



U. S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2545

Falls Church, Virginia 22041

December 9, 1998

TO: All Immigration Judges
All Court Administrators
All Judicial Law Clerks

FROM: Office of the Chief Immigration Judge

SUBJECT: Administrative Closure of Cases In Which an Alien is Eligible for Cancellation of Removal for LPRs in Removal Proceedings

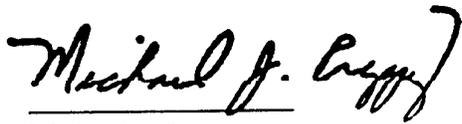
The Attorney General has decided to allow those lawful permanent residents who are currently in deportation or exclusion proceedings and would be statutorily eligible for section 212(c) relief (as in effect prior to IIRIRA), "but for" section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996, but are statutorily eligible for cancellation of removal for certain permanent residents under section 240A(a) of the Act, to be placed in removal proceedings in order to apply for cancellation of removal. The Department will be issuing regulations in the near future which will allow these aliens to request the INS to terminate their deportation or exclusion proceedings and place them in removal proceedings. This procedure is termed "repapering." This opportunity to request "repapering" will not apply to aliens who have a final order of deportation or exclusion. Only aliens who have a pending case before the Immigration Court or the Board of Immigration Appeals can apply, including an alien whose case has been reopened on an independent basis.

Until this regulation can be promulgated, to ensure that aliens who are currently in deportation or exclusion proceedings can avail themselves of this opportunity to request "repapering," aliens may request administrative closure in order to request the INS to "repaper" their case. If the INS agrees that the alien is eligible for "repapering," the INS Office of General Counsel has instructed trial attorneys to consent to administrative closure, unless the INS Office of General Counsel determines there are unusually adverse factors in the case. A copy of the guidance to INS trial attorneys which contains the criteria for determining eligibility for repapering is attached. In addition, an Immigration Judge, if he or she determines that an alien may qualify for repapering, should request the INS trial attorney to consider administrative closure of the case. If both the trial attorney and the alien agree that administrative closure is appropriate, the Immigration Judge should administratively close the case.

In the event an Immigration Judge administratively closes a case for repapering, the case identifier (RP) must be entered in the ANSIR system. The following language should appear on the order administratively closing the case:

The applicant/respondent appears to be prima facie eligible for cancellation of removal pursuant to section 240A(a) of the Act. The applicant/ respondent who is currently in exclusion/deportation proceedings is not eligible for a waiver pursuant to section 212(c) of the Act (as in effect prior to April 1, 1997) because of the bar contained in section 440(d) of the Anti-Terrorism and Effective Death Penalty Act of 1996. Both parties have stipulated that these proceedings be administratively closed pending the promulgation of regulations which may make the applicant/respondent eligible for a termination of these proceedings or "repapering" pursuant to section 309(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

If there are any questions concerning this matter, please contact my legal counsel, Michael Straus, at (703) 305-1716.

A handwritten signature in black ink, reading "Michael J. Creppy". The signature is written in a cursive style with a large, sweeping initial "M".

Michael J. Creppy
Chief Immigration Judge

Attachment



U.S. Department of Justice
Immigration and Naturalization Service

HQCOU 90/16.1-P

Office of the General Counsel

425 I Street NW
Washington, DC 20536

DEC 7 1998

MEMORANDUM FOR REGIONAL COUNSEL
DISTRICT COUNSEL
APPELLATE COUNSEL

FROM: Paul W. Virtue
General Counsel

SUBJECT: Administrative Closure of EOIR Proceedings For Aliens Eligible for Repapering

The Attorney General is expected to issue a regulation allowing the INS to exercise prosecutorial discretion under section 309(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Sections 309(c)(2) and (3) provide the Attorney General with the authority to consider, on a discretionary basis, conversion of certain exclusion and deportation cases to removal cases ("repapering"). The current regulation on this subject, at 8 C.F.R. § 240.16, requires the Attorney General to publish a notice or issue instructions before the section 309(c) repapering provisions become applicable. The anticipated regulation will satisfy this requirement and is expected to delegate repapering discretion to the INS.

The regulation is expected to allow the INS to consider discretionary repapering for an alien who, at the time of the repapering request:

- (1) would be statutorily eligible for section 212(c) relief (under the pre-IIRIRA INA) "but for" section 440(d) of the Anti-Terrorism and Effective Death Penalty Act (AEDPA). (This means that the alien, at a minimum: is in deportation proceedings (i.e., not subject to a final administrative order); is otherwise statutorily eligible for 212(c) relief; and has not been denied 212(c) relief for another reason.); and
- (2) would be statutorily eligible for cancellation of removal if repapered. (This means that the alien, at a minimum: has not been convicted of an aggravated felony; has been lawfully admitted for permanent residence for at least 5 years; has resided in the U.S. continuously for 7 years after having been admitted in any status; and is not

Subject: Administrative Closure of EOIR Proceedings For Aliens Eligible for Repapering

precluded by the criminal offense stop-time rule or the charging document stop-time rule in INA section 240A(d)(1).)

Criterion one does not require the alien actually to have filed a section 212(c) application.

As an interim measure until the regulation is published, aliens who meet these criteria may ask that their case be administratively closed. In addition, if an alien appears clearly to meet the above criteria, the INS attorney assigned to the case should inform the alien or the alien's representative of record of the alien's option to request administrative closure.

When requested by an alien or an immigration judge, the INS generally should agree to the administrative closing of a proceeding before an immigration judge where the alien meets the above criteria at the time the request for administrative closing is made. However, it is permissible to refuse to agree to administrative closure even where the alien meets the above criteria, if there are unusually adverse factors in the case. This should be the exception, however, and must be approved by the Office of the General Counsel.

Coordination with the District Director or other offices may be appropriate before reaching a decision on administrative closure in a particular case.

We expect the Board to *sua sponte* administratively close cases meeting the above criteria on a case-by-case basis, with written notification to the INS attorney of record. The INS attorney may then move to recalendar the case if the INS does not agree to administrative closure under the guidelines in this memorandum.

A record should be kept of cases administratively closed, and the file appropriately marked and annotated. Once the regulation is published, these cases should be recalendared for consideration of repapering.

The INS shall not agree to join a motion to reopen a proceeding for the purpose of administrative closing under this memorandum. However, once a proceeding is reopened on an independent basis, the alien may request administrative closure under this memorandum. Section 309(c)(3) only provides for repapering in proceedings in which there has not been a final administrative decision, and section 309(c)(2) applies to aliens at an even earlier stage of proceedings, not to those with a final order.

Questions regarding this memorandum should be directed to Kyle Latimer at (202) 616-2604.