U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

April 20, 2010

wrong date - should be 2011
JS

Professor Jacqueline Stevens
Northwestern University
601 University Place
Evanston, IL 60208

RE: FOIA Request Regarding Procedures for Forming EOIR Panels, Rules for EOIR Panels Writing Draft Decisions, and Rules for Board Members Receiving Draft Decisions

Dear Professor Stevens:

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR), in which you seek a copy of all procedures for forming EOIR panels, all rules for EOIR panels writing draft decisions, and all rules for Board of Immigration Appeals (Board) members receiving draft decisions.

Enclosed is the information responsive to your FOIA request. Please note that EOIR has redacted information pursuant to 5 U.S.C. § 552(b)(5) regarding deliberative process privilege and (b)(6) of the FOIA to prevent the disclosure of information that would constitute a clearly unwarranted invasion of personal privacy. On one occasion where the (b)(5) exemption applies, EOIR has exercised its discretion to release the information.

In addition, the press release entitled "Attorney General Issues Final Rule Reforming Board of Immigration Appeals Procedures" contains information responsive to your request. You can find the press release on EOIR's website at http://www.justice.gov/eoir/press/02/BIARestruct.pdf. The final rule implementing Board changes is located in the Federal Register at 67 Fed. Reg. 54878 (2002).

If you are not satisfied with this decision, you may file an appeal with the Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., N.W., Suite 11050, Washington, D.C. 20530. OIP must receive your appeal within 60 days of the date of this letter. The procedures for appeal are stated at 28 C.F.R. § 16.9.

Sincerely,

Crystal Souza

Control Number: 2010-13785

Board of Immigration Appeals

Attorney Manual

The Board of Immigration Appeals Attorney Manual

This Attorney Manual is a compilation of materials designed to provide instruction and guidance to the Board's attorney-advisors to assist them in performing their duties. The newly revised Attorney Oreientation section is designed to provide basic information to attorney-advisors.....

Attorney Manual Quick Navigation

Section 1

ATTORNEY ORIENTATION

TABLE OF CONTENTS

- Organization and Functions of the Board of Immigration Appeals ("BIA")
- Attorney-Advisor Position and Administrative Information
- Case Processing at the Board
- Preparing Cases for Board Member Review
- Circulating Proposed Decisions to the Board Members

Section 2

ATTORNEY REFERENCE GUIDE

TABLE OF CONTENTS

- Board of Immigration Appeals (BIA)
- Citizenship
- Removal
- Forms of Relief
- Motions
- Detention and Bond
- Miscellaneous

Section 3

BIA STYLE AND CITATION GUIDE

TABLE OF CONTENTS

- BIA Decision Style Guide
- Board System of Citations Guide
- Use of Headings and subheadings in the body of the decision

Section 4

STANDARD ORDER LANGUAGE

TABLE OF CONTENTS

- Deportability, Inadmissibility, or Removability at Issue on Appeal
- Relief at Issue on Appeal
- Motions
- Miscellaneous Orders for Immigration Judge Proceedings
- Department of Homeland Security Matters

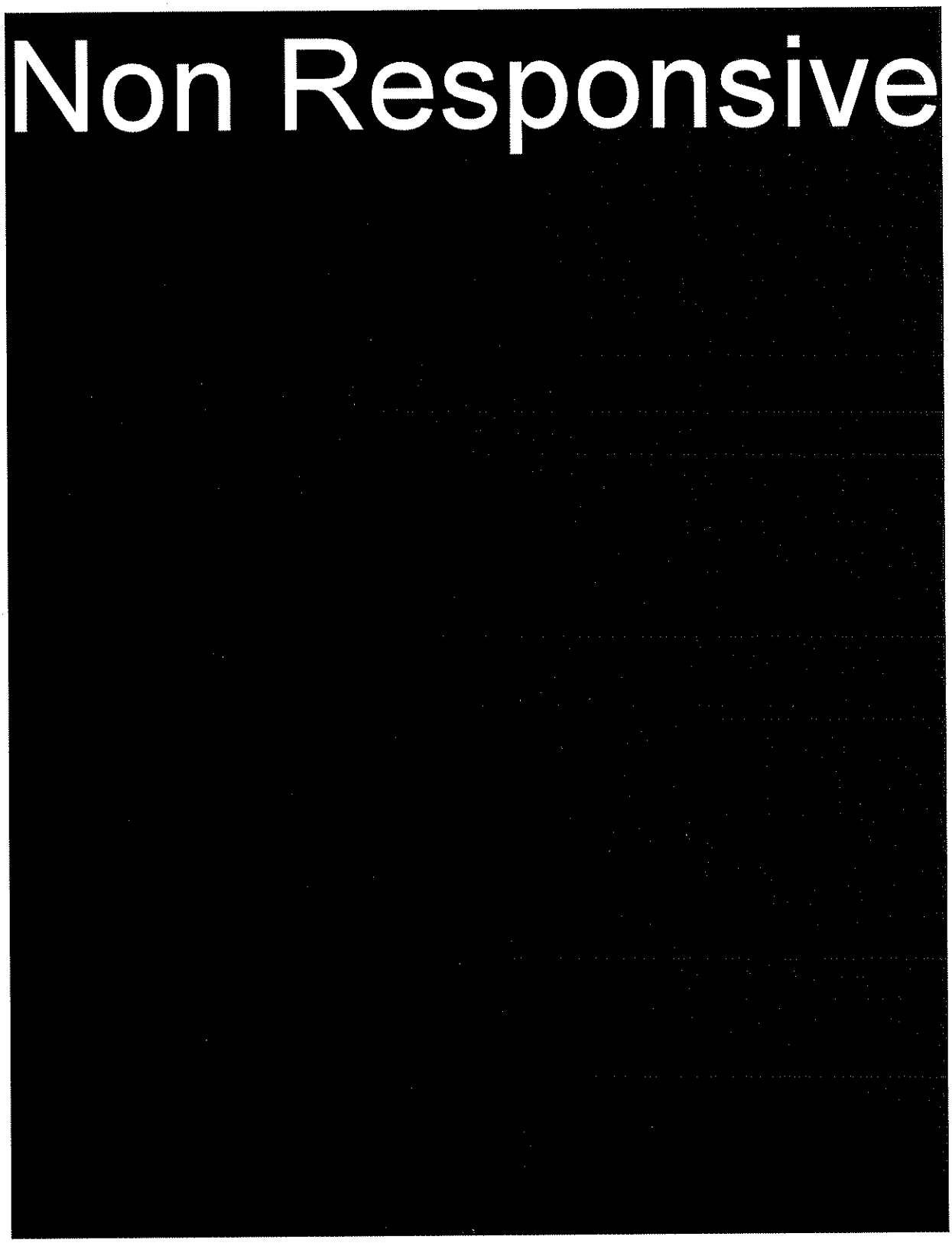
Section 5

APPENDICES

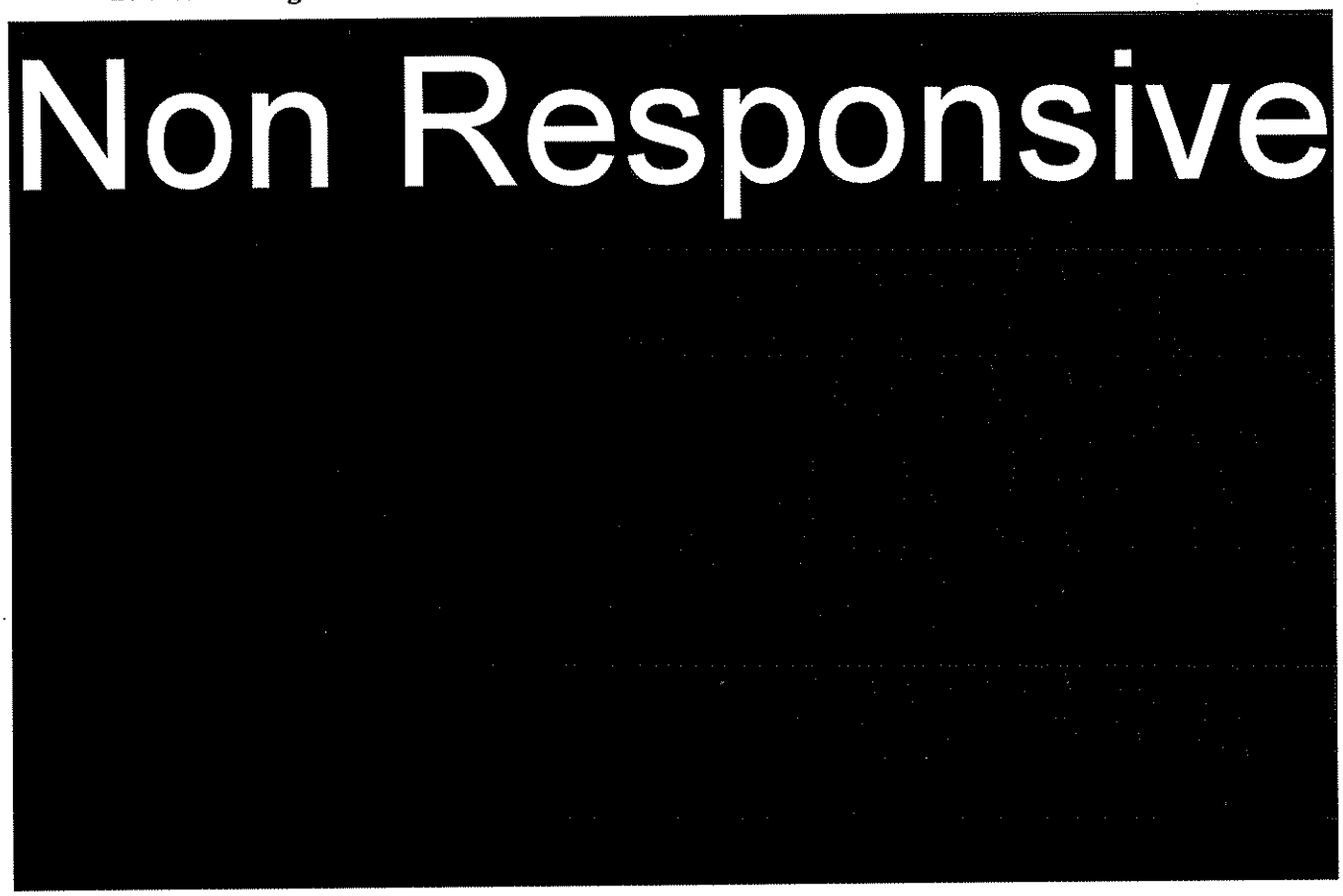
Non Responsive

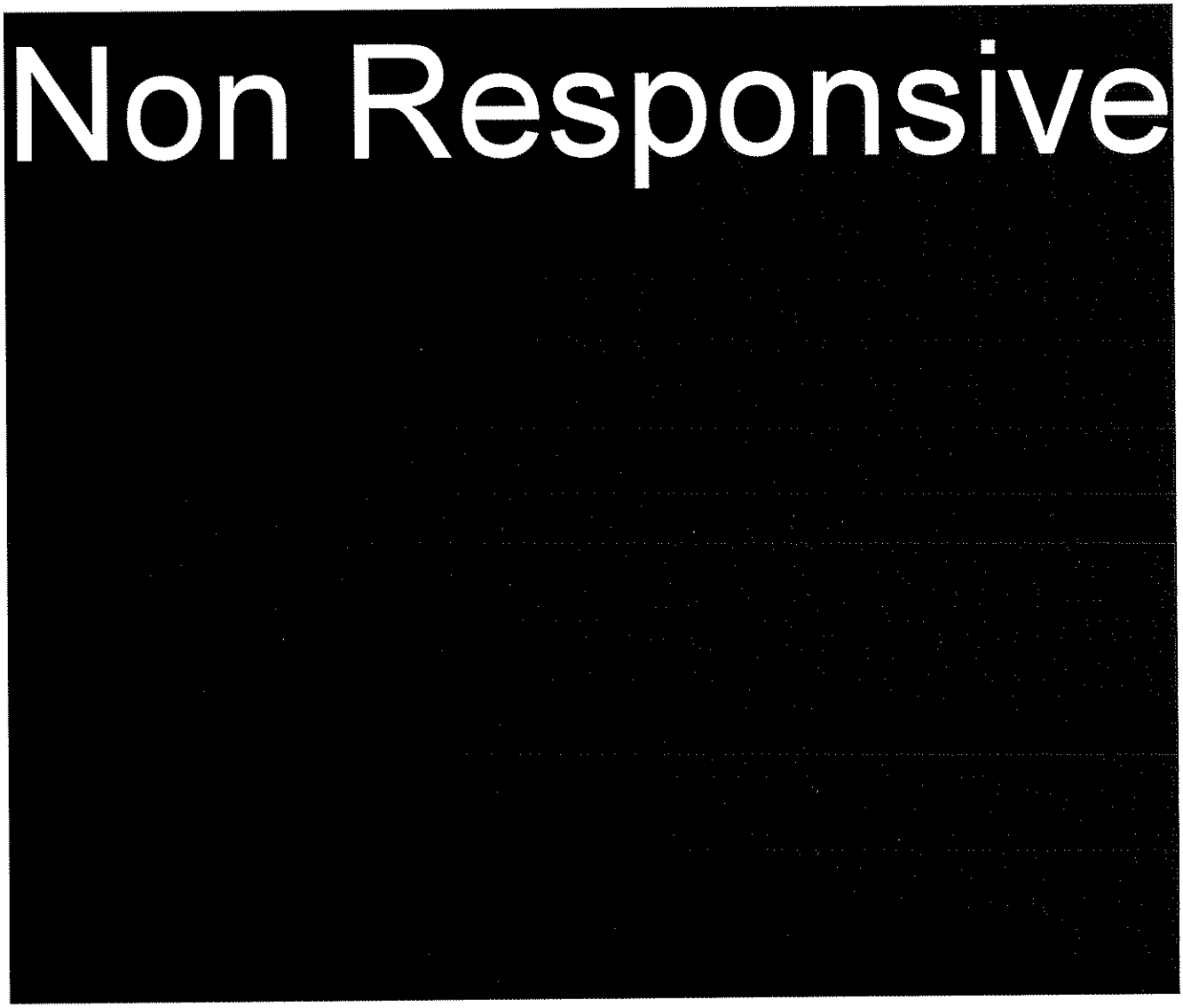
2. **Attorney Review of ROPs**

Non Responsive


Non Responsive

B. Researching Points of Law





C. Drafting Proposed Orders

Once the attorney has identified all issues that need to be addressed to resolve a particular case and has verified the law applicable to the case, he or she can proceed to determine the appropriate order to use for that case.

1. Automated Orders

There are a number of automated orders that can be accessed directly through the "Streamlining Information" box in C.A.S.E. Where such an order is an appropriate disposition, the attorney may generate an automated order. Many of the automated orders have insertion points for the addition of explanatory information or analysis into the form order. These orders are generally appropriate for straightforward cases that do not require a lengthy analysis, often where little is raised on appeal. Examples of such orders are:

- Affirmance without opinion. This is a form order that may be used where Immigration Judge's decision is correct and there is no need for further analysis. It is subject to specific regulatory criteria, as set forth in 8 C.F.R. § 1003.1(e)(4).
- Many jurisdictional issues, such as untimely appeals, waived appeals, and untimely motions.
- Short dismissal of appeal where appellant does not raise numerous or complex challenges.
- Short grant or denial of motion where issues are straightforward and require brief analysis.

A full list of the automated orders available may be found at Non Responsive Non Responsive

Automated orders may be easily tailored by either typing in material at the insertion point, or by copying-and-pasting WordPerfect text into the insertion point. This is done by copying the WordPerfect material, then when the insertion point is reached in the order, using the "control-'v'" function to paste that text into the automated order. The main disadvantage to using the automated order when adding substantial material is that there are space limitations as well as restrictions on ability to edit that text or to add footnote material. Often, if additions will be substantial, it is easier to draft a WordPerfect version of the automated order, which allows for easier editing and the use of footnotes. WordPerfect versions of the auto-orders are available on the s: drive in the S-L "orders" directory.

2. Formatting WordPerfect Orders

Once the attorney has determined that an automated order should not be used in a particular case, a WordPerfect order must be drafted.

a. Creating the Order in WordPerfect

- **Templates** - The starting point for a WordPerfect order is to choose the appropriate BIA template for the proceeding that is before the Board. Templates were created to automatically set up proper format and headings for Board decisions. They also allow for easy entry of the essential heading information by the user. The templates are accessed by selecting "BIA" on

the menu bar, and a drop down menu appears allowing the user to select the appropriate template.

Once the heading is complete, the attorney must focus on the body of the decision. There are some cases where the matter may be resolved through the use of a "Per Curiam" order format, whereas there are others that may involve more complex issues and require the ordinary case format with an "ORDER" at the end of the decision.

- **Per curiam order** - generally appropriate in those cases in which the decision of the Immigration Judge or DHS thoroughly disposes of all issues or in which factual issues are not in dispute and/or the law is clearly established. In some cases where the Immigration Judge or DHS decision is legally and factually sufficient and no new issues are raised on appeal, a short per curiam order dismissing the appeal may be appropriate. A per curiam order may also be used where the Immigration Judge or DHS decision is legally and factually sufficient and, although some new issues are raised on appeal, the issues raised may be disposed of based on the record and clearly established precedent. Thus, a per curiam order generally does not contain as detailed a discussion of the facts or law as a regular order might contain.

Care must be taken, when a per curiam order is used, to ensure that an "ORDER:" appears at the beginning of our decision, and that there is not a duplicate "ORDER:" at the end of the decision. Any additional order appearing after the main body of the per curiam decision should be a "FURTHER ORDER:" followed by the text of that further order. *See* Attorney Manual, Section 4 for Standard Order Language.

Finally, at the end of any proposed order, the attorney must insert a signature line, which may also be found by selecting "BIA" on the menu bar and selecting "BIA Macros," then "signature line." Other macros include the form voluntary departure orders used in deportation proceedings and removal proceedings and the form order used to remand matters for background security checks where an alien has been found eligible for certain forms of relief but the record does not reflect that the required background security checks have been completed. The "BIA macros" should always be used for the sake of uniformity, as they are sometimes updated and copying and pasting from older orders may result in the use of an outdated version.

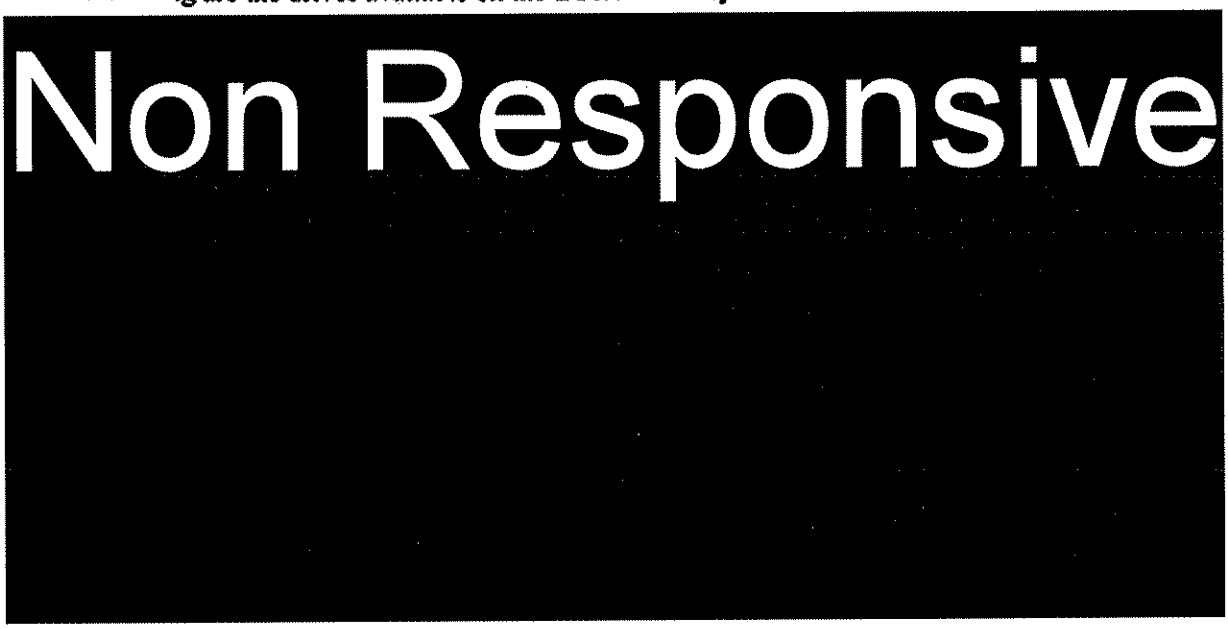
Although most attorneys may be well-versed in the general functions and capabilities of WordPerfect, a list of "Shortcuts Keys" is provided in Appendix IV to assist in the efficient preparation of proposed decisions.

b. Saving Orders in WordPerfect

Since one of the fundamental concepts underlying the Board's computer system is that legal staff work product is to be shared, every attorney's and paralegal's proposed decisions (aside from

automated orders that are generated through C.A.S.E.) are to be stored on the network so that they are available for access and use by others. However, each staff member also has a private drive to maintain non-order, private work product. To make it easy for employees to find the shared work product, the network has been organized into drives, teams, team members, and subject files. In furtherance of the overall concept of sharing work product, attorneys should follow standard file naming and saving conventions.

- **PC Drives** – Every PC has a number of drives indicated by a letter followed by a colon. The following are the drives available on the EOIR-Board system:



- **File Organization** – The Board has assigned directories on the Non Responsive which are named according to the Board's Teams. Each team directory contains subdirectories for each person on that team. The subdirectory names correspond to members' logon names Non Responsive Each team member's personal directory may already contain some of the subdirectories listed below, which correspond to the general subjects addressed by the Board, or these directories can easily be created. These are just general categories to assist in the organization of files and the saving of proposed orders, but attorneys may create their own subdirectories as well. The following is the list of general subjects and corresponding directory names generally used:

Subject	Directory Name
Abandonment of Lawful Permanent Resident Status	Abandon
Adjustment of Status	Adjustment

Asylum and Withholding	Asylum
Bond	Bond
Cancellation of Removal	Cancellation
Citizenship	Citizenship
Constitutional Rights	Constitutional
Criminal Aliens	Criminal
Evidence and Procedure	Evidence
In Absentia	In absentia
Motions	Motions
Protection under the Convention Against Torture	CAT
Removability	Removability
Visa Petitions	Visa Petitions
Voluntary Departure	Voluntary Departure
Waivers: Section 212(c) and other waivers	Waivers

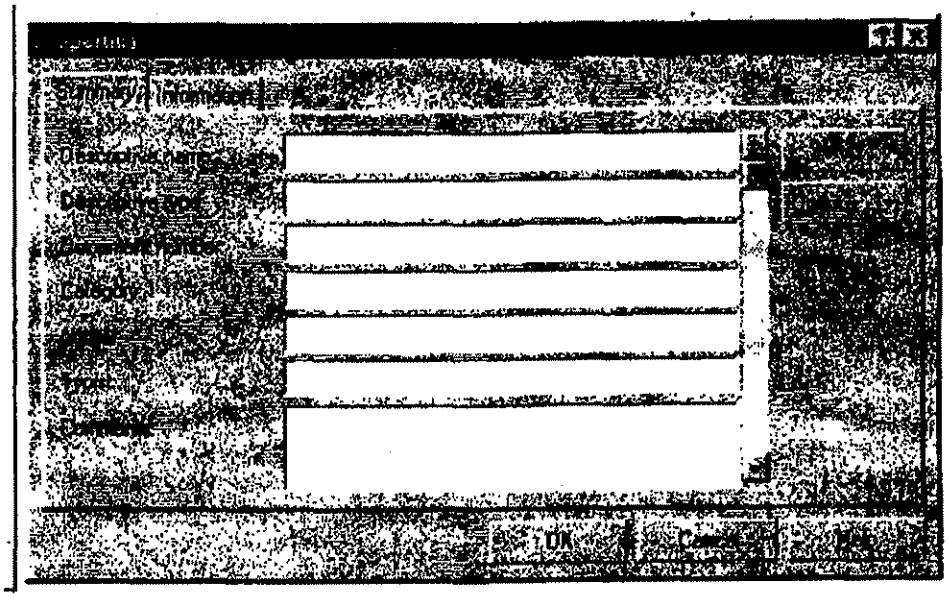
Attorneys may add subdirectories as they like, as well as folders within those subdirectories to organize and maintain files.

- **Access** – Board personnel can read, print, and copy from files belonging to anyone else, but they can only modify, create and delete their own files. An individual's own data will appear in th[redacted] as will files created by other members of their team. Other team members' files, therefore, may be accessed directly from the person's directory on [redacted] However, work of an attorney on another team must be accessed through th[redacted] To access: click "open," the[redacted] then click on the "data" folder, then scroll down to the team folder you want to select, click on it and look for the attorney's folder that you seek. Legal assistants can create, modify and delete files on [redacted]

- **Naming Conventions** – Always create filenames starting with the Alien number (A#), i.e., 23345777. After the A#, attorneys are free to include whatever information they wish to name the file to assist them in classifying and retrieving documents. The entire file name can contain up to 32 characters. Be sure to use the ".wpd" extension at the end of the filename - i.e., 23345777.wpd - when saving or renaming a file.

c. Document Summary Sheets

Document summary sheets are not generally used for automated orders, or even WordPerfect orders circulated through the Screening Panel, since all corrections are sent back to the attorney to complete. However, WordPerfect orders that will be circulated to the Merits Panels should always include a Document Summary Sheet, which is a form that indicates the name and the directory/filename information for any given decision. This information may be needed if corrections or edits to the order need to be completed by clerical staff. This Document Summary Sheet should be attached to the back of any decision circulated to the Merits Panels. If there are separate concurring or dissenting opinions, each should have its own Document Summary Sheet. Although additional fields/categories may be selected, the following list must be included and filled in, except for items that are designated as optional:



Descriptive *name*:	Alien's last *name*
Descriptive type:	dissent or concurring opinion; no entry needed if majority opinion
Document number:	Alien's A number (which should be the first characters in file name saved)
Category:	Your team/your last name/folder file to be saved in
Author:	Your last name and first initial or assignment initials
Typist:	Your last name and first initial or assignment initials
Comments:	(Not required to be filled in)

The Document Summary Sheet may be created or accessed through "File" on the menu bar and selecting "Properties" or by selecting the Document Summary icon on the toolbar.

Document
Summary Icon

d. *Printing WordPerfect Orders*

An attorney may have an individual printer in his or her office, which is generally set as the default printer for that PC. If not, there are common printers throughout the Board's space to which attorneys may send documents for printing. Note that a change of printers may result in a slight change in the positioning of text. When a document is created it is initially formatted for the default printer on the author's PC. If a document is sent to another printer, the new printer reformats the

document, which may alter the positioning of the text. Therefore, it is recommended that the document be reinitialized before printing. This may be done by selecting the Print function in WordPerfect 12 from FILE on the Menu bar or Ctrl + P or the Print Icon on the Tool bar. In the Print Information box select the appropriate printer and then, click the CLOSE button. Check the formatting and text position in the current document before printing. When ready to print, select the Print function and click the PRINT button.

Print Icon

If an attorney makes a correction to one page and then reprints that page, it is important to verify that no text has been shifted by the correction that resulted in the loss or duplication of text between the pages.

3. Writing the Decision

Regardless of what approach an attorney determines should be taken in a particular case, each decision must, in the final analysis, stand on its own. Therefore, it is the duty of the attorney to apply the relevant law, after any necessary research, to the facts of each case under consideration. It is also important to apply the appropriate standard of review to all aspects of the underlying decision. *See* Appendix III, August 2002 and March 2003 Memorandums relating to the "Clearly Erroneous" Standard of Review.

There is no set format for writing Board decisions. Also, the format will vary from case to case, depending on the issues raised, the complexity of the case, and other factors. With that in mind, however, please note that the role of the Board is dispute resolution. The parties that appear before the Board, and any court reviewing our decisions, are expecting to see orders that reflect adequate review of the record in the course of carrying out that role. Therefore, our orders need to identify the dispute that the parties are asking us to resolve, announce the decision we have reached as to that dispute, and explain why we reached that resolution, all in a way that indicates we have listened to the claim, reviewed the relevant parts of the record, and reached a reasoned decision.

Therefore, except with regard to those cases that are amenable to an affirmance without opinion, the following are general principles to follow in carrying out the Board's dispute resolution role. This is intended as a general formula for attorneys to reference in drafting orders for the review of Board Members.

a. Identify the Issue or Issues in Dispute

This does not require repeating all the claims made by either or both parties. But, we should say enough in the order that the parties know we have considered and understood the claim. It is critical to identify dispositive issues, whether or not we acknowledge all points in dispute.

Example: The respondent raises a number of issues in challenging the Immigration Judge's finding of removability and the denial of cancellation of removal on both eligibility and discretionary grounds, including due process claims in relation to the conduct of the hearing. We find it unnecessary to address most of these contentions because we agree with the Immigration Judge that the respondent is removable as an alien convicted of an aggravated felony and does not qualify for any relief requested at the hearing.

b. Clearly Announce Our Ruling

This simply means stating our bottom line as to which party wins or loses on the dispositive issues. It usually takes no more than one sentence, or a clause, that can be combined with identification of the issue.

Example: We reject the claim by the DHS that the Immigration Judge was clearly erroneous in crediting the respondent's testimony and subsequently in granting asylum in the exercise of discretion.

c. Explain Why We Reached Our Result

This is the most important part of any order. It need not be long. But, we need to say enough that the parties can understand why they won or lost. As with the issue identification, our explanation needs to give the parties and any reviewing body confidence that we understood the essence of the case, reviewed the record to the extent necessary to resolve the issues, and reflects a reasoned disposition, even if the losing party or reviewing body thinks the disposition is not correct. Citations to the transcript and the relevant exhibits are the best ways to demonstrate a review of the record.

Example: The adverse credibility ruling is supported by the various inconsistencies in the testimony and evidence identified by the Immigration Judge (I.J. at 16-18), some of which go to the heart of the respondent's claim. For example, the respondent's testimony regarding being detained for five weeks (Tr. at 37-39) and beaten during two interrogation sessions (Tr. at 25, 41-42) was never mentioned in his asylum application (Exh. 3) nor during his credible fear interview (Exh. 5).

d. Address Arguments Raised by the Losing Party

It is also important to address the significant points made by the losing party that bear on the dispositive issues. It is not necessary to address every claim raised by that party, such as arguments

on issues that we are not addressing. The most important thing is to explain the basis for the disposition.

> *Example*: Although the respondent has offered evidence that his psychological condition may have led to these incomplete accounts of past abuse, the Immigration Judge did not clearly err in rejecting this explanation, given the number and significance of the discrepancies that are present in the record (Tr. at 43, 48-51, 58).

Remember that attacks on the overall proceedings, such as rulings on evidentiary issues, continuances, or the fairness of the hearing, may well need to be addressed, as these issues frequently bear on our overall disposition of the case, even if they may not directly relate to what the Board believes is controlling.

The following are also some general guidelines:

- where the issue of removability (or deportability or inadmissibility) has been raised on appeal it should be treated first and applications for relief be treated subsequently.
- if a case is procedurally complex, the procedural posture, to the extent that it is relevant to the disposition of the case, should be clearly set forth early in the decision.
- where the Immigration Judge has based a decision on alternate grounds, the Board's decision should make clear which aspect of that decision it agrees with and why.
- the decision should make clear what standard of review we have applied to different aspects of the decision.
- discussion of voluntary departure will generally come last, if applicable.

All proposed decisions should be written in clear, direct language, and sentences should be as short and succinct as possible. Similarly, paragraphs should be concise, and there should be a logical transition from one paragraph to another. The attorney should maintain a judicial tone in drafting the order.

Chapter 5 - Circulating Proposed Decisions to Board Members

1. Circulation Sheets

Each Panel has its own circulation sheets that the attorney must fill out before circulating a proposed decision to the Board Members. *See* Appendix IV, sample circulation sheets. These circulation sheets make sure the case circulates to the appropriate Board Member(s), provide information for the Board Members about the case, and provide information to the Clerk's Office to ensure that the case is properly processed upon completion. The attorney must do the following:

- complete the front side of the circulation sheet, including alien's name and A#, any appropriate instructions to the Docket Unit, comments for the Board Members concerning the disposition of the case, and the attorney's initials and date of circulation. *The Board has provided for the inclusion of the following information on circulation sheets*: The Immigration Judge's name, the Circuit Court in which the matter arises, an "IJC" code that should be circled if the decision reflects concerns about an Immigration Judge's conduct, and an "AC" code that should be circled if the decision reflects concerns about attorney conduct that should be brought to the attention of the Office of General Counsel. *See* Appendix III, May 2006 Memorandums relating to "IJC" and "AC" codes. Also in the "Comments" section, the attorney should bring any significant information about the case to the Board Members' attention, including whether multiple aliens are involved or whether a case has been severed from accompanying cases.

- complete the reverse side of the circulation sheet, circling one decision code and one disposition code. A description of the codes is in Appendix II. *See* Acting Chairman's Memo 07-03, dated May 1, 2005, Circulation Sheets and Instructions.

Some of the Panels use "orange dots" on the circulation sheet to indicate to the Board Members that an automated order has been used, and "purple dots" to indicate that a WordPerfect order has been drafted that is a single-Board-Member disposition. These dots, when appropriate, should be affixed to the upper right-hand corner of the front of the circulation sheet.

For cases where 3-Board-Member review is proposed, a "3-Board-Member Referral Sheet" must be completed and attached to an appropriate circulation sheet. *See* Appendix IV, sample 3-BM Referral Form.

2. Finalizing and Proofreading the Order

The final draft that is circulated to the Board Members must be printed on buff paper, although the document summary is generally printed on white paper. There must be a separate decision printed for each alien when the case involves multiple aliens.

A major responsibility of the attorney is to proofread any order before circulating. Orders are often signed and issued as proposed by the attorneys, so it is vital that they circulate to the Board Members in final form. Typographical errors requiring correction either by the attorney or the clerical staff detract from the efficient processing of cases and make it more difficult for the Board to meet its case completion goals. *See* Appendix IV, Attorney Case Processing Checklist.

3. Entry of Decision Information in C.A.S.E. and Checking "Comments"

Prior to circulating, if an automated order has not been generated, the staff attorney will need to enter information in C.A.S.E. regarding the disposition of the case. For non-auto-orders, each Panel determines when "approve" or "reject" will be selected. However, if a 3-Board-Member disposition is being proposed, the attorney will always select "reject."

The attorney should also click on the "Comments" tab just before circulating to verify that no correspondence has been received by the Board that has yet to be connected with the ROP.

4. Preparing the ROP to Circulate

The attorney should ensure that all relevant portions of the ROP have been tabbed; that the circulation sheet has been fully completed, initialed and dated; and that the appropriate codes have been selected on the reverse side. Any additional materials the attorney has printed out for Board Member reference (such as relevant circuit cases or the current Visa Bulletin) should be either stapled to the circulation sheet or rubber-banded to the outside of the ROP. The attorney should make sure that in cases involving multiple aliens a decision has been printed for each alien and that the ROPs for all aliens are circulated together. The attorney should then scan the case to circulation (by whatever method that Panel uses).

In order to avoid forgetting any of a number of important checks, the Attorney Case Processing Checklist, available in Appendix IV, can serve as a useful tool for ensuring that the attorney has fully prepared the record to circulate.

5. Board Panel Review

Cases circulate to the Board Members for review and approval. For single-Board-Member cases, once a Board Member has reviewed and approved the decision, that Board Member will sign the order and it will go to the Clerk's Office for processing. If the case has been circulated for 3-Board-Member review, it must go to three Board Members on the Panel for review and vote. A Board Member who dissents may elect to dissent without opinion or draft a short dissenting opinion. That Board Member may also request an en banc conference. The case would then be referred to electronic en banc review by all Board Members for a vote on whether the matter should be considered by the en banc Board.

All 3-Board-Member decisions and a random selection of single-Board-Member decisions undergo a "decision review" process for quality control purposes. These cases are reviewed on a daily basis by attorney managers for accuracy, issues of interest, and consistency among Panels before the cases are forwarded to the Clerk's Office to be date-stamped and issued.

6. En Banc Consideration

- **Electronic En Banc** – If any Board Member of a 3-member Panel decides that the proposed decision should be considered by the entire Board, the decision, any dissenting and/or concurring opinions, circulation sheet, and Notice of Appeal are electronically considered by the entire Board. If a majority of the Board votes to hear the case en banc, then the case is scheduled for an en banc conference.

- **En Banc Conferences** - The attorney who drafted the proposed order will generally be advised by e-mail of the date and time that the matter has been set for en banc consideration, as well as provided a copy of the material considered by the Board during the electronic en banc process. The attorney should make him/herself available during the time of that conference, and will be called when that case comes up for consideration at the conference. If more is required of the attorney, he or she will generally be so advised before the conference. After the conference, the attorney will generally receive further guidance and directives for the revision and processing of the case.

7. Revision of Proposed Orders - "Greenslips"

If a Board Member wants revision or modification of a proposed order, that case may be returned to the attorney with a directive on a "greenslip" from the Board Member. The "greenslip" contains the Board Member's request for changes and is intended to provide all the guidance that the attorney needs to make any necessary changes to the order. However, the Board Member may also pose questions and ask the attorney to discuss the case. In addition, the "greenslip" will generally provide guidance on whether the case merely needs to be returned to the Board Member making the request, or whether it needs to recirculate. More complex cases where three Board Members have reviewed and provided comments may be more difficult to decipher, but the attorney may always bring questions or concerns about what the Board Member wants to his or her Team Leader. The Board Member may also elect to make minor revisions to an order without returning the case to the attorney, in which case he/she will send a "blueslip" to the Board's support staff instructing what change should be made to the order.

Most greenslips with a "Return to me" designation do not need to be recirculated, but merely changed as requested, a new final order prepared, and returned to whatever location is designated by the assigned Panel for ROPs to be placed that are returning directly to a particular Board Member. In these situations, where a new circulation sheet is not completed, care must be taken to change any decision or disposition codes on the reverse side of the circulation sheet if the outcome has been changed in any way by the revision. When a case must recirculate, a new circulation sheet should

generally be completed and the "recirculate" box checked. The old version of the decision should always be folded and stapled to the circulation sheet and greenslip so that neither the Board Member, nor the Clerk's Office is confused about which version is the final one to be signed and issued.

If the attorney understands the directive, but wishes to raise a question regarding its substance (*e.g.*, to see if the directive can be changed or modified in some way), the attorney should generally discuss the matter with the Board Member who issued the greenslip. The approach obviously should not be argumentative, nor should discussions be pursued beyond the point at which it is clear that the Board Member understands the position taken, but has decided to take a different approach. Nevertheless, it is appropriate for the attorney to bring it to the Board Member's or a supervisor's attention if he or she believes something has been overlooked or misunderstood. In any event, a case should not be redrafted in a manner that does not comply with a Board Member's directive without first getting the approval of the Board Member(s).

Cases returned for revision should be redrafted and recirculated promptly. If the case involves a detained alien, it should receive your highest priority. Non-detained "returned" cases should be handled as soon as any other pending detained cases have been resolved, unless the attorney has been instructed otherwise.

At times, the recommended modification will require preparation of a dissent or revision of the proposed decision to respond to a point raised in a dissent. The dissenting Board Member generally will have noted on the circulation sheet the basis upon which he or she requests that a dissent be drafted. The attorney may request clarification or guidance from the dissenting Board Member. A draft of the dissenting opinion, along with the case file, should be returned to that Board Member through his or her legal assistant. Once the dissent is approved by the Board Member, the case will recirculate to the appropriate Board Members.

8. Publication Process

Non Responsive

Non Responsive

9. E-Decisions and Subsequent Orders Amending or Correcting a Decision

Non Responsive

At times, it is brought to the attention of the Board that a decision it has issued contains an error. The Board has the authority to reopen or reconsider a decision that it has rendered on its own motion. 8 C.F.R. § 1003.2(a). Thus, where it has been brought to the Board's attention that there is an error, the Board may elect to re-issue the decision or an amended order. The Chairman has set forth specific guidelines pertaining to re-issued or amended orders, to which the attorney should refer if needed. *See* Appendix II, Chairman's Memo BIA 04-04, dated Oct. 5, 2004, Standard Operating Procedure: Re-Issuance and Amended or Corrected Orders.

December 2007

BIA Style and Citation Guide

Board employees should generally be guided by the most current versions of the United States Government Printing Office ("GPO") Style Manual (2000) for questions of writing style, and A Uniform System of Citation ("Bluebook") (Eighteenth Edition), for citation of legal authorities. The Supervisory Legal Assistants have a copy of the GPO Style Manual, and it is available in the library. Please advise the librarian if you do not have a copy of the current Bluebook, and she will provide you with one. Attorney-advisors and paralegals should also advise supervisory legal assistants and legal assistants who are assigned to them of proper citation forms.

BIA Decision Style Guide

Terminology

The Immigration and Nationality Act is a complex statute. Legal consequences may vary according to the particular term used. Therefore, care must always be taken to use terms of art in the correct sense when drafting a decision. Attorney-advisors and paralegals should use the language recommended in this section in their proposed decisions.

1. Parties before the Board of Immigration Appeals

Immigration Judge – An attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review. *See* section 101(b)(4) of the Act; *see also* 8 C.F.R. § 1001.1(l). An Immigration Judge presides over exclusion, deportation, removal, and asylum proceedings, as well as other proceedings which the Attorney General may assign. *See* 8 C.F.R. § 1003.10. Although some portions of the federal regulations may still refer to the Immigration Judge as a "special inquiry officer," the term is no longer used. The tribunal is referred to as the "Immigration Court."

Counsel/Client – Persons in proceedings before the Board may be represented by counsel. In referring to arguments presented in immigration proceedings, it should be stated that they are made by the private party, not his or her counsel. For example, "The respondent" or "the respondent, through counsel," should argue a point. "Counsel," unless he or she has acted in a nonrepresentative capacity, does not argue anything on appeal.

Respondent - A person named in a Notice to Appear (NTA) or Order to Show Cause (OSC) is known as the "respondent" at all stages of the proceedings. *See* 8 C.F.R. § 1001.1(r). A person in rescission proceedings as provided by section 246 of the Act is also known as the "respondent." Furthermore, if the person is being held in custody pending deportation or removal proceedings, he is referred to as the "respondent."

Applicant - A person in exclusion proceedings, asylum proceedings under 8 C.F.R. § 1208.2(c), adjustment of status proceeding pursuant to NACARA and HRIFA (8 C.F.R. §§ 1245.13(n) and 1245.15(s)), or a nonimmigrant seeking a waiver pursuant to section 212(d)(3) of the Act, is known as an "applicant." If the person is being held in custody pending

exclusion proceedings, he is referred to as the "applicant." Also, an organization or individual seeking recognition pursuant to 8 C.F.R. § 1292.2 is known as an "applicant."

Petitioner - The United States citizen or lawful permanent resident party who has filed the petition on behalf of an alien is the "petitioner." This term is usually preceded by the status of the filing party, i.e, "United States citizen petitioner."

Beneficiary - The person on whose behalf the visa petition has been filed is referred to as the "beneficiary" A person who has received a labor certification is also known as the "beneficiary."

Carrier - In fine proceedings, unless the individual, such as the Master, is being fined in his individual capacity, the various companies and agents involved are invariably gathered under the inclusive term "carrier."

Government Counsel - Department of Homeland Security - The government is represented by several different agencies in proceedings before the Board. As a result, in the body of the Board's decision, the Board uses "Department of Homeland Security ("DHS")" as the first reference with further references to DHS, rather than the name of the specific component or agency of DHS. Below are some of the agencies that represent the government in immigration proceedings.

> The Office of the Principal Legal Advisor (OPLA) within the U.S. Immigration and Customs Enforcement (ICE) is charged with the responsibility of representing the Department of Homeland Security in exclusion, deportation, removal and asylum proceedings before EOIR. Within ICE, the former INS District Counsel Offices have been reorganized and are now known as Offices of Chief Counsel. There are 26 Offices of Chief Counsel which are staffed by a Chief Counsel, Deputy Chief Counsels, and Assistant Chief Counsels. The attorneys from the Offices of the Chief Counsel appear before Immigration Judges
>
> The Appellate Litigation and Protection Law Division (ALPLD) within ICE is staffed by a Chief

Appellate Counsel and Appellate Counsels. ALPLD attorneys represent ICE before the Board in cases where Oral Argument is heard. However, although ALPLD reviews the appeals which are filed by the Office of Chief Counsel, the attorneys from the Offices of the Chief Counsel are generally responsible for filing the ICE appellate brief to the Board.

The U.S. Citizenship and Immigration Services (USCIS or CIS) is responsible for representing DHS in visa petition proceedings. Visa petitions are adjudicated at the CIS Service Centers in Vermont, Texas, Nebraska, and California, and also at the CIS District Offices nationwide. The Service Centers each have an Office of Chief Counsel. The District Offices have either an Office of the Chief Area Counsel or Office of Area Counsel.

The U.S. Customs and Border Protection (CBP) is now responsible for the imposition and collection of fines as provided under section 280 of the Act. The former INS National Fines Office is now known as the Carrier Fines Branch (CFB) of the Seizures and Penalties Division of CBP. Additionally, CBP adjudicates applications for advance permission to enter as a nonimmigrant pursuant to section 212(d)(3)(A) of the Act.

United States Citizens – When a case involves a United States citizen, this fact is usually stated in the proposed order, i.e., "the United States citizen petitioner." Unless it is directly relevant, and it rarely is, a distinction should not be drawn between native-born United States citizens and naturalized United States citizens. Additionally, do not abbreviate "United States" in the text of a decision or in a case name.

2. Board Actions

Appeals – In the normal appeal situation, i.e., when the alien or DHS has filed a timely appeal from the decision rendered by the Service Center or District Director or by the Immigration Judge,

- if the Board decides to uphold the decision below, the "appeal will be dismissed."

- if the Board decides to reverse the decision below, the "appeal will be sustained."

- if the Board decides to dismiss the charges against an alien in removal or deportation proceedings or finds that the alien is not inadmissible or properly in exclusion proceedings, the "proceedings will be terminated."

- if the Board upholds a portion of the order below (such as a finding of deportability) and reverses another portion (such as a denial of voluntary departure), the "appeal will be sustained in part and dismissed in part." It is also generally appropriate to "vacate" the appropriate portion of the Immigration Judge's order.

- if the Board decides to remand, "the record will be remanded" for specified reasons.

See Standard Order Language.

Certification – If a case is heard on certification, either by the Center or District Director, the Immigration Judge, or the Board itself, the decision below is either "affirmed" or "reversed."

Motions to Reopen and Motions to Reconsider – If a case is heard before the Board relating to a motion to reopen or a motion to reconsider, the action taken by the Board will depend upon the posture in which that motion comes before the Board.

Appeals from Immigration Judges' decisions on motions to reopen are treated as appeals, *see supra* Board Actions - Appeals. However, where an

appeal from a denial of a motion to reopen is sustained the order will further direct that the motion be granted and the proceedings be reopened and remanded to the Immigration Judge (*see* Standard Order Language).

Where the motion to reopen or reconsider is properly directed to the Board for initial consideration, i.e., where the Board entered the last decision in the proceedings sought to be reopened, the following terminology is used with respect to the action which may be taken:

> Denial: If the motion is deficient under the criteria set forth in the regulations, the motion should be "denied." The motion may also be "denied" as a result of the Board's unfavorable exercise of discretion. Additionally, if the motion is technically sufficient but the arguments or facts set forth are determined to be without merit or a prima facie showing of eligibility for requested relief has not been made, the motion should be "denied."
>
> Grant: If the motion is technically sufficient, with new facts or legal arguments set forth which warrant consideration, then the motion to reopen or reconsider should be "granted." If a motion to reopen is granted, the Board may consider the new facts or arguments and enter a new decision, or it may choose to remand the matter for further proceedings. If a motion to reconsider is granted, the Board will generally "vacate" or "withdraw from" its prior decision and enter a new decision.

Where a motion to reopen is filed with the Board while an appeal is pending, it is considered a motion to remand. The standards which must be met for a motion to remand are the same as those for a motion to reopen.

Regardless of the posture in which the motion is presented to the Board, if the Board decides to remand or to reopen and remand the matter to the Immigration Judge or to the Service Center or District Director for proceedings at that level, "the record is remanded."

Note: Stays granted by the Board pending consideration of motions should be "vacated" if the motion is denied or the appeal dismissed.

3. Miscellaneous Terms of Art

Admission/admitted – These terms have a different legal significance (i.e., eligibility for certain benefits depends upon having been "admitted").

The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer. *See* section 101(a)(13) of the Act.

Arriving Alien - The term "arriving alien"means an applicant for admission coming into the United State at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. *See* 8 C.F.R. § 1001.1(q).

Entry - "Entry" is a more general term. The term "entry" means any coming of an alien into the United States. The only persons who may come physically into the United States without "entering" are the following: (i) one who presents himself for "admission," but whose inspection or admission is "deferred"; (ii) one who has been "paroled" into the United States for some other

reason; or, (iii) one who falls within the ambit of *Fleuti v. Rosenberg*, 374 U.S. 449 (1963).

> The relevance of making an "entry" is that one is not subject to exclusion proceedings once an entry has been made. An alien who has made an illegal entry must be placed in deportation proceedings in which there are certain procedural and substantive advantages for the alien. **Note:** This does not apply in removal proceedings.

Familial Relationship – Many benefits and waivers under the Act depend upon proof of a family relationship of some sort. Thus, terms such as "parent," "child," and "spouse" should be carefully used when such a relationship is crucial to the resolution of the case.

> Section 101(b) defines "child" for the purposes of the Act and for the purposes of Board decisions. If a relationship is not one of "parent-child" under section 101(b), it should not be referred to as such in an opinion.
>
> Section 101(b), also defines the terms "brother," and "sister," by inference.

Nonimmigrant Classifications – Nonimmigrant classifications are fairly common terms (i.e., "visitor," "crewman," and "student"). However, since the classification under which one is admitted can significantly affect the type of relief or waivers available to the alien, these terms should always be employed with an eye to their legal significance.

Refugees – Aliens may be eligible for asylum and/or withholding of deportation or removal under section 208 and section 243(h) or section 241(b)(3) of the Act, respectively. Care should be taken not to confuse these provisions, because the standards for eligibility and the effect of the various forms of relief are different.

Order to Show Cause and Notice of Hearing (Form I-221) – In a deportation case, the Order to Show Cause contains "allegations" and "charges." A "charge" only involves the DHS contention that a person is deportable under a certain section of the Act. The "allegations" are the facts that the DHS contends took place which render the person deportable on the "charge." In Board decisions,

the respondent's representations as to facts are "alleged" and as to points of law and to legal conclusions are "argued." A "lodged charge" is an additional charge which is added after issuance of the Order to Show Cause. *See* 8 C.F.R. § 1240.48(d). Factual allegations or charges may also be amended or withdrawn.

Notice to Appear (Form I-862) – In a removal case, the Notice to Appear contains "allegations" and "charges". A "charge" only involves the DHS contention that a person is deportable or inadmissible under a certain section of the Act. The "allegations" are the facts that the DHS contends took place which render the person subject to removal on the "charge". In Board decisions, the respondent's representations as to facts are "alleged" and as to points of law and to legal conclusions are "argued." A "lodged charge" is an additional charge which is added after issuance of the Notice to Appear. *See* 8 C.F.R. § 1240.10.(e). Factual allegations or charges may also be amended or withdrawn.

Notice to the Applicant Detained for Hearing Before the Immigration Judge (Form I-122) – In an exclusion case, the alien will be issued this notice which informs him or her of the "grounds" under which the DHS believes that he or she is excludable from the United States.

Notice of Certification (Form I-290C) - When DHS refers a denial of an application for adjustment of status pursuant to either the Nicaraguan and Central American Relief Act ("NACARA") or Haitian Refugee Immigrant Fairness Act ("HRIFA"), and the applicant is subject to a final order of exclusion, deportation or removal, a Notice of Certification (Form I-290C) is filed with the Immigration Court.

Notice of Referral to Immigration Judge (Form I-863) - Asylum proceedings are initiated by DHS by filing a Notice of Referral to Immigration Judge (Form I-863) with the Immigration Court. Note: For formatting purposes, regardless of whether the application is asylum only or withholding of removal only, the proceeding are treated as asylum proceedings.

Voluntary departure – This may also be referred to as the "privilege of voluntary departure in lieu of deportation or removal." Section 244(e) of the Act - deportation proceedings; Section 240B of the Act - removal proceedings.

Relief from Deportation or Removal – Under certain provisions of the Act, an otherwise deportable alien may be eligible for relief from deportation or removal in some form. In order to obtain such relief, an alien must establish both "statutory" eligibility and the "discretionary" merit of the application. Care should be taken to distinguish and separately discuss these two elements in determining whether relief from deportation or removal should be granted.

> **Note:** "Good moral character" and "extreme hardship" and "exceptional and extremely unusual hardship" are examples of technical terms which should be used only in the proper context.

Applications that are made to the Service Center or District Director but have not yet been acted upon are considered "pending" or "unadjudicated."

Punctuation

Choose and place punctuation marks carefully. The sole aim of punctuation is to convey to the reader the exact meaning intended. For additional information on punctuation, consult the United States Government Printing Office ("GPO") Style Manual (2000).

1. All complete dates in the body of orders should be followed by a comma. *See* GPO Style Manual, Rule 8.49, p. 132.

   On June 8, 2005, the respondent entered the United States.

   The respondent appeals from the November 9, 2005, decision of the Immigration Judge.

2. Commas are omitted, however, between a month and year. *See* GPO Style Manual Rule 8.52, p. 132.

   In June 2004 the respondent departed.

3. Commas should be used between the words of a series and before the conjunction joining them. *See* GPO Style Manual, Rule 8.43, p. 131.

clear, unequivocal, and convincing

4. In the body of the decisions there should be a comma between the city and state, and generally after the state unless it is followed by a zip code. *See* GPO Style Manual, Rule 8.51, p. 132.

Reno, Nevada, is the location.

Government Printing Office, Washington, D.C. 20401-0003

5. The word "*supra*" should be in italics, and it should be preceded and followed by a comma when used for citations but not for cross-referencing to a previous footnote. *See* Blue Book, Rules 3.5 and 4.2, pp. 63 and 66-67.

Matter of Torres-Garcia, supra, at 868 n. 2.

See supra note 2.

6. Use an apostrophe in a possessive noun. *See* GPO Style Manual, Rule 8.14, p. 127.

1 year's sentence

a day's trip

7 years' continuous presence

Capitalization

1. For rules regarding capitalization generally, refer to the GOP style Manual pp. 23-62 and the Bluebook, Rules B10.6 and 8, pp. 21-22, 76-78. The following are commonly used examples:

Navy, Army, French Army, Sandinista Army, French Government, Government's position, Sandinista government, Communist government, American Embassy, American consulate, American Ambassador, American consul

2. Capitalize the word "court" only when naming any court in full or when referring to the United States Supreme Court. For other rules on capitalization, *see* the Bluebook, Rule 8, pp. 76-78.

The United States Court of Appeals for the Fifth Circuit
[note: thereafter, may be referred to as the Fifth Circuit]

The California Supreme Court

The court of appeals

NOTE: The Board has determined that "Immigration Court" should be capitalized.

3. Capitalize the word "constitution" only when naming any constitution in full or when referring to the United States Constitution. Parts of the Constitution are capitalized when used in text but not in citations. *See* Bluebook, Rule 8, pp. 77.

Fifth Amendment

Preamble

Article I, Section 8 Clause 17 of the Constitution

See U.S. Const. art. I, § 8, cl. 17

4. The first word of any sentence must be spelled out. Thus, it is incorrect to begin a sentence in the following manner: "8 C.F.R. § 1003.2 provides . . . ." *See* GPO Style Manual, Rule 12.16, p. 186; Bluebook, Rules 6.2(a)(i) and (c), pp. 73-74. However, it is proper to begin a citation sentence with 8 C.F.R.

5. Do not hyphenate or capitalize officer in charge. *See* GPO Style Manual, Rules 6.40 and 6.47, pp. 82-83.

6. Do not capitalize DHS center director, district director, or assistant district counsel. However, capitalize Secretary of DHS and Immigration Judge.

Note: Formatting - DHS Representative line. District Counsel, Assistant District Counsel, or Special Counsel should be capitalized in the heading of the decision - DHS Representative.

7. The first word of an explanatory phrase is not capitalized unless the parenthetical information is a quotation of a full sentence. *See* Bluebook, Rule 1.5, p. 51-52.

