OOD
PM 20-06

Effective: January 13, 2020

To: All of EOIR
From: James R. McHenry III, Director
Date: January 13, 2020

SECTION 7611 OF THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2020, PUBLIC LAW 116-92

PURPOSE:	Management of cases related to Section 7611 of the National Defense Authorization Act for Fiscal Year 2020
OWNER:	Office of the Director
AUTHORITY:	Pub. L. 116-92; 8 C.F.R. § 1003.0(b)
CANCELLATION:	None

Section 7611 of the recently-enacted National Defense Authorization Act for Fiscal Year 2020 (NDAA), Pub. L. 116-92, established a new eligibility program for adjustment of status for certain Liberian nationals and their spouses, children, and unmarried sons and daughters. The NDAA did not prescribe a role for either the immigration courts or the Board of Immigration Appeals (the Board) in adjudicating applications under the new program; rather, authority over the new program is committed to the Secretary of Homeland Security (the Secretary). NDAA § 7611(a)-(i). Nevertheless, ancillary issues regarding the NDAA may arise in immigration proceedings, and the instant PM is intended to provide guidance for addressing those issues.

I. General Provisions

Subject to additional limitations, two categories of aliens are eligible to apply for adjustment of status under section 7611 of the NDAA:

1. Liberian nationals who have been continuously physically present in the United States since November 20, 2014, through the date when the alien submits an application; and
2. spouses, children, and unmarried sons or daughters of such Liberian nationals (*i.e.* those who have the requisite continuous physical presence).

NDAA § 7611(c)(1).

For purposes of establishing the relevant period of continuous physical presence, an alien shall not be considered to have failed to maintain continuous physical presence based on one or more

absences from the United States for one or more periods amounting, in the aggregate, of not more than 180 days. *Id.* § 7611(c)(2).

Under the new program, the Secretary shall adjust the status of an eligible alien to that of an alien lawfully admitted for permanent residence who:

1. applies to the Department of Homeland Security (DHS) for adjustment of status not later than one year following the enactment of the NDAA (*i.e.* no later than December 20, 2020);
2. is otherwise eligible to receive an immigrant visa; and
3. is admissible to the United States, notwithstanding the grounds of inadmissibility in INA §§ 212(a)(4) (public charge), (5) (labor certification requirement), (6)(A) (alien present without admission or parole), and (7)(A) (documentation requirements).

Id. § 7611(b)(1)-(2).

An alien shall not be eligible for adjustment of status under the new program if the Secretary determines that the alien:

1. has been convicted of any aggravated felony;
2. has been convicted of two or more crimes involving moral turpitude (other than a purely political offense); or
3. has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

Id. § 7611(b)(3).

II. Aliens Subject to Orders of Exclusion, Deportation, Removal, or Voluntary Departure

An alien present in the United States who is otherwise subject to an order of exclusion, deportation, removal, or voluntary departure under any provision of the Immigration and Nationality Act (INA) may, notwithstanding the existence of such an order, submit an application for adjustment of status under this new program if the alien is otherwise eligible for adjustment of status. NDAA § 7611(b)(4)(A).[1]

No separate motion to reopen, reconsider, or vacate is required in order to apply for adjustment of status under this program. *Id.* § 7611(b)(4)(B). Accordingly, the immigration court and the Board should reject the filing of any motion that seeks to reopen, reconsider, or vacate an order of exclusion, deportation, removal, or voluntary departure *solely* based on a *potential or pending* application under the new provisions of the NDAA.[2]

[1] The Secretary also "shall promulgate regulations establishing procedures by which an alien who is subject to a final order of deportation, removal, or exclusion, may seek a stay of such order based on the filing of an application" under this program. NDAA § 7611(d)(1).

[2] A motion seeking to reopen, reconsider, or vacate an order of exclusion, deportation, removal, or voluntary departure based on multiple grounds that include a potential or pending application under the new provisions of the NDAA should not be rejected, but it would be contrary to law for an adjudicator to grant a motion solely for that reason. *See*

If an alien who is otherwise subject to an order of exclusion, deportation, removal, or voluntary departure is granted adjustment of status, the Secretary shall cancel the order. *Id.* § 7611(b)(4)(C)(i). Although it is a novel provision of immigration law to direct the Secretary to cancel an order issued by an immigration judge or the Board and further guidance on the precise implementation of that section may be forthcoming, immigration judges and the Board should expeditiously adjudicate any joint motions to reopen such orders filed by an alien and DHS following the approval of an application under NDAA § 7611.

III. Aliens Currently in Exclusion, Deportation, or Removal Proceedings

At the immigration court level, non-detained[3] cases involving aliens currently in proceedings who (1) have established *prima facie* eligibility for adjustment of status pursuant to NDAA §§ 7611(b)(1)-(3) and (c)(1)-(2), (2) have submitted an application to DHS for such adjustment of status and provided proof of such submission, (3) have no other pending applications before the immigration judge, other than an alternative request for voluntary departure, and (4) have appropriately been granted a continuance by an immigration judge to await the adjudication of that application should be placed on a status docket, if the relevant court utilizes one, consistent with PM 19-3, *Use of Status Dockets* (Aug. 16, 2019).

An alien's eligibility for adjustment of status under the provisions of the NDAA "shall not preclude the alien from seeking any status under any other provision of law for which the alien may otherwise be eligible." *Id.* § 7611(i)(2). Thus, for aliens currently in proceedings who have other applications for status (*e.g.* asylum, adjustment of status, cancellation of removal for certain nonpermanent residents, Temporary Protected Status) pending before an immigration judge, those cases should not be placed on a status docket, and immigration judges should proceed with adjudicating those applications unless the alien indicates that he or she no longer wishes to seek such status.

For cases pending at the Board involving non-detained aliens currently in proceedings who: (1) have established *prima facie* eligibility for adjustment of status pursuant to NDAA §§ 7611(b)(1)-(3) and (c)(1)-(2); and (2) have submitted an application to DHS for such adjustment of status and provided proof of such submission, the Board will complete the record of appeal, including the receipt of briefs by the parties. The Board should proceed with the disposition of the appeal if the Board's decision will either: (1) terminate, or affirm the termination of, proceedings against the alien; or (2) grant, or affirm the grant of, relief[4] (except voluntary departure) or Temporary

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Matter of Yauri, 25 I&N Dec. 103, 107 & 110 (BIA 2009) ("We have long been of the view that administratively *final* exclusion, deportation, or removal proceedings should not be reopened for matters over which neither the Immigration Judge nor the Board has jurisdiction, and that referencing the absence of such jurisdiction was a rational basis in itself to decline to reopen proceedings. . . Accordingly, we conclude that we have not been granted authority to reopen the proceedings of respondents who are under a final administrative order of removal to pursue matters that could affect their removability if we have no jurisdiction over such matters.").

[3] Cases of detained aliens who are *prima facie* eligible for adjustment of status pursuant to NDAA § 7611 should be rare, and the appropriateness of their inclusion on a status docket will be addressed on a case-by-case basis. The Board will similarly handle any such detained cases on a case-by-case basis.

[4] Withholding of removal under INA § 241(b)(3) and withholding or deferral of removal under the Convention Against Torture constitute forms of protection, rather than relief from removal.

Protected Status to the alien. In all other such cases, the Board should defer adjudication of the appeal until notice of the disposition of the alien's application for adjustment of status under the NDAA is provided to the Board.

Finally, for cases that are pending at the time an alien's application is approved under NDAA § 7611, immigration judges and the Board should expeditiously adjudicate any motions filed by either party following such approval.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing herein should be construed as mandating a particular outcome in any specific case.

Please contact your supervisor if you have any questions.