the chief immigration officer or a supervisor. If a correction is to be made, the individual shall be advised of his/her right to obtain a copy of the corrected record upon payment of the standard fee as established in 41.0322 of this chapter. If a correction or amendment is refused, in whole or in part, the individual shall be so advised, shall be given reasons for the refusal, and shall be advised of his/her right to appeal to the board in accordance with procedures set forth in this chapter.
- (c) Notice of Correction or Disagreement. When a record has been corrected, the chief immigration officer shall, within 30 working days thereof, advise all prior recipients of the records whose identities can be determined pursuant to an accounting of the correction. Any dissemination of a record after the filing of a statement of disagreement shall be accompanied by a copy of that statement. Any statement of the office

giving reasons for refusing to correct shall be included in the file.

History: Rule 3-86, eff 7 Dec 86.

41.0325 *Records not subject to correction.*

The following records are not subject to correction or amendment by individuals:

- (a) Transcript or written statement made under oath;
- (b) Transcripts of the immigration board, judicial or quasi-judicial proceedings which form the official record of those proceedings; and
- (c) Presentence reports comprising the property of the court but maintained in office files.

History: Rule 3-86, eff 7 Dec 86.

41.0326 *Students.*

It is the policy of the board not to allow aliens to attend the public school system, or the Community College of American Samoa or private schools and colleges or seminaries if their parents are not living in American Samoa, except as set forth in this section, and provided the alien is otherwise admissible:

- (a) An alien may be allowed to enter and remain in American Samoa to attend any school if the alien is participating in an official exchange agreement between the American Samoa Government and the student's home country.
- (b) On a case by case basis the board will review alien applicants to attend any school factors that will be considered, but not limited to, are the sponsoring family in American Samoa who will be responsible while the alien is here, school records, police and health records from the alien's home country, availability of room in the school or college for the alien, and parental or legal guardian written consent.
- (c) Any alien authorized to enter and remain in American Samoa pursuant to subsections (a) and (b) of this section who does not attend the school regularly or engages in any employment without written approval of the board may be subject to immediate deportation.
- (d) Alien students and the sponsors approved under this section shall file copies of report cards and

attendance records with the office quarterly. Failure to provide such records could result in immediate deportation of the alien. A bond and airfare are required on all students.

History: Rule 3-86, eff 7 Dec 86.

41.0327 *Business license.*

It is the policy of the board that all business licenses submitted by aliens are to be reviewed by the board. There shall be no fee for this review. It is the policy of the board not to approve aliens for sole proprietorships for a business license. Aliens may be partners or founders or stockholders in partnerships or corporations pursuant to Title 30 A.S.C.A.

History: Rule 3-86, eff 1 Dec 86.

41.0328 *Ministers and missionary workers.*

- (a) The board finds ministers and missionary workers, as defined in this subsection, as a group of individuals whose assignment to and work in American Samoa constitute extenuating circumstances and for whom the numerical limitations as to their registration are hereby waived pursuant to A.S.C.A. 41.0301(d). The Attorney General or his designee is delegated the authority and responsibility to grant entry and oversee the orderly processing of ministers and missionary workers of the community.
- (b) "Minister", as used in this section, means a person duly authorized by a recognized religious denomination having a bona fide organization in American Samoa to conduct religious worship and to perform other duties usually performed by a regular ordained pastor or clergyman of such denomination. The term shall also apply to persons duly authorized by an interdenominational organization designed to assist the various religions.
- (c) An alien shall be allowed to enter and remain as a minister in American Samoa; provided, that:
 - (1) he/she is entering solely for the purpose of carrying on the vocation of minister of a religious denomination;
 - (2) his/her services are needed by such religious denomination having a bona fide organization in American Samoa or his/her

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services are needed by an interdenominational religious organization; and

- (3) his/her services are requested by the religious organization in American Samoa.
- (d) “Missionary worker”, as used in this section, encompasses all individuals performing religious work in American Samoa not included within the definition of “minister” as set forth in subsection (a) of this section.
- (e) An alien missionary worker shall be allowed to enter and remain in American Samoa, provided that:
 - (1) it is established to the satisfaction of the immigration board that there are not American Samoans available to perform the type of missionary work to be done by the person requested;
 - (2) he/she is entering solely for the purpose of carrying on religious work for the organization;
 - (3) his/her services are needed by such religious denomination having a bona fide organization in American Samoa or his/her services are needed by an interdenominational religious organization; and
 - (4) his/her services are requested by the religious organization in American Samoa.
- (f) If the individual ceases to perform the missionary or ministerial services contemplated in the original approval by the Attorney General or his designee, he/she must depart American Samoa within 20 days or shall be subject to the numerical limitations within 30 days.
- (g) Requests for “ministers” or “missionary” workers shall be filed on form P45 if the stay is for more than one year and on form P50 if the stay is for one year or less. Fees may be (waived upon request and with showing of hardship.

History: Rule 3-86 eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (a) - renumbered (b); subsection (a) - added with new language; subsection

(b) - renumbered (c); subsection (c) - renumbered (d); subsection (d) - renumbered (e); subsection (e)(1) - “immigration board” deleted, amended “Attorney General or his designee;” subsection (e) - renumbered (f); subsection (f) - deleted “immigration board” added “Attorney General or his designee,” added “within 20 days or shall be subject to the numerical limitations within 30 days;” subsection (f) - renumbered (g).

41.0329 Divorced spouses.

Any alien who has entered or remained in American Samoa as a spouse of an American Samoan, United States National or an alien approved for employment who becomes divorced shall be subject to having his/her right to remain revoked unless good and sufficient cause exists for allowing the person to remain. In determining good and sufficient cause, the board will consider but not be limited to:

- (a) Length of stay in American Samoa;
- (b) Employment or ability to care for oneself and family;
- (c) Housing arrangements;
- (d) Hardship;
- (e) Children;
- (f) Police and health records; and
- (g) Sponsorship, and posting of a bond and one-way air fare for all affected person, and valid passports or travel documents.

History: Rule 3-86. eff 7 Dec 86.

41.0330 Adoptions.

For the purposes of 41.0403 (2) and 41.0406 A.S.C.A., it is the policy of the board to accept only adoptions that granted by a court of law in the United States or its territories and possessions, or adoptions accepted by the Courts of American Samoa.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, added (2); deleted “that occur,” added “granted by a court of law”; added “or.”

Editor’s Note: 2010, Proposed change to language to include adoptions granted by courts in the Independent State of Samoa was disregarded and formally withdrawn by Attorney General via promulgating memorandum.

41.0331 Permanent residents.

Upon application for an alien to become a permanent resident, the alien and the sponsor must appear before the board. Failure of the sponsor to appear will result in denial or delay.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, deleted “board,” added “Attorney General or his designee;” added “If permanent resident status is granted, a bond must still be posted for the alien.”

TITLE 41 – CHAPTER 04 – IMMIGRATION RULES

Sections:

- 41.0401 Introduction.
- 41.0402 Organization and delegation.
- 41.0403 Places where and method whereby information may be secured or submittals for request made.
- 41.0404 Application, petition, and other documents.
- 41.0405 Denial and appeals.
- 41.0406 Working hours.
- 41.0407 Forms.
- 41.0408 Instruction to forms.
- 41.0409 Bonds.

41.0401 Introduction.

The following sections describe the organization of the immigration office including statements of delegations of authority indicate the established places at which, and method whereby, the public may secure information, and direct attention to the rules leading to the general course and method by which its functions are channeled and determined. These sections also set forth the procedure governing the availability of opinions, orders and records.

History: Rule 3-86. eff 7 Dec 86.

41.0402 Organization and delegation.

The Attorney General has delegated to the chief immigration officer without divesting of the Attorney General any of the powers, privileges, and duties, authority to direct the administration of the immigration office, and to enforce the Act, and all other laws relating to immigration. From time to time

other persons within the office of the Attorney General such as the Deputy Attorney General or an assistant attorney general may have delegated to him or her authorization to exercise certain powers and authority on behalf of the beyond which vessel owners will be required to pay overtime as 7:00 a.m. to 5:00 p.m., Monday through Friday, excepting holidays.

History: Rule 3-86, eff 7 Dec 86.

41.0403 Places where and method whereby information may be secured or submittals for request made

Any person desiring information relative to a matter handled by the office or any person desiring to make a submittal or request in connection to such matter should communicate either orally or in writing with the office. When the submittal or request consists of a formal application for one of the documents, privileges, or other benefits provided for in the laws administered by the office or the rules implementing those laws, the instructions on the form as to preparation and place of submission should be followed.

History: Rule 3-86, eff 7 Dec 86.

