September 2006

CONVENTION AGAINST TORTURE CHECK-LIST[1]

- *Although applications for CAT protection and asylum and withholding of removal under the INA are often paired due to the mechanics of the application (the same application form [I-589] is used to apply for all three forms of protection), they are separate forms of protection and must be considered separately.*
- *Similar to withholding of removal under the INA, protection under the Convention Against Torture ("CAT") is forward looking. Unlike asylum and withholding of removal under the INA, however, (1) there is no requirement that the prospective torture be on account of a protected ground, and (2) generally, the torturer must be the government, or must have acted at the government's instigation or with its consent or acquiescence.*
- *Similar to withholding of removal under the INA, CAT protection affects only the applicant's removal - there are no provisions for derivative status or permanent residency.*

I. PROCEDURAL REQUIREMENTS AT THE AGENCY LEVEL

___ A. Was the request for CAT protection timely?

If the final order of removal was entered before March 22, 1999, the applicant must have filed a motion to reopen to apply for CAT protection before June 21, 1999. 8 C.F.R. § 1208.18(b)(2)(i); Foroglou v. Reno, 241 F.3d 111, 113 (1st Cir. 2001); Guo v. U.S. Dept. of Justice, 422 F.3d 61 (2d Cir. 2005). (*Other time and numerical limitations on motions to reopen do not apply to MTRs to request CAT protection filed before June 12, 1999, nor does the MTR requirement that the evidence in question be previously unavailable and undiscoverable. 8 C.F.R. § 1208.18(b)(2).*) An application filed after that date may be considered if the basis of the claim for protection is changed country conditions. 8 C.F.R. §§ 1003.23(b)(4)(i) & 1208.18(b)(2); see also Alam v. Gonzales, 438 F.3d 184, 186-88 (2d. Cir. 2006). Such a motion must be timely in light of the claimed change. See, *e.g.*, 8 C.F.R. § 1208.4(a)(4)(ii).

___ B. If the applicant was or remains in immigration court proceedings, did the applicant request CAT consideration?

If not, IJ is required to consider *sua sponte* where the applicant is ineligible for asylum under INA §§ 208(a)(2) or (b)(2), 8 U.S.C. 1158(a)(2) or (b)(2), and the evidence indicates possible torture in country of removal. See 8 C.F.R. § 1208.13(c)(1).

II. JUDICIAL REVIEW

___ A. Does the Court have subject matter jurisdiction?

___ *1. Is this a petition for review of a removal order in the court of appeals?*

[1] For a detailed look at the history of the U.S. ratification of the CAT, including agreements, reservations, and reports, see Auguste v. Ridge, 395 F.3d 123, 129-34 (3d Cir. 2005).

A court of appeals has subject matter jurisdiction over CAT claims where the petitioner requests review of a final order of removal pursuant to INA § 242, 8 U.S.C. § 1252. See the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat 2681 (Oct. 21, 1998); 8 C.F.R. § 1208.18(e); Khourassany v. INS, 208 F.3d 1096, 1099 n.4 (9th Cir. 2000); Ali v. Reno, 237 F.3d 591, 596 (6th Cir. 2001).

___ ***2. Is this a petition for habeas corpus?***

The REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat 231, 302 ("REAL ID Act") precludes district court jurisdiction over habeas petitions seeking review of a final order of removal, other than an expedited removal order under INA § 235(b)(1). See INA § 242(a)(4), 8 U.S.C. § 1252(a)(4); see generally, Chen v. U.S. Dept. of Justice, 434 F.3d 144,151-55 (2d Cir. 2006); Bonhometre v. Gonzales, 414 F.3d 442 (3d Cir. 2005).

___B. Are there procedural defaults that preclude jurisdiction?

___ ***1. If a BIA appeal was pending when the regulations were published, did the applicant file a motion to remand for CAT consideration?***
If not, claim may not be exhausted. See INA § 242(d)(1), 8 U.S.C. 1252(d)(1).

___ ***2. If the application was denied by the IJ, did the alien include argument on the denial of CAT protection in his or her appeal to the Board?***
If not, the claim is not exhausted. INA § 242(d)(1), 8 U.S.C. § 1252(d)(1); see also Mendoza v. U.S. Attorney General, 327 F.3d 1283, 1286 n.3 (11th Cir. 2003).

___ ***3. If the application was made in a Motion to Reopen, is the alien appealing specifically from the agency's final disposition of that motion and application?***
If not, the court lacks jurisdiction over the claim. See Stone v. INS, 415 U.S. 386, 405 (1995); Wu v. INS, 436 F.3d 157, 164 (2d Cir. 2006) .

___ ***4. Does the applicant's petition for review fall within one of the criminal bars to jurisdiction?***
Jurisdictional bars, such as the one for criminals at INA § 242(a)(2)(C), preclude jurisdiction over CAT claims to the same extent as over claims for other remedies. See Hanan v. Gonzales, 449 F.3d 834, 837 (8th Cir. 2006); Hamid v. Gonzales, 417 F.3d 642, 647-48 (7th Cir. 2005). Attacks on an agency determination that the applicant has not demonstrated the requisite likelihood of torture are attacks on factual findings that do not raise "constitutional questions or questions of law." Hanan, 449 F.3d at 837; Hamid, 417 F.3d at 647-48.

___C. Standard of Review

___ ***1. Petitions for Review***
Factual findings underlying the agency's determination are reviewed under the standard codified at INA § 242(b)(4)(B), 8 U.S.C. § 1252(b)(4)(B), which requires the reviewing court to treat "the administrative findings of fact [as] conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." See Ali, 237 F.3d at 596; Zheng v. Ashcroft, 332 F.3d 1186, 1193 (9th Cir. 2003); Ontunez-Tursios v. Ashcroft, 303 F.3d 341, 353 (5th Cir. 2002); Tarrawally v. Ashcroft, 338 F.3d 180, 184 (3d Cir. 2003).

The agency's interpretations of the immigration laws are given Chevron deference. See INS v. Aguirre-Aguirre, 516 U.S. 415, 425 (1999) (citing Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 842 (1984)). The agency's interpretations of its own regulations are given controlling weight unless those interpretations are "'plainly erroneous or inconsistent with the regulations.'" Auer v. Robbins, 519 U.S. 452, 461 (1997) (quoting Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945)).

___ ***2. Motions to Reopen***

Courts "employ a very deferential abuse of discretion standard" for review of any Board decision denying a motion to reopen, including those requesting reopening to seek CAT protection. Najjar v. Ashcroft, 257 F.3d 1262, 1302 (11th Cir. 2001); Cano-Merida v. INS, 311 F.3d 960, 965-66 (9th Cir. 2002); Mansour v. INS, 230 F.3d 902, 906-07 (7th Cir. 2000); Sevoian v. Ashcroft, 290 F.3d 166, 174 (3d Cir. 2002).

III. BURDEN OF PROOF

___ A. Who has the burden of proof?

The burden of proof remains entirely with the applicant. 8 C.F.R. § 1208.16(c)(2); Chen v. U.S. Dept. of Justice, 434 F.3d 144, 163 (2d Cir. 2006) (citing Ramsameachire v. Ashcroft, 357 F.3d 169 (2d Cir. 2004)). *Unlike asylum and withholding of removal under the INA, there is no provision providing a presumption of future torture based upon past torture that requires rebuttal by the DHS. Moreover, the applicant has the burden of showing no reasonable relocation within the country of removal. Compare 8 C.F.R. § 1208.16(c)(2) with 8 C.F.R. § 1208.13.*

___ B. What is the burden of proof?

___ ***1. The applicant must establish that it is more likely than not that he or she would be tortured in the country of removal. 8 C.F.R. § 1208.16(c)(2).***

The applicant must show a "particularized threat" of torture - not just that torture occurs in the country of removal, but a likelihood that the applicant himself or herself would be singled out for torture. See, *e.g.*, Lin v. U.S. Dept. of Justice, 432 F.3d 156, 158-59 (2d. Cir. 2005); Castellano-Chacon v. INS, 341 F.3d 533, 551-52 (6th Cir. 2003); Efe v. Ashcroft, 293 F.3d 899, 907-08 (5th Cir. 2002); Matter of J-E-, 23 I. & N. Dec. 291 (BIA 2002); Matter of M-B-A, 23 I. & N. Dec. 474 (BIA 2002); Matter of Y-L-, 23 I. & N. Dec. 270 (A.G. 2002); Matter of S-V-, 22 I. & N. Dec. 1306 (BIA 2000).

___ ***2. On motions to reopen to apply for CAT protection, the applicant must present a prima facie case of eligibility.***

The evidence presented with the motion to reopen, if assumed to be true, must establish a reasonable likelihood of satisfying each element of a CAT claim. 8 C.F.R. § 1208.18(b)(2)(ii); Najjar, 257 F.3d at 1303-04; Sevoian, 290 F.3d at 174. In addition, a motion to reopen must show that any new evidence sought to be offered is material and could not have been discovered or presented at the earlier hearing. See Allabani v. Gonzales, 402 F.3d 668, 675-76 (6th Cir. 2005).

IV. EVIDENCE

___ A. Is an applicant's testimony sufficient to sustain the burden of proof?

The regulations and case law provide that while the testimony of the applicant may be sufficient to sustain the burden of proof, the applicant should corroborate the testimony where reasonable. See 8 C.F.R. § 1208.16(c)(2) ("The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.") (emphasis added); see also Matter of M-D-, 21 I&N Dec. 1180, 1182-83 (BIA 1988), vacated on other grounds by Diallo v. INS, 232 F.3d 279 (2d Cir. 2000) ("[W]here it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of an applicant's [asylum] claim, such evidence should be provided or an explanation should be given as to why such information was not presented."); Diallo v. INS, 232 F.3d 279, 290 (2d Cir. 2000) (finding corroboration may be required where the BIA makes an explicit credibility finding, explains the need for corroboration, and assesses the alien's explanations for the lack of corroboration); Abdulai v. Ashcroft, 239 F.3d 542, 554-55 (3d Cir. 2001) (same). But see Ladha v. INS, 215 F.3d 889, 901 (9th Cir. 2000) ("[A]n alien's testimony, if unrefuted and credible, direct and specific, is sufficient to establish the facts testified without the need for corroboration."); Uwase v. Ashcroft, 349 F.3d 1039, 1041 (7th Cir. 2003) ("Corroborating evidence is essential to bolster an otherwise unconvincing case, but when an asylum applicant does testify credibly, 'it is not necessary for [her] to submit corroborating evidence in order to sustain her burden of proof.'") (quoting Georgis v. Ashcroft, 328 F.3d 962, 969 (7th Cir. 2003)).

___ B. Was the applicant's testimony regarding the elements of his CAT claim credible?

___ 1. Where the applicant relies on the *same* facts to support his CAT claim as those relied upon to support his claim for asylum and/or withholding of removal under the INA, the adjudicator may adopt an overall adverse credibility finding that applies to all of the claims. Yang v. U.S. Dept. of Justice, 426 F.3d 520, 522-23 (2d. Cir. 2005); Farah v. Ashcroft, 348 F.3d 1153, 1157 (9th Cir. 2003); Ibrahim v. Gonzales.

___ 2. Where the adverse credibility finding is based upon testimony regarding facts not relied upon for the applicant's CAT claim, however, a separate credibility finding may be necessary. See Mansour, 230 F.3d at 907-08; Zubeda v. Ashcroft, 333 F.3d 463, 476 (3d Cir. 2003); Kamalthas v. INS, 251 F.3d 1279, 1284 (9th Cir. 2001); Efe, 293 F.3d at 907 ("should receive separate attention").

___ 3. Credibility is reviewed under the findings of fact standard codified at INA § 242(b)(4)(B), 8 U.S.C. § 1252(b)(4)(B), which requires the reviewing court to treat "the administrative findings of fact [as] conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary."

___ C. Upon which element(s) is the claim based?

A CAT claim requires consideration of the totality of the elements. The regulations provide a non-exhaustive list of elements which may be considered, including (i) past torture inflicted on the applicant, (ii) the possibility of relocation within country to avoid torture, (iii) evidence of gross, flagrant or mass violations of human rights within country, and (iv) other relevant information regarding conditions in country. 8 C.F.R. § 1208.16(c)(3). No one element is determinative; the

adjudicator must look at the totality of the evidence to determine whether the applicant has established that it is more likely than not that he or she will be singled out for torture in the proposed country of removal. For example, evidence of past torture is relevant only to the extent that it affects the likelihood of future torture, and does not suffice in and of itself to establish CAT eligibility. Thus, an adverse credibility finding as to the testimony regarding past events does not necessarily bar a grant, as all evidence regarding the possibility of future torture must be considered. See Ni. v. BIA, 439 F.3d 177, 179-80 (2d. Cir. 2006); Ang v. Gonzales, 430 F.3d 50, 58-59 (1st Cir. 2005); Ramsameachire v. Ashcroft, 357 F.3d 169, 184-85 (2d Cir. 2004); Ngure v. Ashcroft, 367 F.3d 975, 992 (8th Cir. 2004); Niang v. Gonzales, 422 F.3d 1187, 1202 (10th Cir. 2005).

There has been some discussion in the courts as to whether forced sterilization or FGM, generally considered to constitute past torture, constitutes an "ongoing experience" that qualifies the applicant for CAT protection, but the cases were remanded for Board consideration of the question. See Yang, 426 F.3d at 522-523; Mohamed v. Gonzales, 400 F.3d 785, 802 (9th Cir. 2005).

___ D. Were the merits of the applicant's CAT claim considered separately from the merits of any claim for asylum of withholding of removal under the INA?

The adjudicator must decide the merits of the CAT claim *separately*. Kamalthas, 251 F.3d at 1284; Mansour, 230 F.3d at 907-08; Efe, 293 F.3d at 906-07; Tarrawally, 338 F.3d at 188. But "[a] separate analysis under CAT is only required when the petitioner has presented evidence that he is likely to be tortured for reasons unrelated to his asylum claim." Rodriguez v. Gonzales, --- F.3d ---, 2006 WL 708492 (8th Cir. March 22, 2006).

___ E. What evidence of country conditions was submitted?

The most common forms of evidence regarding country conditions are reports from the Department of State and reports from non-governmental organizations. For a discussion on weighting of reports, see Sevoian, 290 F.3d at 176 (quoting M.A. v. INS, 899 F.2d 304, 313 (4th Cir. 1990) ("[NGO's] may have their own agendas and concerns, and their condemnations are virtually omnipresent.")); Chen v. U.S. Dept. of Justice, 434 F.3d at 164-65. A complete failure to discuss submitted reports may also be cause for reversal. Rafiq v. Gonzales, 458 F.3d 36, 38-39 (2d Cir. 2006); Mostafa v. Ashcroft, 395 F.3d 622 (6th Cir. 2005). But see Almaghzar v. Gonzales, 450 F.3d 415, 422 (9th Cir. 2006) (holding that although the regulation requires individualized consideration of the CAT claim, it "does not require an IJ's decision to discuss every piece of evidence").

V. ELEMENTS OF A CAT CLAIM

___ A. What is the definition of "Torture"?

____ *1.* ***Torture is "extreme and outrageous treatment," an extreme form of cruel, inhuman or degrading treatment, and does not include lesser forms of cruel, inhuman or degrading treatment.***

8 C.F.R. § 1208.18(a)(2). While interpretation of the statutory terms is ultimately a question for the Attorney General, in Matter of J-E-, 23 I. & N. Dec. 291, 298 (BIA 2002), the Board referenced the European Court of Human Rights' holding that there are three levels of mistreatment: degrading treatment (characterized by gross humiliation), inhuman treatment,

and torture, the worst of the three. See also Nuru v. Gonzales, 404 F.3d 1207, 1218 (9th Cir. 2005); Raffington v. Kangemi, 399 F.3d 900, 903-04 (8th Cir. 2005) (lack of access to public and private mental health care does not constitute torture); Al-Saher v. INS, 268 F.3d 1143, 1147 (9th Cir. 2001) (finding severe beatings coupled with burning with cigarettes was extreme enough to constitute torture); Matter of G-A-, 23 I. & N. Dec. 540 (BIA 2002) (stating that torture includes deliberate burning with cigarettes, severe and repeated beating with cables and other instruments on the back and on the soles of the feet, beatings about the ears and eyes that result in partial or complete deafness or blindness, and suspension for long periods in contorted positions).

Torture does not include pain or suffering arising from or inherent in lawful sanctions, such as the death penalty. 8 C.F.R. § 1208.18(a)(3). See Zhang v. Gonzales, 432 F.3d 339, 345 (5th Cir. 2005).

Torture is not solely physical mistreatment; it may also include mental mistreatment. Mental mistreatment that rises to the extreme level of "torture" requires "prolonged mental harm caused by or resulting from (i) intentional infliction or threatened infliction of severe physical pain or suffering; (ii) actual or threatened administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality; (iii) the threat of imminent death; and/or (iv) the threat of imminent torture to another. 8 C.F.R. § 1208.18(a)(4).

The definition of torture does not encompass simple deprivation of property. Jo v. Gonzales, 458 F.3d 104, 109-110 (2d Cir. 2006).

___ *2.* ***The victim must be in the torturer's custody or control at the time of torture.***

8 C.F.R. § 1208.18(a)(6). Thus, even severe pain and suffering, inflicted on a person who is not within the perpetrator's custody or control, would not qualify as torture. See 64 Fed. Reg. 8478, 8483 (Feb. 19, 1999); Azanor v. Ashcroft, 364 F.3d 1013 (9th Cir. 2004) (correcting misstatement in Matter of J-E- that applicants must demonstrate that the prospective torture would be "by or at the instigation of or with the consent or acquiescence of *a public official who has custody or physical control of the victim*.").

___ *3.* ***The torturer must have the specific intent to inflict severe physical or mental pain or suffering.***

An act which results in unanticipated or unintended severity of pain does not constitute torture. 8 C.F.R. § 1208.18(a)(5); Majd v. Gonzales, 446 F.3d 590, 597 (5th Cir. 2006) ("Most of the suffering he described was inflicted without any specific intent . . . ."); Matter of J-E-, 23 I. & N. Dec. 291 (BIA 2002); Price v. Socialist People's Libyan Arab Jamahiriya, 294 F.3d 82, 92-93 (D.C. Cir. 2002) (construing the definition of torture in the Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (Mar. 12, 1992)) ("The critical issue is the degree of pain and suffering that the alleged torturer intended to, and actually did, inflict upon the victim. . . . [T]orture requires acts both intentional and malicious."). But see Zubeda, 333 F.3d at 473 (suggesting that the standard is met merely where severe pain or suffering is the foreseeable consequence of a deliberate act (which suggests a lesser negligence or recklessness standard)).

___ ***4. The torturer must have a specific illicit purpose; those pursuant to lawful sanction do not constitute torture.***

The torturer must have a specific illicit purpose, such as obtaining information or a confession, punishment for an act, intimidation or coercion, or on account of discrimination of any kind. 8 C.F.R. § 1208.18(a)(5). This language shows the framers' intent to carefully define and circumscribe the scope of CAT protection and to underscore the state action requirement. See Price v. Socialist People's Libyan Arab Jamahiriya, 294 F.3d at 92-93.

Acts which are pursuant to "lawful sanctions" do not constitute torture. 8 C.F.R. § 1208.18(a)(3). See Khouzam v. Ashcroft, 361 F.3d 161, 169-71 (2d Cir. 2004). But see Nuru, 404 F.3d at 1220-22 ("A government cannot exempt torturous acts from CAT's prohibition merely by authorizing them as permissible forms of punishment in its domestic law.") (citing Khouzam v. Ashcroft, 361 F.3d 161, 169 (2d Cir. 2004)).

___ *5.* ***CAT only provides protection for acts of torture with a government nexus.***

The torture must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1).

Where the torturers are government officials, the question becomes whether they are acting in their official capacity. "The scope of the Convention is confined to torture that is inflicted under color of law. It extends to neither wholly private acts nor acts inflicted or approved in other than 'an official capacity.'" Matter of Y-L-, 23 I. & N. Dec. at 285 (quoting Ali, 237 F.3d at 597). Thus, where a government official acts ultra vires, or from personal vengeance, there is no direct governmental nexus.

Where the torturers are NOT government officials, but private actors, the question becomes whether government officials consented to the torture or acquiesced to such activity. Acquiescence is more than powerlessness to prevent activity. The government official must, at a minimum, turn a blind eye to reported torture. Ontunez-Turcios, 303 F.3d at 354; Ali, 237 F.3d at 597. The government's inability to control a private actor does not necessarily constitute acquiescence. Kimumwe v. Gonzales, 431 F.3d 319, 322-23 (8th Cir. 2006); Ali, 237 F.3d at 597-98; Kasneci v. Gonzales, 415 F.3d 202, 205 (1st Cir. 2005).

The government official(s) must know of or be aware of the activities of the private actors beforehand *and breach a legal responsibility to intervene to prevent the torture*. 8 C.F.R. § 1208.18(a)(7); see Khouzam v. Ashcroft, 361 F.3d 161, 171 (2d Cir. 2004). Thus, the public official must be specifically aware of specific acts constituting torture and then fail to intervene. See Sevoian, 290 F.3d at 176; Rreshpja v. Gonzales, 420 F.3d 551, 557 (6th Cir. 2005); Toure v. Ashcroft, 400 F.3d 44, 50 (1st Cir. 2005) (government efforts to eradicate FGM sufficient to show no acquiescence). "Awareness" requires "willful acceptance" in most circuits. Menjivar v. Gonzales, 416 F.3d 918, 923 (8th Cir. 2005); Lopez-Soto v. Ashcroft, 383 F.3d 228, 240 (4th Cir. 2004); Matter of Y-L-, 23 I. & N. Dec. 270 (BIA 2002). But see Zheng, 332 F.3d at 1194-96 (holding that "acquiescence" includes awareness and willful blindness but does not require actual knowledge or willful acceptance); Ontunez-Tursios, 303 F.3d at 355 ("'Willful blindness' suffices to prove acquiescence."); Ochoa v. Gonzales, 406 F.3d 1166, 1172 (9th Cir. 2005) ("[A] petitioner

need only prove that the government is aware of a third party's torturous activity and does nothing to prevent it."); Cruz-Funez v. Gonzales, 406 F.3d 1187, 1192 (10th Cir. 2005).[2] It is OIL's position that the act of turning a blind eye to the activity does, however, require intent, and not merely an act of negligence or recklessness. The Ninth Circuit has acknowledged that the public official's acquiescence must be knowing. Azanor, 364 F.3d at 1020.

___ B. What do country reports show regarding risk of torture?

Where country reports show mass human rights violations, the evidence must indicate that the applicant would be personally at risk of torture. See Nuru, 404 F.3d at 1220; Castellano-Chacon, 341 F.3d at 551-52; Efe, 293 F.3d at 907-08; Tarrawally, 338 F.3d at 188; Matter of J-E-, 23 I. & N. Dec. 291 (BIA 2002), Matter of M-B-A-, 23 I. & N. Dec. 474 (BIA 2002); Matter of Y-L-, 23 I. & N. Dec. 270 (A.G. 2002); Matter of S-V-, 22 I. & N. Dec. 1306 (BIA 2000).

If country condition reports state that torture is generally used against or specific to a group (*i.e.*, political opponents, journalists, ethnic groups), does the applicant fit within the group? See Perinpanathan v. INS, 310 F.3d 594, 599 (8th Cir. 2002); Nuru, 404 F.3d at 1220; Kamalthas, 251 F.3d at 1283; Mansour, 230 F.3d at 908; Sevoian, 290 F.3d at 175-78.

___ C. Has the applicant addressed whether internal relocation would be feasible?

Where the alleged activity is specific to one area or one group, the applicant may not face torture in a separate area of the country. See Nuru, 404 F.3d at 1219-20; Singh, 351 F.3d at 443; Perinanpathan, 310 F. 3d at 599-600; United States v. Lubo, 262 F. Supp. 2d 727, 736 (W.D. Tex. 2003). If the alleged activity is not country-wide, the applicant must address whether relocation is feasible. Singh v. Gonzales, 439 F.3d 1100 (9th Cir. 2006); Hasan v. Ashcroft, 380 F.3d 1114, 1123 (9th Cir. 2004). The factors listed at 8 C.F.R. § 1208.13(b)(3) may also be useful.

VI. CAT PROTECTION

___ A. Is the applicant eligible for withholding of removal, or only deferral of removal?

Similar to withholding of removal under the INA, if the applicant otherwise establishes eligibility for protection under the CAT but (i) the applicant persecuted others on account of a protected ground; (ii) the applicant has been convicted of a particularly serious crime in the United States (see Matter of Y-L-, 23 I. & N. Dec. at 273-78); (iii) there are "serious reasons to believe that the [applicant] committed a serious nonpolitical crime outside the United States" before arriving in the United States; and/or (iv) the applicant is a danger to the security of the United States, the applicant

[2] For additional insight into the "willful blindness" standard, see United States v. Aguilar, 80 F.3d 329, 331 (9th Cir. 1996); United States v. Pacific Hide & Fur Depot, Inc., 768 F.2d 1096 (9th Cir. 1985); United States v. Jewell, 532 F.2d 697 (9th Cir. 1976). See also United States v. Espinoza, 244 F.3d 1234, 1242 (10th Cir. 2001); United States v. Campbell, 977 F.2d 854 (4th Cir. 1992).

is ineligible for withholding of removal under the CAT and may only be granted deferral of removal under the CAT. 8 C.F.R. § 1208.17(a); INA § 241(b)(3)(B). See Bellout v. Ashcroft, 363 F.3d 975, 978-79 (9th Cir. 2004).

___ B. Is the applicant removable to a third country where he or she would not be tortured?

Protection under the CAT, whether withholding or deferral, bars removal only to the country where the applicant has established a likelihood of torture. The applicant may be removed to a third country where he is not likely to be tortured. See 8 C.F.R. § 1208.16(f).

___ C. Has the U.S. Government received assurances that the applicant will not be tortured?

If the Secretary of State obtains assurance from the government of the designated country that an applicant will not be tortured, and the Attorney General deems the assurance "sufficiently reliable", CAT protection is no longer provided and the alien may be removed. 8 C.F.R. § 1208.18(c)(3).

___ D. Does a grant of protection under the CAT necessarily result in the applicant's release from DHS custody?

CAT protection does not necessarily result in the applicant's release from DHS custody, where the applicant is subject to such custody (because removal to a third country is a possibility). 8 C.F.R. § 1208.17(b)(1)(ii). Release of aliens granted deferral of removal is governed by 8 C.F.R. § 241.4(b)(3).

___ E. What does a grant of deferral of removal entail?

___ 1. Deferral of removal confers no lawful or permanent immigration status in the United States and thus does not require issuance of employment authorization. 8 C.F.R. § 1208.17(b)(1)(i).

___ 2. A grant of deferral is subject to termination where either the applicant or DHS requests termination, or where the U.S. government receives assurances from the designated country. 8 C.F.R. §§ 1208.17(b)(1)(iv);1208.17(f).

___ a. DHS may request termination of deferral by submitting a motion to the immigration judge requesting such termination. 8 C.F.R. § 1208.17(d). With that motion, DHS counsel must present evidence, not previously presented, relevant to the possibility that the applicant is no longer more likely than not to be singled out for torture in the designated country. Id. On receipt of that motion and evidence, the immigration court must schedule a hearing and provide the applicant with notice that he or she has 10 (personal service) or 13 (service by mail) days to supplement the evidence provided in the initial application. 8 C.F.R. 1208.17(d)(1). Once that period to supplement expires, the immigration court must forward the application, with all additional evidence provided by the parties, to the Department of State for comments. 8 C.F.R. § 1208.17(d)(2).

At the hearing, the applicant bears the burden of proving that it remains more likely than not that he or she will be tortured in the country in question. 8 C.F.R. § 1208.17(d)(3). If the applicant no longer establishes such a likelihood, the order of deferral is terminated. 8 C.F.R. § 1208.17(d)(4). The applicant may appeal the decision of the immigration judge to the

Board. Id.

___ b. The applicant may request termination by filing a written request for termination with the immigration court. 8 C.F.R. § 1208.17(e). The immigration judge must determine, either on the basis of the written submission or after a hearing, whether the request for termination of deferral is knowing and voluntary. If so, the order of deferral will be terminated. Id.

U.S. Department of Homeland Security
Immigration and Customs Enforcement
Office of the Chief Counsel
Miami, Florida

Standard Operating Procedures
for
Background and Security Investigation Requirements

Version 1.0

2 April 2007

Table of Contents

Scope of the SOP

This document is a Standard National Operating Procedure (SOP) for Background Checks and Security Investigation Requirements for aliens in proceedings before the Immigration Judges (IJ) and Board of Immigration Appeals (BIA). In addition, this SOP is a procedural guide for when and how Background Checks will be processed in the Miami Office of Chief Counsel (OCC).

The Office of the Principal Legal Advisor (OPLA) also issued a Guidance Memorandum on March 31, 2005. This memorandum remains active and is also attached to this SOP. This SOP does not negate any local or national requirements and procedures that are not in conflict with this SOP. Procedures that are above and beyond this SOP may still be required as directed by management.

Goals and Purpose of the SOP

This document has been created for the purpose of standardizing operational policies and procedures for the Miami OCC in processing Background Checks and Security Investigations that will ensure that required checks are current and completed prior to any hearing at which an alien may obtain an immigration benefit. This SOP will also provide guidance regarding the use of background checks where an alien seeks any discretionary relief that is not included within the required checks.

Section I—Background and Security Investigation Requirements

Effective April 1, 2005, background and security checks are required to be performed and completed before an IJ or the BIA may grant any alien certain principal forms of immigration relief. Immigration Judges are prohibited from granting applications until after Immigration and Customs Enforcement (ICE) has reported to the IJ that the appropriate investigations or examinations have been completed and are current and ICE has reported any relevant information to the IJ. The BIA may remand a case for background and security checks to be completed or updated.

Background checks are required for any alien age 14 or older. DHS has sole authority to determine what checks shall be required. Immigration and Customs Enforcement has determined that FBI fingerprint checks and Interagency Border Inspection System (IBIS) checks will be the minimum required checks. FBI fingerprint results will be considered current and complete if they were conducted and cleared within the fifteen (15) months before the IJ grants a benefit. IBIS checks will be considered current and complete if conducted and cleared within one hundred and eighty (180) days before a grant. Immigration and Customs Enforcement has also determined that an FBI name check will be an additional discretionary check. On March 30, 2005, Chief Counsel Riah Ramlogan published a detailed Guidance Memorandum regarding implementation of the new requirements in the Miami OCC. This guidance is still current and attached hereto. This memorandum should be referred to for complete information regarding requirements and processing of background checks in the Miami OCC.

The principal forms of immigration relief for which background checks are required include the following:

- Asylum, withholding of removal, and deferral of removal under Convention Against Torture[1];

- Adjustment of status under sections 209 and 245 of the Immigration and Nationality Act (INA), or under any other provision of law;

- Conditional permanent resident status or the removal of the conditional basis of such status under section 216 or 216A of the INA;

[1] For CAT cases, the regulation requires that the background checks be completed. Given that we will often have antithetical information on these aliens, it is not required that the check results be resolved. Simply inform the court that the checks have been completed, recognizing that if new significant information not previously available is subsequently revealed upon resolution, that there may be justification for a Motion to Reopen.

- Waivers of inadmissibility or deportability under sections 209(c), 212, or 237 of the INA;
- Cancellation of removal or suspension of deportation under section 240A or former section 244 of the INA;
- Relief from removal under former section 212(c) of the INA; and
- Registry under section 249 of the INA.

In addition to the specified forms of relief, the regulation applies to any form of immigration relief in immigration proceedings, which permits the alien to reside in the United States.

INSTRUCTIONS FOR SUBMITTING CERTAIN APPLICATIONS IN IMMIGRATION COURT AND FOR PROVIDING BIOMETRIC AND BIOGRAPHIC INFORMATION TO U. S. CITIZENSHIP AND IMMIGRATION SERVICES

A. Instructions for Form I-589 (Asylum and for Withholding of Removal)*

In addition to filing your application and supporting documents with the Immigration Court and serving a complete copy of your application on the appropriate Immigration and Customs Enforcement (ICE) Office of Chief Counsel, you must also complete the following requirements before the Immigration Judge can grant relief or protection in your case:

SEND these 3 items to the address below:

(1) A clear copy of the first three pages of your completed Form I-589 (Application for Asylum and for Withholding of Removal) that you will be filing or have filed with the Immigration Court, which must include your full name, your current mailing address, and your alien number (A-number). (Do Not submit any documents other than the first three pages of the completed I-589).

(2) A copy of Form EOIR–28 (Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court) if you are represented, and

(3) A copy of these instructions.

USCIS Nebraska Service Center
Defensive Asylum Application With Immigration Court
P.O. Box 87589
Lincoln, NE 68501-7589

Please note that there is no filing fee required for your asylum application.

After the 3 items are received at the USCIS Nebraska Service Center, you will receive:

- A USCIS receipt notice in the mail indicating that USCIS has received your asylum application, and
- An ASC notice for you, and separate Application Support Center (ASC) notices for each dependent included in your application. Each ASC notice will indicate the individual's unique receipt number and will provide instructions for each person to appear for an appointment at a nearby ASC for collection of biometrics (such as your photograph, fingerprints, and signature). If you do not receive this notice in 3 weeks, call (800) 375-5283. If you also mail applications under Instructions B, you will receive 2 notices with different receipt numbers. You must wait for and take both scheduling notices to your ASC appointment.

You (and your dependents) must then:

- Attend the biometrics appointment at the ASC, and obtain a biometrics confirmation document before leaving the ASC, and
- Retain your ASC biometrics confirmation as proof that your biometrics were taken, and bring it to your future Immigration Court hearings.

*** NOTE: IF YOU ARE FILING A FORM I-589 AND/OR ANOTHER APPLICATION, SEE THE REVERSE OF THIS FORM FOR ADDITIONAL INSTRUCTIONS.**

Important: Failure to complete these actions and to follow any additional instructions that the Immigration Judge has given you could result in delay in deciding your application or in your application being deemed abandoned and dismissed by the court. 1

Revised 8/7/06

B. Instructions for Form(s) I-485, I-191, I-601, I-602, I-881, EOIR-40, EOIR-42A, or EOIR-42B

In addition to filing your application(s) with the Immigration Court and serving a complete copy of any such application(s) on the appropriate Immigration and Customs Enforcement (ICE) Office of Chief Counsel, you must also complete the following requirements before the Immigration Judge can grant relief in your case:

SEND these 5 items to the address below:

(1) A clear copy of the entire application form(s) that you will be filing or have filed with the Immigration Court. (Do not submit any documents such as attachments – send only the completed form itself),

(2) The appropriate application fee(s) or the Immigration Judge's order granting your fee waiver. (The fee can be found in the instructions with the application, the regulations, and at www.uscis.gov or for the EOIR forms, at www.usdoj.gov/eoir),

(3) The mandatory $70 USCIS biometrics fee,

(4) A copy of Form EOIR–28 (Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court) if you are represented, and

(5) A copy of these instructions.

USCIS Texas Service Center
P.O. Box 852463
Mesquite, Texas 75185-2463

All fees must be submitted in the form of a check or a money order (or separate checks/money orders) and be made out to: "Department of Homeland Security."

After the 5 items are received at the USCIS Texas Service Center, you will receive:

- A USCIS fee receipt notice showing that you have paid the application fee (unless waived) and the mandatory biometrics fee. Keep a copy for yourself.
- A USCIS notice with instructions to appear for an appointment at a nearby Application Support Center (ASC) for collection of your biometrics (such as your photographs, fingerprints, and signature). This notice contains your important USCIS application receipt number which must be presented to the ASC. Your dependents will receive separate ASC notices if they are required to provide biometrics. If you do not receive this notice in 3 weeks, call (800) 375-5283. If you also apply for asylum, take both scheduling notices to your ASC appointment (*see* side A). Keep copies of all ASC scheduling notices for your records.

You (and your dependents) must then:

- Attend this ASC biometrics appointment and obtain a biometrics confirmation document from the ASC,
- File the following with the Immigration Court within the time period directed by the Immigration Judge: (1) the original application Form, (2) all supporting documentation, and (3) the USCIS fee receipt notice that serves as evidence that you paid the filing fees (unless the Immigration Judge granted you an application fee waiver), and
- Retain your ASC biometrics confirmation as proof that your biometrics were taken, and bring it to your future Immigration Court hearings.

DO NOT SUBMIT THE ORIGINAL APPLICATION TO USCIS. DO NOT SUBMIT ANY APPLICATIONS TO THIS POST OFFICE BOX OTHER THAN THOSE APPLICATIONS LISTED. ALL OTHER APPLICATIONS, INCLUDING APPLICATIONS FOR EMPLOYMENT AUTHORIZATION AND IMMIGRANT PETITIONS, WILL BE RETURNED TO YOU IF SENT TO THIS POST OFFICE BOX. FOR SUBMITTING APPLICATIONS NOT LISTED ON SIDE A OR SIDE B OF THIS PAPER, PLEASE FOLLOW THE INSTRUCTIONS THAT ACCOMPANY THE APPLICATION.

