U.S.A. Cultivated Blueberry Council

§ 1218.40 [Amended]

5. In § 1218.40 the words ''U.S.A. Blueberry Council'' are removed and the words ''U.S.A. Cultivated Blueberry Council'' are added in its place, and ''USABC'' is removed Wherever it appears and ''USACBC'' is added in its place.

§§ 1218.41, 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.55, 1218.56, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77 [Amended]

6. In §§ 1218.41, 1218.42, 1218.43, 1218.44, 1218.45, 1218.46, 1218.47, 1218.48, 1218.50, 1218.51, 1218.55, 1218.56, 1218.62, 1218.70, 1218.73, 1218.75, and 1218.77, ''USABC'' is removed wherever it appears and ''USACBC'' is added in its place.

§§ 1218.52, 1218.53, 1218.54, and 1218.60 [Amended]

7. In §§ 1218.52, 1218.53, 1218.54, and 1218.60, ''USABC'' is removed wherever it appears and ''USACBC'' is added in its place.

Dated: July 11, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–17767 Filed 7–16–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 128P; AG Order No. 2467–2001]

RIN 1125–AA31

Motions To Reopen for Suspension of Deportation and Special Rule Cancellation of Removal Pursuant to Section 1505(c) of the LIFE Act Amendments

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR) by establishing a special procedure for the filing and adjudication of motions to reopen deportation and removal proceedings to apply for suspension of deportation and special rule cancellation of removal pursuant to section 1505(c) of the Legal Immigration Family Equity Act Amendments of 2000 (LIFE Act Amendments).

DATES: *Effective date:* This interim rule is effective July 17, 2001.

Comment date: Comments must be submitted on or before September 17, 2001.

Motions to reopen under this rule must be filed on or before October 16, 2001.

ADDRESSES: Please submit written comments to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041; or e-mail comments to the following e-mail address: LIFE.1505(c)@USDOJ.GOV.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: This rule revises the special reopening provisions previously established in 8 CFR 3.43. The revisions account for changes in eligibility established by sections 1506 and 1510 of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386, Div. B, tit. V, 114 Stat. 1464, 1527–29, 1531–32) (VTVPA) and section 1505(c) of the LIFE Act Amendments (Pub. L. 106–554, App. D, tit. XV, 114 Stat. 2763, 2763A–326 to 328). The rule permits aliens with reinstated final orders and aliens with newly issued final orders, where those new orders were issued based on their having reentered the United States illegally after having been removed or having departed voluntarily under an order of removal subject to reinstatement under section 241(a)(5) of the Immigration and Nationality Act (the Act), to move to reopen immigration proceedings for the sole purpose of applying for suspension of deportation or special rule cancellation of removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act of 1997 (Pub. L. 105–100, 111 Stat. 2160, 2196–200) (NACARA).

Why Is the Department Issuing This Interim Rule?

Section 241(a)(5) of the Act provides for the reinstatement of a removal order against any alien who illegally reenters the United States after having been removed or having departed voluntarily under an order of removal. It also bars any alien whose removal order has been reinstated from receiving any relief under the Act, and prohibits the reopening or review of the previous order.

Section 1505(c) of the LIFE Act Amendments added a new subsection (h) to the transition provisions in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208, Div. C, tit. III, subtit. A, 110 Stat. 30009, 3009–625) (IIRIRA). Section 309(h)(1) of IIRIRA, as so amended, provides that aliens who are otherwise eligible for suspension of deportation or special rule cancellation of removal under section 203 of NACARA shall not be barred from applying for such relief by operation of section 241(a)(5) of the Act.

Section 309(h)(2) of IIRIRA, as amended, provides that aliens who have become eligible for relief based on new subsection (h)(1) will have the opportunity to submit an additional motion to reopen, within a designated period, solely for the purpose of adjudicating the NACARA claim. Consistent with the provisions of section 203(c) of NACARA, an alien with a final order of deportation or removal who has become eligible for suspension of deportation or special rule cancellation of removal as a result of section 1505(c) of the LIFE Act Amendments may file one such motion to reopen removal or deportation proceedings on or before October 16, 2001.