41.0404 Application, petition, and other documents

- (a) General. Every application, petition, or other document submitted on the forms prescribed by this chapter shall be executed and filed in accordance with the instructions contained on the form, such instructions being hereby incorporated into the particular section of the rules requiring its submission. The native form of a name may also be required if such a document has been executed in an anglicized version thereof. A parent, guardian or other adult having a legitimate interest in a person who is under 14 years of age may file on such a person’s behalf; a guardian of a mentally incompetent person may file on such a person’s behalf. Any required oath may be administered by an immigration officer or person generally authorized to administer oaths.

Applications or petitions received in the office or the office of the Attorney General relative to immigration matters shall be stamped to show

the time and date of actual receipt and shall be regarded as filed when stamped unless they are returned because they are improperly executed or for other reasons cannot continue to be accepted.

- (b) Evidence. Each application or petition shall be accompanied by the documents required by the particular section of the rule under which submitted. All accompanying documents must be submitted in the original and will not be returned unless accompanied by a copy. Except as otherwise provided a copy accompanied by an original will be accepted only if the accuracy of the copy has been certified by an immigration officer who has examined the original. A foreign document must be accompanied by an English translation in accordance with the instructions on the application or petition form. A translator must certify that he/ she is competent to translate and that the translation is accurate. If any required documents are unavailable, church or school records, or other evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The immigration office may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. The office may also require the submission of additional evidence, including blood tests, may require the taking of testimony, and may direct the making of any necessary investigation. When any statement is taken from a person and that statement is signed by him/her, he/she shall be furnished a copy thereof, on request, without fee. Any allegations made in addition to, or in substitution for, those originally made shall be under oath and filed in the same manner as the original application, petition, or other document or noted on the original application, petition, or the document and acknowledged under oath thereon. The status of an applicant or petitioner who claims that he/she is lawfully present in American Samoa will be verified from official records of the immigration office. Under the conditions hereinafter prescribed, the term “official records” as used herein includes files of the Office of the Attorney General and the immigration office, arrival manifests, arrival

records, office index cards, forms, files, passports, and reentry permits.

- (c) Inspection of Evidence. An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as hereinafter provided. If the decision will be adverse to the applicant or petitioner on the basis of derogatory evidence considered by the office and of which the applicant or petitioner is unaware, he/she shall be advised thereof and offered an opportunity to rebut it and present evidence in his/her behalf before a decision is rendered, except that classified evidence shall not be made available. Any explanation, rebuttal, or evidence presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding. A determination of statutory ineligibility shall not be valid unless based on evidence contained in the record of proceeding. In exercising discretionary power when considering an application or petition, the immigration officer, in any case in which he/she is authorized to make the decision, may consider and base the decision on information not contained in the record not made available for inspection by the applicant or petitioner; provided, that the Attorney General has determined that such information is relevant and is classified. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the Attorney General should direct that the applicant or petitioner be given notice of the general nature of the information and the opportunity to offer opposing evidence. The Attorney General’s authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decisions.

History: Rule 3-86, eff 7 Dec 86.

41.0405 Denial and appeals

Whenever a formal application or petition is denied, the applicant shall be given notice setting forth the reasons for such denial in writing. Any decision of the immigration office is appealable to the immigration

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board. Such appeal may be taken within 15 days after the service of notification of the decision.

History: Rule 3-86. eff 7 Dec 86.

41.0406 Working Hours

Pursuant to 41.0505 ASCA the Attorney General establishes the normal working hours beyond which vessel and aircraft owners will be required to pay overtime as 7: 00 a.m. to 5: 00 p.m. Monday through Friday, excepting holidays.

History: Rule 3-86. eff 7 Dec 86; amd 2010, eff 5 May 2010.

Amendments: 2010, added “and aircraft,” deleted “5:00” added “4:00.”

41.0407 Forms.

The Attorney General and the immigration board hereby approve the following forms and instructions, including those that are relative to numerical limitations and quotas as established at 41.0301 and 41.0303 A.S.C.A.:

Petition to Classify Preference Status of Alien on Basis of Profession or Occupation

Petition to Classify Preference Status of Alien on Basis of Profession or Occupation	P45
Instructions	P45 I
Petition to Classify Preference Status of Alien on Basis of Relations or Humanitarian Reasons	P12
Instructions	P12 I
Petition for Temporary or Season Worker	P50
Instructions	P50 I
Denial for Preference Status	P100
Authorization to Remain in American Samoaq	P101
Application for Receipt Card	P200
Application for Extension of Time to Remin Under Numerial Limitations	P300
Notice of Address or Change of Address	P400
Application fo Extension of 30 Days Entry Permit	IO 101
Complaint Report	IO 102
Warnings as to Rights	IO 201
Record of Sworn Statement -Affidavit of Witness	IO 202
Record of Sworn Statement	IO 203
Notice of Request for Disposition	IO 301
Notice of Violation	IO 302
Waiver of Rights	IO 303
Order Requiring Cash Bond	IO 304
Release of Immigrtion Prisoner	IO 305
Order or Release on Recognizance	IO 306
Notice of Revocation of Bond or Parole	IO 307

Record of Deportable Aliens	IO 308
Notice of Detain, Deport, Remove or Present Aliens	TL 101
Notice to Transportation Line Regarding Deportation and Detention Expenses of Detained Aliens	TL 102
Notice to Transportation Line Regarding Deportation Expenses	TL 103
Clearance Prior to Deporting Alien from American Samoa	TL 104
Application for Permanent Residence	IB 101
Instructions	IB 101 I
Order Granting Permanent Resident Status	IB 102
Application for Becoming an American Samoan	IB 103
Instructions	IB 102 I
Application for Students	IB 104
Instructions	IB 104 I
Affidavit for Arrest Warrant	IB 201
Warrant of Arrest	IB 202
Summons	IB 203
Summons to Appear	IB 204
Order to Show Cause/Employer	IB 301
Order to Show Cause/Employee	IB 302
Order to Show Cause/Deportation	IB 303

History: Rule 3-86, eff 7 Dec 86.

41.0408 Instruction to forms.

The forms listed in 41.0407 of this chapter that have instructions contain matters that are hereby approved as part of these rules relative to who may file petitions, supporting documents, rules for documents, filing dates, appearances before officers, fees, penalties, authority, and bond. The board or the Attorney General may alter the forms or instructions or create new ones, but they shall not be inconsistent with the Act or these rules.

History: Rule 3-86. Eff 7 Dec 86.

41.0409 Bonds.

(a) The Attorney General or chief immigration officer may in his/her discretion, require any alien who is either visiting or residing in American Samoa to post a cash bond, to ensure that she/he will not become a financial burden to the American Samoa Government, not to exceed an amount sufficient to pay transportation costs to his/her home country plus not more than \$500.

(b) In the case of a fishing vessel that is registered in or otherwise connected to, a jurisdiction outside of the geographic area of the United States, and is based in American Samoa, the Attorney

General or chief immigration officer may, in his/her discretion, require the owner of the vessel or his/her authorized representative American Samoa to post a bond, to ensure that each crewmember of such vessel will not: become a financial burden to the American Samoa Government in an amount sufficient to pay the transportation costs of all or any number of the crewmembers to his or her or their home country plus not more than \$500 per person.

(c) Sums deposited in accordance with this section shall be returned, or accounted for if used as provided in this section, to the deportee or payee upon his/her or the covered alien’s departure from American Samoa. The original receipt and a copy of the manifest or other proof demonstrating the alien left will be required to secure a full refund. The bond may be used to pay immigration fines or debts owed to the government. A request for a bond refund must be submitted to the Attorney General for authorization to pay not later than 60 days after occurrence of the event that justifies a bond refund.

History: Rule 3-86, eff 7 Dec 86; amd 2003, eff 1 Apr 2003.

Amendments: 2003, subsection (c) – added “A request for a bond refund must be submitted to the Attorney General for authorization to pay not later than 60 days after occurrence of the event that justifies a bond refund.”

TITLE 41 – CHAPTER 05 – CONTROL OF ALIENS DEPARTING FROM AMERICAN SAMOA; MANIFEST: INSPECTIONS

Sections:

- 41.0501 Definitions.
- 41.0502 Authority of immigration officer to prevent alien’s departure from American Samoa
- 41.0503 Aliens whose departure is prejudicial to the interest of American Samoa and the United States. See 8 CFR 215.3.
- 41.0504 Procedures in case of alien prevented from departing from American Samoa.
- 41.0506 Hearing procedure before the board.
- 41.0507 Arrival-departure manifests and lists-Supporting documents arrival manifest for passengers.
- 41.0508 Departure manifest for passengers.

- 41.0509 Detention for examination to determine mental or physical defects detention.
- 41.0510 Temporary removal for inspection.
- 41.0511 Inspection of persons applying for admission-Scope of examination.
- 41.0512 Temporary exclusion.

41.0501 Definitions.

For the purpose of this chapter:

- (a) “Alien” means any person who is not an American Samoan or a citizen or national of the United States. (b) Other words as defined in 41.0201 of this title shall serve as definition for this chapter.

