



U. S. Department of Justice

Executive Office for Immigration Review

*Office of the Chief Immigration Judge*

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Chief Immigration Judge

5107 Leesburg Pike, Suite 2500  
Falls Church, Virginia 22041

December 7, 1999

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 non-LPRs in Removal Proceedings<sup>1</sup>

The Attorney General is expected to promulgate a regulation which allows certain aliens who are ineligible for suspension of deportation based on the "stop-time" rule, but may be eligible for cancellation of removal for non-permanent residents, to be placed into removal proceedings. This procedure is termed "repapering." The Attorney General has decided that aliens who:

1. are currently in deportation proceedings;
2. are not lawful permanent residents;
3. would be statutorily eligible for suspension of deportation under the former section 244 of the Act (as in effect prior to IIRIRA), but for the "stop-time" provisions in section 240A(d)(1) of the Act<sup>2</sup> relating solely to service of an Order to Show Cause (and have not been denied suspension for another reason);

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<sup>1</sup>This guidance is separate and apart from earlier guidance on administrative closure of cases for certain lawful permanent residents in exclusion or deportation proceedings expected to be eligible for repapering (see Memorandum from the Office of Chief Immigration Judge dated December 9, 1998). A copy of that memorandum is attached for your convenience.

<sup>2</sup>As amended by section 203(a)(1) of NACARA.

**and**

4. are statutorily eligible for cancellation of removal for certain non-permanent residents under section 240A(b) of the Act;

are eligible to request "repapering."

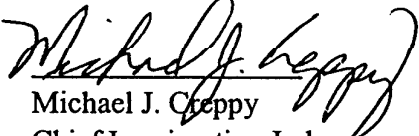
The Department is expected to issue a regulation in the near future which will allow these aliens to request the INS to terminate their deportation proceedings and place them in removal proceedings. This opportunity to request "repapering" will not apply to aliens who have a final order of deportation. Only aliens who have a pending case before the Immigration Court or the Board of Immigration Appeals can apply. Aliens whose cases have been reopened on an independent basis are considered to have a pending case.

Until this regulation can be promulgated, to ensure that aliens who are currently in deportation proceedings will be able to avail themselves of this opportunity to request "repapering" when the regulation is published, aliens who appear eligible may seek administrative closure. If the INS trial attorney agrees that the alien appears eligible to request "repapering," the INS Office of General Counsel has instructed them to consent to administrative closure, unless there are unusually adverse factors in the case. A copy of the guidance to INS trial attorneys for administrative closure of proceedings for aliens expected to be eligible for repapering is attached. In addition, if an Immigration Judge determines that an alien may qualify for repapering, he or she 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 (RN) must be entered in the ANSIR system. The following language should appear on the order administratively closing the case:

The respondent appears to be prima facie eligible for cancellation of removal pursuant to section 240A(b) of the Act. The respondent, who is currently in deportation proceedings, is not eligible for suspension of deportation under section 244 of the Act (as in effect prior to April 1, 1997) because of lack of continuous physical presence based solely on the service of an order to show cause. Both parties have stipulated that these proceedings be administratively closed pending the promulgation of regulations which may make the respondent eligible for a termination of these proceedings and "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-~~1116~~<sup>1247</sup>.

  
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 1999

MEMORANDUM FOR REGIONAL COUNSEL  
DISTRICT COUNSEL  
APPELLATE COUNSEL

FROM:

  
Bo Cooper  
General Counsel

SUBJECT: Administrative Closure of EOIR Proceedings for Non-Lawful Permanent Resident Aliens Eligible for Repapering

In a memorandum dated December 7, 1998 (attached), we provided guidance for the administrative closure of proceedings for certain lawful permanent resident aliens expected to be eligible for discretionary repapering under a draft regulation.<sup>1</sup> The scope of the draft regulation has been expanded to cover certain aliens who are not LPRs. Accordingly, this new group is also subject to the administrative closure guidelines.

The new group covered by the draft regulation consists of any alien who, at the time of the repapering request:

- (1) is not a lawful permanent resident;
- (2) would be statutorily eligible for suspension of deportation under former section 244 of the Act but for the stop-time provision in INA section 240A(d)(1)<sup>2</sup> relating to the

<sup>1</sup> As described in the previous memorandum, sections 309(c)(2) and (3) of IIRIRA 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.

<sup>2</sup> As clarified by section 309(c)(5)(A) of IIRIRA as amended by section 203(a)(1) of NACARA.

service of the Order to Show Cause. (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 suspension of deportation (e.g., continuous physical presence and good moral character); and has not been denied suspension of deportation for another reason.); and

- (3) is statutorily eligible for cancellation of removal under section 240A(b). (This means that the alien has at least 10 years of continuous physical presence in the U.S., has been a person of good moral character during that period, has not been convicted of any of the listed offenses, has a qualifying relative, and is not precluded by the criminal offense stop-time rule in INA section 240A(d)(1).)

The existence of hardship, whether extreme under former section 244(a)(1) or exceptional and extremely unusual under former section 244(a)(2) and current section 240A(b), is a matter to be determined by the immigration judge. Therefore, an alien need not demonstrate hardship in order to meet the above requirements. A repapering applicant is also not required to have actually filed a suspension application. As an interim measure until the regulation is published, aliens who meet these criteria may ask that their case be administratively closed.

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. In addition, even in the absence of such a request, 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. However, an INS attorney may decline 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.

The Board will *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 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 should not agree to join a motion to reopen a proceeding solely 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 in proceedings prior to their evidentiary hearing, not to those with a final order.

I appreciate your efforts to carry out these instructions. As questions arise, please direct them to Kyle Latimer at (202) 616-2604.