This rule also clarifies that those persons eligible for relief under new section 309(h) (as added by section 1505(c) of the LIFE Act Amendments) include the classes added to section 309(c)(5)(C)(i) of IIRIRA by sections 1506(b)(3) and 1510(b) of the VTVPA. These additional classes of eligible aliens include certain spouses and children who have been battered or subjected to extreme cruelty by a NACARA section 203 applicant, or by a United States citizen or lawful permanent resident.

The VTVPA also contains an additional provision making certain classes of battered aliens who are not covered by this rule eligible to submit a motion to reopen. See section 1506(c) of the VTVPA. The Department anticipates promulgating regulations in the near future regarding relief for those aliens who are addressed in the VTVPA, but are not covered by this rule.

How Has the VTVPA Changed the Classes of Aliens Eligible for Suspension of Deportation or Special Rule Cancellation of Removal Pursuant to Section 309(c)(5)(C)(i) of IIRIRA?

The six classes of eligible aliens in section 309(c)(5)(C)(i) of IIRIRA, as amended by NACARA, are set forth in § 3.43(d)(1)–(6) of this rule. The VTVPA added two additional classes of eligible aliens, which are set forth in § 3.43(d)(7) and (8) of this rule.

The first new class of aliens (class 7) includes aliens (1) who were issued Orders to Show Cause or were in deportation proceedings before April 1, 1997, and (2) who applied for suspension of deportation under former section 244(a)(3) of the Act (as in effect before the date of enactment of section 309 of IIRIRA) as aliens who had been battered or subjected to extreme cruelty by a spouse or parent who is a United States citizen or lawful permanent resident.

The second new class of aliens (class 8) includes the spouses or children of aliens described in classes 1 through 4, 8 CFR 3.43(d)(1)–(4), as amended, if they were the spouse or child of such alien: (1) At the time a decision is rendered to suspend deportation or to cancel removal of that alien; (2) at the time that alien filed an application for suspension of deportation or cancellation of removal; or (3) at the time that alien registered for benefits under the settlement agreement in *American Baptist Churches, et al.* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991) (ABC), applied for Temporary Protected Status (TPS), or applied for asylum. In addition, the spouse or child must demonstrate that he or she (or the child of that spouse) has been battered or subjected to extreme cruelty by the alien parent or spouse who is within one of the four classes described at 8 CFR 3.43(d)(1)–(4), as amended. Aliens in the new classes 7 and 8 are not required to be nationals of El Salvador, Guatemala, or former Soviet bloc countries.

Who Is Eligible To Reopen Proceedings Under Section 1505(c) of the LIFE Act Amendments?

Consistent with the existing provisions of 8 CFR 3.43, an individual submitting a motion to reopen under section 1505(c) of the LIFE Act Amendments must establish certain preliminary requirements. The motion to reopen must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible, by operation of section 241(a)(5) of the Act, for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or for cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, but for enactment of section 1505(c) of the LIFE Act Amendments;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the classes of aliens described in section 309(c)(5)(C)(i) of IIRIRA, as amended by section 203 of NACARA and sections 1506 and 1510 of the VTVPA.

Section 3.43(d) of this rule describes with more particularity the eight classes of aliens covered by this special reopening procedure. Prima facie eligibility is discussed in greater detail in this rule under the section entitled ''How is prima facie eligibility defined?''

What Is the Deadline for Filing Motions To Reopen Pursuant to Section 1505(c) of the LIFE Act Amendments?

Section 1505(c) of the LIFE Act Amendments requires that the Attorney General designate a specific time period for filing motions to reopen under this section. Section 1505(c) further provides that the time period is to begin no later than 60 days after the enactment of the LIFE Act Amendments and is to extend for a period not to exceed 240 days. See section 309(h)(2) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments. Consistent with that statutory directive, this rule designates the period from February 19, 2001, through October 16, 2001, as the time period for filing motions to reopen pursuant to section 1505(c) of the LIFE Act Amendments.