Quotations

1. Quotations of 50 words or more should be indented without quotation marks; quotations of fewer than 50 words should be in quotation marks and therefore part of the text. *See* Bluebook, Rule 5.1, pp. 68-69. An exception to this rule may be made when more than one section of the statute is quoted or a section is to be set off, especially in a footnote.

2. For rules regarding alterations and the use of ellipses to indicate omissions in quotations, follow the Bluebook, Rules 5.2 and 5.3, pp. 69-71. Note that an ellipsis should never be used to begin a quotation, or before or after quoted matter used as a phrase or clause. When an ellipsis is used within a sentence, there should be a space before the first period, between each period, and after the last period. Refer to Rules 5.3(b)(iii), (iv), and (v) to determine if the final word in a sentence is followed by a space or a period, i.e., when the ellipsis represents an omission at and/or after the end of the sentence.

   An alien must establish that he has been "physically present in the United States" for 7 years."

   <u>not</u>

   An alien must establish that he has been ". . . physically present in the United States . . ." for 7 years.

3. For rules on how to indent quotations in order to indicate paragraph structure and omissions of entire paragraphs, *see* Bluebook, Rule 5.1(a)(iii) and 5.1(b)(iii), pp. 68-69.

4. Use a colon to formally introduce a long direct quotation, and a comma to set off a direct quotation of only a few words following an introductory phrase.

In *Matter of Seda, supra*, we stated as follows: "[A] person sentenced under a first offender statute . . . shall not be considered to be 'convicted' for immigration purposes."

The respondent stated, "We married for love."

5. Capitalize the first word of a direct quotation following a colon or comma when introducing an independent clause or sentence. If the case of the first letter is changed, indicate the change with brackets. *See* Bluebook, Rule 5.2, pp. 69-70.

Section 101(a)(3) of the Act provides as follows: "The term 'alien' means any person not a citizen or national of the United States."

Section 240A(a) of the Act provides in pertinent part: "[T]he Attorney General may cancel removal in the case . . . ."

6. Do not capitalize the first word of a fragmentary quotation or one introduced indirectly in the text. Do not set off such a quotation by a comma or use an ellipsis before or after the quotation.

Section 245(c) of the Act provides that adjustment of status is unavailable to "an alien crewman."

Section 101(a)(10) of the Act provides that "[t]he term 'crewman' means a person serving in any capacity on board a vessel or aircraft."

7. Quotation marks are always outside the comma and the final period. Other punctuation marks should be placed inside the quotation marks only if they are part of the matter quoted. *See* GPO Style Manual, Rule 8.141, p. 144 and Bluebook, Rule 5.1(b), p. 69.

8. When a citation follows an indented quotation, the citation is returned to the left margin in the main body of the text. *See* Bluebook, Rule 5.1(a), pp. 68-69.

Numbers

1. Time, measurement, and money are always in figures. *See* GPO Style Manual, Rule 12.9, p. 182-84

10-year-old 30 days

25 feet 6 months

$50

2. A figure is used for a single number of 10 or more with the exception of the first word of a sentence. *See* GPO Style Manual, Rule 12.4, p. 181. This rule differs from the Bluebook, Rule 6.2(a), p. 73. Figures are used in a group of two or more numbers, any one of which is 10 or more. *See* GPO Style Manual, Rule 12.5, p. 181-182. However, an exception is made when one or more of the numbers is a unit of time, measurement, or money. *See* GPO Style Manual, Rule 12.6, p. 182.

two robberies and three burglaries

3 shoes, 5 dresses, and 15 gloves

five decisions written during 2 weeks

3. For rules regarding the use of ordinal numbers (i.e., first, 14th), *see* GPO Style Manual, Rules 12.10-.13, p. 185.

4. Use a hyphen after the number in an adjective compound. *See* GPO Style Manual, Rule 6.36, p. 81.

3-week period

6-month extension

fourth-preference classification

5. Fractions used with whole numbers should be separated from the number by a space, not a hyphen or the word "and." For rules regarding the use of fractions, *see* GPO Style Manual, Rules 12.26-.27, p.188.

3½ grams of cocaine

6. In numbers containing four or more digits, use commas to separate groups of three digits. *See* GPO Style Manual, Rule 12.14, pp. 185. This rule differs from the Bluebook, Rule 6.2(a), pp. 73-74.

Italics

1. Follow the rules in the Bluebook for italicization. *See* Bluebook, Rule 7 p. 75. Note that the Board no longer uses underlining, so italicize anything that was previously underlined.

2. Refer to the Bluebook for rules regarding the addition or omission of emphasis and other alterations to quoted material. *See* Bluebook, Rules 5.2 and 5.3, pp. 69-71.

   To indicate the addition of emphasis to a quotation, use the phrase "emphasis added."

   When the quotation is followed by a citation, "emphasis added" is part of the citation sentence and therefore is not capitalized, and the period is placed outside the parenthesis. *See* Bluebook, Rule 5.2, pp. 69-70.

   > "The Board *in its decision* may grant or deny oral argument." 8 C.F.R. § 1003.1(e)(7) (emphasis added).

   When there is no citation following the quotation, "emphasis added" constitutes a sentence and follows the final period of the quotation. Note that in this case the "e" is capitalized and the period is placed inside the parenthesis. If the quotation is indented, include the "emphasis added" at the end of the indented paragraph.

   > Section 101(a)(10) of the Act provides: "The term 'crewman' means a person serving *in any capacity* on board a vessel or aircraft." (Emphasis added.)

3. Italicize explanatory phrases introducing prior or subsequent history and phrases introducing related authority. *See* Bluebook, Rules B13, 1.6, 10.7.1, and T.8, pp. 23-24, 52-53, 92-95, and 340.

aff'd,	*cert. denied,*	*modified*	*availa ble at*
vacated	*reprinted in*	*quoted in*	

4. Italicize the entire name of a case, including the "v." and all procedural phrases. *See* Bluebook, Rules B13, pp. 23-24. **NOTE:** Do not italicize the commas after the name and citation.

Kaczmarczyk v. INS, 993 F.2d 588 (7th Cir.), *cert. denied*, 502 U.S. 98 (1991).

5. Italicize "*supra*," "*infra*," (commas are not italicized) and "*id.*" (the period is italicized), but not "hereinafter." *See* Bluebook, Rules B13, pp.23-24. **REMEMBER**: Do not italicize any comma or period after "*supra*" or "*infra.*"

6. In citations, italicize the title of a book or of an article appearing in a periodical, but not the author's name or title of the periodical. When referring to a publication in a textual sentence rather than citing to it, italicize the name of the publication. *See* Bluebook, Rule B13, pp. 23-24.

7. Italicize all introductory signals, including any commas or periods within the signals, when they appear in citation sentences or clauses, but not when they serve as the verbs of ordinary sentences. *See* Bluebook, Rules B13, pp. 23-24. **NOTE**: Do not italicize the comma after an introductory signal. For example:

See also *See generally*

However, all but the last commas are italicized in the examples below.

See, e.g., *But see, e.g.,*

An example when the signal is used as a verb and is not in italics:

For an explanation of the petty offense exception, see *Matter of Castro*.

8. Italicize only those foreign words and phrases that have not been incorporated into common English usage. Do not italicize "e.g." or "i.e." when used in a sentence. *See* Bluebook, Rules B13 and 7, pp. 23-24 and 75.

9. Italicize periods, commas, semicolons, etc. only when they fall within italicized material, but not when they follow it. *See* Bluebook, Rules B13, 2.2(c), and T.8, pp. 23-24, 57, and 340.

Typing

1. NEVER type the lowercase letter l in place of the number 1.

2. Always spell out the word "and" unless the "&" sign appears in the name of a law firm or other organization.

   Mr. and Mrs. Castillo

   Verner, Lipfert, Bernhard & McPherson

3. Proper nouns (names) are <u>not</u> to be split, and no word is split from one page to another.

4. Case cites may be split between the case name and the volume number on the same page. However, avoid splitting any cite from one page to another. **[IMPORTANT]**

5. When splitting a paragraph, at least two lines of text should be on either page.

6. Section symbol(s) and typing month and day:

   (a) Keep 8 U.S.C. and 8 C.F.R. on the same line. The "§" symbol should be on the same line as the referenced number.

   In order to accomplish this, **delete** the space between the words that are to be kept together and press **Ctrl + (space bar)**, or after typing the section symbol, press the **Ctrl + (space bar)**.

   (b) Keep the month and the day on the same line.

7. Double-space the body of an order or letter which has 10 lines or less.

8. Spaces should be used in citations to cases in Federal Supplement and Supreme Court Reporter, but not in United States Reports and Federal Reporter 2d and 3d. *See* Bluebook, Rule 6.1(a) and T.1, pp. 72 and 193-95.

   F. Supp. 2d S. Ct. F.3d

   U.S. F.2d

In a district court case, there is no space between the court and state where the state abbreviation is in initials.

(E.D.N.Y. 1978) (M.D. Mass. 1980)

For spacing of abbreviations of periodical names, *see* Bluebook Rule 6.1(a) and T.13, pp. 72, and 349-72.

9. For state and other court and statute citations, *see* Bluebook, section T.1, pp. 198-242.

10. Do not end a page with a colon. The colon and at least two lines of the quotation which follows must be on the same page.

11. Use a comma before Jr. and Sr. following a surname, but do not use a comma before Roman numerals.

Board System of Citations Guide

The basic rules to be used for citation in Board decisions are the rules set forth in the Bluebook, currently in its 18th edition. However, the Board does use some forms of citation which are either different from those in the Bluebook or are not given in the Bluebook. In drafting proposed decisions, the attorneys and paralegals should adhere to the following guidelines:

1. Citing of the Immigration and Nationality Act –

The first time the 1952 Act is cited, it is referred to as the "Immigration and Nationality Act." Thereafter, it is usually referred to only as "the Act." A citation to the Act should include the appropriate citation to Title 8 of the United States Code the first time the section is cited. After a section of the Act has been cited in full with the 8 U.S.C. reference, a subsequent citation to that section or to a different subsection of that section does not require an additional 8 U.S.C. cite. Do not put ("the Act") or ("Act") after the citation to the Immigration and Nationality Act.

> An alien was found inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), and applied for relief under section 212(c) of the Act.

2. Citing of Cases Generally –

In case citations, the full name appears first, followed by a comma and the volume and page number of the reported decision, followed by the tribunal and the year of the decision in parentheses. *See generally* Bluebook, Rule 10, pp. 7999. Unreported cases are cited by case number, Westlaw identifier, and full date of the decision. *See* Bluebook, Rule 18.1, pp. 151-53. If not available on Westlaw, an Internet source may be cited. *See* Bluebook, Rule 18.2, pp. 153-58. The name of the case is in *italics*. In United States Supreme Court cases, the tribunal will not appear. As with all citations used in legal writing, subsequent history should be given, but omit denials of certiorari or of similar discretionary appeals, unless the decision is less than 2 years old or the denial is particularly relevant. *See* Bluebook Rule 10.7, p.92. If a case is reversed on grounds not relevant to your use of that

case, this should be specified. *See* Bluebook, Rule 10.7.1 and T.8, pp. 93-94 and 340.

Campbell v. Esperdy, 287 F. Supp. 92 (S.D.N.Y. 1968).
Matter of Nagy, 11 I&N Dec. 888 (BIA 1966).
Matter of Lennon, 15 I&N Dec. 9 (BIA 1974), *rev'd on other grounds*, *Lennon v. INS*, 527 F.2d 187 (2d Cir. 1975).
Hughes v. Ashcroft, No. 99-70565, 2001 WL 699357 (9th Cir. June 22, 2001).

(a) Use the case name that appears at the beginning of the opinion in the cited reporter. *See* Bluebook, Rule 10.2, p. 81-86.

(b) When the Immigration and Naturalization Service is a party, however, it should be referred to as the INS (without periods).

Boutilier v. INS, 387 U.S. 119 (1967).

(c) Habeas corpus cases should be cited to show the name of the relator.

United States ex rel. Stellas v. Esperdy, 250 F. Supp. 85 (S.D.N.Y. 1966).

3. Reference to a Court of Appeals –

The first time that a court of appeals is referenced in the text of the Board's decision, it should be referred to as "The United States Court of Appeals for the _____ Circuit." Thereafter, a reference to any circuit may be referred to as "the _____ Circuit."

The United States Court of Appeals for the First Circuit held contrary to the ruling of the Third Circuit.

NOTE: Do not use figures for the circuit court number in the text of a decision.

4. Citing of Administrative Decisions –

When an administrative decision that has been sustained on judicial review is cited, the citation should be to the court decision as the primary authority. In some instances, reference to the administrative decision may be appropriate. For example, when the point involved in one of the Board's decisions is not discussed in the court's opinion, citation should be to the Board decision, followed by a subsequent history of any court action.

> *Matter of Lennon*, 15 I&N Dec. 9 (BIA 1974), *rev'd on other grounds*, *Lennon v. INS*, 527 F.2d 187 (2d Cir. 1975).

For information regarding explanatory phrases and weight of authority, *see* Bluebook, Rule 10.7.1 and T8, pp. 93 and 340.

(a) Volume 23 – In the past, precedent decisions of the Board which had not been printed in a volume were referred to only by interim decision number until they were published in a bound volume. Beginning with volume 23 of *Administrative Decisions*, the Board began to issue all precedent decisions electronically as they would appear in the bound volume. The continuous pagination of the electronic decisions permits immediate citation to the volume and page of *Administrative Decisions*. Although the Board will continue to identify precedent decisions by interim numbers for reference in the Index to Precedent Decisions and the Numerical Listings of Interim Decisions, decisions in volume 23 and subsequent volumes should be cited by volume and page number.

> *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001).

(b) Attorney General Review – When a precedent decision that has been reviewed by the Attorney General is cited, the dates of both decisions should be included in the citation, regardless of which decision contains the point upon which you are relying. Separate the dates of the decisions with a semicolon if the dates are different; separate them with a comma if the dates are the same. If there are two Board decisions with different dates, separate the dates with a comma.

> (A.G. 1961; BIA 1960)
> (A.G., BIA 1972)
> (BIA 1990, 1991)

(c) Nonprecedent decisions – They should not be cited. However, in those very limited instances where it is necessary to reference an unpublished decision (i.e., where a federal court directs the Board to distinguish an unpublished decision) cite as below:

Matter of Marzano, A20 061 103 (BIA July 13, 1979) (unpublished).

5. Use the following format when citing to the following sources:

(a) Foreign Affairs manual -

Vol. 9, Foreign Affairs Manual, Part II, 22 C.F.R. § 41.25 note 2 (or proc. note 2) (TL: VISA-47 Aug. 30, 1991)

Vol. 9, Foreign Affairs Manual, Part IV, Appendix B/C/E, "Ghana, Republic of"

(b) INS/DHS Operation Instructions -

Operations Instructions 250.1

(c) Gordon & Mailman -

1 Charles Gordon et al., *Immigration Law and Procedure* § 4.03[1], at 4-28 (rev. ed. 2003)

9 Charles Gordon et al., *Immigration Law and Procedure* App. A-13 (rev. ed. 2003)

See Bluebook, Rule 15.1(b), p. 130.

(d) Visa Bulletin -

Department of State Visa Bulletin, Vol. II, No. 97 (June 1977)

(e) Country Reports -

Citing to the published version

Committees on International Relations and Foreign Relations, 106th Cong., 2d Sess., *Country Reports on Human Rights Practices for 1999* 2050 (Joint Comm. Print 2000) [hereinafter *1999 Country Reports*]

Citing to the Internet copy

Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *Nigeria Country Reports on Human Rights Practices – 2001* (Mar. 2002), *available at* http://www.state.gove/g/dr/rls/hrpt/2001/af/8397.htm [hereinafter Country Reports]

(g) Country Profile -

Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Togo-Profile of Asylum Claims & Country Conditions* 3 (April 1995) [hereinafter *Profile*]

(h) United Nations Protocol - Refugees

United Nations Protocol Relating to the Status of Refugees, *opened for signature* Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967; for United States Nov. 1, 1968)

(i) United Nations Convention - Refugees

United Nations Convention Relating to the Status of Refugees, *adopted* July 28, 1951, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954)

(j) Convention Against Torture -

Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted and opened for signature* Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984) (entered into force June 26, 1987; for the United States Apr. 18, 1988) ("Convention Against Torture")

(k) United Nations Handbook - Refugees

Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* para. 40, at 12 (Geneva, 1992) [hereinafter *Handbook*]

(l) Interpreter Releases -

63 Interpreter Releases, No. 29, July 28, 1986, at 626

(m) Federal Rules of Civil Procedure -

Federal Rule of Civil Procedure 65(d) (text)

Fed. R. Civ. P. 12 (citation)

(n) Amnesty International -

Amnesty International, *Sri Lanka - The Northeast*, AI Index: ASA 37/14/91, at 7 (Sept. 1991)

(o) Immigration and Nationality Act - House Committee on Judiciary

House Comm. on the Judiciary, 104th Cong., 1st Sess., *Immigration and Nationality Act with Notes and Related Laws* 24 n.35 (Comm. Print, 10th ed. 1995)

(p) Sutherland Statutory Construction -

2A Norman J. Singer, *Sutherland Statutory Construction* § 45.13, at 78 (5th ed. 1992)

(q) Model Penal Code -

Model Penal Code § 223.2(a) (1980)

Model Penal Code and Commentaries pt. II, art. 223 (1980)

Note: *See* Bluebook, Rule 12.8.5, p. 111-12

(r) Electronic Media and Other Nonprint Resources -

See Bluebook, Rule 18, pp. 151-61

Note: Internet references *see* Bluebook, Rule 18.2, pp. 153-58

(s) Sentencing Guidelines -

U.S. Sentencing Guidelines Manual § 2D1.1(c) (2004)

U.S. Sentencing Guidelines Manual § 3D1.5 cmt. n.1 (2004)

See Bluebook, Rule 12.85, pp. 111-12

(t) BIA Practice Manual -

Board of Immigration Appeals Practice Manual, § 5.7(a) at 86 (July 30, 2004), http://www.usdoj.gov/eoir/vll/gapracticemanual/pracmanual/chap5.pdf

6. Forms -

Reference to INS forms should be by the form name followed by the form number in parentheses or, if the context requires, by the form number with the form name in parentheses. For the correct name of the form, *see* 8 C.F.R. §§ 299.1, 299.5, and 499.1. If the form has no name, use the form number only. A listing of DHS forms is also available at www.uscis.gov and a listing of EOIR forms may be found at www.usdoj.gov/eoir.

Arrival-Departure Record (Form I-94)
Form I-94 (Arrival-Departure Record)

7. Signals -

Within each signal, cases should be cited with the highest legal authority first and, within each level of authority, in reverse chronological order. *See* Bluebook, Rule 1.4(d), p. 49-50.

See 400 U.S. 220 (1980); 350 U.S. 123 (1975); 749 F.2d 360 (6th Cir. 1984); *cf.* 902 F.2d 717 (9th Cir. 1990); 831 F.2d 1384 (7th Cir. 1987); 724 F. Supp. 799 (D. Colo. 1989).

When using more than one signal, the signals should appear in the order listed in the Bluebook, Rule 1.2, pp. 46-48, and group them in citation sentences according to Rule 1.3, p. 48.

8. Date or Year -

When a case is decided in the same year as a subsequent decision on appeal, omit the date of the lower court's decision. *See* Bluebook, Rule 10.5(d), p. 91.

450 F.2d 225 (9th Cir.), *cert. denied*, 372 U.S. 1140 (1972)

9. United States Supreme Court decisions -

Cite a decision of the Supreme Court to the United States Reporter, if available; otherwise, use an alternative citation, but indicate the unavailability of the U.S. cite with blank spaces.

Ballbe v. INS, 886 F.2d 306 (11th Cir. 1989), *cert. denied*, __ U.S. __, 110 S. Ct. 2166 (1990)

10. Pending and unreported cases -

For rules regarding citation of pending and unreported cases, see the Bluebook, Rules 10.8.1, 10.8.2 and 18.2.2, pp. 95-96 and 155-56.

Velasquez-Valencia, No. 00-1551, 2001 WL 293154 (1st Cir. Mar. 30, 2001).

11. "Section" and "paragraph"

(a) Spell out the words "section" and "paragraph" in the text of a decision except when referring to C.F.R. and U.S.C. Use the symbols "§" for section and "¶" for paragraph in citations except when citing the Act. Include a space between the symbol and the numeral. Do not use "at" before a section or paragraph symbol. *See* Bluebook, Rules 3.3 and 6.2(c), pp. 61-62 and 74.

8 C.F.R. § 1003.1 (2006)

See section 241(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(2)

See Immigration Act of 1990, Pub. L. No. 101-649, § 501, 104 Stat. 4978, 5048.

6 James Wm. Moore et al., *Moore's Federal Practice* ¶ 56.07 (3d ed. 1997).

(b) In citations, separate sections by commas, but use "and" in a sentence.

See 8 C.F.R. §§ 1003.1, 1003.2.

See sections 212(a)(2)(B), (C), (D)(i) of the Act, 8 U.S.C. §§ 1182(a)(2)(B), (C), (D)(i).

We rely on 8 C.F.R. §§ 1003.1 and 1003.2.

He applied for relief under sections 212(c) and 244(e) of the Act, 8 U.S.C. §§ 1182(c) and 1254(e).

(c) When multiple subsections of the same section are cited, do not repeat any subsections that they all have in common.

However, separate consecutive subsections with a hyphen without repeating any subsections.

212(a)(2)(A)(i)(I), (A)(ii)(II), (D)(i), (D)(iii)

212(a)(1)(A)(i), (1)(A)(ii)(II)-(iii), (7)(A)(i)(I)

241(a)(2)(A)(i), (A)(iii), (B)(i)-(ii)

241(a)(2)(A)(i), (2)(B)(i), (3)(A)

8 C.F.R. §§ 1003.2, 1003.3(b), 1003.4

8 C.F.R. §§ 1208.16 - 1208.18

(d) When different sections are cited, do not repeat the section reference to "8 C.F.R." or "section" and "U.S.C." except when the sections are in different parts of the C.F.R. or titles of the U.S.C.

8 C.F.R. §§ 1003.8, 1236.1

not 8 C.F.R. § 1003.8, 8 C.F.R. § 1236.1

but 8 C.F.R. § 1003.8; 22 C.F.R. § 42.53

sections 212(a)(7)(A)(i)(I), 245 of the Act, 8 U.S.C. §§ 1182(a)(7)(A)(i)(I), 1255

not section 212(a)(7)(A)(i)(I), section 245

but 8 U.S.C. § 1255; 21 U.S.C. § 844(b)

(e) When citing multiple subsections of a single section of C.F.R. or U.S.C., use two section symbols. This differs from the Bluebook, Rule 3.4(b), p. 62.

8 C.F.R. §§ 1003.1(a), (c)

sections 101(b)(1)(A), (C) of the Act, 8 U.S.C. §§ 1101(b)(1)(A), (C)

(f) A section of the statute should be preceded by the word "section" unless the reference is used several times in the same

sentence and repetition of "section" becomes awkward. Moreover, a section of the statute should be followed by "of the Act" unless frequent repetition becomes awkward.

12. Reference to transcript or exhibit –

When reference is made to exhibits or pages in a decision, transcript, etc., the word "at" should be used instead of "p." or "pp." and the following abbreviations are to be used:

Transcript (Tr. at 36).
(Tr. at 223-36).
(Tr. at 233, 321).

Exhibit (Exh. 3). or (Exhs. 3, 7).
Appendix (App. 1-1).
Immigration Judge's decision (I.J. at 4).

The reference is part of the preceding sentence, so only one period is used unless the sentence ends with a quotation.

The respondent said he was married (Tr. at 40).

The respondent said, "I am married." (Tr. at 40).

When reference is made to the briefs filed on appeal, the page number should follow the word "at." *See* Bluebook, Rules 10.1 and 10.8.3, pp. 79-80 and 96-97.

See Respondent's Brief at 8.

13. Burden of proof - deportation proceedings –

When reference is made to the burden of proof in *Woodby v. INS*, the order of the words is as follows: clear, unequivocal, and convincing.

14. "*Id.*" and "*supra*" –

When referring to the immediately preceding citation which contains only one authority, "*Id.*" or "*Id.* at 4" should be used. When citing "*Id.*" for a case, use "*Id.*" alone, without the case name. Otherwise, when citing cases not in the immediately preceding citation, the case name is followed by "*supra*" or

"*supra*, at 47." Note that our use of *supra* in case citations differs from the Bluebook. *See* Bluebook, Rules 4.1, and 4.2, pp. 64-67.

15. Legislative materials –

When citing legislative materials, refer to the Bluebook, Rule 13, pp. 114-19. Note that United States Code Congressional and Administrative News is abbreviated as U.S.C.C.A.N. *See* Bluebook, Rule 13.4(a), p. 117.

16. Date of statutes and regulations –

Give the year when citing to statutes and regulations in Board precedent decisions. For rules regarding citation of dates, *see* Bluebook, Rules 12.3.2, 12.4, 12.6, and 14.2, pp. 105-06, 108-09, and 121-22.

8 C.F.R. § 1003.1 (2006)

8 U.S.C. § 1255(c) (2006)

17. Session laws –

When citing session laws, refer to the Bluebook, Rule 12.4, pp. 106-07. Note that the year in which a statute is passed is not given when the same year is part of the name of the statute. The effective date may be given parenthetically. *See* Bluebook, Rule 12.4(d), p. 107.

Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2193, 2193 (1997), *amended by* Pub. L. No. 105-139, 111 Stat. 2644 (1997) ("NACARA").

Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (effective Nov. 29, 1990).

18. Material within a source –

When citing to specific material within a source, include both the page on which the source begins and the page on which the specific material appears. *See* Bluebook, Rule 3.2(a), pp. 59-60. When citing to material that is on more than one page, give the

inclusive numbers, but retain only the last two digits. *See* Bluebook, Rule 3.2, pp. 59-61.

Matter of Acosta, 19 I&N Dec. 211, 215-18 (BIA 1985)

19. Discussing the Board, DHS, or the Act –

When discussing the Board, the DHS, or the Act, use the full name for the first reference. Thereafter, the shortened form may be used without a parenthetical explanation.

The Department of Homeland Security ("DHS") appealed. The DHS argues as follows.

20. Board precedent's subsequent history –

When a citation to a Board decision includes subsequent court action, include the name of the case on appeal to the court preceded by "sub nom." only if the alien's name is different. *See* Bluebook, Rule 10.7.2, p. 94-95.

Matter of Maldonado-Cruz, 19 I&N Dec. 509 (BIA 1988), *rev'd*, 883 F.2d 788 (9th Cir. 1989).

but

Matter of Davila, 15 I&N Dec. 781 (BIA 1976), *remanded sub nom. Davila-Villacaba v. INS*, 594 F.2d 242 (9th Cir. 1979).

21. "United States" –

Always spell out "United States" when it is the entire name of the party, it may be abbreviated if it is just part of a case name. *See* Bluebook, Rule 10.2.2, p. 62.

Patel v. U.S. INS, 803 F.2d 804 (5th Cir. 1986).

22. Citation sentences and clauses –

When citing authorities relating to only part of a sentence, set off the citation(s) from the rest of the sentence by commas.

23. Short forms -

(a) Statutes – For examples of short forms to be used in citing statutes after the first citation, *see* Bluebook, Rule 12.9, p. 113.

(b) Regulations – For examples of short forms to be used in citing regulations after the first citation, *see* Bluebook, Rule 14.10, pp. 128-129.

Use of Headings and subheadings in the body of the decision

Proposed decisions in non-routine matters, especially those which are lengthy (i.e., 5 pages or more), should be broken down into relevant segments and headings should be used to separate the case into more readily identifiable and understandable parts.

Please use the following guidelines regarding capitalization, centering, and outlining when drafting headings for Interim Decisions and other lengthy decisions:

1. Capitalization

Capitalize all letters of main headings (i.e., those following Roman numerals I, II, III, etc.).

In all subheadings, capitalize the first and last words, the word following a colon, and all other words except articles (a, an, the), coordinate conjunctions (and, as, but, if, or, nor), and prepositions of fewer than four letters (at, by, for, in, of, on, to, up). The first element of an infinitive (i.e., the "to") is also capitalized. *See* GPO Style Manual, Rules 3.49 and 3.52, p. 33.

Do not italicize any words in headings. Only italicize words in subheadings that would be italicized if found within the text.

2. Centering

Each heading and subheading should be centered.

If a heading is more than one line, each following line or lines should decrease in length.

3. Outlining

Use the following outline format for headings:

I.
A.
1.
a.
(1)
(a)
(i)

Use two spaces between the period or parenthesis and the heading.

The following example illustrates these rules:

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Proceedings Before the Immigration Judge

B. Respondent's Family Ties, History of Criminal Activity, and Evidence of Rehabilitation

1. Familial Relationships

2. Arrests and Convictions

3. Rehabilitative Efforts by the Respondent

II. ISSUES PRESENTED ON APPEAL

A. Validity of *Matter of Marin*

B. Discretion Under Section 212(c)

III. INTERPRETATION OF MATTER OF MARIN

IV. APPROPRIATE FACTORS FOR CONSIDERATION ON AN APPLICATION FOR SECTION 212(c)

V. CONCLUSION

December 2007

STANDARD ORDER LANGUAGE

This document contains examples of orders which are appropriate to use in a variety of matters. This list is not all-inclusive; rather, it should be used as a general guide for drafting appropriate orders. References to the Department of Homeland Security in orders may be abbreviated as "DHS" if that abbreviation has already been established in the body of the Board's decision.

Also, be aware that the Board has created certain "macro" functions for form orders in WordPerfect that should always be used, as they will be the most current and up-to-date versions of those orders. These include some form voluntary departure orders and remand orders pursuant to the Background Check regulation.

TABLE OF CONTENTS

I. Deportability, Inadmissibility, or Removability at Issue on Appeal

A. Removal proceedings (commenced on or after April 1, 1997) - deportability or inadmissibility at issue

1. Alien appeal

- Sustain

ORDER: The respondent's appeal is sustained and removal proceedings are terminated.

Or (if Immigration Judge's ("IJ") decision was in error, may add the following order):

FURTHER ORDER: The Immigration Judge's decision dated [ ] is vacated.

Or (in rare cases where a nonimmigrant seeking admission is in removal):

ORDER: The appeal is sustained, and the respondent is admitted to the United States as a nonimmigrant (for a period ___ days/months from the date of this order conditioned on the posting of a maintenance of status bond in the amount of $___).

- Dismiss

ORDER: The appeal is dismissed.

[**NOTE:** If voluntary departure was granted below by the Immigration Judge, it will generally be necessary to include a FURTHER ORDER relating to voluntary departure - the **"BIA Macro" § 240B(b) - VD** order should be used, either for 60 days (if the Immigration Judge granted 60 days or more) or for the insertion of the number of days the IJ granted, if less than 60].

Or (if sustain in part, but respondent is still deportable/inadmissible on other grounds):

ORDER: The respondent's appeal is sustained with respect to the finding of deportability/inadmissibility under section_____ of the Immigration and Nationality Act, but is dismissed in all other respects.

- Remand

  ORDER: The appeal is [dismissed] [sustained].

  FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoi ng opinion and for the entry of a new decision.

Or (for remand alone, without reaching the merits at issue in the pending appeal):

ORDER: The recor d i s rem anded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

2. Department of Homeland Security appeal

- Sustain

  ORDER: The Department of Homeland Security's appeal is sustained.

Plus, one of the following "further orders" will generally be needed:

(1) if the record must be remanded to allow the respondent an opportunity to apply for relief from removal:

FURTHER ORDER: The re cord is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Or

(2) if it has been established on th record that the respondent, if removable as charged, is ineligible for any relief from removal or was provided an opportunity to apply below and declined:

FURTHER ORDER: The respondent is ordered r emoved from the United States to _____. [NOTE: IF THE CASE ARISES IN THE 9 TH CIRCUIT, THE RECORD MUST BE REMANDED TO THE IMMIGR ATION COURT F OR THE ENTRY OF A REMOVAL ORDER. *See Lolong v. Gonzales*, 484 F.3d 1173 (9th Cir. 2007); *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 884 (9th Cir. 2003).]

Or

(3) if it is appropriate to grant voluntary departure in the first instance bec ause the respondent requested voluntary departure and the record reflects the respondent's eligibility:

> FURTHER ORDER: In lieu of an order ofemoval, and conditioned upon compliance with the provisions of the statute, t he respondent is perm itted to voluntarily depart from the United States, without expense to the Governm ent, within ___ days from the date of this order, or any extension beyond that tim e as may be granted by the Department of Homeland Security. *See* section 240B(b) of the Im migration and Nationality Act; 8 C.F.R. §§ 1240.26(c), (f). In the event that the respondent fails to voluntarily depart or comply with the conditions set forth below, the respondent shall be removed from the United States to _____.
>
> FURTHER ORDER: The respondent must post a voluntary departure bond in the amount of $500 with the district director within 10 busine ss days of the date of this order. If the bond is not posted within 10 business days, therder of voluntary departure is automatically vacated on the following business day, and the respondent is ordered removed.
>
> FURTHER ORDER: The respondentmust provide to the Department of Homeland Security appropriate travel documentation, sufficient to assure lawful entry into the country to which the respondent is departing, within 30 days ofhis order or within any extension beyond that time as may be granted by the Department of Homeland Security. **[OPTIONAL]**
>
> NOTICE: If the respondent fails to voluntarily depart the United States within t he time period specified, or any extensions grante d by the Department of Homeland Security, the respondent shall be subject to a civil penalty of not less than $1,000 and not m ore than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

Or (sustaining appeal of erroneous grant of request to withdraw application for admission):

> ORDER: The Department of Homeland Security's appeal is sustained.
>
> FURTHER ORDER: The Immigration Judge's order which granted the respondent's request to withdraw his application for admission is vacated.
>
> FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the fore going opinion and for the entry of a new decision.

- Dismiss

ORDER: The Department of Homeland Security's appeal is dismissed.

[**NOTE:** this order is appropriate to use when proceedings were term inated by the Im migration Judge below on a finding that removability was not established; for appropriate orders where relief is at issue, see Section II infra].

- Remand

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision dated [ ], is vacated, and this matter is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Or (for remand alone, without reaching the merits at issue in the pending appeal):

ORDER: T he reco rd is rem anded to th e Im migration C ourt f or f urther p roceedings consistent with the foregoing opinion and for the entry of a new decision.

B. Deportation proceedings (initiated before April 1, 1997)- deportability at issue

1. Alien appeal

- Sustain

ORDER: The appeal is sustained, and deportation proceedings are terminated.

- Dismiss

ORDER: The appeal is dismissed.

[**NOTE:** If the Immigration Judge granted voluntary departure below, it will generally be necessary to include a FURTHER ORDER relating to voluntary departure - the **"BIA Macro" "Chouliaris"** should be used, which will reinstate 30 days of voluntary departure, but should be modified to reflect the actual number of days originally granted if the IJ gave the respondent less than 30 days].

- Remand

ORDER: The appeal is [dismissed] [sustained].

FURTHER ORDER: The record is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Or (for remand alone, without reaching the merits at issue in the pending appeal):

ORDER: The record is rem anded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

2. Department of Homeland Security appeal

- Sustain

ORDER: The Department of Homeland Security's appeal is sustained.

Plus, one of the following "further orders" will generally be needed:

(1) if the record must be remanded to allow the respondent an opportunity to apply for relief from deportation:

FURTHER ORDER: The Immigration Judge's decision dated [ ], is vacated, and the record is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Or

(2) if it has been established on the record that the respondent, if deportable as charged, is ineligible for any relief from deportation or was provided an opportunity to apply below and declined:

FURTHER ORDER: The respondent i s or dered deported from the United States to _____.

Or

(3) if it is a ppropriate to grant voluntary departure in the first instance because the respondent requested voluntary departure and the record re flects the respondent's eligibility for VD, but no other possible eligibility for relief:

FURTHER ORDER: In lieu ofin order of deportation, the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be grantedby the Department of Homeland Security; and, in the event of failure so to depart, the respondent shall be deported from the United States to _____

- Dismiss

  ORDER: The Department of Homeland Security's appeal is dismissed.

[**NOTE:** this order is appropriate to use when deportation proceedings were terminated by the IJ below on a finding that deportability was not established; for appropriate orders where relief is at issue, see Section II infra].

- Remand

  ORDER: The Department of Homeland Security's appeal is sustained.

  FURTHER ORDER: The Immigration Judge's decision dated [ ], is vacated, and this matter is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Or (for remand alone, without reaching the merits at issue in the pending appeal):

ORDER: The record is rem anded to th e Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

C. Exclusion proceedings (commenced before April 1, 1997) - inadmissibility at issue.

1. Alien appeal

[**NOTE:** the alien in exclusion proceedings is an "applicant" rather than a "respondent"].

- Sustain (alien found not inadmissible)

  ORDER: The appeal is sustained, and the applicant is admitted to the United States.

Or (alien found not excludable)

ORDER: The appeal is sustained, and exclusion proceedings are terminated.

Or (in the rare case of a nonimmigrant seeking admission through exclusion proceedings)

ORDER: The appeal is sustained, and theapplicant is admitted to the United States as a nonim migrant (for a period of ____ days/months from the date of this order

conditioned on the post ing of a maintenance of status and departure bond in the amount of $___).

Or (where an Immigration Judge order was entered in error)

ORDER: The applicant's appeal is sustained, and [ ].

FURTHER ORDER: The Immigration Judge's decision dated [ ], is vacated.

- Dismiss

ORDER: The applicant's appeal is dismissed.

Or (where there is more than one ground of inadmissibility, and alien remains excludable)

ORDER: The applicant' s appeal is sustained with respect to the finding of inadmissibility under section ____ of the Immigration and Nationality Act, but is dismissed in all other respects.

- Remand

ORDER: The applicant's appeal is [dismissed] [sustained].

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the ent ry of a new decision.

Or (for remand alone, without reaching the merits at issue in the pending appeal):

ORDER: The record is rem anded to the Im migration Court for fur ther proceedings consistent with the foregoing opinion and for the entry of a new decision.

2. Department of Homeland Security appeal

- Sustain

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The applicant i s or dered excluded and deported from the United States to _____

Or (if a remand is warranted to allow for alien to apply for relief from exclusion)

FURTHER ORDER: The record is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Or (sustaining appeal of erroneous grant of request to withdraw application for admission)

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's order dated [ ], which granted the applicant's request to withdraw his/her application for admission, is vacated.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the for egoing opinion and for the entry of a new decision.

- Dismiss

ORDER: The Department of Homeland Security's appeal is dismissed.

[**NOTE:** this order is appropriate to use when exclusion proceedings were term inated by the IJ below on a finding that inadmissibility was not established; for appropriate orders where relief is at issue, see Section II infra].

- Remand

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the fore going opinion and for t he entry of a new decision.

Or (for remand alone, without reaching the merits at issue in the pending appeal):

ORDER: The record is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

II. Relief at Issue on Appeal

A. Voluntary departure at Issue on Appeal -

1. Removal Proceedings

a. Alien appeal

- Sustain

ORDER: The appeal is sustained.

Or (if removability or other issue was also challenged on appeal):

ORDER: The appeal is dismissed with respect to the Immigration Judge's removability determination [denial of _____ relief], but is sustained with respect to the respondent's application for voluntary departure.

FURTHER ORDER: The outstanding order of removal is withdrawn and in lieu of an order of removal and conditioned upon compliance with the provisions of the statute, the respondent is permitted to voluntarily depart from the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security. *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.*

FURTHER ORDER: The respondent must post a voluntary departure bond in the amount of $500 with the district director within 10 business days of the date of this order. If the bond is not posted within 10 business days, the order of voluntary departure is automatically vacated on the following business day, and the respondent is ordered removed as provided by the Immigration Judge's order.*

[***NOTE**: You must verify that the Immigration Judge has actually entered a complete and valid order of removal. If not, you may have to enter an alternative order of removal to the respondent's country of nationality or designated country.

FURTHER ORDER: The respondent must provide to the Department of Homeland Security appropriate travel documentation, sufficient to assure lawful entry into the country to which the respondent is departing, within 30 days of this order or within any extension beyond that time as may be granted by the Department of Homeland Security. **[OPTIONAL]**

NOTICE: If the respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the Department of Homeland Security, the respondent shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10

years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

- Dismiss

  ORDER: The appeal is dismissed.

Or (if the respondent files an appeal only regarding the length of the voluntary departure period granted by the Immigration Judge, over which the Board has no jurisdiction):

ORDER: The appeal is dismissed for lack of jurisdiction pursuant to 8 C.F.R. §§ 1003.1(b)(3), 1240.26(g).

- Remand (for example, if the record does not clearly establish eligibility, but remand is warranted)

  ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

- Appeal is withdrawn (other than a challenge to denial of VD):

ORDER:

PER CURIAM. The respondent has advised this Board that he/she no longer desires to pursue his/her appeal on the merits. Accordingly, the appeal is dismissed and voluntary departure is hereby reinstated.

FURTHER ORDER: **[appropriate BIA Macro for 240B(b) VD].**

b. Department of Homeland Security appeal

- Sustain

  ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's grant of voluntary departure is reversed, and the respondent is ordered removed from the United States to [country].

- Dismiss

  ORDER: The Department of Homeland Security's appeal is dismissed.

FURTHER ORDER: **[Use BIA Macro for 240B(b) Voluntary Departure]**

- Remand (for remand alone, without reaching the merits at issue in the pending DHS appeal):

  ORDER: The record is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

- DHS Appeal is withdrawn

ORDER:

PER CURIAM. The Department of Homeland Security has advised this Board that it no longer desires to pursue its appeal on the m erits. A ccordingly, the appeal is dism issed and vol untary departure is hereby reinstated.

FURTHER ORDER: **[appropriate BIA Macro for 240B(b) VD].**

2. **Deportation proceedings** -

a. Alien Appeal - alien challenges denial of voluntary departure on appeal

- Sustain

ORDER: The appeal is sustained.

FURTHER ORDER: The outstandingorder of deportation is withdrawn, and in lieu of an order of deportation, the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security; and, in the event of failure to voluntarily depart, the order of deportation will be reinstated and executed.

Or (if deportability was also raised on appeal, but that aspect is dismissed)

ORDER: The appeal is dism issed with respect to the Im migration Judge's deportability determination, but is sustai ned with respect to the respondent' s application for voluntary departure.

FURTHER ORDER: The outstanding order of deportation is withdrawn, and in lieu of an order of deportation, the respondent is permitted to depart from the United states voluntarily within 30 days from the date of this orde r or any extension beyond that time as may be granted by the Department of Homeland Security; and, in the event of failure to voluntarily depart, the order of deportation will be reinstated and executed.

- Dismiss

ORDER: The appeal is dismissed.

Or (if the respondent files an appeal only regarding the length of the voluntary departure period granted by the Immigration Judge, over which the Board has no jurisdiction):

ORDER: The appeal is dismissed for lack of jurisdiction pursuant to 8 C.F.R. § 1003.1(b)(2).

- Remand (for remand alone, without reaching the merits at issue in the pending appeal):

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

- Appeal is withdrawn (other than the challenge to denial of VD):

ORDER:

PER CURIAM. The respondent has advised this Board that he/she no longer desires to pursue his/her appeal on the merits. Accordingly, the appeal is dismissed and voluntary departure is hereby reinstated.

FURTHER ORDER: [**BIA Macro "Chouliaris"** - 30 days, unless IJ granted less].

b. Department of Homeland Security Appeal

- Sustain

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision is reversed, and the respondent is ordered deported from the United States to [country].

- Dismiss

ORDER: The Department of Homeland Security's appeal is dismissed.

FURTHER ORDER: [**BIA Macro "Chouliaris"** - 30 days, unless IJ granted less]. Homeland Security; and, in the event of failure so to depart, the order of deportation will be reinstated and executed.

- Dismiss

ORDER: The appeal is dismissed.

Or (if the respondent files an appeal only regard ing the length of the voluntary departure per iod granted by the Immigration Judge, over which the Board has no jurisdiction):

ORDER: The appeal is dism issed for lack of jurisdiction pursuant to 8 C.F.R. § 1003.1(b)(2).

- Remand (for remand alone, without reaching the merits at issue in the pending appeal):

ORDER: The record is rem anded to the Im migration Cour t for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

- Appeal is withdrawn (other than the challenge to denial of VD):

ORDER:

PER CURIAM. The respondent has advised thisBoard that he/she no longer desires to pursue his/her appeal on the merits. Accordingly, the appeal is dismissed and voluntary departure is hereby reinstated.

FURTHER ORDER: [**BIA Macro "Chouliaris"** - 30 days, unless IJ granted less].

b. Department of Homeland Security Appeal

- Sustain

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Im migration Judge's decision is re versed, and the respondent is ordered deported from the United States to [country].

- Dismiss

ORDER: The Department of Homeland Security's appeal is dismissed.

FURTHER ORDER: [**BIA Macro "Chouliaris"** - 30 days, unless IJ granted less].

- Remand (for remand alone, without reaching the merits at issue in the pending appeal):

  ORDER: The record is rem anded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

- DHS Appeal is withdrawn

ORDER:

PER CURIAM. The Department of Homeland Security has advised this Board that it no longer desires to pursue its appeal on the m erits. Accordingly, the appeal is dism issed and volunt ary departure is hereby reinstated.

FURTHER ORDER: **[BIA Macro "Chouliaris"** - 30 days, unless IJ granted less].

3. Exclusion Proceedings - Voluntary departure is not a f orm of relief available in exclusion proceedings, so you should never have a voluntary departure "further order" in the se cases.

B. Forms of Relief requiring Remand for the Completion of Background Checks Pursuant to 8 C.F.R. § 1003.1(d)(6).

The Board may not currently enter an order gr anting any im migration relief in im migration proceedings which permits the alien to reside inthe United States without ensuring that the required background and secur ity checks have been com pleted by the Departm ent of Hom eland Security during the proceedings below and that the checks have not expired. 8 C.F.R. § 1003.1(d)(6). The Board must remand the matter to the Immigration Court to ensure that the required checks have been completed and are valid. Immigration relief covered by the Background and Security Check rule includes but is not limited to the following forms of relief:

- Asylum under section 208 of the Act.
- Adjustment of Status to that of a lawful permanent resident under section 209, 245, or any other provision of the Act.
- Waiver of Inadmissibility or deportability under sections 209, 212, or 237 of the Act.
- Permanent resident status on a conditional basis under sections 216 or 216A of the Act.
- Cancellation of removal or suspension of depotation under section 240A or former section 244 of the Act or any other provision of law.
- Relief from removal under former section 212(c) of the Act.
- Withholding of removal under section 241(b)(3) of the Act or the Convention Against Torture
- Registry under section 249 of the Act.
- Conditional grants for any of the above, including 207(a)(5) and 240A(e) of the Act.

See 8 C.F.R. § 1003.47(b)

The following **BIA Macro "Background Check Remand"** further order must be used when the disposition of the appeal includes a finding of eligibility for any of these forms of relief (remember to note in the body of your decision that the respondent's eligibility for the relief requested has been established):

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is rem anded to the Immigration Judge for the purpose of allowing the Departm ent of Hom eland Security the opportunity to c omplete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

NOTE: In cases where the security checks are "current" (*i.e.*, expiration date provided by DHS and time period has not elapsed), the Board's decision must include specific language notifying the alien that he or she must contact the appropriate DHS office in order to obtain status documents. 8 C.F.R. § 1003.47(i). If it appears from the record that background checks have been completed and have not expired, as required under the regulations, you **must** consult your Team Leader or Senior Panel Attorney for further review of the case for inclusion of the approved notice language. Be sure to consult the latest Chairman's memorandum regarding the Background and Security Check Rule (Interim).]

1. Alien appeal

- Sustain

  ORDER: The appeal is sustained.

  FURTHER ORDER: **[BIA Macro "Background Check Remand"]**

- Dismiss

  ORDER: The appeal is dismissed.

[**NOTE:** If voluntary departure was granted below by the Immigration Judge, it will generally be necessary to include a FURTHER ORDER relating to voluntary departure - the **"BIA Macro" § 240B(b) - VD** order should be used, either for 60 days(if the Immigration Judge granted 60 days or more) or for the insertion of the number of days the IJ granted, if less than 60; the **"BIA Macro" "Chouliaris"** order should be used in deportation proceedings].

- Remand (for remand alone, without reaching the merits at issue in the pending appeal):

  ORDER: The r ecord is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Or (if there is a reason for a more specific remand)

ORDER: The record is remanded to the Immigration Court to accept an application for a waiver of inadmissibility under section ____ of the Immigration and Nationality Act, to consider the application for adjustment of status under section 245 of the Act, and to enter a new decision in accordance with the foregoing opinion.

2. Department of Homeland Security appeal

- Sustain

ORDER: The Department of Homeland Security's appeal is sustained.

(and, if appropriate)

FURTHER ORDER: The Immigration Judge's order dated [ ], granting adjustment of status [or waiver of inadmissibility/other form of relief from removal] to the respondent is vacated and the respondent is ordered [deported] [removed] from the United States to [country].

- Dismiss

ORDER: The appeal is dismissed.

FURTHER ORDER: **[BIA Macro "Background Check Remand"]**

- Remand

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

- DHS Appeal is withdrawn

ORDER:

PER CURIAM. The Board has been advised that the Department of Homeland Security's appeal has been withdrawn. *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

[**NOTE**: Assuming that the IJ's order was entered prior to the date the background check regulations came into effect, or that the record reflects the checks were current at the time of the IJ's decision, there is no need for a BCR remand further order because the withdrawal of the DHS appeal means the IJ's decision is final as if no appeal had been taken].

III. Motions

A. Motions to Remand - Appeal Pending Before the Board

- remand granted after considering merits of appeal

  ORDER: The appeal is [sustained] [dismissed].

  FURTHER ORDER: The m otion to rem and is granted, and the record is rem anded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

- grant motion to remand without addressing merits of appeal

  ORDER: The motion to remand is granted, and therecord is remanded to the Immigration Court for further proceedings consistent with the fregoing opinion and for the entry of a new decision.

(and, if appropriate)

FURTHER ORDER: If discretionay reliefis granted by the Imigration Court, the outstanding order of [exclusion and] [deportation] [removal] shall be withdrawn.

- remand for clarification of decision and certification back to Board

  ORDER: The record is remanded to the [Department of Homeland Security/Immigration Court] for clarification and certification back to the Board for further review.

- appeal dismissed for lack ofjurisdiction - (thus Board has no jurisdiction over a pending motion to remand):

  ORDER: The appeal is dismissed for lack of jurisdiction.

  FURTHER ORDER: The record is returned to the Immigration Court without further action.

B. Orders Relating to Appeals of Denial of Motion by Immigration Judge (MTR-IJ)

Generally, orders appropriate for appeals will be used.

- sustain (i.e. the IJ improperly denied underlying motion to reopen)

  ORDER: The appeal is sustained.

FURTHER ORDER: The motion to reopen is granted, the proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

- dismiss (i.e. the IJ properly denied underlying motion to reopen)

ORDER: The appeal is dismissed.

C. Order Language for Motions Filed With the Board (MTR-BIA)

- Grant

ORDER: The [respondent's/appl icant's/DHS's] motion to [reopen/reconsider/reinstate] is granted, and these proceedings are [reopened/reinstated].

(and, where appropriate)

FURTHER ORDER: The Board's decision dated [ ], is vacated, and the r ecord is remanded to the Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

- Deny

ORDER: The motion [to reopen/reconsider/reinstate] is denied.

(and, where appropriate, if a stay was requested)

FURTHER ORDER: The respondent's request for a stay of [deportation] [removal] is denied.

Or

FURTHER ORDER: The Board's g rant of a stay of [deportation] [rem oval] pending adjudication of the motion is vacated.

- No Jurisdiction Over Motion

(Per curiam Order)

IT IS ORDERED that the record be returned to the Immigration Court without further action by the Board for the appropriate disposition of the [respondent's/applicant's/ Department of Homeland Security's] motion to reopen.

IV. Miscellaneous Orders for Immigration Judge Proceedings

A. Bond Determinations

1. Alien appeal

- Sustain

ORDER: The appeal is sustained.

FURTHER ORDER: The respondent shall be released from custody under the posting of a bond in the amount of ($___).

- Dismiss

ORDER: The appeal is dismissed.

- Remand

ORDER: The record is rem anded to the Im migration Court for fur ther proceedings consistent with the foregoing opinion and for the entry of a new decision.

2. Department of Homeland Security appeal

- Sustain

ORDER: The Department of Homeland Security's appeal is sustained.

FURTHER ORDER: The Im migration Judge's decision is vacated and the respondent is [ordered detained on no bond/ ordered released under the posting of a bond in the am ount of ($___)].

- Dismiss

ORDER: The Department of Homeland Security's appeal is dismissed.

- Remand (for remand alone, without reaching the merits at issue in the pending appeal):

ORDER: The record is rem anded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

B. Certification - When the Board considers a m atter on certification, there is no pendi ng appeal to be "sustained" or "dismissed," so the Board will either affirm or reverse the underlying decision:

ORDER: The decision of the Immigration Judge dated [ ], is [affirmed] [reversed].

[**NOTE:** If the order results in a reversal, a furthe order may be needed. Construct an appropriate further order from the language of the models in the other subsections.]

C. Interlocutory Appeals

- Sustain

ORDER: The appeal is sustainedand the order of the Immigration Judge dated [ ], is vacated.

FURTHER ORDER: The record is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion.

- Dismiss

ORDER: The appeal is dismissed.

FURTHER ORDER: The record is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion.

- Board declines to consider interlocutory appeal

IT IS THEREFORE ORDERED t hat the record be returned to the Im migration Court without further action.

D. Rescission Proceedings

1. Alien appeal

- Sustain

ORDER: The appeal is sustained.

(and, where appropriate)

FURTHER ORDER: The proceedings commenced under section 246 of the Immigration and Nationality Act are hereby terminated.

- Dismiss

  ORDER: The appeal is dismissed.

- Remand (for remand alone, without reaching the merits at issue in the pending appeal):

  ORDER: The record is rem anded t o the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

2. Department of Homeland Security appeal

- Sustain

  ORDER: The Department of Homeland Security's appeal is sustained.

- Dismiss

  ORDER: The Department of Homeland Security's appeal is dismissed.

- Remand (for remand alone, without reaching the merits at issue in the pending appeal):

  ORDER: The record is rem anded to the Im migration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

E. Change of Country of Deportation/Removal

FURTHER ORDER: The respondent 's country of deportation/rem oval is am ended from Yugoslavia to Serbia-Montenegro.

F. Cross Appeals - The Board's order must reflect the disposition of each appeal.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: The Department of Homeland Security's appeal is dismissed.

V. Department of Homeland Security Matters - [Only alien appeals].

A. Visa Petition (Revocation) Proceedings

- Sustain (in visa petition proceedings, where petition has been denied by the DHS)

ORDER: The appeal is sustained, and the visa petition is approved.

- Sustain (in revocation proceedings, where the DHS has revoked approval of the visa petition)

  ORDER: The appeal is sustained, and approval of the visa petition is reinstated.

- Dismiss

  ORDER: The appeal is dismissed.

- Remand

  ORDER: The record is remanded to the Department of Homeland Security for further consideration of the visa petition consistent with the foregoing opinion and for the entry of a new decision.

B. Application for Advance Permission to Enter as a Nonimmigrant - Section 212(d)(3) application.

- Sustain

  ORDER: The appeal is sustained.

  FURTHER ORDER: The application for advance permission to enter the United States as a nonimmigrant will be granted under such conditions as the Department of Homeland Security deems appropriate.

- Dismiss

  ORDER: The appeal is dismissed.

- Remand (for remand alone, without reaching the merits at issue in the pending appeal):

  ORDER: The record is remanded to the Department of Homeland Security for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Board of Immigration Appeals Panel 3 Guidelines for Preparation of Orders

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November 2009

This document is for internal Board use only.

TABLE OF CONTENTS

Appendices

Board of Immigration Appeals
Panel 3 Guidelines for Preparation of Orders
November 2009

Introduction

The Board Members on Panel 3 appreciate all of the hard work that the attorneys and managers put into the screening and drafting process of what constitutes the majority of orders issued by the Board. As has been said numerous times, we are the due process "engine" that ensures timely and effective review of the Board's caseload by determining which cases need to go to the merits panels as well as handling increasingly more complex cases and doing so with increasingly more extensive and complete decisions.

Our goal in issuing these guidelines is to present what we consider "best practices" drawn from current work of the panel including specific templates and "stock language," which you will find attached in the Appendices. In addition, we have gathered into this document the standard guidance you have received over the years regarding file preparation, etc., with the hope that this will serve not only as a good reference for experienced attorneys, but also a useful tool for those attorneys new to the panel.