History: Rule 3-86, eff 7 Dec 86.

41.0502 Authority of immigration officer to prevent alien’s departure from American Samoa.

- (a) No person shall depart, or attempt to depart American Samoa if his/her departure would be prejudicial to the interest of American Samoa or the United States Government. Any immigration officer who knows or has reason to believe that the case of an alien in American Samoa comes within the provision of 41.0503 of this chapter shall temporarily prevent the departure of such alien from American Samoa and shall serve him/her with a written temporary order directing him/her not to depart or attempt to depart from American Samoa until notified of the revocation of the order. A stop order shall be placed on such persons so that they cannot leave by airplane, ship or boat. No stop order shall be issued against any person unless there is probable cause to arrest the person except in the case of an alien who may be the subject of a stop order for owing money to the government (A.S.C.A., 41.0513 and 11.0103) and it is signed by an attorney working for the Attorney General.
- (b) The written order temporarily preventing an alien, other than an enemy alien, from departing from American Samoa shall become final 30 days after the day or service thereof upon the alien, unless prior thereto the alien requests a hearing as hereinafter provided. At such time as the alien is served with an order temporarily preventing his/her departure from American

Samoa, he/she shall be notified in writing concerning the provision of this subsection, and shall be advised of his/her rights to request a hearing as entitled thereto in 41.0504 of this chapter. In the case of an enemy alien, the written order preventing departure shall become final on the date of its service upon the alien and information shall be filed with the Secretary of State of the United States.

- (c) Any alien who seeks to depart from American Samoa may be required, in the discretion of the immigration officer, to be examined under oath and to submit for official inspection all documents, articles, and other properties in his/her possession which are being removed from American Samoa upon, or in connection with, the alien's departure. The immigration officer may permit certain other persons including officials of American Samoa and the United States Government and interpreters to participate in such examination or inspection and may exclude from presence at such examination or inspection any person whose presence would not further the objectives of such examination or inspection. The immigration officer shall temporarily prevent the departure of any alien who refuses to submit to such examination or inspection and may, if necessary to the enforcement of this requirement, take possession of the person's passport or other travel documents.

History: Rule 3-86. eff 7 Dec 86.

41.0503 Aliens whose departure is prejudicial to the interest of American Samoa and the United States. See 8 CFR 215.3.

The departure from American Samoa of any alien within one of the following categories shall be deemed prejudicial to the interests of American Samoa and the United States:

- (a) Any aliens who is in possession of, and who is believed likely to disclose to an unauthorized person, information concerning the plans, preparation, equipment, or establishment for the national defense and security of the United States;

- (b) Any alien who seeks to depart from American Samoa to engage in, or who is likely to engage in, activities of any kind designed to obstruct, impede, retard, delay or counteract the effectiveness of the national defense of the United States or the measure adopted by the United States or the United Nations for the defense of any other country;
- (c) Any alien who seeks to depart from American Samoa to engage in, or who is likely to engage in, activities which would obstruct, impede, retard, delay or counteract the effectiveness of any plans made or action taken by any country cooperating with the United States in measures adopted to promote the peace, defense, or safety of the United States or such other country;
- (d) Any alien who seeks to depart from American Samoa for the purposes of organizing, directing, or participating in any rebellion, insurrection, or violent uprising in or against the United States or a country allied with the United States, or of waging war against the United States or its allies, or destroying, or depriving the United State of sources of supplies or materials vital to the national defense of the United States, or to the effectiveness of the measures adopted by the United States for its defense, or for the defense of any other country allied with the United States;
- (e) Any alien who is subject to registration for training and service in the Armed Forces of the United States and who fails to present a Registration Certificate (SSS Form No. 2) showing that he/she has complied with his/her application to register under the universal Military Training and Service Act, as amended;
- (f) Any alien who is a fugitive from justice on account of an offense punishable in American Samoa or the United States; or
- (g) Any alien who is needed in American Samoa or in the United States as a witness in, or as a party to, any criminal case under investigation or pending in a court in American Samoa or in the United States; provided, that any alien who is witness in, or party to, any criminal case pending in any criminal court proceeding may be

permitted to depart from American Samoa with the consent of the prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this chapter;

- (h) Any alien who is needed in American Samoa or the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official, executive, legislative, or judicial agency in American Samoa or in the United States or by any governmental committee, board, bureau, commission, or body in American Samoa or in the United States, whether national, state, territorial, or local;
- (i) Any alien whose technical or scientific training and knowledge might be utilized by an enemy or a potential enemy of the United States to undermine and defeat the military in defense of the operation of the United States or any nation cooperating with the United States in the interest of collective security;
- (j) Any alien, where doubt exists whether such alien is departing or seeking to depart from American Samoa voluntarily except an alien who is departing or seeking to depart subject to an order issued in extradition, exclusion, or deportation proceeding.
- (k) Any alien whose case does not fall within any of the categories described in subsections (a) to (j), inclusive, of this section, but which involves circumstances of a similar character or the owing of money to the American Samoa Government rendering the alien's departure prejudicial to the interest of American Samoa or the United States Government.

History: Rule 3-86, eff 7 Dec 86.

41.0504 Procedures in case of alien prevented from departing from American Samoa.

- (a) Any alien, other than an enemy alien whose departure has been temporarily prevented under the provision of 41.0502 of this chapter, may, within 15 days of the service upon him/her of the written order temporarily preventing departure, request a hearing before the board. The alien's request for hearing shall be made in writing and shall be addressed to the chair of the board. If the alien's request for hearing is timely made, the

immigration officer shall schedule a hearing for the board, and notice of such hearing shall be given to the alien. Notice of hearing shall, as specifically as security considerations permit, inform the alien of the nature of the case against him/her, shall fix the time and place of the hearing, and shall inform the alien of his/her right to be represented, at no expense to the government, by counsel of his/her own choosing.

- (b) Every alien for whom a hearing has been scheduled under subsection (a) of this section shall be entitled:
 - (1) to appear in person before the immigration board;
 - (2) to be represented by counsel of his/her own choice at no expense to the government;
 - (3) to have the opportunity to be heard and to present evidence;
 - (4) to cross examine the witnesses who appear at the hearing, except, that if, in the course of the examination, a witness may divulge information of a confidential or security nature, the board may, in its discretion, preclude further examination of the witness with respect to such matters;
 - (5) to examine any evidence in possession of the government which is to be considered in the disposition of the case: provided, that such evidence is not of a confidential or security nature the disclosure of which would be prejudicial to the interest of the United States;
 - (6) to have the time and opportunity to produce evidence and witnesses on his/her own behalf; and
 - (7) to reasonable continuances upon request for good cause shown.
- (c) The board shall have the authority to:
 - (1) administer oaths and affirmations;
 - (2) present and receive evidence;

- (3) interrogate, examine, and cross-examine under oath or affirmation both the alien and witnesses;
- (4) rule upon all objections to the introduction of evidence or motions made during the course of a hearing;
- (5) take or cause depositions to be taken;
- (6) issues subpoenas;
- (7) take any further action consistent with applicable provisions of law, executive orders, and rules.

History: Rule 3-86, eff 7 Dec 86.

41.0506 Hearing procedure before the board.

- (a) The hearing before the board shall be conducted in accordance with the following procedures:
 - (1) The board shall advise the alien of the rights and privileges accorded to him/her under the provisions of 41.0505 of this chapter.
 - (2) The board shall enter the record:
 - (A) a copy of the order served upon the alien temporarily preventing his departure from American Samoa; and
 - (B) a copy of the notice of hearing furnished the alien.
 - (3) The alien shall be interrogated by the board as to the matters considered pertinent to the proceedings, with opportunity reserved to the alien to testify thereafter in his/her own behalf, if he/she so chooses.
 - (4) The board shall receive on behalf of the government such evidence, including the testimony of witnesses in the certificates or written statements of government officials or other persons, as may be necessary and available. In the event such certificates or statements are received in evidence, the alien may request and, in discretion of the board, be given an opportunity to interrogate such official or person, by deposition or otherwise, at a time and place and in a manner fixed by the board; provided, that when in the judgment of the

board any evidence relative to the disposition of the case is either a confidential or security nature the disclosure of which would be prejudicial to the interest of the United States, such evidence shall not be presented at the hearing but shall be taken into consideration in arriving at a decision in the case.

- (5) The alien may present such additional evidence, including the testimony of witnesses, as is pertinent and available.
- (b) Following the completion of the hearing, the board shall make and render a decision in the case, which shall be governed by and based upon the evidence presented at the hearing and any evidence of a confidential or security nature which the government may have in its possession. The decision of the board shall decide:
 - (1) That the temporary order preventing the departure of the alien from American Samoa be made final; or
 - (2) That the temporary order preventing the departure of the alien from American Samoa be revoked;
 - (3) This decision shall be made in writing and shall set forth the board's reasons for such decision. The alien concerned shall at his/her request be furnished a copy of the decision of the board.