This rule does not address the provision in section 1506(c) of the VTVPA providing for motions to reopen proceedings by certain other classes of battered aliens. The Department anticipates promulgating regulations in the near future that will address the motions to reopen at issue in section 1506(c) of the VTVPA.

Does This Rule Extend the September 11, 1998, Deadline for Motions To Reopen Under Section 203(c) of NACARA?

No. Only aliens who have final orders of removal and deportation that have been reinstated, or aliens who have newly issued final orders that were issued based on their having reentered the United States illegally after having been removed or having departed voluntarily under a prior order of removal that was subject to reinstatement under section 241(a)(5) of the Act, may move to reopen proceedings for the purpose of applying for suspension of deportation or special rule cancellation of removal under section 203 of NACARA. Although this rule amends the existing procedures of § 3.43, which originally dealt only with motions to reopen under section 203(c) of NACARA, this rule does not extend the September 11, 1998, filing deadline for those NACARA motions. Editorial changes within the text of former § 3.43 have been made for consistency purposes only and do not change or extend the requirements or procedures applicable to motions to reopen under section 203(c) of NACARA.

What Are the Procedures for Reopening Deportation or Removal Proceedings Pursuant to Section 1505(c) of the LIFE Act Amendments?

The Department has adapted for purposes of section 1505(c) motions to reopen the existing procedures of § 3.43, which originally dealt only with motions to reopen under section 203(c) of NACARA. An alien seeking to reopen proceedings pursuant to section 309(h) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, must file a motion to reopen and include with that motion an application for suspension of deportation or cancellation of removal and supporting documents, on or before October 16, 2001. An eligible alien may file only one motion to reopen pursuant to section 309(h) of IIRIRA. The alien must establish in such motion that he or she satisfies each of the requirements for reopening in § 3.43(c). The front page of the motion to reopen and any envelope containing such motion should include the notation ''Special LIFE 1505(c) Motion.'' A copy of both the motion to reopen and the application for suspension of deportation or cancellation of removal, with all other supporting documents, must be served on the Immigration and Naturalization Service (Service). Persons filing a motion to reopen under section 309(h) should follow standard motion practice, as set forth in the regulations at 8 CFR 3.2(c) and 3.23(b)(3), with the exception that the fee (required under 8 CFR 3.8 and 3.24) for motions to reopen submitted pursuant to this rule will be waived.

If an alien has previously filed an application for suspension of deportation or cancellation of removal with the Immigration Judge or the Board of Immigration Appeals (Board), he or she must file a copy of that application or a new application with the motion to reopen. If the motion to reopen is granted, and the alien has previously filed an application, the alien will not be required to pay a new filing fee for the suspension/cancellation application.

If an alien has not previously filed an application for suspension of deportation or cancellation of removal,

the alien must submit a suspension/cancellation application with the motion to reopen. Nothing in this notice changes the requirements and procedures in 8 CFR 3.31(b), 103.7(b)(1), and 240.11(f) for paying the application fee for suspension/cancellation after a motion to reopen is granted if such an application was not previously filed.

If an eligible alien fails to file the required motion, and the applicable application and supporting documents, by October 16, 2001, the alien will have lost his or her one opportunity to move under section 309(h)(2) to reopen proceedings to seek suspension of deportation or special rule cancellation of removal relief. However, an individual may still be eligible to reopen proceedings under other statutory and regulatory provisions.

How Is Prima Facie Eligibility Defined?