Important: Failure to complete these actions and to follow any additional instructions that the Immigration Judge has given you could result in delay in deciding your application or in your application being deemed abandoned and dismissed by the court. 2

Revised 8/7/06

Section II—Miami OCC IBIS Checks Processing and Procedures

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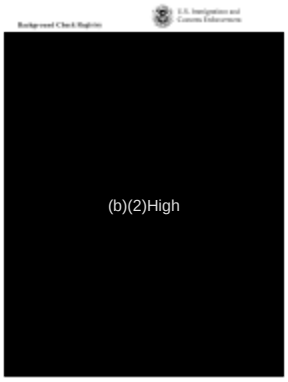
FLOW CHART FOR BACKGROUND CHECK PROCESSING

(b)(2)High



Background Check Registry form (BCR)

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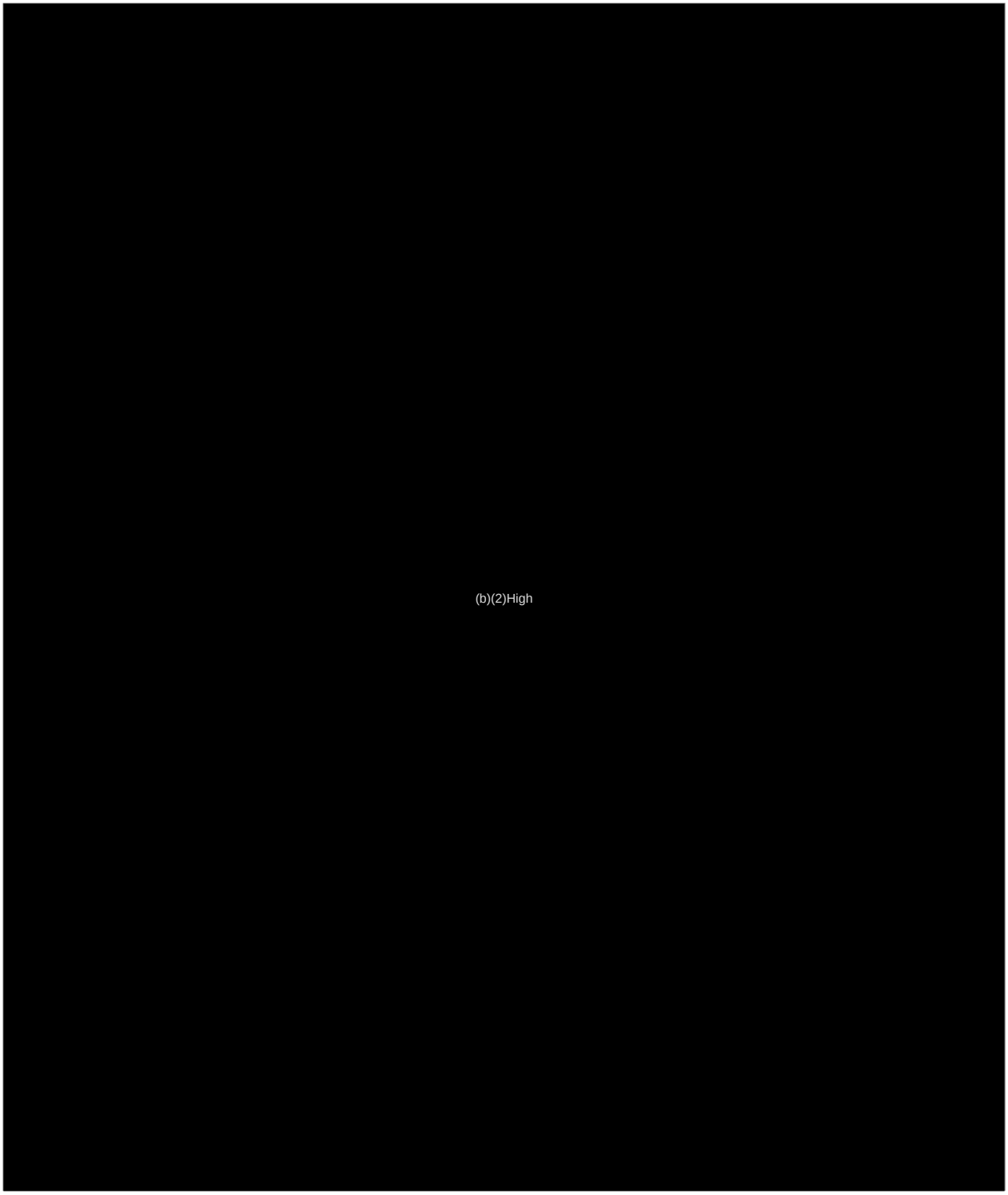


Office of the Director Field Legal Operations

U.S. Department of Homeland Security
P.O. Box 30080
Laguna Niguel, CA 92607-0080

U.S. Immigration and Customs Enforcement

Interoffice Memorandum

To: Chief Counsel

From: (b)(6), (b)(7)(C)

Date: October 19, 2005

Re: Background Check Registry (BCR) forms:

To properly issue aliens evidence of lawful permanent resident status granted by an immigration judge, USCIS needs to know the applicable admission code. These codes cover many pages and can be confusing. By and large, however, only a discrete number of these will normally apply in immigration court matters.

Please note as well that there are no admissions codes for grants of cancellation of removal to lawful permanent residents under Immigration and Nationality Act (INA) sections 240A(a) or 212(c). Cancellation under section 240A(a) and 212(c) grants apply to persons already admitted to such status and, as there is no new grant of status, the previous admissions code remains unchanged.

The common codes that you can expect to see include the following categories:

With respect to adjustment of status[1]:

Immediate Relatives:

Spouse of a USC	IR6/CR6[2]
Child of a USC	IR7
Parent of a USC	IR0

Other Relatives of USC

Unmarried son or daughter	F16
Married son or daughter	F36
Brother or sister	F46

Relatives of Permanent Residents

[1] Please note that there are additional codes for derivatives
[2] Where the status is conditional

Spouse	F26/CR26
Child	F27/C28
Unmarried son or daughter	F-29/C29
Diversity Immigrant	DV6
Juvenile Court Dependent	SL6
NACARA Nicaraguan or Cuban NACARA 202	NC6
Spouse	NC7
Child	NC8
Unmarried son or daughter	NC9

HRIFA – there are many different codes covering the variety of possible ways to obtain status. Please consult the attachment to this document or your CIS point of contact to identify the appropriate code.

Cancellation of Removal (Suspension)

Suspension of deportation	Z13
Suspension of deportation (VAWA)	Z14
Suspension of deportation (NACARA) NACARA 203 + Special Rule Cancellation	Z15

There is no code for cancellation of removal pursuant to section 240A(b) INA. If relief is granted under provisions of this statute simply annotate the BCR to that effect.

USCIS also uses codes to designate grants of asylum. Please note that these codes apply to grants of asylum under section 208 INA. There are different codes used to record section 209 INA adjustments. The asylum codes are:

Principal asylee	AS1
Spouse	AS2
Child	AS3

Your staff must annotate the code on the BCR in the blank space adjacent to the circled type of relief granted.

We will be establishing a USCIS point of contact where you can obtain assistance if you encounter a grant of lawful permanent resident status for a reason not identified above or if you cannot easily ascertain the appropriate code from the attachment. I have tried to identify the primary codes for relief that you are likely to encounter. Certain offices may have other matters that they also see frequently, for example Miami does get a significant number of HRIFA cases, so that it may be wise for you to have a supplementary sheet. You may also choose to do a supplemental sheet if you get a significant number of employment-based adjustment of status cases.

In addition to annotating the BCR with the admissions code, please identify the fact that you did obtain the required visa number prior to the grant of relief for preference and diversity adjustment cases. The notation can be simply "visa number obtained."

The BCR should be promptly transmitted to USCIS so that it normally will arrive within the 3-day period before applicants may appear to obtain evidence of status. Please give your local CIS office a point of contact in your office in the event that there is a problem. You should be able to fax or e-mail a copy to them from GEMS.

Also CU6 Citizen or national of Cuba granted adjustment under the Cuban Adjustment Act [section 1°]

CU7 Spouse or child of a citizen or national of Cuba who is eligible to adjust as a CU6

COMMON CODES OF ADMISSION	
Adjustment of Status: **Immediate Relatives:** Spouse of a USC, IR6/CR-6 (where status is conditional) Child of a USC. IR7 Parent of a USC, IR0 **Other Relatives of USC:** Unmarried son or daughter, F16 Married son or daughter. F36 Brother or sister. F46 **Relatives of Permanent Residents:** Spouse. F26/C26 Child. F27/C28 Unmarried son or daughter, F29/C29 **Diversity Immigrant, DV6** **Juvenile Court Dependent, SL6**	**Adjustment of Status:** **NACARA Nicaraguan or Cuban:** Principal alien, NC6 Spouse, NC7 Child, NC8 Unmarried son or daughter, NC9 **Cuban Adjustment Act ("Cuban Refugee")** Principal alien, CU6 Spouse or child, CU7 **Cancellation of Removal (Suspension):** Suspension of deportation, Z13 Suspension of deportation (VAWA), Z14 Suspension of deportation (NACARA), Z15 **Asylum (not asylum adjustment):** Principal alien, AS1 Spouse, AS2 Child, AS3

Instructions

1. Code of admission: The table at the top of this page lists common codes of admission (COA) that apply to certain immigration benefits granted by immigration judges. This list is not exhaustive. If the COA applicable to a benefit granted by an immigration judge (IJ) is not listed above, the Office of Chief Counsel (OCC) attorney completing the Background Check Registry (BCR) will need to determine the COA by requesting the correct COA from the U.S. Citizenship and Immigration Services (CIS) point of contact, or by consulting the complete list of admission codes.

2. Final order: An IJ decision becomes a final order when the OCC waives appeal or, if the OCC reserves the right to appeal, upon expiration of the time to appeal (30 days) if no appeal is filed. See 8 C.F.R. § 1003.39. When the OCC reserves the right to appeal, or is deemed to have reserved the right to appeal (e.g., when the IJ mails a written decision to the parties), but subsequently decides not to appeal, the IJ decision shall be deemed final on the date the appeal period expires or on the date the OCC decides to forego the appeal, whichever is earlier.

3. When the IJ grants lawful permanent resident (LPR) status: The OCC will deliver the BCR to CIS within three (3) business days of an IJ order becoming final that grants adjustment of status, removal of conditional basis of lawful permanent residence, non-LPR cancellation of removal, registry, or suspension of deportation to a respondent. See Santillan v. Gonzales, No. C 04-02686, 2005 WL 3542661, at *5 (N.D. Cal. Dec 22, 2005) (order granting permanent injunction). The OCC attorney who reports the results of the background checks to the IJ immediately prior to LPR status being granted is responsible for filling in the lower portion of the BCR that begins with the "Benefit granted" field and ends with the "Alien's current address" field. The completed BCR will be scanned into GEMS and the hard copy will be retained in the A-file.

4. When the IJ grants asylum status: The OCC will deliver the BCR to CIS within three (3) business days of an IJ order becoming final that grants asylum status to a respondent. The OCC attorney who reports the results of the background checks to the IJ immediately prior to asylum status being granted is responsible for filling in the lower portion of the BCR that begins with the "Benefit granted" field and ends with the "Alien's current address" field. The completed BCR will be scanned into GEMS and the hard copy will be retained in the A-file.

5. When the IJ grants other relief: The OCC attorney who reports the results of the background checks to the IJ immediately prior to the IJ granting the respondent relief that is not a benefit identified in instruction 3 or 4 is responsible for filling in the following fields in the lower portion of the BCR: "Location of IJ hearing," "ICE attorney," "Date of final order," and "Alien's current address." The BCR will not be submitted to CIS. The completed BCR will be scanned into GEMS and the hard copy will be retained in the A-file.

Section III—Use of the BCR in Immigration Court

In immigration proceedings, prior to any grant of a covered form of relief, the ACC should inform the IJ if the appropriate investigations or examinations have been completed and are current. Immigration Judges are prohibited from granting covered applications before DHS confirms that all checks have been completed.

If all background checks were completed and the IJ grants relief without appeal by DHS, the respondent should be provided a Post-order Instruction form. The ACC should subsequently annotate the lower portion of the BCR to reflect the relief granted and then route the A file as appropriate.

If an IJ grants a covered form of relief before all background checks have been completed, the ACC should reserve appeal and bring the matter to the Appeals Committee for review. *See* SOP for appealing cases.

The IJ is authorized to go forward with the hearing in absence of the appropriate investigations or examinations being completed, but no relief can be granted prior the completion of these requirements.

The BCR, NCIC, and related documents must not be filed in the Record of Proceeding. Also, the GEMS Document Type for these and related records is Enforcement Documents and are FOIA-Exempt/ Not Served.

POST-ORDER INSTRUCTIONS FOR INDIVIDUALS GRANTED RELIEF OR PROTECTION FROM REMOVAL BY IMMIGRATION COURT

Please follow the applicable instructions marked below.

If you fail to present yourself to the U.S. Citizenship and Immigration Services (USCIS) as instructed, and fail to follow USCIS instructions for providing your biometrics (such as fingerprints, photograph, and signature) and other biographical information, you may not receive your immigration documents.

☐ A. Instructions for Individuals with Final Orders

o You have been granted permanent residence or asylum, and that decision is final. In order to receive a Permanent Resident Card or asylum and employment authorization documents, you must contact USCIS in one of the following ways:

- You may schedule an appointment with your local USCIS office through INFOPASS, an internet-based online system at www.uscis.gov, or
- In case of a true emergency, your local USCIS office will try to assist you without an appointment.

In order to allow sufficient time for the USCIS office to receive information about your court order, please do not make your appointment or visit USCIS any earlier than 3 business days after the date of your immigration court order.

You must bring a copy of your final order granting you asylum or permanent residency when you come to USCIS to complete processing for your status and/or work authorization documents.

o You have been granted another form of relief or protection, such as withholding of removal, and you *may* be eligible for work authorization. You may obtain an I-765, Application for Employment Authorization, from the USCIS website at www.uscis.gov/graphics/formsfee/forms/index.htm, or by calling (800) 375-5283. Submit the application as directed in the instructions to the application.

☐ B. Instructions for Individuals Without Final Orders

Your application for relief/protection has been granted, but the decision is not final. Therefore, you will not receive a Permanent Resident Card or documentation of asylum at this time.

- The government has 30 days to file an appeal of the Immigration Judge's decision with the Board of Immigration Appeals (BIA). You may check whether the government has filed an appeal by calling (800) 898-7180.
- If the government does not file an appeal, the Immigration Judge's decision will become final after 30 days, and you may then schedule an appointment with USCIS to receive your immigration documents (*e.g.*, Permanent Resident Card or asylum and employment authorization). Follow the instructions on the left side (A) of this paper for making an appointment at your local USCIS office. Be sure to bring the judge's order to USCIS.
- If the government files an appeal of the Immigration Judge's decision, the BIA will issue a filing receipt. You may consult the BIA Practice Manual at www.usdoj.gov/eoir for information on the appellate process.
- While an appeal of your case is pending at the BIA, you may be eligible to apply to USCIS for an employment authorization document. For further information, *see* www.uscis.gov.
- If the BIA issues an administratively final order granting you relief or protection, at that time you may schedule an appointment with USCIS to receive your immigration status documents. Be sure to bring your BIA order to USCIS.

(Eff. Date 4/1/05)

Section IV—Fingerprint Notice Procedures for Applications Filed Before April 1, 2005

Respondents who had already filed applications for relief prior to April 1, 2005, (pipeline cases) and need to have their fingerprints updated are still given the Fingerprint Appointment Notice and can go directly to any of the local Application Support Centers (ASC) to be fingerprinted. Fingerprint Appointment Notices will only be provided for pipeline cases. Respondents should address any problems regarding BCR delays or appointments directly with CIS.

Please check Duty Attorney SOP for additional instructions regarding fingerprint form requests.

Office of Adjudications

U.S. Department of Homeland Security
7880 Biscayne Boulevard
Miami, FL 33138

U.S. Citizenship and Immigration Services

FINGERPRINT SCHEDULING NOTICE (DISTRICT OFFICE)

(b)(2)High

TO CONTINUE PROCESSING YOUR APPLICATION YOU MUST HAVE YOUR FINGERPRINTS TAKEN AT ONE OF THE APPLICATION SUPPORT CENTERS (ASC) LISTED BELOW WITHIN THE NEXT "EIGHTY-SEVEN (87) DAYS" OR EARLIER.

U.S. IMMIGRATION ASC
521 NE 81 STREET
MIAMI, FL 33138
(BISCAYNE PLAZA SHOPPING CENTER)

U.S. IMMIGRATION ASC
3700 W 18TH AVENUE SUITE 110
HIALEAH, FL 33012
(WESTLAND PROMENADE)

U.S. IMMIGRATION ASC
11865 SW 26TH STREET (CORAL WAY), SUITE J-6
MIAMI, FL 33175
(SHOPPING CENTER)

U.S. IMMIGRATION ASC
11690 STATE ROAD 84
DAVIE, FL 33324
(PLAZA SHOPPING CENTER)

U.S. IMMIGRATION ASC
2711 EXCHANGE COURT
WEST PALM BEACH, FL 33409-4017

HOURS OF OPERATION: TUESDAY THRU SATURDAY: 8AM TO 4PM
CLOSED SUNDAY, MONDAY AND THE FOLLOWING FEDERAL HOLIDAYS: FEB 18; MAY 27; JULY 4; SEPT 2; OCT 7; NOV 10; NOV 23; DEC 23; DEC 30

You must bring this letter with you and one of the following forms of Identification (ID):

NATURALIZATION APPLICANTS:
- U.S. Resident Alien Card (Form I-551)

ALL OTHER APPLICANTS:
- Employment Authorization Card (Form I-688B)
- Any other U.S. Citizenship and Immigration Services document showing your photograph
- Any U.S. State ID card or U.S. State Driver's License showing your photograph
- Passport or National ID card showing your photograph

PLEASE NOTE: A PHOTOCOPY OF YOUR ID OR ANY OTHER FORM OF ID IS NOT ACCEPTABLE. IDENTIFICATION IS SUBJECT TO VERIFICATION.

cc: , Esq.
File–A0

Revised 02/01/06

Key Asylum Confidentiality Caselaw

(courtesy of George Martin, APLD)

- *Anim v. Mukasey*, 535 F.3d 243 (4th Cir. 2008) (finding overseas asylum fraud investigation of police summonses against a political opponent violated 8 C.F.R. § 1208.6 because: 1) although alien had *orally* agreed to the investigation, a written waiver was required; 2) the USG report of investigation failed to comply with 2001 INS memo specifying, e.g., how the inquiry was made to the foreign govt. official, what the inquiry entailed, and whether USG investigator was aware of 1208.6; 3) the disclosure of police summonses related to opposition political activity by the USG made clear that the alien was in contact with the USG information, giving rise to a "reasonable inference" that the alien was seeking asylum in the U.S.; separately finding the investigative report to be of no evidentiary value because it was based on multiple hearsay statements)

- *Corovic v. Mukasey*, 519 F.3d 90 (2d Cir. 2008) (finding that USG overseas inquiry to foreign government about authenticity of official document resulted in foreign government becoming aware of alien's name, his contact with USG, and fact that USG possessed document noting his imprisonment for political activism; applying *Zhen Nan Lin*, *infra*, to find 8 C.F.R § 1208.6 violation, and remanding to BIA to consider whether breach gave rise to new risk of persecution)

- *Averianova v. Mukasey*, 509 F.3d 890 (8th Cir. 2007) (distinguishing *Zhen Nan Lin*, *infra*, finding no 8 C.F.R. § 1208.6 violation where USG did not provide documents to foreign government, but simply requested alien's birth records; noting even if "disclosures" made by providing alien's name and birth date, and inquiring about ethnicity, no reasonable inference of asylum application was thereby raised; ethnicity is common vital statistic referenced in many official documents and thus do not necessarily imply alien is seeking asylum)

- *Abdel-Rahman v. Gonzales*, 493 F.3d 444 (4th Cir. 2007) (finding that even though USG improperly disclosed military deserter's status as asylum applicant to foreign government in violation of 8 C.F.R. § 1208.6, such does not necessarily render alien eligible for asylum and distinguishing *Zhen Nan Lin*, *infra*, on grounds that BIA already considered violation and determined that it gave rise to new persecution claim; observing foreign government had expressed interest in alien well before USG's improper disclosure, and that foreign government had tracked alien closely in U.S. and was seeking his return, prior to both his asylum application and its disclosure)

- *Hosseini v. Gonzales*, 471 F.3d 953 (9th Cir. 2006) (holding Iranian established eligibility for CAT deferral where, *inter alia*, Iranian officials would be able to identify his involvement with dissident group based on immigration court documents the court mistakenly believed he was required to submit as part of travel document process; noting while USG precluded from disclosing asylum related information under 8 C.F.R. § 1208.6, regulation "does not impede Iran's actions")

- *Zhen Nan Lin v. U.S. Dep't of Justice*, 459 F.3d 255 (2d Cir. 2006) (finding that submission of official document to foreign government for authentication, which linked alien to "conspiracy of anti-revolution," gave rise to reasonable inference of asylum application, constituting a breach of 8 C.F.R. § 1208.6; noting that when document indicates foreign government has violated human rights, that government's "opinion" regarding authenticity is suspect; remanding case to BIA to evaluate new, independent risk of persecution based on breach; and, finally, expressing "no opinion" whether USG employee who breached confidentiality should be disciplined, but noting that breach could be "firing offense")

- *Ghasemimehr v. Gonzales*, 427 F.3d 1160 (8th Cir. 2005) (noting it would not be unreasonable for foreign government to have deduced alien had applied for asylum where USG forwarded redacted IJ minute order deleting check mark and words "granted/denied/withdrawn" from bullet dealing with asylum, but nevertheless denying alien's petition for review, finding alien had presented no evidence of foreign government reaction to altered IJ minute order and even if it had deduced he was asylum applicant, alien showed no potential harm from alleged disclosure)

ASYLUM/WITHHOLDING OF REMOVAL CHECK-LIST

Randa Zagzoug
Deputy Chief Counsel
United States Immigration and Customs Enforcement
New York Office of the Chief Counsel[1]

ASYLUM

I. WHAT IS ASYLUM?

(b)(2)High, (b)(5)

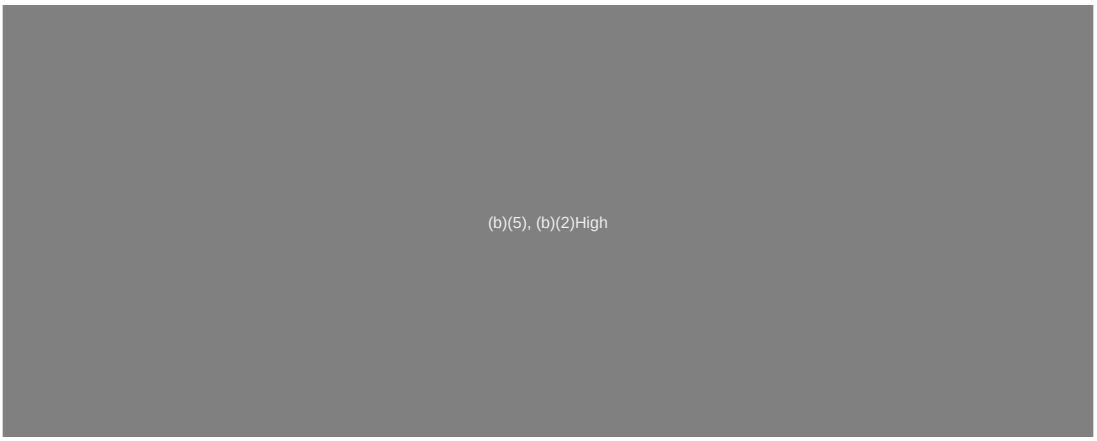
II. WHAT KIND OF ASYLUM CASE IS IT?

(b)(2)High, (b)(5)

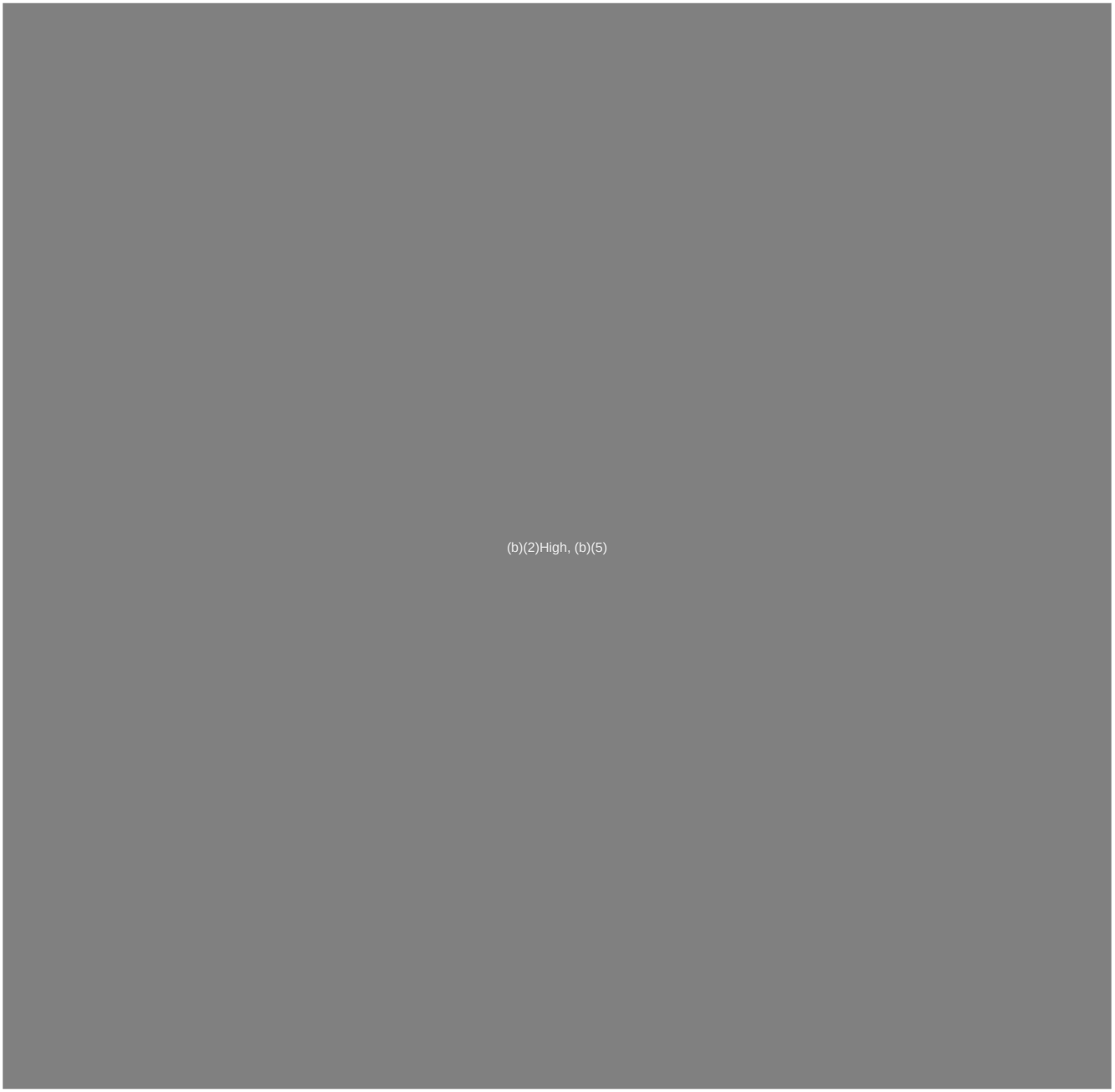
(b)(2)High, (b)(5)

III. WAS THE QUALITY OF THE EVIDENCE ADEQUATE?

(b)(2)High, (b)(5)



IV. DID SUBSTANCE OF EVIDENCE PROVE EACH ELEMENT OF ASYLUM?



(b)(2)High, (b)(5)

(b)(2)High, (b)(5)

(b)(2)High, (b)(5)

V. IS APPLICANT DISQUALIFIED FROM RECEIVING ASYLUM BECAUSE OF A STATUTORY BAR?

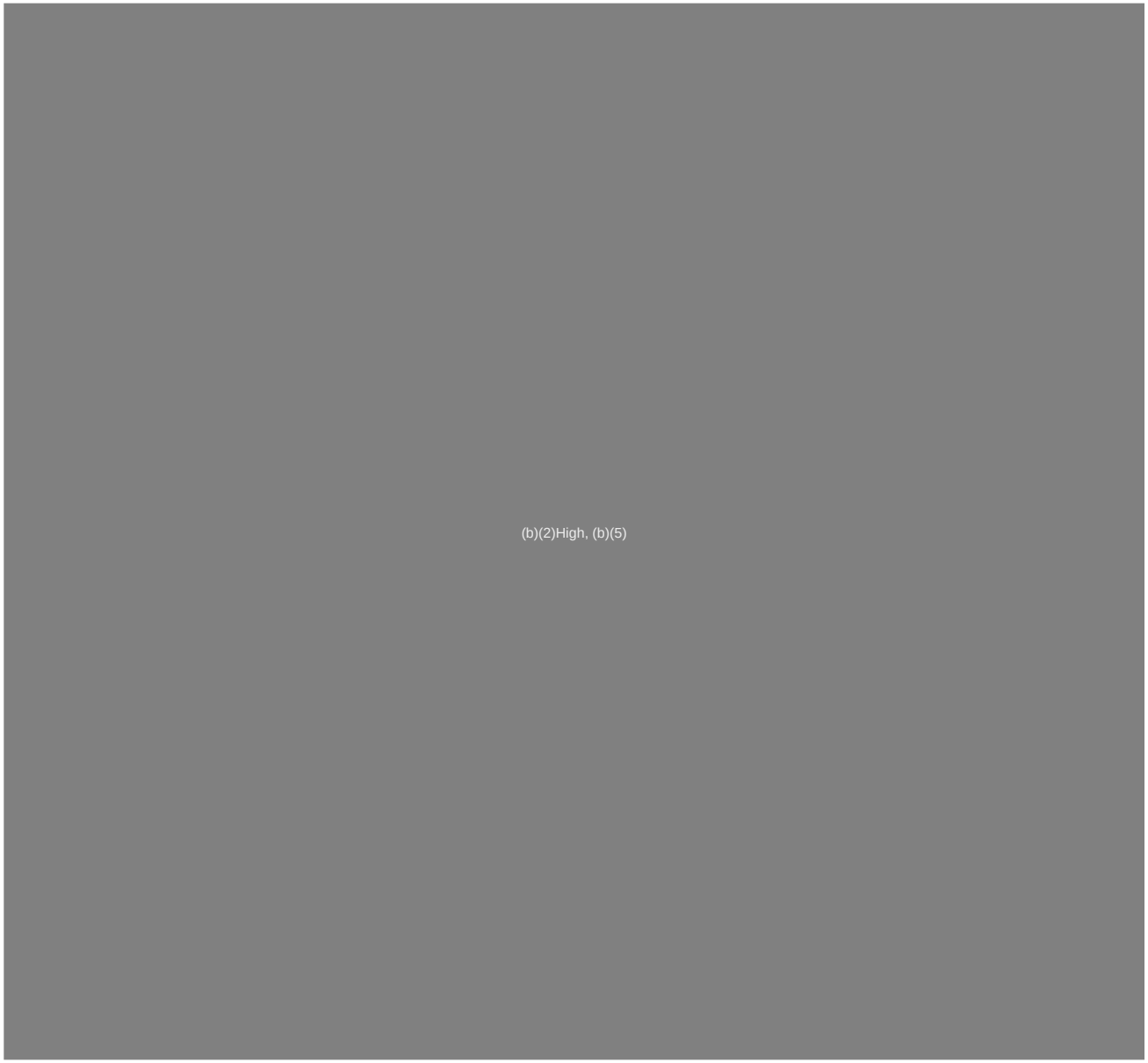
(b)(2)High, (b)(5)

VI. IS APPLICANT UNDESERVING OF ASYLUM AS A MATTER OF DISCRETION?

(b)(2)High, (b)(5)

WITHHOLDING

I. WHAT IS WITHHOLDING OF REMOVAL?



Asylum and Withholding of Removal
Leonard A. Rosenberg, San Francisco Deputy Chief Counsel

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ncisco Asylum Folder

(b)(2)High

ASYLUM CONFIDENTIALITY ADVISAL

(provided by ICE's Appellate and Protection Law Division)

- The law unequivocally prohibits the disclosure of asylum-related information to unauthorized parties. *See* 8 C.F.R. §§ 208.6, 1208.6.

- Protected information includes information contained in or pertaining to applications for asylum (INA § 208), refugee status (INA § 207), withholding of removal (INA § 241(b)(3)), credible fear interviews (INA § 235(b)), and requests for protection under the Convention Against Torture (CAT). It includes any other information that might lead to a "reasonable inference" that an alien has made such an application.

- Private individuals and foreign governments will always be unauthorized parties; no disclosures may be made to them under any circumstances. Unauthorized parties may also include international organizations (e.g., INTERPOL), state and local law enforcement agencies, and even, in certain situations, other federal agencies.

- When making any authorized disclosure, include this advisal, or otherwise be certain to convey the information contained herein.

- If you have any questions about this advisal, contact either local ICE Chief Counsel or ICE OPLA's Appellate and Protection Law Division.

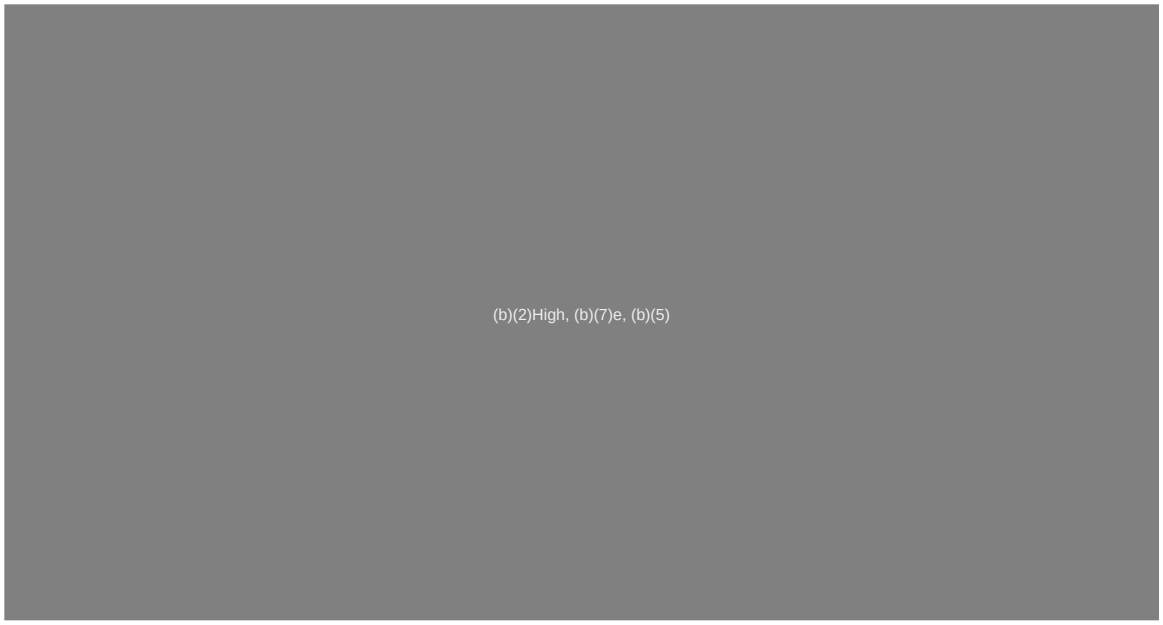
This advisal is intended to provide only the most general guidance. It is not to be disseminated outside of the U.S. Government. It does not create any enforceable legal right or private right of action.