Please review these guidelines carefully and use them to update any of your own personal stock language or templates you use to draft orders.

Preliminary Matters

Review of Files

Non Responsive

Circulation Sheets

The circulation sheet should include a brief indication of the issues(s) in the case, the Immigration Judge's disposition, the proposed disposition in the draft order, and a brief indication of the reason for the proposed disposition. While it is not necessary that they be typed, please try to make your notes (and your initials) legible.

Examples:

> #1: Asylum/W.H. Colombia. A.C.F. and no P.P./W.F.F. findings. CAT denied below, but not argued on appeal at all. REAL ID applies. A.C.F. weak, but .IJ. correct on lack of corroboration. Threats only; no physical harm, so no PP. W.F.F. undermined by safety of similarly-situated relatives still living in COL. Dismiss.
>
> #2: Sec. 245 A/S. Fraud inadmissibility issue; IJ denied 212(i) waiver in discretion. I.J. seems correct on R.'s level of culpability and continuing nature of fraud. R. has extensive criminal record beyond the fraud conviction, and he admits to alien smuggling, drug dealing, tax cheating, and chasing his tax accountant with a machete. The hardship factors are considerable, but do not overcome the negative factors. Recommend upholding I.J.

Sometimes, you will need to write a bit more. A typed sheet attached to the circulation sheet would be appropriate in such circumstances, or you can use the space on the 3-member referral sheet in cases where you've been asked to do a 3-Board-Member write-up. Try to leave some space on the front the circulation sheet for Board Member comments.

If a case is sent back on a green slip and the result of the case changes, a new circulation sheet should be prepared reflecting the contents of the new proposed order, with the correct codes on the reverse. *Please be sure your code selections are correct!*

Transcripts and I.J. decisions

If you have a transcript and/or I.J. decision where there are "indiscernibles," or it appears that portions of these documents are missing or somehow compromised, you have a few options about how to proceed. If you can determine that the missing portion would not affect the outcome (this will be a case-by-case evaluation, and you should be able to articulate why the result is or is not impacted) you may not need to have the document in question re-transcribed. In that instance, you might simply drop a footnote in your draft order to acknowledge the issue and how it is not outcome-determinative, or perhaps address the issue in the body of the order if one of the parties has raised a concern about it.

If, however, you need a new transcript or I.J. decision, please complete a quality control form, attach it to the ROP, and give it either to your Team Leader or one of the support staff. On the form, briefly explain what the problem is and what you need to have re-transcribed.

If the new transcript or I.J. decision does not cure the problem, only then should you draft a decision remanding the case to the I.J. for a new decision or a new hearing.

Beginning of Orders

Appeals, In General

The first paragraph of most orders involving appeals from the decision of an Immigration Judge should, in succinct fashion, identify the party that has filed the appeal, state the disposition of the case before the Immigration Judge (including identifying the forms of relief granted or denied), and state whether the appeal is sustained, dismissed, remanded, or sustained in part and remanded, or dismissed in part and remanded. Usually, for most regular cases, you should include a statement of the respondent's nationality and citizenship. (There are some short order formats, such as our former auto-orders, which may not follow this approach.)

Examples:

> The Department of Homeland Security (the "DHS") appeals from the decision of the Immigration Judge, dated [ ], finding the respondent, a native and citizen of China, removable, pretermitting the respondent's asylum application as untimely, and granting the respondent's application for withholding of removal. [*Cite pertinent statutes and regulations.*] [*You may want to include a very brief summary of the parties' respective positions here.*] The appeal will be dismissed in part and the record remanded.
>
> -OR-
>
> The respondent, a native and citizen of Mexico, has appealed from the decision of the Immigration Judge dated [ ], finding him removable as charged for having been convicted of an aggravated felony, namely, a crime of violence, and for having been convicted of a crime involving moral turpitude. [*Cite relevant provisions of Act.*] The appeal will be dismissed.

Note that the foregoing examples do not attempt to summarize the rationale of the Immigration Judge's decision. Often, that gets protracted and unwieldy, so is best left to the substantive discussion in the order.

If the case has a lengthy procedural history, try to avoid summarizing that history in the first paragraph. Leave that for a subsequent paragraph that may either immediately follow the first paragraph, or be included in your discussion and analysis of the issues on appeal.

In most cases, the second paragraph of the order should concisely set forth the standard of review to be applied. This can be done very briefly with appropriate citations to the

regulations and, if appropriate, BIA precedent. Below is a common format that works. Most orders will require nothing longer than this:

> We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. [*Cite*]. We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a de novo standard. [*Cite applicable regulations and BIA precedent.*]
>
> -OR-
>
> We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. [*Cite.*]

In addition to citing the correct standard of review at the beginning of the order, it is critically important that in the body of the order we avoid imprecise language regarding which standard we are applying to each portion of the Immigration Judge's decision. Otherwise we risk giving the parties and circuit courts the impression that we have applied an incorrect standard. See examples below:

Clearly Erroneous Standard

**As may be necessary, review the guidance provided on October 20, 2009, at the "Standards of Review" training.*

Incorrect: "We agree with the Immigration Judge that the respondent was not credible."

Incorrect: "Contrary to the Immigration Judge's findings, we find the respondent not credible."

Correct: "There is no clear error in the adverse credibility finding" OR "We find that the Immigration Judge's adverse credibility determination was not clearly erroneous" OR "For the following reasons, we hold that the Immigration Judge's factual findings were clearly erroneous."

De Novo Standard

Incorrect: "We find no reversible error . . ."

Incorrect: "We find no error in the Immigration Judge's determination that the respondent failed to show exceptional and extremely unusual hardship."

Correct: "Upon de novo review, we agree with the Immigration Judge that the respondent failed to demonstrate exceptional and extremely unusual hardship."

Correct: "Upon de novo review, we find that the Immigration Judge correctly determined that the respondent failed to demonstrate exceptional and extremely unusual hardship."

Circuit Court Remands and Routine Matters

Among other matters we occasionally address are "lost aliens," moot appeals, and circuit court remands. For the first two, there is stock language available for you to use from the Board's former automatic orders, which we have updated in WordPerfect on the S:\ drive, currently fount at: **S:\Panel 3 Sample Orders_current as of November 12, 2009**.

For circuit court remands, please look to the following examples to help you draft your first paragraph. Remember, do not try to pack in too much information. The procedural history and, in particular, the rationale for any previous dispositions in the case should follow in subsequent paragraphs.

Where a circuit court decision has granted a petition for review:

> This case is presently before us pursuant to a September 19, 2008, decision of the United States Court of Appeals for the Ninth Circuit, granting the respondent's petition for review from the Board's decision of March 5, 2006, and remanding for further proceedings. In light of the Ninth Circuit's decision, we find the respondent eligible for asylum and remand the record to the Immigration Court for completion of background checks.

> On June 29, 2006, the United States Court of Appeals for the Second Circuit granted a petition for review, vacated our November 5, 2003, decision, and remanded the record to this Board. In light of the Second Circuit's decision, the Government has requested that the record be remanded to the Immigration Judge for an update of the security and background checks and for a possible grant of asylum. Accordingly, the record will be remanded to the Immigration Judge for further proceedings.

Where a circuit court has granted a motion to remand:

> This case is presently before us pursuant to an order of the United States Court of Appeals for the Third Circuit granting the Government's unopposed motion to remand for further consideration of the respondent's applications for asylum and withholding of removal. In a decision dated May 11, 2004, we had affirmed the decision of the Immigration Judge denying those applications for relief. The record will be remanded to the Immigration Judge for further proceedings.

Not this:

> This matter was last before us on May 11, 2004, when we affirmed the Immigration Judge's decision dated January 22, 2003, finding the respondent removable as charged and denying her application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act (Act), 8 U.S.C. §§ 1158, 1231(b)(3), as well as her application for withholding of removal under the Convention

> Against Torture, 8 C.F.R. §§ 1208.16(c), 1208.18. The respondent sought review of our order by the United States Court of Appeals for the Third Circuit (the court). In an Order granting the respondent's Unopposed Motion to Remand dated January 28, 2005, the court remanded the matter to the Board for further consideration of the respondent's application for asylum and withholding of removal. The record will be remanded to the Immigration Judge for further proceedings.

The second is a classic example of trying to pack too much information, much of it unnecessary, into a single sentence and paragraph. Plus, the reciting all of the procedural history in this way, when it does not add to the decision, creates a greater possibility that something will be misstated.

Where a circuit court has remanded an issue for the Board to address:

> On May 17, 2007, the United States Court of Appeals for the Ninth Circuit remanded this case to the Board for a decision concerning the respondent's claim that his right to counsel was violated before the Immigration Judge. Upon remand, as discussed below, we find that the respondent's right to counsel was not violated. Thus, the respondent's appeal will be dismissed.

Where a circuit court has reversed, and the Board now terminates proceedings:

> This case was last before us on April 28, 2004, when we denied the respondent's motion to reopen in which he contended that his conviction had been vacated and no longer supported the charge of removability. In an order dated June 6, 2007, the United States Circuit Court of Appeals for the Ninth Circuit found that the Board erred in finding that the respondent's conviction remained valid for immigration purposes and remanded the record to the Board. We vacate our April 28, 2004, decision and grant the respondent's motion to reopen. As the sole charge of removability in the Notice to Appear (Exh. 1) was based on the respondent's now vacated conviction, there is no factual basis to support the charge of removability. Therefore, the instant removal proceedings against the respondent are terminated.

***Reminder: When a Board decision is appealed, the "respondent" before the circuit court is the Government. The OIL attorney who appears before the court, who may also be listed on court documents, should not be confused with the DHS attorney who may (or may not, in many instances) have filed a new brief with the Board once the case is back. A circuit court remand is a "new matter" where we need a new EOIR-27 before recognizing any private attorney involved. (Look for correspondence from the Clerk's Office about this, notifying the parties of the court's remand to us.)**

****Note: If the Government filed a motion to remand with the circuit court, you should mention that in your draft order.**

Body of Orders

Identify the Issue or Issues in Dispute

This does not necessarily require repeating all the concerns raised by the parties. But we should say enough in the order that the parties know that we have considered and understood the claims. It is critical to identify dispositive issues, whether or not we acknowledge all points in dispute.

Example:

> The respondent raises a number of issues in challenging the Immigration Judge's finding of removability and the denial of cancellation of removal on both eligibility and discretionary grounds, including due process claims relating to the conduct of the hearing. We find it unnecessary to address most of these contentions because we agree with the Immigration Judge that the respondent is removable as an alien convicted of an aggravated felony and does not qualify for any relief requested at the hearing.

Clearly Announce Our Ruling

This simply means stating our bottom line as to which party wins or loses on the dispositive issues. It usually takes no more than one sentence, or a clause, and can be combined with the identification of the issue.

Example:

> We reject the claim by the DHS that the Immigration Judge, who ultimately granted asylum in the exercise of discretion, was clearly erroneous in crediting the respondent's testimony.

Example:

> We reject the respondent's argument that, because the statute of conviction does not require as an element the use of "violent" force, his conviction cannot be classified as a "crime of violence" under section 101(a)(43)(F) of the Act. *[Then explain that "violent" force rule is limited to the Seventh Circuit and does not apply in this Eighth Circuit case.]*

Explain Why We Reached Our Result

This is the most important part of any order. It need not be long. But, we need to say enough that the parties can understand why they won or lost. As with the issue identification, our explanation needs to give the parties and any reviewing body confidence that we understood the essence of the case, reviewed the record to the extent necessary to resolve the issues, and set forth a reasonable disposition, even if the losing party or reviewing body thinks the disposition is incorrect. Citations to the transcript and relevant exhibits are the best ways to demonstrate a review of the record, when they relate to findings made by the Immigration Judge.

Example:

> The adverse credibility finding is supported by the various inconsistencies in the testimony and evidence identified by the Immigration Judge (I.J. at 11-18), some of which go to the heart of the respondent's claim. For example, as the Immigration Judge found, the respondent's testimony regarding being detained for five weeks and beaten during two interrogation sessions was not mentioned in his asylum application (Exh. 3) or during his credible fear interview (Exh. 5). *See* I.J. at 12-15; Tr. at 46-58.

Address Arguments Raised by the Losing Party

It is also important to address the points made by the losing party that bear on the dispositive issues. It is not necessary to address every issue raised by that party, such as arguments that clearly have no effect on the outcome. Sometimes, for such meritless arguments, simply acknowledging them and stating that they have no bearing on the outcome, is enough. We must, however, address every actual claim that is before us. If *new claims* are raised on appeal, we should at least acknowledge them and state what effect they have, if any, on the outcome. The most important thing is to explain the basis for the disposition.

Example:

> Although the respondent has offered evidence that his psychological condition may have led to his incomplete accounts of past abuse, the Immigration Judge did not clearly err in rejecting this explanation, given the number and significance of the discrepancies that are present in the record. (I.J. at 19; Tr. at 43, 48-51, 58).

Remember that attacks on the overall proceedings, such as ruling on evidentiary issues, continuances, or the fairness of the hearing, may need to be addressed as these issues frequently bear on our overall disposition of the case, even if they may not directly relate to what we believe is controlling. It may also be necessary to include in the order items not raised by the parties, such as controlling precedent published after the Immigration Judge rendered his or her decision.

Maintain a Neutral Judicial Tone

It is sufficient in addressing an issue to indicate that we have considered the argument made by the party against whom we are ruling, and briefly stating why we disagree. It is neither necessary nor appropriate to treat an argument in a dismissive or pejorative fashion. If a Board Member believes that additional comments are needed, the Board Member can pen in an edit to that effect. While you should express reasoned judgment in, for example, making discretionary determinations, deciding whether ineffective assistance of counsel was rendered, or whether a frivolous asylum claim was filed, such findings should focus upon the facts as presented and the applicable law, rather than becoming an editorial about the arguments raised or the parties themselves.

> E.g. Please do **not** say something like: *For whatever reason*, the respondent again raises several of the same, and *obviously* meritless arguments which he set forth before the Immigration Judge in support of this *pointless* claim. The Immigration Judge, *of course*, properly rejected each of these challenges. *Surprisingly*, the respondent maintains that we should overlook his criminal history. For its part, however, the DHS has *merely* submitted a pro forma brief that *in no way* facilitates the adjudication of this case.

In the context of the foregoing example, the italicized portions unnecessarily suggest disdain for the respondent and the DHS. Even if these remarks have some support in the record, little (if anything) is added to a formal legal analysis by such subjective commentary. Worse, it may instead suggest bias, as such editorializing is not needed to reach the outcome. A court might not look favorably upon such characterizations. Sometimes adverbs even less strong than "obviously" or "surprisingly" are a clue to whether inappropriate statements are being made. In this context, "merely" indicates a lack of effort by DHS.

If you are concerned with counsel's false statements or frivolous arguments, you should try to address them neutrally. Additionally, you might consider, in such an instance, circling the AC (Attorney Conduct) code on the circulation sheet, giving a brief explanation as to why you did so.

Be Succinct and Direct

Sentences should be as brief as possible. Long sentences can be very difficult to understand, and long paragraphs are always more difficult to read. When a sentence runs long, look at it again. There is virtually always a way to break it into shorter, simpler, and easier to understand sentences. When a paragraph runs long, try to find the best place (or places) to break it up. It may seem, at times, that the break is artificial. It will, however, definitely be easier to read.

Please proofread to reduce unneeded language, such as, "After [upon] a careful review of the record . . ." (*This is presumed.*) Or, "We next consider whether the respondent is eligible . . ." *(You might just state whether or not R. is eligible.)* A phrase such as, "These criteria are applicable to . . ." might become, "These criteria apply to . . ." *(the second version is a little less wordy, and uses the active voice).*

Please use sparingly phrases such as "We note," "We observe," "In any event, . . ."

* * *

Conclusion

As noted above, our orders need to identify the dispute that the parties are asking us to resolve, announce the decision, and explain why we have come to that resolution, all in a way that indicates that we have been attentive to the claim, reviewed the relevant parts of the record, and reached a reasoned decision. We hope this guidance proves useful in the preparation of orders that achieve these objectives.

This document, with its appendices, is intended to be a "living" document that changes as we identify additional best practices that will help us continue to increase the quality of our decisions, while maintaining our efficient case flow. As you come across ideas or develop standard language that would be helpful in this regard, please pass them along to your Team Leader, SPA, or Board members to be considered for inclusion in the next update.

Thank you.

Appendix 1
Board of Immigration Appeals
Panel 3 Guidelines for Preparation of Orders
Sample Orders
Updated November 2009

SAMPLE #1 - ASYLUM (PRE- REAL ID)

In a decision dated May 30, 2006, the Immigration Judge found the respondent removable and denied his applications for asylum, withholding of removal, and protection under the United Nations Convention Against Torture ("CAT"). *See* sections 208, 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. §§ 1208.16-.18. The respondent, a native and citizen of Albania, has appealed from that decision. The respondent argues that the Immigration erred in finding him not credible. We will dismiss the appeal.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). *See also Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002) (stating that the Board must defer to the factual determinations of an Immigration Judge in the absence of clear error); *Matter of A-S-*, 23 I&N Dec. 1106, 1109-12 (BIA 1998) (noting that because an Immigration Judge has the ability to see and hear witnesses, he or she is in the best position to determine the credibility of such witnesses).[1]

We find no clear error in the Immigration Judge's determination that the respondent is not credible. The Immigration Judge identified material inconsistencies between the respondent's testimony and the application (I.J. at 14-18). For example, the respondent testified that he joined the opposition political party in December 1991, but his application for asylum states that he joined in May 1993 (I.J. at 15; Exh. 4). The respondent asserted at the hearing that he was detained by the Albanian security police for two days, but he did not mention this in his application (I.J. at 16; Tr. at 61-63). The respondent has not offered any explanation for these inconsistences, despite being given an opportunity by the Immigration Judge to do so (I.J. at 16; Tr. at 68). On appeal, the respondent maintains that these inconsistencies were trivial. We disagree, as they go to significant events central to the respondent's claim. *See Cao He Lin v. United States Dept. of Justice*, 428 F.3d 391 (2d Cir. 2005); *Secaida-Rosales v. INS*, 331 F.3d 297 (2d Cir. 2003).

In light of our disposition of this matter based on the Immigration Judge's credibility finding, we find it unnecessary to discuss the respondent's other appellate arguments, relating to persecution. Further, we affirm the Immigration Judge's conclusion, in view of the adverse credibility

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[1] **[As noted by the Immigration Judge,]** [T]he respondent submitted his asylum application on November 14, 2003. Since the application was filed before May 11, 2005, it is not governed by the provisions of the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). Hence, the amendments made by the REAL ID Act to section 208(b)(1)(B) of the Immigration and Nationality Act do not apply to this case.

determination, that the respondent did not establish that he was more likely than not to be tortured in Albania, by or with the acquiescence (to include the concept of willful blindness) of a government official upon his return. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). [*Additional language for circuits requiring separate CAT analysis:* The record does not contain independent evidence that would support the respondent's CAT claim when considered without regard to {**his/her**} testimony that was properly found to lack credibility.]

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

SAMPLE #2 - ASYLUM (PRE- REAL ID)

The respondent, a native and citizen of Somalia, has appealed an Immigration Judge's August 15, 2006, decision which denied applications for asylum and withholding of removal. Sections 208, 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3). The appeal will be dismissed.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(i), (ii).[1]

On appeal, the respondent argues that the Immigration Judge erred in finding that he was not credible as a result of inconsistencies between the respondent's written application for asylum and his testimony. The respondent also challenges the Immigration Judge's alternative finding that the respondent did not suffer past persecution as a result of mistreatment by members of a rival clan in Somalia. We find it unnecessary to address the respondent's arguments as to past persecution, because we find no clear error in the Immigration Judge's determination that the respondent lacked credibility.

The adverse credibility finding is supported by the various inconsistencies in the testimony and evidence identified by the Immigration Judge (I.J. at 16-18), most of which go to the heart of the respondent's claim. We affirm that finding with the exception of the suggestion by the Immigration Judge that it was implausible that the respondent would marry someone outside his clan (I.J. at 18). The affidavits submitted by the respondent and unchallenged by the Department of Homeland Security (the "DHS") assert that such inter-clan marriages frequently take place. 8 C.F.R. § 1003.1(d)(3)(i).

In addition, the respondent testified to events that were not mentioned in his asylum application. For example, the respondent's account about being detained for five weeks and beaten during two interrogation sessions was not included in his written statement. I.J. at 17; Tr. at 38-44; Exh. 3. *See Li v. Ashcroft*, 378 F.3d 959 (9th Cir. 2004); *Alvarez-Santos v. INS*, 332 F.3d 1245 (9th Cir. 2003). During the hearing, the Immigration Judge offered the respondent an opportunity to explain the inconsistencies, but he was unable to do so (I.J. at 18; Tr. at 45-46). We find no merit to the

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[1] **[As noted by the Immigration Judge,]** [T]he respondent's asylum application was filed prior to May 11, 2005. Thus, the amendments made to the Immigration and Nationality Act by the REAL ID Act of 2005 are not applicable to the claims.

respondent's argument on appeal that the inconsistencies were minor and did not justify the Immigration Judge's adverse credibility determination. Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed.

SAMPLE #3 - ASYLUM (PRE- REAL ID)

The respondent, a native and citizen of Haiti, has appealed the December 4, 2005, decision of the Immigration Judge denying her applications for asylum, withholding of removal, and protection under the United Nations Convention Against Torture. Sections 208, 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. §§ 1208.16-.18. We will dismiss the respondent's appeal.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(i), (ii).[1]

The Immigration Judge found that the respondent is barred by statute from asylum because her application was untimely filed and because she has not demonstrated that such late filing was legally excused. Section 208(a)(2)(B), (D) of the Act, 8 C.F.R. §§ 1208.4(a)(2), (4), (5). The respondent has offered no evidence, apart from her testimony, for her assertion that she entered the United States in June 2002, which would have been 11 months before the date she filed for asylum. We find no clear error in the Immigration Judge's factual finding that, based on the documentary evidence in the record, which was determined to be more probative than the respondent's contrary testimony, the respondent actually entered the United States in May 2001. The respondent has not demonstrated by clear and convincing evidence that she entered at the later time she claims.

We also agree with the Immigration Judge's conclusion that the respondent does not face a clear probability of persecution if returned to Haiti. Thus, the respondent is ineligible for withholding of removal. Aside from participating in one pro-Lavalas demonstration in 1999, the respondent has not been politically active in Haiti, nor does she allege any instances of past persecution (I.J. at 9; Tr. at 12-14). The respondent offers no support for her appellate assertion that she is in "great danger" merely as a result of the change in government in Haiti that resulted in the ouster of President Aristide in 2004. Respondent's Brief at 4. The respondent has not indicated how she would be identified as a Lavalas supporter such that it would be likely that her life or freedom would be threatened.

Finally, we affirm the Immigration Judge's conclusion, for the reasons stated in her decision, that the respondent has failed to demonstrate that she is more likely than not to be tortured in Haiti (I.J.

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[1] **[As noted by the Immigration Judge,]** [T]he respondent's asylum application was filed prior to May 11, 2005. Thus, the amendments made to the Immigration and Nationality Act by the REAL ID Act of 2005 are not applicable to the claims.

at 11), by or with the acquiescence (to include the concept of willful blindness) of a government official upon her return. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). [*Additional language for circuits requiring separate CAT analysis:* The record does not contain independent evidence that would support the respondent's CAT claim.]

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

SAMPLE #4 - NON-L.P.R. CANCELLATION

The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's May 9, 2008, decision denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The respondent maintains that the Immigration Judge erred in finding that none of the respondent's qualifying relatives would suffer the requisite hardship if he were removed to Mexico. The appeal will be dismissed.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. §1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008) **[As noted by the Immigration Judge,]** [T]he respondent's claim was filed **[after/prior to]** May 11, 2005. Thus, the amendments made to the Immigration and Nationality Act by the REAL ID Act of 2005 **[are/are not]** applicable.

We affirm the Immigration Judge's determination that the respondent does not qualify for cancellation of removal. We agree with the Immigration Judge that the respondent failed to show that his removal would result in exceptional and extremely unusual hardship to either of his two United States citizen children, who were ages 2 and 10 at the time of the merits hearing. While we recognize that by accompanying the respondent to Mexico, his children will be separated from friends and family in the United States and may have fewer educational and economic opportunities, we agree with the Immigration Judge that the respondent has not established that his children would suffer hardship substantially beyond that which ordinarily would be expected to result from a family member's removal from the United States. *See Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002) (discussing exceptional and extremely unusual hardship standard); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001); *compare Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002). ***[INSERT KEY FACTS, AS FOUND BY THE I.J., RELATING TO THE E.E.U.H. DETERMINATION, e.g.:*** *The respondent's children are healthy and the oldest child is performing adequately in school (I.J. at 2; Tr. at 7-9). The children's mother has recently been removed from the United States and is now residing in Mexico (I.J. at 3; Tr. at 17).*] In light of the foregoing, we find that, considering the factors of this case cumulatively, the respondent failed to demonstrate that either of his children will suffer exceptional and extremely unusual hardship if they accompany him to Mexico.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed.

SAMPLE #5 - LAWFUL PERMANENT RESIDENT CANCELLATION

The respondent, a native and citizen of India, appeals an Immigration Judge's January 30, 2005, decision finding him removable and denying his application for cancellation of removal for certain lawful permanent residents under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). We will dismiss the appeal.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008). **[As noted by the Immigration Judge,]** [T]he respondent's claim was filed **[after/prior to]** May 11, 2005. Thus, the amendments made to the Immigration and Nationality Act by the REAL ID Act of 2005 **[are/are not]** applicable.

No clear error has been shown with respect to the Immigration Judge's factual findings. In addition, on de novo review of the Immigration Judge's discretionary determination, we agree with the Immigration Judge that the negative factors, including the respondent's criminal history and failure to pay taxes for the last three years, outweigh his family ties and other positive factors. *See* I.J. at 18-23; Exh. 2; 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998); *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978). On appeal, the respondent argues that the Immigration Judge gave insufficient weight to his positive equities and evidence of his rehabilitation. We disagree. The Immigration Judge considered these factors, but concluded that the recency and seriousness of the respondent's criminal activities indicated a lack of rehabilitation and outweighed the positive equities. We agree with the Immigration Judge's conclusions and find no reason to overturn them.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

SAMPLE #6 - ASYLUM, WITHHOLDING OF REMOVAL (POST-REAL ID ACT)

The respondent, a native and citizen of Colombia, appeals from an April 16, 2008, decision of an Immigration Judge. The Immigration Judge determined therein that the respondent is subject to removal as charged and denied his applications for asylum and withholding of removal. Sections 208, 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3). The appeal will be dismissed.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(i), (ii). The respondent's asylum application was filed in July 2007. Thus, it is governed by the amendments to the Immigration and Nationality Act brought about by the passage of the REAL ID Act of 2005.

The respondent asserts that he fears returning to Colombia because of problems he encountered from the FARC[1] related to his employment. I.J. at 4; Tr. at 13-23. He testified that he was working as a mechanical engineer for the company Tuberia Ingenieria, helping to install large plumbing pipes throughout the city of Bogotá. I.J. at 5; Tr. at 12, 29-30. The respondent testified that he started having problems with the FARC in April 2006, when he received a note at his hotel left for the person in charge. I.J. at 6; Tr. at 14. He indicated that he was instructed in the note to leave the area, but that he decided to remain on the job. I.J. at 6; Tr. at 15. On June 12, 2006, six men approached him at his work site, and although they didn't identify themselves, the respondent said that they wore the uniform of the guerrillas. I.J. at 7; Tr. at 16-17. He testified that the men threatened him, but no one was harmed. *Id.* After receiving a similar note in August, he reported the incident to his company and decided to discontinue working on the project. I.J. at 8; Tr. at 17-18. Nonetheless, he was later kidnaped, during which time he was hit on the head, threatened, and then thrown out of a moving vehicle. I.J. at 9; Tr. at 21-22. He was able to walk to a police roadblock where police called an ambulance for him, but he declined to file a police report. I.J. at 9-10; Tr. at 23.

The respondent maintains that he suffered past persecution from the FARC, and has expressed fear that the group will continue to have an interest in him if he returns to Colombia. The issue in this case is not whether the respondent has a legitimate fear of harm from guerrillas, but rather whether the threats of harm experienced by the respondent and the fear of future harm have a nexus to the respondent's race, religion, nationality, membership in a particular social group, or political opinion. *See* section 101(a)(42) of the Act, 8 U.S.C. § 1101(a)(42). On appeal, the respondent contends that because he initially resisted the FARC's efforts, members of that group imputed a political opinion to him. As the respondent indicated, and the Immigration Judge found, however,

[1] "FARC" is an acronym for the guerrilla group, Fuerzas Armadas Revolucionarias de Colombia (the Revolutionary Armed Forces of Colombia).

the threats he received and the mistreatment he experienced were due solely to his employment, and the FARC's apparent desire to interfere with Bogotá's plumbing projects. Further, he testified that the first threats were not directed at him personally, but to the person in charge. I.J. at 12; Tr. at 14-15. Therefore, we find that the Immigration Judge correctly held that the record fails to establish that at least one central reason for the FARC's interest in the respondent consisted of any of the five bases enumerated in the Act. Section 208(b)(1)(B)(i) of the Act. *See Matter of S-E-G-*, 24 I&N Dec. 579, 588-89 (BIA 2008) (concluding that the aliens there "failed to show a political motive in resisting gang recruitment" where "there [was] no evidence in the record that [they] were politically active or made any anti-gang political statements"); *Matter of E-A-G-*, 24 I &N Dec. 591, 596 (BIA 2008) ("[The alien's] refusal to join [Mara Salvatrucha], without more, does not constitute a 'political opinion'"); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).

Accordingly, without the required nexus, the respondent cannot meet his burden of demonstrating eligibility for asylum. Inasmuch as the respondent has not met his burden of showing past persecution or a well-founded fear of persecution as required for asylum, it follows that he has not satisfied the higher standard of a clear probability of persecution as required for withholding of removal. *See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *INS v. Stevic*, 467 U.S. 407 (1984).[2]

ORDER: The appeal is dismissed.

[2] The Immigration Judge made an adverse credibility finding in this case. I.J. at 5. Because we agree with the Immigration Judge's determination that the respondent failed to establish that the mistreatment he experienced or fears was or will be on account of a basis enumerated in the Act, we need not address that finding.

Appendix 2
Board of Immigration Appeals
Panel 3 Guidelines for Preparation of Orders
Suggested Standard Language
Updated November 2009

Asylum: One-Year Filing Deadline

The Immigration Judge found that the respondent is statutorily ineligible for asylum because **[his/her]** application was untimely filed, and **[he/she]** has not shown that the late filing was legally excused. *See* section 208(a)(2)(B), (D) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(B), (D); 8 C.F.R. § 1208.4(a)(2), (4), (5). The record supports the Immigration Judge's determination that the respondent failed to establish by clear and convincing evidence that **[his/her]** asylum application was filed within 1 year of the date of **[his/her]** arrival in the United States (I.J. at ___). The respondent has also not shown that extraordinary or changed circumstances existed which would excuse the delay. *Id.*

Standard of Review

Standard of Review: General

Under 8 C.F.R. § 1003.1(d)(3), the Board defers to the factual findings of an Immigration Judge, unless they are clearly erroneous, but it retains independent judgment and discretion, subject to applicable governing standards, regarding pure questions of law and the application of a particular standard of law to those facts. *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

-OR-

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(i), (ii).

Standard of Review: Asylum

The Immigration Judge's findings of fact, including an adverse credibility finding, will not be overturned unless clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i).

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). The Board reviews questions of law, discretion, and judgment

and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. §1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

In determining whether established facts are sufficient to meet a legal standard, such as well-founded fear, the Board has the authority to weigh the evidence in a manner different from that accorded by the Immigration Judge, or to conclude that the foundation for the Immigration Judge's legal conclusions was insufficient or otherwise not supported by the evidence of record. *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008); *see* 8 C.F.R. § 1003.1(d)(3)(ii).

These incidents, considered cumulatively, do not rise to the level of persecution as contemplated by the Immigration and Nationality Act. *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998); *see also Matter of L-K-*, 23 I&N Dec. 677 (BIA 2004). **[*Not*–"*even* when considered cumulatively" or "whether considered individually or cumulatively"]**

Standard of Review: CAT

The Board of Immigration Appeals reviews de novo an Immigration Judge's prediction or finding regarding the likelihood that an alien will be tortured, because it relates to whether the ultimate statutory requirement for establishing eligibility for relief from removal has been met and is therefore a mixed question of law and fact, or a question of judgment. *Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008).

Standard of Review: Non-L.P.R. Cancellation of Removal

Pursuant to 8 C.F.R. § 1003.1(d)(3)(ii), we review de novo the Immigration Judge's determination of whether it has been established that the respondent's removal will result in exceptional and extremely unusual hardship to any of **[his/her]** qualifying relatives. *See* section 240A(b)(1)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1)(D).

Standard of Review: Criminal

Pursuant to 8 C.F.R. § 1003.1(d)(3)(ii), we review de novo the Immigration Judge's legal determination as to whether the respondent was convicted of an aggravated felony.

REAL ID Act

[NOTE: Please do *not* use general language such as "the REAL ID Act changed the standards for adjudicating asylum claims." This is too broad of a statement, is unnecessary, and not entirely accurate; the "change" is greater in some circuits than in others. In the course of discussing the REAL ID standards, you can and should note any specific changes wrought by that Act that are relevant to the case, with citation to the specific provisions of the Immigration and Nationality Act, 8 U.S.C. § as amended. But save that for the specific discussion of your case–do not include it as part of a generic description of the REAL ID Act.]

[NOTE: Go ahead and use these new samples now. We no longer need to use the full citation to the REAL ID Act – that is contained in *Matter of S-B-*]:

"The respondent submitted his asylum application on **[date]**. Since the application was filed on or after May 11, 2005, it is governed by the provisions of the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). Hence, the amendments made by the REAL ID Act to section 208(b)(1)(B) of the Immigration and Nationality Act apply to this case."

Because the asylum application was filed on **[date: on or after May 11, 2005,]** it is subject to the provisions of the REAL ID Act of 2005.

Because the asylum application was filed prior to May 11, 2005, it is not subject to the REAL ID Act of 2005.

In order to qualify for asylum or withholding of removal under the REAL ID Act, "the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant." *See* section 208(b)(1)(B)(i) of the Act, 8 U.S.C. § 1158(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).

Pursuant to the REAL ID Act, the testimony of an applicant may be sufficient to sustain the applicant's burden without corroboration, but only if such applicant satisfies the Immigration Judge that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. Section 208(b)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(ii).

In determining whether the applicant has met his or her burden, the Immigration Judge may weigh the credible testimony along with other evidence of record. Section 208(b)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(ii).

Where the Immigration Judge determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence. Section 208(b)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(ii).

Pursuant to the REAL ID Act, an Immigration Judge may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the account, and the consistency of the evidence, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. Section 208(b)(1)(B)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(iii).

There is no presumption of credibility; however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal. Section 208(b)(1)(B)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(iii).

Asylum, Compared to Withholding of Removal

Inasmuch as the respondent has not met his burden of showing past persecution or a well-founded fear of persecution as required for asylum, it follows that he has also failed to satisfy the higher standard of a clear probability of persecution as required for withholding of removal. *See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *INS v. Stevic*, 467 U.S. 407 (1984).

CAT

The respondent has not established eligibility for protection under the Convention Against Torture because **[he/she]** has failed to show that **[he/she]** is "more likely than not" to be tortured in **[his/her]** country, by or with the acquiescence (to include the concept of willful blindness) of a government official upon return. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). **[ADDITIONAL LANGUAGE FOR CIRCUITS REQUIRING SEPARATE CAT ANALYSIS-** The record does not contain independent evidence that would support the respondent's CAT claim when considered without regard to **[his/her]** testimony that was properly found not credible.] **[ADDITIONAL LANGUAGE FOR GANG CASES-** The record does not indicate that a public official from _____ would likely acquiesce in or exhibit willful blindness toward any torture inflicted by _____.]

VIDEO CONFERENCE CASES

Proceedings before the Immigration Judge in this matter were completed in [**hearing location where case is docketed, see OPPM No. 04-06**] through video conference pursuant to section 240(b)(2)(A)(iii) of the Act.

NON-LAWFUL PERMANENT RESIDENT CANCELLATION OF REMOVAL

Reference to Cumulative hardship

We find that, considered cumulatively, the hardship to any one of the respondent's qualifying relative(s) does not rise to the level of exceptional and extremely unusual hardship. **[NOT- "even when considered cumulatively" or "whether considered individually or cumulatively"]**

Remands for failure to consider all factors relating to E.E.U.H.

[This is a 2d Circuit example, but other circuits are remanding as well, and we need to watch for this error in all cases]:

(b) (5)

[redacted]

Remand for Failure to Consider Effect of Mixed Nationality Parents

We note, as did the Immigration Judge, that the analysis regarding hardship to qualifying relative children of respondent parents who are not citizens of the same country differs in nature from the analysis in our precedent cases, where the parents were either single or from the same country as their spouses. Despite noting these "distinguishing factors," as well as the fact that the respondents are from El Salvador and Guatemala, the Immigration Judge's decision did not go on to evaluate the hardship which would result for United States children if their parents were removed to two different countries. Thus, we are unable to fully review the decision below until the effect of splitting this family in two is factored into the cumulative hardship analysis. As the record stands at this point,

the children would accompany a parent to either El Salvador or Guatemala and would thereafter live as a fractured immediate family unit. This type of hardship is not the usual hardship faced by a family unit forced to choose partially remaining in the United States or all returning to a home country as a single unit. On remand, the parties should be encouraged to submit any evidence relating to the possibility for the family unit to avoid separation (i.e. evidence regarding the ability of either spouse to lawfully immigrate to the other's country) as well as any updates on the country conditions in El Salvador and Guatemala and the current health and educational situations of the qualifying relatives.

Appendix 3
Board of Immigration Appeals
Panel 3 Guidelines for Preparation of Orders
Quick Tips on Order Drafting (based on a document by Carolyn Elliot)
Updated November 2009

Citations

Citation order:
Generally, cite statutes first, then cases (circuit cases before Board cases), and then the regulations. Also, put citations of the same type in *reverse* chronological order. *See* Blue Book Rule 1.4.

Citing inclusive page numbers:
When citing inclusive page numbers, use only two digits after the dash. *Example*: 24 I&N Dec. 350, 356-57. Note that the Blue Book Rule 3.2, which is followed, differs from the Government Printing Manual ("GPM") on this practice.

Using "citing" and "quoting":
Remember that "(citing)" and "(quoting)" should appear in parentheses and are *not* italicized. Do not use "citing" when you are quoting an authority. *See* Blue Book Rule 10.6.2.

Separating citations:
Citations within a text of a sentence can be separated with "and," but only use semicolons to separate citations within the same signal in a citation sentence. When "see also" follows another citation, use a semi-colon (not a period) and do not capitalize it. However, when "*But see*" and "*See generally*" follow another citation, use a period and capitalize them, because they are in different citation sentences. *See* Blue Book Rule 1.2. When "cert. denied" follows a citation, use a comma, not a semicolon.

Commas with "See generally" in a citation:
Do not include a comma between the words, i.e., "*See generally*" – not "*See, generally*".

"Cf." versus "compare":
Use *cf.* to indicate a citation that supports a different, but analogous proposition from the main proposition. Use *Compare . . . with* when a comparison of two or more authorities will offer support for or illustrate the proposition. *See* Blue Book Rule 1.2.

Citing Attorney General decisions:
When citing a decision that includes an Attorney General decision at the same citation (i.e., prior to volume 23), the dates of all decisions should be included in the citation, regardless of which decision contains the point for which you are citing it. *Example*: *Matter of N-J-B-*, 22 I&N Dec. 1057 (BIA 1997; A.G. 1997, 1999).

Citing multiple subsections of the Act:
When citing multiple subsection of the same section, do not repeat any subsections that they all have in common. *Example*: 212(a)(2)(A)(i), (2)(B), (3)(A).

Citing 8 U.S.C. sections:
Do not repeat an 8 U.S.C. citation if the same section has been cited before, even if the subsection is different. But remember to add the Code citation the first time a section of the Act is cited.

Citing Federal Register pages:
Use a comma with a Federal Register citation that is longer than four figures.
Examples: 42 Fed. Reg. 3682; 42 Fed. Reg. 12,487.

Citing State statutes:
Always spell out State statutes in text, but not in citations. *Example - text*: section 4(a) of the California Penal Code; *citation*: Cal. Penal Code § 4(a) (2009).

Use of participles with descriptive parentheticals:
When using a parenthetical after a citation, either start that parenthetical with a present participle and the word "that," or use an express quotation. *See* Blue Book Rule B11.
Examples: (finding that the respondent is removable); ("We hold that we lack jurisdiction.").

Capitals and abbreviations

Capitalizing "Court of Appeals":
Capitalize "Court of Appeals" only when it appears as part of the name of a court. *Example*: "United States Court of Appeals for the Ninth Circuit " vs. "court of appeals." *See* Blue Book Rule 8.

Capitalizing governments:
Generally, "Federal" and "State" should be capitalized. Also capitalize "Government" when referring to the Government of the United States or another nation. *Example*: The French Government. *See* GPM Rule 3.19 and ch. 4.

Abbreviation of references:
You only need to add an abbreviation to a reference such as the IIRIRA or the DHS in parentheses if it is repeated elsewhere in the decision. Always use quotation marks when abbreviating a reference in parentheses. *Example*: ("IIRIRA") or ("FGM").

Abbreviation to ("the Act"):
Given that the Act is the staple statute of the Board, do not add a parenthetical identifying it as "the Act." *Not*: Immigration and Nationality Act ("the Act").

Spelling, punctuation, and format

The country formerly referred to as "the Ukraine" is now known only as "Ukraine."

The country is "Colombia," the university is "Columbia."

inadmissible (not inadmissable).

indiscernible and discernible (not indiscernable and discernable).

supersede (not supercede).

threshold (not threshhold).

Hyphenation:
Hyphenate words which are combined to form a unit modifier. *Examples*: a 13-year-old person, well-founded fear. But do not use a hyphen if the word is used as a predicate adjective (i.e. if it follows a "to be" verb) when the second element is a present or past participle. *Example*: "it is well established" vs. "he has a well-founded fear." *See* GPM. ch. 6 and 7.

Comma with one subject and two verbs:
When you have one subject and two verbs, either do *not* use a comma between the verbs or add a subject to the second verb. *Example*: "He went to the store and bought food." or "He went to the store, and he bought food." *Not*: "He went to the store, and bought food."

Punctuation marks with quotation marks:
Periods and commas go inside quotation marks. Semicolons and question marks generally go outside quotation marks. *See* GPM Rule 8.141.

Italicizing commonly used Latin words and phrases:
Generally, Latin words and phrases are *not* in italics because they are presumed to be in common English usage in legal writing. *Examples*: Do not italicize "de novo," "inter alia" or "sua sponte." However, long phrases that are not common should be italicized. *See* Blue Book Rule 7.

Italicizing citation signals:
Citation signals, like *see* and *cf.*, should be italicized, unless they are used as the verb of a textual sentence. *See* Blue Book Rule 1.2(e).

Italicizing commas:
Be careful not to italicize the commas used after a case name or used after "*supra*."

Use of apostrophes:
Use apostrophes to show the possessive case. *See* GPM ch. 8. *Examples*: a year's time; a sentence of 5 years' imprisonment; Congress' (pursuant to a recent change made by the 2008 edition of the GPM).

Footnote numbers:
Unless there is a need to footnote something inside a sentence, the footnote number should always fall outside the sentence. The footnote number should therefore be placed after the period. Example: "was issued."[1] Not "was issued.[1]"

Numbers:
Spell out numbers under 10, except for time, measurement, and money. *Examples*: three siblings; 2 years; the 3-year-old child and his two grandparents. *See* GPM ch. 12 for rules on numbers, including use of several numbers in a sentence.

Word choice, usage, grammar

Nationals of El Salvador are "Salvadorans" (***not*** "El Salvadorans").

If an I.J. did not commit any error, say "the Immigration Judge did not err" (not "did not error").

". . .the Department of Homeland Security ("DHS") . . ." is sufficient. You longer need to include the language, "formerly the Immigration and Naturalization Service," unless there's some reason you need to make that distinction.

Outside the United States (not outside *of* the United States). We say "inside the United States"–so the same goes for "outside."

Watch redundant phrases: "same" (not "exact same"); "This issue" (not "this exact issue"); "The respondent was. . ." (*Avoid where possible:* "We note that the respondent was . . ." *and* "We find that the respondent . . . .")

"Affect" vs. "effect":
"Affect" is generally used as a verb meaning "to have an influence on." When used as a noun, "affect" loosely means "emotion." "Effect" is generally used as a noun meaning "result" or "consequence." When used as a verb, "effect" loosely means "to create."

"Which" vs. "that":
"Which" is used with a restrictive/nonessential clause and follows a comma. In contrast, "that" is used to introduce restrictive/essential clauses, and no comma is used. *Examples*: "This hat, *which* cost $5, is my favorite." "This is a hat *that* goes well with everything."

Convictions vs. crimes:
A person is convicted "of" an offense, or a person has a conviction "for" an offense. A conviction is not a crime involving moral turpitude or an aggravated felony. Rather, it is a conviction *for* a crime involving moral turpitude or an aggravated felony. In other words, the offense, not the conviction, is the crime.

Transitional words like "however" and "therefore":
Must be preceded by a period (or a semicolon) when they start a new thought. (E.g., "He was convicted of a drug possession crime; however, under our case law he is not an aggravated felon.") ("There is no presumption of credibility for an applicant at the hearing before the Immigration Judge; however, if no adverse credibility determination is explicitly made, the applicant shall have a rebuttable presumption of credibility on appeal.") →

Can be surrounded by commas only when qualifying a preceding thought (e.g. "Despite his best efforts, however, the respondent was unable to make contact with his attorney prior to the hearing.")

Quotations

Emphasis in a quotation:
Do not use "(emphasis in original)." If you are quoting, you highlight only what has been changed, not what has been left alone. Note emphasized language only when you, as the author, are adding emphasis. *See* Blue Book Rule 5.2.

Use of ellipses for an omitted citation:
Do not use ellipses when omitting a citation or footnote in a quotation; instead, follow the quotation with "(citation omitted)" or "(footnote omitted)." Also, do not indicate the omission of a citation or footnote number that follows the last word quoted. *See* Blue Book Rules 5.2 and 5.3.

Quotes within a quote:
Quotes within a quote should be "nested," and the quoted cases should be cited. *See* Blue Book Rules 5 and 10.6.2.

Board of Immigration Appeals

Case Management Plan

September 2002

Chapter 7: Board Member Review

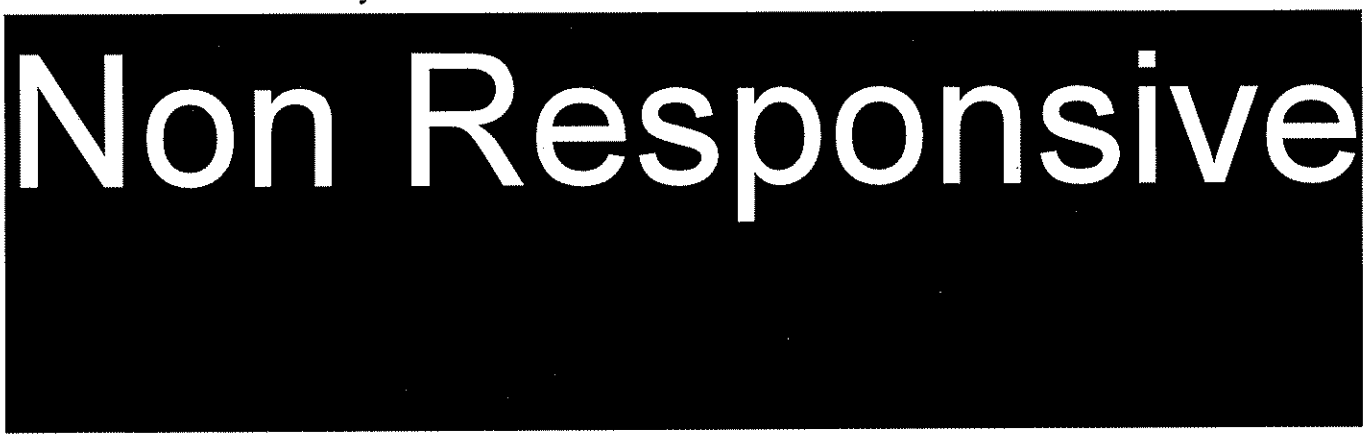
7.1 Process Overview

(a) ***Objective.*** — To provide an efficient system for Board Members to conduct a timely and accurate review of the record of proceeding and draft decision proposed by the attorney, request any needed revisions and adjudicate the case.

(b) ***Screening for Case Type .*** — The Board Members review cases circulated by the attorneys to determine whether the case can be adjudicated as a One Board Member order or whether it must be submitted for Three Board Member review. Under the regulation, most cases should fit the One Board Member criteria.

(i) Prior to circulation, attorneys and support staff check the BIAP system to determine if any correspondence regarding the case appeal or motion has been submitted to the Board since the Notice of Appeal (NOA), has been matched with the ROP.

(c) ***Criteria for Three Board Member Review.*** — Cases are referred for Three Board Member review only if the case relates to at least one of these circumstances:



7.2 Board Member Review

(a) ***One Board Member Orders.*** — If a case is circulated to the Board Member as a One Board Member order, the Board Member determines whether the case will be (i) signed as a One Board Member order; (ii) revised as a One Board Member order; or (iii) referred for Three Board Member review.

(i) If the order proposed for One Board Member review is accepted by the Board Member, the decision may be signed as is, or returned to the staff attorney for needed revisions.

(ii) Properly prepared or revised orders are signed and forwarded to the Clerk's

Office docket unit or auxiliary docket unit for copies, final date entry, and out-processing.

(iii) If the order proposed for One Board Member review is not appropriate for adjudication by one Board Member, the Board Member may refer the case for Three Board Member review by attaching and completing the Three Board Member referral sheet and forwarding the case to administrative staff (the Board Member Secretary or Supervisory Legal Assistant or Management Assistant) for further processing.

(b) ***Three Board Member Orders.*** — If a case is circulated to a Panel of Board Members as a Three Board Member order, then:

(i) If the case fits within the Three Board Member criteria, the Board Member will forward the case to the other two panel members for review.

(ii) If the initial Board Member determines that the case can be signed as a One Board Member order, the Board Member may sign the order and further circulation is not required. Board members are encouraged in this event to consult fellow Panel Members in order to maintain consistent practice.

Chapter 2: Board Panel Structure

2.1 Organization

(a) ***Panels.*** — The Board's adjudicative function will continue to be organized around a Board panel structure. The Board's Chairman assigns Board Members to panels, consisting of at least 3 members. In accordance with the BIA Reform regulation, the Chairman designates a screening panel comprising a sufficient number of Board Members to adjudicate appeals in accordance with 8 C.F.R. §1003.1 of the BIA Reform Regulation.

(b) ***Presiding Member.*** — Each panel has a Presiding Member appointed by the Chairman. It will continue to be the responsibility of the Presiding Member to:

(1) schedule conferences of the panel members and oral arguments,
(2) coordinate with the Senior Panel Attorney to ensure that the staff meets the panel members' needs,
(3) coordinate issues of inter-panel concern with other Presiding Members,
(4) arrange for substitute panel members during absences, as permitted by the Chairman, and
(5) notify the Chairman of any problems or issues requiring attention, particularly those issues that might be of concern to the Chairman, the en banc Board, or the Director.

(c) ***Staffing.*** — The Chairman has assigned staff to each panel to support the needs of the panel members within the priorities established by the Chairman. Staff may include attorney advisors, management assistants, paralegals, supervisory legal technicians and legal technicians.

(d) ***Supervision.*** — A Senior Panel Attorney who reports to the Chairman supervises each panel staff, including the screening panel. One or more Team Leaders assist the Senior Panel Attorney and provide first line supervision of the attorney staff. All requests for staff assistance by panel members beyond normal case preparation are made through the Senior Panel Attorney.

(e) ***Staff Attorneys.*** — In keeping with the provisions of the regulations, the staff attorneys prepare cases for circulation to their respective panels. For One Board Member review See 8 C.F.R. §1003.1 (e)(4) or (e)(5); for review by Three Board Panel Members See 8 C.F.R. §1003.1 (e)(6).

2.2 Managing the Panel Structure

(a) ***Objective.*** — To revise the Board's panel structure to conform to the BIA Reform regulation and retain enough flexibility to ensure prompt adjudication of case appeals and maintain proper issuance of precedent decisions. This will require differing panel arrangements for different phases of the transition.

(b) ***Panel Structure - Pre September 25, 2002.*** — Prior to September 25, 2002, the Board implemented a series of initiatives by which all panels were issuing streamlined, automated orders under an organizational structure of six panels plus a jurisdiction panel.

(i) ***Panels 1 and 6.*** — Panels 1 and 6, the streamlining panels, focused on automated orders and also completed short Three Board Member decisions under the original streamlining regulation.

(ii) ***Panels 2, 3 and 4.*** — Panels 2, 3 and 4, the merits panels, prepared both automated orders and a wide variety of Three Board Member decisions under the former regulation.

(iii) ***Panel 5 and the Jurisdiction Panel.*** — Panel 5, the training panel for new attorneys at the Board, also completed a mix of automated and Three Board Member orders. The jurisdiction panel handled all jurisdictional issues, both routine and complex.

(c) ***Panel Structure - Phase I. The First 90 Days.*** —The panels will remain as above in the early stages of the new regulation's implementation. However, five panels and the jurisdiction panel will function as auxiliary screening panels for the legacy cases during at least the first 90 days, completing primarily automated and short, tailored orders for One Board Member review.

(d) ***Panel Structure - Phase II. The 120-Day Period to April 23.*** — With the backlog fully screened, the Board will return the "auxiliary screening" panels 2, 3 and 4 to their original merits panel functions.

(i) **3 Merits Panels.** These panels will complete any One Board Member legacy cases that required the Chairman's 120-day extension, as well as those cases referred for Three Board Member review during the first 90 days.

(ii) **Screening Panel.** The screening panel will screen all newly ready cases and will complete them as automated or other One Board Member orders, or refer them to the merits panel for Three Board Member review. The screening panel will continue to refer Three Board Member detained cases to Panel 2 for completion on an expedited basis.

(e) **Panel Structure, Phases III, IV and V: Restructuring.** — At such time as adjudicative resources require, the Board will be restructured from its six panel configuration to three panels. One panel of three to five Board Members will serve on a screening panel to screen the newly ready cases and adjudicate One Board Member cases, and two panels will adjudicate more time-consuming cases, including 3-Board Member referrals.

(i) ***Attorney Staffing and Flexibility.*** — This arrangement suggests three teams of attorneys per panel. The Board anticipates that staff would generally have an opportunity to change from merits panels to the screening panel or vice-versa at regular intervals to be determined. Much about restructuring phase remains undetermined, and its effect on

Board of Immigration Appeals
Panel 2
Guidelines for Preparation of Orders

The Board Members on Panel 2 deeply appreciate the work of the entire team of attorneys and managers who enable us to resolve the large and increasingly complex caseload assigned to us. The past two years have particularly challenged us: we have assumed responsibility for a much higher number of "Rush" cases involving criminal grounds of deportation, precisely at a time when Circuit Court case law on the subject has become more voluminous and more exacting. In addition, we have taken on new issues such as the applicability of the REAL ID Act. Finally, we have seen some months with significant increases in overall case load. Your hard work has made it possible for us to stay on top of these new legal developments as well as to stay current with the case load.

The new Panel Members particularly appreciate the efforts of the panel as they have adjusted to their new positions. As a result of the new panel configuration and the complex nature of our caseload, and in anticipation of further regulatory changes that may affect the drafting of Board decisions, the panel has determined that circulating some specific guidelines for the preparation of orders would be useful. We also hope these guidelines will help reduce the need for greenslips and other corrections to draft orders, thus giving us all more time to concentrate on pending cases.

We also intend these guidelines to assist all of us in meeting the standards highlighted in our recently completed Departmental professional responsibility training. .

The guidelines we decided upon reflect the "best practices" drawn from the current work of the panel. Most of the guidelines pertain to the drafting of orders, and are intended to reflect the ongoing changes in Board practice, away from the use of summary orders, and to reflect the complex nature of the docket that is assigned to our panel. However, it is critical note that we are not asking for a return to the "old" form of Board decisions, multiple pages in length, presenting a virtually *de novo* decision in the case. Our task is to address the dispositive issues raised on appeal in a clear and concise manner.