An alien filing a motion to reopen pursuant to section 309(h) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, must establish prima facie eligibility for suspension of deportation under former section 244(a) of the Act, as in effect prior to April 1, 1997, or special rule cancellation of removal under section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA. In general, the alien must have been physically present in the United States for a continuous period of at least 7 years immediately preceding the date of such application or at least 3 years in the case of certain battered aliens; must be a person of good moral character during such period; and must establish that deportation or removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence. Different standards apply to aliens who are deportable because of a criminal conviction or certain other grounds. See section 244(a)(2) of the Act, as in effect prior to April 1, 1997, and special rule cancellation of removal under section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA. The period of continuous physical presence must be established as of no later than October 16, 2001.

Further, to be prima facie eligible to apply for suspension of deportation or special rule cancellation of removal, the alien must not be subject to any of the statutory bars to seeking such relief which are discussed below.

What Are the Statutory Bars to Suspension of Deportation and Special Rule Cancellation of Removal?

Section 309(h)(1) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, waives only the statutory bar created by the reinstatement provision in section 241(a)(5) of the Act; all other bars remain. Section 240A(c) of the Act and former section 244(f) of the Act (as it existed prior to April 1, 1997) provide that certain categories of aliens are ineligible for suspension of deportation or cancellation of removal. Moreover, an alien who was previously granted voluntary departure and received oral and written notice of the consequences of failing to depart, but did not depart the United States voluntarily within the time specified, is barred for a specific period of time from various forms of discretionary relief. See section 240B(d) of the Act and section 242B(e)(2), as in effect prior to April 1, 1997. These include suspension of deportation and cancellation of removal, pursuant to section 240B(d) of the Act and former section 242B(e)(2) of the Act (as it existed prior to April 1, 1997). Former section 242B(e)(1), (3) and (4) of the Act (as it existed prior to April 1, 1997) also bars eligibility for such relief for certain aliens who, after receiving the required oral and written notices, failed to appear at their removal or deportation hearings, failed to appear as ordered for deportation, or failed to appear at an asylum hearing. These and any other statutory bars to eligibility for suspension of deportation or cancellation of removal are not waived by section 1505(c) of the LIFE Act Amendments.

Which Application Form Must Be Filed With the Motion To Reopen?

When filing a motion to reopen, aliens in the classes described in paragraphs (d)(1)–(d)(6) and (d)(8) must attach to the motion a copy of the Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to section 203 of Pub. L. 105–100). The Form I–881 is currently being revised to include specifically aliens described in paragraph (d)(8); aliens should attach the most current Form I–881 available to the motion to reopen. Aliens described in paragraph (d)(7) must attach to the motion a copy of the Form EOIR–40, Application for Suspension of Deportation. Aliens should follow the instructions for submitting the appropriate application to the Immigration Court or the Board of Immigration Appeals (Board), but should not submit evidence of payment of the filing fee, unless and until the motion to reopen is granted.

Where Should a Motion To Reopen Under Section 1505(c) of the LIFE Act Amendments Be Filed?

Any motion to reopen and all supporting documentation to apply for suspension of deportation or special rule cancellation of removal under section 309(h) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments, shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case. If the Immigration Court has jurisdiction and grants only the motion to reopen proceedings to apply for suspension of deportation and cancellation of removal, the scope of the reopened proceeding shall be limited to a determination of the alien's eligibility for suspension of deportation or special rule cancellation of removal.

If the Board has jurisdiction and grants only the motion to reopen to apply for suspension of deportation or special rule cancellation of removal, it shall remand the case to the Immigration Court solely for adjudication of the application for suspension of deportation or special rule cancellation of removal.

Must All Aliens Eligible for Relief Under Section 309(h)(1) of IIRIRA Submit a Motion To Reopen Under Section 309(h)(2) in Order To Obtain Such Relief?