ADJUSTMENT OF STATUS CHECKLIST (for section 245 adjustments)

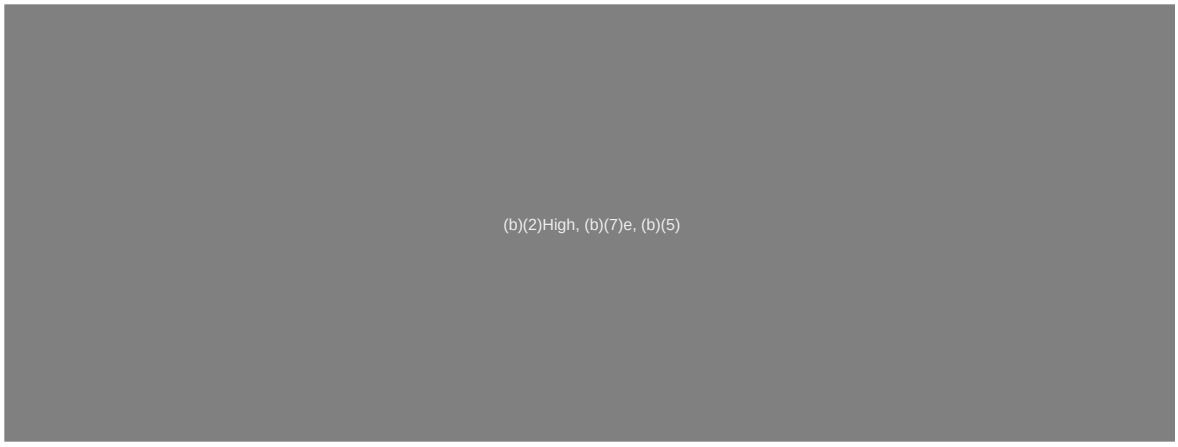
1. Alien inspected and admitted or paroled (245(a))

2. Alien makes application for adjustment (I-485) (245(a))

3. Alien has an immediately available immigrant visa (245(a))



4. Statutory bars



(b)(2)High, (b)(7)e, (b)(5)

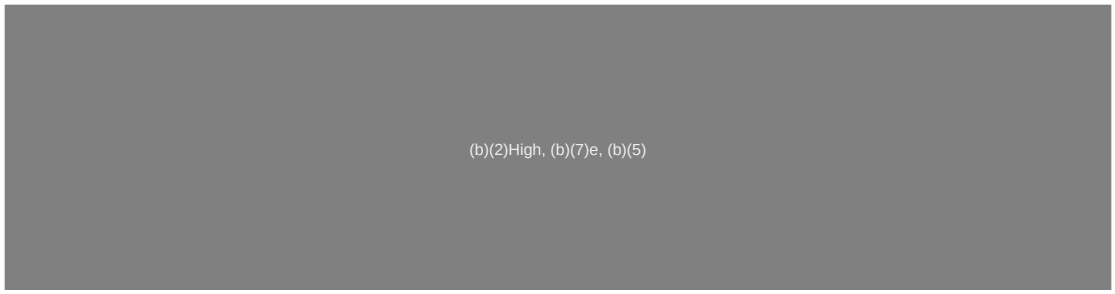
5. Alien is admissible (245(a))

(b)(2)High, (b)(7)e, (b)(5)

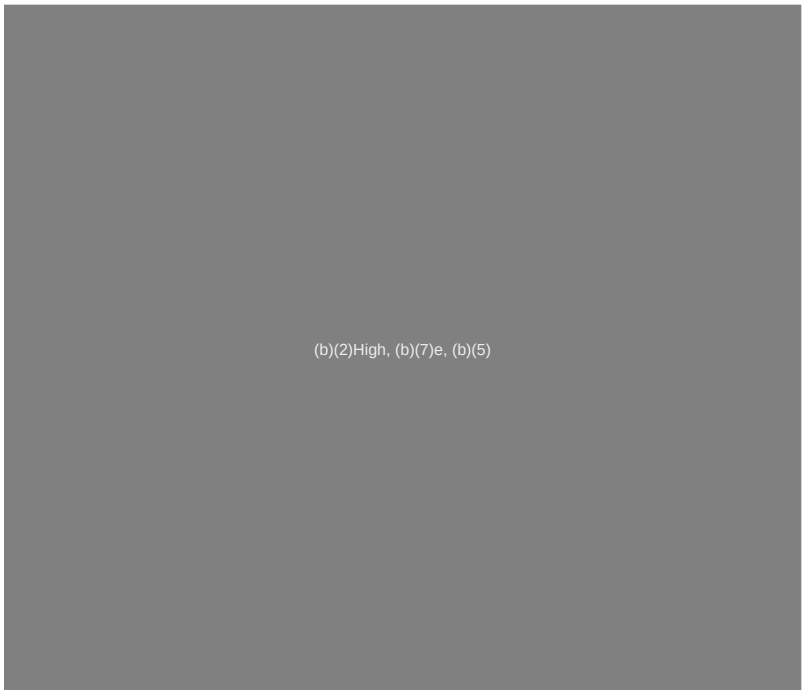
☐

(b)(2)High, (b)(7)e, (b)(5)

6. Discretion (245(a) -- the AG "may")



7. DV cases



Philip J. Costa, DCC
Elizabeth Gross, ACC
January 19, 2007

SPECIAL RULE CANCELLATION OF REMOVAL PURSUANT TO SECTION 203 OF NACARA

I. PURPOSE

- To provide discretionary relief in the form of lawful permanent resident status to Salvadorans, Guatemalans, and nationals of former Soviet bloc countries who also satisfy other statutory requirements with regard to continuous physical presence, good moral character, and hardship.

References: INA § 101(a)(43); INA § 212(a)(2); INA § 237(a)(2); INA § 237(a)(3); INA § 237(a)(4); INA § 240(b)(7); INA § 240A(c); INA § 240B(d); INA § 241(b)(3)(B)(I); 8 C.F.R. § 1240.60; 8 C.F.R. § 1240.61; 8 C.F.R. § 1240.66; § 203 of NACARA

II. PROCESS

- **An applicant must establish**:

  a) That he is described in 8 C.F.R. § 1240.61 as an alien eligible to apply for this relief;

  b) That he is not inadmissible for a criminal-related offense or security-related offense, or deportable for a criminal-related offense, security-related offense, document fraud, or failure to register;

  c) That the alien has been physically present in the United States for a continuous period of seven years immediately preceding the filing of the application;

  d) That the alien has been a person of good moral character during the required period of continuous physical presence;

  e) That the alien's removal would result in extreme hardship to the alien, or to the alien's spouse, parent, or child who is a United States citizen or an alien lawfully admitted for permanent residence;

  f) That the alien has not been convicted of an aggravated felony;

  g) That the alien has not ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race,

religion, nationality, membership in a particular social group, or political opinion (as described in INA § 241(b)(3)(B)(i)); and

h) That the alien does not have an outstanding final order of deportation or removal.

- **Separate requirements based on nationality**:

  - **If the applicant is Salvadoran**, he must also establish that he first entered the United States on or before September 19, 1990 without being apprehended after entry after December 19, 1990 or that he filed an application for asylum before April 1, 1990, and that he registered for either temporary protected status or as a class member in the settlement in American Baptist Churches v. Thornburgh before October 31, 1991. Hardship is presumed but can be rebutted by the Department if it is shown that it is more likely than not that neither the applicant nor a qualified relative would suffer extreme hardship if the applicant were removed from the United States.

  - **If the applicant is Guatemalan**, he must also establish that he first entered the United States on or before October 1, 1990 without being apprehended after entry after December 19, 1990 or that he filed an application for asylum before April 1, 1990, and that he registered as a class member in the settlement in American Baptist Churches v. Thornburgh before December 31, 1991. Hardship is presumed but can be rebutted by the Department if it is shown that it is more likely than not that neither the applicant nor a qualified relative would suffer extreme hardship if the applicant were removed from the United States.

  - **If the applicant is from a former Soviet bloc nation**, he must also establish that he first entered the United States on or before December 31, 1990 without being apprehended after entry after December 19, 1990, and filed an application for asylum on or before December 31, 1991.

- **Other factors related to eligibility**:

  - If the alien is inadmissible or deportable based on a criminal or security-related ground, the alien must establish that he has been physically present in the United States for a continuous period of ten years immediately following the commission of an act, or the assumption of a status constituting a ground for removal.

  - The spouse or unmarried child of an alien described in 8 C.F.R. § 1240.61 may also be eligible if the spouse or parent has pending application or they

have been granted status; if the unmarried child is over 21 years old, then need to establish date of entry as required by statute.

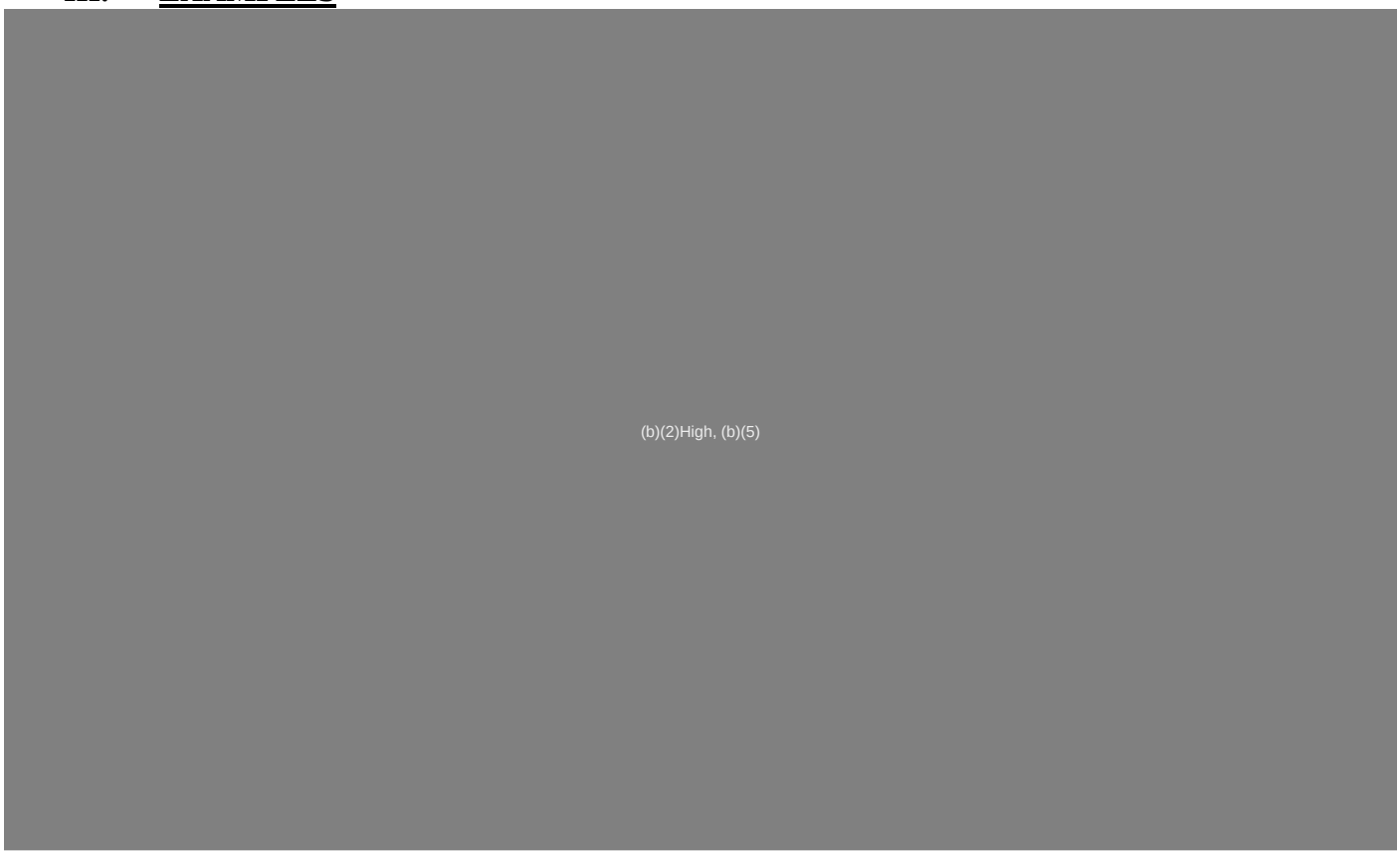
- **Continuous physical presence**:

  - Continuous physical presence may be cut off if the alien has departed from the United States for a period in excess of 90 days or for any periods in the aggregate of 180 days. Any period less than 90 days must be shown to be casual and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States.

  - Continuous physical presence is terminated when the alien is removed from the United States under an order of removal, or the alien voluntarily departs under the threat of deportation, or when the departure is made for the purpose of committing an unlawful act.

  - Service of the charging document or the commission of a criminal offense referred to in INA § 212(a)(2) that renders the alien inadmissible for a criminal-related offense pursuant to INA § 212(a)(2) or deportable for a criminal-related offense pursuant to INA § 237(a)(2) or security-related offense pursuant to INA § 237(a)(4) does *not* cut-off the period of continuous physical presence.

III. EXAMPLES



CANCELLATION OF REMOVAL FOR BATTERED SPOUSE OR CHILD

I. PURPOSE

- To provide discretionary relief in the form of lawful permanent resident status to an alien who is the spouse or child of a United States citizen or lawful permanent resident, and the alien was battered or subject to extreme cruelty by the United States citizen or lawful permanent resident spouse or parent.

References: INA § 101(a)(43); INA § 101(f); INA § 212(a)(2); INA § 212(a)(3); INA § 237(a)(1)(G); INA § 237(2); INA § 237(3); INA § 237(4); INA § 240A(b)(2); INA § 240A(b)(5); INA § 240A(d)

II. PROCESS

- **An applicant must establish**:

  a) Battered or subject to extreme cruelty by a spouse or parent who is or was a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty by the citizen or permanent resident parent);

  Or

  Battered or subject to extreme cruelty by a United States citizen or lawful permanent resident who the alien intended to marry but whose marriage is not legitimate because of that citizen's or permanent resident's bigamy;

  b) Physical presence in the United States for a continuous period of not less than three (3) years immediately preceding the date of such application (*the issuance of a charging document shall not toll the three year period*);

  c) Good moral character during the period of physical presence;

  d) Not rendered inadmissible or removable for a criminal-related ground, security-related ground, marriage fraud, failure to properly register, or document fraud (subject to the application of a domestic violence waiver), and not convicted of an aggravated felony; and

  e) Removal would result in extreme hardship to the alien, the alien's child, or the alien's parent.

Jeffrey E. Blivaiss
Assistant Chief Counsel, DHS/ICE
New York District

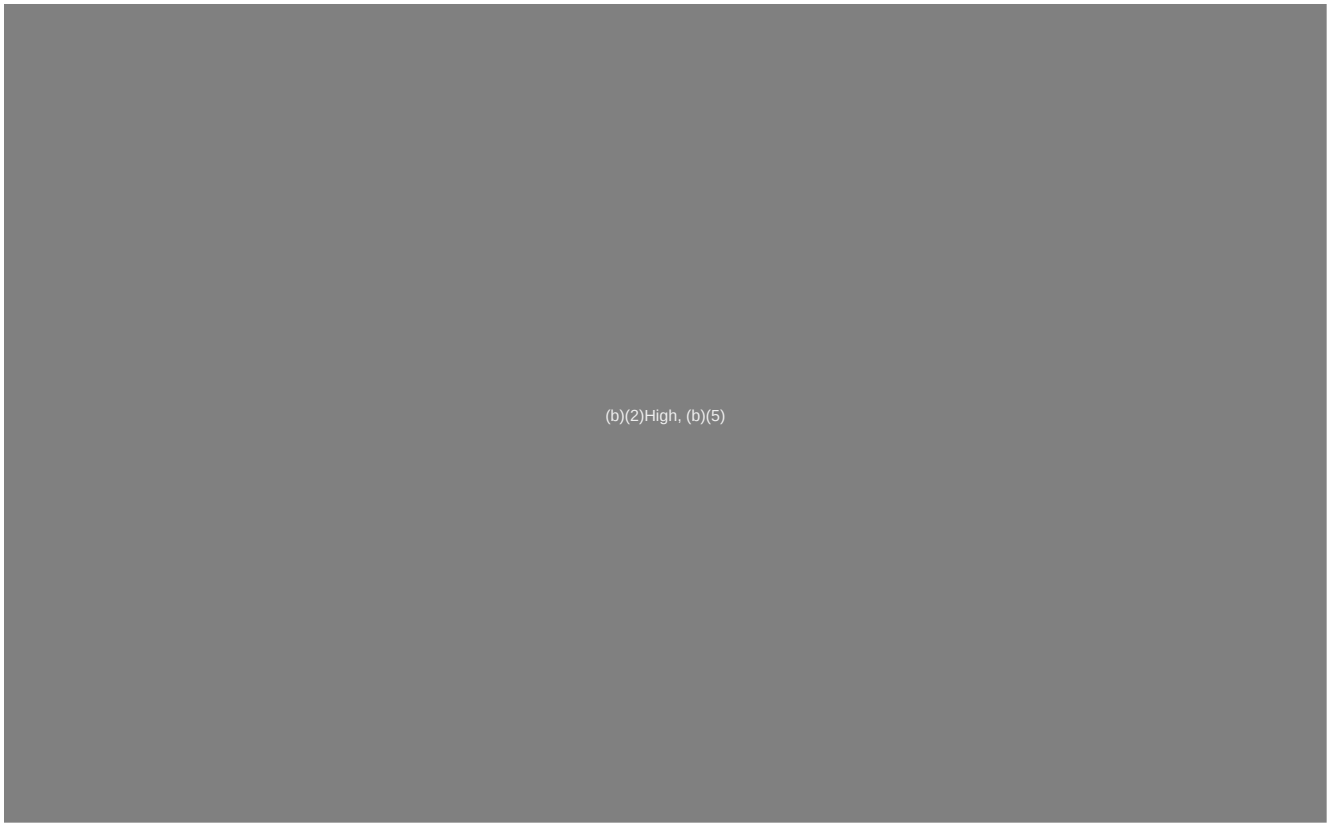
- Bars to an applicant seeking non-lawful permanent resident cancellation of removal pursuant to INA § 240A(b)(1) *do not* apply for an applicant seeking relief under INA § 240A(b)(2).

- Service of the Notice to Appear *does not* cut off the period of continuous physical presence, but continuous physical presence is cut off when the alien has committed a criminal-related offense referred to in INA § 212(a)(2) that renders the alien inadmissible for a criminal-related ground or removable for a criminal-related ground or security-related grounds (INA § 240A(d)).

- Continuous physical presence is not cut off by reason of an absence *if* the alien establishes a connection between the absence and the battering or extreme cruelty perpetrated against the alien.

- An act or conviction that does not bar eligibility for this relief does not bar a finding of good moral character if it is found that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

III. EXAMPLES



ALTERNATE METHODS OF REMOVAL

ADMINISTRATIVE REMOVAL * INA §238
EXPEDITED REMOVAL * INA §235
REINSTATEMENT * INA §241(A)(5)
STIPULATED REMOVAL * INA §240(D)
VISA WAIVER * INA §217

ADMINISTRATIVE REMOVAL - INA §238

I. PURPOSE

Removal without an in-person hearing before an immigration judge (IJ) for certain criminal aliens who are not otherwise entitled to relief from removal. Applies only to aliens with final conviction for an aggravated felony. Aliens cannot be an LPR. Entry can be either lawful or unlawful. Only relief is withholding of removal via asylum office credible fear interview.

Reference: INA § 238; 8 CFR Part 238; *See* Administrative Removal Manual (M-430)

II. PROCESS

- Officer the paperwork and submits for attorney review after service on the alien and obtaining the alien's signature on appropriate forms.

- Attorney review consists of verifying that

  a) The I-213 contains sufficient information to support administrative removal

     1) Identity (name and date of birth).

     2) Alien is not a lawful permanent resident.

     3) Date, place and manner of entry.

     4) DHS advised alien of consular communication privileges.

     5) DHS gave alien list of free legal services.

     6) Alien stated whether any immigration petitions are pending or approved to benefit the alien.

     7) Alien stated whether or not he has a fear of returning.

     8) Alien does not appear to be eligible for a waiver under section 212(h).

  b) The conviction documents contain

     1) Same name and date of birth as alien in administrative removal proceedings.

2) In the event of a drug crime, the type of drug charged (i.e., the drug in a state conviction is contained in one of the Federal controlled substances schedules).

3) Conviction for a crime that is an aggravated felony.

4) Sentencing information to support a determination that the crime is an aggravated felony, if sentencing information is required by the subsection of section 101(a)(43) being charged by DHS.

c) The Notice of Intent to Issue a Final Administrative Removal Order, Form I-851, correctly states the

1) Alien's name, alien number, county of nativity, and country of citizenship.

2) Date, place and manner of entry.

3) Alien is not lawfully admitted for permanent residence.

4) Details of the crime which is an aggravated felony that forms the basis for the administrative removal (i.e., date of conviction, court, offense description and statute violated).

5) Appropriate subsection of the aggravated felony definition which corresponds to the crime that is the basis for the administrative removal (i.e., INA section 101(a)(43)(B) for drug trafficking conviction).

6) Alien signed and dated his acknowledgment of receipt of Form I-851.

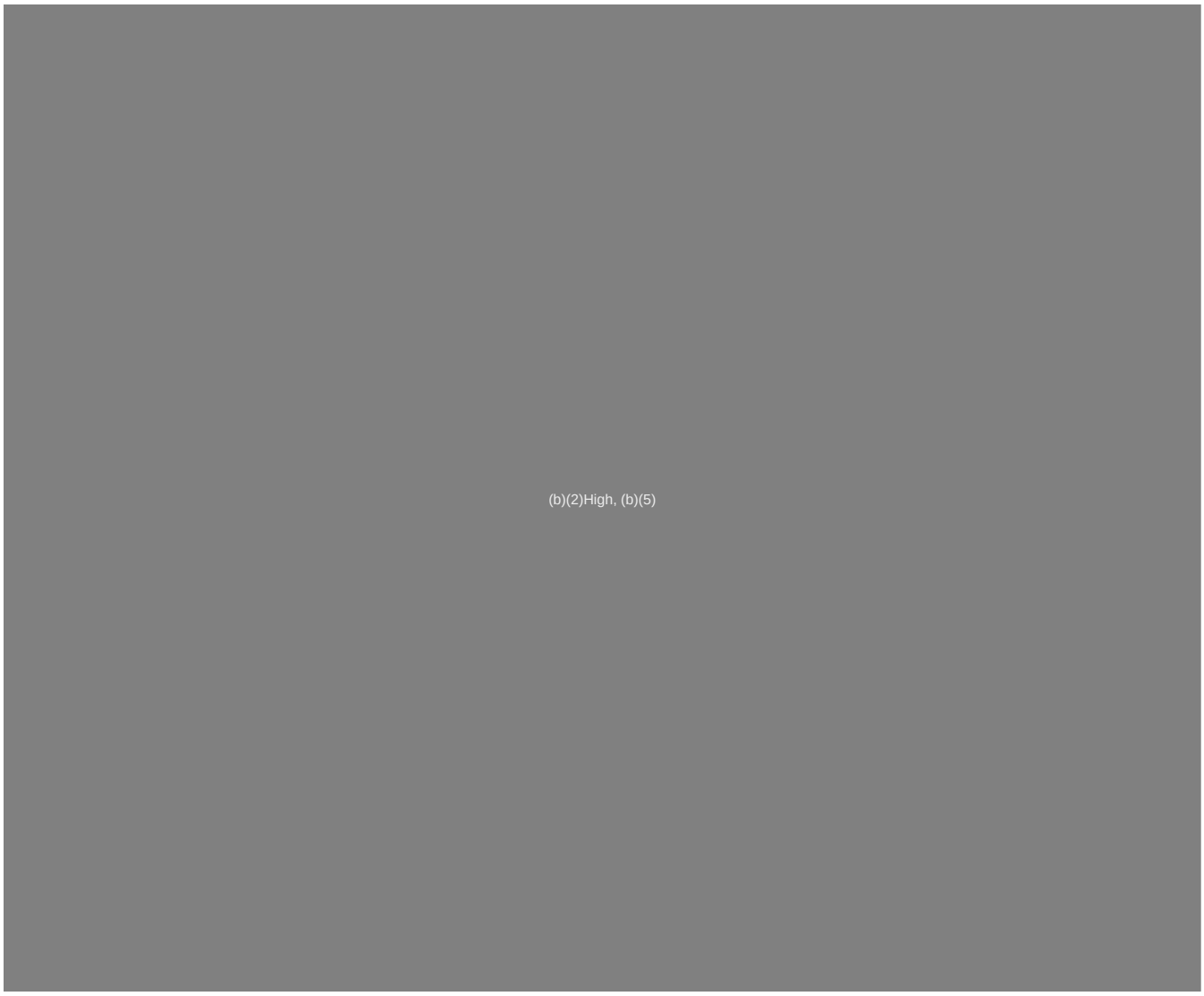
7) Alien checked the box indicating that he does not wish to contest administrative removal proceedings and does not wish to request withholding of removal.

8) Alien checked the box indicating that he admits the allegations, concedes the charge, concedes that he is deportable, acknowledges that he is not eligible for relief from removal, and designates the country of removal.

9) Alien checked the box waiving the right to remain in the United States for 14 calendar days in order to apply for judicial review.

10) Alien signed and dated the Form I-851.

- Attorney must record any legal action taken in GEMS.



EXPEDITED REMOVAL

I. PURPOSE

Port of entry removal without an in-person hearing before an immigration judge (IJ) for inadmissible aliens subject to INA section 212(a)(6)(C) (misrepresentation) or section 212(a)(7) (lack of documents) removal. Not applicable to stowaways or arriving vessels, LPRs, or VWP applicants. Only relief is asylum via asylum office credible fear interview.

Reference: INA § 235(b)(1); 8 CFR 235.3; *See* section 17.15 of M-450.

II. PROCESS

- Officer prepares the paperwork and submits for legal sufficiency review prior to service on alien.

- Attorney review consists of verifying that

  a) The sworn statement

     1) Proves identity.

     2) Proves alienage.

     3) Supports the inadmissibility determination.

     4) Contains a statement that the alien does not fear returning to the home country.

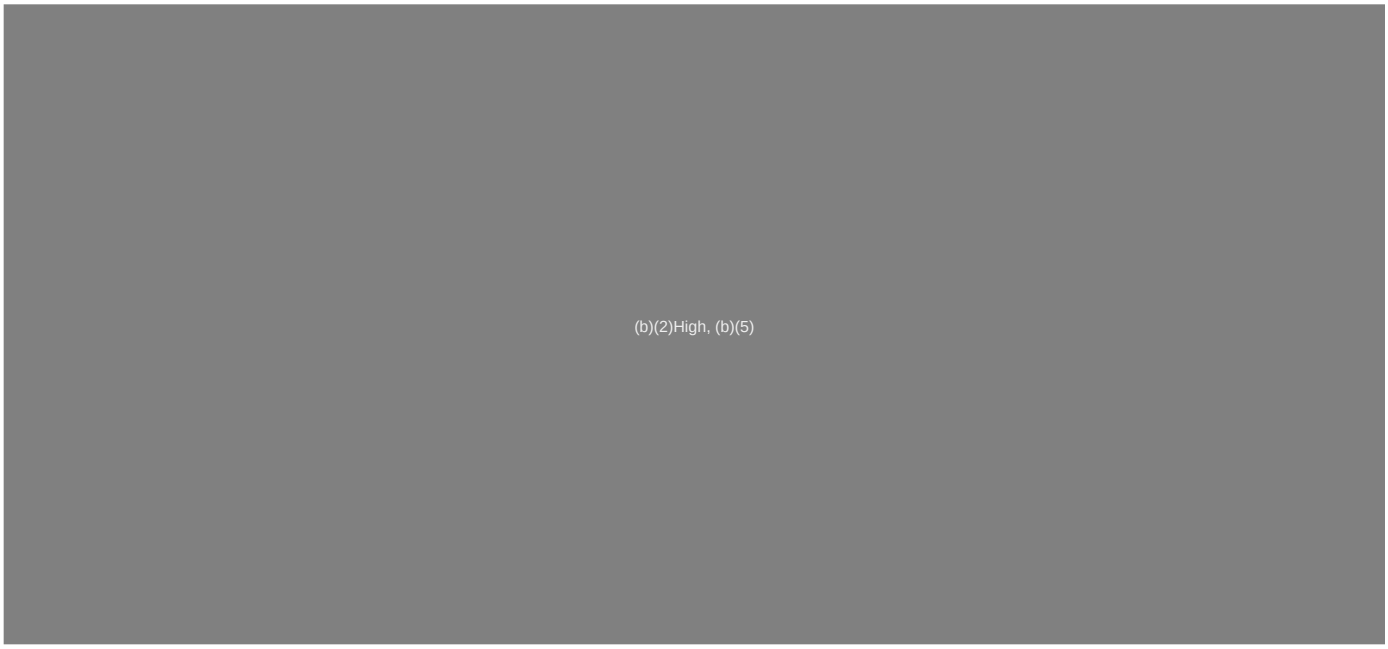
  b) Notice and Order of Expedited Removal, Form I-860, contains

     1) Correct alien name and number.

     2) Appropriate grounds of inadmissibility.

- Attorney must record any legal action taken in GEMS.

III. EXAMPLES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REINSTATEMENT

I. PURPOSE

Reinstates prior removal order without recourse to immigration judge. Applies to aliens who illegally reenter after execution of final order of removal, deportation, or exclusion. Effective date (4/1/1997) refers to date DHS encounters alien, not date of prior removal order. Only relief is withholding of removal via asylum office credible fear interview. Prior expulsion order not judicially reviewable.

Reference: INA § 241(a)(5); 8 CFR section 241.8; *See* section 14.8 of M-489

II. PROCESS

- Officer prepares the paperwork and submits for attorney review after service on the alien and obtaining the alien's signature on appropriate forms.

- Attorney review consists of verifying that

  a) The sworn statement

     1) Proves identity with the alien previously removed.

     2) Proves date, place and manner of unlawful reentry.

     3) Contains admission of prior removal, including date and place from which the alien was removed.

     4) Contains admission that the alien did not obtain permission to reenter the United States after prior removal/deportation/exclusion.

     5) Contains statement that the alien does not have fear of returning. If the alien states that he does have a fear of returning, the sworn statement should contain the details of his fear (usually a fear of economic problems or prosecution for admitted crimes) to determine if the alien should be referred to the asylum office for a credible fear interview.

  b) The prior Order concerns the same person by name and alien number as the alien subject to reinstatement.

  c) The executed Warrant of Removal, Form I-205, concerns the same person by name and alien number as the alien subject to reinstatement.

d) The Notice of Intent/Decision to Reinstate Prior Order, Form I-871, correctly states the

1) Alien's name and alien number.

2) Date and place of the prior Order.

3) Date of the prior removal.

4) Date and place of the unlawful reentry.

- Attorney must record any legal action taken in GEMS.

III. EXAMPLES

STIPULATED REMOVAL

I. PURPOSE

Removal order issued by IJ without necessity of an in-person hearing. Available in removal, deportation, and exclusion proceedings. Alien must be illegal entrant, present in US less than ten years from date of charging document issuance, have no pending applications or any possible eligibility for relief, and wants to participate in stipulated removal. Officer prepares stipulated removal packet for legal review and signature. Packet filed with immigration court having jurisdiction over the alien.

Reference: INA § 240(d); 8 CFR section 1003.25(b).

II. PROCESS

- Attorney review consists of verifying that

  a) The Notice to Appear (NTA) correctly states the

     1) Alien's name and alien number.

     2) Date of entry which is less than ten years from the date of the NTA issuance.

     3) NTA portion entitled "Request for Prompt Hearing" is NOT signed by the alien.

  b) The I-213 reflects that

     1) DHS advised the alien of consular communication privileges.

     2) Alien does not appear to be eligible for a waiver under section 212(h).

  c) The alien's statement/request for stipulated removal[1]

     1) Is in both English and Spanish (if the alien is a Spanish speaker).

     2) Contains the date the NTA was issued, not the date the NTA was served on the alien.

     3) Is signed and dated by the alien.

[1] Because stipulated removal proceedings are before an Immigration Judge, the stipulated removal forms may vary with each court.

d) The DHS response may either be part of a joint stipulated request for an Order, or a separate response. The attorney must review for accuracy, make any corrections, and sign and date the response.

e) The proposed Order of Removal correctly reflects the

1) Charges under which the alien is being removed.

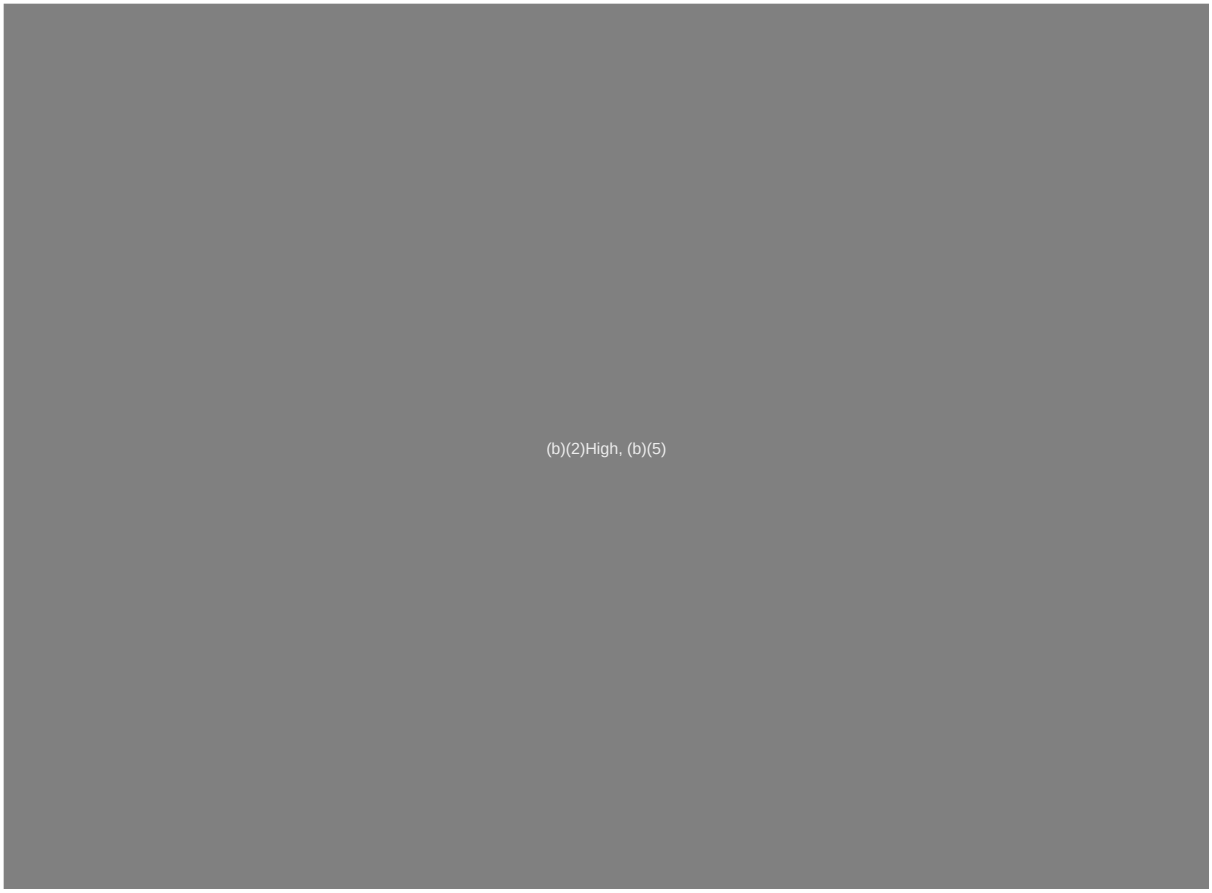
2) NTA issuance date.

- After the attorney completes the legal sufficiency review and signs the appropriate document, the entire stipulated removal packet is delivered to the immigration court for adjudication.

- When the immigration court returns the stipulated removal packet, the Order is processed in the normal manner.

- Attorney must record any legal action taken in GEMS.

III. EXAMPLES



VISA WAIVER PROGRAM (VWP)

I. PURPOSE

Port of entry removal without an in-person hearing before an immigration judge (IJ) for certain nonimmigrant visitors from designated countries who are not required to obtain a visa and who are inadmissible or, after admission under VWP, become deportable. Pursuant to section 237 of the INA and determined by SAC in jurisdiction where alien is found. Relief available is limited to asylum via asylum office credible fear interview and, under certain circumstances, adjustment of status. Functional equivalent to section 240 removal.

Reference: INA § 217; 8 C.F.R Part 217; *See* section 15.7(g) of Inspectors Field Manual (M-450).

II. PROCESS

- Officer prepares paperwork and submits for legal sufficiency review.

- Refused admission at a port of entry due to inadmissibility: officer submits for attorney review prior to service of removal documents under section 217.[2] Attorney review consists of verifying that

  a) The sworn statement

     1) Supports the inadmissibility determination.

     2) Contains a statement that the alien does not fear returning to the home country.

     3) Does not establish facts which clearly demonstrate that an unforeseen emergency prevented the alien from acquiring the appropriate passport or visa, thus qualifying the alien for a waiver under section 212(d)(4)(A) (an alien arriving for a medical emergency; an alien accompanying or following to join a person arriving for a medical emergency; or the alien's passport or visa was lost or stolen within 48 hours of departing the last port of embarkation for the United States). If facts do establish eligibility for the waiver, the attorney should instruct the officer to advise the alien of the right to apply for the waiver, provide the alien with Form 193, Application for Waiver of U.S. Passport and/or Visa,

[2] There are no standardized forms for removal documents under section 217. Some offices use only a letter to notify the alien, consistent with the Immigration Inspector's Manual (M-450), while other offices use a notice of intent to remove, an order of removal, and a warrant of removal, all prepared for use only with removals under section 217. The key is that the alien has had adequate notice of the grounds for removal, as well as an opportunity to express whether he has a fear of returning.

and advise the alien of the nearest office of US CIS where the alien can file the completed Form I-193 with the appropriate fee.

b) The removal documents under section 217 are factually accurate and supported by the sworn statement.

- Admitted and subsequently becomes deportable: Officer submits the removal documents under section 217 for attorney review prior to service on the alien. Attorney review consists of verifying that

a) The Record of Deportable/Inadmissible Alien, Form I-213 (I-213) contains sufficient information to support VWP removal.

1) Identity.

2) VWP entry (date, place, passport and I-94 with WT class of admission noted).

3) Ground(s) of deportability under section 237.

b) The I-213 addresses other necessary information needed prior to seeking an order of removal.

1) DHS advised the alien of consular communication privileges.

2) DHS gave the alien list of free legal services.

3) Alien stated whether any immigration petitions are pending or approved to benefit the alien.

4) Alien stated whether or not he has a fear of returning.

c) If a sworn statement was taken, attorney must review to ensure that contents support the removal documents under section 217, and that the sworn statement does not contain any information to indicate a right to further proceedings (i.e., alien left home country out of fear, indicating that alien should be referred for credible fear interview; alien has married since entry and spouse has petitioned for alien, indicating that alien may be eligible to adjust – *see* 8 C.F.R. § 245.1(b)(7)).