Notwithstanding any other provision of this chapter, the United States Administrator of the Bureau of Security and Counselor Affairs referred to in Section 104(b) of the Immigration and Naturalization Act of the United States, or such other officers of the Department of State as he/she may designate, after consultation with the Immigration and Naturalization Service of the United States may at any time permit the departure of an individual alien or a group of aliens from American Samoa if he/she determines that such action would be in the national interest. If the Administrator specifically requests the Attorney General of American Samoa to prevent the departure of a particular alien or a group of aliens, the Attorney General shall not permit departure of said alien or

aliens until he/she has consulted with the Administrator.

In any case arising in the national interest or the national security for the United States Government, the Administrator shall, at his/her request be kept advised by, in as much detail as he/she may indicate is necessary, of the facts and of any action taken or proposed.

History: Rule 3-86, eff 7 Dec 86.

41.0507 Arrival-departure manifests and lists-Supporting documents arrival manifest for passengers.

- (a) Vessels. The captain, master or agent of every vessel or aircraft arriving in American Samoa from a foreign place or from the United States must present a manifest of all alien passengers on board to the immigration officer at the first port of arrival. A complete roster of all passengers that embark at each port en route towards American Samoa shall be presented by the captain, master or agent to the immigration officer at the first port of arrival in American Samoa. Each passenger on any vessel or aircraft shall fill out an arrival-departure cards as required by the immigration office. An arrival/departure cards is not required by the immigration office. An arrival-departure card is not required for an arrival, through-flight passenger at an American Samoa port for which he/she will depart directly to a foreign country or the United States on the same flight; provided, the number of such through-flight passengers is noted on the manifest and such passenger remains during the ground time in a separate area under the direction and control of immigration officers.
- (b) Deferred Inspection. When inspection of an arriving passenger is deferred at the request of the carrier to another port of debarkation, the manifest relating to any such passengers shall be returned for presentation by the captain, master, or agent at the port where inspection is to be conducted.

History: Rule 3-86, eff 7 Dec 86.

41.0508 Departure manifest for passengers.

The captain, master or agent, of every vessel and aircraft departing from American Samoa for a foreign place or the United States must present a manifest of all alien passengers on board to the immigration officer at the port of departure. Captain's manifest shall set forth each port of disembarkation and the number of passengers (including aliens, United States citizens and nationals) destined thereto which shall be submitted by the carrier to the immigration officer at the last port of departure in American Samoa.

History: Rule 3-86, eff 7 Dec 86.

41.0509 Detention for examination to determine mental or physical defects detention.

When an immigration officer has reasonable grounds for believing the person arriving in American Samoa should be detained for reasons specified in 41.0615(1), (2), (3), (5), (6), or (18) of the Act, he/she shall after consultation with the public health officers of American Samoa at the port of entry, notify the captain, master or agent of the arriving vessel or aircraft of the intention to effect such detention on board the arriving vessel, another vessel of the same transportation line, at the airport of arrival, or any other suitable place of detention. Such notice shall indicate the name of the persons to be detained, the place of detention and reasons therefor. If the master or agent desires to assume responsibility during removal and detention, he/she shall so request the immigration officer, and if granted, shall execute an agreement to assume such responsibility. Following determination of admissibility, the immigration officer will ascertain the assessable detention expenses and bill or reimburse the captain, master or agent.

History: Rule 3-46, eff 7 Dec 86.

41.0510 Temporary removal for inspection.

When an immigration officer at the port of entry has reasonable grounds for believing that it would facilitate the inspection of persons arriving in American Samoa, if they were temporarily removed, he/she shall notify the captain, master or agent of the arriving vessel or aircraft of his/her intention to effect their removal for examination. Such notice shall indicate the names of the persons to be removed, the place to which they shall be removed, and the reasons

therefor. If the captain, master or agent desires to assume responsibility during removal and detention, he/she shall so request the immigration officer at the port of entry and, if granted, shall execute an agreement to assume such responsibility. Following determination of admissibility, the immigration officer will ascertain the assessable detention expenses and bill or reimburse the captain, master or agent.

History: Rule 3-86, eff 7 Dec 86.

41.0511 Inspection of persons applying for admission-Scope of examination.

- (a) General. Application to enter American Samoa shall be made in person to an immigration officer at a port of entry at a time when an immigration officer at the port is open for inspection.
- (b) United States Citizens, Nationals and American Samoans. A person claiming to be a United States citizen, a national or American Samoan must establish that fact to the examining immigration officer's satisfaction and must present a U.S. passport or a certified birth certificate or other travel document. If such an applicant for admission fails to satisfy the examining immigration officer that he/she is a U.S. citizen, a national or American Samoan, he/she shall thereafter be inspected as an alien. A driver's license shall not be considered a valid travel document.
- (c) Alien Members of the United States Armed Forces and Members of a NATO Country. Any alien member of the United States Armed Forces who is in the uniform of, or bears documents identifying him/her as a member of, such Armed Forces, and whose coming to or departing from American Samoa under official orders or permit of such Armed Forces is not subject to the exclusion provisions of the Act. A member of the force of a NATO country signatory to Article III of the Status of Forces Agreement seeking to enter American Samoa under official orders is exempt from the control provisions of the Act; Any alien who is a member of either of the foregoing classes may, upon request, be inspected under the provisions of the Act, and his/her entry as an alien may be recorded. If the alien does not appear to the examining

immigration officer to be clearly and beyond a doubt entitled to enter American Samoa under the provisions of the Act, the alien shall be so informed and his/her entry shall not be recorded.

- (d) Qualifications for Aliens. The following general qualifications and requirements shall be met by each alien seeking to enter American Samoa for permanent, indefinite, or temporary stay, and regardless of the purpose for which he/she seeks to enter:

- (1) He/she shall present whatever documents are required and shall establish to the satisfaction of the immigration officer that he/she is not subject to exclusion under the Act and is entitled under all of the applicable provisions of the immigration laws and this title to enter American Samoa.
- (2) Any person, including an alien crewman on board a vessel en route to American Samoa solely for bunkering purposes or an aircraft enroute to American Samoa solely for refueling purposes, who does not seek to enter American Samoa, shall be regarded as not arriving for purposes of immigration.

History: Rule 3-86, eff 7 Dec 86.

41.0512 Temporary exclusion.

Any immigration officer who temporarily excludes an alien under the Act shall report such action promptly to the chief immigration officer and the attorney general in writing. The immigration officer shall, if possible, take a brief sworn question and answer statement from the alien, and the alien shall be notified by personal service of the action taken and the right to make written representations. If the chief immigration officer or the Attorney General is satisfied that the alien is inadmissible to American Samoa under the Act and concludes that such inadmissibility is based on information of a confidential nature, the disclosure of which would be prejudicial to the public interest, safety, or security, he/she may deny any hearing or further hearing by the board and order such alien excluded and deported, or enter such other order in the ease as he/she deems appropriate. In any other case, the chief immigration officer or the Attorney General may direct that an immigration officer shall further examine the alien as

to his/her admissibility or that the alien be given a hearing before the board. If the chief immigration officer or the Attorney General directs that an alien temporarily excluded be given a hearing before the board, such hearing and all further proceedings in the case shall be conducted in accordance with provisions of 41.0506 of this chapter and other applicable sections of the Act to the same extent as though the alien had been referred to the board by the immigration officer; except that if confidential information, not previously considered in the case, is adduced supporting the exclusion of the alien under the Act, the disclosure of which, in the discretion of the board, may be prejudicial to the public interest, safety, or security, the board may again temporarily exclude the alien under the Act and further action shall be taken as provided in this section.

History: Rule 3-86, eff 7 Dec 86.

TITLE 41 – CHAPTER 06 – EXCLUSION OF ALIENS

Sections:

- 41.0601 Authority of immigration officer.
- 41.0602 Hearing before the immigration board.
- 41.0603 Decision of the immigration board- Notice to the applicant.

41.0601 Authority of immigration officer.

In determining cases referred for further inquiry as provided in the Act, immigration officers shall have the power and authority conferred upon them by the Act and this title. Subject to any specific limitations prescribed by the Act and this title, immigration officers shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases. Any alien who is dissatisfied with the act of an immigration officer relative to his/her exclusion shall have the right to appeal to the immigration board.

History: Rule 3-86, eff 7 Dec 86.