Not all aliens are required to file a motion to reopen in order to obtain relief under section 309(h)(1) of IIRIRA, as added by section 1505(c) of the LIFE Act Amendments. Section 309(h)(1) removes the bar to applying for suspension of deportation or special rule cancellation of removal that would otherwise be imposed by section 241(a)(5) of the Act where the alien has reentered the United States illegally after being removed or having departed voluntarily under a final order of removal. Section 309(h)(1) removes that bar regardless of whether the prior order of deportation or removal has been reinstated by the Service. In those cases in which the prior order has not been reinstated, there is no final order to seek to reopen, and, consequently, the motion to reopen provision in section 309(h)(2) is inapplicable. Instead, aliens who are not in deportation or removal proceedings and whose prior orders have not been reinstated may apply for relief before the Service pursuant to the jurisdictional requirements for applications set forth in 8 CFR 240.62(a). Aliens who are currently in deportation or removal proceedings and

whose prior orders have not been reinstated may apply for relief before the Immigration Court pursuant to the jurisdictional requirements for applications set forth in 8 CFR 240.62(b).

What Happens if a Motion To Reopen Under Section 1505(c) of the LIFE Act Amendments Is Denied?

In those cases where a motion to reopen is denied by final order, the Service will evaluate the facts of the case to determine whether reinstatement of the prior order is required.

Good Cause Exception

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the exception for rules of agency organization, procedures, or practice in 5 U.S.C. 553(b)(3)(A) and upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). Section 1505(c) of LIFE Act Amendments became effective immediately on December 21, 2000. Publication of this rule as an interim rule will expedite implementation of that section and allow certain eligible aliens to submit motions to reopen their removal or deportation proceedings during the limited time period permitted by the LIFE Act Amendments for filing such motions to reopen. That period began on February 19, 2001, and terminates on October 16, 2001. It would be impracticable and contrary to the public interest to delay the effective date of this rule, as such a delay would have the effect of limiting the ability of eligible aliens to move to reopen their proceedings in order to seek the benefits of the LIFE Act Amendments.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule allows certain individual aliens to apply for suspension of deportation or special rule cancellation of removal; it will have no significant effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Attorney General has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f) and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470.

Paperwork Reduction Act

This interim rule permits certain aliens to file motions to reopen proceedings to apply for suspension of deportation and special rule cancellation of removal pursuant to section 1505(c) of the LIFE Act Amendments. Motions to reopen under this rule must be filed on or before October 16, 2001, and must be accompanied by either a Form I–881 or a Form EOIR–40.

The information collection requirement of Form I–881 contained in this rule was previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this collection is 1115–0227.

The Form EOIR–40 is also considered an information collection. The OMB control number on the Form EOIR–40 has expired. Accordingly, the Department of Justice, Executive Office for Immigration Review (EOIR), has submitted an information collection request to the Office of Management and Budget (OMB). Since a delay in issuing this interim rule would harm the public and disrupt EOIR's ability to receive and process motions to reopen proceedings under section 1505(c) of the LIFE Act Amendments within the limited time period permitted for the filing of such motions, EOIR has sought emergency review and clearance as provided for in the Paperwork Reduction Act of 1995. 44 U.S.C. 3507(j). Emergency review and approval has been granted by OMB. That emergency approval is only valid for 180 days.

A regular review of the information collection requirement of the Form EOIR–40 is also being undertaken. All comments and suggestions, or questions regarding additional information, including obtaining a copy of the proposed information collection instrument with instructions, should be directed to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041; telephone: (703) 305–0470. We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Any comments on the information collection must be submitted on or before September 17, 2001. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) Title of Form/Collection: Application for Suspension of Deportation.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–40, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Individuals or households. An alien who is deportable from the United States may request that the Attorney General suspend his or her deportation pursuant to 8 U.S.C. 1254 (as in effect prior to April 1, 1997, and as made applicable by section 1505(c) of the LIFE Act Amendments) and 8 CFR 240.56. To be granted such relief, the alien must prove that he or she meets all of the statutory requirements for suspension of deportation and that he or she is entitled to a favorable exercise of discretion. The proposed Form EOIR–40 would be completed by the applicant for suspension of deportation and would contain information necessary for the Attorney General to decide whether or not to suspend the alien's deportation from the United States.

(5) An estimate of the total number of respondents and the amount of time for an average respondent to respond: 1,518 responses per year at 5 hours and 45 minutes per response.