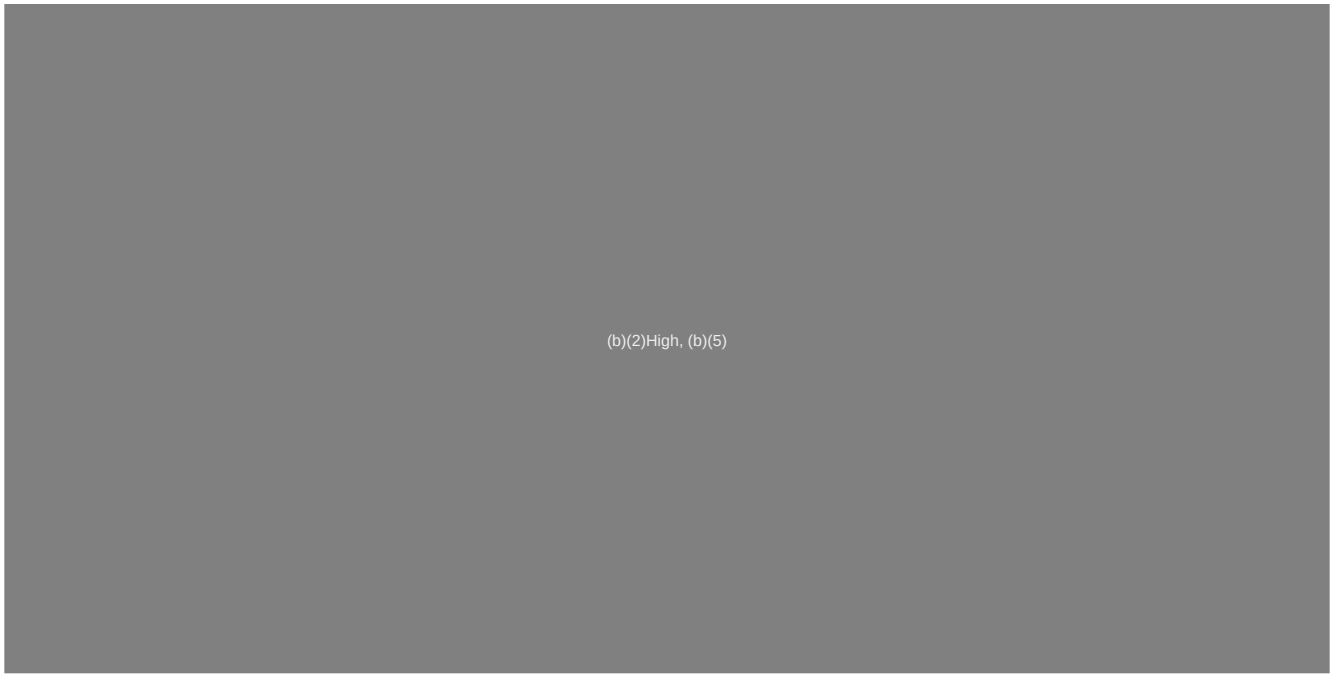
d) Removal documents under section 217 fully advise the alien of the ground(s) of removability, that the alien is removable under the VWP, and that the alien is being removed without a hearing before an immigration judge in accordance with the VWP provisions.

- The officer has prepared the Notice to Alien Ordered Removed/Departure Verification, Form I-296, advising the alien that he is precluded from reentering the United States for a specified period.

- If the alien requests asylum, either at a port of entry or after admission, the officer refers the case to the asylum office for a credible fear interview. If the asylum office issues a Notice of Referral to Immigration Judge, Form I-863, the attorney reviews the I-863 and other documents in the alien's file prior to filing the Form I-863 with the Immigration Court.

- Attorney must record any legal action taken in GEMS.

III. EXAMPLES



ALIEN COMPETENCY

The government may seek to remove an alien who is not legally competent by reason of age (juveniles) or mental condition. However, removal proceedings against individuals who are not competent will involve issues and procedural requirements not normally encountered. Many requirements apply to both juveniles and to those who are mentally incompetent, but there are unique issues and requirements for both. Therefore, this protocol will address juveniles and mental incompetency in separate sections.

The government may also detain an alien with a final removal order beyond the removal period described in section 241 of the INA, 8 U.S.C. § 1231 if it cannot remove the alien and the alien is specially dangerous "[d]ue to a mental condition or personality disorder and behavior associated with that condition or disorder." 8 C.F.R. § 241.14(f)(1)(ii). The final section will address the issues and requirements associated with such a decision to detain an alien beyond the statutory removal period.

I. JUVENILE COMPETENCY ISSUES

A. Constitutional status

1. At common law any person over the age of seven years was considered competent to stand trial for any crime committed. Beginning in the 1890's a movement began to create a Juvenile Court system, the system was to operate on a theory that the State would be substituted for the parents in carrying for the best interests of the child. The goal of the system was rehabilitate rather than to punish a child. The system was labeled as civil rather than criminal. *In re Gault*, 387 U.S. 1 (1967).

2. There is no constitutional duty to treat a person under the age of majority differently in the criminal processes. However, with regard to property interests the law gave special protection to minors. A minor is a person under the full legal age; in other words, a person under a legal disability. Stated otherwise, minority is not an actual condition, which is shed like a cocoon by the child on his or her 18th birthday; a person remains a minor until he or she attains the "age of majority," the law's dividing line between adults and minors, which is drawn by the legislature. Am. Jur. 2nd "Infants" §1.

3. In *Kent v. U.S.*, 383 U.S. 541 (1966) and in *In Re Gault, supra*. the Supreme Court turned away from the view that juveniles were not entitled to the usual due process protections of the criminal law. The Court held that most criminal rights apply to the juvenile court defendant including counsel, notice, a high burden of proof of guilt. In removal proceedings the District Court in *Perez-Funez v. INS*, 619 F. Supp. 656 (C.D. CA 1985) summarized precedent decisions by noting that deportation is a civil proceeding and there is no due

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Assistant Chief Counsels
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process or statutory right to appointed counsel for juveniles. The Supreme Court in *Reno v. Flores*, 507 U.S. 292 (1993) noted that custody determinations were not bound by the "best interests of the child" and that they lacked a fundamental right to be free of all restraint. The Court found that the juvenile's detention asked the same question as that of the adult who is unlawfully present.

4. To date the constitutional law on juvenile rights under the Immigration and Nationality Act (Act) has treated the juvenile alien in the same manner as an adult. The juvenile is entitled to the same due process and opportunities to seek relief including asylum that an adult has.

B. Statutory and regulatory protections

1. Just as many legislatures created juvenile courts to convey different treatment to juvenile criminals the Congress and Attorney General have created certain benefits or protections for the juvenile. Service of the Notice to Appear (NTA) has been restricted under 8 C.F.R. § 103.5a(c) (ii) and 8 C.F.R. § 236.2(a), which require that service on minors under the age of 14 shall be made upon the person the minor resides and whenever possible service shall also be made on the near relative, guardian, committee or friend.

2. At the immigration court hearing the Immigration Judge shall not accept an admission of removability from an unrepresented respondent who is under the age of 18 when the child is not accompanied by an attorney, legal representative, relative, legal guardian, or friend. *See* 8 C.F.R. § 1240.10(c). The Board of Immigration Appeals has held that the Immigration Court can accept a factual admission but cannot accept the concession of removability. *Matter of Amaya-Castro*, 21 I & N Dec. 583 (BIA 1996).

3. "In a removal proceeding, the Service shall assign an attorney to each case within the provisions of § 1240.10(d), and to each case in which an unrepresented respondent is incompetent or is under 18 years of age, and is not accompanied by a guardian, relative, or friend." 8 C.F.R. § 1240.2(b). This provision is best understood in light of the fact that the regulations (as opposed to INS and ICE policy) do not invariably require Service counsel to be present for removal proceedings. Prior to the late 1980s when the INS decided that trial attorneys would appear at all deportation and exclusion hearings, Immigration Judges could, and did, conduct some master calendar hearings (particularly detained) without an INS trial attorney. The regulation does not impose an obligation on, or allow, Service counsel to represent a juvenile in removal proceedings.

3. In *Matter of Gomez-Gomez*, 23 I & N Dec. 522 (BIA 2002) the Board approved the use of the Form I-213 in an in absentia hearing for a minor. The Board noted that there was no indication of Congressional intent to limit

Section 240(b)(5)(A) to adults. The Board encouraged special efforts to assure the reliability of the information in the I-213. *See also Matter of Ponce-Hernandez*, 22 I & N Dec. 784 (BIA 1999).

4. In *Matter of Mejia-Andino*, 23 I & N Dec. 533 (2002) the Board held that the service of the Notice to Appear (NTA) should be with the parent if available in the United States. Further, the Form I-213 should reflect that any other person served under 8 C.F.R. § 236.2(a) and 8 C.F.R. § 103.5a(c)(ii) is the person who is most likely to insure the attendance of a young child.

5. Another special protection for the juvenile is the treatment of the juvenile court adjudications. The Board of Immigration Appeals held, in *Matter of Devision*, 22 I & N Dec. 1362, 1369-70 (BIA 2000), that a finding of juvenile delinquency is not a conviction under §101(a)(48)(A) of the Act. The rationale for this is that the process of the juvenile court is rehabilitative while the adult process is punitive. "[J]uvenile delinquency adjudications are not criminal proceedings, but are adjudications that are civil in nature." *Devison* 22 I & N Dec. at 1366. The proper determination of whether or not an adjudication under a specific ameliorative statute constitutes a conviction will require analysis of the statute and a comparison with the standards set forth in the Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5042. *Devison*, 22 I & N Dec. at 1365-73. The juvenile who has been convicted, within the meaning of § 101(a)(48)(A), in an adult court does not benefit from his minority as the case law follows the forum rather than the age of the alien.

6. A related exception exists for foreign convictions. If the alien would have received treatment within the juvenile system in the United States then the foreign conviction will not result in inadmissibility. *Matter of De La Nues*, 18 I & N Dec. 140 (BIA 1981).

7. As an administrative policy on unaccompanied minors subject to expedited removal, a policy memo from the INS Acting Executive Associate Commissioner, Programs dated August 21, 1997, states that minors will be placed in § 240 removal proceedings. To meet the requirement of section 235(b)(1)(A)(i) for a charge other than those under section 212(a)(6)(C) or 212(a)(7), the NTA should include a charge under section 212(a)(4) (likely to become a public charge).

C. Bond and Detention

1. Because a juvenile is expected to be in the custody of some adult at all times the juvenile is treated differently on bond matters. A minor cannot simply post a bond as an adult would and leave out the front door. The release of juveniles is governed by 8 C.F.R. § 236.3 as well as the usual bond considerations. The Immigration Judge may set a bond, but Immigration and

Customs Enforcement must still approve of the release to a person described in the regulations.

2. Status as a minor is a basis for parole under 8 C.F.R. § 212.5(b)(3).

3. For purposes of detention and release, "A juvenile is defined as an alien under the age of 18 years." 8 C.F.R. § 236.3(a).

II. MENTAL COMPETENCY ISSUES

A. INA § 240 Removal Proceedings:

1. If it is impracticable by reason of an alien's mental incompetency for the alien to be present at the proceeding, the Attorney General shall prescribe safeguards to protect the rights and privileges of the alien. INA § 240(a)(3), 8 U.S.C. § 1229(a).

2. When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the attorney, legal representative, legal guardian, near relative, or friend who was served with copy of the notice to appear shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent. 8 C.F.R. § 240.4 (2003).

3. An Immigration Judge should not accept an admission of removability from an incompetent alien who is not accompanied by an attorney, legal guardian, near relative, or friend. Additionally, the Immigration Judge may not accept an admission of removability from the custodian of the respondent or another officer of the institution in which the respondent is detained. *See* 8 C.F.R. § 1240.10(c).

4. The regulations set out special protections for mentally incompetent aliens. The fact that such safeguards are prescribed demonstrates that mental incompetency does not except an alien from the conduct of removal proceedings. Both INA §240(b)(3) and 8 C.F.R. §240.4 authorize removal hearings to take place even if an alien is mentally incompetent. A mentally incompetent alien may be removed from the United States. *See Salim v. Reno*, 2000WL 33115910 (E.D.Pa.) (alien found "guilty but mentally ill," had been convicted under INA).

5. "In a removal proceeding, the Service shall assign an attorney to each case within the provisions of § 1240.10(d), and to each case in which an unrepresented respondent is incompetent or is under 18 years of age, and is not accompanied by a guardian, relative, or friend." 8 C.F.R. § 1240.2(b). This provision is best understood in light of the fact that the regulations (as

opposed to INS and ICE policy) do not invariably require Service counsel to be present for removal proceedings. Prior to the late 1980s when the INS decided that trial attorneys would appear at all deportation and exclusion hearings, Immigration Judges could, and did, conduct some master calendar hearings (particularly detained) without an INS trial attorney. The regulation does not impose an obligation on, or allow, Service counsel to represent a mentally incompetent alien in removal proceedings.

B. INA §212 Grounds of Inadmissibility:

1. Forms of mental incompetence are grounds to bar admission to the United States. *See* INA § 212(a)(1)(A)(iii), 8 U.S.C. § 1182(a)(1)(A)(iii).

2. Congress further made any accompanying alien inadmissible under INA § 212(a)(10)(B), 8 U.S.C. § 1182(a)(10)(B).

C. 8 C.F.R. § 103.5a Service of Notification, Decisions, and other Papers by the Service:

1. 8 C.F.R. § 103.5a(c)(2)(i) Persons confined.

If a person is confined in a penal or mental institution or hospital and is competent to understand the nature of the proceedings initiated against him, service shall be made both upon him and upon the person in charge of the institution or the hospital. If the confined person is not competent to understand, service shall be made only on the person in charge of the institution or hospital in which he is confined, such service being deemed service on the confined person.

2. 8 C.F.R. §103.5a(c)(2)(i)(ii) Incompetents and minors.

In the case of mental incompetency, whether or not confined in an institution, and in the case of a minor under 14 years of age, service shall be made upon the person with whom the incompetent or the minor resides; whenever possible, service shall be also be made on the near relative, guardian, committee, or friend.

C. Relief:

1. Asylum:

a. *Raffington, v. INS*, 340 F.3d 720 (8th Cir. 2003), the court found the alien failed to demonstrate that she had a well-founded fear of persecution based upon her mental disability, as required for reopening of deportation proceedings to assert an asylum claim.

b. In *Nelson v. INS*, 232 F.3d 258 (1st Cir. 2000), the court addressed the issue of incompetence regarding an asylum claim. The court stated:

> i. Violation of Due Process
>
> We first examine Nelson's claim that the Immigration Judge effectively denied her statutory rights to counsel and a full and fair hearing, and thus violated her Fifth Amendment right to due process. Because deportation is a civil proceeding, rather than a criminal one, the Sixth Amendment does not create a right to government-provided counsel for prospective deportees. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038-39, 104 S.Ct. 3479, 82 L.Ed. 2d 778 (1984). However, an alien is afforded the right to counsel at his own expense. *See, e.g. Rios-Berrios v. INS*, 776 F.2d 859, 862 (9th Cir. 1985).
>
> 232 F.3d at 261.
>
> ii. Mental Incompetence
>
> Nelson suggests that the Immigration Judge's failure to account for her mental incompetence by requesting custodian or other party to appear on her behalf was a violation of her right to due process. The INS has specifically provided for custodial or other representation of incompetent aliens in Regulation 240.4. [FN3] Nelson claims that her March 17, 1997, statement that her "memory …is bad," that she "forget[s] things and …get[s] pain," and thus that she was "not capable of defending [her]self" was a statement of mental incompetency; and as such, that the Immigration Judge was required to request a representative for her. However, Regulation 240.4 is not applicable to this case, simply because Nelson's health-related complaints do not rise to the level of mental incompetence contemplated by Regulation 240.4.
>
> . . . .
>
> FN3. Regulation 240.4 allows a representative to appear on alien's behalf "[w]hen it is impracticable for the respondent to be present at the hearing because of mental incompetency." When no representative appears, "the custodian of the respondent shall be requested to appear").
>
> 232 F.3d at 261-62 & n.3.
>
> iii. Suspension of Deportation
>
> A. In *Nee Hao Wong v. INS*, 550 F.2d 521 (9th Cir. 1977), the procedure specified in 8 C.F.R. § 241.11 (1976) (substantially identical to the present 8 C.F.R. 1240.4) was used to deport an institutionalized alien and upheld in the court of appeals.

i. The Court held that due process does not require that deportation proceedings be postponed until the alien is competent to participate intelligently. Wong was an unmarried citizen of China who had been admitted as a non-immigrant student, and who had been hospitalized for mental disturbance. He was represented by counsel, and accompanied by his state appointed conservator, who testified on his behalf. 550 F.2d at 523.

ii. The Court also found that the IJ did not abuse discretion in denying suspension of deportation, despite Wong's showing of the requisite hardship and residence. 550 F.2d at 524.

III. ISSUES IN POST-ORDER CUSTODY REVIEW (POCR)

A. Reason for Post-Order Custody Review

1. In interpreting the post-final order detention provision at INA § 241(a)(6), a five-to-four majority of the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), held that an alien can be detained for no longer than a six-month period to effect removal, unless there exist "certain special and 'narrow' nonpunitive 'circumstances' … where a special justification, such as a harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." Id., at 689-90. Specifically, protecting the community from danger was one such justification that did not necessarily diminish over time and that could warrant potentially indefinite detention. See id., at 691.

2. As noted by the Attorney General, "the Supreme Court indicated that there may be cases involving 'special circumstances,' such as terrorists or other especially dangerous individuals, in which continued detention may be appropriate even if removal is unlikely in the reasonably foreseeable future." 66 Fed. Reg. 38433 (July 24, 2001). In such cases of preventative detention, the Supreme Court explained that in addition to the dangerousness rationale, some other special circumstance, such as mental illness, must exist to justify detention. See *Zadvydas v. Davis*, 533 U.S. at 689-90.

B. Regulations for Post-Order Custody Review

1. After Zadvydas, the Attorney General directed the Acting Commissioner of the Immigration and Naturalization Service, in consultation with the Executive Office for Immigration Review, to promulgate regulations for the release or continued

custody of aliens ordered removed from the United States who cannot be removed. 66 Fed. Reg. 38433 (July 24, 2001).

2. INS and EOIR, exercising delegated authority of the Attorney General, promulgated the regulations at 8 C.F.R. §§ 241.13-241.14. 66 Fed. Reg. 56967 (Nov. 14, 2001). Identical provisions are also found at 8 C.F.R. §§ 1241.13-1241.14.

3. This process permits the continued detention of a removable alien on account of the special danger he may pose due to a mental condition or personality disorder and for which no conditions of release can reasonably be expected to ensure the public's safety, even though the alien's removal may be unlikely in the reasonably foreseeable future. See 8 C.F.R. § 241.14(f), (j): 66 Fed. Reg. 56972 (Nov. 14, 2001); see generally Zadvydas v. Davis, 533 U.S. at 691-92.

C. Mechanism for Post-Order Custody Review

1. ICE initiates post-order custody review (POCR) by filing a Notice of Referral to the Immigration Judge (Form I-863) with attached documentary evidence.

2. The Immigration Court holds a reasonable cause hearing to determine whether sufficient evidence exists to proceed to a merits hearing. Procedural and legal issues that may arise include, but are probably not limited to:

    a. Issue as to whether alien is represented by counsel at government expense.

    b. Issue as to whether to present witnesses at the reasonable cause stage.

3. If the Immigration Court finds reasonable cause to proceed, the court holds a merits hearing to determine whether to allow the continued detention of the alien.

    a. The Government bears the burden of proving that the alien has committed a crime of violence, poses a danger because of a mental disorder, and cannot be released on any conditions that would assure the safety of the public. See 8 C.F.R. § 241.14(h)(2), (i)(1).
    b. Board and Art. III precedent regarding POCR hearings is almost non-existent. Issues that may arise include, but are not limited to:

        i. Issue as to whether the psychiatrist retained by the Public Health Service is professionally competent. (This issue may be resolved when ICE begins to use a contract psychiatrist at Columbia Care Center in South Carolina.)

ii. Issue as to whether the psychiatrist advised the alien that his statements are not protected by the psychotherapist-patient privilege.

iii. Issue as to whether the psychiatrist and the alien understood each other or whether the psychiatrist used a competent interpreter.

iv. Issue when the defense presents contrary expert witness(es).

v. Issue as to whether POCR proceedings can be held in the absence of the alien because of his disruptions, uncooperativeness, or obvious mental instability.

c. Issue as to what witnesses to call (e.g., police officers, victims, other mental health experts).

d. Issue as to what conditions of release to consider (e.g., electronic monitoring, half-way house, probation, civil commitment).

e. Issue as to where alien is to be detained during the POCR proceedings.

4. The alien may file a preceding or concurrent habeas corpus petition in federal court challenging the POCR regulations and his continued detention while in POCR proceedings citing one or more issues.

a. Issue as to the constitutionality of the regulations.

b. Issue as to coordination with U.S. Attorneys' Office and the Office of Immigration Litigation.

c. Issue as to how much evidence to file in federal court.

d. Issue as to coordination with state authorities on probation violations or civil commitment.

AMERICAN BAPTIST CHURCHES
& TEMPORARY PROTECTED STATUS

V. American Baptist Churches v. Thornburgh 760 F. Supp. 796 (N.D. Cal. 1991. (ABC)

A. Settlement Agreement: An eligible class member who registers for benefits and applies for asylum by the agreed-upon dates is entitled to an initial or de novo asylum interview and adjudications.

Eligibility Requirements:[1]

1. be a class member;
2. have registered for ABC benefits by the requisite date;
3. have applied for asylum by the requisite date;
4. not have been convicted of an aggravated felony; and
5. not have been apprehended at entry after December 19, 1990.

Class members:

1. All Salvadorans physically present in the United States on or before September 19, 1990, and
2. All Guatemalans physically present in the United States on or before October 1, 1990.

Registration:

1. A Guatemalan class member who registered on or before December 31, 1991.
2. A Salvadoran class member who registered on or after January 1, 1991 and on or before October 30, 1991.
3. A Salvadoran class member who registered for Temporary Protected Status (TPS) on or after January 1, 1991, and on or before October 30, 1991.

Asylum Application (Form I-589) Filing Dates:

1. Guatemalan class member filed on or before January 3, 1995.
2. Salvadoran class members filed on or before January 31, 1996.

Class Members Excluded in the Settlement Agreement:[2]

1. Any class member who has been convicted of an aggravated felony; and
2. Any class member who was apprehended at the time of entry into the United States after December 19, 1990.

---

[1] Asylum officers have the responsibility for making substantive determinations regarding a class member's eligibility for ABC.

[2] The class members are not eligible for ABC benefits, even if they meet the registration and filing requirements.

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B. Benefits: Aliens are entitled to a stay of deportation. Detention of a class member is permissible only if:[3] convicted for a involving moral turpitude for which the sentence actually imposed exceeded a term of imprisonment in excess of six months or; poses a national security risk or a threat to public safety. After March 31, 1997, class members are subject to mandatory detention IIRIRA

II. Temporary Protected Status (TPS)

A. Section 244 of the Immigration and Nationality Act establishes:

A temporary safe haven in the United States for nationals of a foreign state if the Attorney General determines:

1. There is an ongoing armed conflict within the state posing a serious threat to personal safety of the country's national's if returned there; or
2. There has been an earthquake, flood drought, epidemic or other environment disaster and the foreign state is unable to handle the return of its nationals and the state has requested designation;
3. There exists extraordinary and temporary conditions in the foreign state that prevents aliens who are nationals from returning safely.
4. Designations may be for 6 to 18 months and may be extended.

A. **Eligibility:**

1. Establish identity and nationality of TPS country.
2. Must be physically present and continually residing in the United States since the date of designation.
3. Must be inadmissible.
4. Must not be ineligible because of a conviction for felony or two or more misdemeanors.
5. Register for TPS within the required period.

C. If an alien is granted Temporary Protected Status:

1) The alien shall not be deported or removed during the TPS period.
2) The alien shall not be detained on the basis of his or her illegal status.
3) The removal proceeding will be administratively closed upon filing of the application.

[3] A likelihood to abscond is not a reason to detain an eligible class member.

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ICE

Recurring Issues Involving "Admission" and Adjustment of Status I – Applicable Law

Matt Downer, APLD
Ron Lapid, Deputy Chief, APLD
Michael Sheridan, USCIS

Appellate and Protection Law Division Conference
Chicago, Illinois
May 2009

U.S. Immigration and Customs Enforcement

ICE

Admission Topics

- Pre-IIRIRA “Entry Doctrine”
- IIRIRA and the “admission” concept
- Naturalization and admission
- Admission at the Border – Procedural versus Substantive legal requirements
- Adjustment of Status as an admission
- Removability and Admission

U.S. Immigration and Customs Enforcement

USCIS

All Aliens Subject to Inspection

- INA § 235(a)(3) provides that all aliens are subject to immigration inspection
- Alien is defined in INA § 101(a)(3) as any person who is not a citizen or national of the United States
- Under INA § 235(a)(1), an alien present in the United States who has not been admitted is deemed an applicant for admission
- Applicable regulations are 8 C.F.R. Part 235

U.S. Citizenship and Immigration Services

USCIS

Ports-of-Entry

- A port-of-entry (POE) is an authorized location through which one can seek admission to the U.S.
- May be land border, airport, or seaport
- POEs are prescribed by regulation, found at 8 C.F.R. § 100.4(c)(2)

U.S. Citizenship and Immigration Services

USCIS

Presumptions

- All aliens arriving in the U.S. are presumed to be intending immigrants
- An immigrant means every alien, except an alien who is within one of the classes of nonimmigrant aliens specified in INA § 101(a)(15)
- With certain exceptions, nonimmigrants are coming for a temporary period, and for a temporary purpose, in one of the various specific nonimmigrant classifications

USCIS

The Law before 1996

- The law of entry and admission changed significantly with the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)
- To understand the current law, it is important to review the law of “entry” prior to 1996

U.S. Citizenship and Immigration Services

USCIS

The Importance of “Entry”

- The term "entry" means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise…

  INA § 101(a)(13) (as in effect before 4/1/1997)

USCIS

The Importance of "Entry"

- except that an alien having a **lawful permanent residence** in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his **departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected** by him or his presence in a foreign port or place or in an outlying possession was not voluntary:

USCIS

The Importance of "Entry"

- An alien who had "entered," even unlawfully, could be removed only through deportation proceedings under former INA § 242
  - Government bore the burden of proving deportability by "clear, convincing and unequivocal evidence"
  - IJ could grant release from custody while the proceedings were pending
  - Suspension of deportation was available to aliens in deportation proceedings

USCIS

The Importance of "Entry"

- Alien who had not "entered" was subject to removal through an exclusion proceeding
  - Release available only through parole, which IJ could not grant
  - Suspension of deportation not available in exclusion proceedings

USCIS

Entry – Before 1996

- An alien made an “entry” if all 3 prerequisites were met:
  1. Physical presence in the U.S. by crossing the territorial limits
  2. Either
     a. Inspection and admission by an immigration officer OR
     b. Actual and intentional evasion of inspection at the nearest inspection point

     AND
     - Freedom from official restraint

U.S. Citizenship and Immigration Services

USCIS

Entry without Inspection (EWI)

- Before 1996, an alien actually and intentionally evading inspection was said to have "entered without inspection," abbreviated as EWI
- That alien was subject to removal from the United States as a deportable alien under INA § 237(a)(1)(B) [and INA § 241(a)(2) of older versions of the INA]
- An alien making a false claim to U.S. citizenship at a POE also entered without inspection, since U.S. citizens are not subject to immigration inspection, *see Reid v. United States*, 420 U.S. 619, 625 (1975)

U.S. Citizenship and Immigration Services

USCIS

Apprehension at a POE

- In contrast to aliens entering without inspection, an alien apprehended at a POE was placed in exclusion proceedings prior to 1996, because the alien had not effected an entry into the United States
- Even if an inspector had decided to "admit" the alien, the alien was still subject to exclusion, rather than deportation, if apprehended before leaving the inspection facility. *See Correa v. Thornburgh,* 901 F.3d 1166 (2d Cir. 1990)

USCIS

Fleuti Doctrine

- Old definition of entry provided that an LPR did not make an "entry" on returning if the LPR's departure "was not intended or reasonably to be expected" or the LPR's presence abroad "was not voluntary"
- This "exception" was rooted in cases which required an intentional departure in order for the return to be an "entry"
- *Delgadillo v. Carmichael*, 332 U.S. 388 (1947) – saved from sinking of torpedoed domestic sea carrier and taken to Cuba
- *DiPaquale v. Karnuth*, 158 F.2d 878 (2d Cir. 1947) – train from Buffalo to Detroit happened to pass through Canada

USCIS

Fleuti Doctrine

- The Supreme Court decided that the Congressional endorsement of these cases justified the Court saying that an LPR who *knowingly and intentionally* left the U.S. did not make an "entry" upon returning if the departure was "brief, casual and innocent"
- The Government could establish that an absence was "intended" only if the alien left with "an intent to depart in a manner . . . meaningfully interruptive of the alien's permanent residence"
- *Rosenberg v. Fleuti*, 374 U.S. 449 (1963)

USCIS

Fleuti Doctrine

- If there was no “meaningful” as opposed to “intentional” departure, the alien was not subject to exclusion upon returning
- But whether the alien had made a “meaningful” departure could be litigated in an exclusion proceeding. *Landon v. Plasencia,* 459 U.S. 21 (1982).

USCIS

The Law after IIRIRA – Admission

- Key concept is now “admission” rather than “entry”
- INA § 101(a)(13) defines admission and admitted to mean “with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration official”
- Now, removal as a *deportable* alien applies only to an alien who has been “admitted”
- INA § 237(a) expressly applies only to an “alien . . . in *and admitted* to the United States . . .”

U.S. Citizenship and Immigration Services

USCIS

Present without Admission or Parole

- Alien who is present without having been admitted is no longer entitled to removal proceedings as a *deportable* alien
- Rather, the alien, under INA § 235(a)(1), is deemed an "applicant for admission"
- Even if he or she has made it from the border crossing to the middle of Kansas, the alien is still subject to removal as an inadmissible alien
- The charge of inadmissibility is INA § 212(a)(6)(A)(i)

USCIS

Lingering Relevance of "Entry"

- As noted, "entry" no longer forms the basic distinction between those subject to removal as deportable aliens and those subject to removal as inadmissible aliens
- But "entry" is still an essential element of "admission"; an alien must still "enter" the United States

USCIS

8 C.F.R. § 1.1(q) – Arriving Alien

"An applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought to the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked…"

USCIS

Arriving Alien Concepts

- All arriving aliens are applicants for admission, but not all applicants for admission are arriving aliens
- Aliens who are PWAP are not arriving aliens, but a PWAP is an applicant for admission
- A *parolee* who is an applicant for adjustment of status is definitely an applicant for admission
- And an adjustment applicant who has departed and then returned pursuant to advance parole is also an applicant for admission

U.S. Citizenship and Immigration Services

USCIS

LPRs as Applicants for Admission

- A lawful permanent resident (LPR) is generally *not* an applicant for admission.
- Under INA § 101(a)(13)(C), however, an LPR is an applicant for admission if the alien has:
  - Abandoned or relinquished LPR status
  - Been absent from the U.S. 180 days or more continuously
  - Engaged in illegal activity after departing U.S.
  - Departed the U.S. while in removal or extradition proceedings

U.S. Citizenship and Immigration Services

USCIS

LPRs as Applicants for Admission

- Committed an offense identified in INA § 212(a)(2) unless it has been waived
- Attempted to enter at a time or place other than designated, or has not been admitted after inspection and authorization

U.S. Citizenship and Immigration Services

USCIS

LPRs as Applicants for Admission

- *Fleuti* doctrine has been fully abrogated.
- Any LPR who falls under INA § 101(a)(13)(C) is now an "applicant for admission" and so can be removed as an inadmissible, rather than deportable, alien
  - *Matter of Collado-Munoz*, 21 I&N Dec. 1061 (BIA 1998)
- Of course, there are exceptions . . . .

U.S. Citizenship and Immigration Services

USCIS

LPRs as Applicants for Admission

- In the FOURTH and NINTH Circuits *Fleuti* still bars an *inadmissibility* charge against an LPR returning from a trip abroad, if the charge is based on a guilty plea that pre-dates IIRIRA
  - *Camins v. Gonzales,* 500 F.3d 872 (9th Cir. 2007)
  - *Olatunji v. Ashcroft,* 387 F.3d 383 (4th Cir. 2004)

USCIS

LPRs as Applicants for Admission

- A lawful permanent resident (LPR) may also qualify as an “arriving alien” under 8 C.F.R. § 1.1(q)
- But an LPR is not subject to expedited removal, *see* 8 C.F.R. § 235.3(b)(5)(ii)
- Once LPR status is verified, the alien, if inadmissible, is entitled to removal proceedings under INA § 240

U.S. Citizenship and Immigration Services

ICE

INA § 101(a)(13)(A)

- INA § 101(a)(13)(A): "The terms 'admission' and 'admitted' mean, with respect to an alien, the ***lawful entry*** of the alien into the United States after inspection and authorization by an immigration officer."

U.S. Immigration and Customs Enforcement

ICE

What Is a "Lawful Entry" for Purposes of INA § 101(a)(13)(A)?

- EITHER:
  - Procedural regularity
    - Inspected and authorized by an immigration officer, regardless of any substantive legal defect
    - For example:
      - With a fraudulent document
      - Inadmissible
- OR
  - Compliance with substantive legal requirements

ICE

INA § 101(a)(13)(A) Requires *Only* Procedural Regularity

- Reading the INA as a whole, *procedural regularity* is all that is required for an admission under INA § 101(a)(13)(A)

U.S. Immigration and Customs Enforcement

ICE

Matter of Areguillin, 17 I&N Dec. 308 (BIA 1980)

- The Board of Immigration Appeals (Board or BIA) reaffirmed that an "admission" occurs when an inspecting officer communicates to an applicant for admission the former's determination that the applicant is not inadmissible and permits the applicant to pass through the port of entry, *see Areguillin*, 17 I&N Dec. at 310 n.6 (citing *Matter of V-Q-*, 9 I&N Dec. 78 (BIA 1960))

ICE

IIRIRA § 301(a)

- In amending INA § 101(a)(13) there is no indication that Congress meant to repeal the Board's prior interpretation of the term "admission," *see* H.R. Rep. 104-828, at 207 (1996) (Conf. Rep.), 1996 WL 563320 (brief discussion on IIRIRA § 301(a))

U.S. Immigration and Customs Enforcement

ICE

IIRIRA § 301(a)

- Congress knew that an ‘entry’ either involved an inspection and admission by an immigration officer, or an actual and intentional evasion of inspection
- Congress might have inserted “lawful” before “entry”
  - To reinforce the use of the language “after inspection and authorization by an immigration officer” at the end of the statute
  - To move away from actual and intentional evasion

U.S. Immigration and Customs Enforcement

ICE

"Lawfully Admitted" in the INA

- 214(n)(2)(A) ("lawfully admitted into the United States")
- 240A(a)(1) ("alien lawfully admitted for permanent residence")
- 245(b) (record of "lawful admission")
- 245A(a) ("alien lawfully admitted for temporary residence")
- 248 ("alien lawfully admitted to the United States as a nonimmigrant")
- 249 ("lawful admission for permanent residence")
- 318 ("lawfully admitted to the United States for permanent residence")
- 320(a)(3) ("lawful admission for permanent residence")

U.S. Immigration and Customs Enforcement

ICE

"Lawfully Admitted" in the INA

- These statutes refer to "lawfully admitted" instead of solely "admitted"
  - The word "lawfully" modifies "admitted"
  - Under INA § 101(a)(13)(A), admission already requires a "lawful entry"
- When expressly describing the term "admitted," "lawfully" must be given some meaning
  - "Lawfully admitted" requires compliance with substantive law

U.S. Immigration and Customs Enforcement

ICE

INA § 101(a)(20)

- INA § 101(a)(20) incorporates “lawfully admitted”
  - “The term ‘lawfully admitted for permanent residence’ means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed”

U.S. Immigration and Customs Enforcement

ICE

INA § 101(a)(20)

- *Matter of Koloamatangi*, 23 I&N Dec. 548 (BIA 2002)
  - An alien who acquired LPR status by fraud or misrepresentation has not been "lawfully admitted for permanent residence" for purposes of INA § 240A(a)
  - The Board interpreted INA § 101(a)(20) to require substantive legal compliance
- If INA § 101(a)(13) required substantive legal compliance, the word "lawfully" before "admitted" in INA § 101(a)(20) would be superfluous

ICE

INA § 237(a)(1)(A)

- INA § 237(a)(1)(A) would be meaningless:
  - The statute applies to an alien who was "admitted" to the United States, but who was inadmissible at the time of entry
  - If substantive legal compliance were required, an alien could never have been "admitted" for purposes of the statute, and the ground of removability under INA § 237(a)(1)(A) could never be used

ICE

INA § 237(a)(1)(H)

- INA § 237(a)(1)(H) would be meaningless:
  - The statute provides a waiver for aliens inadmissible at the time of admission based on INA § 212(a)(6)(C)(i) (fraud or material misrepresentation)
  - If substantive legal compliance were required, an alien never could never have been “admitted” due to fraud or misrepresentation
  - Therefore, no alien could ever be eligible for the waiver

U.S. Immigration and Customs Enforcement

ICE

INA § 212(h)

- Waiver of inadmissibility under INA § 212(h) is unavailable to aliens who, among other requirements, have also "*previously been admitted* to the United States as an alien lawfully admitted for permanent residence"
- *Matter of Ayala*, 22 I&N Dec. 398 (BIA 1998)
  - Alien argued that his previous criminal behavior before his last entry as an LPR meant that he had procured admission by fraud
  - If "admitted" required substantive legal compliance, fraudulent entries would allow aliens to escape from the statutory bar

ICE

Supporting Caselaw

- *Emokah v. Mukasey*, 523 F.3d 110 (2d Cir. 2008) (ruling that an alien who enters the U.S. after inspection and authorization has been "admitted" even if such admission were obtained by fraud or misrepresentation)
- *Bolvito v. Mukasey*, 527 F.3d 428, 431 (5th Cir. 2008) (stating that under INA § 245(a), an "admitted" alien is an "individual who has presented himself for inspection by an immigration officer and who has been allowed to enter the country") (citing INA § 101(a)(13)(A))

ICE

Procedural Regularity and Fraud

- False Claim to U.S. Citizenship
- Fraudulent Green Card
- Nonimmigrant Visa Obtained by Fraud

U.S. Immigration and Customs Enforcement

ICE

Procedural Regularity and Fraud

- If an alien during the admission process falsely (and successfully) claims that he or she is a U.S. citizen, the alien is not "admitted" within the meaning of the INA
- True even before IIRIRA, *see Reid v. United States*, 420 U.S. 619, 625 (1975); *Matter of Wong*, 12 I&N Dec. 733 (BIA 1968); *Matter of Woo*, 11 I&N Dec. 706 (BIA 1966); *Matter of S*, 9 I&N Dec. 599 (BIA 1962); *Matter of F*, 9 I&N Dec. 54 (R.C. 1960)

ICE

Procedural Regularity and Fraud

- Under INA § 101(a)(13)(C), a returning LPR is not regarded as seeking an "admission" to the United States unless one or more of the circumstances described in clauses (i) through (vi) of the statute are true
- Read together, INA §§ 235 and 101(a)(13) provide that a returning LPR is subject to such inspection as is necessary to determine whether the alien should undergo the full rigor of inspection applied to all arriving aliens

ICE

Procedural Regularity and Fraud

- An alien who is permitted to enter the United States as a returning LPR, regardless of whether he or she truly has such status, does not accomplish an “admission” for purposes of the INA

U.S. Immigration and Customs Enforcement

ICE

Procedural Regularity and Fraud

- An alien who uses a nonimmigrant visa to procure admission by fraud has been "admitted" within the meaning of INA § 101(a)(13)(A)
- Example: nonimmigrant K visa

U.S. Immigration and Customs Enforcement

ICE

Adjustment of Status and Admission

- Two Issues:
  - Whether to be “admitted” for purposes of adjustment of status under INA 245(a) requires only procedural regularity
  - Whether adjustment of status constitutes an admission for purposes of the INA

U.S. Immigration and Customs Enforcement

ICE

"Admitted" for Purposes of INA § 245(a)

- *Orozco v. Mukasey*, 521 F.3d 1068 (9th Cir. 2008), *vacated*, 546 F.3d 1147 (9th Cir. 2008)
  - Court found alien ineligible for adjustment of status under INA § 245(a) because he had not been "admitted" within the meaning INA § 101(a)(13)(A)
  - Problems with court's holding:
    - Legally inconsistent with the lodged charge of removability under INA § 237(a)(1)(A)
    - Alien claimed that he had fooled an inspector into believing that he was a returning LPR

ICE

"Admitted" for Purposes of INA § 245(a)

- Inconsistent with the legislative history of INA § 245(a)
  - As originally enacted, the statute had allowed an alien "lawfully admitted" as a "bona fide" immigrant (who met other requirements) to adjust status
  - In 1960, Congress amended the statute to allow aliens who were "inspected and admitted or paroled" (and who met other requirements) to adjust status
  - The purpose of the amendment was to give the former INS more flexibility, *see Matter of Pires De Silve*, 10 I&N Dec. 191 (BIA 1963)

ICE

The Lessons of *Orozco*

- With respect to the terms “admission” and “admitted,” do not be legally inconsistent in the same case
- Remember that it is the alien’s burden to show time, place, and manner of entry; if the alien fails to meet that burden, it is appropriate to lodge the charge of inadmissibility under INA § 212(a)(6)(A)(i)(I)

U.S. Immigration and Customs Enforcement

USCIS

Is Adjustment of Status an "Admission"?

