List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 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.

2. Section 3.1 is amended by revising paragraph (a)(1) and adding paragraphs (a) (4), (5) and (6) to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall consist of a Chairman, a Vice Chairman, and thirteen other members. The Board Members shall exercise their independent judgment and discretion in the cases coming before the Board. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise all the powers of the Board. The Director may in his discretion designate Immigration Judges, retired Board Members, retired Immigration Judges, and Administrative Law Judges employed within EOIR to act as temporary, additional Board Members for terms not to exceed six months. The Chairman may divide the Board into three-member panels and designate a Presiding Member of each panel. The Chairman may from time to time make changes in the composition of such panels and of Presiding Members. Each panel shall be empowered to decide cases by majority vote. A majority of the number of Board Members authorized to constitute a panel shall constitute a quorum for such panel. Each three-member panel may exercise the appropriate authority of the Board as set out in part 3 that is necessary for the adjudication of cases before it. In the case of an unopposed motion or a motion to withdraw an appeal pending before the Board, a single Board Member or the Chief Attorney Examiner may exercise the appropriate authority of the Board as set out in part 3 that is necessary for the adjudication of such motions before it.

* * * * *

(4) *En banc Process*—(i) *Full Board en Banc.* A majority of the permanent Board Members shall constitute a quorum of the Board for purposes of convening the full Board en banc. The Board may on its own motion, by a majority vote of the permanent Board Members, or by direction of the Chairman, consider any case as the full Board en banc, or reconsider as the full Board en banc any case that has been considered or decided by a three-member panel or by a limited en banc panel.

(ii) *Limited en banc panels.* The Board may on its own motion, by a majority vote of the permanent Board Members, or by direction of the Chairman, assign a case or group of cases for consideration by a limited en banc panel, or assign a case that has been considered or decided by a three-member panel for reconsideration by a limited en banc panel. Each limited en banc panel shall consist of nine members. Each limited en banc panel shall contain the Chairman or Vice Chairman (as decided by the Chairman). If the Chairman and Vice Chairman are both disqualified in a particular case, then the most senior permanent Board Member who is not disqualified shall sit on the limited en banc panel as the Presiding Board Member. If the Chairman and Vice Chairman are both unavailable to hear a case that has been assigned to a limited en banc panel, but the Chairman is not disqualified, then the Chairman shall designate a Presiding Board Member to sit on the limited en banc panel. If the Chairman is unavailable and disqualified, then the Vice Chairman, if unavailable and not disqualified, shall designate a presiding Board Member to sit on the limited en banc panel. Where a case that has been considered or decided by a three-member panel is assigned for review by a limited en banc panel, the en banc panel shall contain all available permanent Board Members who considered or decided that case as part of a three-member panel. The remaining members of each limited en banc panel will be randomly selected from among the permanent Board Members. The decision reached by a limited en banc panel shall be considered as the final decision of the Board in the case, unless the Chairman or a majority of the permanent Board Members vote to decide to assign the case to a full en banc panel for reconsideration in accordance with paragraph (a)(4)(i) of this section.

(5) *Precedents.* By majority vote of the permanent Board Members, a decision of the Board, whether rendered by a three-member panel, a limited en banc panel, or by the entire Board sitting en banc, may be designated to serve as a Board precedent pursuant to paragraph (g) of this section.

(6) *Board staff.* There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

* * * * *

Dated: June 5, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–15589 Filed 6–10–98; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

8 CFR Part 3

[EOIR No. 121P; AG Order No. 2162–98]

RIN 1125–AA23

Executive Office for Immigration Review; Motion to Reopen: Suspension of Deportation and Cancellation of Removal

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 to apply for suspension of deportation and cancellation of removal pursuant to section 203(c) of the Nicaraguan Adjustment and Central American Relief Act.

DATES: *Effective date:* This interim rule is effective June 11, 1998.

Comment date: Written comments must be submitted on or before July 13, 1998.