(6) An estimate of the total of public burden (in hours) associated with the collection: Approximately 8,728 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW., Washington, DC 20530.

List of Subjects of 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, part 3 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; sec. 203 of Pub. L. 105–100, 111 Stat. 2196–200; sec. 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; sec. 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Revise § 3.43 to read as follows:

§ 3.43 Motions to reopen for suspension of deportation and cancellation of removal pursuant to section 203(c) of NACARA and section 1505(c) of the LIFE Act Amendments.

(a) *Standard for Adjudication.* Except as provided in this section, a motion to reopen proceedings under section 309(g) or (h) of the Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208) (IIRIRA), as amended by section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105–100) (NACARA) and by section 1505(c) of the Legal Immigration Family Equity Act Amendments (Pub. L. 106–554) (LIFE Act Amendments), respectively, will be adjudicated under applicable statutes and regulations governing motions to reopen.

(b) *Aliens eligible to reopen proceedings under section 203 of NACARA.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or the special rule for cancellation of removal pursuant to section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible:

(i) For suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or

(ii) For cancellation of removal pursuant to section 240A of the Act, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the six classes of aliens described in paragraphs (d)(1) through (d)(6) of this section.

(c) *Aliens eligible to reopen proceedings under section 1505(c) of the LIFE Act Amendments.* A motion to reopen proceedings to apply for suspension of deportation or cancellation of removal under the special rules of section 309(h) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, must establish that the alien:

(1) Is prima facie eligible for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA;

(2) Was or would be ineligible, by operation of section 241(a)(5) of the Act, for suspension of deportation pursuant to former section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act and section 309(f) of IIRIRA, as amended by section 203(b) of NACARA, but for enactment of section 1505(c) of the LIFE Act Amendments;

(3) Has not been convicted at any time of an aggravated felony; and

(4) Is within one of the eight classes of aliens described in paragraph (d) of this section.

(d) *Classes of Eligible Aliens.*

(1) *Class 1.* A national of El Salvador who:

(i) First entered the United States on or before September 19, 1990;

(ii) Registered for benefits pursuant to the settlement agreement in *American Baptist Churches, et al.* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991) (ABC) on or before October 31, 1991, or applied for Temporary Protected Status (TPS) on or before October 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(2) *Class 2.* A national of Guatemala who:

(i) First entered the United States on or before October 1, 1990;

(ii) Registered for ABC benefits on or before December 31, 1991; and

(iii) Was not apprehended after December 19, 1990, at time of entry.

(3) *Class 3.* A national of Guatemala or El Salvador who applied for asylum with the Service on or before April 1, 1990.

(4) *Class 4.* An alien who:

(i) Entered the United States on or before December 31, 1990;

(ii) Applied for asylum on or before December 31, 1991; and

(iii) At the time of filing such application for asylum was a national of

the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

(5) *Class 5.* The spouse or child of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA.

(6) *Class 6.* An unmarried son or daughter of a person who is described in paragraphs (d)(1) through (d)(4) of this section and such person is prima facie eligible for and has applied for suspension of deportation or special rule cancellation of removal under section 203 of NACARA. If the son or daughter is 21 years of age or older, the son or daughter must have entered the United States on or before October 1, 1990.

(7) *Class 7.* An alien who was issued an Order to Show Cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation as a battered alien under former section 244(a)(3) of the Act (as in effect before September 30, 1996).

(8) *Class 8.* An alien:

(i) Who is or was the spouse or child of a person described in paragraphs (d)(1) through (d)(4) of this section:

(A) At the time a decision is rendered to suspend deportation or cancel removal of that person;

(B) At the time that person filed an application for suspension of deportation or cancellation of removal; or

(C) At the time that person registered for ABC benefits, applied for TPS, or applied for asylum; and

(ii) Who has been battered or subjected to extreme cruelty (or the spouse described in paragraph (d)(8)(i) of this section has a child who has been battered or subjected to extreme cruelty) by the person described in paragraphs (d)(1) through (d)(4) of this section.