- Before IIRIRA, it was well-settled that an adjustment of status was *not* a new "entry," *see Matter of Rainford,* 20 I&N Dec. 598 (BIA 1992)
- An adjustment applicant stands in the position of an applicant for admission at a POE, *see*, *e.g.*, *Matter of Rafipour*, 16 I&N Dec. 470 (BIA 1978)
- Even an *admitted* applicant for adjustment of status (e.g., a tourist) is *treated as* an applicant for admission for purposes of the adjustment application, *see Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992)

USCIS

Is Adjustment of Status an "Admission"?

- Thus, any inadmissibility grounds can potentially bar adjustment of status
- INA § 245(b) provides that upon approval of an application for adjustment of status under INA § 245(a), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of the approval

U.S. Citizenship and Immigration Services

USCIS

Is Adjustment of Status an "Admission"?

- And while, before IIRIRA, adjustment was not a *new* entry for those who had already entered as a matter of law, it could, in certain cases, provide the final element of "admission" necessary to create an entry, *see Matter of Jimenez-Lopez*, 20 I&N Dec. 738, 741-42 & n.3 (BIA 1993)
- But is an application for adjustment *actually* an application for admission, such that granting adjustment is necessarily an "admission" for purposes of the INA?

U.S. Citizenship and Immigration Services

ICE

Adjustment of Status as an "Admission"

- Removability
  - INA § 237(a)(2)(A)(i)
    - CIMT within 5 years "after the date of admission"
  - INA § 237(a)(2)(A)(iii)
    - Aggravated felony at any time "after admission"
- Waiver of Inadmissibility under INA § 212(h)
- Naturalization

U.S. Immigration and Customs Enforcement

ICE

Adjustment of Status as an "Admission"

- *Matter of Rosas*, 22 I&N Dec. 616 (BIA 1999)
  - Alien was never admitted at the border, but did adjust status
  - Alien was charged with removability under INA § 237(a)(2)(A)(iii) for committing an aggravated felony "after admission"
  - The Board held that the phrase "after admission" in INA § 237(a)(2)(A)(iii) includes both aliens "admitted" at the time of entry and those "lawfully admitted for permanent residence" through adjustment

ICE

Adjustment of Status as an "Admission"

- *Matter of Shanu*, 23 I&N Dec. 754 (BIA 2005), *rev'd sub nom. Aremu v. DHS*, 450 F.3d 578 (4th Cir. 2006)
  - Adjustment constitutes an "admission" for purposes of INA § 237(a)(2)(A)(i)
    - Even in situations where the alien was previously admitted as a nonimmigrant
  - Each and every date of admission qualifies as a potentially relevant date of admission under INA § 237(a)(2)(A)(i)
  - Fourth Circuit reversed, finding that an adjustment is not an "admission" for purposes of INA § 237(a)(2)(A)(i)

ICE

Adjustment of Status as an "Admission"

- Other circuit courts have agreed with *Aremu*, rejecting the Board's rationale in *Shanu*
- However, all the circuit courts have found or left open the possibility that adjustment of status can mean being "admitted" in other statutory contexts

U.S. Immigration and Customs Enforcement

ICE

Adjustment of Status as an "Admission"

- Ninth Circuit
  - *Ocampo-Duran v. Ashcroft*, 254 F.3d 1133 (9th Cir. 2001) – Adjustment of status is an "admission" for purposes of INA § 237(a)(2)(A)(iii)
  - *Shivaraman v. Ashcroft*, 360 F.3d 1142 (9th Cir. 2004)
    - Adjustment is not an "admission" for purposes of INA § 237(a)(2)(A)(i)
    - Distinguished *Rosas* and *Ocampo-Duran* because they interpreted "admission" in the context of INA § 237(a)(2)(A)(iii)

ICE

Adjustment of Status as an "Admission"

- Seventh Circuit
  - *Abdelqadar v. Gonzales*, 413 F.3d 668 (7th Cir. 2005)
    - Adjustment of status is not an "admission" for purposes of INA § 237(a)(2)(A)(i)
    - Found *Rosas* to be context-specific, so that its reading of "admission" in INA § 237(a)(2)(A)(iii) does not mean that the term should have the same meaning in INA § 237(a)(2)(A)(i)

ICE

Adjustment of Status as an "Admission"

- Sixth Circuit
  - *Zhang v. Mukasey*, 509 F.3d 313 (6th Cir. 2007)
    - Adjustment of status is not an "admission" for purposes of INA § 237(a)(2)(A)(i)
    - Found that *Rosas* does not address the question of whether adjustment of status can mean being "admitted" for purposes of INA § 237(a)(2)(A)(i)

ICE

Adjustment of Status as an "Admission"

- Fifth Circuit
  - *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008)
    - Adjustment of status is not an "admission" for purposes of precluding eligibility for the waiver under INA § 212(h)
  - In response to a motion to amend filed by the Government, the Fifth Circuit amended its original decision to clarify that its holding is limited to the context of INA § 212(h)

USCIS

Admission & Naturalization

- Generally, an alien must have been "lawfully admitted for permanent residence" in order to be eligible for naturalization
- If adjustment is *not* an "admission," can an LPR by adjustment *ever* qualify for naturalization?
- Dicta in *Martinez* suggests the solution. *Martinez v. Mukasey*, 519 F.3d 532, 546 (5th Cir. 2008)
- "Lawfully admitted for permanent residence" is a single concept, defined in INA § 101(a)(20) – a "term of art"

USCIS

Admission & Naturalization

- Unlike INA § 212(h), INA §§ 316 and 318 do not contain the odd construction "admitted . . . as an alien lawfully admitted for permanent residence"
- Rather, they speak of the alien as "being" or "having been" lawfully admitted for permanent residence
- Even if *Martinez* were to become the standard interpretation of INA § 212(h), it should not affect the naturalization eligibility of someone who acquired LPR status by adjustment, rather than with an immigrant visa

U.S. Citizenship and Immigration Services

USCIS

Admission & Naturalization

- INA § 310(d) makes clear that one can become a citizen only as stated in the law
- Eligibility requires "strict compliance with the terms of the authorizing statute," *INS v. Pangilinan,* 486 U.S. 875, 884 (1988)
- An alien is eligible for naturalization only if the acquisition of LPR status was *substantively* lawful. *Federenko v. United States,* 449 U.S. 490, 514-15 (1981)
- Failure to comply with all relevant requirements for becoming an LPR makes the alien ineligible for naturalization

U.S. Citizenship and Immigration Services

ICE

Illegal Re-Entry and Admission

- An entry may be a “lawful entry” for purposes of INA § 101(a)(13)(A), but may also be an “illegal re-entry” for purposes of INA § 241(a)(5)

U.S. Immigration and Customs Enforcement

ICE

Questions or Comments?

U.S. Immigration and Customs Enforcement

NOTICE TO APPEAR

Guidelines For Drafting Factual Allegations
and **Section 237(a)** Charges
Involving Aliens

In and Admitted to the United States

POST - IIRIRA 96

July 30, 1997

Inadmissible at Entry or Adjustment:
CIMT Conviction Before Entry or Adjustment

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the _____ Court [at] _____ for the offense of _____, in violation of _____ .
   OR
4. You admit having committed, on or about _____, the following acts:_____ , which constitute the essential elements of _____, a crime involving moral turpitude. Before making this admission, you were given a definition of the crime and it was explained to you in understandable terms.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who have been convicted of, or who admit having committed, or who admit committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime under Section 212(a)(2)(A)(i)(I) of the Act.

Inadmissible at Entry or Adjustment:
Controlled Substance Conviction Before Entry or Adjustment

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the _____ Court [at] _____ for the offense of _____ , to wit:_____ , in violation of _____;
   OR
4. You admit having committed, on or about _____, the following acts:_____ , which constitute the essential elements of _____, to wit: _____, a violation of a law or regulation relating to a controlled substance.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more classes of aliens inadmissible by the law existing at such time, to wit: aliens who have been convicted of, or who admit having committed, or who admit committing acts which constitute the essential elements of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) under section 212(a)(2)(A)(i)(II) of the Act.

Inadmissible at Entry or Adjustment:
Two or More Convictions & Sentenced to at Least Five Years

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____ in violation of _____ , for which you received a sentence of _____ ;

5. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____ in violation of _____ , for which you received a sentence of _____ .

CHARGE:
Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who have been convicted of two or more offenses (other than purely political offenses) for which the aggregate sentences to confinement were five years or more, under Section 212(a)(2)(B) of the Act.

Inadmissible at Entry or Adjustment:
Prostitution Within 10 Years of Entry

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. Within 10 years of the date of your admission or adjustment of status, you engaged in prostitution, to wit: _____ .

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who have engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status under Section 212(a)(2)(D)(i) of the Act.

Inadmissible at Entry or Adjustment:
No Labor Certification

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;

4. You entered the United States for the purpose of performing skilled or unskilled labor;

5. At the time of your admission you did not possess or present a valid labor certification issued by the Secretary of Labor, nor were you properly exempted therefrom.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor and in whose case the Secretary of Labor has not made the certification as provided by Section 212(a)(5)(A)(i) of the Act.

Inadmissible at Entry or Adjustment:
Seeking Admission or Other Benefit by Fraud

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You procured your admission, visa, adjustment, or other documentation or benefit by fraud or by willfully misrepresenting a material fact, to wit:_____ .

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who seek to procure, or have sought to procure, or who have procured a visa, other documentation, or admission into the United States, or other benefit provided under the Act, by fraud or by willfully misrepresenting a material fact, under Section 212(a)(6)(C)(i) of the Act.

Inadmissible at Entry or Adjustment:
Alien Smuggling

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ , you knowingly encouraged, induced, assisted, abetted, or aided _____ , an alien, to enter or try to enter the United States at or near _____ , in violation of law.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law, under Section 212(a)(6)(E)(i) of the Act.

Inadmissible at Entry or Adjustment:
274C Final Order

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ , a final order for violating Section 274C of the Act was issued against you.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who are the subject of a final order for a violation of Section 274C of the Act, pursuant to Section 212(a)(6)(F) of the Act.

Inadmissible at Entry or Adjustment:
Immigrant Admitted Without Valid Documents

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;

4. At that time you intended to remain permanently or indefinitely in the United States;

5. You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document, and you were not exempt therefrom.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: alien immigrants who are not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the Act, or who are not in possession of a valid unexpired passport, or other suitable travel document, or identity and nationality document if such document is required by regulations issued by the Attorney General pursuant to Section 212(a)(7)(A)(i)(I).

Inadmissible at Entry or Adjustment:
Nonimmigrant Admitted Without Valid Documents

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You did not then possess or present a nonimmigrant visa, border crossing card, or other document valid for your admission into the United States.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who are nonimmigrants not in possession of a valid nonimmigrant visa or border crossing identification card and not exempted from the possession thereof by the Act or regulations issued thereunder, pursuant to Section 212(a)(7)(B)(i)(II) of the Act.

Inadmissible at Entry or Adjustment:
Alien Previously Removed Once, as an Arriving Alien,
Not Aggravated Felons -- 5 Year Bar

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were previously ordered removed under section 235(b)(1) on _____, initiated upon your prior arrival in the United States;

OR

3. You were previously ordered removed at the end of proceedings under section 240 on _____, initiated upon your prior arrival in the United States;

4. You were removed from or you departed the United States pursuant to that order on or about _____;

5. You were admitted to the United States at _____ on or about _____ as a _____ ;

OR

5. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

6. You were admitted or you adjusted status within five years of the date of that removal; and

7. You did not receive the prior consent of the Attorney General to reapply for admission into the United States under section 212(a)(9)(A)(iii).

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who have been previously ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's prior arrival in the United States, and who again seek admission within five years of the date of such removal, without obtaining prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory, pursuant to section 212(a)(9)(A)(i) of the Act.

Inadmissible at Entry or Adjustment:
Alien Previously Removed Two or More Times as an Arriving Alien,
Not Aggravated Felons -- 20 Year Bar

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were previously ordered removed [pursuant to section 235(b)(1)] [at the end of proceedings under section 240] initiated upon your prior arrival in the United States, on _____;

4. You were previously ordered removed [pursuant to section 235(b)(1)] [at the end of proceedings under section 240] initiated upon your prior arrival in the United States, on _____;

5. You were removed from or you departed the United States pursuant to that order on or about _____;

6. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
6. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

7. You were admitted within twenty years of the date of your last removal;

8. You did not receive the prior consent of the Attorney General to reapply for admission into the United States under section 212(a)(9)(A)(iii).

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who have more than once been previously ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's prior arrivals in the United States, and who again seek admission within twenty years of the date of the last such removal, without obtaining prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory, pursuant to section 212(a)(9)(A)(i) of the Act.

(Use Administrative Removal for non-LPRs, INA § 238(b))

RI9A1

Inadmissible at Entry or Adjustment:
Alien Previously Removed as an Arriving Alien -
Aggravated Felony Conviction -- Permanent Bar

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were previously ordered removed [pursuant to section 235(b)(1)] [at the end of proceedings under section 240] initiated upon your prior arrival in the United States, on _____;

4. You were removed from or you departed the United States pursuant to that order on or about _____;

5. You were convicted on _____, of _____, in the _____ Court [at] _____;

6. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
6. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

7. You did not receive the prior consent of the Attorney General to reapply for admission into the United States under section 212(a)(9)(A)(iii).

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who has been previously ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's prior arrival in the United States, who is an alien convicted of an aggravated felony, and who seeks admission without obtaining prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory, pursuant to section 212(a)(9)(A)(i) of the Act.

Inadmissible at Entry or Adjustment:
Alien Previously Removed Once, Not as an Arriving Alien,
Not Aggravated Felons -- 10 Year Bar

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were ordered [removed] [excluded and deported] [deported] under section _____ on _____, or you departed the United States on _____ while an order of removal [exclusion and deportation] [deportation] was outstanding;
OR
3. You were ordered [removed] [excluded and deported] [deported] under section _____, and you subsequently departed the United States on or about _____;

4. You were removed from or you departed the United States pursuant to that order on or about _____;

5. You were admitted to the United States at _____ on _____ as a _____ ;
OR
5. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

6. You were admitted or you adjusted status within ten years of the date of your prior departure or removal;

7. You did not receive the prior consent of the Attorney General to reapply for admission into the United States under section 212(a)(9)(A)(iii).

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who has been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who seeks admission within ten years of the date of such departure or removal without obtaining prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory, pursuant to section 212(a)(9)(A)(ii) of the Act.

Inadmissible at Entry or Adjustment:
Alien Previously Removed Two or More Times, Not as an Arriving Alien,
Not Aggravated Felons -- 20 Year Bar

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were ordered removed [excluded and deported] [deported] under section 240 [*or* section ____] on _____;

4. You were removed from or you departed the United States pursuant to that order on or about _____;

5. You were ordered removed [excluded and deported] [deported] under section 240 [*or* section ____] on _____;

6. You were removed from or you departed the United States pursuant to that order on or about _____;

7. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
7. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

8. You were admitted or you adjusted status within twenty years of the date of your last departure or removal;

9. You did not receive the prior consent of the Attorney General to reapply for admission into the United States under section 212(a)(9)(A)(iii).

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who has more than once been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who seeks admission within twenty years of the date of the last departure or removal without obtaining prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory, pursuant to section 212(a)(9)(A)(ii) of the Act.

(Use Administrative Removal for non-LPRs, INA § 238(b))

RI9A2

Inadmissible at Entry or Adjustment:
Alien Previously Removed, Not as an Arriving Alien,
Aggravated Felony -- Permanent Bar

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were previously ordered removed [excluded and deported] [deported] under section _____ of the Act on _____;

OR

3. You departed the United States on or about _____ while an order of removal [exclusion and deportation] [deportation] was outstanding;

4. You were admitted to the United States at _____ on or about _____ as a _____ ;

OR

4. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

5. You were convicted on _____, of _____, in the _____ Court [at] _____;

6. You did not receive the prior consent of the Attorney General to reapply for admission into the United States under section 212(a)(9)(A)(iii).

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who has been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who is an alien convicted of an aggravated felony, pursuant to section 212(a)(9)(A)(ii) of the Act.

Inadmissible at Entry or Adjustment:
Unlawfully Present for 180-364 Days [after 4/1/97] & Voluntarily Departed before the Commencement of Removal Proceedings -- 3 Year Bar

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were unlawfully present in the United States for a single period of more than 180 days but less than one year, from _____ to _____;

4. You voluntarily departed the United States prior to the commencement of removal proceedings on _____;

5. You were admitted to the United States at _____ on or about _____ as a _____ ;

6. You were admitted to the United States within three years of the date of such departure.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien, other than an alien lawfully admitted for permanent residence, who was unlawfully present in the United States for a period of more than 180 days but less than one year, voluntarily departed the United States prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within three years of the date of departure or removal, pursuant to section 212(a)(9)(B)(i)(I) of the Act.

Inadmissible at Entry or Adjustment:
Unlawfully Present In U.S. One Year or More [after 4/1/97] --
10 Year Bar

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were unlawfully present in the United States for a single period of one year or more, from _____ to _____;

4. You last departed or were removed from the United States on or about _____;

5. You were admitted to the United States at _____ on or about _____ as a _____ ;

6. You were admitted within ten years of the date of such departure or removal.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien, other than an alien lawfully admitted for permanent residence, who has been unlawfully present in the United States for a period of one year or more, and who again seeks admission within ten years of the date of departure or removal from the United States, pursuant to section 212(a)(9)(B)(i)(II) of the Act.

Note: Consider reinstatement of a final order, I.N.A. § 241(a)(5)

RI9C11

Inadmissible at Entry or Adjustment:
Unlawfully Present for One-Year Aggregate Period and Entered or Attempted to Enter Without Being Admitted [after 4/1/97] --
10 Year Bar *and* AG consent required after 10 years

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were unlawfully present in the United States for an aggregate period of more than one year, from _____ to _____, and from _____ to _____;

4. You departed or were removed from the United States on _____;

5. You reentered the United States without being admitted on or about _____;

6. You last departed or were removed from the United States on _____;

7. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
7. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

8. You were admitted within ten years of the date of such departure or removal.
   OR
8. You were admitted more than ten years after the date of such departure or removal, and you did not receive the prior consent of the Attorney General to reapply for admission into the United States under section 212(a)(9)(C)(ii).

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who has been unlawfully present in the United States for an aggregate period of more than one year and who enters or attempts to reenter the United States without being admitted and without obtaining prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory, pursuant to section 212(a)(9)(C)(i)(I) of the Act.

Note: Consider reinstatement of a final order, I.N.A. § 241(a)(5)

RI9C12

Inadmissible at Entry or Adjustment:
Previously Ordered Removed and
Entered or Attempted to Enter Without Being Admitted --
10 Year Bar and AG consent required after 10 years

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were ordered removed from the United States under section ___ of the Act on _____;

4. You departed or were removed from the United States on or about _____;

5. You reentered the United States without being admitted on or about _____;

6. You later departed or were removed from the United States on or about _____;

7. You were later admitted to the United States at _____ on or about _____ as a _____;

OR

7. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted, pursuant to section 212(a)(9)(C)(i)(II) of the Act.

Inadmissible at Entry or Adjustment:
Polygamy

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. At that time, you were coming to the United States to practice polygamy, to wit: _____.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who is coming to the United States to practice polygamy, pursuant to section 212(a)(10)(A) of the Act.

Inadmissible at Entry or Adjustment:
International Child Abduction

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. Prior to or at the time of your admission or adjustment, you detained, retained, or withheld custody of _____ , a United States citizen child, outside the United States from _____ , who was granted custody of such child on _____ by order of the _____ Court [at] _____.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child, detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, pursuant to Section 212(a)(10)(C) of the Act.

Inadmissible at Entry or Adjustment:
Unlawful Voting

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. Prior to your admission or adjustment of status, on _____, you voted in violation of law, to wit: _____.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation, pursuant to section 212(a)(10)(D) of the Act.

Inadmissible at Entry or Adjustment:
Renounced Citizenship for Tax Purposes

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You are a former United States citizen who officially renounced your citizenship on _____;

5. The Attorney General has determined that you renounced your citizenship for the purpose of avoiding taxation by the United States.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: an alien who is a former citizen of the United States who officially renounced that citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States, pursuant to section 212(a)(10)(E) of the Act.

Nonimmigrant Overstay

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a nonimmigrant _____ with authorization to remain in the United States for a temporary period not to exceed _____;

4. You remained in the United States beyond _____ without authorization from the Immigration and Naturalization Service.

CHARGE:

Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States.

Nonimmigrant Overstay: Crewmember

(This charge applies **only** to aliens who were granted landing privileges before 4/1/97. **All** other crewmember aliens may be removed without referral to the Immigration Judge unless they request asylum. If a crewmember requests asylum, refer him or her to the Immigration Judge with a Form I-863.)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a crewmember, and were authorized to remain in the United States in that status until your ship left port, for a temporary period not to exceed 29 days;

4. You have remained in the United States thereafter without the authorization of the Immigration and Naturalization Service.

CHARGE:

Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States.

Nonimmigrant Out of Status: Mexican Border Crosser

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a border crosser or nonimmigrant visitor at a Mexican border port of entry for a temporary period not to exceed 72 hours to visit in the area within 25 miles of the United States border with Mexico;

4. On or about _____ , you were found at _____, a distance of more than 25 miles from the United States border with Mexico;

5. You have not received the permission of an immigration officer to proceed beyond that 25 mile limit.

CHARGE:

Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Sections 101(a)(15) of the Act and 235.1(f)(iii) of Title 8, Code of Federal Regulations, you failed to comply with the conditions of the nonimmigrant status under which you were admitted.

Nonimmigrant Failure to Maintain Status After Status Changed

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on _____ as a _____ ;

4. Your status was changed to that of _____ on _____ ;

5. You failed to maintain status or to comply with the conditions of your change of status in that _____ .

CHARGE:

Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that, after admission as a nonimmigrant and subsequent change to another nonimmigrant status pursuant to Section 248 of the Act, you failed to maintain or comply with the conditions of your change of status.

Nonimmigrant With Unauthorized Employment

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a nonimmigrant _____ with authorization to remain in the United States until _____ ;

4. You were employed for wages or other compensation on _____ at _____, without authorization of the Immigration and Naturalization Service.

CHARGE:

Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you failed to maintain or comply with the conditions of the nonimmigrant status under which you were admitted.

Failure to Maintain Status:
Crime of Violence Under 8 C.F.R. 214.1(g)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a nonimmigrant _____ ;

4. You were, on _____ , convicted in the _____ Court [at] _____ for the offense of _____ in violation of _____;

5. A sentence of more than one year imprisonment may be imposed for that conviction.

CHARGE:

Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you failed to maintain or comply with the conditions of the nonimmigrant status under which you were admitted, in that you have been convicted of a crime of violence for which a sentence of more than one year imprisonment was or could have been imposed, pursuant to 8 C.F.R. 214.1(g).

Nonimmigrant Student Out of Status: Failure to Attend

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a nonimmigrant student to attend _____ in _____ ;

4. You did not attend _____ from _____ to _____ .

CHARGE:

Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you failed to maintain or comply with the conditions of the nonimmigrant status under which you were admitted.

Nonimmigrant Student Out of Status:
Failure to Carry Full Course of Study

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a nonimmigrant student to attend _____ in _____ , _____ ;

4. You did not carry a full course of study from _____ to _____ .

CHARGE:

Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you failed to maintain or comply with the conditions of the nonimmigrant status under which you were admitted.

Nonimmigrant Student Out of Status:
Unauthorized Enrollment at a Different School

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a nonimmigrant student to attend _____ in _____ , _____ ;

4. On or after _____ , you enrolled at _____ without proper authorization from the United States Immigration and Naturalization Service.

CHARGE:

Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you failed to maintain or comply with the conditions of the nonimmigrant status under which you were admitted.

Violated Condition of Entry:
Section 212(g) Waiver of Health Grounds

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;

4. As a term, condition, or control of admission, you were required to _____;

5. The Secretary of Health and Human Services has certified that you have failed to comply with the above-stated terms, conditions, and controls of your admission, in that _____.

CHARGE:

Section 237(a)(1)(C)(ii) of the Immigration and Nationality Act (Act), as amended, in that the Secretary of Health and Human Services has certified that you failed to comply with terms, conditions, and controls that were imposed under Section 212(g) of the Act.

Termination of Conditional Permanent Residence: Adjustment

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a nonimmigrant _____;

4. On _____ your status was adjusted to that of a permanent resident on a conditional basis;

5. Your status was terminated on _____ because _____ .

CHARGE:

Section 237(a)(1)(D)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission or adjustment as an alien lawfully admitted for permanent residence on a conditional basis under Section 216 or 216A of the Act your status was terminated under such respective section.

Termination of Conditional Permanent Residence: Entry

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. On _____ , you were lawfully admitted to the United States for permanent residence on a conditional basis;

OR

3. Your status was adjusted to that of a conditional permanent resident on _____ under section _____ [216] [216A] of the Act;

4. Your status was terminated on _____ because _____ .

CHARGE:

Section 237(a)(1)(D)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission or adjustment as an alien lawfully admitted for permanent residence on a conditional basis under Section 216 or 216A of the Act your status was terminated under such respective section.

Alien Smuggling

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;

OR

3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ , you knowingly encouraged, induced, assisted, abetted or aided _____, an alien, to enter or to try to enter the United States at or near _____ , in violation of law.

CHARGE:

Section 237(a)(1)(E)(i) of the Immigration and Nationality Act, as amended, in that prior to the date of your entry, at the time of any entry, or within five years of the date of any entry, you knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

Marriage Fraud: Marriage Ended Within Two Years

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as an immigrant;

4. You obtained your immigrant status based upon your marriage on _____ to _____ ;

5. Your marriage to _____ was judicially annulled or terminated on _____, in the _____ Court [at] _____ .

CHARGE:

Section 237(a)(1)(G)(i) of the Immigration and Nationality Act, as amended, in that you obtained admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than two years prior to such admission, and which was judicially annulled or terminated within two years subsequent to any admission; you are therefore considered to have procured your visa or other documentation by fraud.

Marriage Fraud: Refusal or Failure to Fulfill Marital Agreement

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as an immigrant on the basis of your marriage to _____ ;

4. You have failed or refused to fulfill your marital agreement with _____ , which was entered into for the purpose of procuring your admission as an immigrant.

CHARGE:

Section 237(a)(1)(G)(ii) of the Immigration and Nationality Act, as amended, in that you are in the United States in violation of the Act, it appearing to the satisfaction of the Attorney General that you are an alien who failed or refused to fulfill your marital agreement which in the opinion of the Attorney General was made for the purpose of procuring your admission as an immigrant; you are therefore considered to have procured your visa or other documentation by fraud.

Conviction of One Crime Involving Moral Turpitude

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;

OR

3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____, committed on or about _____ [in violation of _____];

5. For that offense, a sentence of one year or longer may be imposed.

CHARGE:

Section 237(a)(2)(A)(i) of the Immigration and Nationality Act, as amended, in that you have been convicted of a crime involving moral turpitude committed within five years after admission for which a sentence of one year or longer may be imposed.

Conviction of Two Crimes Involving Moral Turpitude

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the _____ Court [at] _____ for the offense of _____ , in violation of _____ ;

5. You were, on _____ , convicted in the _____ Court [at] _____ for the offense of _____ , in violation of _____ ;

6. These crimes did not arise out of a single scheme of criminal misconduct.

CHARGE:

Section 237(a)(2)(A)(ii) of the Immigration and Nationality Act, as amended, in that, at any time after admission, you have been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.

(Use Administrative Removal for non-LPRs, INA § 238(b))

R2A3

Aggravated Felony

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the _____ Court [at] _____ for the offense of _____ [in violation of _____].

CHARGE:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in section 101(a)(43)(____) of the Act, a law relating to _____.

(Use Administrative Removal for non-LPRs, INA § 238(b))

R2A3

Aggravated Felony: 101(a)(43)(B)
Controlled Substance Trafficking

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____, to wit:_____, in violation of _____.

CHARGE:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a)(43)(B) of the Act, an offense relating to the illicit trafficking in a controlled substance, as described in section 102 of the Controlled Substances Act, including a drug trafficking crime, as defined in section 924(c) of Title 18, United States Code.

(Use Administrative Removal for non-LPRs, INA § 238(b))

R2A3

Aggravated Felony: 101(a)(43)(B)
Two Possessions of a Controlled Substance

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____, convicted in the _____ Court [at] _____ for the offense of Criminal Possession of a Controlled Substance, to wit:_____, in violation of _____.

5. You were, on _____, convicted in the _____ Court [at] _____ for the offense of Criminal Possession of a Controlled Substance, to wit:_____, in violation of _____.

CHARGE:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a)(43)(B) of the Act, an offense relating to the illicit trafficking in a controlled substance, as described in section 102 of the Controlled Substances Act, including a drug trafficking crime, as defined in section 924(c) of Title 18, United States Code.

(Use Administrative Removal for non-LPRs, INA § 238(b))

R2A3

Aggravated Felony: 101(a)(43)(F)
Crime of Violence

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____, in violation of _____

5. You were sentenced to a term of imprisonment of _____.

CHARGE:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a)(43)(F) of the Act, a crime of violence (as defined in section 16 of Title 18, United States Code, but not including a purely political offense) for which the term of imprisonment ordered is at least one year.

(Use Administrative Removal for non-LPRs, INA § 238(b))

R2A3

Aggravated Felony: 101(a)(43)(S)
Obstruction of Justice, Perjury, Bribery of a Witness

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the _____ Court [at] _____ for the offense of _____ [in violation of _____];

5. You were sentenced to a term of imprisonment of _____.

CHARGE:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in section 101(a)(43)(S) of the Act, an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year.

High Speed Flight Conviction, 18 U.S.C. § 758

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were convicted on _____ , in the United States District Court for the District of _____ for a violation of Title 18, United States Code, section 758, relating to high speed flight from an immigration checkpoint.

CHARGE:

Section 237(a)(2)(A)(iv) of the Immigration and Naturalization Act, as amended, in that you are an alien who has been convicted of a violation of Section 758 of Title 18 of the United States Code relating to high speed flight from an immigration checkpoint.

Drug Conviction

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the _____ Court [at] _____ for the offense of _____ , to wit: _____, in violation of _____ .

CHARGE:

Section 237(a)(2)(B)(i) of the Immigration and Nationality Act, as amended, in that, at any time after admission, you have been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802), other than a single offense involving possession for one's own use of 30 grams or less of marijuana.

Current Drug Abuser or Addict
(Note: a PHS certificate will probably be required to prove this charge)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You are a drug abuser or a drug addict, to wit: _____.

CHARGE:

Section 237(a)(2)(B)(ii) of the Immigration and Nationality Act, as amended, in that you are, or at any time after admission have been, a drug abuser or drug addict.

Former Drug Abuser or Addict
(Note: a PHS certificate will probably be required to prove this charge)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on or about _____ , a drug abuser or a drug addict, to wit: _____ .

CHARGE:

Section 237(a)(2)(B)(ii) of the Immigration and Nationality Act, as amended, in that you are, or at any time after admission have been, a drug abuser or drug addict.

Firearms Conviction

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the _____ Court [at] _____ for the offense of _____ , to wit: _____, in violation of _____ .

CHARGE:

Section 237(a)(2)(C) of the Immigration and Nationality Act, as amended, in that, at any time after admission, you have been convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, in violation of any law, any weapon, part, or accessory which is a firearm or destructive device, as defined in Section 921(a) of Title 18, United States Code.

Miscellaneous Crimes: Espionage, Sabotage, Treason and Sedition

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the United States District Court for the District of _____ for the offense of _____ , in violation of _____ ;

5. The term of imprisonment that may be imposed for that offense is five years or more.

CHARGE:

Section 237(a)(2)(D)(i) of the Immigration and Nationality Act, as amended, in that at any time, you have been convicted of any offense or conspiracy or attempt to violate any offense under Chapter 37 (relating to espionage), Chapter 105 (relating to sabotage), or Chapter 115 (relating to treason and sedition) of Title 18, United States Code, for which imprisonment of five or more years may be imposed.

Miscellaneous Crimes:
Violation of Military Selective Service Act
or
Trading with the Enemy Act

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the United States District Court for the District of _____ for the offense of _____ , in violation of _____ .

CHARGE:

Section 237(a)(2)(D)(iii) of the Immigration and Nationality Act, as amended, in that at any time, you have been convicted of any offense or conspiracy or attempt to commit any offense under the Military Selective Service Act (50 U.S.C. App.451 *et seq.*) or the Trading With the Enemy Act (50 U.S.C. App. 1 *et seq.*).

Miscellaneous Crimes: INA § 278,
Importing an Alien for Prostitution or Any Other Immoral Purpose

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the United States District Court for the District of _____ for the offense of _____ , in violation of section 278 of the Act, 8 U.S.C. 1328.

CHARGE:

Section 237(a)(2)(D)(iv) of the Immigration and Nationality Act (Act), as amended, in that, at any time, you have been convicted of a violation of, or a conspiracy or attempt to violate Section 278 of the Act.

Domestic Violence

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ [*only* convictions 9/30/96 or later], convicted in the _____ Court [at] _____ for the offense of _____ , in violation of _____;

5. That offense was committed against _____, _____ [your spouse] [your former spouse] [a person with whom you share a child in common] [a person with whom you are cohabiting as a spouse] [a person with whom you have cohabited as a spouse] [a person who is similarly situated to your spouse under the domestic or family violence laws of _____, the jurisdiction where the offense occurred] [a person who is protected from your acts by the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government].

CHARGE:

Section 237(a)(2)(E)(i) of the Immigration and Nationality Act, as amended, in that you are an alien who at any time after entry has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment.

Stalking and Child Abuse

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ [only convictions 9/30/96 or later], convicted in the _____ Court [at] _____ for the offense of _____ , in violation of _____ .

CHARGE:

Section 237(a)(2)(E)(i) of the Immigration and Nationality Act, as amended, in that you are an alien who at any time after entry has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment.

Violation of a Protection Order

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On _____ , you were enjoined under a protection order issued by the _____ Court [at] _____.

5. On _____, that Court determined that you had engaged in conduct that violated a portion of that order that involved protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued.

CHARGE:

Section 237(a)(2)(E)(ii) of the Immigration and Nationality Act, as amended, in that you are an alien who at any time after entry has been enjoined under a protection order and has been determined to have engaged in conduct in violation of that order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued.