ADDRESSES: Please submit written comments, in triplicate, to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

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

SUPPLEMENTARY INFORMATION: This interim rule with request for comments amends 8 CFR part 3 by creating new § 3.43.

Background

This regulation relates to a previous notice, signed by the Attorney General

on January 15, 1998, and published at 63 FR 3154, on January 21, 1998, which designated the time period for filing motions to reopen pursuant to section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105–100; 111 Stat. 2160, 2193) (NACARA). Section 203 of NACARA, signed into law on November 19, 1997, amended section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208; 110 Stat. 3009–625) (IIRIRA) to provide special rules regarding applications for suspension of deportation and cancellation of removal by certain aliens. These aliens include Guatemalan, Salvadoran, and certain former Soviet bloc nationals described in section 309(c)(5)(C)(i) of IIRIRA, as amended by section 203 of NACARA.

Section 203(c) of NACARA also amended section 309 of IIRIRA by creating a provision for motions to reopen under NACARA. Section 309(g) of IIRIRA, as amended, permits aliens with final orders of deportation or removal who have become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of NACARA to file one motion to reopen removal or deportation proceedings to apply for such relief, without regard to the limitations imposed by law on motions to reopen. Section 309(g) of IIRIRA, as amended, further requires the Attorney General to designate a specific time period for filing motions to reopen for such relief beginning no later than 60 days after the date of enactment of NACARA and extending for a period not to exceed 240 days.

The Attorney General's notice in the **Federal Register** designated from January 16, 1998 to September 11, 1998 as the time period for filing NACARA motions to reopen. *See* 63 FR 3154. That notice waived the filing fee for motions to reopen filed pursuant to NACARA, but did not disturb any other regulatory provisions with respect to the filing or adjudication of motions to reopen.

The Interim Rule

The Attorney General is simplifying the filing process for NACARA motions to reopen in two ways. First, this rule clarifies who can file a motion to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, by defining who has become eligible for ''special rule'' cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of NACARA. Second, the rule permits any alien who is moving to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, to file such motion initially without a suspension or cancellation application and supporting documents. The alien then will have until February 8, 1999 to file the application for suspension of deportation or cancellation of removal and to provide all other supporting evidence and arguments in favor of reopening. The alien should note at that time that he or she is filing such application to complete a NACARA motion to reopen filed earlier without an application and supporting documentation.

The Attorney General is clarifying who can file a motion to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, to ensure a fair and efficient administrative process. In addition, the Attorney General has decided to permit the initial filing of NACARA motions to reopen to pursue relief under NACARA without applications for relief and supporting documents because NACARA gives eligible aliens the opportunity to file only one NACARA-based motion to reopen and permits a 240-day time period during which the motion must be filed. Many potential NACARA beneficiaries may have been in proceedings years ago and it may take some time to accumulate the documents necessary to prepare an application for suspension of deportation.

Aliens Eligible To File a Motion To Reopen Pursuant to NACARA

Section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, permits an alien who has a final order of deportation or removal to file one motion to reopen only if he or she has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of NACARA. Section 203(c) of NACARA provides: ''[N]otwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act)), any alien who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act may file one motion to reopen removal or deportation proceedings to apply for cancellation of removal or suspension of deportation.'' See Public Law 105–100, § 203(c).

This rule clarifies who can file a motion to reopen pursuant to NACARA by defining ''who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act.'' Several provisions of IIRIRA must be examined to determine ''who has become eligible'' for cancellation of removal or suspension of deportation as a result of the amendments made by NACARA.

IIRIRA consolidated deportation and exclusion proceedings into one unified removal proceeding and abolished the relief from deportation known as ''suspension of deportation'' contained in section 244(a) of the Immigration and Nationality Act (INA) (as it existed prior to April 1, 1997). Persons placed in removal proceedings after April 1, 1997 may, instead, apply for cancellation of removal pursuant to section 240A of the INA, as amended. While cancellation of removal resembles suspension of deportation, an applicant for cancellation must generally establish continuous physical presence for ten years instead of seven years, must establish ''exceptional and extremely unusual hardship'' instead of ''extreme hardship,'' and must establish hardship to the applicant's United States citizen or lawful permanent resident spouse, parent, or child rather than hardship to the applicant or a United States citizen or lawful permanent resident spouse, parent, or child.