41.0602 Hearing before the immigration board.

- (a) Opening. Exclusion hearings shall be closed to the public, unless the alien at his/her instance requests that the public, including the press be

permitted to attend; in that event the hearing shall be opened; provided, that the alien states for the records that she/he is waiving the requirement in 41.0307 of the Act that all records shall be kept confidential. When the hearing is to be opened, depending upon physical facilities, reasonable limitations may be placed upon the number in attendance at any one time, with priority being given to the press over the general public. The board shall ascertain whether the applicant for admission is the person who is the subject of an order of exclusion by an immigration officer; enter a copy of such order in evidence as an exhibit in the case inform the applicant of the nature and purpose of the hearing; advise him/her of the privilege of being represented by an attorney of his/her own choice at no expense to the government, and of the availability of free legal services programs if any; and shall ascertain that the applicant has received a list of such programs; and request him/her to ascertain then and there whether she/he desires representation; advise him/her that he/she will have a reasonable opportunity to present evidence in his/her own behalf, to examine and object to evidence against him/her and to cross-examine witnesses presented by the government and place the applicant under oath.

- (b) Procedure. The board shall receive and adduce materials and relevant evidence, rule upon objections and otherwise regulate the course of the hearing.
- (c) Attorney General. The board may request the Attorney General to assign or the Attorney General may assign an assistant attorney general to each case in which the applicant's nationality is in issue. The duties of an assistant attorney general include, but are not limited to, the presentation of evidence and the interrogation, examination and cross-examination of the applicant and other witnesses. Nothing contained herein diminishes the authority of the board to conduct proceedings under this part.

History: Rule 3-86, eff 7 Dec 86.

41.0603 Decision of the immigration board-

Notice to the applicant.

- (a) Contents. The decision of the board may be oral or written. It shall include a discussion of the evidence and findings as to excludability; the formal enumeration of findings is not required. The decision shall be included with the order of the board.
- (b) Oral Decision. An oral decision shall be stated for the record by the board at the conclusion of the hearing and in the presence of the applicant. When entitled to appeal from an adverse decision or the board, the applicant shall be so advised and be so required to state then and there that she/he wishes to appeal. At his/her request, the applicant shall be furnished with a typewritten transcript of the oral decision of the board.
- (c) Written Decision. When the decision of the board is in writing, the immigration officer shall serve a signed copy thereof on the applicant.

History: Rule 3-86, eff 7 Dec 86

TITLE 41 – CHAPTER 07 – DEPORTATION OF EXCLUDED ALIENS

Sections:

- 41.0701 Stay of deportation of excluded alien.
 - 41.0702 Notice to surrender for deportation.
 - 41.0703 Cost of maintenance not assessed.
 - 41.0704 Notice to transportation line of alien’s exclusion.
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41.0701 Stay of deportation of excluded aliens.

The immigration officer in charge of the port of arrival may stay the immediate deportation of an excluded alien under such conditions as he/she may prescribe.

History: Rule 3-86, eff 7 Dec 86.

41.0702 Notice to surrender for deportation.

An alien who has been finally excluded pursuant to chapter 06 of this title may at any time surrender him/herself to the custody of the office and shall surrender to such custody upon notice in writing of the time and place for surrender. The office may take the alien into custody at any time. An alien taken into

custody either upon notice to surrender or by arrest shall not be deported in less than 72 hours thereafter without his/her consent thereto filed in writing with the chief immigration officer.

History: Rule 3-86, eff 7 Dec 86.

41.0703 Cost of maintenance not assessed.

A claim shall be established to the satisfaction of the chief immigration officer from whose adverse decision no appeal shall lie. The chief immigration officer shall afford the claimant a reasonable time within which to submit affidavits and briefs to support its claim.

History: Rule 3-86, eff 7 Dec 86.

41.0704 Notice to transportation line of alien’s exclusion.

An excluded alien shall, immediately or as promptly as the circumstances permit, be offered for deportation to the, master, commanding officer, purser, person in charge, agent, owner, or consignee of the vessel or aircraft on which the alien is to be deported, as determined by the chief immigration officer, with a written notice specifying the cause of exclusion, the class of travel in which such alien arrived and is to be deported, and with the return of any documentation which will assist in effecting his/her deportation.

History: Rule 3-86, eff 7 Dec 86.

TITLE 41 – CHAPTER 08 – PROCEEDING TO DETERMINE DEPORTATION OF ALIEN IN AMERICAN SAMOA-APPREHENSION, CUSTODY, HEARING, & APPEAL

Sections:

- 41.0801 Order to show cause and notice of hearing.
- 41.0802 Apprehension, custody, and detention.
- 41.0803 Confined aliens, incompetents, and minors.
- 41.0804 Voluntary departure prior to commencement of hearing.
- 41.0805 Waiver of right before the immigration board.
- 41.0806 Cancellation of proceedings.
- 41.0807 Deportation hearing.
- 41.0808 Decision of the board.

- 41.0809 Notice of decision.
 - 41.0810 Finality of order.
 - 41.0811 Reopening or reconsideration.
 - 41.0812 Expulsion.
-

41.0801 Order to show cause and notice of hearing.

- (a) Commencement. Pursuant to 41.0610 of the Act the Attorney General may order the arrest and detention of any person pending a determination of that person’s deportability. Any person taken into custody, may, in the discretion of the Attorney General, pending a final determination of deportability, (1) be continued in custody; (2) be free on bond for an amount not less than the cost of one-way transportation to the country from where he/she came plus \$500, with security approved by the Attorney General, and containing such conditions the Attorney General may prescribe; or (3) be released on conditional parole. The Attorney General has delegated to the chief immigration officer the authority to make such arrest in accordance with law. Any person so arrested may appeal the decision to the board. Every proceeding to determine the deportability of an alien in American Samoa to the board is commenced by the issuance and service of an order to show cause by the office, or on appeal by the alien. In the proceedings the alien shall be known as the respondent.
- (b) Statements of Nature of Proceedings. The order to show cause will contain a statement of the nature of the proceeding, the legal authority under which the proceeding is conducted, a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of the law and a designation of charges against the respondent and the statutory provisions alleged to have been violated. The order will require the respondent to show cause why he/she should not be deported. The order will call upon the respondent to appear before the board for a hearing at a time and place which may be stated in the order or may be later specified. Respondent shall be notified of the time and place of the hearing not less than 7 days before the hearing date except that where the issuing officer, in his/her discretion, the public

interest, safety or security so requires, may schedule the hearing on shorter notice. The issuing officer may, in his/her discretion schedule the hearing on shorter notice in any other case at the request and for the convenience of the respondent.

- (c) Service. Service of the order to show cause may be accomplished either by personal service or routine service; however, when routine service is used and the respondent does not appeal for a hearing or acknowledge in writing that he/she has received the order to show cause, it shall be reserved by personal service. When personal delivery of an order to show cause is made by an immigration officer, contents of the order to show cause shall be explained and the respondent shall be advised that any statement she/he makes may be used against him/her. He/she shall also be advised of his/her rights to representation by counsel of his/her own choice at no expense to the government. He/she shall also be advised of the availability of free legal services programs in American Samoa if any. He/she shall also be furnished with a list of such programs.

History: Rule 3-86.eff 7 Dec 86.

41.0802 Apprehension, custody, and detention.

- (a) Warrant of Arrest. At the commencement of any proceeding under this part, or at any time thereafter and up to the time respondent becomes subject to supervision under the authority contained in the Act, the respondent may be arrested and taken into custody under the authority of a warrant of arrest. However, such warrant may be issued by no one other than a member of the board, and then only whenever, in his/her discretion, it appears that the arrest of the respondent is necessary or desirable and is substantiated by an affidavit. If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation. When a warrant of arrest is served under this part, the respondent shall have explained to him/her the contents of the order to show cause; the reason for the arrest and right to be represented by counsel of his/her choice at no

expense to the government. He/she shall also be advised of the availability of free legal service programs, if any, and furnished with a list of such programs. He/she shall be advised that any statement made may be used against him/her. He/she shall also be informed whether he/she is to be continued in custody, or if release from custody has been authorized, of the amount and condition of the bond or the conditions under which he/she may be released. A respondent on whom a warrant of arrest has been served may apply to the Attorney General for release or for amelioration of the conditions under which he/she may be released.

- (b) Authority of the Immigration Board-Appeals. After an initial determination pursuant to subsection (a) of 41.0801 of this chapter, and at any time before a deportation order becomes administratively final, upon application by the respondent for release from custody or for amelioration of the conditions under which he/she may be released, the board may exercise the authority contained in the Act to continue or detain a respondent in, or release him/her from custody, and to determine whether a respondent shall be released under bond, and in the amount thereof, if any. Application for the exercise of such authority may be made to the board. Consideration under this subsection by the board of an application or request of an alien regarding custody or bond shall be separate and apart from any deportation hearing or proceeding under this part, and shall form no part of such hearing or proceeding or of the record thereof, the determination of the board as to custody status or bond may be based upon any information which is available to the board or which is presented to the board by the alien or the officer.
- (c) Revocation. When an alien who having been arrested and taken into custody, has been released, such release may be revoked at any time at the discretion of the Attorney General, in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and cancelled. Subsection (b) of this section shall govern availability to the

respondent of recourse to other administrative authority for release and custody.