Please review these Guidelines carefully, both in preparing future orders, and in revising any "stock language" or templates that are sometimes used to draft orders.

Preliminary Matters

Review of Files:

Non Responsive

Non Responsive

Circulation Sheets:

Circulation sheets should include a brief indication of the issue(s) in the case, the Immigration Judge's disposition, the proposed disposition in the draft Order, and a very brief indication of the reasons for the proposed disposition. While it is not necessary that they be typed, please try to make them (and your initials) legible.

Examples:

#1: Asylum/WR. Colombia. ACF and no PP/WFF findings. REAL ID. ACF weak, but IJ correct on lack of corroboration. Threats only; no physical harm, so no PP. WFF undermined by safety of similarly-situated relatives still living in COL.

#2: Sec. 245 A/S. Fraud inadmissibility issue; IJ denied 212(i) waiver in discretion. IJ seems incorrect on R's level of culpability and continuing nature of fraud. R not entirely sympathetic due to fraud and other immigration history, but no criminal record, and E.H. factors are strong. Recommend reversal and BCR grant/remand.

Sometimes, you will need to write a bit more. A typed sheet attached to the circulation sheet would be appropriate in such circumstances, or you can use the space on the 3-member referral sheet in cases where that is used. Please leave some space on the front the circulation for Board Member comments.

If a case is sent back on a green slip and the result of the case changes, a new circulation sheet should be prepared reflecting the contents of the new proposed order, with the correct codes on the reverse.

In cases where an issue is close and you have made what you believe is a "judgment call" on an issue of removability, credibility, discretion, or other dispositive issue, it is helpful to include a brief, separate statement of the factors on each side of the question, and what led you to make that call. Most often, it is not necessary to include that kind of explanation in the order itself – such passages tend to clutter the decisions and make them seem less confident in tone. (We are referring here to a "personal assessment," not to the required "balancing of the equities" that must be included if we are making a de novo determination on matter of discretion.)

Please do *not* submit cases with circulation sheets that are blank, or simply state "See Draft" or words to that effect. Information on the circulation sheets is critical for Board Member screening of the hundreds of files that cycle through our offices each week.

Beginning of Orders

Beginning of Orders – Appeals:

The first paragraph of all orders involving appeals from the decision of an Immigration Judge should, in succinct fashion, identify the party that has filed the appeal, state the disposition of the case before the Immigration Judge (including identifying the forms of relief granted or denied), and state whether the appeal is sustained, dismissed, remanded, or sustained in part and remanded.

Examples (please follow):

"The Department of Homeland Security appeals from the decision of the Immigration Judge, dated [ ], finding the respondent removable, pretermitting the respondent's asylum application as untimely, and granting the respondent's application for withholding of removal. [Cite pertinent statutes and regulations.] The appeal will be sustained in part and the record remanded."

OR

"The respondent has appealed from the decision of the Immigration Judge dated [ ], finding him removable as charged for having been convicted of an aggravated felony, namely, a crime of violence, and for having been convicted of a crime involving moral turpitude. [Cite relevant provisions of Act]. The appeal will be dismissed."

Note that this example does not attempt to summarize the rationale of the IJ decision. Often, that gets protracted and unwieldy, so is best left to the substantive discussion in the order.

If the case has a lengthy procedural history, avoid trying to summarize that history in the first paragraph. Leave that for a subsequent paragraph that may either immediately follow the first paragraph, or be included in your discussion and analysis of the issues on appeal.

The second paragraph of the Order should concisely set forth the standard of review to be applied in the case. This can be done in two sentences with appropriate brief citations to the regulations and, if appropriate, BIA precedent. Please use this format.

"We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. [Cite]. We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. [Cite applicable regulations and BIA precedent].

The issue of standard of review is critically important. The Chairman recently brought to our attention some draft orders from this panel stating that we did not find the Immigration Judge's conclusions on the issue of burden of proof to be "clearly erroneous." As noted above, this is not the standard. Putting the correct standard into each order should prevent this.

Beginning of Orders – Motions:

While the number of Motions cases should diminish significantly, we will retain some of that caseload. The first paragraph of an order addressing a motion should, like one addressing an appeal, be succinct and state precisely what is before the Board:

Example (please follow):

"The respondent has filed a motion to reopen the Board's decision of July 7, 2008, which affirmed the July 10, 2007, decision of the Immigration Judge and denied the respondent's motion to remand in order to apply for adjustment of status. The motion is granted and the record remanded to the Immigration Judge."

Note what this paragraph does *not* do. It does not address the issue of timeliness. It also does not attempt to summarize the substance of either the IJ or BIA prior decisions. It also does not repeat the procedural history of the case. It does, however, state the essential procedural history of the case, and states the disposition of the motion.

The subsequent paragraph should touch on these issues, as needed.

If a motion is untimely or number-barred, the motion should be denied on that basis, unless there is a compelling legal (e.g., equitable tolling) or factual (e.g., misdirection of an IJ or BIA decision) reason not to do so. If the motion is untimely or number-barred, that should be noted in the first sentence of the second paragraph of the order, and any questions regarding exceptions or waiver to the rule should be addressed.

Examples:

"The motion, which was filed on November 10, 2008, is untimely. [Cite Act and regulation – no need to calculate dates]. The respondent contends that this time limit should be waived because the decision of the Board was erroneously addressed to the respondent's former address, as opposed to the address he submitted in a change of address filed with the Board on July 8, 2008. It is apparent that this change of address form was not associated with the record prior to the issuance of our decision. Accordingly, we will exercise our *sua sponte* authority to waive the time limit for the filing of the motion, and will address the motion on its merits."

OR

"The motion, which was filed on November 10, 2008, is untimely. [Cites]. The respondent contends that the time limit should not apply because his motion is based on evidence of changed country conditions in Albania since the time of his hearing before the Immigration Judge. [Cite Act and regulation on the CCC exception] However, the evidence submitted by the respondent pre-dates the hearing in Immigration Court, and the respondent has offered no explanation for why this

evidence was not discovered or presented at that hearing. Accordingly, the exception for changed conditions does not apply, and the respondent's application is thus untimely."

With both of these examples, there may be a need for further explanation – particularly in the second example. The language suggested here is not intended to foreclose that further discussion, but simply to suggest a uniform and succinct way for an order to capture the essential issues.

Beginning of Orders – Circuit Court Remands and Routine Matters

Among other matters we occasionally address are "lost alien," moot appeals, and circuit court remands. For the first two, there is stock language available from the Board's list of former automatic orders that should be used.

For circuit court remands, please use from among the following examples in drafting your first paragraph. Remember, do not try to pack in too much information – procedural history and, in particular, the rationale for any previous dispositions in the case, should follow in subsequent paragraphs:

FROM CIRCUIT COURT DECISION GRANTING A PETITION FOR REVIEW:

"This case is presently before us pursuant to a September 19, 2008, decision of the United States Court of Appeals for the Ninth Circuit, granting the respondent's petition for review from the Board's decision of March 5, 2006, and remanding for further proceedings. In light of the Ninth Circuit's decision, we find the respondent eligible for asylum and remand the record to the Immigration Court for completion of background checks."

"On June 29, 2006, the United States Court of Appeals for the Second Circuit granted a petition for review, vacated our November 5, 2003, decision, and remanded the record to this Board. In light of the Second Circuit's decision, the government has requested that the record be remanded to the Immigration Judge for an update of the security and background checks and for a possible grant of asylum. The record will be remanded to the Immigration Judge for further proceedings."

FROM CIRCUIT COURT DECISION GRANTING A MOTION TO REMAND –

USE THIS:

"This case is presently before us pursuant to an order of the United States Court of Appeals for the Third Circuit granting the Government's unopposed motion to remand for further consideration of the respondent's applications for asylum and withholding of removal. In a decision dated May 11, 2004, we had affirmed the decision of the Immigration Judge denying those applications for relief. The record will be remanded to the Immigration Judge for further proceedings."

NOT THIS:

"This matter was last before us on May 11, 2004, when we affirmed the Immigration Judge's decision dated January 22, 2003, finding the respondent removable as charged and denying her application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act (Act), 8 U.S.C. §§ 1158, 1231(b)(3), as well as her application for withholding of removal under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c), 1208.18. The respondent sought review of our order by the United States Court of Appeals for the Third Circuit (the Court). In an Order granting the respondent's Unopposed Motion to Remand dated January 28, 2005, the Court remanded the matter to the Board for further consideration of the respondent's application for asylum and withholding of removal. The record will be remanded to the Immigration Judge for further proceedings."

The second is a classic example of trying to pack too much information, much of it unnecessary, into a single sentence and paragraph.

FROM CIRCUIT COURT DECISION REMANDING AN ISSUE FOR BOARD TO ADDRESS:

On May 17, 2007, the United States Court of Appeals for the Ninth Circuit remanded this case to the Board for a decision concerning the respondent's claim that his right to counsel was violated before the Immigration Judge. Upon remand, we find that the respondent's right to counsel was not violated. Thus, the respondent's appeal is dismissed.

FROM CIRCUIT COURT REVERSAL; BOARD NOW TERMINATING PROCEEDINGS:

This case was last before us on April 28, 2004, when we denied the respondent's motion to reopen in which he contended that his conviction had been vacated and no longer supported the charge of removability. In an order dated June 6, 2007, the United States Circuit Court of Appeals for the Ninth Circuit found that the Board erred in finding that the respondent's conviction remained valid for immigration purposes and remanded the record to the Board. We vacate our April 28, 2004, decision and grant the respondent's motion to reopen. As the sole charge of removability in the Notice to Appear (Exh. 1) was based on the respondent's now vacated conviction, there is no factual basis to support the charge of removability. Therefore, the instant removal proceedings against the respondent are terminated.

Body of Orders

The "body" of our decisions should strive to communicate, as precisely as possible, the Board's decision on the dispositive issues raised by the parties on appeal, and the reasons for that decision. In general, we need address only those issues that are necessary for the correct disposition of the appeal. However, exercise sound judgment in light of the record, the decision below, and applicable circuit court case law in deciding which issues to address. In some cases, "alternate" findings are clearly called for. (For example, addressing an IJ's adverse credibility finding as well as her alternate findings on past persecution and nexus.)

Precision

Precision is best achieved by taking on one issue at a time, resolving that issue, and then moving on to the next issue, each in a separate paragraph. Sometimes an issue will take more than one paragraph. If a paragraph gets up to 10 lines, it is probably time to start a new one.

A clear statement of the issue at the outset of the paragraph, usually in the form of stating the argument of the party making it, is usually the best option. This can take two forms, depending on the complexity of the issue. For example, a straightforward argument might be addressed with this beginning:

"We reject the respondent's argument that, because the statute of conviction does not require as an element the use of "violent" force, his conviction cannot be classified as a "crime of violence" under section 101(a)(43)(F) of the Act." [Then explain that "violent" force rule is limited to Seventh Circuit and does not apply in this Eighth Circuit case.]

A more complex argument might require the following:

"The DHS argues that the Immigration Judge's credibility determination was clearly erroneous because it gave insufficient weight to the discrepancies between his asylum application and his testimony regarding the length of his alleged detention, and particularly because it failed to consider that the respondent surreptitiously used an index card tucked in his sleeve to refresh his memory on critical events. While these are critical factors, we conclude that under the totality of the circumstances, the Immigration Judge's credibility finding was not clearly erroneous." [Then discuss the factors that, notwithstanding these problems, support the IJ's finding.]

In the latter case, the complexity of the argument requires that it be set forth in a sentence separate from that indicating the Board's disposition of the argument.

It is sufficient in addressing an issue to indicate that we have considered the argument made by the party against whom we are ruling, and briefly stating why we disagree. It is almost never necessary nor appropriate to treat an argument in a dismissive or pejorative fashion. If the Board Member(s) believes that an argument is frivolous or abusive, the Board Member can pen in an edit to that effect. As a general rule, leave all editorializing of this sort out of orders.

"*Burbano*" Language

Except in rare circumstances – explained below under "Summary Orders" – orders should not begin with the "We adopt and affirm . . ." template that has commonly been used on the Panel. We recognize that this is a significant change. However, the complexity of the cases now commonly presented to the Panel, coupled with proposed regulations that seek to reduce the number of "summary" decisions at the Board, make this change appropriate. In addition, most so-called "*Burbano*" orders go on at significant length to address specific issues raised on appeal. Thus, commencing an order with the *Burbano* language is an anachronism.

Burbano language *can* and *should* be included in orders where it is appropriate to do so. For example, if we are affirming the decision of the Immigration Judge in all or most respects, it is fine to begin the third paragraph of the order with the "we adopt and affirm . . . " language. However, it is not necessary (or preferred) to include the lengthy parenthetical quoting from *Burbano*.

In using the "we adopt and affirm" language, avoid locutions such as "we adopt and affirm the decision of the Immigration Judge *insofar as* she [held/found]" or "we adopt and affirm . . . *to the extent that* . . . " These types of qualifiers instantly communicate a "yes, but" message that is unintentionally confusing.

Instead, if there are parts of the IJ Decision we agree with, and parts we do not, state that clearly, and up front.

"We conclude that the adverse credibility determination of the Immigration Judge cannot be affirmed under the "clearly erroneous" standard, but we agree with the Immigration Judge that, giving full credence to the respondent's testimony, she has not established that the harm she fears in South Africa would be *on account of a ground enumerated in the definition of 'refugee.'* [Cite] Thus, we adopt and affirm the decision of the Immigration Judge on the latter issue. [Cite Burbano].

Note in this example the italicized language. This is the more precise and thus more preferred way to refer to the "5 grounds" issue, as opposed to the "protected by the Act" or "protected under the Act" language that is most commonly used.

REAL ID Act

In cases involving applications for relief, it is generally preferred (at least for the next year or so) to indicate whether the application is subject to the provisions of the REAL ID Act. Please use the following language as guidance:

"The respondent submitted his asylum application on [date]. Since the application was filed on or after May 11, 2005, it is governed by the provisions of the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). Hence, the amendments made by the REAL ID Act to section 208(b)(1)(B) of the Immigration and Nationality Act apply to this case."

[Please do *not* include the full citation to the REAL ID Act – that is contained in *Matter of S-B-*. Also, please exclude general language such as "the REAL ID Act changed the standards for adjudicating asylum claims." This is not entirely accurate; the "change" is greater in some Circuits than in others. In the course of discussing the REAL ID standards, you can and should note any specific changes wrought by that Act that are relevant to the case, with citation to the specific provisions of the INA as amended. But save that for the specific discussion of your case – do not include it as part of a generic description of the REAL ID Act.]

Treatment of Facts

In general, avoid purely narrative descriptions/summaries of the facts of a case unless necessary to buttress the Board's legal analysis. We are not the finders of fact. Facts should generally be discussed in the context of stating the reasons for our decision:

"We conclude that the respondent's December 5, 1996, Florida conviction for Aggravated Assault Upon a Walt Disney Character is not a crime involving moral turpitude because the elements of the offense include a mere offensive touching of an exxagerated body part, such as Pinnochio's nose or Dumbo's ears."

"We conclude that the respondent's 4-day detention in Ruritania in 2001, during which the only available food was red beets and overcooked chicken ghoulash, does not constitute "past persecution" under the precedents of the Eleventh Circuit."

Both examples provide the facts, the decision, and the reason for the decision.

Be Succinct and Direct

Avoid cluttered writing. Sentences should be as brief as possible, and purged of unneeded and excess language. Among the things to avoid are "throat-clearers," such as:

"After [upon] a careful review of the record"	*This is presumed.*
"We note"	*Just say what it is.*
"We observe"	*Ditto.*
"We next consider whether the respondent is eligible"	*State whether or not R is eligible.*
"Are applicable to "	"*apply*"

Use of Authority

Statutory and case citations should be in conformance with the Blue Book and the Board Style Manual.

Please update older templates by replacing citations to older case law. The final two-hour presentation on Professional Responsibility for DOJ Attorneys highlighted the responsibility of Department attorneys to research and cite to the most recent and authoritative legal authority. Our decisions should reflect that this has been done.

Priority in citation should be given to the statutory provision, regulation, Board precedent or federal decision which provides the most authoritative support for the proposition stated. For example, on issues of timeliness in filing an asylum application or a motion, the first citation should be to the pertinent provision of the Immigration and Nationality Act. For an issue on which the Board has issued a clearly controlling precedent, such as whether a particular offense is an aggravated felony or CIMT, priority goes to the Board precedent.

Please cite to relevant Board and Circuit case law when making a determination such as affirming an adverse credibility determination or finding that an applicant for relief has not met the burden of proof.

Summary Orders

As we all know, the Board has curtailed use of summary affirmances. These "AWO " should generally be used only where there is no problem with the Immigration Judge's decision, and the arguments presented on appeal are non-existent or completely non-substantive.

The traditional *Burbano* order beginning with "We adopt and affirm the decision of the Immigration Judge" is an alternate approach to such cases, particularly where there is an ancillary matter than can be treated very briefly. One such matter would be the extension of voluntary departure.

Per Curiam

Technically, any single-member decision of the Board is a "per curiam" decision, in that it represents the decision of one judge as opposed to that of the entire Board. However, since the vast majority of Board decisions are now single-member, and virtually none of the cases on Panel 2 involve routine, administrative matters, use of the *Per Curiam* heading is no longer appropriate.

Thus, as a general rule, please cease using the "per curiam" language on Panel 2 decisions. Exceptions: Routine orders dismissing Interlocutory Appeals and *Matter of A-P-* orders remanding for the Immigration Judge to prepare a separate decision.

Supporting Materials

In general, any Federal circuit case law cited as dispositive of a contested issue (e.g., whether a state drug offense could be prosecuted as a federal felony, or whether a state offense is an aggravated felony or CIMT) should be copied and attached to the file. Exceptions would include widely-known decisions that have been cited in multiple cases for the same proposition. *Elias-Zacarias* is an obvious example. Published Board decisions do not need to be attached.

While the examples here relate to criminal issues, the same holds true for issues of asylum and other forms of relief. Newer case law that the order cites in order to *dispose* of an issue should be attached. There is no need to attach established Circuit case law setting forth general standards for assessing credibility or whether harm rises to the level of persecution. However, if the order relies to a great degree on a particular case for its reasoning or treatment of facts, err on the side of attaching it.

November 26, 2008

VISA PETITION OUTLINE
November 2009

1. JURISDICTIONAL ISSUES

A. Timeliness

An appeal from the decision of a DHS officer must be taken within 30 days of the service of the decision. 8 C.F.R. § 1003.3(a)(2).[1] DHS must give appeal instructions. Keep in mind that DHS often gives incorrect appeal instructions so check to make sure the petitioner was correctly instructed.

Generally, do not dismiss appeals as untimely if they are filed within 33 days. There is still an issue of whether a petitioner has 33 days to appeal because of the use of different language in the regulations concerning appeals of DHS decisions. 8 C.F.R. § 1003.2(a)(2) uses the word "service" of the decision which suggests 30 days plus service time.

The 30 days also applies to decision *revoking* the approval of visa petitions, although DHS may cite to 8 C.F.R. § 1205.2(d) which indicates there are 15 days to appeal a visa revocation. We believe this regulation is a throw back, and the regulations should be fixed to conform with 8 C.F.R. § 1003.2(a).

Make sure there is a date-stamp on the Notice of Appeal on which to base the untimeliness, and check the envelope or fed ex slip, as the NOA may not always be date-stamped on the same day. If the Notice of Appeal was initially timely filed but rejected, then properly resubmitted within 15 days or so of rejection, take as timely.

B. Beneficiary appeal

Only the petitioner may file an appeal. If the Notice of Appeal was signed by the beneficiary or by the beneficiary's attorney, we will not consider the appeal.

The Notice of Appeal is not signed by the petitioner. It is signed by the beneficiary/counsel, but it is not accompanied by a Notice of Entry of Appearance as Attorney or Representative before the Board, Form EOIR-27, indicating that counsel represents the petitioner, as required by 8 C.F.R §§ 1003.3(a)(2) and (a)(3). The regulations at 8 C.F.R. § 1003.3(a)(2) state that only the party affected by a decision is entitled to appeal to the Board. *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985); *Matter of DaBaase*, 16 I&N Dec. 720 (BIA 1979); *Matter of Kurys*,

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[1] This is true for Service decisions issued after September 25, 2002. Prior to that, there was no regulation specifically covering the timeliness of visa petitions, although there was a regulation covering the timeliness of visa *revocations* (15 days).

11 I&N Dec. 315 (BIA 1965). If it is not apparent from the record that the appeal was initiated by the petitioner or an authorized representative. Thus, the appeal has not been properly filed. 8 C.F.R. § 1292.4.

If the petitioner signed a G-28 or an affidavit as part of the appeal, or there is any other indication that the petitioner is the driving force in the appeal, do not dismiss as a beneficiary appeal. Among the factors you may consider is whether the beneficiary is a child abroad (not likely to be driving the appeal). Check to make sure our filing receipt was properly sent to counsel with the appropriate warnings. If counsel signed the Notice of Appeal, but you are not convinced this is a beneficiary appeal, treat the appeal as pro se and drop a footnote: "The Notice of Appeal was signed by an attorney, but no Notice of Entry of Appearance as Attorney (Form EOIR-27) was submitted indicating clearly that counsel represents the petitioner and not the beneficiary, who has no standing to appeal. Thus, we decline to recognize counsel as the attorney of record, but a courtesy copy of the Board's order in this case will be sent to the attorney."

C. Categories of visas over which we do not have jurisdiction (fiancee, orphan, labor) and relationships for which there are no visas (grandchild, daughter-in-law, nephew, married son of LPR)

The petitioner's appeal is dismissed as it does not fall within the Board's jurisdiction. *See* 8 C.F.R. §§ 1003.1(d)(2)(i)(F), (H). The petitioner's appeal concerns a Petition for Alien Fiancee (Form I-129F). However, the Board does not have jurisdiction over such nonimmigrant visa petitions. *See* 8 C.F.R. § 1003.1(b)(5).

Immediate relative petitions per section 201(b)(1)(B)(2)(A)(i) of the Act refer to the children (defined at section 101(b)(1) of the Act), spouses, and parents of a USC, except that, in the case of parents, the USC must be at least 21.

Preference petitions per section 203(a) of the Act refer to unmarried sons/daughters of USCs; spouses, children, and unmarried sons/daughters of LPRs; married sons/daughters of USCs; and brothers/sisters of USCs.

If the relationship is not one of these: There is no immediate relative or visa preference category under the immigration laws of this country for the relationship at issue here, i.e., the grandchild of a United States citizen.

Note that in many cases the petitioner has filed a visa petition for a qualifying relative but mistakenly thought he had to file a separate visa petition for the derivatives, who may qualify to immigrate with the principal. You should acknowledge this if it's evident the petitioner has filed a visa petition for the principal, i.e.: "It appears the petitioner has filed a visa petition for his/her daughter/brother. If that petition is approved, the beneficiary may be eligible for

derivative status. The petitioner should consult with the United States Citizenship and Immigration Services. *See* 8 § C.F.R. 204.2(d)(4)."

If the petitioner files a visa petition before eligibility is established (for a parent before the petitioner reaches the age of 21, or for a parent, sibling, married child before obtaining United States citizen status): At the time the visa petition was filed, the petitioner was a lawful permanent resident. Consequently, the petitioner was not yet eligible to file a visa petition for the beneficiary, because the law does not allow lawful permanent residents to petition for their married children. Section 203(a) of the Immigration and Nationality Act. The petitioner must be eligible to confer a visa at the time the visa petition is filed in order not to provide a priority date to the beneficiary earlier than he or she is entitled to. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Atembe*, 19 I&N Dec. 427 (BIA 1986); *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981); *Matter of Drigo*, 18 I&N Dec. 223 (BIA 1982).

D. Automatic Revocation

Revocation of an approved visa petition may happen in one of two ways. (1) The approval of a visa petition is automatically revoked without notice upon the occurrence of certain events such as the death of the petitioner or beneficiary, withdrawal of the visa petition, termination of a marriage, a child reaching the age of 21, or marriage of the beneficiary. (2) Approval of visa petitions may be revoked upon notice. 8 C.F.R. § 1205.2.

There is no appeal right from an automatic revocation. Only a motion to reopen before CIS is possible. There is a right to appeal a revocation upon notice. While the regulation indicates there are 15 days to appeal, the Board allows for 30 days.

Sample language for an automatic revocation: The appeal is dismissed as it does not fall within the Board's jurisdiction. *See* 8 C.F.R. §§ 1003.1(d)(2)(i)(F), (H). The appeal concerns a visa petition that was automatically revoked pursuant to 8 C.F.R. § 205.1(a)(3)(i)(I), due to the marriage of the beneficiary. Unlike revocations pursuant to 8 C.F.R. § 205.2, there are no specified appeal rights for automatic revocations pursuant to 8 C.F.R. § 205.1. See also 8 C.F.R. § 1205.1. Thus, the Board does not have jurisdiction over any such appeal. *See* 8 C.F.R. § 1003.1(b)(5).

Note: If a visa petition has been approved, but the petitioner dies after approval, the beneficiary may ask CIS to reinstate the visa petition on humanitarian grounds, with a substitute sponsor. 8 C.F.R. § 205.1. The Board does not have jurisdiction over such a matter.

If the beneficiary is a spouse who was married less than 2 years at the time of the death of the petitioner, thus making the spouse ineligible to self-petition, remand the matter based on the Secretary of DHS' deferral on those petitions based on litigation in the federal courts.

E. Wrong notice of appeal

The petitioner may use the wrong appeal form, DHS' Form I-290B, which is used for appeals to the AAO. The appeal may be dismissed as improperly filed. "An appeal is not properly filed until it is received at the appropriate office of the Service, together with all required documents..." 8 C.F.R. § 1003.3(a)(2). However, be lenient as generally DHS does not usually give adequate appeal instructions, DHS has already accepted the appeal from the petitioner, and a good deal of time has elapsed.

F. The Adam Walsh Act

The regulations prohibit a petitioner convicted of certain specified sex offenses from filing a family based visa petition on behalf of any beneficiary unless the Secretary of the Department of Homeland Security ("Secretary") determines that the petitioner poses no risk to the beneficiary of the visa petition. *See* 8 C.F.R. § 103.1 (delegation of authority by Secretary of DHS to the Director of the United States Citizenship and Immigration Services ("USCIS")). The Director of USCIS concluded that the petitioner has not shown beyond a reasonable doubt that he is not a danger to the beneficiary. That decision is within the sole and unreviewable discretion of the Secretary. *See* section 204(a)(1)(A)(viii) of the Act.

2. PROCEDURAL ISSUES

A. Request for evidence

NOTE: Effective June 18, 2007 (*see* 72 F.R. 19100-01), DHS has granted itself much more flexibility to deny a visa petition without firs issuing a request for evidence, 8 C.F.R. § 103.2(b)(8).

The petitioner must establish eligibility for the requested benefit, and file all the required forms and initial evidence required by the applicable regulations and the form's instructions, at the time the visa petition is filed. The petitioner did not submit evidence with the Petition for Alien Relative (Form I-130) to demonstrate eligibility for the status sought. Thus, the Director's denial is affirmed. 8 C.F.R. § 103.2(b)(1) and (8)(ii).

If evidence is filed with the appeal: The Board is an appellate body and generally will not accept evidence offered for the first time on appeal.*Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

B. Notice of Intent to Deny (NOID) - Opportunity to rebut derogatory information

8 C.F.R. § 103.2(b)(16)(i) ("If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered[.]").

Note: If Notice of Intent to Deny *is* issued, the eventual reason for denial must be something that was flagged in the NOID. District director cannot spring a new reason in the denial that was not mentioned in the NOID (although the Director may address evidence raised by the petitioner in response to the NOID).

C. No copy of full Request for Further Evidence (RFE) - sample language

The record does not contain a complete copy of the request for additional evidence. In particular, the top page, which would reflect the address to which the request was mailed and the due date for any response, is not in the record. Without a complete copy of the request for additional evidence, we are unable to adequately adjudicate this appeal.

or

In particular, the second page of the request for additional evidence, which would reflect what evidence was being requested, is not in the record. Without a complete copy of the request for additional evidence, we are unable to adequately adjudicate this appeal.

D. DHS motions to remand

Check to make sure that DHS is not moving to remand before you get into the merits of the case. Check for opposition by the petitioner and respond accordingly.

E. DHS took more than 2 years (from date appeal was filed) to forward the appeal to Board

This order is only used where the passage of time might make a difference in the case, for example, where a close marriage case now has the benefit of 2 more years to establish the bona fides of the marriage. If the beneficiary is statutorily

ineligible for the benefit, then the passage of time would not make a difference, and it would be pointless to remand.

The petitioner filed an appeal from a decision dated December 29, 2004, by the District Director of the Department of Homeland Security (the DHS) denying the visa petition. The Board received the appellate record from the DHS for adjudication of the appeal on June 18, 2008. Because of the lengthy delay in receiving the record, we find that the record should be returned to the DHS office having jurisdiction over the petition to afford the parties an opportunity to update the record with relevant information pertaining to the beneficiary's eligibility for a visa. If, upon review of any additional evidence submitted, and of the record as a whole, the DHS determines that the petition should again be denied, it should issue a new decision clearly setting forth the reasons for the denial, and should promptly forward the record to the Board in the event the petitioner files an appeal.

F. No response to Request for Evidence or inadequate response

Make a short mention of what evidence was not submitted. [Make sure RFE was sent to correct address and asked for the right things.]

G. New evidence on appeal

The general rule is that the Board is an appellate body, whose function it is to review the record as it existed before the Director.

We note that the petitioner has submitted evidence on appeal. However, where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, this Board will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Rarely, there may be situations where sufficient evidence is presented on appeal that was not previously available, which can change the result in the case, and where no unfair advantage would be gained by allowing the case to go forward (for example, the visa petition involves an immediate relative thus no priority date rules are being compromised) where a remand may be appropriate under motion to reopen standards.

3. MARRIAGE

A. New York *Stokes* cases

As a result of the *Stokes* litigation, transcripts are required in visa petition cases from the New York office. Do not rely entirely on the reading of the District

Director's decision. Read the transcript to make sure the interviewing officer was not hostile or hard to understand. Sometimes the transcripts will have too many "unintelligibles" for adequate review. Sometimes, though, the inconsistencies will be glaring.

B. Problematic District Offices

Some offices have produced problematic records: no NOIDs issued, no opportunity to rebut derogatory information at the end of the interview, no record of interview notes, no analysis that weighs where the couple was consistent as opposed to where the couple was inconsistent, fixation on minor inconsistencies. A remand may be necessary where the case is close and the analysis is lacking.

C. Minor inconsistencies

Put yourself in the place of the P and the B. What is a lack of attention to detail (what did your spouse wear to bed last night) and what is information that a married couple should know about each other (have you met your spouse's parents)? Weigh any inconsistencies in relation to the amount of documentary evidence submitted.

We have reviewed the evidence of record and the transcript of the July 13, 2008, interview. We find that a remand is warranted. The petitioner and the beneficiary answered the great majority of the questions in a consistent manner. The few discrepancies that exist are minor, and some of the cited discrepancies are not discrepancies at all. For example, the beneficiary stated that the bathroom floor was a dark gray tile with flowers, while the petitioner stated that the bathroom floor was a dark gray tile with white. Moreover, we note that the petitioner and the beneficiary have provided explanations for most of the noted discrepancies. Further, the petitioner has submitted considerable documentary evidence in support of the instant visa petition.

D. *Tawfik* standard – prior marriage fraud

If a section 204(c) marriage fraud bar finding is made, the evidence of fraud must be documented in the file and presented to the petitioner for rebuttal. The evidence must be substantial and probative - a finding of fraud cannot just be reasonably inferred.

In denying the visa petition, the Director stated that the bar in section 204(c) of the Immigration and Nationality Act, 8 U.S.C. § 1154(c), applied because there had been a previous determination that the beneficiary's first marriage was fraudulent. The prior visa petition denial was based on the fact that the beneficiary had divorced her prior husband and thus no longer met the definition of spouse. Further, we note that the Director may not give conclusive effect to

determinations made in a prior proceeding, but rather should reach his or her own independent conclusion based on the evidence before in the record. *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990); *see also Matter of Samsen*, 15 I&N Dec. 28, 29 (BIA 1974).

The 204(c) bar does not apply a second visa petition filed by same couple.

E. Difference between failure to meet burden of proof and sham marriage

Some districts enter a section 204(c) finding regardless of whether (a) such a finding is called for and (b) the real issue is the petitioner's failure to meet the burden of proof to establish a bona fide marriage. It's important in this regard to note that the burden in a 204(c) case shifts: it is the burden of the petitioner to establish that the marriage is bona fide; it is the burden of DHS to establish that the section 204(c) bar applies.

Burden of proof: The standard in visa petition cases is "preponderance of the evidence", but, in some cases, such as marriages entered into while the beneficiary was in removal proceedings, the standard is "clear and convincing." If the marriage occurred after the beneficiary was placed in removal proceedings, the visa petition filed on behalf of the beneficiary cannot be approved unless the petitioner requests and establishes eligibility for the bona fide marriage exemption. *See* 8 C.F.R. § 204.2(a)(1)(iii). Such a request must be made in writing and submitted with the visa petition, must state the reason for the request, and must be supported by documentary evidence establishing eligibility for the exemption. *See* 8 C.F.R. § 204.2(a)(1)(iii)(A).

F. Sample language to affirm:

We have reviewed the record of proceedings, including the [date] decision of the Director, the [date] Notice of Intent to Deny (NOID), the petitioner's response to the NOID, and the petitioner's contentions on appeal. We affirm the decision of the Director for the reasons set forth in the decision and the NOID. We note that the record contains insufficient evidence of commingled financial assets or a joint life together. Moreover, there were significant discrepancies in the answers given by the petitioner and the beneficiary to interview questions on [date]. Thus, the petitioner has failed to meet her burden of establishing a bona fide marital relationship.

4. PARENT/CHILD

A. Definition of Child - Section 101(b) of the Act

The petitioner must establish that he or she is the biological parent of the child. If the petitioner is the father, then he must also establish that (1) the child was born in wedlock, (2) was legitimated before the child's 18th birthday, or (3) that bona bide

parent/child relationship existed before the child turned 21.

As used in titles I and II-

(1) The term "child" means an unmarried person under twenty-one years of age who is-

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years . . . Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act

B. Legitimated

Countries have changed their laws, so do whatever research you can to gauge the current law. Good source: http://www.servat.unibe.ch/law/icl/index.html. Per Library of Congress, Mexico has changed its legitimation rules. Cuba also does not have a distinction between legitimate and illegitimate children after a certain date.

C. Delayed birth certificate

Where a birth is registered more than a year after it occurs, the accuracy of the reported information carries less weight. In such circumstances, additional documentation is needed to prove the parent-child relationship. *See Matter of Bueno*, 21 I&N Dec 1029 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA

1991); *Matter of Serna*, 16 I&N Dec. 643 (BIA 1978). In such instances, a petitioner must submit secondary evidence, such as medical, religious, or school records that identify the mother and father of the child. Sworn affidavits of those having personal knowledge of the birth may also be accepted (e.g., health care workers, clergy, relatives, and close friends). *See* 8 C.F.R. §§ 103.2(b), 204.2(d)(v). Blood Group Antigen Test or Human Leucocyte Antigen Test results may also be submitted. *See* 8 C.F.R. § 204.2(d)(vi). If the birth certificate was registered over one year after the event, but many years before the visa petition was filed, such a birth certificate carries significantly more probative value than one registered near in time to the filing of the visa petition.

D. Stepchild

"Under the laws of the United States, the definition of the term "child" in section 101(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(B), includes a stepchild only if "the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred. As the record reflects that the beneficiary had already reached the age of 18 at the time of the relevant marriage, the appeal from the denial of the visa petition must be dismissed." Some will argue that there was a common law marriage before the child reached the age of 18. This should be addressed, but a common law marriage is a question of fact that must be established.

Where the marriage creating the step-child relationship was terminated: Pursuant to our decision in *Matter of Mowrer*, 17 I&N Dec. 613 (BIA 1981), the question is not merely whether the *legal* relationship continues. Rather, the question is whether, despite legal separation or termination of the marriage creating the relationship either by divorce or death, a *family* relationship continues to exist in fact between the stepparent and stepchild.

Evidence of a *bona fide* parent-child relationship should establish emotional and/or financial ties or a genuine concern and interest by the parent for the child's support, instruction, and general welfare. There should be evidence that, since the dissolution of the marriage: the parent and child have lived together, that the parent has held the child out as being his/her own, that the parent has provided for some or all of the child's needs, or that, in general, the parent's behavior evidenced a genuine concern for the child. *See* 8 C.F.R. § 204.2(d)(iii); *Matter of Pineda*, 20 I&N Dec. 70 (BIA 1989); *Matter of Vizcaino*, 19 I&N Dec. 644 (BIA 1988).

The most persuasive evidence for establishing a *bona fide* parent-child relationship is documentary evidence made contemporaneous to the events. These could include: money order receipts or canceled checks showing the parent's financial support of the child; the parent's income tax returns, medical records, or insurance records showing the child as a dependent; school records for the child identifying the parent; correspondence between the petitioner and the beneficiary; and notarized affidavits of the natural mother, close relatives, friends, neighbors, school officials, or others knowledgeable about the relationship. *See* 8 C.F.R. § 204.2(d)(iii); *Matter of Pineda, supra.*

E. Adoption

1. Must be under 16 at the time of adoption

Under the laws of the United States, the definition of the term "child" in section 101(b)(1)(E) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(E), includes an adopted child only if, among other requirements, the child was "adopted while under the age of sixteen years." As the record reflects that the beneficiary had already reached the age of sixteen at the time of the adoption, the appeal from the denial of the visa petition will be dismissed.

2. No effect to nunc pro tunc adoption

The petitioner may sometimes submit a court order that modifies the adoption decree *nunc pro tunc* to give it an earlier effective date which is prior to the beneficiary's sixteenth birthday. However, the immigration laws do not generally recognize retroactive adoption dates. *See Matter of Cariaga*, 15 I&N Dec. 716 (BIA 1976) (finding that, in order for adoption to be valid for immigration purposes, act of adoption must occur before child reaches age limit); *see also Matter of Drigo*, 18 I&N Dec. 223 (BIA 1982) (not recognizing a nunc pro tunc adoption decree issued after the child had reached the age limit). The petitioner argues that his amended adoption order is not retroactive but rather is *nunc pro tunc*. *Allen v. Brown*, 953 F.Supp. 199 (N.D. Ohio 1977); *Messina v. U.S. Citizenship and Immigration Services*, 2006 WL 374564 (E.D. Mich. Feb 16, 2006). We have considered the petitioner's arguments. However, we find that the Director's decision is correct. We note that, aside from the factual differences between the cited case and the instant case, we are not bound by district court decisions, even those occurring within the jurisdiction of a case. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The case cited by the petitioner on appeal differs from the instant case because in that case the act of adoption occurred prior

to the beneficiary's sixteenth birthday, but was incorrectly recorded. Thus, the *nunc pro tunc* order sought to correct a mistake in the earlier order. The petitioner's order did not point out any mistake in the prior order but rather gives the earlier adoption order a retroactive effect.

3. Custody and residence

The main issue is proof that the petitioner has to show 2 years of legal custody, at the time the visa petition was filed and that he or she resided with the beneficiary for 2 years while exercising parental control. Many times, it's a case of a grandparent in the U.S. adopting a grandchild in another country for sympathetic reasons. However, if they've never lived together, they cannot successfully petition this way (if the child is an orphan, there are other ways to adopt the child, but those are not within our jurisdiction). In cases where the parties have lived together but are otherwise related (this comes up a lot in Philippine adoptions), the petitioner must show that s/he was the one in parental control even though the beneficiary's parent(s) lived in the same house or down the street.

5. OTHER ISSUES

A. Stereotypical reasoning

The RSC director based his decision largely on the fact that the petitioner's marriage to the beneficiary did not comport with certain societal customs in India. For example: District Director says something like "an Indian man would never marry a divorced woman [or an older woman]." This is not sufficient to make an adverse finding.

B. Consular investigations

Do not accept these without question; read them closely. Some of them may be quite flimsy, with the investigator making conclusions based on one conversation he had with an irrelevant person in the beneficiary's hometown.

C. The petitioner is in prison

As the burden lays with the petitioner, the petitioner must generally be available to go forward with the visa petition. However, there may be circumstances where the Director has to make accommodations.

The District Director denied the visa petition based upon the petitioner's failure to appear at the May 4, 2005, interview. The District Director's decision notes that the beneficiary submitted statements that the petitioner could not attend because he was incarcerated at the time. The petitioner, on appeal, details his attempts to inform the District Director of his incarceration and to reschedule the interview. It does not appear that the District Director responded to the petitioner, and the DHS, on appeal, has not addressed the petitioner's claims. Under the circumstances of this case, we find it appropriate to remand the record to the District Director to allow the parties an opportunity to proceed with the case as appropriate.

D. Evidence is in record

If the denial is based on missing evidence, make sure the birth certificate or marriage certificate or divorce decree isn't actually in the record and has just been overlooked.

E. Certificate of non-availability

If Foreign Affairs Manual (FAM) says evidence not available, P may not need a certificate of non-availability.

F. Revocations

Under section 205 of the Immigration and Nationality Act, 8 U.S.C. § 1155, the Attorney General may revoke the approval of any visa petition for "good and sufficient cause." A notice of intent to revoke is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based on the petitioner's failure to meet his or her burden of proof. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988); *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Before a decision revoking a previously-approved visa petition can be issued, a notice of intent to revoke the visa petition must be sent to the petitioner explaining the reasons for the revocation. The petitioner must be afforded an opportunity to rebut the derogatory evidence and to present evidence in support of the visa petition.

G. Eligible at the time of filing

Sometimes the petitioner will file a visa petition before he or she is eligible to do so (before the petitioner becomes a United States citizen or before the petitioner turns 21).

The petitioner must be qualified to file the visa petition at the time of filing. 8 C.F.R. § 103.2(b)(1) and (12); *Matter of Atembe*, 19 I&N Dec. 427 (BIA 1986); *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981); *Matter of Drigo*, 18 I&N Dec. 223 (BIA 1982).

6. CBP CASES

A. 212(d)(3) – the Canadians

Regardless of the fact that an alien may otherwise be inadmissible, a nonimmigrant may be admitted into the United States temporarily in the discretion of the Attorney General. *See Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978). In deciding whether or not to grant an application under section 212(d)(3) of the Act, there are essentially three factors which should be weighed together. The first is the risk of harm to society if the applicant is admitted. The second is the seriousness of the applicant's prior immigration law, or criminal law violations, if any. The third factor is the nature of the applicant's reasons for wishing to enter the United States. *Id.*

If the crime is old or minor and/or if the applicant has a compelling reason for entering the United States (non-custodial child lives in the US, for example), case can often be sustained or remanded.

B. Fines cases

1. Waiver

Typical scenario: Non-immigrant (student, business person, tourist) arrives with an expired visa or with an expired passport. Most often, a waiver is granted (even if one is not, that does not affect the carrier's liability). Appeal will almost always be from attorney Jonathan Fuchs on behalf of the carrier and will be canned.

Matter of Finnair controls this scenario. [Make sure that the passenger is not a tourist with an unexpired passport from a country that would not need a visa, per the Visa Waiver Pilot Program – 8 C.F.R. § 217.2.] Sometimes a passenger will destroy his or her documents in flight, however, this is usually not a defense, as the airline must prove that the documents were checked. If the alien was paroled, instead of being granted a waiver, cite *Matter of United Airlines Flight UA802*, 22 I&N Dec. 777 (BIA 1999).

The carrier has appealed the decision of the Chief of the Carrier Fines Branch imposing an administrative fine for one violation of section 273(a) of the Immigration and Nationality Act, 8 U.S.C. § 1323(a). The appeal will be dismissed.

We have considered the carrier's contentions on appeal. Nonetheless, we find our decision in *Matter of Finnair Flight AY103*, 23 I&N Dec. 140 (BIA 2001), dispositive of the issue of the carrier's fine liability. The parties do not dispute that the above named passenger was a nonimmigrant not in possession of an unexpired nonimmigrant visa or other required document at the time of arrival who ultimately was granted a waiver pursuant to 8 C.F.R. § 1212.1(g), as amended on March 22, 1996. In *Matter of Finnair Flight AY103*, *supra*, we held that, under such circumstances, the carrier is subject to fine liability. Accordingly, the appeal is dismissed. The carrier's request for oral argument before the Board is denied.

2. No documents

In a decision dated , the Director denied the carrier's request for remission. *See* section 273(c) of the Act. Citing *Matter of Scandinavian Airlines Flight #SK 911*, 20 I&N Dec. 306 (BIA 1991), the Director held that the fact that the alien may dispose of her documentation after check-in and before arrival in the United States does not relieve the carrier of its obligation to provide evidence that its agents exercised reasonable diligence in permitting a passenger to board and be transported to the United States. The Director found that, even if it is established that a passenger presented documents at check-in, it does not necessarily follow that a passenger was properly documented for travel to the United States. The Director determined that the carrier in the present case had not presented sufficient evidence on this issue.

Section 273(a) of the Act provides that it shall be unlawful for any person "to bring to the United States from any place outside thereof (other than from foreign

contiguous territory) any alien who does not have a valid passport and an unexpired visa, if a visa was required under this Act or regulations issued thereunder." Under section 273(a) of the Act, the carrier who brings aliens to the United States becomes in effect an insurer that the aliens have met the visa requirements of the Act. *Matter of Scandinavian Airlines Flight #SK 911, supra.* Any bringing to the United States of an alien who does not meet those requirements incurs fine liability. *Matter of "M/V Emma,"* 18 I&N Dec. 40 (BIA 1981).

Section 273(c) of the Act permits remission (forgiveness in full) where it appears that prior to the alien's departure from the last port outside of the United States, the carrier did not know, and could not have ascertained by the exercise of reasonable diligence, that a valid passport or a visa was required for an individual passenger. What constitutes "reasonable diligence" varies according to the circumstances of the case. *Matter of S.S. Florida*, 3 I&N Dec. 111 (BIA 1947; BIA, A.G. 1948).

In the present case, we find that the record clearly establishes that the passenger here was an alien who needed a passport and a valid visa to enter the United States. The record reflects that, at time of inspection upon arrival in the United States, the alien possessed no such document to enter this country. Accordingly, we find no error in the Director's determination that the carrier has violated section 273(a) of the Act. *See Matter of Scandinavian Airlines Flight #SK 911, supra.*

We thus find that the carrier has not established reasonable diligence in its handling of the alien passenger's documents. The generalized statements of the airline official on appeal are insufficient for the carrier to meet its evidentiary burden. The carrier has not submitted evidence such as copies of the alien passenger's ticket or boarding pass with annotations indicating that the carrier's agents had reviewed the required documents prior to boarding the passenger, copies of the valid documentation the alien passenger submitted, or even statements from its agents who inspected the documents and boarded the passenger. Thus, in the absence of further evidence, we cannot find that the carrier has met its burden.

3. Miscellaneous

212.1(g) does not exempt students even if current I-20

217.2(a) MRP requirement 8 U.S.C. § 1372

TWOV suspended August 2, 2003

British Overseas Passport not eligible for VWP

Passports after October 26, 2005 biometric identifier

6. MISCELLANEOUS

A. Gabe's library

Non Responsive

B. Foreign Affairs Manual

Go to EOIR Virtual Library. On the upper right hand side of page, under State Department tab, click on Country Documents Finder, then click on the country you are researching in the drop down menu.

C. Basics

– The U.S. citizen or LPR is referred to as "petitioner"

– The alien relative is referred to as "beneficiary"

– Names in the order's heading should match the I-130 (visa petition)

– Decisions are usually issued by "District Director", "Field Office Director", or

"California/Vermont Service Center (CSC, VSC) Director"

– If there are several family/related visa petitions circulating together, each must have its own circulation sheet.

Rubi, Veronica (EOIR)

From: Kocur, Ana (EOIR)
Sent: Monday, August 16, 2010 9:25 AM
To: Rubi, Veronica (EOIR)
Subject: FW: Voluntary departure guidance
Attachments: Voluntary departure guidance.wpd
For FOIA

From: Chestnutt, Mark (EOIR)
Sent: Wednesday, May 19, 2010 9:09 AM
To: Non Responsive
Cc: Non Responsive Kocur, Ana (EOIR); Adkins-Blanch, Chuck (EOIR)
Subject: FW: Voluntary departure guidance

Good morning everyone,

I'm just sending this out as a refresher/reminder about the voluntary departure requirements. Remember, if an IJ decision precedes the effective date of the regulation (January 20, 2009), we wouldn't expect to see evidence submitted to the BIA of the voluntary departure bond. The IJs weren't required to give the new warnings before that date. In those older cases, we would just proceed as we did before the regulation, i.e. we wouldn't decline to extend voluntary departure simply because there is no evidence of the bond being paid. Please see your TL if you have any questions.

Thanks,
--Mark

From: Chestnutt, Mark (EOIR)
Sent: Tuesday, January 19, 2010 10:09 AM
To: Non Responsive
Cc: Non Responsive Kocur, Ana (EOIR); Adkins-Blanch, Chuck (EOIR)
Subject: Voluntary departure guidance

Good morning everyone,

Attached to this email is updated voluntary departure guidance which takes into account the Board's new precedent, *Matter of Gamero*, 25 I&N Dec. 164 (BIA 2010). This document supplements the panel guidance which was provided to you in November. If you have any questions, please speak with your TL.

Thanks,
--Mark

Voluntary Departure Guidance

The main points from Jean King's December 18, 2008, memo concerning changes to the voluntary departure regulations are provided below. The current voluntary departure macros in the BIA WordPerfect template should still be used when the Board extends voluntary departure. Further below, we have provided you with "stock language" which you should use in your draft orders to address the situation where an alien fails to provide proof of posting bond (either where the Immigration Judge failed, or did not fail, to give the proper voluntary departure advisals on or after January 20, 2009). Non Responsive

Non Responsive

• A grant of voluntary departure is automatically terminated upon the filing of a post-decision motion to reopen or reconsider with the Immigration Judge or the Board of Immigration Appeals within the voluntary departure period, or upon the filing of a petition for review in a federal court of appeals. 8 C.F.R. §§ 1240.26(b)(3)(iii), (e)(1) and (i).

• With the filing of a motion or a petition for review within the voluntary departure period, the alien no longer has the benefit of voluntary departure, but the alien is also not subject to the bars to relief set forth in section 240B(d)(1)(B) and other penalties in section 240B(d). 8 C.F.R. §§ 1240.26(e)(1) and (i).

• The alien must submit proof to the Board within 30 days of filing an appeal of having posted the bond amount set by the Immigration Judge. If the alien does not provide timely proof that the bond has been posted, the Board will not reinstate the period of voluntary departure. 8 C.F.R. § 1240.26(c)(3)(ii).

• If the alien does not post the bond within 5 days, the alien is still obligated to depart and is not exempted from the consequences for failure to depart. This overrules the Board's decision in *Matter of Diaz-Ruacho,* 24 I&N Dec. 47 (BIA 2006). The failure to post bond can be considered in evaluating whether the alien is a flight risk for detention purposes, and also may be considered as a negative discretionary factor with respect to any discretionary form of relief. 8 C.F.R. § 1240.26(c)(4).

• The Board must advise the alien of the consequences of filing a motion to reopen or reconsider or a petition for review when reinstating voluntary departure. The Immigration Judges also must give detailed additional advisals. 8 C.F.R. §§ 1240.26(c)(3)(i), (iii), (e)(1), (i).

• There shall be a rebuttable presumption of a civil monetary penalty of $3,000 if the alien fails to depart within the voluntary departure period. 8 C.F.R. § 1240.26(j).

• This rule is not retroactive. It was effective on January 20, 2009, and applies to any cases pending before EOIR on [or after] the effective date of this rule.

Sample language - for one respondent, where I.J. gave proper advisals. *(You may insert "to* **[country]***" after "removed from the United States" in both the main paragraph and the further order). Check to be sure that the length of the voluntary departure period and bond amount are correct:*

Effective January 20, 2009, an Immigration Judge who grants an alien voluntary departure must advise the alien that proof of posting of a bond with the Department of Homeland Security must be submitted to the Board of Immigration Appeals within 30 days of filing an appeal, and that the Board will not reinstate a period of voluntary departure in its final order unless the alien has timely submitted sufficient proof that the required bond has been posted. 8 C.F.R. § 1240.26(c)(3). *See Matter of Gamero*, 25 I&N Dec. 164 (BIA 2010). The Immigration Judge provided the respondent with the required advisals and granted the respondent a 60-day voluntary departure period, conditioned upon the posting of a $500.00 bond. The record before the Board, however, does not reflect that the respondent submitted timely proof of having paid that bond. Therefore, the voluntary departure period will not be reinstated, and the respondent will be removed from the United States pursuant to the Immigration Judge's alternate order.

ORDER: The appeal is dismissed.

FURTHER ORDER: The respondent is ordered removed from the United States pursuant to the Immigration Judge's alternate order.

Sample language - for two or more respondents, where I.J. gave proper advisals. *(You may insert "to* **[country]***" after "removed from the United States" in both the main paragraph and the further order). Check to be sure that the length of the voluntary departure period and bond amount for each respondent are correct. Modify the following, as necessary, if one or more respondents have provided proof but another, or others, have not:*

Effective January 20, 2009, an Immigration Judge who grants an alien voluntary departure must advise the alien that proof of posting of a bond with the Department of Homeland Security must be submitted to the Board of Immigration Appeals within 30 days of filing an appeal, and that the Board will not reinstate a period of voluntary departure in its final order unless the alien has timely submitted sufficient proof that the required bond has been posted. 8 C.F.R. § 1240.26(c)(3). *See Matter of Gamero*, 25 I&N Dec. 164 (BIA 2010). The Immigration Judge provided the respondents with the required advisals and granted the respondents a 60-day voluntary departure period, conditioned upon the posting of $500.00 bonds. The record before the Board, however, does not reflect that the respondents submitted timely proof of having paid those bonds. Therefore, the voluntary departure period will not be reinstated, and the respondents will be removed from the United States pursuant to the Immigration Judge's alternate order.

ORDER: The appeal is dismissed.

FURTHER ORDER: The respondents are ordered removed from the United States pursuant to the Immigration Judge's alternate order.

Sample language - for one respondent, where I.J. failed to give the proper advisals.

Effective January 20, 2009, an Immigration Judge who grants an alien voluntary departure must advise the alien that proof of posting of a bond with the Department of Homeland Security must be submitted to the Board of Immigration Appeals within 30 days of filing an appeal, and that the Board will not reinstate a period of voluntary departure in its final order unless the alien has timely submitted sufficient proof that the required bond has been posted. 8 C.F.R. § 1240.26(c)(3). *See Matter of Gamero*, 25 I&N Dec. 164 (BIA 2010). Although the respondent failed to submit timely proof of having paid the bond, the record reflects that the Immigration Judge did not provide the respondent with the required advisals. Therefore, the record will be remanded for the Immigration Judge to grant a new period of voluntary departure and to provide the required advisals.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Sample language - for two or more respondents, where I.J. failed to give the proper advisals.

Effective January 20, 2009, an Immigration Judge who grants an alien voluntary departure must advise the alien that proof of posting of a bond with the Department of Homeland Security must be submitted to the Board of Immigration Appeals within 30 days of filing an appeal, and that the Board will not reinstate a period of voluntary departure in its final order unless the alien has timely submitted sufficient proof that the required bond has been posted. 8 C.F.R. § 1240.26(c)(3). *See Matter of Gamero*, 25 I&N Dec. 164 (BIA 2010). Although the respondents failed to submit timely proof of having paid their bonds, the record reflects that the Immigration Judge did not provide the respondents with the required advisals. Therefore, the record will be remanded for the Immigration Judge to grant a new period of voluntary departure and to provide the required advisals.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Rubi, Veronica (EOIR)

From: Chestnutt, Mark (EOIR)
Sent: Thursday, August 12, 2010 12:13 PM
To: Rubi, Veronica (EOIR)
Subject: FW: Memorandum Addressing Haitian TPS and Related Documents
Attachments: Haiti TPS (1).wpd; Haiti TPS order.wpd; Haiti TPS regulation.rtf

More guidance.