Special rules terminating continuous physical presence also apply to cancellation of removal relief. Section 240A(d) (1) and (2) provides three rules relating to the termination of continuous residence or physical presence. Any period of continuous residence or continuous physical presence in the United States shall be deemed to end when the alien is: (1) served a notice to appear under section 239(a); or (2) has committed an offense referred to in section 212(a)(2) that renders the alien inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4), whichever is earlier. See section 240A(d)(1) of the INA, as amended. In addition, an alien shall be considered to have failed to maintain continuous physical presence in the United States if the alien has departed the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days. *See* section 240A(d)(2) of the INA, as amended. These ''stop-time rules'' of IIRIRA apply to all aliens in removal proceedings under section 240A of the INA, as amended.

Section 309(c)(5) of IIRIRA as in effect prior to amendment by NACARA contained a transitional rule providing

that paragraphs (1) and (2) of section 240A(d) of the INA (which established these ''stop-time rules'' relating to continuous physical presence) shall apply to notices to appear issued before, on, or after the date of enactment of IIRIRA. This transitional rule has been interpreted as applying the ''stop-time rules'' of IIRIRA also to orders to show cause issued against persons in deportation proceedings seeking suspension of deportation relief. Under this interpretation, an alien affected by any of the ''stop-time rules'' relating to continuous physical presence—for example, an alien who failed to accrue seven years of continuous physical presence before being served with an order to show cause—was made ineligible for suspension of deportation. Therefore, under IIRIRA an alien generally must establish seven years of continuous physical presence in the United States prior to service of a charging document, along with good moral character and extreme hardship, in order to qualify for suspension of deportation. (Aliens who cannot establish continuous physical presence because of commission of an offense, or because the continuity of their physical presence was interrupted by a departure from the United States exceeding 90 days (or 180 days in the aggregate), would also be ineligible for suspension of deportation.)

Section 203 of NACARA amends section 309(c)(5) of IIRIRA by eliminating this transitional restriction on suspension of deportation for six classes of aliens in deportation proceedings and similarly exempts persons in removal proceedings who are within those six categories from operation of the ''stop-time rules'' contained in section 240A(d)(1) of the INA. Section 203 also creates a ''special rule'' for cancellation of removal which generally restores pre-IIRIRA suspension rules for those who are applying for cancellation of removal and fall within the six classes of aliens.

Generally, an alien within one of the six classes who would have been ineligible for suspension of deportation at the time of adjudication as a result of section 309(c)(5) of IIRIRA may now be eligible for suspension under the NACARA amendments. Thus, an alien who was served with an order to show cause before being physically present in the United States for a continuous period of seven years may now be eligible for suspension of deportation as a result of the amendments made by section 203 of NACARA. Similarly, an alien within one of the six classes who was ineligible for cancellation of removal under the heightened standard of ''exceptional and extremely unusual hardship'' may now be eligible under the special rule for cancellation of removal. For example, an alien served with a notice to appear before being physically present in the United States for a continuous period of 10 years, or an alien who could not establish that his removal would result in exceptional and extremely unusual hardship to a United States citizen or lawful permanent resident spouse, parent, or child, may now be eligible for the special rule for cancellation of removal as a result of the amendments made by section 203 of NACARA.

This rule provides that a motion to reopen pursuant to 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 section 244(a) of the INA (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; and (2) was or would be ineligible (a) for suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or (b) for cancellation of removal pursuant to section 240A of the INA, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA; and (3) has not been convicted at any time of an aggravated felony; and (4) falls within one of the six classes of aliens described in section 203(a)(1) of NACARA.

