

(5) The decision of an immigration judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the Service counsel for the government. An adverse decision will state why asylum or withholding of deportation was denied.

(d) *Application for relief under sections 241(c)(1)(E) and 241(c)(1)(F)(iii) of the Act.* The respondent may apply to the immigration judge for relief from deportation under sections 241(a)(1)(H) and 241(a)(1)(E)(iii) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his alienage or deportability. However, nothing in this section shall prohibit the Service from using information supplied in an application for asylum or withholding of deportation submitted to an asylum officer pursuant to § 1206.2 of this chapter on or after January 4, 1995, as the basis for issuance of an order to show cause or a notice to appear to establish alienage or deportability in a case referred to an immigration judge under § 1208.14(b) of this chapter. The respondent shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. The respondent shall not be required to pay a fee on more than one application within paragraphs (a) and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee. Nothing contained in this section is intended to foreclose the respondent from applying for any benefit or privilege which he or she believes himself or herself eligible to receive in proceedings under this part.

§ 1240.50 Decision of the immigration judge.

(a) *Contents.* The decision of the immigration judge may be oral or written. Except when deportability is determined on the pleadings pursuant to § 1240.48(b), the decision of the immigration judge shall include a finding as

to deportability. The formal enumeration of findings is not required. The decision shall also contain the reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where deportability is determined on the pleadings pursuant to § 1240.48(b) and the respondent does not make an application under § 1240.49, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision on Form EOIR-7, Summary Order of Deportation. If deportation is ordered, or on Form EOIR-6, Summary Order of Voluntary Departure, if voluntary departure is granted with an alternate order of deportation.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's deportation, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When deportation is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's deportation shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he or she may deem necessary.

§ 1240.51 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the Service counsel, together with the notice referred to in § 1003.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the immigration judge in the presence of the respondent and the trail attorney, if any, at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR-28, Notice of Appeal, and advised of the provisions of § 1240.53. A printed copy of the oral decision shall be furnished at the request of the respondent or the Service counsel.

(c) *Summary decision.* When the immigration judge renders a summary decision as provided in § 1240.51(b), he or she

shall serve a copy thereof upon the respondent at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR-28, Notice of Appeal, and advised of the provisions of § 1240.54.

§ 1240.52 Finality of order.

The decision of the immigration judge shall become final in accordance with § 1003.39 of this chapter.

§ 1240.53 Appeals.

(a) Pursuant to 8 CFR part 1003, an appeal shall lie from a decision of an immigration judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Form EOIR-26, Notice of Appeal, fees, and briefs are set forth in §§ 1003.3, 1003.31, and 1003.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board. The reasons for the appeal shall be stated in the Form EOIR-26, Notice of Appeal, in accordance with the provisions of § 1003.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 1003.1(d)(2) of this chapter.

(b) *Prohibited appeals.* Legalization or applications. An alien respondent defined in § 245a.2(c)(6) or (7) of this chapter who fails to file an application for adjustment of status to that of a temporary resident within the prescribed period(s), and who is thereafter found to be deportable by decision of an immigration judge, shall not be permitted to appeal the finding of deportability based solely on refusal by the immigration judge to entertain such an application in deportation proceedings.

(82 FR 10387, Mar. 6, 1987, as amended at 86 FR 848, Jan. 22, 2001)

§ 1240.54 [Reserved]

Subpart F—Suspension of Deportation and Voluntary Departure (for Proceedings Commenced Prior to April 1, 1997)

§ 1240.55 Proceedings commenced prior to April 1, 1997.

Subpart F of 8 CFR part 1240 applies to deportation proceedings commenced prior to April 1, 1997. A deportation proceeding is commenced by the filing of Form I-221 (Order to Show Cause) with the Immigration Court, and an alien is considered to be in deportation proceedings only upon such filing, except in the case of an alien admitted to the United States under the provisions of section 217 of the Act. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 1240.56 Application.

Notwithstanding any other provision of this chapter, an alien who is deportable because of a conviction on or after November 18, 1988, for an aggravated felony as defined in section 101(a)(43) of the Act, shall not be eligible for voluntary departure as prescribed in 8 CFR part 1240 and section 244 of this part. Pursuant to subpart F of this part and section 244 of the Act, an immigration judge may authorize the suspension of an alien's deportation; or, if the alien establishes that he or she is willing and has the immediate means with which to depart promptly from the United States, an immigration judge may authorize the alien to depart voluntarily from the United States in lieu of deportation within such time as may be specified by the immigration judge when first authorizing voluntary departure, and under such conditions as the district director shall direct. An application for suspension of deportation shall be made on Form EOIR-40.