From: Chestnutt, Mark (EOIR)
Sent: Wednesday, June 16, 2010 4:22 PM
To: Liebowitz, Ellen (EOIR)
Subject: FW: Memorandum Addressing Haitian TPS and Related Documents

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From: Kocur, Ana (EOIR)
Sent: Thursday, January 21, 2010 1:04 PM
To: Non Responsive
Cc: Evans, Glenda (EOIR); Kocur, Ana (EOIR); Adkins-Blanch, Chuck (EOIR); Gipe, Bruce (EOIR); DeCardona, Lisa (EOIR); Maurice, Ellen (EOIR)
Subject: FW: Memorandum Addressing Haitian TPS and Related Documents

Good afternoon, Now that this memo has been issued you can work on any Haitian cases you have been holding. Please give these cases the highest priority over any other cases, other than RUSH cases or cases that have a close due date. If you determine that a particular respondent is not eligible for TPS, Chuck has asked that you use the following text in a footnote, modified as necessary:

A request for humanitarian parole or deferred action arising from the recent devastating earthquake in Haiti and its aftermath are matters beyond the jurisdiction of the Board and the Immigration Judges. *See* section 244(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1254a(b)(1); *Matter of Medina*, 19 I&N Dec. 734 (BIA 1988); *Matter of Quintero*, 18 I&N Dec. 348 (BIA 1982)(deferred action status, giving person permission to remain indefinitely, is a matter of prosecutorial grace). Further, while the Department of Homeland Security has decided to invoke the Temporary Protected Status provisions of the Act for Haitians, this respondent would not be eligible for TPS due to his aggravated felony conviction. We note, however, that a statement released by the Department of Homeland Security on January 13, 2010, reflects that "all removals to Haiti [have been halted] for the time being in response to the devastation caused by [the] earthquake."

Please note on the top of your circ sheet in the comments section "Haitian TPS" if it is a case in which you are proposing an administrative closure.

If you have any questions, feel free to see me or your TL.

Thanks, Ana

From: Cappello, Mark J. (EOIR)
Sent: Thursday, January 21, 2010 11:43 AM
To: Carr, Donna (EOIR); Andrews, Dee (EOIR); Andrade, Niel (EOIR); Porter, Michael (EOIR); Evans, Glenda (EOIR); Meyers, Natalie (EOIR); Drumond, Karen (EOIR); Camp, Kimberly (EOIR); Foreman,

Suzette (EOIR); Smith, Terry (EOIR); Gipe, Bruce (EOIR); Ikezawa, Wendy (EOIR); John, Kathy (EOIR); Lang, Steven (EOIR); Pepper, Kathleen (EOIR); Ramirez, Sergio (EOIR); Adams, Amanda (EOIR); Cali, Andrea (EOIR); Campbell, Keith (EOIR); Chestnutt, Mark (EOIR); DeCardona, Lisa (EOIR); Komiluk, Artur (EOIR); Maurice, Ellen (EOIR); Murphy, Kathleen (EOIR); Phillips-Savoy, Karen (EOIR); Walker, Jake (EOIR); Adkins-Blanch, Chuck (EOIR); Clark, Molly (EOIR); Cole, Patricia A. (EOIR); Filppu, Lauri (EOIR); Grant, Edward (EOIR); Greer, Anne (EOIR); Guendelsberger, John (EOIR); Hess, Fred (EOIR); Holmes, David (EOIR); King, Jean (EOIR); Malphrus, Garry (EOIR); Mann, Ana (EOIR); Miller, Neil (EOIR); Mullane, Hugh (EOIR); Neal, David L. (EOIR); Pauley, Roger (EOIR); Wendtland, Linda (EOIR); Brickman, Jaclyn (EOIR); Chugh, Amit (EOIR); Crossett, John P. (EOIR); Curtis, Rena I (EOIR); Czaykowsky, Sandra (EOIR); Gully, Solomon (EOIR); MacGregor, Margaret R. (EOIR); Niksa, Stephen (EOIR); Oshinsky, John (EOIR); Santucci, Audra (EOIR); Bates, Elizabeth (EOIR); Betourney, Andrew (EOIR); Biggiani, Justin M. (EOIR); Burton, Brett (EOIR); Carey, Tracey (EOIR); Degischer, Kristen (EOIR); Gimbel, Holly (EOIR); Mlynar, Maria (EOIR); O'Herron, Margy (EOIR); Pease, Jeffrey (EOIR); Reilly, Kathleen (EOIR); Anderson, Jill (EOIR); Egy, Julia E. (EOIR); Fernandes, Karen (EOIR); Franco, Danielle (EOIR); Gaffney, Janeen (EOIR); Goodman, Hilary (EOIR); Hines, Judy (EOIR); Kerby, Jennifer (EOIR); Krapf, Catherine (EOIR); Podolny, Janice (EOIR); Saltsman, Gary (EOIR); Sanders, Hope (EOIR); Welsh, Elizabeth (EOIR); Bovier, Jennifer (EOIR); Brown, Keith (EOIR); Gearin, Christopher (EOIR); Helf, Sheila (EOIR); Makredes, Maria (EOIR); Phelps, George (EOIR); Steyn, William (EOIR); Tibere, Valerie (EOIR); Wright, Levi (EOIR); Baumeister, Monica (EOIR); Covell, Stephen C. (EOIR); Fitzgerald, Donna S. (EOIR); Martella, Jennifer (EOIR); McDermott, Patrick J. (EOIR); Mulrean, Mary (EOIR); O'Cadiz, Sergio (EOIR); Reddy, Divya (EOIR); Riotto, Sharon (EOIR); Saadat, David (EOIR); Waters, J. Keith (EOIR); Anderson, Dale (EOIR); Balch-Reno, Karla (EOIR); Brown, Denise (EOIR); Dutra, Amanda (EOIR); Geller, Joan (EOIR); Gottlieb, Arthur (EOIR); Hansen, Heidi (EOIR); Kirby, Christine (EOIR); Latey, Chandani (EOIR); Phillips, Jeffrey (EOIR); Rossi, Clarissa (EOIR); Soto, Jorene (EOIR); Bowers, Catherine (EOIR); Clancy, Douglas (EOIR); Farmakides, George (EOIR); Glickman, Mark (EOIR); Gonzalez, Gabe (EOIR); Johnson, Douglas (EOIR); Miovski, Lourene (EOIR); Nelsen, Michelle (EOIR); Rajan, Shyamleen (EOIR); Riso, Delia (EOIR); White, MB (EOIR); Acosta, Robinson (EOIR); Ching, Pamela (EOIR); Dehn, Negin (EOIR); Henriksen, Nathan (EOIR); Mancuso, Stephen (EOIR); Monsky, Paul (EOIR); Riddick, Stuart (EOIR); Rider, Dale (EOIR); Schlosser, Carrie (EOIR); Strathern, Arthur (EOIR); Bradford, Anne Marie (EOIR); Donovan, Teresa (EOIR); Dunn, Pat (EOIR); Hoffman, Sharon (EOIR); Lafleur, Judith L. (EOIR); Lujan, Jean G (EOIR); Michaelis, Christine (EOIR); Premysler, Debra (EOIR); Riemer, Steve (EOIR); Tyler, Jennifer (EOIR); Alcaraz, Sheri J. (EOIR); Burtnette, Linda (EOIR); Bush, Debra M. (EOIR); Gearhart, Kathy (EOIR); Gilliard, Mimi (EOIR); Haddou, Diniliana (EOIR); Laws-Bipat, Rena (EOIR); McIntyre, Sean (EOIR); Medeiros, Joshua (EOIR); Naderi, Homa (EOIR); Newman, Erica (EOIR); Scott, Tamara (EOIR); Stotmeister, Mary (EOIR); Belvedere, Christopher (EOIR); Berry, Susan (EOIR); Chapman, Martha (EOIR); Manuel, Elise (EOIR); Puffer, Christine (EOIR); Scally, Erin (EOIR); Torstenson, Karen (EOIR); Baker, Glen R. (EOIR); Bolyard, David L. (EOIR); Brown, Bruce (EOIR); Chase, Jeffrey (EOIR); Doss, Ann (EOIR); Engle, James (EOIR); Foote Monsky, Megan (EOIR); Grinberg-Funes, George (EOIR); Macri, Andrea (EOIR); Tierney, Trudy (EOIR); Elliot, Carolyn (EOIR); Liebmann, Beth (EOIR); Liebowitz, Ellen (EOIR); Minton, Amy (EOIR); Rubi, Veronica (EOIR); Kocur, Ana (EOIR); Nadkarni, Deepali (EOIR)
Subject: Memorandum Addressing Haitian TPS and Related Documents

Please find attached: the Acting Chairman's memorandum directing that Haitian cases be administratively closed where the respondent appears eligible for TPS; a template administrative closure order; and the Haiti TPS regulation.

Memorandum

Subject	Date
Temporary Protected Status - Haiti	August 23, 2010

To	From
Board of Immigration Appeals Legal Staff	David L. Neal, Acting Chairman

The Secretary of Homeland Security has announced that aliens from Haiti may seek Temporary Protected Status (TPS) for a period of 18 months. *See* 75 FR 3476-02 (Jan. 21, 2010). Haitians eligible for TPS may register with the DHS during this period. The Board will administratively close pending removal appeals involving Haitians who appear eligible for TPS. Not all Haitians are eligible for TPS, so please review the record for apparent eligibility before circulating an administrative closure order.

Eligibility requirements for TPS are found in the Federal Register cite listed above, sections 244(a)(1), (c) of the Act, and corresponding regulations. An alien:

- must be a national of Haiti (or an alien with no nationality who last habitually resided in Haiti) who has continuously resided in the United States since January 12, 2010, and has been continually physically present in the United States since January 21, 2010;
- must be admissible as an immigrant, except as provided in section 244(c)(2)(A) (permitting waiver of certain grounds of inadmissibility). *See also* 8 C.F.R. § 1244.3(b), (c). The grounds at section 212(a)(4), (5)(A) and (B), and (7)(A)(i) should not be applied. *See* 8 C.F.R. § 1244.3(a);
- cannot be convicted of any felony or two or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 1244.4(a) (referring to definitions of felony and misdemeanor);
- cannot be one described in section 208(b)(2)(A) of the Act, which includes:
  - the persecutor bar
  - the particularly serious crime bar
  - the serious nonpolitical crime bar
  - the security danger bar
  - the terrorist bar
  - firm resettlement.

If the alien does not appear eligible for TPS, the case may be processed pursuant to normal procedures. Please note on the circulation sheet why there is no apparent eligibility.

When administratively closing a case, use the attached order. The "TPS" and "N"codes should be circled on the back of the circulation sheet. Some types of cases should *not* be administratively closed, e.g., motions to reopen and reconsider; appeals of an IJ denial of a motion; untimely appeals; and detained cases. In these cases, add a footnote advising the alien of TPS where he or she may be eligible. Each Panel may issue its own standard language for this purpose.

Please contact your Team Leader if you have questions. Thank you.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A -

Date:

In re:

IN REMOVAL PROCEEDINGS

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

The Secretary of Homeland Security has designated Haiti under the Temporary Protected Status (TPS) Program. This designation is currently in effect and is scheduled to remain so through July 22, 2011. *See* 75 Fed. Reg. 3476-02 (January 21, 2010). It appears from the record that the alien in the case before us is from Haiti and may be eligible to register for TPS. Accordingly, the following order will be entered.

ORDER: Proceedings before the Board in this case are administratively closed.

If either party to this case objects to the administrative closure of these proceedings, a written request to reinstate the proceedings may be made to the Board. **The Board will take no further action in the case unless a request is received from one of the parties.** The request **must** be submitted directly to the Board of Immigration Appeals Clerk's Office, without fee, but with certification of service on the opposing party. If properly submitted, the Board shall reinstate the proceedings.

FOR THE BOARD

Rubi, Veronica (EOIR)

From: Kocur, Ana (EOIR)
Sent: Monday, August 16, 2010 9:39 AM
To: Rubi, Veronica (EOIR)
Subject: FW: Two Items
Attachments: Whether to affirm without opinion (AWO).wpd
For FOIA

From: Kocur, Ana (EOIR)
Sent: Monday, May 04, 2009 8:17 AM
To: Non Responsive
Non Responsive
Cc: Kocur, Ana (EOIR)
Subject: Two Items

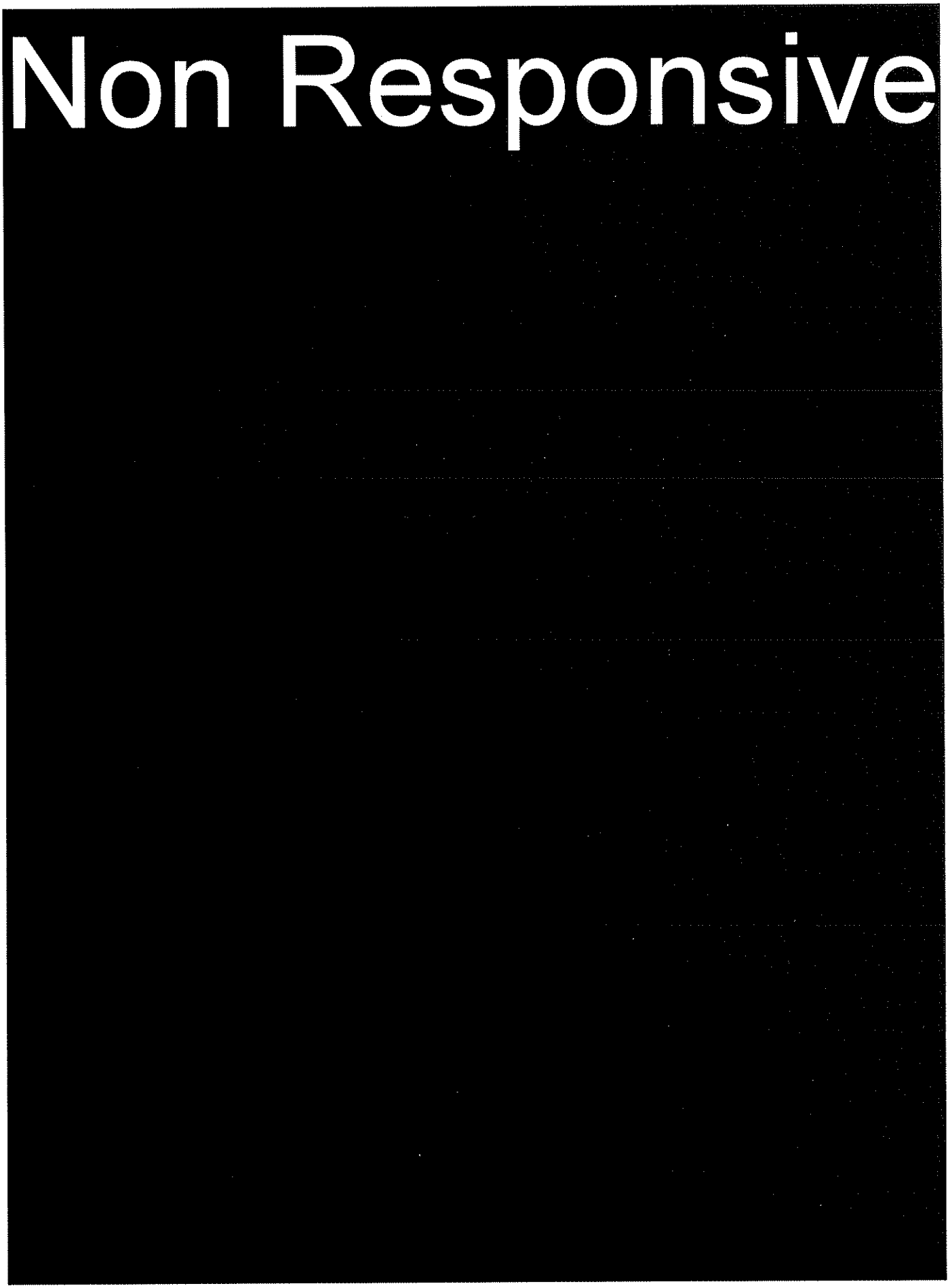
Hi everyone,

Two items:

1) Just a reminder to please double check your orders to make sure that you have identified the correct country throughout the order. While it is generally a simple cut and paste error, it looks bad when we get it wrongNon Responsive
Non Responsive

2) Juan and David Neal had us condense the AWO guidance that was put out a few years ago into a checklist that you will find attached. You may find it helpful to print it out and keep it near your workspace so that you can refer to it when working on a case.

Thanks, Ana


Non Responsive

Minton, Amy (EOIR)

From: Osuna, Juan (EOIR)
Sent: Tuesday, August 29, 2006 4:56 PM
To: Minton, Amy (EOIR)
Subject: FW: AWO guidance from P3 Board Members

Importance: High

Attachments: AWO guidance.wpd

Per your request

-----Original Message-----
From: Parchert, Brett (EOIR)
Sent: Thursday, August 24, 2006 1:40 PM
To: Non Responsive
Subject: AWO guidance from P3 Board Members
Importance: High

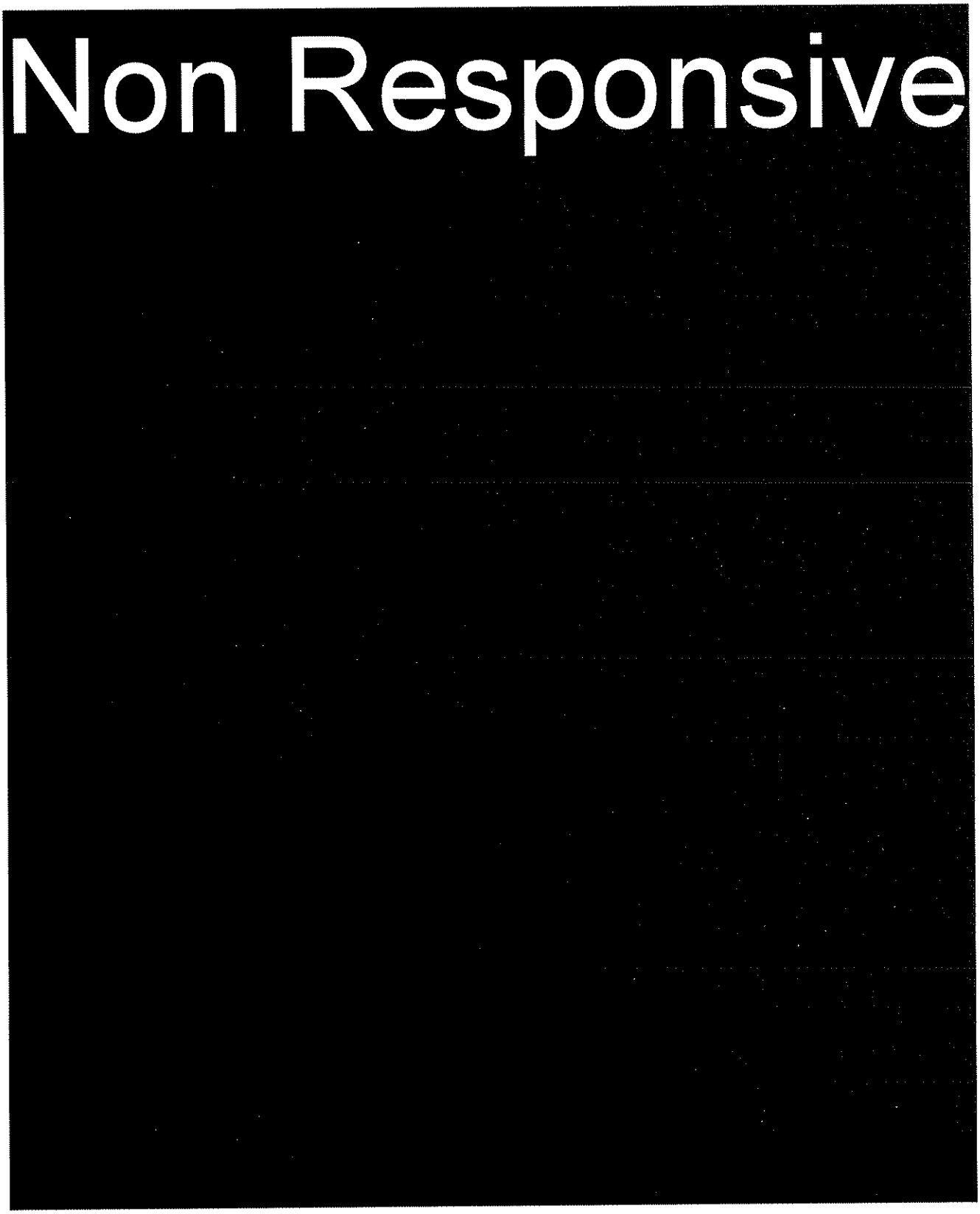
Hi Everyone.

Please read and apply the attached guidance from the Panel 3 Board Members regarding the drafting of AWOs. Please note that all of the current members of Panel 3 and all of the panel's attorney managers are in agreement about the contents of the attached document. Also, you'll probably see a lot of guidance in it with which you should already be familiar as I relayed much of this to all of you orally several months ago in the series of meetings I held in my office. (In other words, you should already generally be following this guidance and you're unlikely to find anything shocking in it.)

Thanks, Brett

AWO guidance.wpd
(39 KB)

Non Responsive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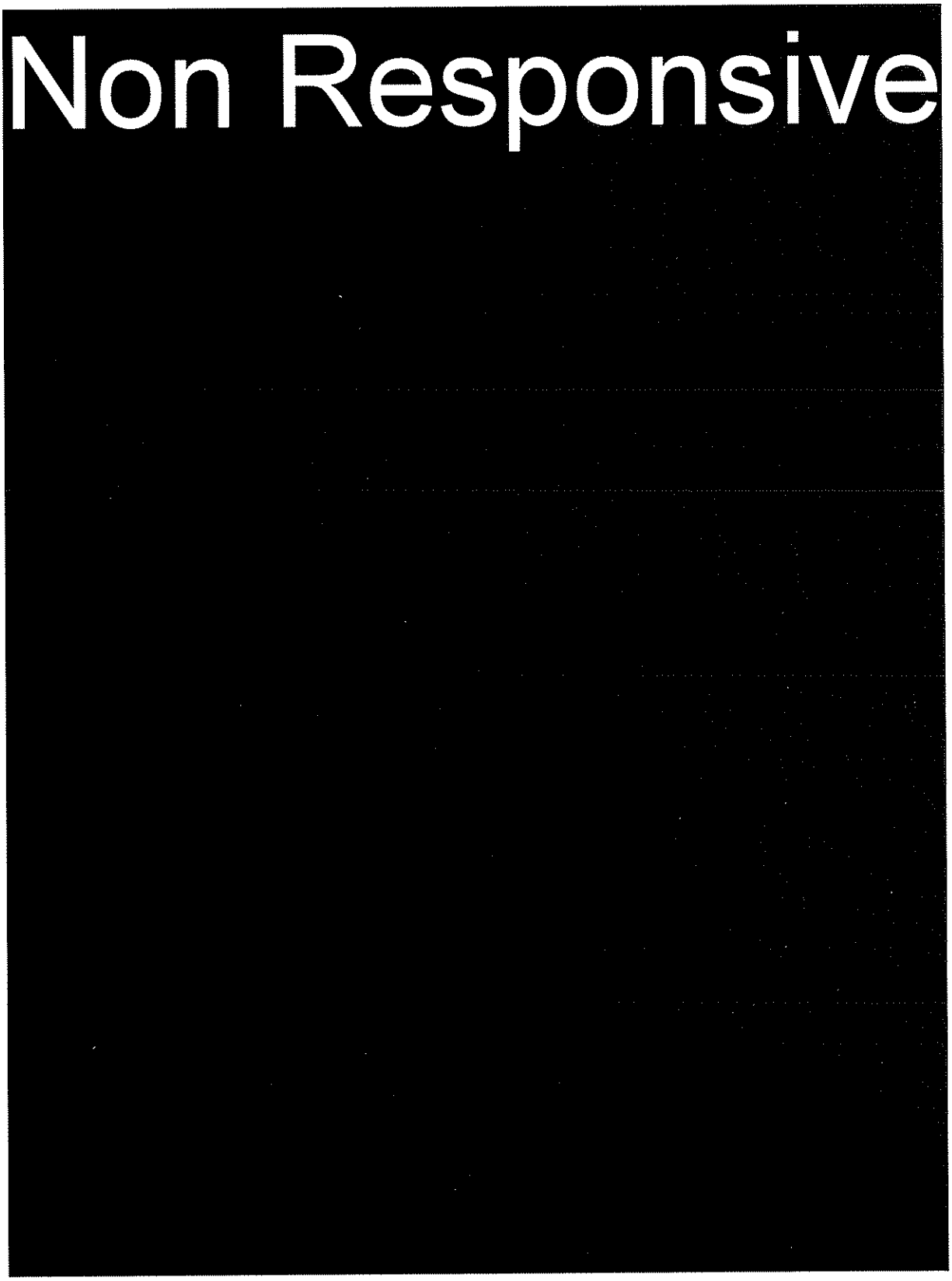
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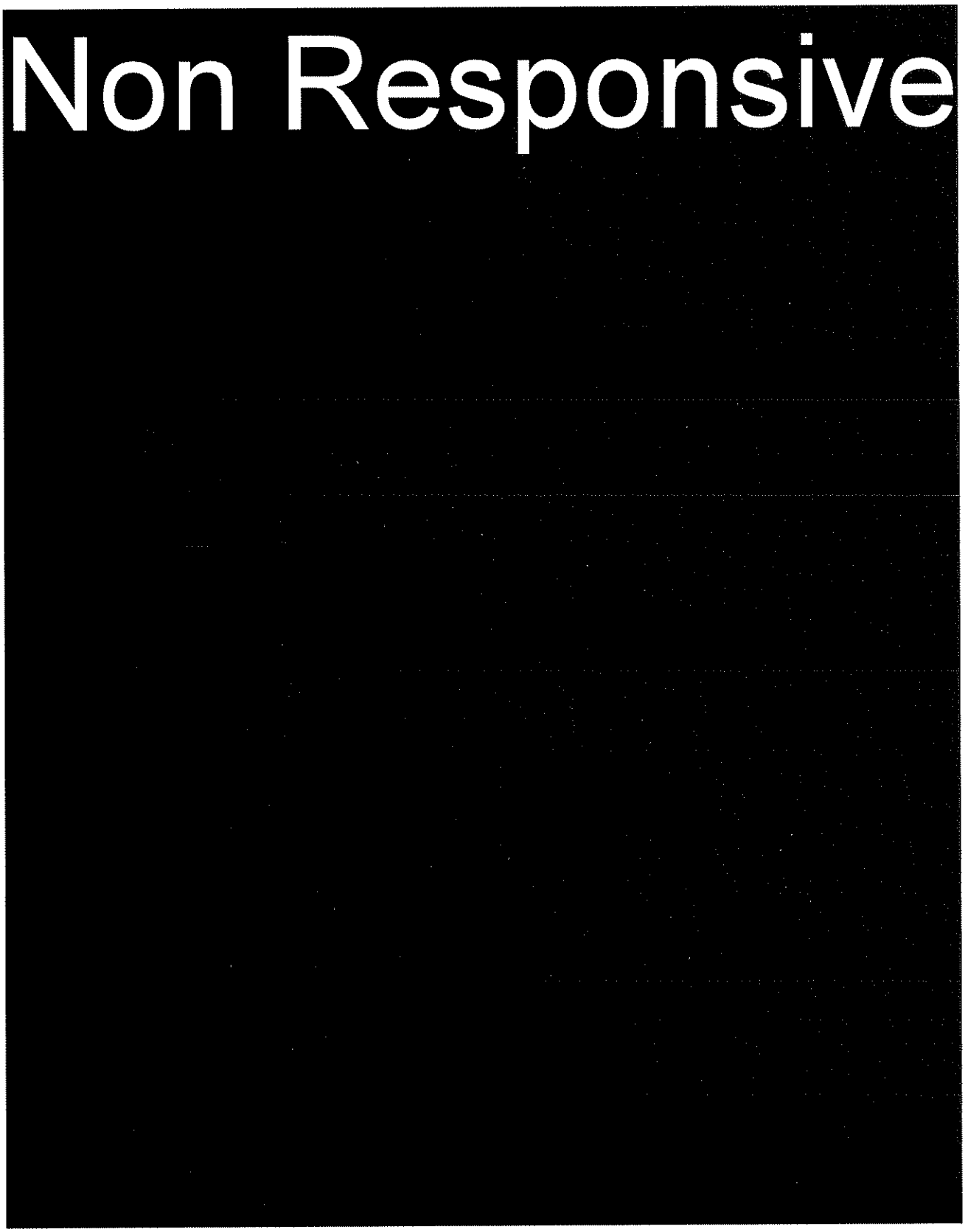
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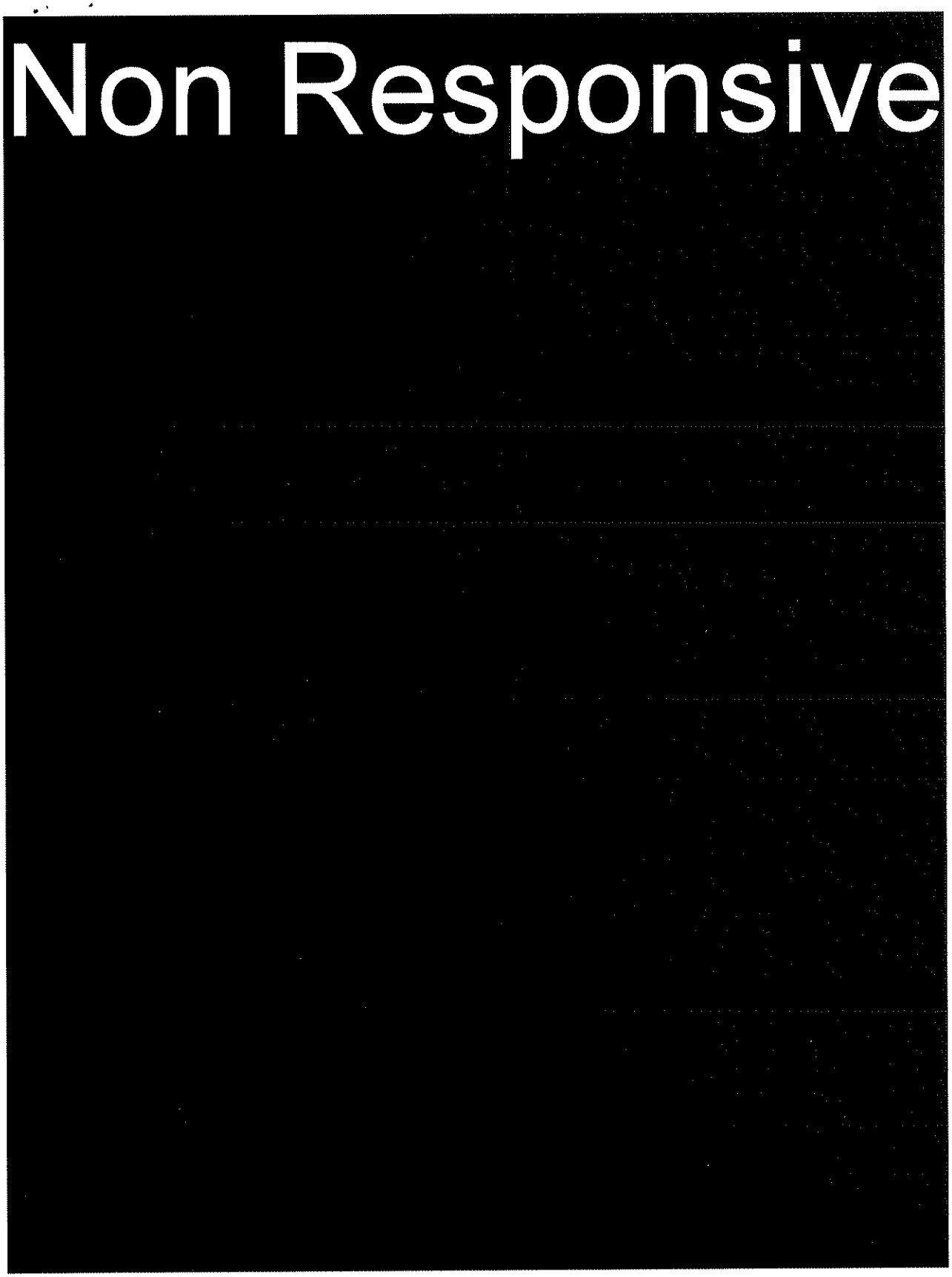
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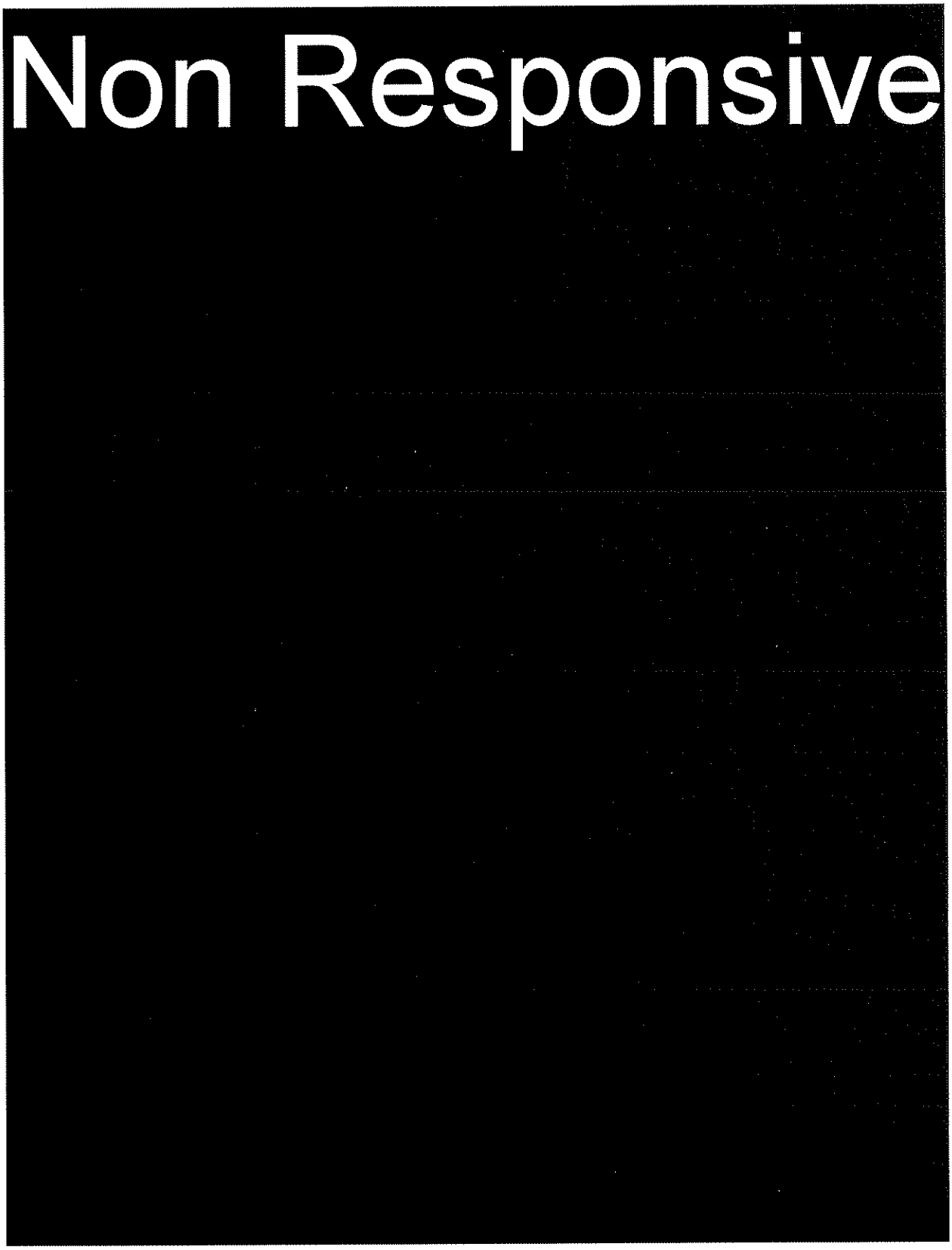
Non Responsive

Non Responsive

Minton, Amy (EOIR)

From: Osuna, Juan (EOIR)
Sent: Monday, September 11, 2006 4:56 PM
To: Minton, Amy (EOIR)

Attachments: Decisionprinciples.wpd

Decisionprinciples.wpd (12 KB)...

DRAFTING ORDERS AT THE BOARD OF IMMIGRATION APPEALS:
DECISION PRINCIPLES FOR PANEL 3

The role of the Board of Immigration Appeals is dispute resolution. The parties that appear before the Board, and any court reviewing our decisions, are expecting to see orders that reflect adequate review of the record in the course of carrying out that role. Therefore, our orders need to identify the dispute that the parties are asking us to resolve, announce the decision we have reached as to that dispute, and explain why we reach that resolution, all in a way that indicates that we have listened to the claim, reviewed the relevant parts of the record, and reached a reasoned decision.

With that in mind, following are general principles to follow in carrying out the Board's dispute resolution role. This is intended as a general formula for you to refer to in drafting orders for the review of the Board Members.[1]

(1) Identify the Issue or Issues in Dispute

This does not require repeating all the claims made by either or both parties. But we should say enough in the order that the parties know that we have considered and understood the claim. It is critical to identify dispositive issues, whether or not we acknowledge all points in dispute.

> *Example*: The respondent raises a number of issues in challenging the Immigration Judge's finding of removability and the denial of cancellation of removal on both eligibility and discretionary grounds, including due process claims in relation to the conduct of the hearing. We find it unnecessary to address most of these contentions because we agree with the Immigration Judge that the respondent is removable as an alien convicted of an aggravated felony and does not qualify for any relief requested at the hearing.

(2) Clearly Announce Our Ruling

This simply means stating our bottom line as to which party wins or loses on the dispositive issues. It usually takes no more than one sentence, or a clause, and can be combined with the identification of the issue.

> *Example:* We reject the claim by DHS that the Immigration Judge was clearly erroneous in crediting the respondent's testimony and subsequently in granting asylum in the exercise of discretion.

---

[1] Obviously, if the case under review is amendable to an affirmance without opinion, the principles set forth in this document do not apply.

(3) Explain Why We Reached Our Result

This is the most important part of any order. It need not be long. But, we need to say enough that the parties can understand why they won or lost. As with the issue identification, our explanation needs to give the parties and any reviewing body confidence that we understood the essence of the case, reviewed the record to the extent necessary to resolve the issues, and reflects a reasonable disposition, even if the losing party or reviewing body thinks the disposition is not correct. Citations to the transcript and relevant exhibits are the best ways to demonstrate a review of the record.

> *Example:* The adverse credibility ruling is supported by the various inconsistencies in the testimony and evidence identified by the Immigration Judge (I.J. at 16-18), some of which go to the heart of the respondent's claim. For example, the respondent's testimony regarding being detained for five weeks (Tr. at 37-39) and beaten during two interrogation sessions (Tr. at 25, 41-42) was never mentioned in his asylum application (Exh. 3) or during his credible fear interview (Exh. 5).

(4) Address Arguments Raised by the Losing Party

It is also important to address the points made by the losing party that bear on the dispositive issues. It is not necessary to address every claim raised by that party, such as arguments on issues that we are not raising. The most important thing is to explain the basis for the disposition.

> *Example:* Although the respondent has offered evidence that his psychological condition may have led to these incomplete accounts of past abuse, the Immigration Judge did not clearly err in rejecting this explanation, given the number and significance of the discrepancies that are present in the record. (Tr. at 43, 48-51, 58).

Remember that attacks on the overall proceedings, such as ruling on evidentiary issues, continuances, or the fairness of the hearing, may well need to be addressed as these issues frequently bear on our overall disposition of the case, even if they may not directly relate to what we believe is controlling. It may also be necessary to include in the order items not raised by the parties, such as controlling precedent published after the Immigration Judge rendered his or her decision.

Nadkarni, Deepali (EOIR)

From: Nadkarni, Deepali (EOIR)
Sent: Thursday, April 10, 2008 11:26 AM
To: Adams, Amanda (EOIR); Anderson, Jill (EOIR); Bates, Elizabeth (EOIR); Betourney, Andrew (EOIR); Biggiani, Justin M. (EOIR); Brickman, Jaclyn (EOIR); Burford, Mary (EOIR); Burton, Brett (EOIR); Campbell, Keith (EOIR); Carey, Tracey (EOIR); Chugh, Amit (EOIR); Combest, Branden (EOIR); Crossett, John P. (EOIR); Curtis, Rena I (EOIR); Czaykowsky, Sandra (EOIR); Degischer, Kristen (EOIR); Fernandes, Karen (EOIR); Franco, Danielle (EOIR); Freeman, Lois (EOIR); Gaffney, Janeen (EOIR); Gimbel, Holly (EOIR); Goodman, Hilary (EOIR); Gully, Solomon (EOIR); Hines, Judy (EOIR); Joe, Ella (EOIR); Kerby, Jennifer (EOIR); Krapf, Catherine (EOIR); Leduc, Becky (EOIR); Maurice, Ellen (EOIR); Meyers, Natalie (EOIR); Mlynar, Maria (EOIR); Murphy, Kathleen (EOIR); Niksa, Stephen (EOIR); O'Herron, Margy (EOIR); Oshinsky, John (EOIR); Pease, Jeffrey (EOIR); Reilly, Kathleen (EOIR); Saltsman, Gary (EOIR); Sanders, Hope (EOIR); Santucci, Audra (EOIR); Soto, Jorene (EOIR); Steyn, William (EOIR); Strand, Marti (EOIR); Tibere, Valerie (EOIR); Walker, Jake (EOIR); Welsh, Elizabeth (EOIR); Wright, Levi (EOIR)
Cc: Cole, Patricia A. (EOIR); Filppu, Lauri (EOIR); Pauley, Roger (EOIR)
Subject: Reminders
Importance: High

Good morning. Please carefully review the items listed below. Despite previous reminders, these errors still occasionally appear.

- Background Check Rule: If the Board decision results in the grant of relief to an alien, the appropriate "BCR" language must be included in the order. This includes the dismissal of a DHS appeal of an IJ's grant of relief. Non Responsive

Non Responsive

- Panel 1 does not use "Burbano" orders. Please be aware of this if you are borrowing language from Panel 2 decisions.

- Do not propose summary affirmance in cases in which the IJ denied asylum based on the merits (reviewable in circuit court) and 1-year bar (nonreviewable). *See Lanza v. Ashcroft*, 389 F.3d 917 (9th Cir. 2004).

- In 240A(a) cancellation cases, please be careful to apply the proper standard. In *Matter of Sotello*, 23 I&N Dec. 201 (BIA 2001), the Board held that an applicant for cancellation of removal under section 240A(a) need not meet a threshold test requiring a showing of "unusual or outstanding equities" before a balancing of the favorable and adverse factors of record will be made to determine whether relief should be granted in the exercise of discretion. *Matter of C-I-T-*, 22 I&N Dec. 7 (BIA 1998), clarified.

- Check CASE first:

Non Responsive

Non Responsive

Thanks for your attention to these issues. Please see your Team Leader or me if you have any questions.
Dee

Panel 1 - Short orders and affirmances

Given the increased rejections from Screening Panel, shorter orders, including short affirmances, may be appropriate in many of our cases on Panel 1. While there is no perfect short order that will work for every case, the following are meant to serve as examples of short orders that may be modified to work in some of our cases. These orders dispense of some of the formalities we have used in some of our orders in the past and get right to the salient issues on appeal. The following are tips to keep in mind during the drafting process:

- In drafting short orders, it is important to use language which reflects that we have given the cases meaningful review. This often can be accomplished by briefly referencing particular arguments made by the parties and/or certain facts underlying the claim. *See, e.g.* Example1, ¶¶ 2, 3.

- It is also important, in drafting short orders, that we specify which issues/applications we are and are not reaching. *See, e.g.* Example 2, ¶¶ 1, 2; Example 3, ¶ 4; Example 4, ¶ 2

- Similarly, in drafting short affirmances, it is critical to specify whether we are affirming all or part of an Immigration Judge's decision and whether we are affirming the reasoning as well as the result of the Immigration Judge's decision. *See, e.g.* Example 3, ¶¶ 2, 4; Example 4, ¶¶ 2, 3

- As with longer orders, we must clearly announce our ruling in short orders and affirmances and specify the applicable standard of review. *See, e.g.* Example 1, ¶ 2; Example 2, ¶ 2.

Again, these orders are meant to serve as samples only and are not exclusive of the types of short orders and affirmances that may be used. Please remember that short orders are not appropriate in every case and that, ultimately, the structure and content of any order is at the discretion of the reviewing Board Member(s).

Example 1 - short order affirming IJ:

ORDER:

PER CURIAM. The respondent appeals from the Immigration Judge's March 16, 2007, decision denying his applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3).[1] The appeal is dismissed.

We reject the respondent's argument on appeal that the Immigration Judge erred in finding that the respondent failed to establish past persecution or a well-founded fear or clear probability of persecution in Lebanon stemming from his membership in the Free Patriotic Movement. The respondent does not challenge the Immigration Judge's factual findings below. *See generally* 8 C.F.R. § 1003.1(d)(3)(i). Moreover, we affirm the Immigration Judge's legal conclusions for the reasons stated by the Immigration Judge (I.J. at 6-10). *See* 8 C.F.R. § 1003.1(d)(3)(ii) (providing that the Board may review questions of law in appeals from decisions of immigration judges *de novo*).

We reject the respondent's argument that the Immigration Judge erred in admitting evidence relating to current country conditions in Lebanon on the date of the hearing and relying on that evidence to determine that the respondent does not have a well-founded fear of persecution in Lebanon. We find that the respondent waived any objection to the Immigration Judge's admission of, or reliance on, this evidence, by failing to object to the admission of the evidence before the Immigration Judge (Tr. at 58-64). *See generally Matter of Garcia-Reyes*, 19 I&N Dec. 830, 832 (BIA 1988) (explaining that objections should be made on the record to preserve them for appeal).

Accordingly, the appeal is dismissed.

---

[1] The respondent submitted her Application for Asylum and for Withholding of Removal (Form I-589) after the passage of the REAL ID Act of 2005 ("REAL ID Act"), which was signed into law on May 11, 2005 (Exh. 2). Her claims are therefore governed by the amendments to the Act brought about by the REAL ID Act's passage. *See* Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act of 2005, Div. B, Pub. L. No. 109-13, 119 Stat. 23 (amending various sections of the Act) (indicating that its provisions apply to claims filed on or after May 11, 2005).

Example 2 - short order affirming IJ and addressing new evidence on appeal:

ORDER:

PER CURIAM. The respondent appeals from the Immigration Judge's January 15, 2007, decision, in which the Immigration Judge denied the respondent's applications for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), and adjustment of status under section 245(i) of the Act, 8 U.S.C. § 1255(i), and ordered the respondent removed to Mexico. The respondent's sole arguments on appeal relate to the Immigration Judge's denial of his application for cancellation of removal. The appeal is dismissed.

On appeal, the respondent argues that the Immigration Judge erred in finding that he failed to establish "exceptional and extremely unusual hardship" to his United States citizen child. *See* section 240A(b)(1)(D) of the Act. The respondent does not challenge the Immigration Judge's factual findings below. *See generally* 8 C.F.R. § 1003.1(d)(3)(i). Reviewing the Immigration Judge's conclusions of law *de novo*, we affirm the Immigration Judge's finding that the respondent failed to meet the hardship standard set forth at section 240A(b)(1)(D) of the Act for the reasons identified by the Immigration Judge (I.J. at 12-15). *See* 8 C.F.R. § 1003.1(d)(3)(ii); *see also Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001).

To the extent that the respondent seeks remand of proceedings to the Immigration Judge based on additional evidence relating to his United States's citizen child's asthma, we find that the respondent has failed to establish that remand of proceedings is warranted. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (holding that an alien seeking to reopen or remand proceedings bears a heavy burden of proving that the new evidence offered would likely change the result of the alien's case). The evidence presented by the respondent in conjunction with his appeal brief, which consists of a doctor's letter indicating that the respondent's daughter's asthma is controlled through the use of an albuterol inhaler, is merely cumulative of evidence presented by the respondent and considered by the Immigration Judge below (I.J. at 14; Exh. 8).

Accordingly, the appeal is dismissed.

Example 3 - short order affirming IJ in part and expressly not reaching another part:

ORDER:

PER CURIAM. The respondent, a native and citizen of Mexico, appeals from the June 15, 2007, decision of the Immigration Judge denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The appeal is dismissed.

We affirm the decision of the Immigration Judge to the extent that the Immigration Judge determined that the respondent failed to demonstrate "exceptional and extremely unusual hardship" to his United States citizen child within the meaning of section 240A(b)(1)(D) of the Act (I.J. at 5-8). *See* 8 C.F.R. § 1003.1(d)(3)(ii) (providing that the Board may review questions of law in appeals from decisions of immigration judges *de novo*); *see also Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001). The respondent does not challenge the Immigration Judge's factual findings below. *See generally* 8 C.F.R. § 1003.1(d)(3)(i).

Although the respondent argues on appeal that his United States citizen child will suffer emotional hardship as a result of being physically separated from the respondent, who does not have primary custody of the child, we agree with the Immigration Judge that the respondent has not established that the hardship his child will suffer is substantially beyond that which would normally be expected from the deportation of an alien with close family members in the United States. *See Matter of Monreal*, *supra*, at 65 (BIA 2001). Furthermore, although the respondent emphasizes on appeal that his child will suffer financial hardship because he will not be able to obtain sufficient employment to continue to pay the $300 in child support that he presently pays per week, the respondent has not established that he will be unable to provide any economic support for his child from Mexico or that the child's mother will not be able to provide for the child's basic needs without his financial contribution.

Because we agree with the Immigration Judge that the respondent failed to meet the hardship requirement set forth at section 240A(b)(1)(D) of the Act, we need not address the Immigration Judge's additional finding that the respondent failed to meet the continuous physical presence requirement set forth at section 240A(b)(1)(A) of the Act (I.J. at 2-4).

Accordingly, the appeal is dismissed.

Example 4 - short order affirming IJ in part and expressly not reaching another part:

The respondent appeals from the October 5, 2005, decision of the Immigration Judge denying her applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture. [1] The appeal will be dismissed.

We affirm the decision of the Immigration Judge to the extent that the Immigration Judge found that the respondent failed to meet her burden of proof for asylum and withholding of removal based on her failure to establish past persecution or a well-founded fear or clear probability of persecution in Honduras (I.J. at 9-10). *See* 8 C.F.R. § 1003.1(d)(3)(ii) (providing that the Board may review questions of law in appeals from decisions of immigration judges *de novo*). Because we agree, for the reasons stated by the Immigration Judge, that the respondent failed to meet her burden of proof on the aforementioned basis, we need not also address the Immigration Judge's determination that the respondent failed to establish a nexus to a protected ground, as set forth at section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A), or the respondent's related arguments on appeal (I.J. at 9).

We further affirm the decision of the Immigration Judge to the extent that the Immigration Judge determined that the respondent failed to meet her burden of proof for protection under the Convention Against Torture subject to the following exception (I.J. at 10). *See* 8 C.F.R. § 1003.1(d)(3)(ii). We do not affirm the Immigration Judge's conclusion that the government of Honduras appears unable to control Mara Salvatrucha (I.J. at 10). Such a conclusion is not necessary to the Immigration Judge's analysis of the respondent's claim under the Convention Against Torture. *See Reyes-Sanchez v. United States Att'y Gen.*, 369 F.3d 1239, 1242-43 (11th Cir. 2004) (holding that the Peruvian government's failure to apprehend members of a Peruvian terrorist group responsible for robbing and assaulting the applicant did not constitute acquiescence by the government to the terrorist group's activity within the meaning of 8 C.F.R. § 1208.18(a)(7)).

The respondent does not challenge the Immigration Judge's factual findings below, except to the extent that the respondent argues that the Immigration Judge erred in not considering and giving weight to the country report, which the respondent contends clearly states the violent nature of the gangs and their inclination to murder those who oppose them. *See generally* 8 C.F.R. § 1003.1(d)(3)(i). Contrary to the respondent's argument, the Immigration Judge specifically referenced the 2004 United States Department of State Country Report on Human Rights Practices for Honduras and found that the respondent's testimony was consistent with known country conditions (I.J. at 5, 8; Exh. 3). Moreover, the respondent has not referred to any portion of the

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[1] The respondent submitted her Application for Asylum and for Withholding of Removal (Form I-589) after the passage of the REAL ID Act of 2005 ("REAL ID Act"), which was signed into law on May 11, 2005 (Exh. 2). Her claims are therefore governed by the amendments to the Act brought about by the REAL ID Act's passage. *See* Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act of 2005, Div. B, Pub. L. No. 109-13, 119 Stat. 23 (amending various sections of the Act) (indicating that its provisions apply to claims filed on or after May 11, 2005).

for Honduras and found that the respondent's testimony was consistent with known country conditions (I.J. at 5, 8; Exh. 3). Moreover, the respondent has not referred to any portion of the country report which specifically supports her contention on appeal, nor is the respondent's contention on appeal itself sufficient to meaningfully challenge the Immigration Judge's decision. Although the country report does refer to gang violence and intimidation, we do not find this information sufficient to establish any clear error in the Immigration Judge's findings of fact or any error in the Immigration Judge's conclusions of law. *See* 8 C.F.R. § 1003.1(d)(3)(i), (ii).

ORDER: The appeal is dismissed.

December 13, 2007

Example 5 - short order denying motion to reopen:

ORDER:

PER CURIAM. This matter was last before the Board on February 23, 2007, when we dismissed the respondent's appeal from an Immigration Judge's 2006 decision ordering him removed from the United States. On October 1, 2007, the respondent filed the present motion, in which he requests that we reopen his removal proceedings so that he may seek a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), pursuant to our June 2007 decision in *Matter of Abosi*, 24 I&N Dec. 204 (BIA 2007), which held that a returning lawful permanent resident need not qualify for adjustment of status in order to seek section 212(h) relief.

The respondent's motion is denied because it is untimely. 8 C.F.R. § 1003.2(c)(2). The respondent acknowledges the untimeliness of his motion and requests that we reopen the proceedings *sua sponte*. We decline to do so, however, because the respondent has identified no exceptional circumstance that would warrant such an extraordinary remedy. *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). *Matter of Abosi*, *supra*, represents an incremental development in the state of the law; it did not announce a fundamental change in the legal landscape, but merely applied established legal principles to a novel factual situation. Accordingly, it does not represent the type of exceptional circumstance that would justify *sua sponte* reopening. *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999). Furthermore, it is not clear to us that the rule announced in *Matter of Abosi*, *supra*, has any applicability to the present respondent, who is now subject to a final order of removal which terminated his status as a returning lawful permanent resident. *See Matter of Lok*, 18 I&N Dec. 101 (BIA 1981), *aff'd*, *Lok v. INS*, 681 F.2d 107 (2d Cir. 1982); *compare with Matter of Abosi*, *supra*, at 206-07. And finally, more than 90 days elapsed between our decision in *Matter of Abosi*, *supra*, and the filing of the present motion, leading us to conclude that the respondent has not exercised the type of diligence that would be required to justify *sua sponte* reopening.

Accordingly, the motion to reopen and the respondent's request for a stay of removal are denied.

FOR THE BOARD

December 13, 2007

Memorandum

Subject	Date
Standard and Scope of Review in Panel 1 Decisions	October 12, 2005

To	From
Panel 1 Attorneys	Dee Nadkarni, Senior Panel Attorney

The purpose of this memo is to serve as a reminder of the standard and scope of the Board's review of Immigration Judge decisions and to communicate some of the issues/concerns Panel 1 Board Members are seeing in our proposed orders. Please print this memo, sample order (attached as separate document), and standard of review sheet (attached), and keep it at hand for easy reference.

Standard of Review

Please keep in mind the correct standard of review language to use when drafting decisions, as outlined in the various reminders sent in the past. When reviewing factual findings, use the "clearly erroneous" standard of review language. Do not say, for example, that "we agree with the Immigration Judge's factual findings." Under the clearly erroneous standard we do not have to agree with the IJ's factual findings, we just have to determine that there was no clear error. Please also do not engage in a recitation of facts that imply a de novo review. Sometimes the facts cited in the draft are not identified in the IJ's decision. This is outside of our scope of review and it is preferable that our summary of the facts be those relied on by the IJ.

Remember that the clearly erroneous standard is only for factual findings. Therefore, never say, for example, that "we find that the IJ's decision finding the respondent removable is not clearly erroneous." The ultimate decision on removability is something we can review de novo, so the "clearly erroneous" language should not be used in such a way.