Prima Facie Eligibility and Statutory Bars

As mentioned above, an alien reopening pursuant to NACARA must establish prima facie eligibility for suspension of deportation or cancellation of removal under the applicable standards governing such forms of discretionary relief pursuant to section 244 of the INA, as in effect prior to April 1, 1997. In general, the alien must have been physically present in the United States for a continuous period of at least seven years immediately preceding the date of such application; 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 INA, as in effect prior to April 1, 1997. The period of continuous physical presence must be established as of no later than September 11, 1998.

Further, to be prima facie eligible to apply for suspension of deportation or cancellation of removal, the alien must not be subject to any of the statutory bars to seeking such relief. Section 240A(c) of the INA, and section 244(f) of the INA as it existed prior to April 1, 1997, provide that certain categories of aliens are ineligible for cancellation of removal or suspension of deportation. 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, including cancellation of removal and suspension of deportation, pursuant to section 240B(d) of the INA and section 242B(e)(2) of the INA as it existed prior to April 1, 1997. Sections 242B(e)(1), (3) and (4) of the INA as it existed prior to April 1, 1997, also bar 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 the provisions of NACARA. Although there may be only a limited number of aliens who are affected by these provisions, the Attorney General has no authority to waive these statutory bars in the cases where they do apply.

Motion To Reopen Without Application for Relief

The Attorney General is creating an exception to the regulatory requirements, found at 8 CFR §§ 3.2(c) and 3.23(b)(3), providing that ''[a]ny motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents'' for any alien eligible to reopen under section 309(g) of IIRIRA, as amended by section 203 of NACARA. Such aliens may elect to file a motion to reopen initially without an application for relief and supporting documents. The alien must allege in such motion that the alien: (1) is prima facie eligible for suspension of deportation pursuant to section 244(a) of the INA (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; and (2) was or would be

ineligible (a) for suspension of deportation by operation of section 309(c)(5) of IIRIRA (as in effect prior to November 19, 1997); or (b) for cancellation of removal pursuant to section 240A of the INA, but for operation of section 309(f) of IIRIRA, as amended by section 203(b) of NACARA; and (3) has not been convicted at any time of an aggravated felony; and (4) falls within one of the six classes of aliens described in section 203(a)(1) of NACARA. The alien will then have until February 8, 1999 to file an application for suspension of deportation or cancellation of removal and all other supporting documents that would have been filed initially with a standard motion to reopen. A copy of both the motion to reopen and the subsequently filed application for suspension of deportation or cancellation of removal with all other supporting evidence must be served on the Immigration and Naturalization Service (INS or Service). The Service shall have 45 days from the date of service of the completed motion to respond to the motion.

The motion will be adjudicated only after it has been completed by the filing of the required application for suspension of deportation or cancellation of removal and the Service has submitted a response or the time for response has elapsed. The completed motion will be adjudicated under all applicable statutory and regulatory provisions. Persons filing a motion to reopen under NACARA should follow standard motion practice, as set forth in the regulations, with the exception of the special provisions regarding the filing fee, the submission of the application for relief, and the provisions relating to Immigration Court jurisdiction as set forth in this rule.

If the alien fails to file the required application by February 8, 1999, the motion will be denied as abandoned. In that case, the alien will have lost the alien's one opportunity to move to reopen under section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, for suspension of deportation or cancellation of removal relief. However, an individual may still be eligible to reopen for other reasons as permitted by statute and regulation. The front page of a motion to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, and any envelope containing such motion should include the notation ''Special NACARA Motion.'' The $110 filing fee is waived for these motions to reopen pursuant to section 203(c) of NACARA. 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 or cancellation after a motion to reopen is granted, however, are not waived. The alien should submit an Application for Suspension of Deportation (Form EOIR–40) whether or not he or she is in deportation or removal proceedings. The time period for filing the motion is from January 16, 1998 to September 11, 1998. See 63 FR 3154.