Failure to File Change of Address
(HQ approval required before lodging this charge)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On _____ you changed your address from _____ to your new address of _____ ;

5. You failed to notify the Attorney General in writing of your new address within ten days after obtaining the new address.

CHARGE:

Section 237(a)(3)(A) of the Immigration and Nationality Act (Act), as amended, in that you failed to comply with the provisions of Section 265 of the Act by failing to notify the Attorney General in writing of your change of address within ten days from the date of such change.

Knowingly False Statements or Fraudulent Procurement in Application for Registration: Convicted Under INA section 266(c)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;

OR

3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were, on _____ , convicted in the United States District Court for the District of _____ for a violation of Title 8, United States Code, section 1306(c).

CHARGE:

Section 237(a)(3)(B)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien who has at any time been convicted of a violation of Section 266(c) of the Act, to wit: filing an application for registration containing statements known by you to be false, or procuring or attempting to procure registration of yourself or another person through fraud.

Fraud and Misuse of Visas, Permits and Other Documents:
Convicted Under 18 U.S.C. § 1546

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. You were convicted on _____ , in the United States District Court for the District of _____ for a violation of Title 18, United States Code, section 1546.

CHARGE:

Section 237(a)(3)(B)(iii) of the Immigration and Nationality Act, as amended, in that you are an alien who has at any time been convicted of a violation of, or an attempt or a conspiracy to violate, Section 1546 of Title 18 of the United States Code relating to fraud and misuse of visas, permits and other entry documents.

**Forged, Counterfeited, Altered, or Falsely Made Document,
or Wrongful Use of a Lawfully Issued Document:
274C Final Order**

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ , a final order for violating Section 274C of the Act was issued against you.

CHARGE:

Section 237(a)(3)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien who is the subject of a final order for violation of Section 274C of the Act.

False Claim of United States Citizenship

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;

OR

3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____, you represented yourself to be a citizen of the United States for the purpose of _____ .

CHARGE:

Section 237(a)(3)(D) of the Immigration and Nationality Act (Act), as amended, in that you are an alien who has falsely represented yourself to be a citizen of the United States for any purpose or benefit under this Act (including Section 274A) or a Federal or State law.

July 30, 1997

Security and Related Grounds:
Espionage and Sabotage

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ you _____ .

CHARGE:

Section 237(a)(4)(A)(i) of the Immigration and Nationality Act, as amended, in that you have engaged, are engaged, or at any time after admission were engaged in any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information.

Security and Related Grounds:
Endangering Public Safety or National Security

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ , you _____ .

CHARGE:

Section 237(a)(4)(A)(ii) of the Immigration and Nationality Act, as amended in that you have engaged, are engaged, or at any time after admission were engaged in a criminal activity which endangers public safety or national security.

Security and Related Grounds: Overthrow of Government

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ , you _____ .

CHARGE:

Section 237(a)(4)(A)(iii) of the Immigration and Nationality Act, as amended, in that you have engaged, are engaged, or at any time after admission were engaged in any activity, a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.

Security and Related Grounds: Terrorist Activities

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ , you _____ .

CHARGE:

Section 237(a)(4)(B) of the Immigration and Nationality Act (Act), as amended, in that you have engaged, are engaged, or at any time after admission were engaged in any terrorist activity as defined in Section 212(a)(3)(B)(iii) of the Act.

Foreign Policy

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. The Secretary of State has determined that your presence or activities in the United States would have serious adverse foreign policy consequences for the United States.

CHARGE:

Section 237(a)(4)(C)(i) of the Immigration and Nationality Act, as amended, in that the Secretary of State has reasonable ground to believe that your presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States.

Security and Related Grounds: Genocide

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ , you engaged in genocide by _____ .

CHARGE:

Section 237(a)(4)(D) of the Immigration and Nationality Act (Act), as amended, in that you engaged in conduct described in Section 212(a)(3)(E)(ii) of the Act that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide.

Security and Related Grounds: Nazi Persecution

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____ , you participated in Nazi persecution by_____.

CHARGE:

Section 237(a)(4)(D) of the Immigration and Nationality Act (Act), as amended, in that you, during the period beginning on March 23, 1933, and ending on May 8, 1945, assisted in Nazi persecution described in Section 212(a)(3)(E)(i) of the Act.

Public Charge

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On _____, you received public services, benefits, or assistance by _____;

5. On _____, a demand for repayment was made on you by _____ ;

6. You have not made such repayment.

CHARGE:

Section 237(a)(5) of the Immigration and Nationality Act, as amended, in that, within five years of the date of your entry you have become a public charge from causes not affirmatively shown to have arisen since your entry.

Unlawful Voter

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____ ;

3. You were admitted to the United States at _____ on or about _____ as a _____ ;
   OR
3. Your status was adjusted to that of a lawful permanent resident on _____ under section _____ of the Act;

4. On or about _____, you voted at _____, _____ in violation of _____.

CHARGE:

Section 237(a)(6) of the Immigration and Nationality Act, as amended, in that you are an alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation.

NOTICE TO APPEAR

Guidelines For Drafting Factual Allegations
and **Section 212(a)** Charges
Involving

"Arriving Aliens"
&
"Aliens Present Without Being Admitted"

POST - IIRIRA 96

July 30, 1997

212(a)(1)(A)(i) - Communicable Disease of Public Health Significance

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You have been determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to have a communicable disease of public health significance, to wit: _____.

CHARGE:

Section 212(a)(1)(A)(i) of the Immigration and Nationality Act, as amended, as an alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome.

212(a)(1)(A)(ii) - No Documentation to Prove Vaccination

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are seeking admission as an immigrant, or you are seeking adjustment of status to the status of an alien lawfully admitted for permanent residence;

4. You have failed to present documentation of having received vaccination against vaccine-preventable diseases, to wit: _____.

CHARGE:

Section 212(a)(1)(A)(ii) of the Immigration and Nationality Act, as amended, as an alien who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, who has failed to present documentation of having received vaccination against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices.

212(a)(1)(A)(iii)(I) - Physical or Mental Disorder

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You have been determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to have a physical or mental disorder, to wit: _____;

4. You have been determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to have behavior associated with that disorder may pose, or has posed, a threat to the property, safety, or welfare of yourself or others, to wit: _____.

CHARGE:

Section 212(a)(1)(A)(iii)(I) of the Immigration and Nationality Act, as amended, as an alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General) to have a physical or mental disorder and behavior associated with that disorder that may pose, or has posed, a threat to the property, safety, or welfare of yourself or others.

212(a)(1)(A)(iii)(II) - Recurring Physical or Mental Disorder

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You have been determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to have had a physical or mental disorder, to wit:_____;

4. You have been determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to have a history of behavior associated with that disorder which has posed a threat to the property, safety, or welfare of yourself or others, to wit: _____;

4. That behavior is likely to recur or to lead to other harmful behavior.

CHARGE:

Section 212(a)(1)(A)(iii)(II) of the Immigration and Nationality Act, as amended, as an alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of yourself or others and which behavior is likely to recur or to lead to other harmful behavior.

212(a)(1)(A)(iv) - Drug Abuser or Addict

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are determined, in accordance with regulations prescribed by the Secretary of Health and Human Services, to be a drug abuser or addict, to wit:_____.

CHARGE:

Section 212(a)(1)(A)(iv) of the Immigration and Nationality Act, as amended, as an alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict.

212(a)(2)(A)(i)(I) - Conviction or Commission of a Crime Involving Moral Turpitude

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____, in violation of _____.

OR

3. You admit having committed the following acts: _____, which constitute the essential elements of _____. Before making this admission, you were given a definition of the crime and the definition was explained to you in understandable terms.

CHARGE:

Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, as amended, in that you are an alien who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.

212(a)(2)(A)(i)(II) - Controlled Substance Conviction

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____, to wit:_____, in violation of _____.

OR

3. You admitted committing the following acts: _____, which constitute the essential elements of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance, to wit : _____.

CHARGE:

Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, as amended, in that you are an alien who has been convicted of, or who admits having committed, or admits committing acts which constitute the essential elements of, (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802).

212(a)(2)(B) - Multiple Convictions With Aggregate Sentence of Five Years

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____, in violation of _____. For that offense, a sentence to confinement was imposed for a period of _____ [a minimum of _____ and a maximum of _____];

4. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____, in violation of _____. For that offense, a sentence to confinement was imposed for a period of _____ [a minimum of _____ and a maximum of _____].

[5. The aggregate sentence imposed was _____.]

CHARGE:

Section 212(a)(2)(B) of the Immigration and Nationality Act, as amended, in that you are an alien who has been convicted of two or more offenses (other than purely political offenses) for which the aggregate sentences to confinement actually imposed were five years or more.

212(a)(2)(C) - Suspected Controlled Substance Trafficker

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are or have been an illicit trafficker of a controlled substance, or were or have been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking of a controlled substance, to wit: _____.

CHARGE:

Section 212(a)(2)(C) of the Immigration and Nationality Act, as amended, in that a consular or immigration officer knows or has reason to believe you are an alien who is or has been an illicit trafficker in any controlled substance or who is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance.

212(a)(2)(C) - Controlled Substance Trafficker with a Conviction

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were, on _____, convicted in the _____ Court [at] _____ for the offense of _____, to wit:_____, in violation of_____.

CHARGE:

Section 212(a)(2)(C) of the Immigration and Nationality Act, as amended, in that a consular or immigration officer knows or has reason to believe you are an alien who is or has been an illicit trafficker in any controlled substance or who is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance.

212(a)(2)(D)(i) - Prostitution Within 10 Years of Application for Admission

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are coming to the United States to engage in prostitution or you engaged in prostitution within ten years of the date of your application for a visa, admission, or adjustment of status, to wit: _____.

CHARGE:

Section 212(a)(2)(D)(i) of the Immigration and Nationality Act, as amended, in that you are an alien who is coming to the United States to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status.

212(a)(2)(D)(ii) - Procured or Imported Prostitutes

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____.

3. You have procured prostitutes or imported persons for the purpose of prostitution, or have attempted to procure prostitutes or import persons for the purpose of prostitution, to wit: _____.

CHARGE:

Section 212(a)(2)(D)(ii) of the Immigration and Nationality Act, as amended, in that you are an alien who has directly or indirectly procured or attempted to procure or (within ten years of your application for a visa, admission, or adjustment of status) has procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or received the proceeds of prostitution.

212(a)(2)(D)(ii) - Received Proceeds of Prostitution

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On or about _____ at _____ you received the proceeds of prostitution, to wit: _____.

CHARGE:

Section 212(a)(2)(D)(ii) of the Immigration and Nationality Act, as amended, as an alien who within ten years of your application for a visa, admission, or adjustment of status, received, in whole or in part, the proceeds of prostitution.

212(a)(2)(D)(iii) - Commercialized Vice

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are coming to the United States to engage in unlawful commercialized vice, to wit: _____.

CHARGE:

Section 212(a)(2)(D)(iii) of the Immigration and Nationality Act, as amended, as an alien who is coming to the United States to engage in any unlawful commercialized vice.

212(a)(2)(E) - Exercise of Criminal Immunity

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On _____, in _____, you committed acts which constitute _____, a violation of _____;

4. On _____, you exercised immunity from criminal jurisdiction with respect to that offense;

5. As a consequence of the offense and exercise of immunity, you departed the United States;

6. You have not submitted fully to the jurisdiction of the _____ Court [at] _____ , with respect to that offense.

CHARGE:

Section 212(a)(2)(E) of the Immigration and Nationality Act (Act), as amended, as an alien who has committed in the United States a serious criminal offense (as defined in section 101(h) of the Act), who exercised immunity from criminal jurisdiction with respect to that offense and departed the United States as a result, and who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense.

212(a)(3)(A)(i)(I) - Espionage or Sabotage

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are seeking to enter the United States to engage in an activity to violate a law of the United States relating to espionage or sabotage, to wit: _____.

CHARGE:

Section 212(a)(3)(A)(i) of the Immigration and Nationality Act, as amended, as an alien who a Consular Officer or the Attorney General knows or has reasonable ground to believe is seeking to enter the United States to engage solely, principally or incidentally in any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information.

212(a)(3)(A)(i)(II) - Espionage or Sabotage: Export of Goods, Technology, or Sensitive Information

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are seeking to enter the United States to engage in an activity to violate or evade a law prohibiting the export from the United States of goods, technology, or sensitive information, to wit: _____.

CHARGE:

Section 212(a)(3)(A)(i) of the Immigration and Nationality Act, as amended, as an alien who a Consular Officer or the Attorney General knows or has reasonable ground to believe is seeking to enter the United States to engage solely, principally or incidentally in any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information.

212(a)(3)(A)(ii) - Unlawful Activity (Security & Related Grounds)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are seeking to enter the United States to engage in an unlawful activity, to wit: _____.

CHARGE:

Section 212(a)(3)(A)(ii) of the Immigration and Nationality Act, as amended, as an alien whom a Consular Officer or the Attorney General knows or has reasonable ground to believe is seeking to enter the United States to engage solely, principally or incidentally in any unlawful activity.

212(a)(3)(A)(iii) - Control or Overthrow of the U.S. Government

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are seeking to enter the United States to engage in an activity a purpose of which is the opposition to, or the control or overthrow of, the government of the United States by force, violence, or other unlawful means, to wit: _____.

CHARGE:

Section 212(a)(3)(A)(iii) of the Immigration and Nationality Act, as amended, as an alien whom a Consular Officer or the Attorney General knows or has reasonable ground to believe is seeking to enter the United States to engage solely, principally or incidentally in any activity a purpose of which is the opposition to, or the control or overthrow of, the government of the United States by force, violence, or other unlawful means.

212(a)(3)(B)(i)(I) - Engaged in Terrorist Activity

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You have engaged in a terrorist activity, to wit: _____.

CHARGE:

Section 212(a)(3)(B)(i)(I) of the Immigration and Nationality Act, as amended, as an alien who has engaged in a terrorist activity.

212(a)(3)(B)(i)(II) - Likely to Engage in Terrorist Activity

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You engaged or are likely to engage after entry in a terrorist activity, to wit: _____.

CHARGE:

Section 212(a)(3)(B)(i)(II) of the Immigration and Nationality Act, as amended, as an alien who a Consular Officer or the Attorney General knows, or has reasonable ground to believe, is engaged or is likely to engage after entry in any terrorist activity.

212(a)(3)(B)(i)(III) - Incited Terrorist Activity

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You have, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity, to wit: _____.

CHARGE:

Section 212(a)(3)(B)(i)(III) of the Immigration and Nationality Act, as amended, as an alien who has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity.

212(a)(3)(B)(i)(IV) - Representative of Foreign Terrorist Organization

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are a representative of _____ , a foreign terrorist organization, as designated by the Secretary of State.

CHARGE:

Section 212(a)(3)(B)(i)(IV) of the Immigration and Nationality Act (Act), as amended, as an alien who is a representative (as defined in section 212(a)(3)(B)(iv) of the Act) of a foreign terrorist organization, as designated by the Secretary of State under section 219 of the Act.

212(a)(3)(B)(i)(V) - Member of a Foreign Terrorist Organization

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are a member of _____ , a foreign terrorist organization, as designated by the Secretary of State;

4. You know or should know that the organization is a terrorist organization.

CHARGE:

Section 212(a)(3)(B)(i)(V) of the Immigration and Nationality Act, as amended, as an alien who is a member of a foreign terrorist organization as designated by the Secretary of State under section 219 of the Act, which the alien knows or should have known is a terrorist organization.

212(a)(3)(C)(i) - Foreign Policy

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. The Secretary of State has determined that there is reasonable ground to believe that your entry or proposed activities in the United States would have potentially serious adverse foreign policy consequences for the United States, to wit: _____.

CHARGE:

Section 212(a)(3)(C)(i) of the Immigration and Nationality Act, as amended, as an alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States.

212(a)(3)(D) - Immigrant with Communist or Totalitarian Affiliation

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are an immigrant who is or has been a member of or affiliated with the Communist Party or any other totalitarian party, domestic or foreign, to wit: _____.

CHARGE:

Section 212(a)(3)(D) of the Immigration and Nationality Act, as amended, as an immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign.

212(a)(3)(E)(i) - Participation in Nazi Persecution

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On or about _____ you participated in Nazi persecution by _____.

CHARGE:

Section 212(a)(3)(E)(i) of the Immigration and Nationality Act, as amended, as an alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with the Nazi government of Germany, or any government associated with, allied with, established by, or in an area occupied by the Nazi government of Germany, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

212(a)(3)(E)(ii) - Participation in Genocide

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On or about _____ you engaged in genocide by _____.

CHARGE:

Section 212(a)(3)(E)(ii) of the Immigration and Nationality Act, as amended, as an alien who has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide.

212(a)(4)(A) - Public Charge

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are likely at any time to become a public charge because _____.

CHARGE:

Section 212(a)(4)(A) of the Immigration and Nationality Act, as amended, as an alien who is likely at any time to become a public charge.

212(a)(4)(C)(ii) - No Affidavit of Support, Family-Sponsored Immigrant

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You applied for admission under a visa number issued under section 201(b)(2) or 203(a) of the Act;

4. That visa petition was filed by _____, your relative;

5. That petitioner has not executed an affidavit of support on your behalf that complies with section 213A of the Immigration and Nationality Act, to wit: _____.

CHARGE:

Section 212(a)(4)(C) of the Immigration and Nationality Act (Act), as amended, as an alien seeking admission under a visa number issued under section 201(b) (2) or 203(a) of the Act by virtue of a petition filed by a relative when such petitioner has not executed an affidavit of support as described in section 213A of the Act with respect to such alien.

212(a)(4)(D) - No Affidavit of Support: Employment-Based Immigrant

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You applied for admission under a visa number issued under section 203(b) of the Act;

4. Your visa petition was filed by _____, a relative (or a business controlled by a relative in the case where a business is the petitioner);

5. That petitioner has not executed an affidavit of support on your behalf that complies with section 213A of the Immigration and Nationality Act, to wit: _____.

CHARGE:

Section 212(a)(4)(D) of the Immigration and Nationality Act, as amended, as an alien seeking admission under a visa number issued under section 203(b) of the Act by virtue of a petition filed by a relative (or by an entity in which such relative has a significant ownership interest) when such relative has not executed an affidavit of support as described in section 213A of the Act with respect to such alien..

212(a)(5)(A)(i) - No Labor Certification

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You do not possess or you did not present a valid labor certification issued by the Secretary of Labor, nor were you properly exempted therefrom.

CHARGE:

Section 212(a)(5)(A)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor and in whose case the Secretary of Labor has not made the certification as provided by Section 212(a)(5)(A)(i) of the Act.

212(a)(5)(C) - No Health Care Worker Certification

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You do not possess or you did not present a valid certificate from the Commission on Graduates of Foreign Nursing Schools or an equivalent independent credentialing organization verifying the information specified in section 212(a)(5)(C) of the Immigration and Nationality Act.

CHARGE:

Section 212(a)(5)(C) of the Immigration and Nationality Act (Act), as amended, as an alien seeking to enter the United States for the purpose of performing labor as a health care worker, other than a physician, who has not presented a certificate from the Commission on Graduates of Foreign Nursing Schools or an equivalent independent credentialing organization verifying the information specified in section 212(a)(5)(C) of the Act.

212(a)(6)(A)(i) - Alien Present Without Admission or Parole - (PWIs)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You arrived in the United States at or near _____, on or about _____;

4. You were not then admitted or paroled after inspection by an Immigration Officer.

   OR

4. At that time you arrived at a time or place other than as designated by the Attorney General.

CHARGE:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

212(a)(6)(B) - Failure to Attend Removal Proceeding

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were notified to appear on _____ for a hearing before an immigration judge in removal proceedings under section 240 or section 235(b) of the Act;

4. You failed or refused to attend that hearing;
   OR
4. You failed or refused to remain in attendance at that hearing;

5. On or about _____, you departed or were removed from the United States .

CHARGE:

Section 212(a)(6)(B) of the Immigration and Nationality Act, as amended, in that you are an alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within five years of such alien's departure or removal.

NOTE: Most arriving aliens who are inadmissible under section 212(a)(6)(C) are subject to expedited removal under section 235(b)(1). Use this charge, when applicable, as an additional charge against an alien who is also inadmissible on other grounds (including an alien who is present without inspection).

I6C1

212(a)(6)(C)(i) - Fraud or Willful Misrepresentation

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On or about _____, you sought to procure (or you procured) a visa, other documentation, or admission into the United States or other benefit provided under the Immigration and Nationality Act, by fraud or by willfully misrepresenting a material fact, to wit: _____.

CHARGE:

Section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act.

NOTE: Most arriving aliens who are inadmissible under section 212(a)(6)(C) are subject to expedited removal under section 235(b)(1). Use this charge, when applicable, as an additional charge against an alien who is also inadmissible on other grounds (including an alien who is present without inspection).

I6C2

212(a)(6)(C)(ii) - False Claim to U.S. Citizenship

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On or about _____, you falsely represented yourself to be a United States citizen for the following purpose or benefit: _____.

CHARGE:

Section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (Act), as amended, as an alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for a purpose or benefit under the Act (including section 274A) or any other Federal or State law

212(a)(6)(E)(i) - Alien Smuggling

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On or about _____, you knowingly encouraged, induced, assisted, abetted, or aided _____, an alien, to enter or to try to enter the United States in violation of law.

CHARGE:

Section 212(a)(6)(E)(i) of the Immigration and Nationality Act, as amended, in that you are an alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

212(a)(6)(F)(i) - 274C Final Order

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On or about _____, a final order for violating Section 274C of the Immigration and Nationality Act was issued against you.

CHARGE:

Section 212(a)(6)(F)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien who is the subject of a final order for a violation of Section 274C of the Act.

212(a)(6)(G) - Student Visa Abusers

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On _____ you were admitted to the United States as a nonimmigrant student under section 101(a)(15)(F)(i) of the Act;

4. You violated a term or condition of that status, in that you _____, which violation occurred on _____;

5. You departed the United States on _____;

6. You have not remained outside the United States for a continuous period of five years following the violation.

CHARGE:

Section 212(a)(6)(G) of the Immigration and Nationality Act (Act), as amended, as an alien who has obtained the status of a nonimmigrant under section 101(a)(15)(F)(i) of the Act and who has violated a term or condition of such status under section 214(l) of the Act and who has not remained outside the United States for a continuous period of five years after the date of the violation.

NOTE: Most arriving aliens who are inadmissible under section 212(a)(7) are subject to expedited removal under section 235(b)(1). Use this charge, when applicable, as an additional charge against an alien who is also inadmissible on other grounds (including an alien who is present without inspection).

I7A11

212(a)(7)(A)(i)(I) - Immigrant Without an Immigrant Visa

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act;

and/or

3[4]. You are an immigrant not in possession of a valid unexpired passport, or other suitable travel document, or document of identity and nationality.

CHARGE:

212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

NOTE: Most arriving aliens who are inadmissible under section 212(a)(7) are subject to expedited removal under section 235(b)(1). Use this charge, when applicable, as an additional charge against an alien who is also inadmissible on other grounds (including an alien who is present without inspection).

I7A12

212(a)(7)(A)(i)(II) - Immigrant Without an Immigrant Visa

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are in possession of an visa that was issued without compliance with the provisions of section 203 of the Immigration and Nationality Act.

CHARGE:

212(a)(7)(A)(i)(II) of the Immigration and Nationality Act (Act), as amended, as an immigrant at the time of application for admission, whose visa has been issued without compliance with the provisions of section 203 of the Act.

NOTE: Most arriving aliens who are inadmissible under section 212(a)(7) are subject to expedited removal under section 235(b)(1). Use this charge, when applicable, as an additional charge against an alien who is also inadmissible on other grounds (including an alien who is present without inspection).

I7B11

212(a)(7)(B)(i)(I) - Nonimmigrant Without a Valid Passport

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are a nonimmigrant not in possession of a passport valid for a minimum of six months from the date of the expiration of your admission to the United States.

CHARGE:

212(a)(7)(B)(i)(I) of the Immigration and Nationality Act (Act), as amended, as a nonimmigrant who is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period.

NOTE: Most arriving aliens who are inadmissible under section 212(a)(7) are subject to expedited removal under section 235(b)(1). Use this charge, when applicable, as an additional charge against an alien who is also inadmissible on other grounds (including an alien who is present without inspection).

I7B12

212(a)(7)(B)(i)(II) - Nonimmigrant Without a Valid Nonimmigrant Visa

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are a nonimmigrant not in possession of a valid nonimmigrant visa or border crossing identification card.

CHARGE:

212(a)(7)(B)(i)(II) of the Immigration and Nationality Act, as amended, as a nonimmigrant who is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission.

212(a)(8)(A) - Immigrant Ineligible for Citizenship

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are an immigrant who is permanently ineligible to citizenship, to wit: _____.

CHARGE:

212(a)(8)(A) of the Immigration and Nationality Act, as amended, as an immigrant who is permanently ineligible to citizenship.

212(a)(8)(B) - Draft Evader

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On or about _____ you departed from or remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency, to wit: _____[describe the period of national emergency].

CHARGE:

212(a)(8)(B)of the Immigration and Nationality Act, as amended, as a person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5))

I9A1

212(a)(9)(A)(i) - Alien previously removed once, as an arriving alien (NOT aggravated felons)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were ordered removed under section 235(b)(1) on _____, initiated upon your arrival in the United States;
OR
3. You were ordered removed at the end of proceedings under section 240 on _____, initiated upon your arrival in the United States;

4. You are seeking admission within five years of the date of that removal.

CHARGE:

Section 212(a)(9)(A)(i) of the Immigration and Nationality Act, as amended, in that you have been previously ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon your prior arrival in the United States, and you again seek admission within five years of the date of such removal, without obtaining prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5))

I9A1

212(a)(9)(A)(i) - Alien previously removed two or more times as an arriving alien (NOT aggravated felons)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were ordered removed [pursuant to section 235(b)(1)] [at the end of proceedings under section 240], on _____, initiated upon your arrival in the United States;

4. You were ordered removed [pursuant to section 235(b)(1)] [at the end of proceedings under section 240], on _____, initiated upon your arrival in the United States;

   [add additional charges if there are more than two previous removals as an arriving alien]

5. You are seeking admission within twenty years of the date of your last removal.

CHARGE:

Section 212(a)(9)(A)(i) of the Immigration and Nationality Act, as amended, in that you have more than once been previously ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon your prior arrival in the United States, and you again seek admission within twenty years of the date of the last such removal, without obtaining prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5))

I9A1

212(a)(9)(A)(i) - Alien previously removed as an arriving alien - Aggravated Felony Conviction

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were ordered removed pursuant to section 235(b)(1) on _____, initiated upon your prior arrival in the United States;
OR
3. You were ordered removed at the end of proceedings under section 240, on _____, initiated upon your prior arrival in the United States;

4. You were convicted on _____, of _____, in the _____ Court [at] _____ .

CHARGE:

Section 212(a)(9)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien who has been previously ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon your prior arrival in the United States, and who is an alien convicted of an aggravated felony.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5))

I9A2

212(a)(9)(A)(ii) - Alien previously removed once, not as an arriving alien (NOT aggravated felons)

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were ordered removed under section 240 or section _____, and you subsequently departed the United States on or about _____ while that order of removal was outstanding;

4. You are seeking admission within ten years of the date of your departure or removal;

5. You did not obtain prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory.

CHARGE:

Section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, as amended, as an alien who has been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who seeks admission within ten years of the date of such departure or removal.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5))

I9A2

212(a)(9)(A)(ii) - Alien previously removed two or more times, NOT as an arriving alien, NOT aggravated felons

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were ordered removed under section 240 or section _____ on _____, and/or you departed the United States on _____ while an order of removal was outstanding;

4. You were ordered removed under section 240 or section _____ on _____, and/or you departed the United States on _____ while an order of removal was outstanding;

5. You are seeking admission within twenty years of the date of your last [departure] [removal];

6. You did not obtain prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory.

CHARGE:

Section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, as amended, as an alien who has more than once been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who seeks admission within twenty years of the date of the last departure or removal.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5))

I9A2

212(a)(9)(A)(ii) - Alien previously removed,
NOT as an arriving alien & aggravated felony conviction

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were ordered removed under section 240 or section _____, or you departed the United States while an order of removal was outstanding;

4. You were convicted on _____, of _____, in the _____ Court [at] _____.

CHARGE:

Section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, as amended, as an alien who has been ordered removed under section 240 or any other provision of law, or who departed the United States while an order of removal was outstanding, and who is an alien convicted of an aggravated felony.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5)) if there is a prior removal

I9B11

212(a)(9)(B)(i)(I) - Non-LPR Unlawfully Present In U.S. for 180-364 days [after 4/1/97] & departed voluntarily prior to commencement of removal proceedings

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were unlawfully present in the United States for a single period of more than 180 days but less than one year, from _____ to _____, because you _____ [overstayed, EWI'd, etc];

4. You departed the United States voluntarily on _____, prior to the commencement of removal proceedings;

5. You are seeking admission to the United States within three years of the date of such departure.

CHARGE:

Section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act, as amended, as an alien, other than an alien lawfully admitted for permanent residence, who was unlawfully present in the United States for a period of more than 180 days but less than one year, voluntarily departed the United States prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within three years of the date of departure or removal.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5)) if there is a prior removal

I9B12

212(a)(9)(B)(i)(II) - Non-LPR Unlawfully Present In U.S. One Year or More [after 4/1/97]

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were unlawfully present in the United States for a single period of one year or more, from _____ to _____, because you _____ [overstayed, EWI'd, etc];

4. You last [departed] [were removed from] the United States on or about _____;

5. You are seeking admission within ten years of the date of such [departure] [removal].

CHARGE:

Section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, as amended, as an alien, other than an alien lawfully admitted for permanent residence, who has been unlawfully present in the United States for a period of one year or more, and who again seeks admission within ten years of the date of departure or removal from the United States.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5)) if there is a prior removal

I9C11

212(a)(9)(C)(i)(I) - Unlawfully Present for One-Year Aggregate [after 4/1/97] and Entered or Attempted to Enter Without Being Admitted

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You were unlawfully present in the United States for an aggregate period of more than one year, from _____ to _____, because you _____ [overstayed, EWI'd, etc];

   [add additional allegations about other unlawful periods, if applicable]

4. You last departed or were removed from the United States on _____;

5. You [entered] [attempted to reenter] the United States without being admitted on _____;

6. You are seeking admission within ten years of the date of such departure or removal.
   OR
6. You are seeking admission more than ten years after the date of such departure or removal, and you did not obtain prior consent to reapply for admission from the Attorney General before reembarkation at a place outside the United States or seeking admission from foreign contiguous territory.

CHARGE:

Section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act, as amended, as an alien who has been unlawfully present in the United States for an aggregate period of more than one year and who enters or attempts to reenter the United States without being admitted.

Note: Use reinstatement for aliens encountered within the U.S. (INA § 241(a)(5)) if there is a prior removal

I9C12

212(a)(9)(C)(i)(II) - Previously Ordered Removed and Entered or Attempted to Enter Without Being Admitted

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On _____, you were ordered removed from the United States under section _____ of the Act;

4. You entered or attempted to reenter the United States without being admitted on _____.

CHARGE:

Section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act, as amended, as an alien who has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted.

212(a)(10)(A) - Polygamy

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are coming to the United States to practice polygamy, to wit: _____.

CHARGE:

Section 212(a)(10)(A) of the Immigration and Nationality Act, as amended, as an alien who is coming to the United States to practice polygamy.

212(a)(10)(B) - Guardian Required to Accompany Helpless Inadmissible Alien

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are accompanying _____, an alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy, and whose protection or guardianship is required.

CHARGE:

Section 212(a)(10)(B) of the Immigration and Nationality Act (Act), as amended, as an alien accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy pursuant to section 232(c) of the Act, and whose protection or guardianship is determined to be required by that alien.

212(a)(10)(C) - International Child Abduction

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You detained, retained, or withheld custody of _____, a United States citizen child, outside the United States from _____, who was granted custody of such child on _____ by order of the _____Court [at] _____;

4. That child has not been surrendered to the person granted custody by that order.

CHARGE:

Section 212(a)(10)(C) of the Immigration and Nationality Act, as amended, in that you are an alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child, who detains or retains the child, or withholds custody of the child, outside the United States from the person granted custody by that order, and the child has not been surrendered to the person granted custody by that order.

212(a)(10)(D)-Unlawful Voters

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. On _____ you voted in the _____ election in violation of _____ law.

CHARGE:

Section 212(a)(10)(D) of the Immigration and Nationality Act, as amended, as an alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation.

212(a)(10)(E) - Former U.S. Citizens Who Renounced Citizenship to Avoid Taxation

ALLEGATIONS:

1. You are not a citizen or national of the United States;

2. You are a native of _____ and a citizen of _____;

3. You are a former citizen of the United States who officially renounced your citizenship on _____;

4. The Attorney General has determined that you renounced your citizenship for the purpose of avoiding taxation by the United States.

CHARGE:

Section 212(a)(10)(E) of the Immigration and Nationality Act, as amended, as an alien who is a former citizen of the United States who officially renounced United States citizenship and who is determined by the Attorney General to have renounced United States citizenship for the purpose of avoiding taxation by the United States.

§ 94.8 Interagency coordinating group.

The U.S. Central Authority shall nominate federal employees and may, from time to time, nominate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation. This group shall meet from time to time at the request of the U.S. Central Authority.

PART 95—IMPLEMENTATION OF TORTURE CONVENTION IN EXTRADITION CASES

Sec.
95.1 Definitions.
95.2 Application.
95.3 Procedures.
95.4 Review and construction.

AUTHORITY: 18 U.S.C. 3181 *et seq.*; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

SOURCE: 64 FR 9437, Feb. 26, 1999, unless otherwise noted.

§ 95.1 Definitions.

(a) *Convention* means the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984, entered into force for the United States on November 10, 1994. Definitions provided below in paragraphs (b) and (c) of this section reflect the language of the Convention and understandings set forth in the United States instrument of ratification to the Convention.

(b) *Torture* means:

(1) Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

(2) In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from:

(i) The intentional infliction or threatened infliction of severe physical pain or suffering;

(ii) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(iii) The threat of imminent death; or

(iv) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

(3) Noncompliance with applicable legal procedural standards does not per se constitute torture.

(4) This definition of torture applies only to acts directed against persons in the offender's custody or physical control.

(5) The term ''acquiescence'' as used in this definition requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.

(6) The term ''lawful sanctions'' as used in this definition includes judicially imposed sanctions and other enforcement actions authorized by law, provided that such sanctions or actions were not adopted in order to defeat the object and purpose of the Convention to prohibit torture.

(7) Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment.

(c) *Where there are substantial grounds for believing that [a fugitive] would be in danger of being subjected to torture* means if it is more likely than not that the fugitive would be tortured.

(d) *Secretary* means Secretary of State and includes, for purposes of this

rule, the Deputy Secretary of State, by delegation.

§ 95.2 Application.

(a) Article 3 of the Convention imposes on the parties certain obligations with respect to extradition. That Article provides as follows:

(1) No State party shall expel, return (''refouler'') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

(2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

(b) Pursuant to sections 3184 and 3186 of Title 18 of the United States Criminal Code, the Secretary is the U.S. official responsible for determining whether to surrender a fugitive to a foreign country by means of extradition. In order to implement the obligation assumed by the United States pursuant to Article 3 of the Convention, the Department considers the question of whether a person facing extradition from the U.S. ''is more likely than not'' to be tortured in the State requesting extradition when appropriate in making this determination.

§ 95.3 Procedures.

(a) Decisions on extradition are presented to the Secretary only after a fugitive has been found extraditable by a United States judicial officer. In each case where allegations relating to torture are made or the issue is otherwise brought to the Department's attention, appropriate policy and legal offices review and analyze information relevant to the case in preparing a recommendation to the Secretary as to whether or not to sign the surrender warrant.

(b) Based on the resulting analysis of relevant information, the Secretary may decide to surrender the fugitive to the requesting State, to deny surrender of the fugitive, or to surrender the fugitive subject to conditions.

§ 95.4 Review and construction.

Decisions of the Secretary concerning surrender of fugitives for extradition are matters of executive discretion not subject to judicial review. Furthermore, pursuant to section 2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998, P.L. 105–277, notwithstanding any other provision of law, no court shall have jurisdiction to review these regulations, and nothing in section 2242 shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or section 2242, or any other determination made with respect to the application of the policy set forth in section 2242(a), except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), which is not applicable to extradition proceedings.

PART 96—ACCREDITATION OF AGENCIES AND APPROVAL OF PERSONS UNDER THE INTERCOUNTRY ADOPTION ACT OF 2000 (IAA)

Subpart A—General Provisions

Subpart B—Selection, Designation, and Duties of Accrediting Entities

Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

Asylum Confidentiality, Public Affairs, and Legal Considerations Related to the Disclosure of Immigration Case Information

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Protection Law Conference
Atlanta, Georgia
May 2008

U.S. Immigration and Customs Enforcement

OVERVIEW

- Asylum Confidentiality
- Public Affairs Considerations
- General Non-disclosure Provisions
- EOIR's Perspective

Asylum Confidentiality
a.k.a.
"Protection-related" Confidentiality
~
8 C.F.R. §§ 208.6, 1208.6
(hereinafter "§ 1/208.6")

Asylum Confidentiality Outline

- Legal Background & Asylum Disclosure Prohibitions
- Exceptions to Prohibitions
- Remedies & Penalties
- Key Case Law
- 8 CFR 1287.6 Authentication
- Final Food For Thought
- Asylum Confidentiality “Final Exam”

Confidentiality CONTEST !

