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Code of Federal Regulations Currentness

Title 8. Aliens and Nationality

Chapter V. Executive Office for Immigration

Review, Department of Justice (Refs & Annos)

Subchapter B. Immigration Regulations (Refs & Annos)

Part 1240. Proceedings to Determine
Removability of Aliens in the United States
(Refs & Annos)

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

→ § 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 evalu-

ating 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 27875, May 21, 1999]

SOURCE: 62 FR 10367, March 6, 1997; 63 FR 27829, May 21, 1998; 64 FR 25766, May 12, 1999; 64 FR 27875, May 21, 1999; 65 FR 15844, March 24, 2000; 68 FR 9830, 9832, Feb. 28, 2003; 68 FR 9830, Feb. 28, 2003; 68 FR 9838, Feb. 28, 2003; 69 FR 57835, Sept. 28, 2004; 69 FR 69497, Nov. 29, 2004; 70 FR 674, Jan. 5, 2005; 71 FR 35757, June 21, 2006, unless otherwise noted.

AUTHORITY: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub.L. 105-100 (111 Stat. 2160, 2193); sec. 902, Pub.L. 105-277, (112 Stat. 2681).

8 C. F. R. § 1240.58, 8 CFR § 1240.58

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→ § 1240.56 Application.

AUTHORITY: 8 U.S.C. 1103, 1182, 1186a, 1224,
1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b,
1362; secs. 202 and 203, Pub.L. 105-100 (111 Stat.
2160, 2193); sec. 902, Pub.L. 105-277, (112 Stat.
2681).

8 C. F. R. § 1240.56, 8 CFR § 1240.56

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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 the Act. 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.

[68 FR 10355, March 5, 2003]

SOURCE: 62 FR 10367, March 6, 1997; 63 FR 27829, May 21, 1998; 64 FR 25766, May 12, 1999; 64 FR 27875, May 21, 1999; 65 FR 15844, March 24, 2000; 68 FR 9830, 9832, Feb. 28, 2003; 68 FR 9830, Feb. 28, 2003; 68 FR 9838, Feb. 28, 2003; 69 FR 57835, Sept. 28, 2004; 69 FR 69497, Nov. 29, 2004; 70 FR 674, Jan. 5, 2005; 71 FR 35757, June 21, 2006, unless otherwise noted.

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→ **§ 1240.55 Proceedings commenced
prior to April 1, 1997.**

8 C. F. R. § 1240.55, 8 CFR § 1240.55

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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.

[68 FR 10355, March 5, 2003]

SOURCE: 62 FR 10367, March 6, 1997; 63 FR 27829, May 21, 1998; 64 FR 25766, May 12, 1999; 64 FR 27875, May 21, 1999; 65 FR 15844, March 24, 2000; 68 FR 9830, 9832, Feb. 28, 2003; 68 FR 9830, Feb. 28, 2003; 68 FR 9838, Feb. 28, 2003; 69 FR 57835, Sept. 28, 2004; 69 FR 69497, Nov. 29, 2004; 70 FR 674, Jan. 5, 2005; 71 FR 35757, June 21, 2006, unless otherwise noted.

AUTHORITY: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub.L. 105-100 (111 Stat. 2160, 2193); sec. 902, Pub.L. 105-277, (112 Stat. 2681).

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8 U.S.C.A. § 1253

For purposes of subparagraph (B), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime.

(June 27, 1952, c. 477, Title II, ch. 5, § 243, 66 Stat. 212; Pub.L. 89-236, § 11(f), Oct. 3, 1965, 79 Stat. 918; Pub.L. 95-549, Title I, § 104, Oct. 30, 1978, 92 Stat. 2066; Pub.L. 96-212, Title II, § 203(e), Mar. 17, 1980, 94 Stat. 107; Pub.L. 97-116, § 18(i), Dec. 29, 1981, 95 Stat. 1620; Pub.L. 101-649, Title V, § 515(a)(2), Title VI, § 603(b)(3), Nov. 29, 1990, 104 Stat. 5053, 5085.)