This special provision allowing for the filing of a motion to reopen without the application for relief and supporting documents applies only to motions to reopen under the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA. An alien moving to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, may choose to file a complete motion to reopen accompanied by an application for suspension of deportation or cancellation of removal and all other supporting evidence within the designated time period of January 16, 1998 to September 11, 1998. The Service will then have 45 days to respond to the motion.

ABC Class Members

Any alien listed in section 309(c)(5)(C)(i) of IIRIRA with a final order of deportation or removal must file a motion to reopen pursuant to section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, in order to apply for suspension of deportation or ''special rule'' cancellation of removal. This includes, but is not limited to, the defined class of Salvadorans and Guatemalans who are afforded de novo asylum adjudications pursuant to the settlement agreement in *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (1991) (ABC class members) who were issued final orders by the Board or the Immigration Judge.

The Attorney General anticipates promulgating regulations this year to delegate to Service asylum officers the authority to adjudicate the applications of certain NACARA beneficiaries for suspension of deportation and ''special rule'' cancellation of removal. It is anticipated that ABC class members who are eligible for ABC benefits (that is, are registered for ABC benefits and have filed an asylum application by the requisite dates: for Guatemalans, by January 3, 1995; for Salvadorans, by February 16, 1996) and who have a final order of deportation will have the option to seek adjudication of suspension of deportation before an asylum officer at INS if the motion to reopen is granted. Thus, ABC class members may request administrative closure at the time they file their motion to reopen or after the motion is granted. Their cases may be administratively closed pending promulgation of regulations governing adjudication of suspension of deportation or ''special rule'' cancellation of removal before the INS. An ABC class member who is eligible for ABC benefits, as described above, and whose case previously had been administratively closed by the Immigration Court, is not required to file a motion to reopen under section 309(g) of IIRIRA, as amended by section 203(c) of NACARA , however, as no final order has been issued in such a case.

Jurisdiction Over Motions To Reopen Under Section 203 of NACARA

All motions 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. An alien should make all efforts to file such motion to reopen and the completed application for suspension of deportation or cancellation of removal with the Immigration Court that last had jurisdiction over the proceedings because that is the Immigration Court that will adjudicate the motion to reopen. Any motion to reopen under the special rules of section 309(g), as amended by section 203(c) of NACARA, filed with the Board or with an Immigration Court other than the one that last had jurisdiction over the proceedings, will be forwarded to the appropriate Immigration Court for adjudication as a timely filed motion if filed on or before September 11, 1998.

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'' exception found at 5 U.S.C. §§ 553(b)(3)(B), 553(d)(3). Immediate implementation is necessary because the time period has already been designated for filing motions to reopen under NACARA and will terminate on September 11, 1998.

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 because it affects individual aliens, not small entities.

Unfunded Mandates Reform Act of 1995

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 one 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 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in 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 on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is a significant regulatory action under Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation adopted herein 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 Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988: Civil Justice Reform

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

List of Subjects in 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. 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; section 203 of Pub. L. 105–100.

2. Section 3.43 is added to subpart C to read as follows:

§ 3.43 Motion to Reopen for Suspension of Deportation and Cancellation of Removal pursuant to Section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

(a) *Standard for Adjudication.* Except as provided in this section, a motion to reopen proceedings under section 309(g) of IIRIRA, as amended by section 203(c) of NACARA, 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 section 244(a) of the INA (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 INA, 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 following six classes:

(i) A national of El Salvador who:

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

(B) 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

(C) Was not apprehended after December 19, 1990, at time of entry; or

(ii) A national of Guatemala who:

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

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

(C) Was not apprehended after December 19, 1990, at time of entry; or

(iii) A national of Guatemala or El Salvador who applied for asylum with INS on or before April 1, 1990; or

(iv) An alien who:

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

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

(c) 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; or

(v) The spouse or child of a person described under paragraphs (b)(4)(i) through (b)(4)(iv) of this section who was a spouse or child of such person at the time the person was granted suspension of deportation or cancellation of removal; or

(vi) An unmarried son or daughter of a parent, who is described under paragraphs (b)(4)(i) through (b)(4)(iv) of this section, at the time the parent is granted suspension of deportation or cancellation of removal, provided that, if the son or daughter is 21 years of age or older at the time the parent is granted suspension of deportation or cancellation of removal, the son or daughter must have entered the United States on or before October 1, 1990.