- (d) Privilege of Communication. Every detailed alien shall be notified that he/she may communicate with the counsel of diplomatic officers of the country of his nationality.

Existing treaties require immediate communication with appropriate counselor of diplomatic officers whenever nationals or certain countries are detained in exclusion or expulsion proceedings, whether or not requested by the alien, and, in fact, even if the alien requested no communication be undertaken in his/her behalf. See Appendix A following this title.

History: Rule 3-86, eff 7 Dec 86.

41.0803 Confined aliens, incompetents, and minors.

- (a) Service. If the respondent is confined, or if he/she is incompetent, or a minor under the age of 14, the order to show cause, and the warrant of arrest, if issued, shall be served in the manner described in this chapter upon the person or in the person's name.
- (b) Office Custody-Cost of Maintenance. An alien confined because of physical or mental disability in an institution or at the hospital will not be accepted into physical custody by the office until an order of deportation has been entered and the office is ready to deport the alien. When such an alien is an inmate of a public or private institution at a time of the commencement of the deportation proceedings, expenses for the maintenance of the alien shall not be incurred by the government until the alien is taken under physical custody by the officer.

History: Rule 3-86, eff 7 Dec 86.

41.0804 Voluntary departure prior to commencement of hearing.

- (a) Authorized Officers. The authority contained in 41.0601 A.S.C.A., may be exercised by any immigration officer. Any person remaining in American Samoa beyond the time allowed by law or the board who voluntarily departs before a hearing is held by the board is prohibited from reentering American Samoa for any purpose for

one year. Any person, ordered deported by the board, remaining in American Samoa beyond the time allowed by law or the board is prohibited from reentering American Samoa for any purpose for one year, and for 5 years is not eligible under the numerical limitations of chapter 3 of the Act.

- (b) Authorization. Voluntary departure may be granted to any alien who is statutorily eligible. A person who has voluntarily surrendered him/herself to the office or in whose case the chief immigration officer has determined there are compelling factors to warrant him to grant voluntary departure are eligible.
- (c) Period of Time. Any grant of voluntary departure shall contain a time Limitation of usually not more than 10 days, and an extension of the original voluntary departure time shall not be authorized except under meritorious circumstances and approved by the Attorney General. Upon failure to depart, deportation proceedings will be pursued.
- (d) Application. Any alien who believes him/herself to be eligible for voluntary departure under the Act may apply therefore at the office any time prior to the commencement of the deportation proceedings against him/her or if deportation proceedings have been commenced, any time prior to the commencement of the hearing. Any immigration officer may deny or grant the application and determine the condition under which the alien's departure shall be affected. An appeal shall not lie from a denial of an application for voluntary departure under this section, but the denial shall be without prejudice to the alien's right to apply for relief from deportation under any provision of law.
- (e) Revocation. If, subsequent to the granting of an application for voluntary departure under this section, it is ascertained that the application should not have been granted, that grant may be revoked without notice by the chief immigration officer.

History: Rule 3-86, eff 7 Dec 86.

41.0805 Waiver of right before the immigration board.

Any alien who has been advised that he/she has been accused of violating the immigration laws of American Samoa shall have the right to waive their rights before the board. Any officer may provide a form to any alien who desires to waive their rights that they have been advised that because of the alleged violation he/she may be deported from American Samoa; however, before he/she can be deported the alien has a right to a hearing before the board. The officer shall advise the alien when the board will meet and where; the alien shall be advised that at a deportation hearing before the board, the alien has the following rights:

1. A reasonable notice of the nature of the charge against the alien and the time and place of the hearing;
2. To be represented by counsel of alien's choice at no cost to the government;
3. A reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's behalf and cross-examine witnesses;
4. The right to have witnesses subpoenaed to testify before the board on the alien's behalf;
5. That no decision of deportability will be valid unless it is based on reasonable, substantial and appropriate evidence.

The form shall also advise the alien that because of an overlay in American Samoa beyond the time allowed by law or the board that the alien can be prohibited from reentering American Samoa for five years and not eligible under the numerical limitations of 41.0301 et seq. of the Act for 10 years. The alien will be required to sign a statement saying that the alien has carefully read the waiver and understands all rights before the board and that the rights are waived and the alien does not desire a board hearing, but rather consents to be placed on the next available transportation to the alien's home. The alien is to receive a copy of the waiver and sign a statement that he/she understands.

History: Rule 3-86, eff 7 Dec 86.

41.0806 Cancellation of proceedings.

- (a) If an order to show cause has been-issued by any officer, the office may cancel the order to show cause or, prior to the actual commencement under a served order to show cause, terminate proceedings thereunder, if in either case he/she is satisfied that the respondent is actually a national of the United States or an American Samoan, or is not deportable under the immigration laws, or is deceased, or is not in American Samoa, or the proceedings was improvidently begun; or after actual commencement of a hearing such officer may move that the case be remanded to the office on the grounds that it has come to the, attention of the office that they are involved in the foreign relations of the United States which require further consideration. Cancellation of an order to show cause or termination of proceedings or remand of a case pursuant to the foregoing shall -be without prejudice to the alien or the office. If an order to show cause has been cancelled or proceedings have been terminated pursuant to this section, any outstanding warrant of arrest shall also be cancelled.
- (b) The basis and purpose of the prescribed rules in subsection (a) of this section are to empower the immigration office to issue and cancel orders to show cause and to empower the office to request warrants of arrest.

History: Rule 3-86, eff 7 Dec 86.

41.0807 Deportation hearing.

- (a) Opening. The immigration board shall advise the respondent of his/her right to representation, at no expense to the government by counsel of his/her choice authorized to practice in the proceedings and require the alien to state then and there whether the alien desires representation; advise the respondent of the availability of free legal services programs if any; ascertain the respondent has received a list of such programs; advise the respondent that he/she will have reasonable opportunity to examine and object to the evidence against him/her, to present evidence in his/her own behalf and to cross-examine witnesses presented by the government; place respondent under oath;

read the factual allegations and the charges in the order to show cause to the respondent and explain them in nontechnical language, and enter the order to show cause as an exhibit in the record. Deportation hearings shall be opened to the public except, that the board may, in its discretion and for the purpose of protecting witnesses, respondent, or public interest, direct that the general public or particular individuals shall be excluded from the hearing in any specific case. Depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public.

- (b) Pleading by Respondent. The board shall require the respondent to plead to the order to show cause by stating whether he/she admits or denies the factual allegations and deport-ability under the charges contained therein. If the respondent admits the factual allegations and admits the deportability under the charges and the board is satisfied that no issue of law or fact remains, the board may determine that the deportability as charged has been established by the admissions of the respondent. The board shall not accept an admission of deportability from an unrepresented respondent who is incompetent or under age 16 and is not accompanied by a guardian, relative or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this subsection, the board may not accept an admission of deportability, it shall direct a hearing on the issue.
- (c) Issues of Deportability. When deportability is not determined under the provision of subsection (b) of this section, the board shall request the assignment of an assistant attorney general, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading.
- (d) Additional Charges. An assistant attorney general who has been assigned to a case may at any time during a hearing lodge additional charges of deportability, including factual

allegations against the respondent. The additional factual allegations and charges shall be submitted in writing and entered as an exhibit in the record. The board shall read the additional factual allegations and charges to the respondent and explain them to him/her in nontechnical language. The board shall advise the respondent, if the alien is not represented by counsel, that he/she may be so represented and that he/she may have a reasonable time within which to meet the additional factual allegations and charges. The respondent shall be required to state then and there whether he/she desires a continuance for either of these reasons. Thereafter, the provision of subsection (b) of this section shall apply to the additional factual allegations and lodged charges.

- (e) The board shall conduct proceedings under this chapter to determine the deportability of any person. Determination of deportability shall be made only upon a record made in a proceeding before the board and the person shall have a reasonable opportunity to be present unless by reason of a person's incompetency it is impractical for him/her to be present; in which case the board shall prescribe necessary and proper safeguards for his/her rights and privileges. If any person who has been given a reasonable opportunity to be present at a proceeding under this chapter and without reasonable cause fails or refuses to attend or to remain in attendance, the board may proceed to a determination in a like manner as if the person were present.

History: Rule 3-86, eff 7 Dec 86.

41.0808 Decision of the board.

- (1) Contents. The decision of the board may be oral or written. Except when deportability is determined on the pleading pursuant to subsection 41.0807(b) of this chapter, the decision of the board shall include a discussion of the evidence and findings as to deportability. The formal enumeration of findings is not required. The decision shall also contain a discussion of the evidence pertinent to any application made by the respondent and the reason for granting or denying the request. The

decisions shall be concluded with the order of the board.