What multiple Oscar winning movie, in which many of the actors portrayed refugees from Nazi occupied Europe, contained the following dialogue?

Why is Confidentiality Important?

- Safety of the applicant for protection & relatives / associates in home country
- Integrity of process and public confidence in DHS
- Potential / actual breaches must be reported to OCC supervisors, ICE OPLA HQ, and, as necessary, to EOIR and opposing party
- Potential creation of new asylum claim and/or evisceration of ICE evidence
- Potential personal liability

Key Resources

- 8 C.F.R. § 1/208.6
- 55 Fed. Reg. 30674, 30676 (1990) & 65 Fed. Reg. 76121, 76124-25 (2000)
- Bo Cooper Memorandum: *Confidentiality of Asylum Applications and Overseas Verification of Documents and Application Information* (June 21, 2001)
  - *See also* USCIS Asylum Division Fact Sheet: *Federal Regulations Protecting the Confidentiality of Asylum Applicants* (June 3, 2005) (cited by circuit courts along with Cooper Memo)
- Michael Chertoff Memorandum: *Disclosure of Asylum-Related Information to U.S. Intelligence and Counterterrorism Agencies* (Apr. 18, 2007)
- Relevant Circuit Court Case Law

8 C.F.R. § 1/208.6

- Subsection "(a)":

  "Information contained in or pertaining to any asylum application, …credible fear determination…, and…reasonable fear determination…, shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General [or Secretary of Homeland Security]."

8 C.F.R. § 1/208.6 (cont'd)

- Subsection "(b)":

  "The confidentiality of other records kept by [DHS and EOIR] that indicate that a specific alien has applied for asylum, received a credible fear or reasonable fear interview [or review]…shall also be protected from disclosure. [DHS] will coordinate with the Department of State to ensure that the confidentiality of those records is maintained if they are transmitted to Department of State offices in other countries."

Scope of Protected Information: What Applications Are Covered?

- § 208 asylum & credible / reasonable fear
  - *See* 8 C.F.R. § 1/208.6
- § 241(b)(3) withholding of removal
  - *See* 8 C.F.R. § 1/208.3(b): asylum application deemed to constitute withholding application
- § 207 Refugee
  - As a matter of policy. *See* Apr. '07 Chertoff Memo
- CAT withholding and deferral
  - Debatable, but best practice

Scope of Protected Information: "Reasonable Inference" Concept

- *Cooper Memorandum* – generally, confidentiality is breached when information contained in or pertaining to an asylum application is disclosed to a third party, and the disclosure allows the third party to link the applicant's identity to:
  - the fact that the applicant has applied for asylum;
  - specific facts or allegations pertaining to the individual asylum claim contained in an asylum application; or
  - facts or allegations that are sufficient to give rise to a "reasonable inference" that the applicant has applied for asylum.

Exceptions to Disclosure Prohibitions - 8 C.F.R. § 1/208.6***(a)***

- With the **written** consent of the applicant.

- In the discretion of the DHS Secretary or AG.

Secretary Chertoff Memorandum

- Via the Apr. 17, 2007, memo the Secretary exercised his § 208.6(a) discretionary waiver authority as follows:
  - "[I]nformation covered by 8 C.F.R. § 208.6 may be disclosed to any element of the U.S. Intelligence Community, or any other Federal or state agency having a counterterrorism function, provided that the need to examine the information [is]…in connection with its authorized intelligence or counterterrorism function…and the information received will be used for the authorized purpose for which it is requested."
  - Sec.'s memo supersedes AG's Oct. 8, 2001 memo concerning FBI access to asylum files.
  - Sec.'s memo details strict procedures for making / granting requests.
  - NSLD is POC for process questions.

Exceptions to Disclosure Prohibitions (cont'd): 8 C.F.R. § 1/208.6 ***(c)(1)***

- To any USG official or contractor having a need to examine protected information in connection with:
  - The adjudication of asylum applications;
  - A credible fear or reasonable fear interview or review;
  - The defense of any legal action arising from the adjudication or failure to adjudicate the asylum application, or from a credible fear / reasonable fear determination, or of which such application or determination is a part; or
  - Any USG investigation concerning any criminal or civil matter.

Exceptions to Disclosure Prohibitions (cont'd): 8 C.F.R. § 1/208.6 ***(c)(2)***

- To any federal, state, or local court in the United States considering any legal action:
  - Arising from the adjudication or failure to adjudicate the asylum application, or from a credible fear or reasonable fear determination, or from proceedings of which such application or determination is a part.

"Special Status" of UNHCR The UN Refugee Agency ???

- Article 35 of the 1951 Convention and Article II of the 1967 Protocol directly obligate contracting states to cooperate with UNHCR in the exercise of its functions.
- Accordingly, upon request, may we discuss the case of an asylum applicant of "special concern" to UNHCR ?

8 C.F.R. § 1/208.6
Formal Remedies / Penalties ???

8 C.F.R. § 1/208.6 Formal Remedies / Penalties ???

- **None!** *Compare* 8 U.S.C. § 1367 (providing specific penalties for disclosure of information in battered alien scenario).
- **BUT** there are important adverse impacts, and "indirect" remedies / penalties to consider:
  - Potentially endanger alien applicant & relatives / associates in home country
  - Erode faith / integrity of system and DHS
  - Potentially create new asylum claim and/or eviscerate ICE evidence
  - Potential / actual breaches must be reported to supervisors, OPLA HQ, and, as necessary, EOIR and opposing party
  - Potential personal liability

Key Case Law

- FOIA Cases:
  - *U.S. Dep't of State v. Ray,* 502 U.S. 164 (1991) (noting the great privacy interest in protecting the identities of interdicted Haitians because of potential retaliatory action). *See also Phillips v. Immigration and Customs Enforcement*, 385 F.Supp.2d 296, 305 (SDNY 2005).

- No seminal BIA precedent on § 1/208.6

Key Case Law

- § 1/208.6 Federal Court Cases:
  - *Zhen Nan Lin v. U.S. Dep't of Justice,* 459 F.3d 255 (2d Cir.2006) (finding that submission of official document to foreign govt. for authentication, which linked alien to "conspiracy of anti-revolution," gave rise to reasonable inference of asylum application, constituting a breach of § 1/208.6; noting that when document indicates foreign govt. has violated human rights, that govt.'s "opinion" regarding authenticity is suspect; remanding case to BIA to evaluate new, independent risk of persecution based on breach; and, finally, expressing "no opinion" whether USG employee who breached confidentiality should be disciplined, but noting that breach could be "firing offense").

Key Case Law

- § 1/208.6 Federal Court Cases (cont'd):
  - *Corovic v. Mukasey*, 519 F.3d 90 (2d Cir. 2008) (finding that USG overseas inquiry to foreign govt. about authenticity of official document resulted in foreign govt. becoming aware of alien's name, his contact with USG, and fact that USG possessed document noting his imprisonment for political activism; applying *Zhen Nan Lin* to find § 1/208.6 violation, and remanding to BIA to consider whether breach gave rise to new risk of persecution).

Key Case Law

- § 1/208.6 Federal Court Cases (cont'd):
  - *Hosseini v. Gonzales*, 471 F.3d 953 (9th Cir. 2006) (holding Iranian established eligibility for DCAT where, inter alia, Iranian officials would be able to identify his involvement with dissident group based on immigration court documents he must submit as part of travel doc. process; noting while USG precluded from disclosing asylum related information under § 1/208.6, reg. "does not impede Iran's actions").
    - Note: 9th Cir. decision based on erroneous assumption as to travel doc. process vis-à-vis Iran that, unfortunately, was never adequately developed in record, but can be refuted in future cases.

Key Case Law

- § 1/208.6 Cases (cont'd):
  - *Averianova v. Mukasey*, 509 F.3d 890 (8th Cir. 2007) (distinguishing *Zhen Nan Lin,* finding no § 1/208.6 violation where USG did not provide docs. to foreign govt., but simply requested alien's birth records; noting even if "disclosures" made by providing alien's name / birth date, and inquiring about ethnicity, such ≠ reasonable inference of asylum application: ethnicity is common vital statistic and many official documents, e.g., birth / marriage cert. and some court records, do not necessarily imply alien is seeking asylum).
    - "Presumption of regularity" in USG investigations.
    - Even assuming disclosure sufficient to create new asylum claim, alien ultimately failed to establish sufficient risk of persecution.

Key Case Law

- § 1/208.6 Cases (cont'd):
  - *Abdel-Rahman v. Gonzales*, 493 F.3d 444 (4th Cir.2007) (finding that even though USG improperly disclosed military deserter's status as asylum applicant to foreign govt. in violation of § 1/208.6, such does not necessarily render alien eligible for asylum; distinguishing *Zhen Nan Lin*, noting BIA already considered violation and rejected that such gave rise to new persecution claim; observing foreign govt. had expressed interest in alien well before USG's improper disclosure, and that foreign govt. had tracked alien closely in U.S. and was seeking his return, prior to both his asylum application and its disclosure).

Key Case Law

- § 1/208.6 Cases (cont'd):
  - *Ghasemimehr v. Gonzales,* 427 F.3d 1160 (8th Cir. 2005) (noting it would not be unreasonable for foreign govt. to have deduced alien had applied for asylum where USG forwarded re-photocopied / redacted IJ minute order deleting check mark and words "granted/denied/withdrawn" from bullet dealing with asylum; BUT denying PFR, finding alien presented no evidence of foreign govt. reaction to altered IJ minute order and even if it had deduced he was asylum applicant, alien showed no potential harm from alleged disclosure - alien MTR to the BIA had lacked any supporting documentation in this regard).

Key Case Law

- § 1/208.6 Cases (cont'd):
  - *Li Xiang Tang v. Gonzales*, 215 Fed.Appx. 34, 36 n.2 (2d Cir. 2007) (unpublished – post FRAP 32.1) (noting while § 1/208.6 prohibits disclosure of asylum info., it excepts disclosures to USG officials having a need to examine info. in adjudication of asylum applications; consequently, because asylum info. re husband was disclosed during adjudication of wife's asylum

[redacted] (b)(5)

Key Case Law

- § 1/208.6 Cases (cont'd):
  - *Velasco v. INS*, 87 Fed.Appx. 35 (9th Cir. 2004) (unpublished – pre-FRAP 32.1) (holding alien's right to confidentiality vis-à-vis CAT application not violated by INS disclosure to Salvadoran INTERPOL office that alien was in "immigration proceedings," as information revealed nothing regarding the nature of alien's application for protection).

8 CFR § 1287.6 Authentication

- (b)(5)

8 CFR § 1287.6 Authentication (cont'd)

- *Vatyan v. Mukasey*, 508 F.3d 1179 (9th Cir. 2007) (holding that while an alien's own testimony may suffice to authenticate a foreign official document, such does not mean that an IJ must accept the document into evidence or deem its contents true; explaining further that: 1) an IJ need not assume that barriers exist in all asylum cases to "more established means" of authentication; 2) an IJ is not precluded from determining the admissibility of a document based on judicial experience or "obvious warning signs of forgery," as long as such are more than guess / surmise; and 3) even if an IJ finds sufficient prima facie evidence of authenticity, an IJ retains discretion to determine a document's ultimate probative value.

8 CFR § 1287.6 Authentication (cont'd)

Vatyan (cont'd)

- (and finally, strongly implying that, in those circumstances where an alien's self-authenticating testimony should be allowed, more than conclusory allegations must be provided, e.g., "Vatyan provided evidence that arguably could have supported authentication" as he was a "longtime resident" of his country, testified he "recognized the official stamps" on the documents, and attempted to establish a "chain of custody").

8 CFR § 1287.6 Authentication (cont'd)

- Best practice tips:

(b)(5)

"Food for Thought"

- There are few bright lines given that different IJs, BIA panels, and circuits may disagree as to whether similar fact patterns establish a § 1/208.6 violation.
- If a violation is found, remember that such, per se, does not automatically establish eligibility for asylum / protection
- [redacted]

"Food for Thought" (cont'd)

- Never assume that DHS, DOS, DOJ, or even other ICE components know about § 1/208.6 confidentiality – remind them (and, if non- lawyers, remind them in understandable terms).
- Under § 1/208.6, the only valid waiver of confidentiality by an alien is a written one. Oral waivers, even on the record, are of dubious value.

"Food for Thought" (cont'd)

- Further, there are no implicit waivers of confidentiality!
- Even if an alien publicizes his case in the media or fails to request redaction in public federal court litigation, or if an unauthorized third party is otherwise aware of the protection claim, DHS is still bound by § 1/208.6 disclosure restrictions.
  - However, "publication" by the alien might be used to undercut any asserted new protection claim based on an alleged DHS breach.

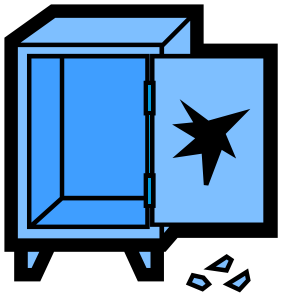
”Food for Thought” (cont’d)

- (b)(5)
-

"Food for Thought" (cont'd)

- Final advice:
  - "Whenever there is any doubt, there is no doubt."
    Robert De Niro / *Ronin* (1998)

- In other words, if you have any nagging doubt that § 1/208.6 confidentiality has been, or might be, breached, stop, consult with your supervisor and, as necessary, with APLD.



What to do if you suspect a § 1/208.6 breach:

-
-
-

(b)(5)

Asylum Confidentiality Final Exam – Document Verification

Official Medical Examination Report

Certificate No.: 307652
Patient: Jones, Johan
Attending Physician: Smith, Gregor

Hospital: State Hospital # 1
Date Admitted: 30 July 2003

Diagnosis & Treatment: Patient admitted with multiple bruises and deep lacerations. Patient claims injuries occurred during detention by state security services. No internal injuries found. Patient sutured and released. Advised to rest at home for 2 weeks and follow up with local medical center.

Dr. Gregor Smith

1000001113

Susan Mathias, Deputy Chief, CALD

ICE

Office of Public Affairs

- OPLA and OPA – Working together to finding Common Ground for Media Response

U.S. Immigration and Customs Enforcement

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Before the Court Appearance

- If you suspect the case will attract the media please notify the Public Affairs Officer responsible for the area of operations
- If you have questions about which PAO to contact, call HQ OPA or the Regional OPA

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OPA Contacts – Local PAO

Or if you have question on which PAO covers the area, call:

- HQ OPA - 202 514-2648
- Northeast (VT) - 802 872-(b)(2)High
- Southern (Miami) - 305 597(b)(2)High
- Central (Dallas) – 214 905
- Western (Laguna) – 949 360(b)(2)High

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Discussing the Case With OPA Step One

- PAO will need to know internal background on case
- If case has national security connection or is asylum case tell PAO
- Work with PAO on talking points
- Let PAO know what can and cannot be said publicly

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Discussing the Case with PAO Step Two

- Provide PAO with information on the case from GEMS
- PAO will work up talking points and discuss with attorney
- If PAO unable to attend hearing, work to prepare attorney talking points for possible media contact outside courtroom

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Getting from NO to YES

- Instead of starting with “No we can’t say anything,” help PAO’s develop comments
- The public has a right to know
- ICE should not appear defensive
- ICE can often speak generically about enforcement actions
- ICE should speak positively and proactively about our congressionally mandated mission
- Being transparent (without hindering the case) is essential to building public support for ICE

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Responding to the Media Outside the Courtroom

- Options
  - Respond in Very Limited Fashion – Stick to the Law
  - Politely Refer Reporters to Office of Public Affairs – Have PAO contact info handy

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Avoid *NO COMMENT!"*

- A "no comment" appears the government is being defensive or has something to hide
- Unless the case is national security or asylum the government can generally say something
- For example: Provide information on the applicable area of the law to the reporter where permissible.

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Some Suggestions if Ambushed

- Stick with the (appropriate) law:
- “The individual was charged with being present in the United States without inspection, a violation of Section 212 of the INA.”
- “The individual was legally admitted to the country but committed a crime and is removable under Section 237 of the INA.”

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Response to questions: "Was the person just caught up in a raid?"

- "ICE Operations are targeted based on investigations, intelligence and evidence."
- "Individuals who are here illegally should not be surprised if they are arrested and placed in removal proceedings."
- "ICE does not conduct random immigration enforcement."

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Talk About the Process

- "Aliens who are charged with being removable have due process in an immigration court."
- "Immigration judges work for the DOJ and provide an independent review of the alien's case."
- "Aliens do have the opportunity to appeal the judge's removal order."

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Planning ahead with OPA can avoid most issues

- By planning ahead OPLA and OPA keeps everyone on the same page
- Discussing controversial cases with OPA beforehand gives OPLA attorneys advantage of advice from public affairs

- Also keeps PAO from getting the surprise call from the media

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DRO Detainee Interview and Facilities Tour SOP

U.S. Immigration and Customs Enforcement

ICE

Introduction

Purpose

To Standardize SOPs for Response to Media Requests

- **Requests for Detainee Interviews**
- **Requests for Facilities Tours**

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Handling Interview Requests for Service and Contract Facilities

SOP

This SOP sets procedures for initial handling of Requests.

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Handling Interview Requests for Service and Contract Facilities

Request

Request must be in written form (e-mail acceptable) and fully identify the alien to the extent possible.

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Handling Interview Requests for Service and Contract Facilities

Reporter's Needs

Does the reporter need or wish to take a camera or recording device into the facility?

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Handling Interview Requests for Service and Contract Facilities

Detainee

Detainee must wish to be interviewed as indicated by signed consent form.

Detention standards require detainee be consulted before ICE begins decision-making process.

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Handling Interview Requests for Service and Contract Facilities

File Review and Case Synopsis

AFOD initiates alien file review and develops a case synopsis to be forwarded for FOD and OPLA review.

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Handling Interview Requests for Service and Contract Facilities

Local OPLA Informed

The local OPLA is informed of the interview request and provided with the case synopsis.

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Handling Interview Requests for Service and Contract Facilities

PAO Notified of Interview Decision

Upon agreement by FOD and OPLA, PAO is notified of the decision.

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Handling Interview Requests for Service and Contract Facilities

National Security/Significance Cases

For cases with national significance or security implications, HQOPA should be notified and their concurrence requested.

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Handling Interview Requests for Service and Contract Facilities

Routine Cases

Routine cases may be approved at field office level but should include notification of HQOPA.

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Handling Interview Requests for Service and Contract Facilities

Informing Reporters of Denial

When informing reporters that requests have been denied, you may refer them to the six grounds in the standards but not to a specific ground. You may also indicate that they may resubmit their requests at a later time for reconsideration.

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Handling Interview Requests for Service and Contract Facilities

Detainee Refusal

If a detainee refuses a media request for an interview, the reporter should simply be told that the detainee has refused the offer of an interview.

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Comments or Suggestions

- michael.gilhooly@dhs.gov
- Or on Outlook at Michael W. Gilhooly
- Office 802 872-[redacted]
- Cell 802 316-[redacted]

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QUESTIONS ???

U.S. Immigration and Customs Enforcement

BALTIMORE OFFICE OF THE CHIEF COUNSEL'S OFFICE PROCEDURES MANUAL

OUTLINE

I. INTRODUCTION

II. FILING SYSTEMS

III. WORK ASIGNMENTS

IV. PRE-TRIAL ACTIONS

V. SECURITY AND BACKGROUND CHECKS FOR RELIEF APPLICATION (8 C.F.R. § 1003.47)

VI. ENTERING CODE OF ADJUSTMENT ON BCR

VII. REQUESTING VISA NUMBERS FOR ADJUSTMENT CASES

VIII. REVIEW OF CHARGING DOCUMENT

IX. ATTORNEY WORK SHEETS

X. WITNESS/DOCUMENT REQUESTS

XI. FINAL ORDERS

XII. GOVERNMENT APPEALS

XIII. MOTIONS TO REOPEN

XIV. FEDERAL LITIGATION

XV. CLIENT ADVICE

XVI. SUBPOENAS

XVII. STAYS OF DEPORTATION

XVIII. ACAP/IHP PROGRAM

XIX. WORKSITE ENFORCEMENT

XX. PERSONNEL MATTERS

XXI. CONCLUSION

I. INTRODUCTION

Pursuant to the Homeland Security Act of 2002, 116 Stat. 2135, Pub. L. 107-296, *codified at* 6 U.S.C. §§ 101, *et seq.*, immigration detention, deportation, and removal functions were transferred to the Department of Homeland Security ("DHS")[1] on March 1, 2003.[2] Within the Department of Homeland Security, three separate immigration bureaus were created, the Immigration and Customs Enforcement ("ICE")[3], Citizenship and Immigration Service ("CIS")[4], and Customs and Border Protection ("CBP")[5]. ICE is responsible for deportations and investigations. The ICE Office of the Principal Legal Advisor ("OPLA")[6] is the legal arm of ICE responsible for all litigation before the Executive Office for Immigration Review's ("EOIR")[7] Immigration Courts. ICE also litigates certain cases in federal court and provides legal advise and technical assistance to other ICE components, federal and state law enforcement agencies.

This office procedures manual has been developed as a basic guide for the efficient operation of the Baltimore ICE Office Chief Counsel Office. While the manual tries to covers most areas dealt with by the Baltimore Office of Chief Counsel on a daily basis, it is not intended to be an all-inclusive document! ICE attorneys and support staff should consult with supervisors with any questions not answered by this manual. If the Chief Counsel is unavailable, consult with the Acting Chief Counsel or Deputy Chief Counsel.

[1] More information on DHS's creation may be found on their website at www.dhs.gov.
[2] Codified at 6 U.S.C. § 251 (2002).
[3] The ICE website may be found at www.ice.gov.
[4] The CIS website may be found at www.cis.gov.
[5] The CBP website may be found at www.cbp.gov
[6] [redacted] ranet at,
[7]

II. IMMIGRATION FILES AND RECORDS

A. <u>The A-File ("Alien File")</u>: An A-file or alien file, is a file relating to a single individual concerning a Service action under the Immigration and Nationality Act, excluding non-immigration petition files.

1. <u>Creating the A-file</u>: A-files are assigned through pre-numbered and bar-coded folder type jackets furnished to each Headquarters ("HQ"). A more in-depth summary of the following material can be found in the Records Operations Handbook (ROH), Form M-407. This handbook replaces the Administrative Manual (AM) 2700 which provided guidance and procedures to be used in administering the Records program. Attorneys and Support Staff should consult with the Baltimore District Records program concerning all matters relating to A-file or T-file creation.

- Left-hand tab folders are used for odd numbered files and right-hand tab folders are used for even numbered files.
- Each jacket number is preceded by the letter "A" and followed by eight or nine digits. A separate A-file is used for each individual. Blank A-file jackets are obtained from the Records and Information Section. A Central Index System (CIS) check must be conducted to ascertain if an A-file exists prior to opening a new Alien file.
- An A-file is to be opened when one of a variety of actions occurs relating to an individual, or upon receipt of an application and/or petition. Such actions include: whenever a formal Investigation Report is prepared, when a Notice to Appear (Form I-862), Warrant of Arrest is issued, when an alien is apprehended and taken into DHS custody, when an immigrant visa is issued, when a Form I-485 is filed, when a Form I-130 is filed, and upon receipt of refugee processing documents.

3. <u>Other types of alien files</u>: There are various types of alien files other than the A file. These include the following:

- *<u>T-File</u>*: The T-file (or temporary file) is an A-file created for a limited purpose. For example, often when an alien with a prior immigration history is detained by CBP at an airport they will create a T-file in order to process him/her. The T-file jacket is preceded by the letter "T" then followed by the corresponding eight or nine digit A-file number. T-files may only be created by records and are registered in the National File Tracking System ("NFTS"). Once the purpose of the T-files creations has been fulfilled, the file must be consolidated with the A-file and sent to records to have the T-file deleted from the NFTS system.

- *<u>WF-File</u>*: The WF-file (or work folder) is a file created by the ICE attorney or support staff to house certain documents or for organization purposes while awaiting the arrival of the A-file. The WF-file is not an official file. As such, as soon as the A-file is received the WF-file's contents must be placed in the A-file. Since the WF-file was not created by records there is no need to return the folder to records for its deletion. WF-files are, likewise, not tracked by NFTS.

- *<u>Service Center files</u>*: Service center files are files created by a CIS Service Center to adjudicate petitions or applications for relief. The jackets of these files are preceded by the initials of the service center who created the file. For example, Eastern Service Center file jackets are preceded by the letters "EAC."

4. A-file Contents: All documents and materials contained in an A-file shall be filed in chronological order with the most recent document filed on top. ICE's record of proceedings in an exclusion, deportation or removal case contains copies or originals of documents that have been filed with the Executive Office for Immigration Review (EOIR) by ICE or the alien. ICE's record of proceedings in a visa petition or other application case contains the official Service record and may be certified and provided to EOIR when necessary for judicial review. EOIR maintains its own records of proceedings for all cases filed with the Office of the Immigration Judge or Board of Immigration Appeals ("BIA"). In some older A-files that were created prior to the separation of EOIR from the Service, the A-file will contain the Record of Proceeding relating to actions taken by the Special Inquiry Officer.

5. ICE Record of Proceedings: Documents and materials that constitute the record of an application, petition, hearing or proceeding before the Service or before EOIR is considered to be the Record of Proceeding and is placed on the left-hand side of the A-file. Documents and materials submitted by an alien and/or prepared by Service personnel and not considered to be part of the Record of Proceeding is placed on the right-hand side of the A-file.

B. **General Counsel Electronic Management System (GEMS):** The General Counsel Electronic Management System ("GEMS") is a web based database, knowledge management, and trial information repository. GEMS provides real-time information on cases being litigated in the immigration and the federal courts. GEMS is comprised of three principal integrated component subsystems with specific purposes: Case/Project Management, Object Management, and Knowledge Management. ICE Assistant Chief Counsels are required to input their trial notes into the GEMS Case/Project Manager.

- *GEMS Case/Project Manager*: As noted above Baltimore Assistant Chief Counsels are required to input trial notes into the GEMS Case/Project Manager under the "events" tab. The notes must include what happened at the hearing, the reset date and time. You should also input who the Immigration Judge was at the hearing, the amount of time the case took to litigate (including preparation time), whether an order has been issued or is pending, and bond information if applicable. The notes must be entered immediately at the conclusion of an individual hearing. Assistant Chief Counsels should forward cases to the designated legal clerk for purposes of updating GEMS Case/Project Manager. (b)(2)High (b)(2)High (b)(2)High

- *GEMS Object Manager*:

C. **Organization of Files**

1. A-files which are maintained in the Chief Counsel's File Room or in individual attorney offices. The A-files are filed in numerical order and are charged in the National File Tracking System ("NFTS").

2. Each ICE attorney must have access to the NFTS data based, and can be accessed at http//www.????.gov. (b)(2)High (b)(2)High ANY TRANSFER OF ANY FILE MUST BE REFECTED IN THE

3. The Baltimore Office of Chief Counsel files are divided into five main categories:

1) Main file room: files awaiting initial master calendar hearing notices and awaiting individual hearings.

2) Appeals: files awaiting the filing of a notice of appeal with the Board of Immigration Appeals ("BIA") or pending cases before the BIA.

3) Awaiting Orders: those files awaiting decisions by the Immigration Judges.

4) Federal Court: consisting of District Court and Fourth Circuit cases. Some of these case filed or copies of these files are often kept near the back of the office in cubbies across from the Chief Counsel's office.

5) Detained cases: pending detained cases are kept in a drawer outside of the Janice Robertson's cubicle.

6) Attorney offices: files may be kept in the individual attorney offices. Files kept in attorney offices must only be for pending cases which the attorney will be prosecuting or cases related to a pending case which the attorney will be prosecuting. NO OTHER FILES MAY BE KEPT IN INDIVIDUAL ATTORNEY OFFICES.

7) Classified files: are kept in the office file safe. Access to classified files is limited to a "need to know" basis. Access is also limited to those with the appropriate security clearance.

B. Request and Receipt of Files

1. A-files may be requested, received from other offices or divisions through NFTS. All A-files must be charged out to other offices or divisions through NFTS. Files charged to outside divisions should be transferred via NFTS to records.

2. All A-files transferred directly to or from another unit or File Control Office must be routed through the Chief Counsel staff and received or charged out in the NFTS system.

C. Retrieval of Files for Hearings

1. Support Staff are responsible for the retrieval of A-files for the Chief Counsel's Office and from other locations prior to the scheduled hearing date.

   a. Support Staff will annotate GEMS to indicate that a file has been located and received to the Office of Chief Counsel.

   b. If the file is not located, the Support Staff will annotate GEMS and will request the files through established channels.

   c. If a file cannot be located through normal established procedures, requests may be made for a Special Search to the Records Unit Supervisor.

d. If all efforts have been made to locate an A-file and has not been located before the **MASTER** calendar hearing date a work folder may be created the following actions may be taken:

- GEMS should be annotated to reflect that a work folder has been created.
- The work folder must be labeled with a WF before the A numer.
- Work folders are intended to act as a temporary file folder and as a repository for documents obtained before receipt of the actual A-file. It is not a temporary file (T-file). Consequently, a work folder need not be created or tracked in NFTS.
- Once the A-file is received the contents of the work folder must be transferred to it.

e. If all efforts have been made to locate an A-file and has not been located before the **MERITS** calendar hearing date a work folder may be created the following actions may be taken:

- A work folder may be created by requesting to copy the Immigration Court's record of proceedings ("ROP").

D. File Control During Pendency of Proceedings

1. Files involving pending proceedings are to be maintained in the Chief Counsel's Office until the Immigration Judge has rendered a decision in the case (unless it is a detained cases).

2. Files containing final orders (whether Immigration Judge or BIA orders) will be delivered/routed to an assigned officer in the Deportation and Removal Office ("DRO") if they are not already there.

3. Files in which the Government or the alien has filed an appeal will not be maintained in the legal section until briefs are completed; these files are routed to Records.

4. Files in which the BIA has rendered a decision will be forwarded to the assigned officer in DRO.

5. Cases in which the Federal Court has rendered a decision will be forwarded to the assigned officer in DRO.

6. Requests for files from operating units during the pendency of proceedings will be dealt with on a case-by-case basis taking into consideration the need of the operating unit for the file and whether the file will be returned by a date set by the Chief Counsel's Office. If the A file is needed in the litigation unit, a copy will be provided to the requestor.

E. Classified Files

1. The transmittal of classified files to and from the Chief Counsel's Office shall comply with all applicable established procedures relating to the movement of those files. The Chief Counsel's Office shall endeavor to not maintain classified files or documents. Additional guidance may be found under DocuShare[8].

2. Only those individuals with the appropriate level security clearances may handle or review classified files (e.g., A-file classified as Secret can only be reviewed by an individual with a Secret clearance).

3. Staff should always contact a supervisor prior to taking action involving a classified file.

III. WORK ASSIGNMENTS

A. Attorneys

1. *Official Titles*: The lead supervisory attorney for the ICE/OPLA Baltimore filed office is referred to as the "Chief Counsel." The "Deputy Chief Counsel" assists the Chief Counsel with supervision of the Baltimore field office. The official title for an ICE/OPLA field attorneys working under the Chief Counsel is "Assistant Chief Counsel." The Baltimore field office has 2 attorneys who litigate cases in Federal District Court. The official title for these attorneys is "Special Assistant United States Attorney."

2. *Assignment of Cases*: Assistant Chief Counsels are assigned court days before a particular judge. This court schedule is prepared by the Deputy Chief Counsel 2-3 months ahead of time. Assistant Chief Counsels will be assigned master calendar dockets, individual calendar dockets, and duty days. Whenever possible Assistant Chief Counsels will be assigned days outside of court and/or non-duty days in order to prepare the cases to be presented before the Immigration Court. A-files are assigned to the Assistant Chief Counsel pursuant to this schedule. Generally, ICE attorneys will be assigned to be before an Immigration Judge for an entire day and will be responsible for the preparation, trial and appeal of all cases on that Judge's docket for the assigned day. Attorney/Judge/day assignments are set forth on the Monthly Court Calendar.

3. *Calendar Assignments*: To ensure that attorneys have sufficient time to prepare cases for master and individual calendar appearances, ICE attorneys are given their Judge/day assignments at least approximately 30 days in advance of the merits hearing day. On or about the first day of each month, the District Counsel or his designee will prepare and distribute the monthly Court Calendar for the following month. For example, on February 1, the Court Calendar for the month of March will be distributed. Attorneys should immediately review the monthly Court Calendar and advise the District Counsel of any errors or required revisions.

4. *Federal Court Litigation*: Federal court litigation is handled by the Special Assistant United States Attorneys ("SAUSA). In the Baltimore District, the Chief Counsel is cross-designated as a SAUSA. The Baltimore Deputy Chief Counsel is, likewise, designated as a SAUSA. All matters involving actual or threatened federal court litigation must immediately be brought to the attention of the SAUSAs or the Acting Chief Counsel. Additional ICE Attorneys may be assigned to work on specific federal court cases under the supervision of the SAUSAs.

5. *Criminal Alien/Institutional Hearing Program*: One ICE Attorney is designated as Criminal Alien/Institutional Hearing Program ("IHP") Coordinator. It is the responsibility of the Criminal Alien/IHP Coordinator to manage all aspects of the Criminal Alien/IHP dockets, including criminal alien charging document review, trial preparation, and case appeals of IHP cases, Criminal Alien/IHP case tracking, and criminal alien legal advice to the District. Additional ICE attorneys may be assigned to Criminal Alien/IHP program as the need arises.

6. *Administrative Removal*: The Duty Attorney is responsible for the reviewing the legal sufficiency of notices of intent to issue a final administrative removal orders, and final orders issued pursuant to section 238(b) of the Act. If deemed legally sufficient the Duty Attorney will prepare a short memo indicating as such. This memo must be saved to the GEMS I-manage database.

7. *Legal support*: In addition to Immigration Court proceedings, the Chief Counsel's Office provides technical and legal assistance to the:

    - ICE Office of Investigations.
    - ICE Office of Deportation and Removal.
    - Office of Immigration Litigation ("OIL")

B. Support Staff

1. Support Staff are assigned duties by the Chief Counsel, or the Deputy Chief Counsel. These assignments are designed to support the ongoing legal work of the Chief Counsel's Office and are modified as dictated by the demands placed on the office.

C. Other

1. The Chief Counsel's Office is responsible for requests for legal advice from other ICE components. All advice shall be rendered promptly.

2. The Chief Counsel's Office is responsible for liaison with the private bar. All calls shall be returned promptly.

3. The Office of the Chief Counsel has a daily Duty Attorney, to respond to inquiries by other ICE components, other federal or state government agencies, the private bar, and the public. The Duty Attorney also assists the support staff with questions and to ensure the proper routing of correspondence, motions, and orders.

4. The Duty Attorney is required to review and respond, where deemed appropriate and/or necessary, to all motions filed with EOIR. Duty Attorneys will be assigned motions for review that are received by the Office of Chief Counsel at noon on the day preceding his/her scheduled duty day to noon of the actual duty day.

5. Should the Duty Attorney find it unnecessary to respond to a motion GEMS must be annotated providing the reasons

6. All media inquiries will be directed to the Chief Counsel only. Deputy and Assistant Chief Counsel's are not to respond to the media-orally or in writing unless so designated at a further time[9].

7. The legal assistant may be assigned all or some of the following responsibilities, including using the Federal Financial Management System (FFMS), Travel Manager review, and advice to the Chief Counsel of available budget balances on a regular basis.

8. Assists the Chief Counsel or Deputy Chief Counsel in the overall administration of the legal program.

9. Serves as an advisor and source of knowledge on various administrative matters (areas include personnel, budget and finance, office supplies, services and equipment, building space and procurement).

10. Receives and sorts all general incoming correspondence, directing it to the appropriate individuals. Support staff also receives Notices of Appeal, BIA Decision, and BIA Transcripts for processing.

11. Tracking of BIA transcripts:

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[9] fairs Guidance (b)(2)High (b)(2)High

a. Check transcript to determine which party is appealing (alien or Government) for timely submission of the brief.

b. Retrieve file (Records or outlining branches).

c. Distribute to attorney according to the Assistant Chief Counsel of record at the merits hearing or by Appeal Assignment list.

d. Annotate the briefing date sent to parties.

12. Responsible for coordination with any ICE Time and Attendance clerk providing support to the Office of the Chief Counsel.

13. Receives and sorts incoming correspondence from local EOIR.

14. Provides case status information to requesting individuals in ICE, Citizenship and Immigration Services, and Customs and Border Protection.

15. Pulls files as required and files documents as necessary.

16. Answers phones, directs calls to appropriate individuals and takes messages.

17. Maintains central depository of request for file from other FCO's.

18. Responsible for general filing of incoming and office documents to A files.

19. Responsible for creation of Record of Action or attorney worksheets.

20. Prepares documentary submissions to be filed as court exhibits.

21. Ensures that A files, or copies of files, are timely transmitted for FOIA purposes.

NOTE: This is intended only as a summary and not an all-inclusive list of support staff assignments. It is not intended to modify the current performance work plan in any regard.

IV. PRE-TRIAL ACTIONS

The Chief Counsel's Office is responsible to ensure that all pre-trial actions mandated by statutes, regulations, local court rules, court orders, OPLA guidance and other mandates are complied with.

A. *Local Operating Procedures*: Baltimore Assistant Chief Counsels are required to strictly comply with the Baltimore Immigration Court's local operating procedures[10].

1. Filing evidence: The Baltimore Local Operating Procedures requires that, in additions to complying with 8 C.F.R §§ 1003.31 and 1003.32, all documents filed with the Immigration Court be two hole punched at the top of the page with holes 2-3/4 inches apart. All exhibits and

[10] A full copy of the Baltimore Immigration Court's local operating procedures may be found on the EOIR virtual law library at http://www.usdoj.gov/eoir/efoia/ocij/localop/bal.pdf.

documents must be paginated and must include a table of contents with page number identification. All exhibits must be tabbed with letter designations.