Scope of Review

Sometimes an order is proposed that includes sweeping language about the scope of review that the Board has engaged in. For example, sometimes the order will say that "we have reviewed the Immigration Judge's decision, the briefs on appeal, and the record of proceedings." This language may suggest more than may have been done in any particular case. If there's no

challenge to an IJ's findings of fact and if we are resolving a legal issue raised by one of the parties, it's entirely possible that we won't get into the record after reading the briefs and the IJ's order. Saying that we have reviewed the entire record is inaccurate. It is best to avoid language like that.

Reviewability

In some cases, even where the issues presented are relatively straightforward, an affirmance without opinion (AWO) may not be the best way to go. For example, if the IJ's decision rests on issues that are both reviewable and nonreviewable in federal court, our practice is to use a short order, rather than an AWO.

However, be careful with some short orders that are basically just boilerplate and say nothing. For example, some short orders "affirm" IJ untimeliness rulings as to asylum and then again "affirm" the IJ on withholding and CAT, but otherwise contain no reasons for why we so affirm the rulings below. These are basically AWOs by another name. They are in fact worse than an AWO, because an AWO directs a reviewing court to look at the IJ's decision as the final agency order. A boilerplate short order sends a message to a reviewing court that the Board substituted its own analysis for the IJ's, but then provides no analysis.

If you are going to propose a short order instead of an AWO, please provide some explanation to support your legal conclusions. This does not have to be a long explanation. A reference to specific pages in the IJ's decision or the transcript would suffice, as would a specific example. Please refer to the attachment for guidance.

Thank you for all your hard work on this panel. As always, if you have any questions, please talk to one of the Board Members or to your team leader.

The following are two examples of short orders that have been proposed in relatively straightforward asylum cases. The first one is a format that should be avoided, for the reasons noted below. The preferred format is the second one, which can be used in some asylum appeals presenting relatively simple issues, and where an affirmance without opinion (AWO) may not be the best option.

INCORRECT

The respondent has appealed from the Immigration Judge's decision dated September 30, 2005. We have reviewed the entire record and we agree with the Immigration Judge's adverse credibility determination. We also agree that the respondent failed to establish that he filed his application within one year of arriving in the United States. Moreover, we agree that the respondent failed to meet his burden of establishing past persecution or a well founded fear of persecution if he is removed. *See INS v. Cardoza Fonseca*, 480 421 (1987); *INS v. Stevic*, 467 U.S. 407 (1984); *INS v. Elias Zacarias*, 502 U.S. 478 (1992) *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). The respondent has presented no arguments on appeal which persuade us that the Immigration Judge's decision should be reversed. Accordingly, the respondent's appeal is dismissed.

CORRECT

The respondent appeals from the September 30, 2005 decision of the Immigration Judge finding him removable from the United States and denying him asylum and withholding of removal. We affirm the Immigration Judge's decision. We find no error in the Immigration Judge's conclusion that the respondent did not meet his burden of establishing that he filed his asylum application within one year of arriving in the United States. While the respondent entered the United States in 1999, he did not filed until 2004, and he has not explained why he waited so long to file. We also find no clear error in the Immigration Judge's determination that the respondent was not credible for the reasons specified in the Immigration Judge's decision. See IJ at 12-15. The Immigration Judge identified a number of discrepancies in the respondent's testimony which go to the heart of the claim. For example, the respondent's testimony about where he was incarcerated and the length of his incarceration differed in fundamental ways from the statements made in his application for asylum and withholding of removal. *Id* at 13. *See Matter of A-S-*, 21 I&N Dec. 1106 (BIA 1998). Without credible testimony, the respondent cannot meet his burden of establishing that he has suffered past persecution or has a well founded fear of future persecution. Accordingly, the Immigration Judge correctly denied his applications for asylum and withholding of removal.

COMMENTARY

The first order is not correct for a number of reasons. First, it sets forth the wrong standard of review. Immigration Judges' credibility determinations are factual findings, which are reviewed under the "clearly erroneous" standard. Therefore, we do not necessarily have to "agree" with the credibility determination to affirm it. Saying, as the order does, that we agree with the credibility finding implies that we reviewed the Immigration Judge's decision de novo. Second, when it states that "we have reviewed the entire record" the order makes an overbroad statement that is not accurate. As an appellate tribunal, the Board does not always review the "entire" record. Rather, we review those portions of the record relevant for our adjudication of the appeal and raised by the parties on appeal. Third, the order makes a number of conclusory legal statements but does not back them up. It says we agree with the credibility determination, but does not say why. It says that the respondent failed to meet his burden of establishing persecution, but does not say why or give any examples. It does not even refer to the Immigration Judge's conclusions on these legal issues. In short, the order is in effect an affirmance without opinion (AWO), but does not conform to the AWO format. Finally, the order contains a series of cites to asylum cases that have little specific relevance to the issues on appeal.

The second order is preferable. First, it contains the correct standard of review. By stating that we find no "clear error" in the credibility determination, the order applies the correct standard to findings of fact. Second, it avoids sweeping statements like "we have reviewed the entire record", thus acknowledging that the Board's review is focused on only the relevant parts of the record as raised by the parties on appeal. Third, it avoids making conclusory statements that are not backed up by *specific* references in the record. It states specific reasons why we are affirming the Immigration Judge's credibility determination, including pinpoint cites to portions of the Immigration Judge's decision and an example. Anyone reviewing our order can then see specific reasons in the record why we are reaching the result we find appropriate. Finally, the order does not include a string citation, but only cites a relevant precedent. Of course, if there is circuit precedent that applies, that should also be cited.

Appropriate Language for BIA Standard of Review

8 C.F.R. § 1003.1(d)(3) sets forth the Board's standard of review

Under the regulations, the Board currently has two standards of review, depending on whether the particular issue under review in a case is a matter of fact or a matter of law. Factual determinations are reviewed under the "clearly erroneous" standard, while matters of law and related issues are reviewed *de novo*. Please keep the proper standard in mind when drafting decisions.

Clearly erroneous standard

1003.1(d)(3)(i) precludes *de novo* review by the Board of the Immigration Judge's findings of fact (including findings as to the credibility of testimony). The proper standard is "whether the findings of the Immigration Judge are clearly erroneous."

Thus, for those issues, it is inappropriate to use any language in an order that indicates we have made our own assessment of the evidence, as opposed to merely reviewing whether the IJ's findings are "clearly erroneous." In other words, we should avoid language that suggests any *de novo* type of review of the facts of the case on our part.

For example, the phrase "we agree" has the connotation that we have made independent factual findings and agree with the IJ's conclusions, rather than merely determining that the IJ committed no clear error in his/her factfinding. Likewise, the phrases "we find" and "we concur" should be avoided when they concern our review of factual findings.

More appropriate language could include the following:

- "The Immigration Judge's findings of fact are not clearly erroneous."
- "The Immigration Judge's adverse credibility finding is not clearly erroneous."
- "We find no clear error in the Immigration Judge's adverse credibility finding."

It is worth emphasizing that the "clearly erroneous" standard is only for findings of fact. Any other issues in the case, including findings of law and discretionary determinations, are subject to *de novo* review, as outlined below.

De novo review standard

1003.1(d)(3)(ii) allows *de novo* review of issues of law, discretion, judgment and all other issues. In other words, it allows *de novo* review of everything but factual findings. This would include questions such as whether the facts as found by the IJ meet the alien's burden of proof, whether removability or statutory eligibility for relief has been established by the facts, and whether the facts show that relief is warranted.

Thus, for these issues, language reflecting our independent assessment of whether the facts, as

determined by the IJ, meet the appropriate standard may be used, as well as language that merely reflects our assessment that the IJ did not err.

What should be avoided, however, is language suggesting that we reviewed an IJ's findings or law, discretion or judgment under the "clearly erroneous" standard. That standard is reserved for findings of fact. Thus, for example, we should avoid saying that we find no "clear error" in the IJ's conclusions that the respondent is removable, or that the IJ's findings that the respondent does not have a well-founded fear of persecution are not "clearly erroneous."

More appropriate language could include the following:

- "We agree with the IJ that the R is removable as charged."
- "We find that the respondent established his statutory eligibility for the relief."
- "The IJ properly/correctly found that the respondent did not meet his burden of proof and was not eligible for relief."

Once again, the *de novo* standard is only for findings of law, discretion and judgment. Factual issues are reviewed under the "clearly erroneous" standard.

Memorandum

BIA 10-02

Subject	Date
Temporary Protected Status - Haiti	January 21, 2010

To	From
Board of Immigration Appeals Legal Staff	David L. Neal, Acting Chairman

The Secretary of Homeland Security has announced that aliens from Haiti may seek Temporary Protected Status (TPS) for a period of 18 months. *See* 75 FR 3476-02 (Jan. 21, 2010). Haitians eligible for TPS may register with the DHS during this period. The Board will administratively close pending removal appeals involving Haitians who appear eligible for TPS. Not all Haitians are eligible for TPS, so please review the record for apparent eligibility before circulating an administrative closure order.

Eligibility requirements for TPS are found in the Federal Register cite listed above, sections 244(a)(1), (c) of the Act, and corresponding regulations. An alien:

- must be a national of Haiti (or an alien with no nationality who last habitually resided in Haiti) who has continuously resided in the United States since January 12, 2010, and has been continually physically present in the United States since January 21, 2010;
- must be admissible as an immigrant, except as provided in section 244(c)(2)(A) (permitting waiver of certain grounds of inadmissibility). *See also* 8 C.F.R. § 1244.3(b), (c). The grounds at section 212(a)(4), (5)(A) and (B), and (7)(A)(i) should not be applied. *See* 8 C.F.R. § 1244.3(a);
- cannot be convicted of any felony or two or more misdemeanors committed in the United States. *See also* 8 C.F.R. § 1244.4(a) (referring to definitions of felony and misdemeanor);
- cannot be one described in section 208(b)(2)(A) of the Act, which includes:
  - the persecutor bar
  - the particularly serious crime bar
  - the serious nonpolitical crime bar
  - the security danger bar
  - the terrorist bar
  - firm resettlement.

If the alien does not appear eligible for TPS, the case may be processed pursuant to normal procedures. Please note on the circulation sheet why there is no apparent eligibility.

When administratively closing a case, use the attached order. The "TPS" and "N"codes should be circled on the back of the circulation sheet. Some types of cases should *not* be administratively closed, e.g., motions to reopen and reconsider; appeals of an IJ denial of a motion; untimely appeals; and detained cases. In these cases, add a footnote advising the alien of TPS where he or she may be eligible. Each Panel may issue its own standard language for this purpose.

Please contact your Team Leader if you have questions. Thank you.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A -

Date:

In re:

IN REMOVAL PROCEEDINGS

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

The Secretary of Homeland Security has designated Haiti under the Temporary Protected Status (TPS) Program. This designation is currently in effect and is scheduled to remain so through July 22, 2011. *See* 75 Fed. Reg. 3476-02 (January 21, 2010). It appears from the record that the alien in the case before us is from Haiti and may be eligible to register for TPS. Additional information about applying for TPS may be obtained from the Department of Homeland Security (1-800-375-5283 or www.uscis.gov).

Accordingly, the following order will be entered.

ORDER: Proceedings before the Board in this case are administratively closed.

If either party to this case objects to the administrative closure of these proceedings, a written request to reinstate the proceedings may be made to the Board. **The Board will take no further action in the case unless a request is received from one of the parties.** The request **must** be submitted directly to the Board of Immigration Appeals Clerk's Office, without fee, but with certification of service on the opposing party. If properly submitted, the Board shall reinstate the proceedings.

FOR THE BOARD

Memorandum

BIA 08-06

Subject	Date
Administrative Closure of cases pursuant to the *ABC* Settlement Agreement	October 1, 2008

To	From
Board Legal staff	Juan P. Osuna, Chairman

The Board is anticipating receiving requests for administrative closure in a limited number of pending Salvadoran and Guatemalan cases as the result of a change in policy by the U.S. Citizenship and Immigration Services ("USCIS") relating to registration for benefits under the settlement agreement set forth in *American Baptist Churches v. Thornburgh*, 760 F.Supp. 796 (N.D.Cal. 1991) ("*ABC*"). On September 22, 2008, the USCIS issued the attached Fact Sheet regarding their "New Policy for *ABC* Registration Determinations After *Chaly-Garcia v. U.S.*, 508 F.3d 1201 (9th Cir. 2007).[1] The Fact Sheet advises Salvadoran and Guatemalan *ABC* class members with cases pending before EOIR who were previously found ineligible for *ABC* benefits and believe they are eligible for *ABC* benefits under the *Chaly-Garcia* ruling to file a motion to administratively close their proceedings. This memorandum provides general guidance on addressing such requests for administrative closure. If you have any questions regarding the processing of these requests for administrative closure, please consult your Team Leader or Senior Panel Attorney, and/or Board Member.

Application of the *ABC* settlement agreement - The Board has previously determined that EOIR's role under the *ABC* settlement agreement is restricted to inquiries under paragraph 19 of the agreement. *Matter of Morales*, 21 I&N Dec. 130 (BIA 1996). In this regard, (1) whether the alien is a class member, (2) whether he has been convicted of an aggravated felony, and (3) whether he is subject to detention under paragraph 17 of the agreement. *Id.*

Initially, the *ABC* settlement agreement defines an ABC class members as all Salvadorans in the United States as of September 19, 1990; and all Guatemalans in the United States as of October 1, 1990. Paragraph 19 of the *ABC* settlement agreement provides in relevant part:

> [A]ny class member whose deportation proceedings is based on a criminal ground of deportability or whose proceedings commenced after November 30, 1990, will not have his or her case automatically administratively closed on or before January 31, 1991. Rather, that individual may ask the Immigration Court or the BIA to administratively close his or her case and the case will be administratively closed unless the class member has been convicted of an aggravated felony or is subject to detention under paragraph 17.

[1] The Fact Sheet is also available online at www.uscis.gov/files/article/Chaly_22Sep08.pdf

Paragraph 17 of the agreement sets forth the conditions under which DHS (former INS) may detain eligible class members. It provides in relevant part:

> The INS may only detain class members, eligible for relief under paragraph 2, who are otherwise subject to detention under current law and who: (1) have been convicted of a crime involving moral turpitude for which the sentence actually imposed exceeded a term of imprisonment in excess of six months; or (2) pose a national security risk; or (3) pose a threat to public safety.

The Board has held that the former INS, now DHS/USCIS is assigned the role of making substantive determinations of an alien's eligibility and EOIR's obligation is to assure that each qualified class member under paragraph 19 has an opportunity for an eligibility determination by USCIS. *Matter of Morales, supra,* at 134. As a result, the Board will not evaluate whether or not a class member is eligible for a *de novo* asylum adjudication before an Asylum Officer as provided under paragraph 2 of the settlement agreement.

Accordingly, where a class member requests administrative closure from the Board and they are not convicted of an aggravated felony and are not subject to detention under the provisions of paragraph 17 of the settlement agreement, administrative closure should be granted in accordance with the *ABC* settlement agreement. However, if you have a case where the alien seeking administrative closure is detained or is subject to paragraph 17, please bring the matter to the attention to your Team Leader or Senior Panel Attorney for further assessment.

Suggested language - Below is some suggested language granting the request for administrative closure as well as ORDER language:

> In the present case, the respondent has requested administrative close proceedings based upon his/her membership in the class of persons governed by the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F.Supp. 796 (N.D.Cal. 1991) ("*ABC*"). The respondent appears to be a class member by the terms of the settlement, and he/she has not been convicted of an aggravated felony and is not subject to detention under paragraph 17 of the settlement agreement. We further find that this case is governed by our precedent decision in *Matter of Morales*, 21 I&N Dec. 130 (BIA 1995). Therefore, we find that administrative closure is appropriate under the facts of this case.
>
> ORDER: The respondent's motion for administrative closure is granted.
>
> FURTHER ORDER: The proceedings before the Board in this case are continued indefinitely without further Board action pending the respondent's effectuation of her/his rights under the *ABC* settlement.
>
> FURTHER ORDER: Proceedings will be reinstated upon written notice by either party with proof of service of such notice upon the opposing party.

Decision and Disposition Codes - When a case is administratively closed pursuant to the *ABC* settlement, please select the CON decision code and the N disposition code on the back of the circulation sheet.

Memorandum

BIA 08-03

Subject	Date
The Board's Standard/Scope of Review	May 23, 2008

To	From
Board Attorneys	Juan Osuna, Acting Chairman
	Ellen Liebowitz, Acting Senior Counsel

In 2002, the Attorney General issued a procedural reform regulation, which, in part, changed the standard and scope of review applied by the Board when reviewing a decision by an Immigration Judge. The standard/scope of review regulation is now found at 8 C.F.R. § 1003.1(d)(3).

This regulation mandates that the Board will not engage in *de novo* review of findings of fact determined by an Immigration Judge, but rather, shall review them only to determine whether the factual findings (including findings as to credibility) are clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i).[1] The Board has *de novo* authority over questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges. *See* 8 C.F.R. § 1003.1(d)(3)(ii). The regulation also limits the Board's ability to engage in fact-finding in the course of deciding appeals. *See* 8 C.F.R. § 1003.1(d)(3)(iv).[2]

The reform regulation was accompanied by a detailed Supplementary Information, which among other things, explained the interplay of the clearly erroneous standard of review and the Board's *de novo* review authority. *See* 67 Fed. Reg. 54,878 (Aug. 26, 2002); *see also Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

EMPLOYMENT OF THE STANDARD/SCOPE OF REVIEW

When the Board reviews an Immigration Judge's decision, it is imperative to correctly identify and employ the standard of review being used by the Board. Depending on the particular needs of a case, it will often be appropriate to refer to the pertinent provisions of 8 C.F.R. § 1003.1(d)(3), along with the correct

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[1]The clearly erroneous standard of review does not apply to appeals filed before September 25, 2002. *See* 8 C.F.R. § 1003.3(f); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). The Board has *de novo* review authority over all issues arising in appeals filed before that date, with deference to the Immigration Judge in the area of credibility. *See e.g., Matter of A-S-*, 21 I&N Dec. 1106, 1109 (BIA 1998).

[2]Under 8 C.F.R § 1003.1(d)(3)(iii), the Board has *de novo* review authority over all questions arising in appeals from decisions issued by DHS officers.

terminology. The Board also has issued several precedent decisions, discussed below, addressing this regulation and the standard of review. These cases should be cited where appropriate. For example, where the Board is addressing an Immigration Judge's finding on whether a respondent met his or her burden of proof for protection under the Convention Against Torture (CAT), *Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008), can be cited to explain why we will defer to the Immigration Judge's finding of facts insofar as they are not clearly erroneous, but we have *de novo* authority over the question of whether those facts support a conclusion that it is more likely than not that the respondent will be tortured upon return to his or her native country. Similarly, *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008) may be cited in instances where the Board is not finding any clear error on an Immigration Judge's *factfinding* in an asylum case, but is reaching a different conclusion on the *legal* issue of whether a respondent qualifies for asylum.

While each decision must be drafted in accordance with the particular circumstances of the case, it is of paramount importance that there are no ambiguities as to the standard of review being employed. For example, when referring to a legal, discretionary, or other determination made by an Immigration Judge over which the Board has *de novo* review authority, do not use language such as "there was no clear error by the Immigration Judge." Similarly, when reviewing factual findings by an Immigration Judge, be sure to refer to a lack of or existence of "clear" error. Do not use the term "substantial evidence" as this is not the standard the Board uses to review factual, legal, or discretionary issues, and use of that incorrect term can be very confusing to the parties and to a reviewing court.

RELEVANT PRECEDENT DECISIONS

The Board has issued a number of precedent decisions discussing the standard of review under the reform regulation. The two most recent precedents were issued this month. These decisions should be consulted and cited in decisions when discussing the standard of review. The precedent decisions are the following:

Matter of S-H-, 23 I&N Dec. 462 (BIA 2002). This case explains that under the new regulations, the Board has limited fact-finding ability on appeal, which heightens the need for Immigration Judges to include in their decisions clear and complete findings of fact that are supported by the record and are in compliance with controlling law. It adds that if the Immigration Judge does not conduct adequate factfinding, a remand may be necessary.

Matter of R-S-H-, 23 I&N Dec. 629 (BIA 2003). The Board discusses the highly deferential nature of the clearly erroneous standard of review. *See e.g, id.* at 637 ("[a] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (*quoting from United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Matter of A-S-B-, 24 I&N Dec. 493 (BIA 2008). In this case, the court of appeals granted the government's unopposed motion to remand for the Board to explain its earlier statement that the issue of whether the alien met his burden of proof to show a "well-founded" fear of persecution was a question of law warranting a *de novo* review pursuant to 8 C.F.R. § 1003.1(d)(3)(ii). The Board, considering the guidance provided in the Supplementary Information to the procedural reform regulation, explained that the Board should defer

to the factual findings of an Immigration Judge, unless clearly erroneous, but retains independent judgment and discretion, subject to applicable governing standards, regarding pure questions of law and the application of a particular standard of law to those facts. The decision also explains that to determine whether established facts are sufficient to meet a legal standard, such as a "well-founded fear," the Board is entitled to weigh the evidence in a manner different from that accorded by the Immigration Judge, or to conclude that the foundation for the Immigration Judge's legal conclusions was insufficient or otherwise not supported by the evidence of record. This case also contains a discussion about the Board's authority to consider the total content of documentary evidence admitted into the record by an Immigration Judge. *See Matter of A-S-B-, supra*, at 498.

Matter of V-K-, 24 I&N Dec. 500 (BIA 2008). In this case, the court of appeals granted the government's unopposed motion to remand for clarification of whether the Board had authority to reverse the Immigration Judge's finding that the respondent established, by a preponderance of the evidence, that he would more likely than not be tortured upon return to his native country. Upon considering the regulations and the Supplementary Information, the Board found it had *de novo* review authority over an Immigration Judge's prediction or finding regarding the likelihood that an alien will be tortured upon return to his native country, because the question relates to whether the ultimate statutory requirement for establishing eligibility for relief from removal has been met. The Board also clarified that while it reviewed an Immigration Judge's factual rulings for clear error, a prediction of the probability of future torture, although it may be derived in part from "facts," is not the sort of determination limited by the clearly erroneous standard. We noted that the fact that the Immigration Judge's prediction derived from his acceptance of an expert witness's testimony does not affect its nature as a prediction relating to whether an ultimate legal standard has been met.

Memorandum

BIA 07-07

Subject	Date
US Supreme Court to consider issue of whether filing motion to reopen tolls the voluntary departure period, and whether a particularly serious crime must be an aggravated felony	October 31, 2007

To	From
Board Legal Staff	Juan P. Osuna, Acting Chairman

On September 25, 2007, the United States Supreme Court granted petitions for *writ of certiorari* in two immigration related matters. The first matter involves the limited issue of whether the filing of a motion to reopen removal proceedings automatically tolls the period within which an alien must depart the United States under an order granting voluntary departure. *Dada v. Gonzales*, 207 Fed. Appx. 425 (5th Cir. Nov. 28, 2006) (unpublished, No. 06-60180), *certiorari granted by, Dada v. Keisler*, ___S.Ct. ___, 2007 WL 2768022, 76 USLW 3122, 76 USLW 3154. The Court of Appeals for the Third, Eighth, Ninth, and Eleventh circuits have held that the filing of a motion to reopen prior to the expiration of a voluntary departure period has the effect of "tolling" the voluntary departure deadline until such time as the motion is adjudicated. *Ugokwe v. United States Attorney General*, 453 F.3d 1325, 1329-31 (11th Cir. 2006); *Kanivets v. Gonzales*, 424 F.3d 330, 334-35 (3d Cir. 2005); *Sidikhouya v. Gonzales*, 407 F.3d 950, 952 (8th Cir. 2005); *Barroso v. Gonzales*, 429 F.3d 1195 (9th Cir. 2005). The Court of Appeals for the First, Fourth and Fifth have rejected the "tolling" principle. *Dekoladenu v. Gonzales*, 459 F.3d 500, 505-07 (4th Cir. 2006); *Banda-Ortiz v. Gonzales*, 445 F.3d 387, 390-91 (5th Cir.), *petition for reh'g en banc denied*, 458 F.3d 367 (5th Cir. 2006); *Jupiter v. Ashcroft*, 396 F.3d 487, 491-92 (1st Cir. 2005).

The second case in which the Supreme Court granted the petition for *writ of certiorari* involves the issues of whether an offense must be an aggravated felony to be classified as a "particularly serious crime" (PSC) for purposes of the bar to withholding of removal, and the scope of appellate court jurisdiction over review of PSC determinations. *Ali v. Achim*,468 F.3d 462 (7th Cir. 2006), *rehearing and rehearing en banc denied* (Jan. 5, 2007), *certiorari granted*, ___S.Ct. ___, 2007 WL 1090399, 75 USLW 3557, 76 USLW 3018. The Seventh Circuit Court of Appeals determined that the Immigration and Nationality Act does not require that an offense be an aggravated felony in order to be considered a particularly serious crime. The Board recently held in *Matter of N-A-M-*, 24 I&N Dec. 336, 338 (BIA 2007), that a plain reading of statute does not require that an offense be an aggravated felony in order for it to be considered a particularly serious crime. The Third Circuit, on the other hand, has taken the contrary view, *see Alaka v. United States Att'y Gen.*, 456 F.3d 88, 104-05 (3d Cir. 2006), and the Board has declined to follow the court's position outside the Third Circuit.

Pending the Supreme Court's determination in these cases, the Board will continue to apply controlling circuit or Board precedent. In those circuits that have not addressed the "tolling"of voluntary departure

issue, we will continue to follow the approach that the filing of a motion to reopen does not have the effect of "tolling" voluntary departure. Moreover, as to the PSC issue, apply the Board's decision in *Matter of N-A-M-*. In the Third Circuit apply that court's decision in *Alaka*.

In addition, in the circuits that have spoken on these issues, please include language either in a footnote or the text of the decision that refers to the pending issue before the Supreme Court. Below is some language, which will need to be tailored to the specific controlling circuit, which you are welcome to use for the "tolling" voluntary departure issue:

> "The Board recognizes that the United States Supreme Court is currently considering the issue of whether the filing of a motion to reopen removal proceedings automatically tolls the period within which an alien must depart the United States under an order granting voluntary departure."

With respect to the issue of whether a particularly serious crime must be an aggravated felony for the withholding bar to trigger, below is some language that you may wish to use.

> "The Board recognizes that the United States Supreme Court is currently considering the issue of whether an offense must be an aggravated felony to be classified as "particularly serious crime" for purposes of the bar to withholding of removal."

If you have any questions, please contact your Team Leader or SPA.

Memorandum

BIA07-02

Subject	Date
Background and Security Check Interim Rule - Board Case Processing Update	March 1, 2007

To	From
Board Legal Staff	Juan Osuna, Acting Chairman

The Board is anticipating that, in a limited number of cases, the Department of Homeland Security ("DHS") will advise the Board that the appropriate security and background checks are "current" (*i.e.*, evidence of an expiration date and that time period has not elapsed). In accordance with the *Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals* (interim) regulation ("Background Check rule"), such cases must include specific language notifying the alien that he or she must contact the appropriate DHS office in order to obtain status documents. 8 C.F.R. § 1003.47(i). If you are assigned a case where security checks are "current" (*i.e.*, expiration date provided by DHS and time period has not elapsed), you **must** bring the matter to the attention of your Team Leader or Senior Panel Attorney for further review for inclusion of the approved notice language.

It is important to note, that although there may be a few cases where the Board may outright grant relief as opposed to issuing a BCR remand, the Board's policy of presuming that previously reported checks have expired remains in effect. If you have any question as to whether checks have expired in your assigned case, please make the appropriate inquiries with your Team Leader or Senior Panel Attorney. The Board must comply with the requirements of the Background Check rule as discussed in the attached memorandum which was issued on October 24, 2005. Moreover, the Board must also comply with the permanent injunction order entered by United States District Court of California in the *Santillan* class action suit (slip opinion published at 2005 WL 3542661 (N.D. Cal. Dec. 22, 2005). With this in mind, it is very important to remember the following processing procedures:

(1) Where the Board determines that relief should be granted or affirmed, but the record of proceedings does not reveal that checks have been completed, or DHS reports that the results of prior checks are no longer current, the Board **must** remand the record to the Immigration Judge;

(2) A decision remanded for the sole purpose of allowing DHS to complete or update checks must contain the background check remand standard FURTHER ORDER language, and the circulation sheet must have the decision code "BCR" selected;

(3) At this time, the Board presumes that previously reported and considered checks have expired. The record therefore **must** be remanded to the Immigration Judge for the purpose of updating checks and further consideration where appropriate. Moreover, such orders must contain the background check remand standard FURTHER ORDER language, and the circulation sheet must have the decision code "BCR" selected;

(4) Only in cases which affirmatively reflect that reported and considered checks have not expired, (*i.e.*, expiration date provided to the Board and time period has not elapsed), will the Board consider issuing an order explicitly granting relief covered by the Background Check Rule. However, such a case **must** include specific language notifying the alien that he or she must contact the appropriate DHS office in order to obtain documentation evidencing status.

Again, if you have a case where there is an affirmative representation by DHS indicating that previously reported security checks are "current", (*i.e.*, expiration date provided DHS and time period has not elapsed), bring the matter to the attention of your Team Leader or Senior Panel Attorney. The case will be reviewed for inclusion of the regulatory required language, NOTICE TO ALIEN TO CONTACT DHS/USCIS. *See* 8 C.F.R. 1003.47(i).

For additional details regarding the Board's implementation of the Background Check rule, please refer to the Background Check Remand Guidance (BIA 05-02) issued on March 23, 2005, which is available on the BIA Web Page at Non Responsive

Attachment

Memorandum

Subject	Date
Background and Security Check Interim Rule - Board Case Processing Reminder	October 24, 2005

To	From
Board Legal Staff	Lori L. Scialabba, Chairman

We have reached the 6 month "anniversary" mark with respect to implementation of the *Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals* (interim) regulation ("Background Check rule"). As a result, this memo is intended as a general reminder of the Board's processes for implementing this rule. For more details, please refer to the Background Check Remand Guidance (BIA 05-02) issued on March 23, 2005, which is available on the BIA Web Page at Non Responsive

The Background Check rule prohibits Immigration Judges and the Board from granting particular forms of immigration relief without first ensuring that the Department of Homeland Security ("DHS") has completed and reported the appropriate identity, law enforcement, or security investigations or examinations. *See* 8 C.F.R. §§ 1003.1(d)(6) and 1003.47(g). The following forms of relief are specifically covered by the rule and therefore cannot be granted until DHS completes the necessary background and security checks:

- Asylum under section 208 of the Act;
- Adjustment of status to that of an LPR under section 209 or 245 of the Act or any other provision of law;
- Conditional permanent resident status or the removal of the conditional basis of such status under section 216 or 216A of the Act;
- Waivers of inadmissibility or deportability under sections 209(c), 212, or 237 of the Act or other provisions of law;
- Cancellation of removal under section 240A of the Act, suspension of deportation under former section 244 of the Act, relief from removal under former section 212(c) of the Act, or any similar form of relief (includes cancellation under NACARA § 203);
- Withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture;
- Registry under section 249 of the Act; and

- Conditional grants relating to the above, such as for applications seeking cancellation of removal in light of section 240A(e) of the Act.

The rule, however, does not apply to the granting of voluntary departure applications or to custody redeterminations.

Board Remand to allow DHS to complete or update checks: Where the Board determines relief should be granted or affirmed, but the record of proceedings reveals that checks have not been completed or DHS reports that the results of prior checks are no longer current, the Board must remand the record to the Immigration Judge to allow DHS the opportunity to complete and report the results of checks. The Background Check Remand Guidance (BIA 05-02) issued on March 23, 2005, provides detailed information regarding processing cases remanded to the Immigration Judge for the sole purpose of allowing DHS to complete or update checks.

Remember, that a decision remanded for the sole purpose of allowing DHS to complete or update checks must contain the background remand standard FURTHER ORDER language provided below.

> FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h). *See* Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).

In addition, the proposed decision should not explicitly state that the relief is granted. Rather, the decision should reflect that eligibility for the relief has been established. For further specific guidance regarding suggested decision language, please consult the Background Check Remand Guidance (BIA 05-02) which is available on the BIA Web Pate at Non Responsive Finally, the decision code "BCR" should be checked on the backside of the circulation sheet, and the disposition code "Z" should also be selected.

Board Order Granting or Affirming - Notice To Alien To Contact DHS: Only when checks have been completed, results reported and considered, and DHS has not advised that checks have expired or are not required, may the Board issue an order granting relief covered by the Background Check rule. However, the regulation further requires that the decision reflecting the grant **must** include

notice to the alien that, in order to obtain documentation evidencing status, the alien must contact the appropriate DHS office. *See* 8 C.F.R. § 1003.47(i).

At this time, the Board and DHS are working through various issues related to the notification requirement in Board decisions. Further information will be forthcoming regarding implementation of this portion of the Background Check rule. If you have a case where a covered form of relief should be granted or affirmed AND the record reflects that checks have been completed, results reported and considered, and DHS has not advised the Board that checks have expired, please bring the matter to the attention of your Team Leader or Senior Panel Attorney.

Memorandum

BIA 05-04

Subject	Date
Grants of Asylum Based on Coerced Population Control Policies (CPC)	June 30, 2005

To	From
Board Legal Staff	Lori L. Scialabba Chairman

This memorandum concerns the impact of provisions of the REAL ID Act on our processing of cases. **As of May 11, 2005, the Board should no longer be granting asylum conditionally based on coercive population control policies, but we must continue to circle the CPC code on the circulation sheet when the Board's decision results in a grant of asylum based on CPC, if the background checks are complete.**

Section 101(g)(2) of the Real ID Act amends the Immigration and Nationality Act, in particular, by repealing section 207(a)(5), which imposed a numerical cap on the number of asylum grants based on persecution for resistance to coercive population control policies. This amendment took effect on May 11, 2005, subject to the requirements for background security investigations performed by the Department of Homeland Security.

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Remember, CPC grants may include orders withdrawing appeals or dismissing a DHS appeal (even as untimely) from an Immigration Judge's order granting asylum based on CPC. A CPC grant could also result from a summary affirmance decision. There is an automated summary affirmance order that writes in a CPC code to the system. Please be sure to choose the correct order and the correct codes.

Since April 1, 2005, when the background check rule took effect, we have not been using the CPC code because we have not had indication in the record that DHS has completed all required identity or security investigations.

Until there is such indication in the record, please continue to remand to the Immigration Court cases where the alien establishes eligibility for asylum based on CPC, in order to allow DHS to complete or update the background checks. Do not use the CPC code in that instance. Rather, please use the BCR code with a Z disposition code.

Thank you and please feel free to contact Ana Mann at (b) (6) if you have any questions.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman *5107 Leesburg Pike, Suite 2400* **BIA 04-03**

Falls Church, Virginia 22041

August 26, 2004

MEMORANDUM TO: Board Legal Staff

FROM: Lori L. Scialabba
Chairman

SUBJECT: Administrative Closure of cases involving TPS or DED countries

The purpose of this memorandum is to provide updated guidance regarding administrative closure of pending appeals at the Board. In particular, appeals which involve aliens who are potentially eligible for Temporary Protected Status (TPS) or Deferred Enforced Departure (DED).

As you are aware, administrative closure is a means in which to temporarily remove a case from either the Immigration Judge's calendar or from the Board's docket. Administrative closure is a case management tool for the Board's administrative convenience and is not meant to provide benefits to either party. The Board has stated that a case may not be administratively closed if opposed by either of the parties. *Matter of Gutierrez*, 22 I&N Dec. 479 (BIA 1996). Moreover, the Board does not, with a few exceptions, administratively close expedited or detained cases, motions to reopen or reconsider or untimely appeals.

In the past, the Board has approved the administrative closure of groups of cases involving nationals who appear eligible for Temporary Protected Status (TPS) or Deferred Enforced Departure (DED). At this time, however, I have concluded that administrative closure of groups of cases is not warranted. Rather, the issue of administrative closure of a case appeal pending at the Board will be made on a case by case basis after evaluating whether:

- alien is eligible to apply for TPS or DED
- a party has affirmatively sought such closure
- no objection from the opposing party has been received

In addition, a listing of countries designated for TPS or DED may be found on the Virtual Law Library.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

BIA 04-02

Chairman *5107 Leesburg Pike, Suite 2400*

Falls Church, Virginia 22041

March 5, 2004

MEMORANDUM TO: BIA Board Members
FROM: Lori Scialabba
Chairman
SUBJECT: IJ Decisions imbedded in the transcripts

Please be advised that pursuant to discussions with OCIJ, and in accordance with our precedent decision in *Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999), the Board, beginning March 4, 2004, should consistently remand all decisions from Immigration Judges in non-detained cases where the IJ's oral decision is embedded in the transcript itself and there is no separate transcribed oral decision in the record. Detained cases of this type should be handled on a case-by-case basis.

As you know, the IJ's oral decision should be a separate item in the record of proceedings (ROP). When the decision is not separate but is imbedded in the transcript, it causes processing problems from the transcription and briefing stages all the way through the process, to the posting of our final decision on the Virtual Law Library (VLL). This is increasingly important now that the Virtual Law Library is used for posting decisions to the Courts and to OIL, as well as being a resource for EOIR and DHS. It is therefore imperative that we have an IJ decision to post, and that we remand the case if we do not. Otherwise, in addition to processing problems noted above, our own electronic records for the case remain deficient, and we receive complaints about the decisions' absence from the VLL.

Consequently, in accordance with our discussions with OCIJ, and pursuant to *Matter of A-P-, supra*, we will be instructing our J-Panel paralegals to begin treating these cases consistently as defective transcript cases, as of March 4, 2004. They will be preparing proposed form orders to this effect for Board Member signature when this circumstance arises. Please be aware of this issue when you encounter imbedded IJ decisions. Thank you.

Rubi, Veronica (EOIR)

From: Kocur, Ana (EOIR)
Sent: Monday, August 16, 2010 9:38 AM
To: Rubi, Veronica (EOIR)
Subject: FW: Panel 3 guidance on captioning Hispanic and Latino/a last names in unpublished BIA decisions
For FOIA

From: Chestnutt, Mark (EOIR)
Sent: Tuesday, June 30, 2009 9:03 AM
To: [redacted]
[redacted]
Cc: Kocur, Ana (EOIR)
Subject: Panel 3 guidance on captioning Hispanic and Latino/a last names in unpublished BIA decisions

Hi everyone,

There have been some recent questions about this formatting issue, so here's some additional guidance.

For Hispanic and Latino/a last names, Board practice is to underline the second-to-last surname as shown on the charging document. Thus, if the NTA shows:

Juan Valdez-GRANADOS

You would nonetheless caption the respondent's name as:

JUAN VALDEZ-GRANADOS

If, however, there is a middle name instead of two last names, you would only underline the actual last name. E.g.:

ALICIA JUANITA SANCHEZ

If the charging document shows a hyphen between the two last names, you should include it. If it does not show a hyphen, you may include the hyphen between the last names at your option (remember, this guidance relates to Hispanic and Latino/a last names). The presence or absence of a hyphen in the name on the charging document, however, is not enough reason *by itself* to add an "a.k.a." that's not already listed on the charging document.

If you're not sure about whether a name is a middle or a last name, you might talk to your colleagues for input. We understand that this rule can be a bit confusing, and we just ask that you do your best. Please see your TL if you have any questions.

Thanks!

Rubi, Veronica (EOIR)

From: Kocur, Ana (EOIR)
Sent: Monday, August 16, 2010 9:30 AM
To: Rubi, Veronica (EOIR)
Subject: FW: Haitian TPS Footnote

Attachments: haitian footnote earthquake 2010.wpd

haitian footnote earthquake 20...

or FOIA

-----Original Message-----
From: Holmes, David (EOIR)
Sent: Monday, January 25, 2010 1:20 PM
To: Non Responsive
Cc: Liebowitz, Ellen (EOIR); Neal, David L. (EOIR); Grant, Edward (EOIR); Kocur, Ana (EOIR)
Subject: Haitian TPS Footnote

Please use the attached footnote in decisions in which we are denying a Haitian motion to reopen or reconsider.

A request for humanitarian parole or deferred action arising from the recent devastating earthquake in Haiti and its aftermath are matters beyond the jurisdiction of the Board and the Immigration Judges. *See Matter of Medina*, 19 I&N Dec. 734 (BIA 1988); *Matter of Quintero*, 18 I&N Dec. 348 (BIA 1982). However, a statement released by the Department of Homeland Security on January 13, 2010, reflects that "all removals to Haiti [have been halted] for the time being in response to the devastation caused by [the] earthquake." Further, the Secretary of Homeland Security has announced that Haitians who have continuously resided in the United States since January 12, 2010, and have been continuously physically present since January 21, 2010, may be granted Temporary Protected Status ("TPS"). *See* 75 Fed. Reg. 3476-02 (January 21, 2010). Jurisdiction over applications for TPS by aliens under final orders of removal is with the U. S. Citizenship and Immigration Services (USCIS) and TPS applications must be filed with the USCIS. *See* 8 C.F.R. § 1244.7. Please contact the Department of Homeland Security for any additional questions you may have regarding how to apply for TPS (1-800-375-5283 or www.uscis.gov).

Rubi, Veronica (EOIR)

From: Kocur, Ana (EOIR)
Sent: Monday, August 16, 2010 9:30 AM
To: Rubi, Veronica (EOIR)
Subject: FW: IMPORTANT: Revised admin. closure order for Haitian cases
Attachments: Haiti TPS order revised.wpd
For FOIA

From: Liebowitz, Ellen (EOIR)
Sent: Tuesday, January 26, 2010 9:04 AM
To: BIA ATTORNEYS (EOIR)
Cc: BIA BOARD MEMBERS (EOIR)
Subject: IMPORTANT: Revised admin. closure order for Haitian cases

Hello. The Acting Chairman has decided to slightly revise the administrative closure order for Haitian cases. The order is amended only as indicated in bold below:

> The Secretary of Homeland Security has designated Haiti under the Temporary Protected Status (TPS) Program. This designation is currently in effect and is scheduled to remain so through July 22, 2011. *See* 75 Fed. Reg. 3476-02 (January 21, 2010). It appears from the record that the alien in the case before us is from Haiti and may be eligible to register for TPS. **Additional information about applying for TPS may be obtained from the Department of Homeland Security (1-800-375-5283 or www.uscis.gov).**

The revised order is attached. Please use it for any future orders (there is no need to pull out anything already in circulation).

Thank you

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A -

Date:

In re:

IN REMOVAL PROCEEDINGS

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

The Secretary of Homeland Security has designated Haiti under the Temporary Protected Status (TPS) Program. This designation is currently in effect and is scheduled to remain so through July 22, 2011. *See* 75 Fed. Reg. 3476-02 (January 21, 2010). It appears from the record that the alien in the case before us is from Haiti and may be eligible to register for TPS. Additional information about applying for TPS may be obtained from the Department of Homeland Security (1-800-375-5283 or www.uscis.gov).

Accordingly, the following order will be entered.

ORDER: Proceedings before the Board in this case are administratively closed.

If either party to this case objects to the administrative closure of these proceedings, a written request to reinstate the proceedings may be made to the Board. **The Board will take no further action in the case unless a request is received from one of the parties.** The request **must** be submitted directly to the Board of Immigration Appeals Clerk's Office, without fee, but with certification of service on the opposing party. If properly submitted, the Board shall reinstate the proceedings.

FOR THE BOARD

Rubi, Veronica (EOIR)

From: Kocur, Ana (EOIR)
Sent: Monday, August 16, 2010 9:29 AM
To: Rubi, Veronica (EOIR)
Subject: FW: reminder
For FOIA

From: Pepper, Kathleen (EOIR)
Sent: Thursday, January 28, 2010 9:49 AM
To: Kocur, Ana (EOIR); Non Responsive
Non Responsive
Subject: RE: reminder

In addition, if you notice that a document (brief, motion, exhibit, etc.) is incomplete, particularly if the party has indicated that documents are attached (but some or all of them weren't), please note that in your decision. For example, in a footnote: "We note that the DHS's brief is missing pages 5-6." OR "The respondent indicated that he had three attachments to his motion; however, no attachments were provided."

Adding a footnote regarding missing documents, pages, or attachments will indicate that the missing items were never before the Board if the case goes to federal court on further review. Without such footnote, the courts will assume that the Board overlooked the missing items or that the certification process failed to include the missing items.

If you find pages, documents, or attachments missing – bring the matter to the attention of your TL, who may want to send the ROP to the Clerk's Office for them to contact the party to try to obtain the missing items.

Kathleen Pepper
Federal Court Remand Coordinator
Board of Immigration Appeals
(b) (6)

From: Kocur, Ana (EOIR)
Sent: Thursday, January 28, 2010 9:24 AM
To: Non Responsive
Non Responsive
Cc: Kocur, Ana (EOIR)
Subject: reminder

Good morning, I have been asked to make all of you aware of the Seventh Circuit decision quoted below and remind everyone to please be sure when reviewing an ROP that the transcript and IJ decision are complete. If you have any questions, let me know. Thanks, Ana

At the outset, we note that the transcription of the IJ's oral decision appears to be incomplete, as reflected in the disconnect between the first and second pages. To its credit, the government pointed out that discrepancy in its responsive brief to this court. Milanovic does not complain that the record is incomplete, or that any substantive aspect of the IJ's decision is missing. Moreover, our independent review of the record as a whole makes clear that all portions of the oral decision relevant to the IJ's determination are transcribed, and we can review the decision. We note, however, that this is not the first time in this past year that we have been presented with an incomplete record. See Patel v. Holder, 563 F.3d 565,

567 (7th Cir. 2009) (noting that one page of the IJ's decision was missing from the administrative record.) This is unacceptable and we trust that greater care will be exercised in the future to ensure that records presented to this court are accurate and complete.
We turn to the contention raised by Milanovic ...

Case is Milanouic v. Holder, 7th Cir. Jan. 6, 2010 Shortcut to:
http://www.ca7.uscourts.gov/tmp/U41FFXVA.pdf

Rubi, Veronica (EOIR)

From: Kocur, Ana (EOIR)
Sent: Monday, August 16, 2010 8:38 AM
To: Rubi, Veronica (EOIR)
Subject: FW: Visa petitions with delayed RFEs
For FOIA

From: Adkins-Blanch, Chuck (EOIR)
Sent: Wednesday, August 11, 2010 10:19 AM
To: Maurice, Ellen (EOIR); Acosta, Robinson (EOIR); Baker, Glen R. (EOIR); Ching, Pamela (EOIR); Doss, Ann (EOIR); Mancuso, Stephen (EOIR); Miovski, Lourene (EOIR); Monsky, Paul (EOIR); Nelsen, Michelle (EOIR); Rajan, Shyamleen (EOIR); Rider, Dale (EOIR); Schlosser, Carrie (EOIR); Strathern, Arthur (EOIR); Tierney, Trudy (EOIR); White, Mary (LEO)
Cc: Neal, David L. (EOIR); Guendelsberger, John (EOIR); Kocur, Ana (EOIR); King, Jean (EOIR)
Subject: Visa petitions with delayed RFEs

Hi All-

Here is some general guidance from the panel members on the delayed RFE cases. Please note that we cannot adhere to an absolute rule about how long the visa petition has been pending, as each case must be considered on the totality of the circumstances. However, be more generous and lenient in considering a remand to allow the petitioner another opportunity to submit evidence in a case where the visa petition has been pending for more than 5 years before a RFE was issued.

Again, each case is unique and we need to look at the totality of the circumstances of the case to determine whether a remand is warranted.

Thanks.

Chuck

Rubi, Veronica (EOIR)

From: Kocur, Ana (EOIR)
Sent: Monday, August 16, 2010 9:25 AM
To: Rubi, Veronica (EOIR)
Subject: FW: Panel 3 guidance regarding Matter of V-K-, 24 I&N Dec. 500 (BIA 2008)
For FOIA

From: Chestnutt, Mark (EOIR)
Sent: Tuesday, June 01, 2010 4:45 PM
To: Non Responsive
Cc: Non Responsive Adkins-Blanch, Charles (EOIR); Kocur, Ana (EOIR)
Subject: Panel 3 guidance regarding Matter of V-K-, 24 I&N Dec. 500 (BIA 2008)

Hi everyone,

Our panel's Board Members are asking that we avoid citing *Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008) in any case--whether arising inside or outside the Third Circuit where it was reversed--for the proposition that evaluating the likelihood of torture is a determination reviewed by this Board de novo (i.e. as mixed question of fact/law or a question of judgment). Generally, you should remove *V-K-* from your standard language, and avoid citing it in the Third Circuit at all. If you cite *V-K-* in another circuit for a different proposition, i.e. one of its other holdings, please be sure to add to the cite the subsequent case history: *rev'd on other grounds, Kaplun v. Att'y Gen. of U.S.*, 602 F.3d 260 (3d Cir. 2010).

Please consult your TL if you have any questions.

Thanks,
--Mark

Rubi, Veronica (EOIR)

From: Kocur, Ana (EOIR)
Sent: Monday, August 16, 2010 9:26 AM
To: Rubi, Veronica (EOIR)
Subject: FW: Video conference hearings - additional guidance
For FOIA

From: Chestnutt, Mark (EOIR)
Sent: Wednesday, May 05, 2010 10:43 AM
To: Non Responsive
Non Responsive
Cc: Kocur, Ana (EOIR); Adkins-Blanch, Chuck (EOIR)
Subject: Video conference hearings - additional guidance

Hi everyone,

As a general matter, you should use our standard language (provided at the Panel 3 meeting in November 2009) for video conference hearings. There are times, however, when you will need to use something more detailed. You should include in your draft orders something along the lines of the sample below in cases where the I.J. may have applied (or made a reference to) the wrong circuit law in a video conference hearing case, even if the ultimate outcome was not affected. Note that the panel has been using this approach in 7th/8th Circuit cases that would otherwise be covered by the Seventh Circuit's two *Ramos* decisions (noted at the training). Adapt the following paragraph as necessary (usually set forth in a footnote) for your particular case, making sure that if you include something like the last sentence, that it is correct. –Mark

Pursuant to Operating Policies and Procedure Memorandum No. 04-06: Hearings Conducted through Telephone and Video Conference (Aug. 18, 2004), we consider the proceedings before the Immigration Judge in this matter to have been completed in Kansas City, MO. The case was docketed for hearing in Kansas City, MO, the respondent was located in Kansas City, MO, and the Immigration Judge, sitting in Chicago, IL, heard the case through video conference pursuant to section 240(b)(2)(A)(iii) of the Act. Accordingly, we will consider the respondent's claim under the precedent decisions of the United States Court of Appeals for the Eighth Circuit. We note, however, that even if we were to consider this case under the precedent decisions of the United States Court of Appeals for the Seventh Circuit, we would find that the respondent has not met his burden of proof to establish eligibility for the relief sought.

Nadkarni, Deepali (EOIR)

From: Nadkarni, Deepali (EOIR)

Sent: Tuesday, June 08, 2010 12:12 PM

To: Adams, Amanda (EOIR); Alberty, Linda (EOIR); Anderson, Jill (EOIR); Betourney, Andrew (EOIR); Biggiani, Justin M. (EOIR); Brickman, Jaclyn (EOIR); Campbell, Keith (EOIR); Carey, Tracey (EOIR); Chugh, Amit (EOIR); Combest, Branden (EOIR); Crossett, John P. (EOIR); Curtis, Rena I (EOIR); Czaykowsky, Sandra (EOIR); Degischer, Kristen (EOIR); Egy, Julia E. (EOIR); Fernandes, Karen (EOIR); Franco, Danielle (EOIR); Gaffney, Janeen (EOIR); Gimbel, Holly (EOIR); Goodman, Hilary (EOIR); Grandle, Brooke (EOIR); Gully, Solomon (EOIR); Hines, Judy (EOIR); Hunt, JuanCarlos (EOIR); Joe, Ella (EOIR); Kerby, Jennifer (EOIR); Krapf, Catherine (EOIR); Leduc, Becky (EOIR); Lyon, Jaime (EOIR); MacGregor, Margaret R. (EOIR); Meyers, Natalie (EOIR); Mlynar, Maria (EOIR); Niksa, Stephen (EOIR); O'Herron, Margy (EOIR); Oshinsky, John (EOIR); Pease, Jeffrey (EOIR); Podolny, Janice (EOIR); Reilly, Kathleen (EOIR); Rose, Karen (EOIR); Rowell, Derrick (EOIR); Saltsman, Gary (EOIR); Sanders, Hope (EOIR); Sheehan, Sue (EOIR); Soto, Jorene (EOIR); Steyn, William (EOIR); Tibere, Valerie (EOIR); Walker, Jake (EOIR); Welsh, Elizabeth (EOIR); Wright, Levi (EOIR); Allen, Patricia M. (EOIR); Anderson, Dale (EOIR); Balch-Reno, Karla (EOIR); Baumeister, Monica (EOIR); Billups, Denise (EOIR); Blachly, Jonathan O. (EOIR); Bovier, Jennifer (EOIR); Brooks, Dee (EOIR); Brown, Denise (EOIR); Brown, Keith (EOIR); Bryant, Steven (EOIR); Cali, Andrea (EOIR); Covell, Stephen C. (EOIR); DaSilva, Roberta (EOIR); Dutra, Amanda (EOIR); Fitzgerald, Donna S. (EOIR); Gearin, Christopher (EOIR); Geller, Joan (EOIR); Gottlieb, Arthur (EOIR); Hansen, Heidi (EOIR); Helf, Sheila (EOIR); Herron, Christine (EOIR); Kirby, Christine (EOIR); Latey, Chandani (EOIR); Makredes, Maria (EOIR); Martella, Jennifer (EOIR); McDermott, Patrick J. (EOIR); McNair, Jasmine (EOIR); Mulrean, Mary (EOIR); O'Cadiz, Sergio (EOIR); Phelps, George (EOIR); Phillips, Jeffrey (EOIR); Phillips-Savoy, Karen (EOIR); Reddy, Divya (EOIR); Riotto, Sharon (EOIR); Rossi, Clarissa (EOIR); Saadat, David (EOIR); Schoonmaker, Jean (EOIR); Summitt, Pat (EOIR); Waters, J. Keith (EOIR); Whittington, Gloria (EOIR)

Cc: Cole, Patricia A. (EOIR); Filppu, Lauri (EOIR); Greer, Anne (EOIR); Pauley, Roger (EOIR); Wendtland, Linda (EOIR); Grant, Edward (EOIR); Malphrus, Garry (EOIR); Miller, Neil (EOIR); Mullane, Hugh (EOIR)

Subject: Reminder--Remand to Different IJ

Importance: High

Good afternoon. Please remember, in cases being remanded to a different Immigration Judge, to state so explicitly in the **order** language so that it is clear to the parties and Immigration Court. It is not sufficient just to mention it in the decision's text or a footnote. Also, please specifically note the remand to a different IJ in the "Special Instructions to Docket" box on the circulation sheet so that the Docket Unit may take appropriate actions to ensure the case is re-docketed to a different IJ. Thanks! Dee

Nadkarni, Deepali (EOIR)

From: Pepper, Kathleen (EOIR)
Sent: Thursday, June 03, 2010 6:03 PM
To: Liebowitz, Ellen (EOIR); Nadkarni, Deepali (EOIR); Kocur, Ana (EOIR)
Cc: Neal, David L. (EOIR); Gipe, Bruce (EOIR)
Subject: RE: Reminder for staff

(b) (5)

Kathleen Pepper
Federal Court Remand Coordinator
Board of Immigration Appeals

(b) (6)

From: Liebowitz, Ellen (EOIR)
Sent: Thursday, June 03, 2010 5:17 PM
To: Nadkarni, Deepali (EOIR); Kocur, Ana (EOIR)
Cc: Neal, David L. (EOIR); Gipe, Bruce (EOIR); Pepper, Kathleen (EOIR)
Subject: Reminder for staff

Hello.

(b) (5)

Please let me know if you need further clarification.