§ 1240.57 Extension of time to depart.

Authority to reinstate or extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is within

the sole jurisdiction of the district director, except that an Immigration Judge or the Board may reinstate voluntary departure in a deportation proceeding that has been reopened for a purpose other than solely making an application for voluntary departure. A request by an alien for reinstatement or an extension of time within which to depart voluntarily shall be filed with the district director having jurisdiction over the alien's place of residence. Written notice of the district director's decision shall be served upon the alien and no appeal may be taken therefrom.

§ 1240.58 Extreme hardship.

(a) To be eligible for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, the alien must meet the requirements set forth in the Act, which include a showing that deportation 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. Extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case. Applicants are encouraged to cite and document all applicable factors in their applications, as the presence or absence of any one factor may not be determinative in evaluating extreme hardship. Adjudicators should weigh all relevant factors presented and consider them in light of the totality of the circumstances, but are not required to offer an independent analysis of each listed factor when rendering a decision. Evidence of an extended stay in the United States without fear of deportation and with the benefit of work authorization, when present in a particular case, shall be considered relevant to the determination of whether deportation will result in extreme hardship.

(b) To establish extreme hardship, an applicant must demonstrate that deportation would result in a degree of hardship beyond that typically associated with deportation. Factors that may be considered in evaluating whether deportation would result in extreme hardship to the alien or to the

alien's qualified relative include, but are not limited to, the following:

- (1) The age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;
 - (2) The age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in the country of return;
 - (3) The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;
 - (4) The alien's ability to obtain employment in the country to which the alien would be returned;
 - (5) The length of residence in the United States;
 - (6) The existence of other family members who are or will be legally residing in the United States;
 - (7) The financial impact of the alien's departure;
 - (8) The impact of a disruption of educational opportunities;
 - (9) The psychological impact of the alien's deportation;
 - (10) The current political and economic conditions in the country to which the alien would be returned;
 - (11) Family and other ties to the country to which the alien would be returned;
 - (12) Contributions to and ties to a community in the United States, including the degree of integration into society;
 - (13) Immigration history, including authorized residence in the United States; and
 - (14) The availability of other means of adjusting to permanent resident status.
- (c) For cases raised under section 244(a)(3) of the Act, the following factors should be considered in addition to, or in lieu of, the factors listed in paragraph (b) of this section.
- (1) The nature and extent of the physical or psychological consequences of abuse;
 - (2) The impact of loss of access to the United States courts and criminal justice system (including, but not limited

to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);

- (3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);
 - (4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;
 - (5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and
 - (6) The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's children from future abuse.
 - (d) Nothing in § 1240.58 shall be construed as creating any right, interest, or entitlement that is legally enforceable by or on behalf of any party against the United States or its agencies, officers, or any other person.
- (64 FR 27676, May 21, 1999)

Subpart G—Civil Penalties for Failure to Deport [Reserved]

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Pub. L. 105-100

SOURCE: 64 FR 27676, May 21, 1999, unless otherwise noted.

§ 1240.60 Definitions.

As used in this subpart the term: ABC means American Baptist Churches v. Thornburgh, 760 F. Supp. 786 (N.D. Cal. 1991). ABC class member refers to:

- (1) Any Guatemalan national who first entered the United States on or before October 1, 1990; and
- (2) Any Salvadoran national who first entered the United States on or before September 19, 1990.

Asylum application pending adjudication by the Service means any asylum application for which the Service has not served the applicant with a final decision or which has not been referred to the Immigration Court.

Filed an application for asylum means the proper filing of a principal asylum application or filing a derivative asylum application by being properly included as a dependent spouse or child in an asylum application pursuant to the regulations and procedures in effect at the time of filing the principal or derivative asylum application.

IRIRA means the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Pub. L. 104-208 (110 Stat. 3009-625).

NACARA means the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of Pub. L. 105-100 (111 Stat. 2160, 2193), as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Pub. L. 105-139 (111 Stat. 2944).

Registered ABC class member means an ABC class member who:

- (1) In the case of an ABC class member who is a national of El Salvador, properly submitted an ABC registration form to the Service on or before October 31, 1991, or applied for temporary protected status on or before October 31, 1991; or
- (2) In the case of an ABC class member who is a national of Guatemala, properly submitted an ABC registration form to the Service on or before December 31, 1991.

§ 1240.61 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart H applies to the following aliens:

- (1) A registered ABC class member who has not been apprehended at the time of entry after December 19, 1990;
- (2) A Guatemalan or Salvadoran national who filed an application for asylum with the Service on or before April 1, 1990, either by filing an application