(e) *Motion to reopen under section 203 of NACARA.*

(1) An alien filing a motion to reopen proceedings pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, may initially file a motion to reopen without an application for suspension of deportation or cancellation of removal and supporting documents, but the motion must be filed no later than September 11, 1998. An alien may file only one motion to reopen pursuant to section 309(g) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (b) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen filed pursuant to paragraph (b) of this section shall be considered complete at the time of submission of an application for suspension of deportation or special rule cancellation of removal and accompanying documents. Such application must be submitted no later than November 18, 1999. Aliens described in paragraphs (d)(5) or (d)(6) of this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court with either the Form EOIR–40 or the Form I–881 application for suspension of deportation or special rule cancellation of removal to respond to that completed motion. If the alien fails to submit the required application on or before November 18, 1999, the motion will be denied as abandoned.

(f) *Motion to reopen under section 1505(c) of the LIFE Act Amendments.* (1) An alien filing a motion to reopen proceedings pursuant to section 309(h) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, must file a motion to reopen with an application for suspension of deportation or cancellation of removal and supporting documents, on or before October 16, 2001. An alien may file only one motion to reopen proceedings pursuant to section 309(h) of IIRIRA. In such motion to reopen, the alien must address each of the four requirements for eligibility described in paragraph (c) of this section and establish that the alien satisfies each requirement.

(2) A motion to reopen and the accompanying application and supporting documents filed pursuant to paragraph (c) of this section must be submitted on or before October 16, 2001. Aliens described in paragraphs (d)(5) and (d)(6) of this section must include, as part of their submission, proof that their parent or spouse is prima facie eligible and has applied for relief under section 203 of NACARA.

(3) The Service shall have 45 days from the date the alien serves the Immigration Court to respond to that motion to reopen.

(g) *Fee for motion to reopen waived.* No filing fee is required for a motion to reopen to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) or (h) of IIRIRA, as amended by section 203(c) of NACARA and by section 1505(c) of the LIFE Act Amendments, respectively.

(h) *Jurisdiction over motions to reopen under section 203 of NACARA and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, shall be filed with the Immigration Court, even if the Board of Immigration Appeals (Board) issued an order in the case. The Immigration Court that last had jurisdiction over the proceedings will adjudicate the motion.

(2) The Board will remand to the Immigration Court any presently pending appeal in which the alien appears eligible to apply for suspension of deportation or cancellation of removal under the special rules of section 309(g) of IIRIRA, as amended by section 203 of NACARA, and appears prima facie eligible for that relief. The alien will then have the opportunity to apply for suspension or cancellation under the special rules of NACARA before the Immigration Court.

(i) *Jurisdiction over motions to reopen under section 1505(c) of the LIFE Act Amendments and remand of appeals.* (1) Notwithstanding any other provisions, any motion to reopen filed pursuant to paragraph (f) of this section to apply for suspension of deportation or cancellation of removal under section 1505(c) of the LIFE Act Amendments shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case. Only an alien with a reinstated final order, or an alien with a newly issued final order that was issued based on the alien having reentered the United States illegally after having been removed or having departed voluntarily under a prior order of removal that was subject to reinstatement under section 241(a)(5) of the Act, may file a motion to reopen with the Immigration Court or the Board pursuant to this section. An alien whose final order has not been reinstated and as to whom a newly issued final order, as described in this section, has not been issued may apply for suspension of deportation or special rule cancellation of removal before the Service pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments, according to the jurisdictional provisions for applications before the Service set forth in 8 CFR 240.62(a) or before the Immigration Court as set forth in 8 CFR 240.62(b).

(2) If the Immigration Court has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f)

of this section, the scope of the reopened proceeding shall be limited to a determination of the alien's eligibility for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(3) If the Board has jurisdiction and grants only the motion to reopen filed pursuant to paragraph (f) of this section, it shall remand the case to the Immigration Court solely for adjudication of the application for suspension of deportation or cancellation of removal pursuant to section 309(h)(1) of IIRIRA, as amended by section 1505(c) of the LIFE Act Amendments.