§ 244. Suspension of deportation [8 U.S.C.A. § 1254]

(a) Adjustment of status for permanent residence; contents

As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien (other than an alien described in section 241(a)(4)(D) [8 U.S.C.A. § 1251(a)(4)(D)]) who applies to the Attorney General for suspension of deportation and—

(1) is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence;

(2) is deportable under paragraph (2), (3), or (4) of section 241(a) [8 U.S.C.A. § 1251(a)]; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

(3) is deportable under any law of the United States except section 241(a)(1)(G) [8 U.S.C.A. § 1251(a)(1)(G)] and the provisions specified in paragraph (2); has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application; has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme

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cruelty in the United States by such citizen or permanent resident parent); and proves that during all of such time in the United States the alien was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.

(b) Continuous physical presence not required because of honorable service in Armed Forces and presence upon entry into service

(1) The requirement of continuous physical presence in the United States specified in paragraphs (1) and (2) of subsection (a) of this section shall not be applicable to an alien who (A) has served for a minimum period of twenty-four months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and (B) at the time of his enlistment or induction was in the United States.

(2) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.

(c) Fulfillment of requirements of subsection (a); report to Congress

Upon application by any alien who is found by the Attorney General to meet the requirements of subsection (a) of this section the Attorney General may in his discretion suspend deportation of such alien.

(d) Record of cancellation of deportation

Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the cancellation of deportation of such alien is made.

(e) Voluntary departure

(1) Except as provided in paragraph (2), the Attorney General may, in his discretion, permit any alien under deportation proceedings, other than an alien within the provisions of paragraph (2), (3) or (4) of section 241(a) [8 U.S.C.A. § 1251(a)] (and also any alien within the purview of such paragraphs if he is also within the provisions of paragraph (2) of subsection (a) of this section), to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure under this subsection.

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(2) The authority contained in paragraph (1) shall not apply to any alien who is deportable because of a conviction for an aggravated felony.

(f) Alien crewmen; nonimmigrant exchange aliens admitted to receive graduate medical education or training; other

The provisions of subsection (a) of this section shall not apply to an alien who—

(1) entered the United States as a crewman subsequent to June 30, 1964;

(2) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J) [8 U.S.C.A. § 1101(a)(15)(J)], or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 212(e) [8 U.S.C.A. § 1182(e)]; or

(3)(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J) [8 U.S.C.A. § 1101(a)(15)(J)] or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training, (B) is subject to the two-year foreign residence requirement of section 212(e) [8 U.S.C.A. § 1182(e)], and (C) has not fulfilled that requirement or received a waiver thereof.

(g) Consideration of evidence

In acting on applications under subsection (a)(3) of this section, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(June 27, 1952, c. 477, Title II, ch. 5, § 244, 66 Stat. 214; Oct. 24, 1962, Pub.L. 87-885, § 4, 76 Stat. 1247; Oct. 3, 1965, Pub.L. 89-236, § 12, 79 Stat. 918; Oct. 20, 1976, Pub.L. 94-571, § 7(f), 90 Stat. 2706; Oct. 30, 1978, Pub.L. 95-549, Title I, § 105, 92 Stat. 2066; Mar. 17, 1980, Pub.L. 96-212, Title II, § 203(d), 94 Stat. 107; Dec. 29, 1981, Pub.L. 97-116, §§ 9, 18(h)(2), (j), 95 Stat. 1616, 1620; Nov. 6, 1986, Pub.L. 99-603, Title III, § 315(b), 100 Stat. 3439, as amended Oct. 24, 1988, Pub.L. 100-525, § 2(q)(1), 102 Stat. 2613; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7343(b), 102 Stat. 4470; Nov. 29, 1990, Pub.L. 101-649, Title I, § 162(e)(2), Title VI, § 603(b)(3), (4), 104 Stat. 5011, 5085; Pub.L. 101-649, Title VI, § 603(b)(4)(B), as amended Dec. 12, 1991, Pub.L. 102-232, Title III, § 307(m)(1), 105 Stat. 1757; Sept. 13, 1994, Pub.L. 103-322, Title IV, § 40703, 108 Stat. 1955.)

§ 244A. Temporary protected status [8 U.S.C.A. § 1254a]

(a) Granting of status

(1) In general

In the case of an alien who is a national of a foreign state designated under subsection (b) of this section (or in the case of an