- (b) Summary Decision. Notwithstanding the provisions of subsection (a) of this section, in any case where deportability is determined on the pleadings pursuant to the subsection 41.0807(b) or the respondent applies for voluntary departure and the board grants the application, the board may enter a summary decision, if deportation is ordered or if voluntary departure is granted with an alternate order of deportation.

History: Rule 3-86, eff 7 Dec 86.

41.0809 Notice of decision.

- (a) Written Decision. A written decision shall be served upon the respondent and the Attorney General together with the notice informing the respondent of appeal right. Service by mail is complete upon mailing.
- (b) Oral Decision. An oral decision shall be stated by the board in the presence of the respondent and the assistant attorney general, if any, at the conclusion of the hearing. A typewritten copy of the oral decision shall be furnished at the request of the respondent or the Office of the Attorney General.
- (c) Summary Decision. When the board renders a summary decision, it shall serve a copy thereof upon the respondent at the conclusion of the hearing.

History: Rule 3-86, eff 7 Dec 86.

41.0810 Finality of order.

The order of the board shall be final and subject to appeal at the High Court pursuant to the Act.

History: Rule 3-86, eff 7 Dec 86.

41.0811 Reopening or reconsideration.

The immigration board may upon its own motion or, upon motion of the respondent or the assistant attorney general reopen or reconsider any case in which it made a decision. A motion to reopen will not be granted unless the board is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing. The board may stay deportation pending

its determination of the motion and also pending the taking and disposition of an appeal from such determination. All requests for consideration must be filed within 15 days of receipt of the board’s decision.

History: Rule 3-86, eff 7 Dec 86.

41.0812 Expulsion.

Once an order of deportation becomes final from the board, an alien, not in the physical custody of the office, shall be given not less than 48 hours advance notice in writing of the time and place of his/her surrender for deportation. If the alien fails to surrender as directed, he/she shall be deported without further notice when located. When an alien is directed to surrender for deportation, he/she shall do so notwithstanding the riling of an application for a stay of deportation unless the alien has been informed prior to the surrender date that a stay has been granted. The advance notice requirement above does not preclude taking an alien into custody at any time, including any time within the 48 hour period, if the alien’s being at large constitutes a danger to public safety or security, or the immigration officer has reason to believe the alien is likely to abscond. However, in such an instance, the alien’s deportation shall not be effective prior to the expiration of 48 hours from the time of apprehension or of the 48 hour notice period, whichever is less. An alien shall be taken into custody prior to the time specified in the surrender notice only pursuant to an order by a member of the board which authority to issue warrants of arrest.

History: Rule 3-86, eff 7 Dec 86.

TITLE 41 – CHAPTER 09 – (RESERVED)

TITLE 41 – CHAPTER 10 – ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE-EMPLOYMENT-BECOMING AN AMERICAN SAMOA

Sections:

- 41.1001 Eligibility.
- 41.1002 Application.
- 41.1003 Order granting permanent resident status.

- 41.1004 Loss of permanent residents status.
- 41.1005 Employment of aliens.
- 41.1006 Becoming an American Samoa.
- 41.1007 Entry permits.
- 41.1008 Certificates of identity, stateless certificates and travel permits.

41.1001 Eligibility.

Persons may apply for the status of permanent resident in American Samoa on the following basis:
Title

- (a) As an American Samoa pursuant to 41.0402(a) of the Act;
- (b) As a person who established American Samoa as the permanent residence on or before 1 January 1950 and whose spouse and children are entitled to permanent residence because they have continuously resided here since that day pursuant to 41.0402(b) of the Act;
- (c) As a person who continuously resided in American Samoa for 10 years prior to October 15, 1984 pursuant to 41.0603(2) of the former Act;
- (d) As a person who is physically and legally present in American Samoa for a continuous period of at least 20 years of good moral character, for whom deportation would be a hardship, pursuant to 41.0403(a) (1) of the Act;
- (e) As a person who after January 1, 1981 was legally adopted by an American Samoa and who is 21 years of age or younger, pursuant to 41.0403 (a)(2) of the Act; and
- (f) As a person who on or before December 31, 1980 was’ legally adopted by an American Samoan, pursuant to 41.0403(a)(2) of the Act.

History: Rule 3-86, eff 7 Dec 86.

41.1002 Application.

- (a) Any person applying to become a permanent resident must submit a separate application. The board hereby approves forms IB 101, IB 101 1, and IB 102 for use relative to permanent residence. The board shall have exclusive

jurisdiction in declaring eligibility for permanent residents pursuant to the act.

- (b) It is the policy of the Attorney General that an alien applying for permanent residence pursuant to 41.0403(a)(1) A.S.C.A., who was granted permission to remain and/or work in American Samoa pursuant to 41.0301(d) A.S.C.A. (outside of the numerical limitations established by section 41.0301 A.S.C.A., shall not count the years of that status toward the residency requirement for permanent residence.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 5 May 2010.

Amendments: 2010, numbered original provision (a); new subsection (b) added as indicated above.

41.1003 Order granting permanent resident status.

Upon consideration of the application by the Attorney General of persons who have filed for permanent residence status, the Attorney General shall decide based on evidence presented whether the person will be granted permanent resident status or not. Persons who apply for permanent resident status are to be cautioned that if the basis for their eligibility is false or if the person resides outside of American Samoa in excess of six months without approval of the Attorney General or his designee, he/she may lose the permanent resident status. The alien is also hereby informed that other causes for loss of status will be found at 41.0403 of the Act. Aliens who are permitted to stay in American Samoa must be registered with the immigration office at all times and notify the Attorney General in writing with any change of address within 10 days after the change, pursuant to 41.0308(a) of the Act

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 5 May 2010.

Amendment: 2010, deleted “immigration board,” added “Attorney General,” deleted “at a hearing,” deleted “board,” added “Attorney General or his designee.”

41.1004 Loss of permanent residents status.

Permanent residents may lose their status if they reside outside American Samoa for a period in excess of 6 months without approval of the Attorney General or his designee. Any non-American Samoan permanent resident can lose the status of “permanent

resident” by action of the Attorney General because that person has violated the requirements of 41.0405 of the Act. The office of the Attorney General may file an order to show cause against any alien who has received the status of permanent resident for the purpose of losing that status. The alien shall have the right to appear at the hearing and to be served with process.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 5 May 2010.

Amendments: 2010, deleted “board,” added “Attorney General or his designee,” deleted “board,” added “Attorney General.”

41.1005 Employment of aliens.

- (a) No person may knowingly employ any alien without written approval before the person commences work.
- (b) No alien may seek employment or become employed without prior written approval of the office or the board.
- (c) Subsection 41.0409(c) A.S.C.A., provides for a hearing before the board for any person who has violated subsection (a) or (b) of 41.0409 A.S.C.A. This hearing shall be commenced by the filing of an order to show cause by any immigration officer against any employer and/or employee for a hearing before the board.
- (d) It is the policy of the immigration board that the employer shall be the sponsor of all alien employees unless a sufficient reason should appear to the board for allowing another person to sponsor the alien. It is the policy of the board to deny transfer or adjustment of status of those aliens registered pursuant to section 41.0301(d) A.S.C.A., designated as the special provision or SP, to another alien status, classification or preference category unless otherwise provided by law.
- (e) Any person sponsoring, another must reside in American Samoa during the period of sponsorship. Should it appear to the Attorney General, chief immigration officer, or the board that the sponsor has departed from American Samoa for an indefinite period of time, the person sponsored may have permission to remain revoked. A sponsor shall lose his

authority to sponsor a person if he/she fails to pay all costs as established by 41.0408(e) A.S.C.A., or if he/she resides outside of American Samoa in excess of 3 consecutive months in violation of 41.0408(f) A.S.C.A., or if he/she is sponsoring aliens contrary to the Act.

History: Rule 3.86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (d) – deleted “It is the policy of the board to deny requests for transfer from one employer to another for sponsorship pursuant to 41.0408(h) of the Act;” added - see amended language indicated above.

41.1006 *Becoming an American Samoa.*

Pursuant to 41.0202(J)(c)(ii) A.S.C.A., the Attorney General or his designee is to approve eligible persons as American Samoans. The Attorney General hereby approves form IB 103 and IB 1031 for filing purposes.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, deleted “board,” added Attorney General or his designee,” deleted “board,” added “Attorney General.”

41.1007 *Entry permits.*

(a) An alien traveling to American Samoa must have a sponsor provide the following to the Immigration Office at least three business days before entry to American Samoa to obtain a thirty-day entry permit:

- (1) An application by local sponsor and approval of the senior matai of the family if sponsor lives on communal land or, if a religious exchange, the head of the church in American Samoa; and
- (2) approval of the pulenu’u or district governor or designated representative; and
- (3) proof of valid travel documents and round trip tickets or onward passage, and a valid passport that will not expire during the visit; and
- (4) A clearance from the American Samoa Medical Center business office and the District Court of American Samoa. A medical clearance and police clearance from the country of origin, unless the

Attorney General or his designee waives on or more such clearances if there are adequate measures to protect the health and safety of the resident of American Samoa

(b) Any person or group arriving in American Samoa without the approvals required in subsection (a) of this section may be refused entry by an immigration officer.