(4) Nothing in this section shall be interpreted to preclude or restrict the applicability of any other exceptions regarding motions to reopen that are provided for in 8 CFR 3.2(c)(3) and 3.23(b).

Dated: June 28, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–16767 Filed 7–16–01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 74

[Docket No. 00–016–3]

Importation and Interstate Movement of Certain Land Tortoises

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, two interim rules concerning the importation and interstate movement of certain land tortoises. The first interim rule established regulations to prohibit the importation and interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise. The second interim rule amended the regulations by allowing the interstate movement of these land tortoises if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises have been examined by that veterinarian and found free of ticks. This document amends the second interim rule by allowing that certificate to be either a health certificate or a certificate of veterinary inspection and by providing that only an accredited veterinarian may sign the certificate. This action is necessary to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease. This action will also relieve an unnecessary burden on Federal veterinarians.

EFFECTIVE DATE: July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. D. D. Wilson, Senior Staff Entomologist, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2000, we published in the **Federal Register** (65 FR 15216–15218, Docket No. 00–016–1) an interim rule that prohibits, until further notice, the importation of the following tortoises into the United States: All species and subspecies of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*). The interim rule also prohibits the interstate movement of all species and subspecies of these land tortoises. These prohibitions were established in order to prevent the spread of exotic ticks known to be vectors of heartwater disease, an acute infectious disease of ruminants.

We solicited comments on our interim rule for 60 days, ending May 22, 2000. We received 53 comments by that date. They were from tortoise breeders and owners, representatives of the reptile industry, animal advocacy groups, and other interested individuals. Many commenters supported the prohibition on importation of these tortoises, but most expressed concerns about the effect of prohibiting the interstate movement of these tortoises. Because of the prohibition on interstate movement, these tortoises could not be moved interstate for sale, health care, or adoption. In addition, many domestic tortoise breeders who must move their tortoises interstate prior to exporting them could no longer export these tortoises.

Based on these comments, on July 21, 2000, we published in the **Federal Register** (65 FR 45275–45277, Docket No. 00–016–2) an interim rule that allowed the interstate movement of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise if they were accompanied by a health certificate signed by a Federal or accredited veterinarian stating that the tortoises had been examined by that veterinarian and found free of ticks. This action was necessary to enable the export, interstate commerce, health care, and adoption of these types of tortoises while providing protection against the spread of exotic ticks known to be vectors of heartwater disease.

We solicited comments on our second interim rule for 60 days, ending September 19, 2000. We received two comments by that date. They were from a State department of agriculture and an association. We discuss the comments we received on the second interim rule, as well as comments we received on the first interim rule that were not addressed by the action we took in the second interim rule, below.

Public Comments on Interim Rules

Comment: You should allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks. This would allow the importation of these tortoises while protecting against the introduction of exotic ticks and could help decrease the potential for smuggled tortoises.

Response: Allowing the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks would require long-term preparation both for exporting regions and for the United States. Currently, most regions, including the United States, do not have a national export certification program for reptiles. Establishing such a program would require time, resources, and review by trading partners of the proposed components of the program. We are in the process of determining whether regions that export reptiles to the United States have any interest in establishing export certification programs.

In addition, if we were to allow the importation of leopard tortoise, African spurred tortoise, and Bell's hingeback tortoise with veterinary inspection and certification that the tortoises have been found free of ticks, we would have to hire additional port personnel and train our inspectors to examine documents, as well as tortoises, at U.S. ports of entry. We would also have to ensure that adequate facilities for tortoise inspection are available at U.S. ports. At this time, we do not have the resources necessary to implement such a program, but we are working to establish effective treatment and biosecurity controls for tortoises and other reptiles. Until those treatment and biosecurity controls are in place, we believe that it is necessary to continue to prohibit the importation