Thank you, Ellen

Nadkarni, Deepali (EOIR)

From: Nadkarni, Deepali (EOIR)

Sent: Thursday, February 12, 2009 12:58 PM

To: Adams, Amanda (EOIR); Anderson, Jill (EOIR); Bates, Elizabeth (EOIR); Betourney, Andrew (EOIR); Biggiani, Justin M. (EOIR); Brickman, Jaclyn (EOIR); Burton, Brett (EOIR); Campbell, Keith (EOIR); Carey, Tracey (EOIR); Crossett, John P. (EOIR); Curtis, Rena I (EOIR); Czaykowsky, Sandra (EOIR); Degischer, Kristen (EOIR); Fernandes, Karen (EOIR); Franco, Danielle (EOIR); Gaffney, Janeen (EOIR); Gimbel, Holly (EOIR); Goodman, Hilary (EOIR); Gully, Solomon (EOIR); Hines, Judy (EOIR); Kerby, Jennifer (EOIR); Krapf, Catherine (EOIR); Mlynar, Maria (EOIR); Niksa, Stephen (EOIR); O'Herron, Margy (EOIR); Oshinsky, John (EOIR); Pease, Jeffrey (EOIR); Podolny, Janice (EOIR); Reilly, Kathleen (EOIR); Saltsman, Gary (EOIR); Sanders, Hope (EOIR); Santucci, Audra (EOIR); Soto, Jorene (EOIR); Steyn, William (EOIR); Tibere, Valerie (EOIR); Walker, Jake (EOIR); Welsh, Elizabeth (EOIR); Wright, Levi (EOIR)

Cc: Cole, Patricia A. (EOIR); Filppu, Lauri (EOIR); Greer, Anne (EOIR); Pauley, Roger (EOIR)

Subject: Matter of A-S- citation

Good afternoon. The Board Members have been seeing a recurring incorrect volume citation to *Matter of A-S-*, in the context of the language set forth below relating to deference to an IJ's credibility determination. Please note that the correct citation, with the proper pinpoint cite, is *Matter of A-S-*, 21 I&N Dec. 1106, 1111-12 (BIA 1998). Please take special care to correct any standard language you may be using that includes this citation. Thanks. Dee

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). *See also Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002) (stating that the Board must defer to the factual determinations of an Immigration Judge in the absence of clear error); *Matter of A-S-*, ~~23 I&N Dec. 1106, 1109-12~~ (BIA 1998) (noting that because an Immigration Judge has the ability to see and hear witnesses, he or she is in the best position to determine the credibility of such witnesses).

Nadkarni, Deepali (EOIR)

From: Nadkarni, Deepali (EOIR)

Sent: Wednesday, November 26, 2008 1:13 PM

To: Adams, Amanda (EOIR); Anderson, Jill (EOIR); Bates, Elizabeth (EOIR); Betourney, Andrew (EOIR); Biggiani, Justin M. (EOIR); Brickman, Jaclyn (EOIR); Burton, Brett (EOIR); Campbell, Keith (EOIR); Carey, Tracey (EOIR); Combest, Branden (EOIR); Crossett, John P. (EOIR); Curtis, Rena I (EOIR); Czaykowsky, Sandra (EOIR); Degischer, Kristen (EOIR); Fernandes, Karen (EOIR); Franco, Danielle (EOIR); Freeman, Lois (EOIR); Gaffney, Janeen (EOIR); Gimbel, Holly (EOIR); Goodman, Hilary (EOIR); Gully, Solomon (EOIR); Hines, Judy (EOIR); Joe, Ella (EOIR); Kerby, Jennifer (EOIR); Krapf, Catherine (EOIR); Leduc, Becky (EOIR); Lyon, Jaime (EOIR); Meyers, Natalie (EOIR); Mlynar, Maria (EOIR); Niksa, Stephen (EOIR); O'Herron, Margy (EOIR); Oshinsky, John (EOIR); Pease, Jeffrey (EOIR); Podolny, Janice (EOIR); Reilly, Kathleen (EOIR); Rowell, Derrick (EOIR); Saltsman, Gary (EOIR); Sanders, Hope (EOIR); Santucci, Audra (EOIR); Soto, Jorene (EOIR); Steyn, William (EOIR); Tibere, Valerie (EOIR); Walker, Jake (EOIR); Welsh, Elizabeth (EOIR); Wright, Levi (EOIR)

Cc: Cole, Patricia A. (EOIR); Filppu, Lauri (EOIR); Greer, Anne (EOIR); Pauley, Roger (EOIR)

Subject: Discontinue use of "per curiam" orders

Importance: High

Good afternoon. The Panel Members have requested that we discontinue the use of "per curiam" orders. Please convert all orders, including affirmances without opinion, to delete the "ORDER: PER CURIAM" at the beginning and include a standard "ORDER" at the conclusion of the decision. Please refer to the Formatting Guide and see your Team Leader or me if you have any questions.

Most of the panel is out of the office on Friday, November 28. If you need support assistance, please contact Board secretary Karen Rose on the 24th floor (b) (6) If you have a management issue, you may reach me by email.

Have a safe, happy, and healthy Thanksgiving. Dee

to P2 04.09.04

Nadkarni, Deepali (EOIR)

From: Nadkarni, Deepali (EOIR)

Sent: Thursday, September 18, 2008 7:21 PM

To: Adams, Amanda (EOIR); Anderson, Jill (EOIR); Bates, Elizabeth (EOIR); Betourney, Andrew (EOIR); Biggiani, Justin M. (EOIR); Brickman, Jaclyn (EOIR); Burton, Brett (EOIR); Campbell, Keith (EOIR); Carey, Tracey (EOIR); Chugh, Amit (EOIR); Combest, Branden (EOIR); Crossett, John P. (EOIR); Curtis, Rena I (EOIR); Czaykowsky, Sandra (EOIR); Degischer, Kristen (EOIR); Fernandes, Karen (EOIR); Franco, Danielle (EOIR); Freeman, Lois (EOIR); Gaffney, Janeen (EOIR); Gimbel, Holly (EOIR); Goodman, Hilary (EOIR); Gully, Solomon (EOIR); Hines, Judy (EOIR); Joe, Ella (EOIR); Kerby, Jennifer (EOIR); Krapf, Catherine (EOIR); Leduc, Becky (EOIR); Lyon, Jaime (EOIR); Maurice, Ellen (EOIR); Meyers, Natalie (EOIR); Mlynar, Maria (EOIR); Murphy, Kathleen (EOIR); Neal, Michelle (EOIR); Niksa, Stephen (EOIR); O'Herron, Margy (EOIR); Oshinsky, John (EOIR); Pease, Jeffrey (EOIR); Podolny, Janice (EOIR); Reilly, Kathleen (EOIR); Rowell, Derrick (EOIR); Saltsman, Gary (EOIR); Sanders, Hope (EOIR); Santucci, Audra (EOIR); Soto, Jorene (EOIR); Steyn, William (EOIR); Strand, Marti (EOIR); Tibere, Valerie (EOIR); Walker, Jake (EOIR); Welsh, Elizabeth (EOIR); Wright, Levi (EOIR)

Cc: Osuna, Juan (EOIR)

Subject: IJC issues

Importance: High

Good evening. Reminder: If, in your review of cases, you come across an instance of Immigration Judge misconduct (including improper or intemperate behavior or bias), please address the issue in your proposed order. This is particularly important in cases in which a party specifically raises the misconduct issue on appeal. Even if the behavior is not ultimately determined to be improper or egregious, the Board should acknowledge and address the concern. If the behavior is improper, please circle the IJC code on the front of the circulation sheet. Please see your Team Leader or me if you require further guidance regarding this matter. Thanks. Dee

Nadkarni, Deepali (EOIR)

From: Nadkarni, Deepali (EOIR)

Sent: Friday, June 20, 2008 4:41 PM

To: Adams, Amanda (EOIR); Anderson, Jill (EOIR); Bates, Elizabeth (EOIR); Betourney, Andrew (EOIR); Biggiani, Justin M. (EOIR); Brickman, Jaclyn (EOIR); Burton, Brett (EOIR); Campbell, Keith (EOIR); Carey, Tracey (EOIR); Chugh, Amit (EOIR); Combest, Branden (EOIR); Crossett, John P. (EOIR); Curtis, Rena I (EOIR); Czaykowsky, Sandra (EOIR); Degischer, Kristen (EOIR); Fernandes, Karen (EOIR); Franco, Danielle (EOIR); Freeman, Lois (EOIR); Gaffney, Janeen (EOIR); Gimbel, Holly (EOIR); Goodman, Hilary (EOIR); Gully, Solomon (EOIR); Hines, Judy (EOIR); Joe, Ella (EOIR); Kerby, Jennifer (EOIR); Krapf, Catherine (EOIR); Leduc, Becky (EOIR); Maurice, Ellen (EOIR); Meyers, Natalie (EOIR); Mlynar, Maria (EOIR); Murphy, Kathleen (EOIR); Niksa, Stephen (EOIR); O'Herron, Margy (EOIR); Oshinsky, John (EOIR); Pease, Jeffrey (EOIR); Podolny, Janice (EOIR); Reilly, Kathleen (EOIR); Saltsman, Gary (EOIR); Sanders, Hope (EOIR); Santucci, Audra (EOIR); Soto, Jorene (EOIR); Steyn, William (EOIR); Strand, Marti (EOIR); Tibere, Valerie (EOIR); Walker, Jake (EOIR); Welsh, Elizabeth (EOIR); Wright, Levi (EOIR)

Cc: Cole, Patricia A. (EOIR); Filppu, Lauri (EOIR); Pauley, Roger (EOIR)

Subject: language alert

Importance: High

Good afternoon. The panel Board Members have asked me to relay a few concerns.

- When drafting an analysis/balancing of factors concerning the level of harm or hardship presented in an application for relief, please do not use the qualification "considered individually or cumulatively." Harm and hardship determinations are based on a comprehensive review of factors.
- There is a footnote floating out there including a "to be codified at" reference to the REAL ID Act. Please use the statute's now-published (for 3 years) citation and burn whatever form contains this 2005 "to be codified" language.
- Circulation sheets: Please do not relate the entire contents of the order on the circ. sheet; the Board Members read the proposed order. A brief notice of the issue (a visual cue to help Board Members organize their workload) and result is appropriate. More helpful to the Board Members is a note about a complication or anomaly in the case. For example, if the order affirms the IJ, what factor(s) would give you pause or second thoughts?

Thanks for your attention to these issues. Have a nice weekend. I'll be out of the office next week and will see you on the 23rd! 30th Dee

Nadkarni, Deepali (EOIR)

From: Nadkarni, Deepali (EOIR)

Sent: Wednesday, October 11, 2006 5:08 PM

To: Bates, Elizabeth (EOIR); Betourney, Andrew (EOIR); Biggiani, Justin M. (EOIR); Blum, John M. (EOIR); Burford, Mary (EOIR); Campbell, Keith (EOIR); Carey, Tracey (EOIR); Chugh, Amit (EOIR); Crossett, John P. (EOIR); Curtis, Rena I (EOIR); Czaykowsky, Sandra (EOIR); DaSilva, Roberta (EOIR); Egy, Julia E. (EOIR); Fernandes, Karen (EOIR); Franco, Danielle (EOIR); Freeman, Lois (EOIR); Gimbel, Holly (EOIR); Goodman, Hilary (EOIR); Gully, Solomon (EOIR); Henriksen, Nathan (EOIR); Hines, Judy (EOIR); Howard, Lisa (EOIR); Joe, Ella (EOIR); Kerby, Jennifer (EOIR); Leduc, Becky (EOIR); Liebowitz, Ellen (EOIR); Meyers, Natalie (EOIR); Mlynar, Maria (EOIR); Nabti, Najwa (EOIR); O'Herron, Margy (EOIR); Oshinsky, John (EOIR); Reilly, Kathleen (EOIR); Saltsman, Gary (EOIR); Sanders, Hope (EOIR); Santucci, Audra (EOIR); Schaffner, Jane (EOIR); Soto, Jorene (EOIR); Tibere, Valerie (EOIR); Walker, Jake (EOIR); Acosta, Robinson (EOIR); Cali, Andrea (EOIR); Hansen, Heidi (EOIR); Krapf, Catherine (EOIR); Maurice, Ellen (EOIR); Mulrean, Mary (EOIR); Nelsen, Michelle (EOIR); Reddy, Divya (EOIR); Rizer, Arthur (EOIR); Wright, Levi (EOIR)

Cc: Drumond, Karen (EOIR); Adams, Amanda (EOIR); Baker, Glen R. (EOIR); Chestnutt, Mark (EOIR); DeCardona, Lisa (EOIR); Geller, Joan (EOIR); Mateen, Fatimah (EOIR); Pepper, Kathleen (EOIR); Cole, Patricia A. (EOIR); Filppu, Lauri (EOIR); O'Leary, Brian (EOIR); Osuna, Juan (EOIR); Pauley, Roger (EOIR)

Subject: Preferred language in Panel 1 and Training Panel orders

Importance: High

[illegible] Read: 10/12/2006 6:10 AM

Good afternoon. The Panel Members have asked me to relay their opinion on some introductory paragraphs they have seen in recent orders. The Panel Members disfavor the sentence/paragraph set forth below. Although they have signed orders in the past containing this type of introductory sentence, they would like for us to discontinue its use.

"The respondent's appeal of the Immigration Judge's June 18, 2004, decision denying his motion to terminate his proceedings based upon his claim of derivative citizenship under former section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a), and denying his motion for a continuance in order to seek adjudication of his appeal of the Department of Homeland Security's ("DHS") denial of his Application for Citizenship (Form N-600) is dismissed."

10/30/2006

Non Responsive

10/30/2006

Whew, try saying that in one breath! Although grammatically correct, the sentence/paragraph above occupies a full five lines of formatted text in our orders. It is cumbersome and not easily understood. (The subject and verb of the sentence are separated by four lines of text.) A revision of the same paragraph could read:

"The respondent appeals the Immigration Judge's decision dated June 18, 2004. The Immigration Judge denied the respondent's motion to terminate proceedings based upon his claim of derivative citizenship under former section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a). The Immigration Judge also denied the respondent's motion for a continuance in order to pursue his appeal of the Department of Homeland Security's ("DHS") denial of his Application for Citizenship (Form N-600). The appeal will be dismissed."

The above paragraph is intended as an example -- not as a template for all orders. The critical point is to keep sentences and paragraphs short and easy for a non-technical reader to follow. Please see your Team Leader or me if you have questions. Thanks. Dee

LSF ex. 1

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Arlington

Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rev. Uduak J. Ubom, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

APPLICATION: Termination of proceedings; continuance

ORDER:

PER CURIAM. The respondent's appeal of the Immigration Judge's May 3, 2006, decision denying his motion to terminate his proceedings based upon his claim of derivative citizenship under former section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a), and denying his motion for a continuance in order to seek adjudication of his appeal of the Department of Homeland Security's ("DHS") denial of his Application for Citizenship (Form N-600), is dismissed.

The record reflects that the respondent was born in Ghana on November 17, 1980. Subsequently, the respondent was admitted to the United States as a lawful permanent resident on October 7, 1992, when he was 6 years old (Exh. 1). On January 22, 2004, the lawful permanent resident respondent was convicted in the Superior Court of the District of Columbia, Washington, D.C., for the offenses of attempted third degree sexual abuse and carrying a concealed pistol without a license in violation of the District of Columbia Criminal Code 22, sections 3004 and 4504(a), respectively (Exh. 3). Based upon these convictions, the respondent was placed into these proceedings with the issuance of a Notice to Appear on or about February 8, 2006 (Exh. 1).

During his proceedings, the respondent made a motion for termination based upon his claim that he derived United States citizenship via the naturalization of his father on March 31, 1995, when the respondent was 13 years old, and based upon his father's marriage to a United States citizen, the respondent's stepmother. The respondent also requested a continuance pending the outcome of his appeal of the DHS's denial of his Form N-600 to the Administrative Appeals Unit ("AAU") (Exh. 4). In his May 3, 2006, written decision, the Immigration Judge concluded that the respondent could not establish derivative citizenship under former section 321(a) of the Act. Although unexplained, this finding was presumably based upon the same reasoning set forth by the DHS in its denial of the

Nadkarni, Deepali (EOIR)

From: Nadkarni, Deepali (EOIR)

Sent: Wednesday, October 12, 2005 1:41 PM

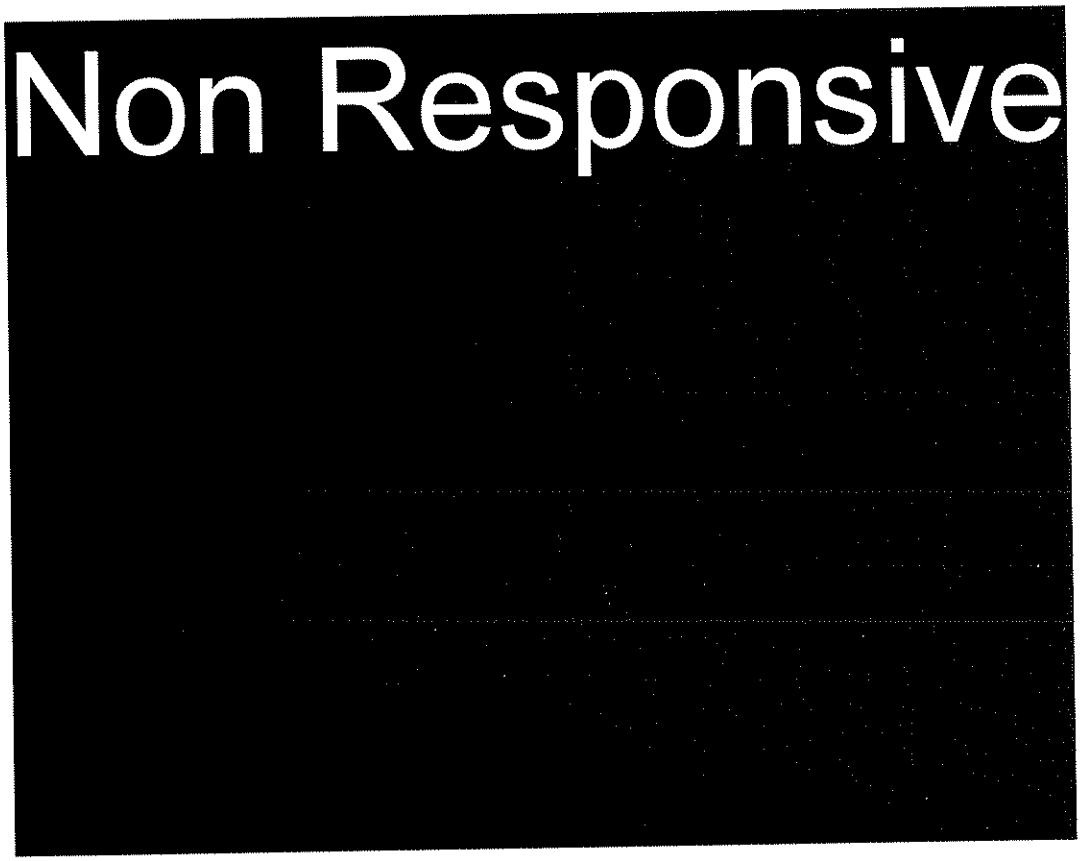
To: Bates, Elizabeth (EOIR); Betourney, Andrew (EOIR); Blum, John M. (EOIR); Burford, Mary (EOIR); Campbell, Keith (EOIR); Carey, Tracey (EOIR); Chugh, Amit (EOIR); Crossett, John P. (EOIR); Curtis, Rena I (EOIR); Czaykowsky, Sandra (EOIR); DaSilva, Roberta (EOIR); DeCardona, Lisa (EOIR); DeRouen, Pamela (EOIR); Dickerson, Sonya (EOIR); Fernandes, Karen (EOIR); Foote, Megan (EOIR); Franco, Danielle (EOIR); Freeman, Lois (EOIR); Gimbel, Holly (EOIR); Gully, Solomon (EOIR); Hansen, Angie (EOIR); Henriksen, Nathan (EOIR); Hines, Judy (EOIR); Jackson, Kimberly (EOIR); Joe, Ella (EOIR); Kerby, Jennifer (EOIR); Leduc, Becky (EOIR); Maloney, Sarah (EOIR); Meyers, Natalie (EOIR); Michaelis, Christine (EOIR); Mitchem, Sally (EOIR); Mlynar, Maria (EOIR); Nabti, Najwa (EOIR); Ohata, Ronald N. (EOIR); O'Herron, Margy (EOIR); Oshinsky, John (EOIR); Podolny, Janice (EOIR); Reilly, Kathleen (EOIR); Saltsman, Gary (EOIR); Sanders, Hope (EOIR); Santucci, Audra (EOIR); Schaffner, Jane (EOIR); Soto, Jorene (EOIR); Strathern, Arthur (EOIR); Tibere, Valerie (EOIR); Walker, Jake (EOIR); Zanfardino, Richard (EOIR)

Cc: Osuna, Juan (EOIR)

Subject: standard and scope of Board review

Tracking: **Recipient** **Delivery** **Read**

Non Responsive



Good afternoon everyone. Attached are a panel memorandum and 2 attachments relating to the standard and scope of review. Please print and keep at hand for easy reference. Thanks. d

Rubi, Veronica (EOIR)

From: Minton, Amy (EOIR)
Sent: Wednesday, August 18, 2010 12:08 PM
To: Rubi, Veronica (EOIR)
Subject: FW: Panel 1 guidance

Attachments: Sample orders.wpd

Non Responsive

From: Osuna, Juan (EOIR)
Sent: Monday, October 17, 2005 4:48 PM
To: Minton, Amy (EOIR)
Subject: FW: Panel 1 guidance

-----Original Message-----
From: Osuna, Juan (EOIR)
Sent: Wednesday, October 12, 2005 11:35 AM
To: Nadkarni, Deepali (EOIR); Walker, Jake (EOIR); Campbell, Keith (EOIR)
Cc: Scialabba, Lori (EOIR)
Subject: Panel 1 guidance

Dee, Jake and Keith:

Below is a message and attachment that the panel 1 Board Members would like to send to our attorneys. Can you see it goes out? Please copy me on the message, and let me know if you have questions.

Lori, I am copying you on this since it relates in part to our discussion with the Board Member contact group last week.

Thank you.

J

Dear Panel 1 attorneys:

This is the latest in occasional emails on various items the Board Members are seeing in decisions. This one focuses on problems that sometimes arise with particular orders. Please refer to the attached document for guidance, along with the points below.

1. Please keep in mind the correct standard of review language to use when drafting decisions, as outlined in the various reminders sent in the past. When reviewing factual findings, use the "clearly erroneous" standard of review language. Do not say, for example, that "we agree with the Immigration Judge's factual findings." Under the clearly erroneous standard we do not have to agree with the IJ's factual findings, we just have to determine that there was no clear error. Please also do not engage in a recitation of facts that imply a de novo review. Sometimes the facts cited in the draft are not identified in the IJ's decision. This is outside of our scope of review and it is preferable that our summary of the facts be those relied on by the IJ.

Remember that the clearly erroneous standard is only for factual findings. Therefore, never say, for example, that "we find that the IJ's decision finding the respondent removable is not clearly erroneous." The ultimate decision on removability is something we can review de novo, so the "clearly erroneous" language should not be used in such a way.

2. Sometimes an order is proposed that includes sweeping language about the scope of review that the Board has engaged in. For example, sometimes the order will say that "we have reviewed the Immigration Judge's decision, the

briefs on appeal, and the record of proceedings." This language may suggest more than may have been done in any particular case. If there's no challenge to an IJ's findings of fact and if we are resolving a legal issue raised by one of the parties, it's entirely possible that we won't get into the record after reading the briefs and the IJ's order. Saying that we have reviewed the entire record is inaccurate. It is best to avoid language like that.

3. In some cases, even where the issues presented are relatively straightforward, an affirmance without opinion (AWO) may not be the best way to go. For example, if the IJ's decision rests on issues that are both reviewable and nonreviewable in federal court, our practice is to use a short order, rather than an AWO.

However, be careful with some short orders that are basically just boilerplate and say nothing. For example, some short orders "affirm" IJ untimeliness rulings as to asylum and then again "affirm" the IJ on withholding and CAT, but otherwise contain no reasons for why we so affirm the rulings below. These are basically AWOs by another name. They are in fact worse than an AWO, because an AWO directs a reviewing court to look at the IJ's decision as the final agency order. A boilerplate short order sends a message to a reviewing court that the Board substituted its own analysis for the IJ's, but then provides no analysis.

If you are going to propose a short order instead of an AWO, please provide some explanation to support your legal conclusions. This does not have to be a long explanation. A reference to specific pages in the IJ's decision or the transcript would suffice, as would a specific example. Again, refer to the attachment for guidance.

Thank you for all your hard work on this panel. As always, if you have any questions, please talk to one of the Board Members or to your team leader.

Sample orders.wpd
(12 KB)

The following are two examples of short orders that have been proposed in relatively straightforward asylum cases. The first one is a format that should be avoided, for the reasons noted below. The preferred format is the second one, which can be used in some asylum appeals presenting relatively simple issues, and where an affirmance without opinion (AWO) may not be the best option.

INCORRECT

The respondent has appealed from the Immigration Judge's decision dated September 30, 2005. We have reviewed the entire record and we agree with the Immigration Judge's adverse credibility determination. We also agree that the respondent failed to establish that he filed his application within one year of arriving in the United States. Moreover, we agree that the respondent failed to meet his burden of establishing past persecution or a well founded fear of persecution if he is removed. *See INS v. Cardoza Fonseca*, 480 421 (1987); *INS v. Stevic*, 467 U.S. 407 (1984); *INS v. Elias Zacarias*, 502 U.S. 478 (1992) *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). The respondent has presented no arguments on appeal which persuade us that the Immigration Judge's decision should be reversed. Accordingly, the respondent's appeal is dismissed.

CORRECT

The respondent appeals from the September 30, 2005 decision of the Immigration Judge finding him removable from the United States and denying him asylum and withholding of removal. We affirm the Immigration Judge's decision. We find no error in the Immigration Judge's conclusion that the respondent did not meet his burden of establishing that he filed his asylum application within one year of arriving in the United States. While the respondent entered the United States in 1999, he did not filed until 2004, and he has not explained why he waited so long to file. We also find no clear error in the Immigration Judge's determination that the respondent was not credible for the reasons specified in the Immigration Judge's decision. See IJ at 12-15. The Immigration Judge identified a number of discrepancies in the respondent's testimony which go to the heart of the claim. For example, the respondent's testimony about where he was incarcerated and the length of his incarceration differed in fundamental ways from the statements made in his application for asylum and withholding of removal. *Id* at 13. *See Matter of A-S-*, 21 I&N Dec. 1106 (BIA 1998). Without credible testimony, the respondent cannot meet his burden of establishing that he has suffered past persecution or has a well founded fear of future persecution. Accordingly, the Immigration Judge correctly denied his applications for asylum and withholding of removal.

COMMENTARY

The first order is not correct for a number of reasons. First, it sets forth the wrong standard of review. Immigration Judges' credibility determinations are factual findings, which are reviewed under the "clearly erroneous" standard. Therefore, we do not necessarily have to "agree" with the credibility determination to affirm it. Saying, as the order does, that we agree with the credibility finding implies that we reviewed the Immigration Judge's decision de novo. Second, when it states that "we have reviewed the entire record" the order makes an overbroad statement that is not accurate. As an appellate tribunal, the Board does not always review the "entire" record. Rather, we review those portions of the record relevant for our adjudication of the appeal and raised by the parties on appeal. Third, the order makes a number of conclusory legal statements but does not back them up. It says we agree with the credibility determination, but does not say why. It says that the respondent failed to meet his burden of establishing persecution, but does not say why or give any examples. It does not even refer to the Immigration Judge's conclusions on these legal issues. In short, the order is in effect an affirmance without opinion (AWO), but does not conform to the AWO format. Finally, the order contains a series of cites to asylum cases that have little specific relevance to the issues on appeal.

The second order is preferable. First, it contains the correct standard of review. By stating that we find no "clear error" in the credibility determination, the order applies the correct standard to findings of fact. Second, it avoids sweeping statements like "we have reviewed the entire record", thus acknowledging that the Board's review is focused on only the relevant parts of the record as raised by the parties on appeal. Third, it avoids making conclusory statements that are not backed up by *specific* references in the record. It states specific reasons why we are affirming the Immigration Judge's credibility determination, including pinpoint cites to portions of the Immigration Judge's decision and an example. Anyone reviewing our order can then see specific reasons in the record why we are reaching the result we find appropriate. Finally, the order does not include a string citation, but only cites a relevant precedent. Of course, if there is circuit precedent that applies, that should also be cited.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Chairman

5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

BIA 04-04

October 5, 2004

MEMORANDUM TO: BIA Staff

FROM: Lori Scialabba, Chairman

SUBJECT: Standard Operating Procedure: Re-issuance and Amended or Corrected Orders.

Please find attached the BIA standard operating procedure (SOP) for re-issued, amended, or corrected orders. This SOP details the process to be followed only, and does not change any areas of responsibility. Please refer to this SOP when processing re-issued, amended, or corrected orders. This document will be posted on the BIA Web Page for your convenient reference. Thank you.

BIA 04-04
10/04/04
Effective immediately

Special BIA Standard Operating Procedure (SOP) for Vacated and Re-issued Decisions, and Amended or Corrected Orders:

Scope: This SOP sets forth the process to be followed for vacated and re-issued orders and for amended or corrected orders. Portions of this SOP may apply to SPAs, SLAs, team leaders, panel administrative staff, attorneys, paralegals, docket staff, and the Library.

Administration: Questions concerning duties under this SOP should be referred to your supervisor. Other standard operating procedures dealing with re-issuance or amended orders, or with non-associated correspondence and returned decisions, should be amended to conform with the procedures in this SOP. Comments and corrections concerning this SOP should be directed to a senior legal advisor or to the paralegal supervisor.

Authority: 8 CFR §1003.2(a) provides that the Board may reopen or reconsider on our own motion *(sua sponte)* any case in which the Board has rendered a decision.

Occasion: Certain circumstances require that BIA issue a new decision with the same content as a decision we have already rendered (a re-issuance), or with slight modification (an amended or corrected order). This may occur when:

1. Re-issuance: We are ordered by a court to re-issue a decision with a new date to preserve a party's appeal rights (*see note 1*);
2. Re-issuance: An administrative error has resulted in a defect of service to a party, such as a bad address and returned mail, a lost BIA order, etc.;
3. Amended order: An error in the text of the decision requires correction; or
4. Amended order: Correspondence not previously associated with the file must now be considered, and the order must be amended to reflect this consideration.

Note 1: *Court orders and party requests for re-issuance*: Where a court remands to BIA for re-issuance, refer the matter to senior legal advisor Molly Clark. Where a party *requests* re-issuance, simply forward the ROP to [redacted] with a green [redacted] sheet and check the box for "Request to Reissue Board Decision."

Note 2: *Further information*: For further information on handling re-issuance or amended orders involving non-associated correspondence or returned decisions, please refer to the respective SOPs (currently under review) or contact your supervisor. *See:*

i) SOP for Returned Decisions (BIA Web page, Clerk's Office Button, SOPs, Appendix U; *see* [redacted]

ii) SOP for Non-Associated Correspondence, BIA Web page, J-Panel Button, Non-Associated Correspondence box; [redacted]

PROCESS OVERVIEW / SUMMARY

Under circumstances calling for re-issuance or amended order, the individuals involved in preparing the new decision should acquire the ROP, add a new BIA/MTR proceeding in BIAP, affix the bar code to the existing ROP, and prepare a new proposed order using language set forth below and incorporating by reference the original order. The new signed decision should be posted to the Virtual Law Library with the original version of the decision attached to the new order. For the specific steps in the process, use the following checklist as a guide:

PROCESS IN DETAIL: STEP BY STEP INSTRUCTIONS

I. Determine whether the BIA order was a remand

- ❑ *No remand*: If the original BIA order was not a remand, proceed to section II below.
- ❑ *Remanded but service was defective*: If the original BIA order was a remand and the problem is a defect of service, do not issue a new decision. Instead, route the returned decision to the ROP, in accordance with the BIA Returned Decision SOP (*see* above, page 1, Note 2).
- ❑ *Remanded but there is non-associated correspondence*: If the original BIA order was a remand and the problem is non-associated correspondence, you may not be issuing a new decision. Instead, handle the non-associated document in accordance with the Non-Associated SOP (*see* above, page 1, note 2).
- ❑ *Remanded but the written order is defective*: If the original BIA order was a remand and the problem is a defective order, such as a missing signature or date stamp, or incorrect language, issue an appropriate e-mail to the Immigration Court noting the defect and requesting that the court close out the matter and return the ROP to the Board, pending our issuance of an amended decision. Also, place the request to the court on a "Tickler" system for a follow-up request after one week, in the event we do not receive the ROP by then. Once the ROP is received, proceed to section III below.

II. If the BIA order was not a remand, acquire the ROP

- ❑ Enter the A# in BIAP and click "Document tracking."
- ❑ If document tracking shows the ROP is in on-site storage here at the Board, get the ROP (forward a completed Onsite Storage ROP Request Form to the onsite storage team point of contact, currently Janet Hogg and Pam Elder).
- ❑ If the ROP is not at the Board, but is at the Immigration Court, request it from the Court (Note: Clerk's Office, supervisory legal assistants, case management specialists have standard request language for this). Also, place the motion on a "Tickler" system for a follow-up request to the court after one week, in the event we do not receive the ROP by then.

Note: *DD matters*: Returned decisions pertaining to DD matters should be routed to DHS for handling, per the Returned Decision SOP. Non Responsive

Non Responsive

III. Add a new proceeding into the BIAP system.

Non Responsive

IV. Bar code the ROP (*Your station will need to be connected to a bar code printer as noted in section* III *above*).

Non Responsive

V. Complete the remaining appeal/motion information in BIAP

Non Responsive

Now the ROP and the BIAP system are ready for the re-issuance or the amended or corrected order.

VI. Create a new proposed Board Decision, using the appropriate language:
Below see appropriate language for: A) a re-issuance order; B) a corrected or amended order, and C) a remand due to significant non-associated correspondence.

[**Note!**: *Automated orders specifically designed for re-issuance, amended, and corrected orders, with insertion points for tailored language, are in our streamlining software. See automated orders **7H** (re-issuance), **7I** (amended, with option for voluntary departure), **7J** (same, no voluntary departure), **7K** (non-associated documents, no change in order necessary) and **7L** (remanded due to non-associated correspondence). If none of the language in the auto orders is adequate to the order you need, use Word Perfect to the following effect*]:

A. For Re-issuance:

❑ For a re-issuance, use the following or similar language (see, e.g., auto order 7H):

"REISSUED DECISION

To correct [here specify reason for the re-issuance], the Board's order of [DATE] in this matter is hereby vacated and the proceedings reinstated upon the Board's own motion. 8 CFR 1003.2(a). A final order in the matter is hereby issued as of this date, incorporating by reference the text of the attached vacated order."

❑ If the original order (which will be attached to the new order, see below) granted voluntary departure, include the following language:

"FURTHER ORDER: The respondent is granted 30 days from this date within which to voluntarily depart the United States under the terms of the Board's prior order, attached hereto."

B. For Corrected or Amended Order:

❑ For a corrected or amended order, use the following or similar language [*see also automated orders # 7I, 7J, or 7K*]:

"AMENDED DECISION

To correct an error in our original decision, the Board's order of [DATE] in this matter is hereby vacated and the proceedings reinstated upon the Board's own motion. 8 CFR 1003.2(a). A final order in the matter is hereby issued as of this date, incorporating by reference the text of the attached vacated order, with the following exception: [here specify the correction being made. For example: "in the first full paragraph on page one, the word "China" is hereby corrected to read "India"]."

❑ If the original order (which will be attached to the new order, see below) granted voluntary departure, include the following language:

"FURTHER ORDER: The respondent is granted 30 days from this date within which to voluntarily depart the United States under the terms of the Board's prior order, attached hereto."

C. For Remand

❑ If the amended decision results in a remand - - this may occur because of non-associated correspondence - - use the following language, omitting reference to "final order" and "attached vacated order" *[see automated order # 7L]*:

"PER CURIAM. To correct an error in our original decision, the Board's order of [DATE] in this matter is hereby vacated and the proceedings reinstated upon the Board's own motion. 8 CFR 1003.2(a). Through administrative error, [insert reference to correspondence received] which was received by the Board before the prior order was issued, was not included in the record of proceedings and was not considered. Upon further review [insert appropriate language]. Accordingly, the record is remanded to the immigration court for further proceedings consistent with the foregoing opinion and the entry of a new decision.

VII. Prepare the new decision for Board Member signature (attorney or legal assistant):

- ❑ Staple the new order on top of a copy of the vacated order.
- ❑ Ensure that a new circulation sheet is placed on the file, for the appropriate panel.
- ❑ Fill out the decision code section of the circulation sheet, using decision code "Other" for re-issues. If remanding, use "REM" (case appeal) or "GRN" (motion).
- ❑ The disposition code should be the same code used for the original order, assuming it was correct.
- ❑ Put a note on the circulation sheet: "Re-issuance" or "amended order."

VIII. Forward the proposed decision to a Board Member:

- ❑ Re-issued decisions can generally be routed to any Board Member.

IX. Break down and mail out: (Docket)

- ❑ Enter decision information (e.g., dates, Board Member(s), vote(s), decision and disposition codes) in BIAP as usual. See section VI above for correct decision codes.
- ❑ Record in Decision Comments the reason for the amended order, so that if asked, we understand and can defend our order to outside parties.
- ❑ Staple the new order on top of the vacated order. This is the same for all copies.
- ❑ Prepare the usual transmittal letters. (*There are no special transmittal letters for re-issuance or amended orders*).

X. Post to the Virtual Law Library (VLL) (Library Personnel or C.O. Personnel):

- ❑ Post the newly issued transmittal and order on the VLL, UNDER THE NEW DATE
- ❑ Post the new order in front, *with the old order attached to it.*

FORMATTING UNPUBLISHED BOARD DECISIONS

April 2009

TABLE OF CONTENTS

CHAPTER 1 - Preparation of Board Decisions

Generally

Each unpublished Board decision has a heading which includes information regarding the nature of the proceedings, i.e., final hearing location, names of the parties, charges and applications. This chapter provides general guidance as to what information should be included in each caption.

Below is an example of a Board heading in removal proceedings and the type of information generally contained in the captions.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A[Alien #] - [City and state - hearing location] Date:

In re: [Alien name]

IN [Type of proceedings before the Board] PROCEEDINGS

[Type of case before the Board]

ON BEHALF OF RESPONDENT/APPLICANT: [Pro se or Attorney/Accredited representative]

ON BEHALF OF DHS: [DHS Attorney]
[Title of DHS Attorney]

CHARGE:

Notice: Sec. [charge]
[description]

APPLICATION: [type of relief pending before the Board]

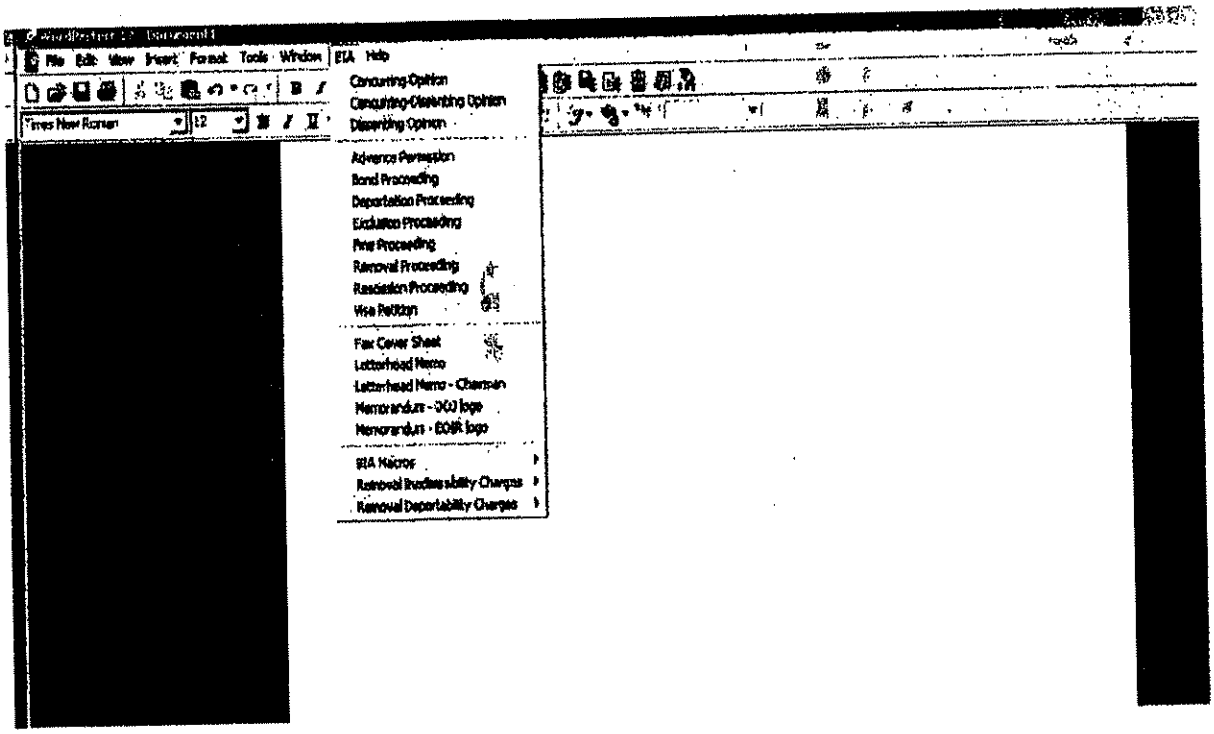
BIA Templates and Macros

Templates have been created in order to assist attorney-advisors, paralegals, and legal assistants in the preparation of Board decisions. The templates contain the appropriate heading and format settings for proposed decisions. They are also designed to allow the user to input information directly into the heading of the decision.

Templates have been created for the following proceedings: advance permission, bond, deportation, removal, exclusion, fine, rescission and visa petition. Templates have also been created for concurring, concurring-dissenting, and dissenting opinions.

The BIA templates may be accessed by selecting "BIA" on the menu bar in WordPerfect. A drop down menu will appear allowing the user to select the appropriate template.

In addition, macros have been created for the most commonly used inadmissibility and deportability charges in **removal** proceedings. Macros have also been created for the Background check remand and reinstating voluntary departure language. The macros are also accessed by selecting the "BIA" on the menu bar. A drop down menu will appear allowing the user to select the appropriate macro.



REMINDER: The macros for inadmissibility and deportability contain the common charges in REMOVAL proceedings.

Spacing

Generally, there is 1 line between captions. However, 2 lines between the last charge and application line is permissible. There also may be between 2-3 lines between the application line and the beginning of the Board's decisions (body of the decision). An easy way to check the spacing between the captions is to click on "View" in the menu Bar and select "Show ¶" or Ctrl+Shift+F3.

BIA Addresses

Generally, the address of the Clerk's Office is not included in the heading. Below is an example of the Board's heading without an address: (General rule is not to include the address).

U.S. Department of Justice Decision of the Board of Immigration Appeals
Executive Office for Immigration Review

Falls Church, Virginia 22041

Proceeding before the Board

The heading should reflect the type of proceeding which is before the Board. As noted earlier, templates have been created in WordPerfect for some of the proceedings which the Board has jurisdiction to consider. The * indicates that a template has been created.

* APPLICATION FOR ADVANCE PERMISSION TO ENTER AS NONIMMIGRANT PURSUANT TO SECTION 212(d)(3) OF THE IMMIGRATION AND NATIONALITY ACT

IN ADJUSTMENT OF STATUS PROCEEDINGS

IN ASYLUM PROCEEDINGS

* IN BOND PROCEEDINGS

IN CONTINUED DETENTION REVIEW PROCEEDINGS

* IN DEPORTATION PROCEEDINGS

* IN EXCLUSION PROCEEDINGS

* IN FINE PROCEEDINGS

* IN REMOVAL PROCEEDINGS

* IN RESCISSION PROCEEDINGS UNDER SECTION 246 OF THE IMMIGRATION AND NATIONALITY ACT

* IN VISA PETITION PROCEEDINGS

IN VISA PETITION REVOCATION PROCEEDINGS

For those proceedings which a template has not been created, it is recommended that one of the other existing templates be utilized since they have the appropriate formatting. However, be sure to make the appropriate substitutions in the Caption.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A023 654 123 - Chicago, IL

Date:

In re: JOHN SMITH

APPLICATION FOR ADVANCE PERMISSION TO ENTER AS NONIMMIGRANT PURSUANT TO SECTION 212(d)(3) OF THE IMMIGRATION AND NATIONALITY ACT

APPEAL

ON BEHALF OF APPLICANT: Jane Doe, Esquire

INADMISSABLE: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] - Crime involving moral turpitude

APPLICATION: Advance permission to enter the United States as a nonimmigrant

---

Example of Advance Permission - Section 212(d)(3)(A) of the INA.

Template exists in WordPerfect

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Miami, FL

Date:

In re: (b) (6)

IN ADJUSTMENT OF STATUS PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Jane Smith, Esquire

ON BEHALF OF DHS: John Doe
Assistant Chief Counsel

Example of Adjustment of status proceedings

When the relief being sought is adjustment of status pursuant to (1) Nicaraguan and Central American Relief Act ("NACARA") or Haitian Refugee Immigrant Fairness Act ("HRIFA"); and (2) the applicant is subject to a final order of exclusion, deportation or removal; and (3) DHS has issued a Notice of Certification (Form I-290C) with the Immigration Court, then the following formatting guidance should be applied.

- Type of proceeding line - IN ADJUSTMENT OF STATUS PROCEEDINGS
- Designation of person in proceedings - Applicant not Respondent

ON BEHALF OF APPLICANT

- Charges - none, so delete the line.

CHARGES [delete line]

- Applications - none, so delete the line.

APPLICATION [delete line]

NOTE: Although 8 C.F.R. § 1245.13(n) relates to NACARA and 8 C.F.R. § 1245.15(s) relates to HRIFA, there is no need to distinguish between NACARA and HRIFA in the Type of Proceedings line. The line should read IN ADJUSTMENT OF STATUS PROCEEDINGS.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - El Centro, CA Date:

In re: (b) (6)

IN ASYLUM PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Gary H. Manulkin, Esquire

ON BEHALF OF DHS: Gregory E. Fehlings
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

---

Example of asylum proceedings

These proceedings are initiated by DHS by filing a Notice of Referral to Immigration Judge (Form I-863) with the Immigration Court. *See* 8 C.F.R. § 1208.2(c); *see also* 8 C.F.R. §§ 1208.30(g)(2)(iv)(C) (stowaway) and 1208.31(e) and (g) (expedited removal or reinstated order of removal). The **only** issue in these types of cases is the alien's eligibility for asylum and/or withholding and/or protection under the Convention Against Torture.

- Type of Proceedings line - Regardless of whether dealing with asylum/withholding or only withholding, the type of proceeding line in the caption should read:

IN ASYLUM PROCEEDINGS

- No template. *** Use the exclusion proceedings templates and change the type of proceedings in the caption to IN ASYLUM PROCEEDINGS.

- Applicant NOT Respondent - Designation of person in proceedings - refer to the alien as the applicant not the respondent.

ON BEHALF OF APPLICANT

CHARGES line - none [delete line]

APPLICATION line - make the distinction of type of relief being examined in this line

Note: There should not be an order of removal to a particular country in these cases.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) New York, NY Date:

In re (b) (6)

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Yvonne Floyd-Mayers, Esquire

APPLICATION: Change in custody status

Example of bond proceedings

Template exists in WordPerfect

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - New York, NY Date:

In re: (b) (6)

IN CONTINUED DETENTION REVIEW PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Smith, Esquire

ON BEHALF OF DHS: Kevin Smith
Assistant Chief Counsel

APPLICATION: Review of custody status pending removal from United States

---

Example of continued detention review proceedings

- These proceedings involve aliens who are subject to final orders of removal and the issue in these cases is whether the aliens can continued to be detained as provided under section 241(a)(6) of the Act. *See also* 8 C.F.R. § 1241.14.

APPLICATION line - Review of custody status pending removal from United States

CHARGES - none; delete line

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) Boston, MA Date:

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew B. Smith, Esquire

CHARGE:

Order: Sec. 241(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1251(a)(2)(A)(iii)] - Convicted of aggravated felony

Sec. 241(a)(2)(B)(i), I&N Act [8 U.S.C. § 1251(a)(2)(B)(i)] - Convicted of controlled substance violation

APPLICATION: Waiver of inadmissibility pursuant to section 212(c)

Example of deportation proceedings

Template exists in WordPerfect

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Seattle, WA Date:

In re: (b) (6)

IN EXCLUSION PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Jay W. Stansell, Esquire

ON BEHALF OF DHS: Gregory E. Fehlings
Assistant Chief Counsel

EXCLUDABLE: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] - Crime involving moral turpitude

Sec. 212(a)(2)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(II)] - Controlled substance violation

Sec. 212(a)(2)(C), I&N Act [8 U.S.C. § 1182(a)(2)(C)] - Controlled substance trafficker

APPLICATION: Termination; admission to the United States

Example of exclusion proceedings

Template exists in WordPerfect

- Applicant NOT Respondent - Designation of person in proceedings - refer to the alien as the applicant not the respondent.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Los Angeles, CA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Gregory E. Fehlings
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -
Convicted of controlled substance violation

APPLICATION: Cancellation of removal under section 240A(a)

Example of removal proceedings - deportability

Template exists in WordPerfect

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Newark, NJ

Date:

In re: JOHN DOE

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Notice: Sec. 212(a)(6)(E)(i), I&N Act [8 U.S.C. § 1182(a)(6)(E)(i)] - Alien smuggler

APPLICATION: Termination of proceedings

Example of removal proceedings - inadmissibility

Template exists in WordPerfect

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Washington, DC Date:
(b) (6)

In re: CHINA AIRLINES FLIGHT NO. CI 012 which arrived at New York, New York, from Taipei, Taiwan, on July 24, 2001.

Alien passenger involved:

(b) (6)

IN FINE PROCEEDINGS

APPEAL

ON BEHALF OF CARRIER: Arnold F. Williams, Esquire

ON BEHALF OF DHS: Craig Raynsford
General Attorney

BASIS FOR FINE: Sec. 273, I&N Act [8 U.S.C. § 1323] - Bringing to the United States alien not in possession of valid passport or unexpired visa

APPLICATION: Termination; remission

Example of fine proceedings

Template exists in WordPerfect

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A023 456 789 - New York, NY Date:

In re: JANE DOE

IN RESCISSION PROCEEDINGS UNDER SECTION 246 OF THE IMMIGRATION AND NATIONALITY ACT

APPEAL

ON BEHALF OF RESPONDENT: John Smith, Esquire

ON BEHALF OF DHS: James Bond
Assistant Chief Counsel

Example of rescission proceedings

Template exists in WordPerfect

- No charges; delete line
- No application line; delete line

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - California Service Center Date:

In re: (b) (6) Beneficiary of a visa petition filed by (b) (6) Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Dona L. Coultice
Chief Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa

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Example of visa petition proceedings

Template exists in WordPerfect

- Hearing Location - refer to Chapter 1 page 25

  The United States Citizenship and Immigration Services (USCIS) has responsibility for adjudicating immigrant based visas. There are 4 Service Centers which process the visa petitions:

Vermont Service Center	(Burlington)
Nebraska Service Center	(Lincoln)
California Service Center	(Laguna Niguel)
Texas Service Center	(Mesquite)

  In general, one of the Service Centers will be the hearing location. However, when a decision has been rendered from one of the 33 District Offices (e.g., New York District), list the city and state that the office as the hearing location. For example, Tampa. Do not try to pick the closest Service Center. Also, do not identify a District Office as a Service Center. For example, Tampa Service Center is not appropriate. Nor is the Florida Service Center.

- The last name of the Beneficiary should be underscored. Not the Petitioner.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) California Service Center Date:

In re: (b) (6) Petitioner, as widow of

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Sheila C. Fisher
Chief Area Counsel

APPLICATION: Petition for classification as spouse of deceased citizen for issuance of immigrant visa

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Example of visa petition filed by Widow or Widower of United States citizen

- The template for visa petitions should be used for revocation proceedings. However, it will be necessary to type in the word REVOCATION in the heading.
- The last name of the widow should be underscored. Not the deceased spouse.
- The name of the deceased spouse should appear on the line immediately below the widow's or widower's name.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) Nebraska Service Center Date:

In re: (b) (6), Beneficiary of visa petition filed by (b) (6), Petitioner

IN VISA PETITION REVOCATION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Bart A. Chavez, Esquire

ON BEHALF OF DHS: Paul R. Stultz
Chief Area Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa

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Example of visa petition revocation proceedings

- The template for visa petitions should be used for revocation proceedings. However, it will be necessary to type in the word REVOCATION in the heading.
- Only the last name of the Beneficiary should be underscored. Not the Petitioner.

File: "A" number(s)

Lead Alien

- The lead alien number (without hyphens or dashes) is placed on this line.
- 9-digit alien number is used on this line and should look like this: File: A012 345 678
- When using the templates, it will be necessary to include the space after the second number and fifth number. However, it is not necessary to include the letter "A" when using the templates.

REMEMBER: Be sure to have the appropriate spacing. Again, **NO HYPHENS or DASHES** in the caption of the orders.

Multiple Aliens

- When there is more than one alien, all aliens included in the appeal or motion must be listed in the heading unless the cases are severed. (Lead and rider files). No alien for which an appeal or motion has not been filed should be included in the heading.
- When there are multiple aliens, the other alien numbers are also listed, but they are located below the lead alien. Additionally, when there is more than one alien, the letter "s" is added to the word "File."

  Files: A031 107 217
  A031 107 297

  In re: JOHN DOE
  JANE DOE

- The applicant/respondent is also made plural in the ON BEHALF OF line of the heading. These are the only two lines that are changed to the plural form when there are multiple aliens in the proceedings.
- Visa Petition cases - If DHS did not consolidate the family members' visa petitions, then the Board should issue a separate decision for each beneficiary (one beneficiary in the heading). However, on the rare occasion where DHS has consolidated family members and issued one decision, all the beneficiaries are included on the appeal or motion filed by the Petitioner should be listed in the heading unless the cases are severed. Also, Beneficiary should be changed to Beneficiaries.

IMPORTANT: The alien number must be included on all pages after the first page in the header.

- The second and all subsequent pages for multiple aliens should state the lead alien number followed by "et al." [There is no comma after the alien number and before the et al. Also, the "et al." is not in italics]

The header on subsequent pages should look as follows:

A012 345 678 et al.

- The header is automatically created when you use the BIA Templates. However, for multiple aliens, it will be necessary to manually type the "et al." in the header.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Los Angeles, CA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] - Convicted of controlled substance violation

APPLICATION: Cancellation of removal under section 240A(a)

Example of alien number for single alien

- No hyphens or dashes between the numbers.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files: (b) (6) Los Angeles, CA Date:

In re (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: David L. Ross, Esquire

CHARGE:

Notice: Sec. 212(a)(5)(A)(i), I&N Act [8 U.S.C. § 1182(a)(5)(A)(i)] - No valid labor certification (b) (6)

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigration visa (b) (6)

APPLICATION: Termination of proceedings; admission to the United States

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Example of multiple aliens

- The letter "s" is added to the word "File" as well as making applicant/respondent plural in the ON BEHALF OF line of the heading.
- **IMPORTANT**: The second and all subsequent pages for multiple aliens should state the lead alien number followed by "et al." in the header. For the example above, it would look something like this (b) (6) et al.
- No comma after the alien number. Also, the et al is not in italics.
- Although the templates automatically create a header on subsequent pages of the decision, it is necessary to manually type the "et al." in the first header on the second page. Thus, "et al." will appear in all subsequent page headers.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files: (b) (6) - California Service Center Date:

In re: (b) (6) Beneficiaries of a visa petition filed by (b) (6) Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Karl Jones, Esquire

ON BEHALF OF DHS: Dona L. Coultice
Chief Area Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa

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Example of visa petition proceedings multiple beneficiaries

- If DHS did not consolidate the family members visa petitions (beneficiaries), the Board should issue a separate decision for each beneficiary for which the Petitioner has listed on the Notice of Appeal (NOA) or filed a separate NOA.
- The letter "s" is added to the word "File".
- Be sure to complete separate circulation sheets for each beneficiary since the Board does not designate a "lead" beneficiary in CASE.

Hearing location

General rule: List the city and state of the final designated hearing location. For example, Chicago, IL.

- The designated hearing location (where the hearing takes place) as identified in the final hearing notice issued by the Immigration Court.
- Check the final hearing notice.
- Below is a snap shot of a hearing notice -

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
201 VARICK ST., RM 1140
NEW YORK, NY 10014

RE: FILE (b) (6)

DATE: 3-7-07

TO:

BRETZ & COVEN
305 BROADWAY, SUITE #100
NEW YORK, NY 10007

Please take notice that the above captioned case has been scheduled for a Master/~~Individual~~ hearing before the Immigration Court on 12 MARCH 2007 at 9:00 AM

201 VARICK ST., RM 1140
NEW YORK, NY 10014

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or

In the above hearing notice, the Immigration Court advises that a hearing has been scheduled before the Immigration Court on March 12, 2007, at

201 Varick St., RM 1140
NEW YORK, NY 10014

Since this was the final scheduled hearing in this matter, the caption in the Board's order would identify the hearing location as New York, NY.