2. Opposing Parties: Documents served on the opposing party must be in the identical format to those submitted to the Immigration Court. This includes indexing and pagination.

3. 10-day Rule: All proposed exhibits and briefs must be filed with the Immigration Court no later than 10 calendar days prior to the scheduled individual calendar hearing, unless otherwise authorized by the Immigration Judge, or where good cause is shown. Late submissions may be accepted for filing at the discretion of the Immigration Judge upon a showing of good cause for the tardy filing. Weekends (Saturdays and Sundays) and official federal holidays are counted toward the computation of filing due dates. If a filing deadline falls on a weekend or official federal holiday, the filing must be effected no later than the last business day prior to the weekend or holiday.

4. Witnesses: Assistant Chief Counsels shall name all proposed witnesses they intend to present to the Court and provide a brief proffer of each witness' testimony. The witness proffer must include the estimated length of the testimony and the language in which the witness will testify. The Immigration Judge may require that witnesses execute and file an affidavit as part of the exhibits filed. Immigration Judge Bruce Barrett and Elizabeth Kessler both require such affidavits. The local operating procedures require that witness lists and proffers be filed with the Immigration Court no later than 10 calendar days prior to the scheduled individual calendar hearing, unless otherwise ordered or permitted by the Immigration Judge where good cause is shown.

5. Court hours: The Immigration Court intake/filing window is open to receive documents from 8:00 a.m. through 3:30 p.m. each business day. The Baltimore Immigration Court will not accept after 3:30 p.m. The window, however, remains open until 4:30 p.m. for all other purposes.

V. TRIAL

A. Master Calendar Appearances—Attorney Responsibilities

1. It is the responsibility of the assigned attorney to take any and all actions necessary to protect or improve the ICE's position.

2. The assigned attorney will, when appropriate, prepare and file any post-hearing briefs or motions that are requested by the Court or required to protect or improve the ICE's position.

B. Merits Hearings—Attorney Responsibilities

1. It is the responsibility of the assigned attorney to take any and all actions necessary to protect or improve ICE's position.

2. The assigned attorney will, when appropriate, prepare and file any post-hearing briefs or motions that are requested by the Court or required to protect or improve the ICE's position.

3. It is the responsibility of the ICE attorney to ensure that the appropriate biometric security checks are completed before the merits hearing. This responsibility includes post-hearing biometric security processing (See Section V of this manual).

D. Duty-Attorney Responsibilities

1. The Duty Attorney is required to review and respond, where deemed appropriate and/or necessary, to all motions filed with EOIR. Duty Attorneys will be assigned motions for review that are received by the Office of Chief Counsel at noon on the day preceding his/her scheduled duty day to noon of the actual duty day.

4. Should the Duty Attorney find it unnecessary to respond to a motion GEMS must be annotated providing the reasons for the decision to not respond.

5. All media inquiries will be directed to the Chief Counsel only. Deputy and Assistant Chief Counsel's are not to respond to the media-orally or in writing unless so designated at a further time.

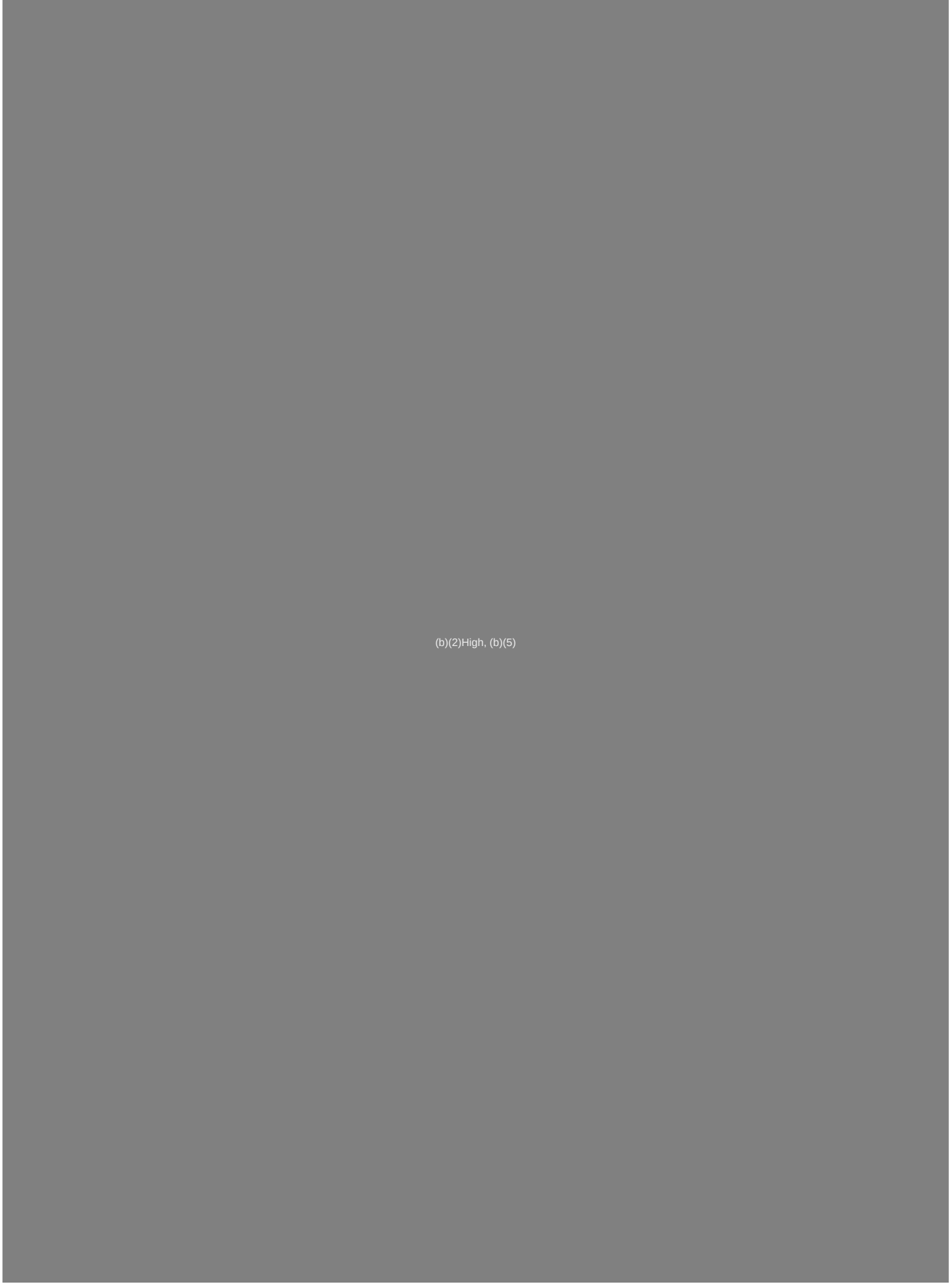
E. GEMS Attorney Notebook

1. It is the responsibility of the ICE attorney assigned to the Master Calendar appearance and the attorney assigned to the merits hearing to ensure GEMS is appropriately updated. Entries should document and explain all matters relating to the Court's actions, the procedural status of the case, representations made and actions taken by the ICE attorney and respondent or respondent's counsel or legal representative, any legal issues raised, and any other matter that should be known by the next ICE attorney handling the case.

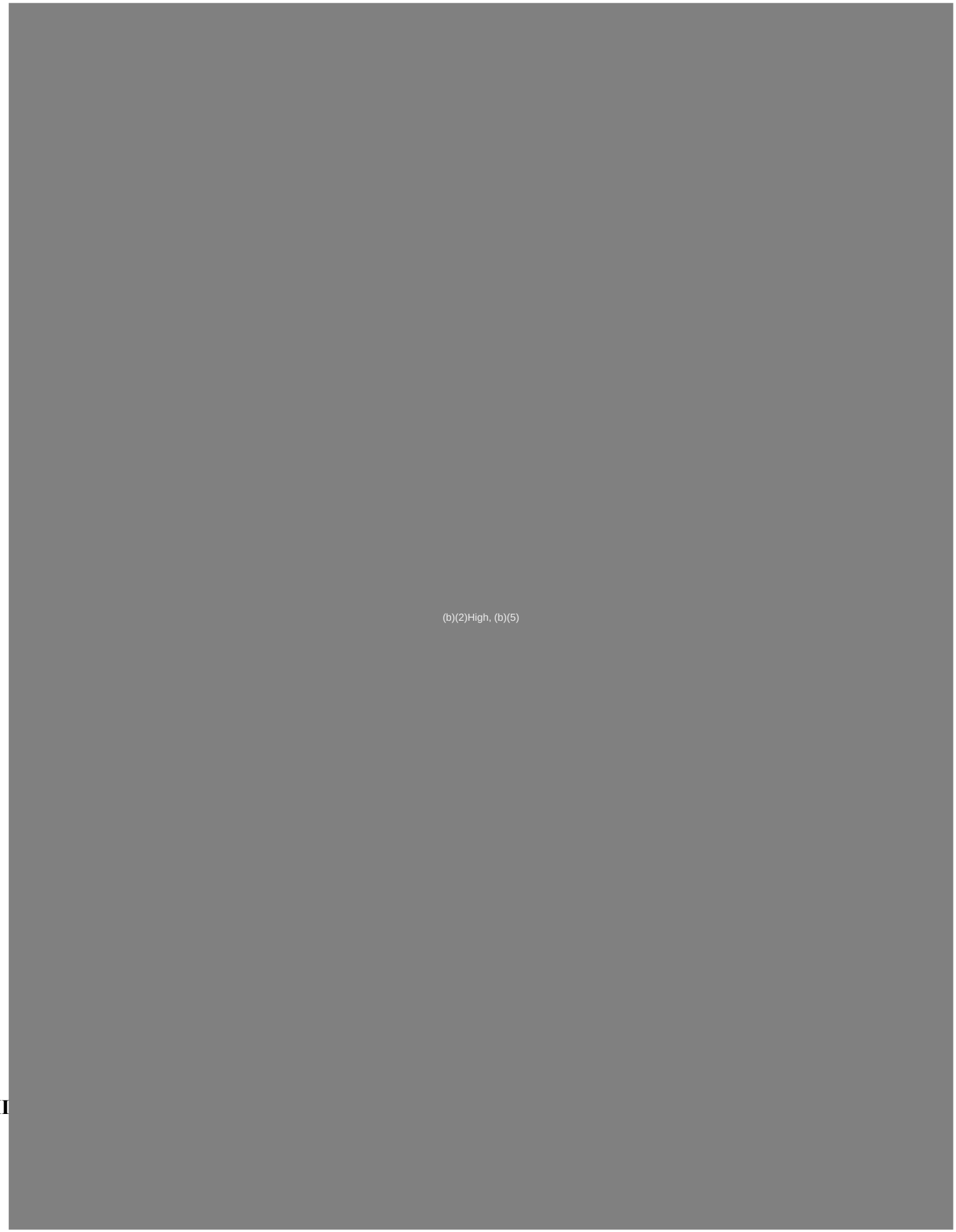
2. While the case is still pending before the Immigration Court and where the A-file is still in the possession and control of the Baltimore Office of Chief Counsel a GEMS coversheet should be printed out and placed on the right side of the A-file.

V. SECURITY AND BACKGROUND CHECKS FOR RELIEF APPLICATION (8 C.F.R. § 1003.47)

(b)(2)High, (b)(5)



[11] See 8 C.F.R. § 1003.47(e)



VII

(b)(2)High

within 3 days of the merits hearing. The visa request form may be faxed to the Department of States. Upon completion, the Department of State Immigrant Visa Control Office will annotate the same form indicating that a visa number has been allocated and fax it back to the requestor. After the hearing, the assigned attorney should fax the form back to Immigrant Visa Control to confirm whether or not the adjustment application was granted by the immigration judge—indicate in the Block "CONFIRM Y/N" Y if granted and N if not granted.

VIII. REVIEW OF CHARGING DOCUMENTS FOR LEGAL SUFFICIENCY

All charging documents received in the Office of the Chief Counsel which have mandated review requirements are reviewed by the duty attorney. After an attorney reviews a charging document the GEMS shall be annotated accordingly. If the case is not approved, the case is returned to the issuing unit for appropriate action. A memorandum outlining the charging document's deficiencies and outlining the changes to be made should be appended to the A-file. If the charging document is legally sufficient the ICE attorney may sign the Application for Order to Show Cause and Processing Sheet (Form I-265) attesting to the legal sufficiency of the charging document.

IX. ATTORNEY WORKSHEETS

Everything that happens before the Immigration Court, Board of Immigration Appeals, and in the field must be annotated. The Office of Chief Counsel is responsible for all annotating the attorney work sheet and, thereafter, inputing this information into the GEMS database.

A. GEMS Attorney Worksheet: ICE Attorneys are responsible to ensure that all the appropriate GEMS fields are properly completed in each case. All actions taken or observed by a Chief Counsel, Deputy Chief Counsel, and Assistant Chief Counsel must be documented under the "EVENTS" tab in GEMS. GEMS notes must reflect the procedural posture of the case and adequately convey necessary information to staff. These may include a designation of the attorney of record, the judge, the date, appearances of and on behalf of the respondent, pleading, type of relief requested, the time, date, and type of next hearing, whether witnesses or additional documents are required, disposition, whether an appeal was reserved or taken, and any other matters deemed important. The attorney is responsible for inputting all information from the GEMS Attorney Worksheet to the on-line GEMS Attorney Notebook.

B. GEMS Attorney Notebook: The online GEMS Attorney Notebook also allows access to case information and the recording of case information without retrieving the A-file. Therefore, all actions relating to a case, including phone calls with private counsel or government employees, should be recorded in the GEMS Attorney Notebook. Documents (ie: applications, photos, passports..) may also be scanned into GEMS. As many of the GEMS Attorney notebook fields should be completed. For example, where there is a final decision by the Immigration Judge the "final decision" checkbox should be annotated.

X. SPECIAL INTEREST CASES

Special interest cases includes national security, enforcement, human rights, and protection law cases. Other special interest cases include high profile cases and/or cases related to a high profile ICE initiative. Special interest cases carry different reporting, preparation, and follow-up requirements than non-special interest cases.

A. National Security Law Division ("NSLD") Cases: NSLD cases ("NSLD") involve charges under sections 212(a)(3) or 237(a)(4) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1182(a)(3) or 1229(a)(4), except for any case involving charges under INA sections 212(a)(3)(E) or 237(a)(4)(D). National security cases also include cases where an alien is suspected of being involved in terrorist or other security-related activity, irrespective of whether ICE actually lodges a 212(a)(3) or 237(a)(4) security-related charge of removal.

- NSLD has a point of contact within the Baltimore ICE Office of Chief Counsel. All cases involving national security must be immediately reported to the Chief Counsel, the Deputy Chief Counsel, and the Baltimore NSLD Assistant Chief Counsel.

B. Enforcement Law Division ("ELD") Cases: ELD cases involve significant criminal cases involving extradition, fugitives sought by countries with which the U.S. does not have an extradition treaty, or aliens involved in particularly egregious criminal activity. ELD cases also involves significant agency initiatives that are a part of a *national* ICE initiative such as Operation Predator or Operation Community Shield. Lastly, ELD cases also include any case that has or is likely to generate national media or Congressional attention.

- ELD has no local point of contact within the Baltimore Office of Chief Counsel. All cases involving ELD issues must be immediately reported to the Chief Counsel and the Deputy Chief Counsel.

C. Human Rights Law Division ("HRLD") Cases: HRLD cases involve participants in genocide, participants in acts of torture or extrajudicial killing, and any case involving charges under sections 212(a)(3)(E) or 237(a)(4)(D) of the Act. Lastly, HRLD cases involve human rights abuser cases and any case in which an alien in the United States is suspected of committing or otherwise participating in serious human rights abuses such as persecution or particularly serious violations of religious freedom.

- HRLD has a point of contact within the Baltimore ICE Office of Chief Counsel. All cases involving human rights abusers, persecutors, or participants in genocide, torture, or extrajudicial killings must be immediately reported to the Chief Counsel, the Deputy Chief Counsel, and the Baltimore HRLD Assistant Chief Counsel.

D. Appellate Litigation and Protection Law Division ("ALPLD") Cases: APLD cases involve specifically identified protection law issues. Because of the rapidly evolving nature of protection law, this set of issues is set forth separately under Attachment #. As contested issues become settled law and as new areas of contention arise, it is anticipated this list will change over time, and the Offices of Chief Counsels will be notified whenever that occurs.

- APLD has no local point of contact within the Baltimore Office of Chief Counsel. All cases involving APLD issues must be immediately reported to the Chief Counsel and the Deputy Chief Counsel.

E. Classified Information: Some special interest cases may involve classified information. Only secure and appropriate means are to be used to transmit classified information. The Immigration Judge can consider relevant evidence, which is classified under Executive Order 12958, as amended, to reach a decision regarding custody or relief from removal. *See* C.F.R. §§ 1003.19(d), 1240.11(a)

and (c)(iv); *see also* 8 C.F.R. §§ 1240.33 (exclusion proceedings) and 1240.49(a) and (c) (deportation proceedings).[13]

1. *Using Classified Information*: Upon discovery of classified material that contains information that is relevant to custody or an application for relief from deportation the Chief Counsel, in coordination with the NSLD, will determine whether it is necessary to submit such information to the Immigration Judge.

2. *Declassifying*: If the Chief Counsel determines that the submission of information contained in classified material is necessary, the NSLD Assistant Chief Counsel will request a review of the classified material by the originating agency for possible declassification, or, if declassification is not possible, an unclassified summary. **CLASSIFIED EVIDENCE WILL NOT BE SUBMITTED TO THE IMMIGRATION JUDGE WITHOUT OBTAINING APPROVAL TO DO SO FROM THE APPROPRIATE AUTHORITY.**

    - Procedures Before Immigration Judge: Upon receiving the appropriate approval the ICE attorney will do the following:

        a. File a "Motion to Consider Classified Information" to be served on the Immigration Judge and the respondent or opposing counsel. The motion will cite to 8 C.F.R. §1240.11(a) (or 8 C.F.R. § 1003.19(d) (custody proceedings), 1240.33 (exclusion proceedings) or 1240.49(a) (deportation proceedings)) for authority, and will not describe the evidence to be considered.

        b. Prepare an indexed exhibit with required classification and other security marking. A copy of the classified exhibit will not be served on the respondent or attorney.

XI. IMMIGRATION JUDGE ORDERS

A. **Final Orders of the Immigration Judge**: Orders are usually received from the Immigration Judge immediately upon conclusion of the hearing, and placed in the administrative file. Once the case is completed GEMS must be updated as soon as reasonably possible.

- *Orders by Mail*: If the Immigration Judge elects to prepare a written decision, typically due to the presence at the hearing of the press or numerous family members/witness, the Office of the Immigration Judge will serve the decision on the Office of Chief Counsel by mail. In cases where the Immigration sends the order via interoffice mail or issues a written decision the ICE attorney will update all the relevant GEMS filed as soon as the order is received.

- *Detention and Final Orders*: Where an alien is detained and receives a final order either terminating proceedings or ordering his/her removal, a courtesy copy of the order may be emailed or faxed to DRO. If the file cannot be routed within the day the order should be emailed or faxed, followed by a courtesy call to advise DRO.

B. **Appeals:** Administrative appeals of Immigration Court decisions are adjudicated by the Board of Immigration Appeals ("BIA"). The BIA is the highest administrative appellate body charged by the Attorney General of the United States with adjudicating all appeals arising from the

[13] (b)(2)High, ICE, NSLD. (b)(2)High

Immigration Court. The BIA also adjudicates some specifically enumerated issues arising from CIS adjudicators.[14] The BIA maintains an excellent practice manual. Greater guidance on appeal issues and procedures may be found in this practice manual.[15] Some significant procedural appeal requirement affecting the Office of Chief Counsel are:

- *Reserving Appeal*: The attorney assigned to represent ICE at the immigration hearing is responsible for determining whether or not to reserve appeal. Appeal should be reserved unless there is absolutely no doubt that it is not in the interest of ICE to take an appeal.

- *Appeal Period*: With the exception of bond decisions, parties to an immigration hearing have 30 days within which to file a notice of appeal with the BIA.

- *Filing an Appeal*: Notices of appeals must be filed within 30-days from the Immigration Judge's decision. Notices of appeal must be filed on form EOIR-28. The BIA considers the appeal "filed" only when the notice of appeal is received by the BIA. Given this rule appeals to the BIA should be mailed via either certified return receipt mail or via DHL overnight express. ICE counsel is responsible for sending any correspondence to the BIA in a way that may be independently verified by the Office of Chief Counsel.

- *Appeal Briefs*: When an appeal is filed the BIA will issue a briefing schedule. Typically the BIA will also provide a transcript of the proceedings. The assigned attorney will prepare and file ICE's appeal brief without waiting for receipt of the transcript of proceedings, unless the transcript is necessary for the proper preparation of the brief. The assigned attorney will maintain possession of the A-file until receipt of the decision of the BIA. ICE attorneys are **REQUIRED** to comply with any and all deadlines set by the Immigration Judge and the BIA.

- *Alien Appeal*: Where an alien appeal is taken the A-file will be reassigned to the last ICE Attorney who was responsible for the merits hearing. If that ICE Attorney is unavailable (ie: the ICE Attorney has been reassigned or left the Baltimore Office of Chief Counsel) the appeal will be reassigned to the Duty Attorney for the day the appeal was received. If an alien appeal is not filed within the 30-day period the A File must be routed to DRO in a timely manner.

- *ICE Appeals*: As noted in subsection 3, ICE appeals must be filed with the BIA within 30-days on a form EOIR-26.[16] Once an ICE Appeal is taken the A-File will be retained by the assigned attorney for briefing. If the an appeal is not taken the assigned attorney will forward the A-file to DRO. ICE attorneys are **REQUIRED** to comply with any and all deadlines set by the Immigration Judge and the BIA.

    a. **Automatic Stays of Custody Decisions:** In bond appeals the ICE Attorney may seek an automatic stay of custody decisions by the Immigration Judges. Automatic stays requests must be sought by filing form EOIR-43. Automatic stay request must be approved beforehand by the chief counsel or deputy chief counsel. THE EOIR-43 MUST BE FILED NO LATER THAN 24-HOUR FROM THE DATE OF THE IMMIGRATION JUDGE'S DECISION. IN ORDER TO PERFECT THE STAY A NOTICE TO APPEAL MUST BE

[14] 8 C.F.R. § 1003.1(d)(3).
[15] http://www.usdoj.gov/eoir/vll/qapracmanual/apptmtn4.htm.
[16] ICE, Appellate Counsel. (b)(2)High (b)(2)High

FILED WITHIN 10-DAYS OF THE IMMIGRATION JUDGES DECISION.[17] NOTICE OF APPEALS MUST BE APPROVED BY THE OFFICE OF APPELATE COUNSEL AND PROTECTION LAW DIVISION ("APLD"). Requests for automatic stays and notices to appeal must be emailed to APLD.

b. **Brief:** The Government's appeal brief should be thoroughly researched and well written. If the attorney assigned to the case cannot write the brief the brief should be reassigned.

XII. MOTIONS

A. Motions to Reopen

1. *Alien Motions to the Immigration Court*: When a motion to reopen is received in the Chief Counsel's Office will time/date stamp the motion upon receipt.

a. Joint Motions to Reopen are routed to the Duty Attorney assigned to the day the motion is received. All joint motions must be reviewed and approved by the Chief Counsel. Assistant Chief Counsels may not join a motion to reopen without approval of the Chief Counsel.

b. The attorney who receives the file will create an event record in GEMS in the category "Motion to Reopen" and record the date of receipt.

c. The Office of the Chief Counsel should examine the A-file and/or motion papers to determine whether or not to respond. If the Assistant Chief Counsel decides not to respond the reasons should be annotated in GEMS. All efforts will be made to take the appropriate action on motions to reopen within 10 days of receipt. All actions on Motions to Reopen will be noted in GEMS and responses stored in GEMS through GEMS iManage.

2. *ICE Motions to the Immigration Court***:** All ICE motions must be filed with the Immigration Court pursuant to the local rules and must comply with the regulatory requirements under 8 C.F.R. § 1003.23(a).

a. All ICE motions to the Immigration Court must include a proposed order for signature by the Immigration Judge. Proposed orders should conform to the format contained in Appendix E of the Baltimore Local Operating Procedures.

b. Pursuant to 8 C.F.R. § 1003.23(a) the parties must use a Certificate of Service that conforms to the format in Appendix.

B. Applicability to Other Motions

These procedures contained in section XIII(A) are applicable to motions to reconsider made or received by the ICE Office of Chief Counsel.

[17] **8 C.F.R. §1003.19(i)(2).**

XIV. FEDERAL LITIGATION

A. **Court Proceedings**: Federal litigation refers to immigration cases within the district that are litigated either in the Federal District Court or the Fourth Circuit Court of Appeals. Applicable jurisdiction provisions are primarily found at Sections 106 and 1329 of the Immigration and Nationality Act, as well as 28 U.S.C. Sections 2241 and 1331, and the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231. Some federal litigation is handled by the Office of Chief Counsel, which works with the U.S. Attorney's Office and Office of Immigration Litigation on such cases. The Chief Counsel and the ICE attorney designated as a Special Assistant United States Attorney ("SAUSA") must be familiar with Federal Rules of Civil Procedure; Federal Appellate Rules; and, Local District and Circuit Court Rules.

1. *Inquires and Documents*: It is vitally important that inquiries and documents pertaining to federal litigation be promptly brought to the attention of the Chief Counsel or the Baltimore SAUSA. All telephone inquiries concerning any matter involving federal litigation and all incoming documents shall be forwarded to the Chief Counsel or the SAUSA.

   - Upon receipt of any documents which indicate initiation of a federal litigation case, the Chief Counsel or her designee shall contact the AUSA and, when appropriate, the OIL attorney, and advise him or her of the court action.

   - It is the responsibility of the Office of Chief Counsel to timely complete litigation reports for the AUSA handling the case, as well as providing necessary support as may be needed to fully represent the Government in the litigation. This includes securing Government witnesses for any testimony needed for a district court hearing.

   - The Office of Chief Counsel shall advise the operating unit of any decision rendered in the federal litigation case. However, no action shall be taken against the alien until the mandate is issued by the court. In those cases adverse to the alien, once the mandate is issued, the case file should be closed, and forwarded to DRO.

XV. CLIENT ADVICE:

A. **Legal Advice**: The Office of the Chief Counsel is routinely contacted for legal advice on a variety of issues relating to immigration. When the advice sought involves a pending case assigned to an Assistant Chief Counsel, he or she may exercise his or her judgment in providing the advice orally. To the extent possible, the Assistant Chief Counsel should obtain the relevant A-number and record advice given orally in GEMS.

- *Advise to the Agency v. Client*: When the advice sought involves unique, sensitive or policy related issues, the request must be made through appropriate supervisory channels to the Office of Chief Counsel. The Chief Counsel will review the request and prepare the appropriate response in a timely manner. Only the Office of Principal Legal Advisor may issue official "Legal Opinions" for the agency. The Office of Chief Counsel provides legal advice to the client.

B. **Significant Interest Cases**: The Office of Chief Counsel is responsible for reporting cases of interest or significance to the Office of Principal Legal Advisor, ICE. Such cases include:

- National Security Cases
- Cases Involving Classified Information
- Investigations Relating to National Security
- Significant Criminal Cases
- Human Rights Abusers
- Other High Profile Cases
- Novel or Unique Legal Issues of Special Significance
- Significant Achievements/Accomplishments

XVI. SUBPOENAS

A. Under DHS guidelines, subpoenas must be served on the Office of the Chief Counsel. Personnel receiving subpoenas will immediately bring them to the attention of the Chief Counsel, Deputy Chief Counsel, or designated Assistant Chief Counsel.

XVII. STAYS OF DEPORTATION/REMOVAL

A. Where an alien has filed a motion to reopen/reconsider before the BIA, the alien is in custody, and the Government intends to remove the person, the BIA will notify the Government point of contact. Pearson Memo, November 2, 2001 "Emergency Stay Requests Filed with the Board of Immigration Appeals."

1. Upon receipt of other stays of deportation orders entered by any other court, the Office of Chief Counsel or her designee or legal assistant shall promptly notify the appropriate unit telephonically and follow up in writing. **See Attachment One.** Ninth Circuit stays are routed through Los Angeles DRO, which then notifies other DRO offices in the circuit via cc: mail.

2. Types of Stays:

   a. Automatic:
      1) Motion to reopen filed with the BIA after an in absentia order.
      2) Motion for a stay filed in the Ninth Circuit. There is an automatic stay once a motion for a stay is filed until the Court issues a decision on the merits of the motion for a stay.

      3) Motion for stay filed in District Court. There is no automatic stay, but there has been a past practice and policy not to remove an alien after he files for a stay with the District Court. If the Service is to remove an alien after he has filed for a stay with the District Court, past policy required Service to notify the Court, at which time it would usually grant the stay.

   b. Not Automatic Stay:
      1) Filing an appeal of an order of removal to the Ninth Circuit. Unless a motion for a stay is filed.
      2) Filing an appeal with the District Court. Unless a motion for a stay is filed, there is no automatic stay.
      3) Motion to reopen to BIA.

XVIII. CRIMINAL ALIENS

A. **Criminal Alien Charging Documents**: All criminal alien charging documents must be reviewed by the Office of Chief Counsel for legal sufficiency. Once a notice to appear is approved it may be served on the court. The assigned attorney will record the review as an event in GEMS.

B. **Administrative Removal Charging Documents**: All administrative removal charging documents must be reviewed by the Office of Chief Counsel for legal sufficiency. After approval for legal sufficiency, the file is returned to the officer designated to issue the notice. The assigned attorney will record the review as an event in GEMS.

XX. PERSONNEL MATTERS

All actions requiring supervisory approval should be submitted to the Office of Chief Counsel in a timely manner. These actions include, but are not limited to, leave and promotion requests. Leave will be approved pursuant to the Administrative Manual and the Collective Bargaining Agreement, when appropriate, priority of submission (earlier dated requests get approved first), Immigration Judge docket coverage, and agency needs are usually balanced and considered.

XXI. CONCLUSION

The procedures and guidelines established herein are for the efficient operation of the Office of Chief Counsel. Where reference is made to Chief Counsel, an attorney designated as Acting in that capacity is responsible to perform the required functions.

Modifications to these procedures may be made by the Chief Counsel to meet specific needs of the office. Attorneys are encouraged to be creative and innovative to perform the functions of the office and to recommend improvements.

In any process or procedure where the Office of the Chief Counsel and the Collective Bargaining Agreement are in conflict the Collective Bargaining Agreement will take precedence.

ATTACHMENTS

1. Notification of Stays
2. Significant Case Report combined with One Page Report
3. EOIR-43 Reporting Form
4. Operation Predator Adverse Decision Reporting Form
5. Request for Immigrant Numbers

ATTACHMENT ONE

ATTORNEY WORK PRODUCT - DO NOT RELEASE

STAY DECISION NOTIFICATION Date:_____

To: Detention and Removal Office

From: Office of Chief Counsel

Re: _____

Case No. _____

A stay has been entered by the following court in the above matter

effective _____.

( ) Immigration Judge
- ( ) Written Order Attached
- ( ) Oral Order
- ( ) Motion to Reopen Filed (Section 242B)

( ) Board of Immigration Appeals
- ( ) Written Order Attached
- ( ) Telephonic Decision
- ( ) Motion to Reopen Filed (Section 242B)

( ) United States District Court
- ( ) Written Order Attached
- ( ) Oral Order
- ( ) Habeas Corpus Petition Filed

( ) United States Court of Appeals
- ( ) Written Order Attached
- ( ) Oral Order
- ( ) Petition for Review Field (Non-Aggravated Felon)

( ) United States Supreme Court
- ( ) Written Order Attached
- ( ) Oral Notification from Solicitor General/OIL

( ) Other _____

PLEASE TAKE NO ACTION TO ENFORCE THE EXPULSION ORDER UNTIL FURTHER NOTICE

ATTACHMENT TWO

SIGNIFICANT CASE REPORT (SCR)

From: (OCC POC Name/Title):

(Office/Phone):

(Date/Time):

(District):

(Contact Information): *(emergency numbers)*

DETAILS

(NOTE: ONE FORM MUST BE SUBMITTED FOR EACH INDIVIDUAL CASE)

A Number:	JTTF Agent Assigned:	Attorney Assigned:
Last Name:	First Name:	Middle Name:
DOB:	POB:	Citizenship:
Nationality:	Ethnicity: (may be relevant to persecutor cases)	

Operation name: (If applicable)

IJ Case ☐ (Immigration Court)
Non-IJ Case ☐ (adjudications or ongoing investigation)
Federal Litigation ☐ (Habeas Corpus, Mandamus action, past litigation, PFR, Extradition)
Pending Criminal Prosecution: **Yes** ☐ **No** ☐

Date NTA filed:

NTA charges:

Immigration Status: (LPR/Visa holder/PWI)

Date, place and manner of entry:

Custody Location/Status:

Bond set by District: $ Bond set by IJ: $

Legal Procedural History: (When will the alien appear in court, past appearances in court, previous legal proceedings)

Operational History: (How did case come to ICE's attention)

A-File Location and Status: (Does the OCC have the file, if not where is the file and has it been requested)

Classified information relevant to the case: **Yes** ☐ **No** ☐

*** IF A PRIORITY, THIS INFORMATION MUST BE TRANSMITTED IMMEDIATELY TO THE PRINCIPAL LEGAL ADVISOR, THE DEPUTY PRINCIPAL LEGAL ADVISOR, THE DIRECTOR OF FIELD LEGAL OPERATIONS, THE SPECIAL COUNSEL, THE CHIEF OF STAFF AND THE APPROPRIATE HQ DIVISION CHIEF.**

Precedence: Priority or Routine **Litigation**

If priority: Date: 00/00/0000

To: Principal Legal Advisor
Deputy Principal Legal Advisor
Director of Field Legal Operations
Special Counsel
Chief of Staff
Division Chief (NSLD, HRLD, or ELD)

If routine:

To: Director of Field Legal Operations
Division Chief (NSLD, HRLD, or ELD)

Name; A-number

CURRENT DEVELOPMENTS:

BACKGROUND:

FURTHER ACTION:

RECOMMENDATION:

ATTACHMENT THREE

EOIR-43 Reporting Form
[Please e-mail to Appellate Counsel only after completion of Chief Counsel review.]

Alien Name / A#:		Chief Counsel Office / Assigned Attorney:	
236(a) or 236(c) or Arriving Alien:		NSLD Case (Yes/No):	
Specify Any Special 43 Category (e.g., "OPPRED"):			
Date of IJ Bond / Release Order:		Date of EOIR-43 Filing:	
Summary of Flight Risk / Dangerousness: **(Use more space if necessary.) (If criminal alien, please detail: conviction type / date / underlying circumstances / conviction documents in record.)**			
Summary of IJ Reasoning in Setting Bond / Releasing: **(Use more space if necessary.)**			
Chief Counsel 43 Approval Date:			
[<u>Operation Predator Cases Only</u>. Chief Counsel, if recommending AGAINST a 43 and/or bond appeal, please provide explanation below. Use more space if necessary.]			
▼ Below Sections to be Completed by HQ Only ▼			
Appellate Counsel 43 Approval / Disapproval Date (and explanation of any disapproval): **[If NSLD case, also note NSLD approval / disapproval.]**			
Field Director Comments [Operation Predator Cases Only]: **[For use if Appellate Counsel has disapproved 43.]**			

ATTACHMENT FOUR

Operation Predator "Adverse Decision" Reporting Form

[Please e-mail to Appellate Counsel only after completion of Chief Counsel review.]

[Please also complete an initial "EOIR-43 Reporting Form" if not previously prepared in case.]

Alien Name & A#:					Chief Counsel Office / Assigned Attorney:				
Type of Adverse Decision **(check one)**:					Date of Adverse Decision:				
IJ Termination or Grant of Relief									
BIA Dismissal of ICE Bond Appeal									
US District Court Habeas Decision									
Alien Currently Detained?	Yes		No						
Summary of Adverse Decision: **(Use more space if necessary. Please also include a description of any additional evidence / information on the predatory crime that may have been uncovered since the time of initial IJ bond hearing.)**									
Chief Counsel Position on Further Review **(E.g., Appeal / AG Referral) (If "no," please provide reasoning below.)**				Yes		No			
▼ Below Sections to be Completed by HQ Only ▼									
Appellate Counsel Position on Further Review : **(Provide any comments below.)**				Yes		No			
Field Director Position on Further Review (if necessary): **(Provide any comments below.)**				Yes		No			

ATTACHMENT FIVE

REQUEST FOR IMMIGRANT NUMBER(S)

TO: IMMIGRANT VISA CONTROL, U.S. DEPT OF STATE
FAX: (202) 663-1083 PHONE: (202) 663-1513

FR: DHS/ICE, [*Office location*], CHIEF COUNSEL'S OFFICE

For VO use

TOTAL ALLOCATED:

FAX: (xxx) xxx-xxxx **PHONE: (xxx) xxx-xxxx**

REQUESTED BY: _____

DATE: _____

Advance Request for Hearing Date: _____

*******VISA CONTROL*****VISA CONTROL*****VISA CONTROL*****VISA CONTROL*******

DATE REQUESTED	COUNTRY OF CHARGE	CLASS SYMBOL	PRIORITY DATE	DATE OF BIRTH	A- NUMBER	QTY	CONFIRM Y/N

Note to Trial Attorney: FAX back status of visa number. Use last column to indicate yes or no answer please.