(c) *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. The alien must allege in such motion to reopen that the alien:

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

(ii) Was or would be ineligible:

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

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

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

(iv) Falls within one of the six classes described in paragraph (b)(4) of this section.

(2) A motion to reopen filed without an application for suspension of deportation or cancellation of removal shall not be considered complete until it has been supplemented with the application for suspension of deportation or cancellation of removal and all other supporting documentation. An alien shall have until February 8, 1999 to complete that motion. A motion to reopen filed without an application and supporting documents will not be adjudicated until it is completed with the required application for suspension of deportation or cancellation of removal and supporting documents. The Service shall have 45 days from the date of service of the application for suspension of deportation or cancellation of removal to respond to that completed motion. If the alien fails to file the required application by 150 days after September 11, 1998 the motion will be denied as abandoned.

(c) *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) of IIRIRA, as amended by section 203(c) of NACARA.

(d) *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 issued an order in the case. The Immigration Court that last had jurisdiction over the proceedings will adjudicate a motion to reopen filed pursuant to the special rules of section 309(g) of IIRIRA, as amended by section 203(c) of NACARA.

(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.

Dated: June 5, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–15588 Filed 6–10–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1751–96]

RIN 1115–AE29

Effect of Parole of Cuban and Haitian Nationals on Resettlement Assistance Eligibility

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published by the Immigration and Naturalization Service (Service) in the **Federal Register** on July 12, 1996. The interim rule amended Service regulations to clarify that, with certain exceptions specified in the interim rule, nationals of Cuba or Haiti who were paroled into the United States since October 10, 1980, are to be considered to have been paroled in an immigration status referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, Pub. L. 96–422, dated October 10, 1980, as amended. This amendment was necessary to ensure that these aliens are not inadvertently considered to hold an immigration status other than the status referred to in section 501(e)(1).

DATES: This rule is effective June 11, 1998.

FOR FURTHER INFORMATION CONTACT: Janice B. Podolny, Associate General Counsel, Chief of Examinations Division, Office of the General Counsel, Immigration and Naturalization Service, Room 6100, 425 I Street NW., Washington, DC 20536, telephone: (202) 514–2895. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On July 12, 1996, the Service published an interim rule in the **Federal Register** at 61 FR 36610–11. The interim rule clarified that, with certain exceptions specified in the interim rule, nationals of Cuba and Haiti who were paroled into the United States since October 10, 1980, are to be considered to have been paroled in the immigration status referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, as amended.

The comment period expired September 10, 1996. The Service received only one comment, from a commenter who supported the promulgation of this rule. The commenter made further comments regarding the expiration of the validity of Forms I–94 issued to parolees, and the parolees' concomitant need to obtain extensions of their parole and of their employment authorization. Since these further comments do not relate to the purpose and substance of the interim rule, nor of this final rule, the Service need not address these further comments in promulgating this final rule.

Effective Date

Because of the urgent need to clarify the status of the aliens affected by the interim rule, the Commissioner found that good cause existed to make the interim rule effective on July 12, 1996, the date the Service published the interim rule in the **Federal Register,** as stated at 61 FR 36611. This final rule makes no substantive change. For this reason, the Commissioner finds that good cause also exists to make this final rule effective upon publication in the **Federal Register,** as permitted under 5 U.S.C. 553.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that this rule simply clarifies the immigration status that the affected aliens already hold, and does not alter the rights or obligations of any person or entity.

Unfunded Mandates Reform Act of 1995

This final rule is not a Federal mandate, as defined by 2 U.S.C. 658. For this reason, it is not necessary to conduct the analyses provided for under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 12866

The Commissioner does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived the required review.

Executive Order 12612

This final rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,