(c) The following fees shall be charged for an entry permit and other authorization or service to facilitate entry in to American Samoa:

- (1) One person, \$40.00; extension \$50.00
- (2) 10 to 20 persons, \$200.00;
- (3) 21 to 50 persons, \$300.00;
- (4) 51 to 100 persons, \$400.00;
- (5) 101 persons and above, 200, \$500.00, plus \$5.00 for each additional person over 200;
- (6) Multiple entry permit - \$50.00 per month. Multiple entry permits shall be available for commercial business travelers only.
- (7) 14-day pass - \$10.00 per person per trip; available only to citizens of the Independent State of Samoa with a registered business in Samoa, who travels to American Samoa for a business purpose. Must have a valid travel document, roundtrip ticket, local sponsor, and clearances from the District Court of American Samoa and the American Samoa Medical Center business office.
- (8) Authorization to enter American Samoa granted to an American Samoan or a United States national or citizen to permit entry without proper travel documents or other non-compliance with entry requirements - \$50.00.
- (9) Authorization to enter American Samoa granted to an alien due to an emergency to permit entry without proper travel documents or other non-compliance with entry requirements - \$50.00.
- (10) A memorandum or letter confirming authorization to enter American Samoa

prepared for alien crew member faxed or otherwise transmitted with an entry permit to facilitate entry - \$25.00.

- (d) Upon satisfactory showing of compliance with the requirements of subsections (a), (b) and (c)(1) to (c)(5) of this section, the Attorney General or his designee, or the chief immigration officer may grant up to 30 days to visit American Samoa. A visitor granted a 30-day permit may apply for only one extension of 30 days; upon expiration of the extension, the visitor shall depart American Samoa immediately. The chief immigration officer shall report monthly the number of permits granted and receipt of fees.

History: Rule 3-86, eff 7 Dec 86; amd 2003, eff 1 Apr 2003; amd 2010, eff 3 May 2010; amd Rule 2023-0005, eff Apr 10, 2023.

Amendments: 2010, subsection (c) – added “the following fee shall be charged for an entry permit and other authorization or service to facilitate entry in to American Samoa;” subsection (8) – added “national,” deleted “due,” added “or other non-compliance with entry requirements;” subsection (9) and (10) – added as indicated above; 2023, ASAC § 41.1007 subsections (a), (a)(1), (a)(3), (a)(4), (c)(7), and (d).

41.1008 Certificates of identity, stateless certificates and travel permits.

(a) Certificate of Identity.

- (1) A certificate of identity is a travel document issued under the authority of the Attorney General. No alien is eligible for a certificate of identity. A national or citizen of the United States may be issued a certificate of identity if the Attorney General or his designee is satisfied of the following matters:

- (A) The applicant has been informed and encouraged to apply for a United States passport;
- (B) The applicant’s identification is sufficiently verified through other photo identification documents or other credible evidence or sources, and conforms to photographs provided for the certificate of identity.

(C) The applicant’s certificate of birth is authentic and verified to be that of the applicant;

(D) For a minor child, a parent or legal guardian shall provide sufficient verification of identity, authorization, relationship and other proof that he/she is authorized to apply for the child’s certificate of identity for travel purposes; and

(E) Such other matters that the Attorney General or his designee shall require to confirm that the issuance of a certificate of identity to a person is appropriate.

(2) Certificates of identity may be issued for a six-month period or a one-year period. The Attorney General shall determine the period of duration of a certificate of identity. Upon expiration of a term of a certificate of identity, the holder must apply for a new certificate of identity.

(3) All applicants for a certificate of identity must provide a certified copy of a birth certificate from any state, territory, or possession of the United States. Birth certificates for United States citizens or nationals must be verified by the Attorney General or his designee prior to issuing the certificate of identity.

(4) The fee for issuing a certificate of identity shall be \$50.00 for a six-month period and \$100.00 for a one-year period.

(b) Stateless Certificate.

- (1) A stateless certificate is a travel document issued by the Attorney General to aliens only. The applicant for a stateless certificate must file an affidavit or official letter from the alien’s native or citizenship country demonstrating that the country will not issue a passport to the alien, a certified birth certificate (any birth certificate not in English must be translated into English and the translator must certify the translation), two recent photographs, and file a personal

affidavit as to the truth of the application. The alien is responsible for securing necessary visas or approvals from other nations as required.

- (2) Aliens who have been approved by the Attorney General as American Samoans who cannot get passport from their native or citizenship country are eligible for stateless certificate on the basis of the Attorney General approval and must supply a certified birth certificate and two recent photographs.
 - (3) A stateless certificate may be issued for up to three years.
 - (4) in order for an alien with a stateless certificate to enter the United States, a United States Visa is required.
 - (5) The fee for a stateless certificate is \$75.00.
- (c) Travel Permit.
- (1) A travel permit is a travel document issued by the Attorney General to an alien who is qualified for a passport from his or her native or citizenship country, but the passport is lost, stolen, mutilated or expired and the alien is returning to his or her native country.
 - (2) An alien applying for a travel permit must have a valid alien registration card and identification as required by 41.0309 A.S.C.A., or be an alien who is legally in the Territory as a visitor pursuant to 41.0502 A.S.C.A. The alien registration card or two recent photographs and on affidavit stating the facts as to the missing passport must be presented upon application for the travel permit.
 - (3) The travel permit shall be valid for one trip only to the native country and may not be used for entrance to American Samoa.
 - (4) Any alien who has an invalid or expired alien registration card or who has overstayed may be deported pursuant to law and not permitted to return to American Samoa pursuant to 41.0613 A.S.C.A.

- (5) The fee for a travel permit is \$40.

History: Rule 3-86, eff 7 Dec 86; amd 2003, eff 1 Apr 2003; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (a)(1) – added “A national or citizen of the United States may be issued a certificate of identity if the Attorney General or his designee is satisfied of the following matters;” deleted “No person who is eligible for a United States passport as a citizen or a national shall be issued a certificate of identity except in an emergency. An emergency is defined as follows;” subsection (a)(1)(A) – added “been informed and encouraged to apply;” deleted “filed;” subsection (a)(1)(B) – added “The applicants identification is sufficiently verified through other photo identification documents or other credible evidence or sources, and conforms to photographs, provided for the certificate of identity;” deleted “The physical health of the applicant or an immediate member of the family is impaired and there is medical evidence to substantiate the health problem and travel is necessary; or;” subsection (a)(1)(C) – added “The applicant’s certificate of birth is authentic and verified to be that of the applicant;” deleted “There is a death or wedding in the applicant’s family necessitating travel; or;” subsection (a)(1)(D) – added “ For a minor child, a parent or legal guardian shall provide sufficient verification of identity, authorization, relationship and other proof that he/she is authorized to apply for the child’s certificate of identity for travel purposes;” deleted “The applicant has been approved for education or training necessitating travel.”; subsection (a)(1)(E) – added (see current language);” subsection (a)(2) – deleted “In 1986 all eligible applicants may be granted a certificate of identity valid until December 31, 1986. Commencing January 1, 1987, a certificate of identity may be issued for periods of up to and not exceeding 90 days;” added (see current language); subsection (a)(3) – deleted “file;” added “provide;” added “copy of a;” deleted “American Samoa;” added “United States citizens or nationals;” deleted “office;” added “Attorney General or his designee;” subsection (a)(4) – deleted “\$35.00;” added “\$50.00 for a six-month period and \$100.00 for a one-year period;” subsection (b)(2) – deleted “board;” added “Attorney General;” deleted “board;” added “Attorney General.”

41.1009 Fees for Processing Visa Applications or Waiver of Visas

Processing of applications for visa, or waivers thereof, to enter the United States are undertaken at the Passport and Visa Section of the Department of Legal Affairs. All applications are to be sent to the American Consulate office designated by the U.S. State Department for final determination and decision. Processing of applications for waiver of visas are done only on emergency situations.

- (1) Processing fee for application U.S. Visa is \$50.00.
- (2) Processing fee for waiver of visa is \$100.00 on a regular working day; \$200.00 for an application made on a weekend or during nonworking hours.

History: Rule 3-86, eff 1 Dec 86; amd 2003, eff 1 Apr 2003; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (a) – deleted “division;” added “Section.”

41.1010 Waiver of Fees

The fees imposed in this title of immigration rules may be waived at the discretion of the Attorney General for good reason. Waiver of a fee by the Attorney General shall in writing setting forth the reason for the exercise of discretion.”

History: Eff 3 May 2010.

END OF TITLE 41 – CITIZENSHIP, ALIENAGE
AND IMMIGRATION