Telephonic or video-conference

- Hearings conducted by telephone and video conference - list the city and state of the final hearing.

- The final designated hearing location (where the hearing takes place) may be different from where the Immigration Judge and/or the alien are physically located.

  For example, DHS files the NTA with the Dallas Immigration Court for an alien detained in a correctional facility in Oklahoma. The final hearing notice advise that the hearing location is Oklahoma City, OK. The Board's order would identify the final hearing location as Oklahoma City, OK despite the fact that the Immigration Judge was physically located in Falls Church, VA and conducted the final hearing by video conference.

City and state are identified

- The abbreviation for the state should be used (make sure you use the correct abbreviation), but it is okay to write out the state as opposed to using the abbreviation.

- A partial list of hearing locations may be found in Appendix A.

Change of venue

- In a case where the Board decision reflects a change of venue, the hearing location listed in the heading should be the designated hearing location (where the hearing was conducted below and not the new venue).

Visa Petition Proceedings

- The United States Citizenship and Immigration Services (USCIS) has responsibility for adjudicating immigrant based visas. There are 4 Service Centers which process the visa petitions:

  Vermont Service Center in St Albans, VT
  Nebraska Service Center in Lincoln, NE
  California Service Center in Laguna Niguel, CA
  Texas Service Center in Dallas, TX

- The Service Center name should be used. For example, California Service Center. **Do not list the city and state where the Service Center is located.**

- In general, one of the Service Centers will be the hearing location. However, when a decision has been rendered from one of the 33 District Offices (e.g., New York District), list the city of the District Office. For example, New York. Do not try to pick the closest Service Center and do not create a new Service Center. There is no Florida Service Center

Fine Proceedings

- Since the Carrier Fines Branch is located in Washington, DC the hearing location should list Washington, DC as the hearing location.

Application for Advance Permission § 212(d)(3)(A) - nonimmigrant waiver

- The Admissibility Review Office of the Customs and Border Protection (CBP) division of DHS adjudicates applications for advance permission - § 212(d)(3)(A) - nonimmigrant waivers.

- List the city where the decision was rendered. However, it is okay to list the city and the state.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - New York, NY Date:

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Walter Rafael Pineda, Esquire

ON BEHALF OF DHS: Eileen R. Trujillo
Assistant Chief Counsel

CHARGE:

Order: Sec. 241(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1251(a)(2)(A)(iii)] - Convicted of aggravated felony

Sec. 241(a)(2)(B)(i), I&N Act [8 U.S.C. § 1251(a)(2)(B)(i)] - Convicted of controlled substance violation

Sec. 241(a)(2)(C), I&N Act [8 U.S.C. § 1251(a)(2)(C)] - Convicted of firearms offense

APPLICATION: Waiver of inadmissibility under section 212(c)

Example of designated or final hearing location - New York, NY or New York, New York

- The hearing location is in lower case.
- Check the most recent Notice of Hearing for the designated hearing location.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Lincoln, NE Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Thomas K. Muther, Jr.
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

APPLICATION: Termination of proceedings

Example of hearing location - Lincoln, NE or Lincoln, Nebraska

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) California Service Center Date:

In re: (b) (6) Beneficiary of a visa petition filed by (b) (6) Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Dona L. Coultice
Chief Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa.

Example of hearing location in visa petition proceedings - California Service Center

- If the decision was rendered by a Service office other than one of the 4 Service Centers, list the district office. Do not try to pick the closest Service Center.
- The Service Center name should be used, **not** the name of the city where the center is located.
- It may not be apparent that the decision was issued by the Service Center. Below is a listing of the cities that the Service Centers are located. However, **do not list the city of the Service Center in the caption.**

  Vermont Service Center in St Albans, VT
  Nebraska Service Center in Lincoln, NE
  California Service Center in Laguna Niguel, CA
  Texas Service Center in Dallas, TX

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Tampa Date:

In re: (b) (6) Beneficiary of a visa petition filed by (b) (6) Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Jane Harrelson
Chief Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa.

Example of hearing location in visa petition proceedings - Tampa District office

- List the city; however, it is okay to list the state. For example, Tampa, FL
- Note: There is no Florida Service Center

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) (b) (6) Washington, DC Date:

In re: CHINA AIRLINES FLIGHT NO. CI 012, which arrived at New York, New York, from Taipei, Taiwan, on July 24, 2001.

Alien passenger involved:

(b) (6)

IN FINE PROCEEDINGS

APPEAL

ON BEHALF OF CARRIER: Arnold F. Williams, Esquire

ON BEHALF OF DHS: Craig Raynsford
General Attorney

BASIS FOR FINE: Sec. 273, I&N Act [8 U.S.C.A. § 1323] - Bringing to the United States alien not in possession of valid passport or unexpired visa

APPLICATION: Termination; remission

Example of hearing location in fine proceedings - Washington, DC

- Since the Carrier Fines Branch of CBP is located in Washington, DC the hearing location should list Washington, DC.

Alien Name

In general, this line contains the alien's name as stated in the charging document in all CAPs with the last name underscored.

In re: JOSE CRUZ-FERNANDEZ

Aliases

- If there are aliases listed in the charging document, they should be placed right after the name in lower case letters.

  In re: JOSE CRUZ-FERNANDEZ a.k.a. Jose Cruz a.k.a. Jose Fernandez

  In re: CARL JONES a.k.a. Carl Smith a.k.a. Carl Jones Smith a.k.a. Hector Carl a.k.a. Hector Jones a.k.a. Hector Smith

- If the alien's name is **consistently** spelled differently as compared to how the alien's name appears in the charging document, then you should list this name as an alias in the caption. For example, the asylum application (Form I-589), alien's appellate brief, and EOIR-33 (Change of Address form) all list the alien's name as "Jon Smith" while the NTA lists the alien's name as "John Smith." An alias of "Jon Smith" should be placed right after the name listed in the NTA.

  In re: JOHN SMITH a.k.a. Jon Smith

  IMPORTANT: You should not list every spelling deviation of the alien's name that appears in the record as an alias. Rather, if you notice a different name or spelling of the alien's name being **consistently** used to refer to the alien than what is listed in the charging document, you should list this name as an alias.

  Note: You should also consult any Panel guidance and/or supervisor to assist in determining whether an alias should be added to the Alien Name caption of the Board's decision.

Template

When filling in the template dialogue box, you will not be able to underscore the last name. Therefore, underscore after all the information in the dialogue box has been placed in the heading.

Multiple aliens

- When there is more than one alien, all the aliens who have filed an appeal or motion are listed in the Caption. The riders are listed immediately below the lead alien in CAPs and the surname or last name is underlined.

  In re: JOHN DOE
  JANE DOE

Visa Petition

- The name of the beneficiary and the petitioner are in CAPS.
- Only the surname or last name of the beneficiary is underlined.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Boston, MA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William E. Graves, Jr., Esquire

ON BEHALF OF DHS: Cathleen DeSimone
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii) - Convicted of aggravated felony

Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] - Convicted of crime of domestic violence, stalking, or child abuse, neglect, or abandonment

APPLICATION: Termination of proceedings

Example of an alien with aliases

- Name in CAPS and underline the last name.
- Aliases are in lower case.
- Check the charging document for aliases. If you discover that the transcript, Immigration Judge decision, filings or other evidence in the ROP reflect that the alien is known by another name than what appears in the charging document, this name should be listed as an alias.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) New York, NY Date:

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Reverend Robert Vitaglione, Accredited Representative

ON BEHALF OF DHS: Timothy Maquire
Assistant Chief Counsel

APPLICATION: Adjustment of status; waiver of inadmissibility

Example of an alien with numerous aliases

- The second line of the aliases starts directly below that alien's first name and not at the left margin.
- In this example, aliases listed in the charging document were placed right after the name in lower case.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - New York, NY

Date:

In re: JOHN SMITH a.k.a. Jon Smith

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Timothy Maquire
Assistant Chief Counsel

APPLICATION: Asylum, withholding of removal

Example of an alien with an aliases not listed in NTA

- Generally, only aliases included in this caption are those that are listed in the charging document.
- However, if you discover that the record **consistently** reflects that the alien is known by another name than what appears in the charging document, an alias may need to be added.
- In this example, it was apparent from filings (NOA; appellate brief; EOIR-33); and an application (Form I-589) submitted by the respondent, that the NTA (charging document) reflected a misspelling of the respondent's first name.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) Los Angeles, CA Date:

In re: (b) (6)

IN EXCLUSION PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANTS: David L. Ross, Esquire

EXCLUDABLE: Sec. 212(a)(5)(A)(i), I&N Act [8 U.S.C. § 1182(a)(5)(A)(i)] - No valid labor certification (A092 775 183)

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigration visa or entry document (A092 775 183, 188, 189)

APPLICATION: Termination of proceedings; admission to the United States

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Example of multiple aliens

- Plural the word File and APPLICANT in the ON BEHALF OF line.
- Underline the last names and check that all alien names line up under the lead alien name.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - California Service Center Date:

In re: (b) (6) Beneficiary of a visa petition filed by (b) (6) Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Dona L. Coultice
Associate Chief Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa.

Example of visa petition. Both beneficiary and petitioner are listed, but ***only*** the beneficiary's last name is underlined.

Type of Case

The heading should accurately reflect the posture of the case before the Board. The appropriate designations are:

- APPEAL
- MOTION
- APPEAL AND MOTION
- CERTIFICATION
- INTERLOCUTORY APPEAL

APPEAL

This designation is appropriate when the matter before the Board is on direct appeal from a decision of an Immigration Judge or DHS. This includes cases where there is an appeal from an Immigration Judge's denial of a motion to reopen

- Circuit Court remand

  When a Circuit Court vacates the Board's order dismissing an alien's appeal and remands for further proceedings, list APPEAL.

MOTION

Designation appropriate only when the motion is made directly to the Board.

Note: When an alien is appealing the denial of a motion by an Immigration Judge, the appropriate caption is APPEAL and **not** MOTION. For example, *in absentia* cases, the alien is appealing the denial of the motion to rescind the *in absentia* order. Therefore, the appropriate designation is APPEAL.

- Circuit Court remand

  When a Circuit Court vacates the Board's order denying an alien's motion and remands for further proceedings, list MOTION.

APPEAL AND MOTION

This designation is used in the heading when the case involves both an appeal and motion before the Board. Generally this is seen when the alien files a motion to remand while their appeal is pending at the Board. The APPEAL AND MOTION designation is also appropriate where the Board previously issued an order continuing the proceedings indefinitely, such as TPS or ABC orders.

INTERLOCUTORY APPEAL

This designation is used only in the heading and not in the application line. The INTERLOCUTORY APPEAL designation is appropriate when one of the parties is appealing a preliminary ruling by an Immigration Judge and a final decision regarding immigration proceedings has not been entered.

CERTIFICATION

This designation is used when a case is certified to the Board by the DHS, by the Immigration Judge, or on the Board's own action. The CERTIFICATION designation is also appropriate when the Board reviews an untimely motion or appeal pursuant its own authority.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files: (b) (6) Los Angeles, CA Date:

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: Enrico A. Mendoza, Esquire

ON BEHALF OF DHS: Jeffrey C. Finnegan
Assistant Chief Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
In the United States in violation of law (all respondents)

APPLICATION: Reopening

Example of a MOTION

- The type of case should be in CAPS.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Files: (b) (6) - Los Angeles, CA

Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENTS: Enrico A. Mendoza, Esquire

ON BEHALF OF DHS: Jeffrey C. Finnegan
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled (all the respondents)

APPLICATION: Asylum; withholding of removal; remand

Example of an APPEAL AND MOTION

- You must type the word AND. The heading **is not** APPEAL/MOTION
- "Remand" should be added to the application line

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Houston, TX Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

INTERLOCUTORY APPEAL

ON BEHALF OF RESPONDENT: Nancy Falgout, Esquire

ON BEHALF OF DHS: Merilee Fong
Assistant Chief Counsel

APPLICATION: Change of venue

Example of an INTERLOCUTORY APPEAL

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) Boston, MA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

CERTIFICATION[1]

ON BEHALF OF RESPONDENT: Matthew B. Smith, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] - Convicted of controlled substance violation

APPLICATION: Termination of proceedings

Example of an appeal taken on Certification by the Board.

- Be sure to include a footnote or explain in the body of the decision that the case is before the Board via certification.
- If the Immigration Judge has certified the case to the Board pursuant to 8 C.F.R. § 1003.7, you may either include a footnote or explain in the body of the decision that the case is before the Board via certification as provided by 8 C.F.R. § 1003.7.

[1] To resolve any issues of timeliness, we will consider this matter on appeal pursuant to 8 C.F.R. § 1003.1(c).

Designation of person in proceedings

The proper designation of the person under proceedings reflects the type of proceedings which are pending. One of the following categories will be applicable:

RESPONDENT

A person named in a Notice to Appear (NTA) or Order to Show Cause (OSC). *See* 8 C.F.R. § 1001.1(r).

APPLICANT

A person in exclusion proceedings, asylum proceedings under 8 C.F.R. § 1208.2(c), adjustment of status proceeding pursuant to NACARA and HRIFA (8 C.F.R. §§ 1245.13(n) and 1245.15(s)), or a nonimmigrant seeking a waiver pursuant to section 212(d)(3)(A) of the Act. Also, an organization or individual seeking recognition pursuant to 8 C.F.R. § 1292.2.

PETITIONER

A person petitioning on behalf of an alien in visa petition proceedings.

BENEFICIARY

A person who is the beneficiary of a visa petition.

> **Note**: The heading ON BEHALF OF BENEFICIARY will only properly appear in those specified instances where the beneficiary is allowed to pursue a visa petition after the death of the petitioner. *See* 8 C.F.R. § 1205.1(a)(3). Otherwise, it will only appear in those cases in which an appeal has been improperly filed in visa petition proceedings by a beneficiary, or on behalf of the beneficiary, since the beneficiary generally has no standing to file an appeal.

CARRIER/INDIVIDUAL

A party subject to fine proceedings.

Representation for alien -

Look to see if a Form EOIR-27 (Notice of Entry of Appearance) is contained in the ROP.

Designation for represented alien – When there is a EOIR-27 contained in the ROP, the name of the party's attorney or representative, as it appears on the form or as updated by subsequent correspondence or in CASE is listed on this line. "Esquire" or "Accredited Representative" are spelled out. Additionally, as noted earlier, if there are multiple aliens, the RESPONDENT or APPLICANT is plural in the ON BEHALF OF line in the heading.

Note: The regulations also allow for an alien to be represented by a law student, law graduate, reputable individual, or accredited official. *See* 8 C.F.R. § 1292.1(a). An EOIR-27 must be completed and the individual must comply with the requirements set forth in the applicable regulations.

The Clerk's Office makes the initial determination as to whether the EOIR-27 has been completed and the requirements of the applicable regulations have been meet.

For example, if a reputable individual meets the requirements set forth at 8 C.F.R. § 1292.1(a)(3), then "Reputable Individual" would be listed after their name on the ON BEHALF OF line.

For example, if a law student or law graduate meets the requirements set forth at 8 C.F.R. § 1291.1(a)(2), then "Law Student" or "Law Graduate" would be listed after their name on the ON BEHALF OF line. Additionally, the name and title of the applicable supervisor should be listed below the name of the student or graduate.

a) DHS appeal

When DHS serves a copy of the Notice of Appeal to an attorney, then the Clerk's Office issues a form EOIR-27 requirement notice to the alien and their representative. The case is considered Pro se until the attorney files the EOIR-27.

When DHS serves a copy of the Notice of Appeal only to the alien, the Clerk's Office does not send a form EOIR-27 requirement notice. The alien is treated as unrepresented unless an attorney or representative subsequently files an EOIR-27 with the Board.

Courtesy copy of Board decision - include a courtesy copy footnote for a DHS appeal only in those cases where the Clerk's Office failed to issue a Form EOIR-27 requirement notice to the alien and the attorney.

The footnote might state the following:

"It is noted that an attorney filed an appellate brief on behalf of the respondent in response to the DHS appeal. However, the attorney failed to file a Notice of Appearance (Form EOIR-27). We will provide the attorney with a courtesy copy of this decision."

Designation "Pro se" – Use when the alien/party is unrepresented.

a) No EOIR-27 filed with the Board

This designation is also appropriate when the alien's attorney or representative fails to file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27). If an attorney files an appeal or motion but does not include a Form EOIR-27, the Clerk's Office should reject the filing. The respondent will be given 15 days from the date of the rejection to perfect and resubmit the filing.

b) Request to withdraw representation

Generally, a request to withdraw representation are processed by the paralegals. Automated orders are generated reflecting whether the withdrawal has been allowed or that the request is deficient.

If the record of proceedings contains notice from the Board reflecting that the request to withdraw representation has been allowed, then the Board's decision does not need to also reflect such a grant. However, if the record does not reveal that a notice has been issued addressing the request, then the request may be granted if the attorney has complied with the requirements of *Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988). In such a case, the heading will reflect that the party is "Pro se," but a footnote should note that the representative has requested to withdraw, that the request meets the requirements of *Matter of Rosales,* and that the request is granted. It should further indicate that a courtesy copy of the decision will be forwarded to the attorney or representative. If the attorney or representative fails to meet the requirements of *Matter of Rosales*, the request may be denied, or it may be granted for all purposes except for service of the decision. In either instance, a footnote reflecting the disposition of the request should follow the listing of the attorney or representative in the heading.

c) Representative has been suspended

Clerk's Office has notified the alien of the attorney's suspension

Where the ROP reflects that the Clerk's Office has already notified the alien of the attorney's suspension, the caption should read "Pro se". It is discretionary to include a footnote that the fact that the respondent's attorney has been suspended.

Clerk's Office has not notified the alien of the attorney's suspension

When the ROP has a purple copy of the suspension order but **does not** reflect that the Clerk's Office has notified the alien of the attorney's suspension, the caption should read "Pro se" (unless the alien has retained new counsel) and a footnote should be added. **IMPORTANT**: The circulation sheet should also be prominently annotated in the area designated "Special Instructions To Docket" advising the Docket Team of the existence of the footnote so that the Clerk's Office can send the alien a copy of the suspension order.

Below is some suggested language that may be used in the footnote regarding the attorney's suspension. **Important note**: Be sure to check your Panel's guidance regarding whether a copy of the Board's decision is also to be sent to the suspended attorney.

> "We note that XXXX has been suspended from practice before the Board. As this attorney is not permitted to practice law before the Board at this time, this order is being sent directly to the respondent [*and a copy only is being sent to XXXX*]. Please also see the attached copy of the order suspending XXXX from practice."

Note:

- Again, the circulation sheet should be prominently annotated in the area designated "Special Instructions To Docket". For example, write "**DOCKET TEAM: Please see footnote 1 regarding attorney suspension.**"
- The Clerk's Office will send the alien a copy of the suspended order.
- The Office of General Counsel maintains an updated list of disciplined practitioners which is posted on the EOIR Internet at http://www.usdoj.gov/eoir/profcond/chart.htm
- The Clerk's Office flags each case with a purple tag, which is similar to a rush tag. The purple tag reflects the attorney's name and date of the suspension. A copy of the Board's decision, on purple paper, suspending the attorney is placed in the ROP. The Clerk's Office should also include a notation of the suspension in CASE - Comments Tab.

Amicus Curiae –

Add the line "AMICUS CURIAE:" below the line ON BEHALF OF RESPONDENT

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Boston, MA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew B. Smith, Esquire

CHARGE:

Notice: Sec. 212(a)(7)(B)(i)(II), I&N Act [8 U.S.C. § 1182(a)(7)(B)(i)(II)] - Nonimmigrant - no valid nonimmigrant visa or border crossing card

APPLICATION: Asylum; withholding of removal

Example of an alien represented by an attorney

- DO NOT abbreviate Esquire.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) New York, NY Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Reverend Robert Vitaglione, Accredited Representative

ON BEHALF OF DHS: Timothy Maquire
Assistant Chief Counsel

APPLICATION: Cancellation of removal

Example of an alien represented by an Accredited Representative

- Do not abbreviate Reverend.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) Arlington, VA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Elizabeth Anderson, Law Student
Kerry Carlton, Faculty Supervisor

ON BEHALF OF DHS: Jeff Clark
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal

Example of an alien represented by a Law Student

- The regulations also allow for an alien to be represented by a law graduate, reputable individual, or accredited official. 8 C.F.R. § 1292.1(a). An EOIR-27 must be completed and the individual must comply with the requirements set forth in the regulations.

  The Clerk's Office makes the initial determination as to whether the EOIR-27 has been completed and the requirements of the applicable regulations have been meet.

- **Law student** - the name and title of the supervising faculty member, licensed attorney, or accredited representative should be listed below the law student's name. This information should be included in the statement that the law student has filed. 8 C.F.R. § 1292.1(a)(2)(ii). In the REPs tab of CASE (before the BIA) the law student should be identified as the primary attorney, and the supervisor will appear as the secondary attorney.

- **Law graduate** - the name and title of the supervising attorney or accredited representative should be listed below the law graduate's name. This information should be included the statement filed by the law graduate. 8 C.F.R. § 1292.1(a)(2)(iii). In the REPs tab of CASE (before the BIA) the law student should be identified as the primary attorney, and the supervisor will appear as the secondary attorney.

- **Reputable individual** - "Reputable Individual" should be listed after the name listed on the EOIR-27. 8 C.F.R. § 1292.1(a)(3).

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Baltimore, MD Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se[1]

ON BEHALF OF DHS: Linda A. Dominguez
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

APPLICATION: Reopening

Example of an alien that is considered to be Pro se, but the Board has elected to send a courtesy copy to the attorney

- **Courtesy copy of Board decision** - include a courtesy copy footnote in those cases where the Clerk's Office failed to issue a Form EOIR-27 requirement notice to the alien and the attorney.
- Use the "Special Instructions To Docket" section on the front side of the circulation sheet to advise the Docket Team of the need to send a courtesy copy of the Board's decision.

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[1] We note that an attorney filed the respondent's motion to reopen. The attorney, however, failed to file a Notice of Appearance (Form EOIR-27). However, we will provide him with a courtesy copy of this decision.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Baltimore, MD

Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se[1]

ON BEHALF OF DHS: Linda A. Dominguez
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

APPLICATION: Reopening

Example of withdrawal of representation

- Use the "Special Instructions To Docket" section on the front side of the circulation sheet to advise the Docket Team if there is a need to send a courtesy copy of the Board's decision.
- If the record of proceedings contains notice from the Board reflecting that the request to withdraw representation has been allowed, then the Board's decision does not need to also reflect such a grant.

---

[1] The respondent's counsel's request to withdraw from this case is hereby granted. *See Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988). Service of this decision, however, will be sent to him in case the respondent should be in contact with him. Notice of this decision will also be sent to the respondent at his last known address.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Baltimore, MD Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: John Smith, Esquire[1]

ON BEHALF OF DHS: Linda A. Dominguez
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

APPLICATION: Reopening

Example of substitution of counsel

- If the record of proceedings contains notice from the Board reflecting that the request to withdraw representation has been allowed, then the Board's decision does not need to also reflect such a grant.

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[1] The respondent's counsel at the proceedings below has withdrawn from this case, and appellate counsel's motion to substitute counsel is granted. *See Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988).

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Baltimore, MD Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Hector Ramirez, Esquire[1]

ON BEHALF OF DHS: Linda A. Dominguez
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

APPLICATION: Reopening

Example where the withdrawal request denied

- Be sure to check to see if a notice has been issued addressing the request to withdraw representation.

[1] Attorney Ramirez's request to withdrawal as the respondent's counsel is hereby denied. *See Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988).

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) Baltimore, MD Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se[1]

ON BEHALF OF DHS: Linda A. Dominguez
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

APPLICATION: Reopening

Example of suspended attorney

- Include a footnote when the ROP has a purple copy of the suspension order but **does not** reflect that the Clerk's Office has notified the alien of the attorney's suspension.
- **IMPORTANT**: The footnote in this example is one previously developed by the J Panel in 2002, and reflects that a copy of the Board's decision is also being sent to the suspended attorney. However, this footnote is merely suggested language, and the Board may elect not to send a copy of the decision to the suspended attorney. Therefore, be sure to check your Panel's guidance.
- Use the "Special Instructions To Docket" section on the front side of the circulation sheet to advise the Docket Team. For example, "**DOCKET TEAM: Please see footnote 1 regarding attorney suspension.**"

---

[1] We note that XXXX XXXXXX has been suspended from practice before the Board, the Immigration Judges and the Department of Homeland Security. As this attorney is not permitted to practice law before the Board at this time, this order is being sent directly to the respondent, and only a copy is being sent to XXXX XXXXX. Please also see the attached copy of the order suspending XXXX XXXXXX from practice.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Boston, MA

Date:

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew B. Smith, Esquire

AMICUS CURIAE FOR RESPONDENT: John Higgins, Esquire

ON BEHALF OF DHS: Linda A. Dominguez
Assistant Chief Counsel

CHARGE:

Order: Sec. 241(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1251(a)(2)(A)(iii)] - Convicted of aggravated felony

Lodged: Sec. 241(a)(2)(B)(i), I&N Act [8 U.S.C. § 1251(a)(2)(B)(i)] - Convicted of controlled substance violation

APPLICATION: Waiver of inadmissibility pursuant to section 212(c)

Example of Amicus Curiae

- **Do not** abbreviate Esquire.

DHS Representative

Appearance before Immigration Court

The Office of the Principal Legal Advisor (OPLA) within the U.S. Immigration and Customs Enforcement (ICE) is charged with the responsibility of representing the Department of Homeland Security in exclusion, deportation, removal and asylum proceedings before EOIR. Within ICE, the former INS District Counsel Offices have been reorganized and are now known as Offices of Chief Counsel. There are 26 Office of Chief Counsel which are staffed by a Chief Counsel, Deputy Chief Counsels, and Assistant Chief Counsels.

- In general, the name and designation from the latest substantive brief from DHS is listed on this line.
- If "Trial Attorney" or "General Attorney", the name should be changed to "Assistant Chief Counsel".
- If "Assistant District Counsel", since DHS is going through a period of transition regarding titles, the general rule should be applied (see general rule).

Designation of Appellate Litigation and Protection Law Division (formerly DHS Appellate Counsel)

The Appellate Litigation and Protection Law Division (ALPLD) is staffed by a Chief Appellate Counsel and Appellate Counsels.

- If the attorney from the ALPLD argued the case before the Board, i.e., oral argument cases, then they should be listed as the DHS representative.
- If the attorney from the ALPLD submitted a brief or memo which significantly affects the Board's action in the case, then they should be listed as the DHS representative. For example, if the appellate counsel withdraws the appeal or gives notice that the alien has died or has been removed, then list only the appellate counsel. The Assistant Chief Counsel or Chief Counsel or Deputy Chief Counsel would not be listed even if a brief was submitted.

Visa proceedings

The U.S. Citizenship and Immigration Services (USCIS or CIS) is responsible for representing DHS in visa petition proceedings before the Board. Visa petitions are adjudicated at the CIS Service Centers in Vermont, Texas, Nebraska, and California, and also at the CIS District Offices nationwide. The Service Centers each have an Office of Chief Counsel. The District Offices have either an Office of the Chief Area Counsel or Office of Area Counsel.

- In general, the name and designation from the substantive brief from CIS should be listed as the DHS representative.

Fine proceedings

The U.S. Customs and Border Protection (CBP) is responsible for the imposition and collection of fines under section 280 of the Act. The former INS National Fines Office is now known as the Carrier Fines Branch (CFB) of the Seizures and Penalties Division of CBP.

- In general, the name and designation from the substantive brief from CFB should be listed as the DHS representative.

Section 212(d)(3)(A) waivers

- In general, the name and designation from the substantive brief from CBP should be listed as the DHS representative.

Deleting DHS heading

- When the DHS has not filed a brief or relevant memorandum, it is not necessary to include the ON BEHALF OF DHS heading.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Baltimore, MD Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Linda A. Dominguez
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

APPLICATION: Reopening

Example of DHS attorney designation

- In general, the name and designation from the latest substantive brief from DHS is listed on this line.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - California Service Center Date:

In re: (b) (6) Beneficiary of a visa petition filed by (b) (6) Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Jane Doe
Chief Area Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa

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Example of DHS attorney designation visa petition

- In general, the name and designation from the latest substantive brief from DHS is listed on this line.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Chicago, IL

Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael G. Moore, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

APPLICATION: Adjustment of status; waiver of inadmissibility

Example of no DHS attorney designated

- DHS did not file a response to the alien's appeal. Therefore, the ON BEHALF OF DHS is deleted.
- Be sure to check to see whether the DHS has filed a brief. Check CASE.

Oral Argument

Oral argument conducted before the Board

When the Board has heard an oral argument in a case, the heading ORAL ARGUMENT is added to the Caption. The date of the oral argument should also be included in the heading.

Oral argument request denied

Some panels have directed that the decision should indicate that the request for oral argument has been denied. This should be done in the body of the decision and not the Caption. Also, the reference is 8 C.F.R. § 1003.1(e)(7) and not 1003.1(c).

Note: The regulations direct that no oral argument is allowed in a case that is assigned for disposition by a single Board member. 8 C.F.R. § 1003.1(e)(7).

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - Chicago, IL Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael G. Moore, Esquire

ON BEHALF OF DHS: John Smith
Appellate Counsel

ORAL ARGUMENT: February 2, 2008

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -
Convicted of controlled substance violation

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

APPLICATION: Withholding of removal

Example of oral argument heading

- Be sure to include the date.

Charges

In general, all grounds and charges alleged by the DHS in the charging documents (Notice to Appear, Order to Show Cause, etc.) should be listed in the heading where any of the charges are an issue on appeal or motion. The description of the charge must also be included in the caption. Even those charges that are not sustained by the Immigration Judge as well as those charges that are not an issue on appeal are to be listed in the charges. It is recommended that the grounds of inadmissibility and deportability listed in Appendix B should generally be applied when completing the charges.

- Charges may be omitted in certain types of proceedings and when they are not an issue on appeal or motion. If the charges are omitted in the order, the charge caption must be deleted.

- Be sure to consult Panel specific instructions regarding the omission of charges. For example, some Panels may have approved the omission of charges where they are not at issue before the Board.

- See subsection which is titled "Omission of charges".

Removal proceedings

- List all the grounds of deportability or inadmissibility that appear in the Notice to Appear (NTA). The word "CHARGE" is followed by "Notice:" in the caption. Next, the word "section" is abbreviated to "Sec." and is followed by the short citation. The full citation is put in brackets instead of double parentheses.

  Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

  Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

- Where a ground of deportability is based on the alien being inadmissible at the time of entry or adjustment, you need to include the I&N citations and description. For example, the charge should read as follows:

  Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

- Be sure to include not only the description of the ground of deportability, but also the description for the ground of inadmissibility.

- When there are multiple charges, you do not need to include the word "Notice:" for the subsequent charges, but you will need to use the word "Sec." before the charge.

- Lodged charges - see subsection which is titled "Additional Grounds filed by DHS".

Deportation proceedings

- List the ground(s) of deportability in the Order to Show Cause. The word "CHARGE" is followed by "Order:" in the caption. Next, the word "section" is abbreviated to "Sec." and is followed by the short citation. The full citation is put in brackets instead of double parentheses.

  Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
  In the United States in violation of law

- Be sure to include the description of the charge. Also, when using the macros, remember that they are for **removal** proceedings and it will be necessary to change the 237 to 241 and the 1227 to 1251. Also check the deportation charge description in Appendix B; you may use that description as opposed to the one listed in the OSC.

- When there are multiple charges, it is not required to include the word "Order:" on the line, but "Sec." must appear before the actual charge.

- Where a ground of deportability is based on the alien being inadmissible at the time of entry or adjustment, you need to include the I&N citations and description. For example, in deportation proceedings the charge should read as follows:

  241(a)(1)(A), I&N Act [8 U.S.C. § 1251(a)(1)(A)]-
  Excludable at entry under section 212(a)(7)(A)(i)(I), I&N Act
  [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - No valid immigrant visa

- Be sure to include not only the description of the ground of deportability, but also the description for the ground of inadmissibility.

- Lodged charges - see subsection which is titled "Additional Grounds filed by DHS".

Exclusion proceedings

- List the ground(s) of inadmissibility listed in the Form I-122. The word **EXCLUDABLE** is used in the caption as opposed to "CHARGE:" which is used in the caption for deportation proceedings. Also, the word "Order:" does not appear in the caption of exclusion proceedings.

  EXCLUDABLE: Sec. 212(a)(6)(E)(i), I&N Act [8 U.S.C. § 1182(a)(6)(E)(i)] -
  Alien smuggler

- Be sure to include the description of the charge. Also, when using the macros, remember that they are for **removal** proceedings and it will be necessary to verify the exclusion charge description in Appendix B.

- Lodged charges - see subsection which is titled "Additional Grounds filed by DHS".

Additional Grounds filed by DHS

- Where DHS has filed an Additional Ground of Deportability (Form I-261), the word "Lodged:" must be substituted for the word "Sec." before the ground(s).

> Lodged: Sec. 237(a)(1)(E)(i), I&N Act [8 U.S.C. § 1227(a)(1)(E)(i)] - Alien smuggler

Omission of charges

- The ground(s) of inadmissibility and deportability may be omitted from the caption in the following decisions:

Bond proceedings	Soriano 212(c) cases
Untimely appeals	NACARA cases
Visa Petitions	Stowaway asylum cases
Continued Detention Review proceedings	Adjustment of status NACARA and HRIFA
Withdrawals	Asylum only proceedings
Interlocutory appeal	Withholding only proceedings
Rescission proceedings	

- Charges may be omitted where they are not an issue on appeal or motion. However, this general rule is subject to Panel specific requirements.

- **Be sure to delete the charges caption in the order if omitted from the order.**

Macros - Removal inadmissibility/deportability charges

- BIA Macros include some of the more common grounds of inadmissibility and deportability in **removal** proceedings. You may access these macros from the Menu bar by clicking on "BIA".

- In addition, you may use these macros in deportation or exclusion proceedings, but it will be necessary to manually change the citations. For example:

> Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

- You must change 237 to 241 and 1227 to 1251. Also, check the description. Refer to Appendix B as well as the INA.

Executive Office for Immigration Review

Falls Church, Virginia 22041

File: (b) (6) Boston, MA Date:

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew B. Smith, Esquire

CHARGE:

Order: Sec. 241(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1251(a)(2)(A)(iii)] - Convicted of aggravated felony

Sec. 241(a)(2)(B)(i), I&N Act [8 U.S.C. § 1251(a)(2)(B)(i)] - Convicted of controlled substance violation

APPLICATION: Waiver of inadmissibility pursuant to section 212(c)

Example of multiple charges in deportation proceedings

- When you have multiple grounds, you will have to type in the word "Sec." before using a macro or manually typing in the ground of deportability.
- When the ground has been **lodged** by the DHS, be sure to type in the word "Lodged:" before "Sec."
- There may be 1 to 2 lines between the charges.
- There may be 2 to 3 lines between the last charge description and the application line.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Seattle, WA Date:

In re: (b) (6)

IN EXCLUSION PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Jay W. Stansell, Esquire

ON BEHALF OF DHS: Gregory E. Fehlings
Assistant Chief Counsel

EXCLUDABLE: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] - Crime involving moral turpitude

Sec. 212(a)(2)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(II)] - Controlled substance violation

Sec. 212(a)(2)(C), I&N Act [8 U.S.C. § 1182(a)(2)(C)] - Controlled substance trafficker

APPLICATION: Termination; admission to the United States

Example of multiple grounds of inadmissibility in exclusion proceedings

- Inadmissibility grounds in exclusion proceedings are different from those in removal proceedings. The macros in WordPerfect are inadmissibility grounds in REMOVAL proceedings **not** for exclusion proceedings. You will have to verify the section and the description.
- There may be 1 to 2 lines between the charges.
- There may be 2 to 3 lines between the last charge description and the application line.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Los Angeles, CA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] - Convicted of controlled substance violation

APPLICATION: Cancellation of removal under section 240A(a)

Example of a charge in removal proceedings

- When in removal proceedings, the word "Notice:" is used as opposed to "Order:" which is used in deportation proceedings.
- There may be 1 to 2 lines between the charges.
- There may be 2 to 3 lines between the last charge description and the application line.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - El Centro, CA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gary H. Manulkin, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] - Convicted of controlled substance violation

Lodged: Sec. 237(a)(2)(C), I&N Act [8 U.S.C. § 1227(a)(2)(C)] - Convicted of firearms offense

APPLICATION: Cancellation of removal

Example of a lodged charge in removal proceedings

- There may be 1 to 2 lines between the charges.
- There may be 2 to 3 lines between the last charge description and the application line.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files: (b) (6) - Los Angeles, CA Date:

In re: (b) (6)

IN EXCLUSION PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANTS: David L. Ross, Esquire

EXCLUDABLE: Sec. 212(a)(5)(A)(i), I&N Act [8 U.S.C. § 1182(a)(5)(A)(i)] -
No valid labor certification (A092 775 183)

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigration visa or entry documents
(b) (6)

Example of multiple charges where only one charge applies to one of the multiple aliens

- Verify that the description of the ground in Appendix B. This is particularly true if you have used the Macros since the Macros are for removal proceedings, not exclusion.
- There may be 1 to 2 lines between the charges.
- There may be 2 to 3 lines between the last charge description and the application line.

Applications

The type of application for relief that is being appealed by either the alien or the DHS is listed on this line. If an application for relief or protection is requested by the alien and granted by the Immigration Judge, it will generally not be included in the application heading, unless the DHS appeals the grant. It should also be noted that, if it is determined that there is no application for relief (and neither termination of proceedings nor remand is appropriate), do not include the application line. If there are multiple applications, separate each application by semi-colon.

Note: An "Interlocutory Appeal" is **NOT** an application and should not appear in the APPLICATION line.

Listed below is a **partial** listing of Applications in Board decisions:

Removal Cases

Adjustment of status
Admission to the United States
Admission to the United States as lawful permanent resident
Admission to the United States as returning lawful permanent resident
Admission to the United States as nonimmigrant
Asylum
Cancellation of removal under section 240A of the Act
Change of venue
Convention against torture
Joint petition under section 216 of the Act
Reconsideration
Registry
Remand
Reopening
Retroactive permission to reapply for admission after removal
Stay of removal
Termination of proceedings
Voluntary departure
Waiver of inadmissibility under section _____ of the Act
Waiver of deportability under section 237(a)(1)(H) of the Act
Waiver under section 216(c)(4) of the Act
Withholding of removal

Motions

Reconsideration
Remand
Reopening

Bond cases

Change in custody status
Elimination of condition of bond

Redetermination of bond
Reduction in amount of bond
Release on own recognizance

Continued Detention Review Proceedings

Review of custody status pending removal from United States

Deportation cases

Adjustment of status
Asylum
Change of venue
Convention Against Torture
Hearing de novo
Joint petition under section 216 of the Act
Reconsideration
Registry
Remand
Reopening
Retroactive permission to reapply for admission after deportation
Stay of deportation
Suspension of deportation
Termination of proceedings
Voluntary departure
Waiver of inadmissibility under section _____ of the Act
Waiver of deportability under section 241(f) of the Act
Waiver of deportability under section 241(a)(1)(H) of the Act
Waiver under section 216(c)(4) of the Act
Withholding of deportation

Exclusion cases

Admission to the United States
Admission to the United States as lawful permanent resident
Admission to the United States as returning lawful permanent resident
Admission to the United States as nonimmigrant
Asylum
Change of venue
Convention against torture
Remand
Reconsideration
Reopening
Termination of proceedings
Waiver of inadmissibility under section _____ of the Act
Withdrawal of application for admission
Withholding of exclusion and deportation

Fine cases

Mitigation of fine
Remission of fine
Termination

Visa Petition cases

Petition to classify status of alien relative for issuance of immigrant visa
Petition for classification as spouse of deceased citizen for issuance of immigrant visa

Application for Advance Permission to Enter as a Nonimmigrant Pursuant to Section 212(d)(3)(A) of Immigration and Nationality Act Cases

Advance Permission to enter as nonimmigrant

DHS appeal cases

(The application of the alien before the Immigration Judge should be retained)

Separate Opinions

The majority opinion of an unpublished decision includes information regarding the nature of the proceedings before the Board, names of the parties, charges, and applications. When preparing the heading for a separate opinion, it is not necessary to include the representatives, charges, and application. Instead, the separate opinion must include the File: "A" number(s); hearing location; Alien name(s); and type of separate opinion.

Templates have also been created for concurring, concurring-dissenting, and dissenting opinions.

Important things to remember when preparing a separate opinion:

- Be sure to include the signature line at the end of the decision.

- Be sure to include the Board Member's name under the signature line. (lower case **not** CAPs)

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) Atlanta, GA Date:

In re: (b) (6)

DISSENTING OPINION: Fred W. Vacca, Board Member

I respectfully dissent.

[text of decision]

Fred W. Vacca
Board Member

Example of a dissenting opinion

Note:

- Be sure to include the signature line at the end of the decision.
- Be sure to change the FOR THE BOARD to the Board Members name in lower case letters.
- You may use the signature line macro contained in the BIA Menu.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Atlanta, GA Date:

In re: (b) (6)

CONCURRING OPINION: Fred W. Vacca, Board Member

I respectfully concur.

[text of decision]

Fred W. Vacca
Board Member

Example of a concurring opinion

Note:

- Be sure to include the signature line at the end of the decision.
- Be sure to change the FOR THE BOARD to the Board Members name in lower case letters.
- You may use the signature line macro contained in the BIA Menu.

CHAPTER 2 - Body of Decision

The legal staff should generally be guided by the most current versions of the United States Government Printing Office ("GPO") Style Manual (2000) for questions of writing style, and A Uniform System of Citation ("Bluebook") (Seventeenth Edition), for citation of legal authorities. The Supervisory Legal Assistants have a copy of the GPO Style Manual and it is available in the library.

The Attorney Manual which is posted on the BIA Web Page has further guidance and should be consulted Non Responsive

Listed below are some highlights/reminder that should be applied when preparing decisions.

Citations

- Use *italics* for case citations. The Board no longer uses underlining, so italicize anything that was previously underlined.

- Citations must be written on the same page. Do not split them between pages.

- Always spell out "United States" when it is part of a case name.

  United States v. Shaw, 936 F.2d 412 (9th Cir. 1991)

- "*Id.*" and "*supra*" - When referring to the immediately preceding citation which contains only one authority, "*Id.*" or "*Id.* at 4" should be used. When citing "*Id.*" for a case, use "*Id.*" alone, without the case name. Otherwise, when citing cases not in the immediately preceding citation, the case name is followed by "*supra*" or "*supra*, at 47." Note that our use of *supra* in case citations differs from the Bluebook. *See* Bluebook, Rules 4.1, and 4.2, pp. 64-67.

- Refer to the Board System of Citations Guide in the Attorney Manual.

Typing

- Section symbol(s) § **IMPORTANT**

  Keep 8 U.S.C. and 8 C.F.R. on the same line. The "§" - section symbol should be on the same line as the referenced number. (The section symbol should not be the last character of a line in a Board decision).

  To accomplish this - **delete** the space between the words you want to keep together and then press **Ctrl + (space bar)**.

  Hint: After you type §, press Ctrl + (space bar). This way the § will not be left hanging.

- Month and day **IMPORTANT**

  Keep the month and day on the same line.

- Paragraphs

  When splitting paragraphs from one page to the next, there should be at least 2 lines of text on either page.

  Hint: The BIA templates (advance permission, bond, deportation, exclusion, removal, rescission, visa petition and fine proceedings) have been formatted to do this automatically. To prevent single lines separated from a paragraph for the other templates or documents you create, 1) click where you want to begin keeping paragraphs together, i.e., after the caption/headings; 2) click Format on the Menu bar, and select Keep Text Together; and 3) click the first option (prevent the first and last lines of paragraphs from being separated across pages).

  Note: The last paragraph on a page should not end with a colon.

Quotations

- Quotations of 50 words or more should be indented without quotation marks.

- Quotation marks are always placed outside the comma and the final period. Other punctuation marks should be placed inside the quotation marks only if they are part of the matter quoted.

Numbers

- A figure under 10 should be written out.

- A figure 10 or more should not be written out except if it is the first word in a sentence.

- Time, measurements, and money are always in figures.

Headings and subheadings

If you elect to use headings and subheadings to separate the decision into more readily and identifiable and understanding parts, please refer to the section "Use of Headings and subheadings in the body of the decision" in Preparation of Board Decisions - available on the BIA Web Page.

Header on page 2, 3, etc.

- For files of more than one alien, put "et al." after the lead file on the second page and thereafter.

  A099 940 601 et al. [No comma after the alien number]

- Remember that when using the template the header is automatically created for subsequent pages. Nevertheless, it is necessary to manually type in the "et al." in the header.

Pagination

Although page numbers are automatically formatted when using the BIA templates, there should be no dashes before and after the page number. Also, the numbering begins on the second page with the number centered at the bottom of the page.

Footnotes

Although the footnotes are automatically formatted when using the BIA templates, occasionally the separator line and indentation reverts to an improper setting.

Length of separator line = 2 inches
Footnote number - flushed to the left
Footnote number font - 8 points rather than 12 points which is used in the body
Indent 2 spaces after the number before typing the footnote text
Text of footnote - full justification

Signature line

- Use the BIA Macro.
- Should be placed 3-4 lines below the last portion of text or order language.
- The signature line should not be the only thing on a page. It may be necessary, therefore, to add lines after the Application line in the order to ensure that the signature line is not on a page by itself.
- Note: The ORDER line may serve the same purpose as a paragraph. Thus, it is appropriate to have ORDER: [Text - one line] followed by 3-4 lines and then the signature line on the last page of the Board's decision.

Spacing

- Generally, the body of the decision is single spaced. However, if the decision is 10 lines or less, then double space.
- 1-2 lines between charges; 2-3 lines between the last charge description and the application line.

Justification

The body of the decision should be fully justified.

CHAPTER 3 - Order Language

Every decision must advise the parties of the disposition of the case. Consult the latest version of the Attorney Manual which is posted on the BIA Web Page for further guidance - Non Responsive

Listed below is some general guidance in drafting order language. Again, please refer to the Standard Order Language section in the Attorney Manul for more detailed discussion regarding order language in Board decisions. However, be sure to consult any appropriate internal Panel directives.

General

Appeal –

The case is before the Board on direct appeal from a decision of the Immigration Judge, or DHS, the order should either sustain or dismiss the appeal. A further order may be appropriate if the record is being remanded or reinstatement of Immigration Judge's grant of voluntary departure. Furthermore, since the Board may not enter an order granting certain forms of relief unless required background and security checks have been completed, a further order remanding the record for updated checks may be required. 8 C.F.R. §§ 1003.1(d)(6) and 1003.47(h).

Motions to Reopen and Motions to Reconsider -

Where a motion to reopen or reconsider is properly directed to the Board for initial consideration, i.e., where the Board entered the last decision in the proceedings sought to be reopened or reconsidered, the motion is either granted or denied. A further order may be necessary if the record is remanded for further proceedings below.

Appeal and Motion –

When the case initially comes to the Board as the result of a direct appeal, and the party files a motion to remand to apply for a new form of relief based on new facts not previously before the Immigration Judge, the appropriate disposition is either an order granting the motion, or two orders, one dismissing or sustaining the appeal and one denying the motion.

Interlocutory appeal –

Disposition is either dismissing or sustaining the appeal. A further order may also be appropriate.

Certification –

The disposition language of the order should either affirm or reverse the decision below.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - El Centro, CA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gary H. Manulkin, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

APPLICATION: Cancellation of removal

[Text of decision]

ORDER: The respondent's appeal is dismissed.

FOR THE BOARD

Example of order language when an appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) - Arlington, VA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gary H. Manulkin, Esquire

ON BEHALF OF DHS: John Smith
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal

The Department of Homeland Security ("DHS") has appealed from an Immigration Judge's decision dated January 20, 2008. [text of decision]

Accordingly, the following orders will be entered.

ORDER: The DHS appeal is sustained.

FURTHER ORDER: The respondent is ordered removed from the United States to Mexico.

FOR THE BOARD

Example of order language

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) - El Centro, CA Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Gary H. Manulkin, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

APPLICATION: Reopening

The respondent has filed a timely motion to reopen. [text of decision]

ORDER: The respondent's motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order and for the entry of a new decision.

FOR THE BOARD

Example of order language in a motion to reopen

CHAPTER 4 - Document Summary and Printing

Signature line

- Each unpublished decision must end with a signature line. The BIA macro should be used.
- There should be 3-4 lines between the order and the signature line.
- Note: The ORDER line may serve the same purpose as a paragraph. Thus, it is appropriate to have ORDER: [Text - one line] followed by 3-4 lines and then the signature line on the last page of the Board's decision.

Decision to be circulated

Final draft must be printed on buff paper. When there are multiple aliens, each alien must have a copy of the decision attached to their ROP. In other words, if there are 3 aliens, 3 copies of the decision must be printed on buff paper.

Document summary sheet -

- Document summary sheet may be completed and printed on white paper. Attach the document summary sheet behind the decision. Note: Apply Panel specific instructions.
- Proposed decisions should have a Document Summary Sheet attached to them; however, be sure to check the requirements of your Panel.
- If there is a majority opinion and a dissenting opinion, there should be two Document Summary Sheets.
- Although additional fields/categories may be selected the following list must be included and filled in, except ones that are designated as optional:

Snapshot of the document summary properties box in WordPerfect is on the next page.

Snapshot of the document summary properties box. The Properties box for the Document Summary Sheet may be accessed through "File" on the menu bar and then selecting "Properties".

Descriptive name: Alien's last name

Descriptive type: dissent or concurring opinion; no entry needed if majority opinion

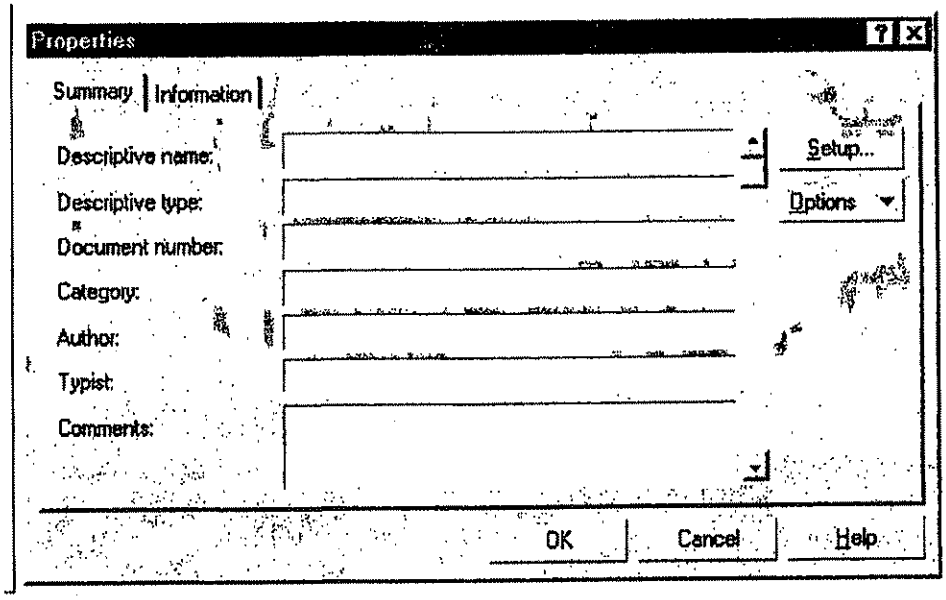
Document number: Alien's A number (which should be the first characters in file name saved)

Category: team/last name/Folder file to be saved in

Author: last name and first initial or assignment initials

Typist: last name and first initial or assignment initials/legal assistant initials (if applicable)

Comments: (Not required to be filled in)



On the next page, you will find an example of a completed document summary sheet.

Below is an example of a completed document summary sheet.

Descriptive name: (b) (6)

Descriptive type:

Document number(b) (6)

Category(b) (6)

Author:

Typist: (b) (6)

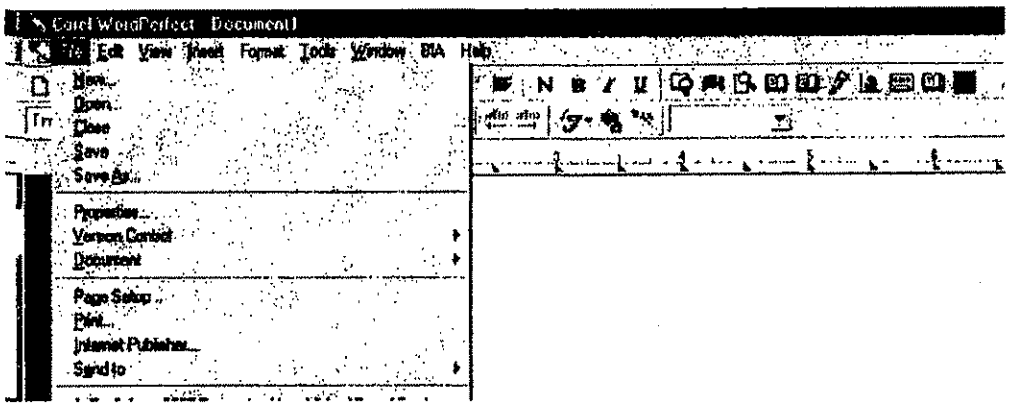
Comments:

Abstract:

Creation date: 12/06/2000 1:47:38 PM

Revision date:

Note: The Document Summary Sheet may be created or accessed through "File" on the menu bar and selecting "Properties"



T

The Document Summary Sheet may also be created or accessed by selecting the Document Summary icon on the toolbar.

Document Summary Icon 

- It is also possible to automate parts of the document summary sheet as well as customize the fields.

Customize fields -

Non Responsive

Specify default Author and Typist names -

Non Responsive

Printing

- When a document is created it is initially formatted for the default printer on your computer.
- When a different printer is designated, the new printer reformats the document, which may alter the positioning of the text.

  Therefore, it is recommended that the user reinitialize the document if it is to be printed on a different printer than the one the document was created on. This may be done by selecting the Print function from FILE on the Menu bar or Ctrl + P or the Print Icon on the Tool bar. In the Print Information box select the appropriate printer and then, click the CLOSE button. Check the formatting and text position in the current document. When ready to print, then select the Print function and click the PRINT button.

- If printing a single page of a multiple page document, be sure to check to the entire completed document in order to avoid missing a sentence(s) that may have been dropped as a result of corrections and printing only one page.

CHAPTER 5 - Circulation

Immigration Judge Decision

A copy of the Immigration Judge decision must be included in the ROP when circulated to the Board Members.

Circulation Sheet

- Each panel has a circulation sheet. There may also be a MIXED PANEL circulation sheet for when Board Members from different panels have originally addressed a case.

- **Important:** Consult the most recent memorandum from the Chairman regarding the proper completion of circulation sheets. This document is available on the BIA Page.

Highlights: Complete the appropriate circulation (front and back)

Front side

- Complete the alien number(s) and name(s) in the spaces provided.

- Check the appropriate box to designate whether the circulated decision is either a three-Board Member decision or a single-Board Member decision.

- Check the RECIRCULATE box if appropriate.

- Complete the Attorney/Paralegal & Date in the space provided

- **IJC** - If language in the proposed order addresses the professionalism of the Immigration Judge's conduct in the proceedings below, this notation should be circled. Moreover, if the Board's decision remands the case to a different Immigration Judge due to an Immigration Judge's conduct, this notation must be circled. The Docket Team shall enter this data in CASE.

- **AC** - This notation relates to egregious conduct of the private attorney in the case and should be circled when the record reveals that the attorney's conduct in representing the alien is of a nature serious enough that it may warrant an investigation by EOIR's Office of General Counsel (OGC). Circumstances which might warrant referral to OGC may be found at 8 C.F.R. § 1003.102.

Reverse side - Decision Codes and Disposition Codes -

- Be sure to consult the most recent Chairman memorandum that is posted on the BIA Page for more detailed information regarding the selection of the appropriate decision and disposition code. Non Responsive

- Decision code - only one code may be selected. Select the single code that most accurately reflects the specific decision in each case.

SUS This code applies when the appeal is sustained, that is, the appealing party prevails.

DIS This code applies when the appeal is dismissed, that is, the appealing party does not prevail, and the decision of the Immigration Judge or District Director stands.

DVD This code applies when the decision dismisses the appeal, but contains a FURTHER ORDER granting voluntary departure. This codes also applies if the Board reinstates voluntary departure.

SAF This code applies when the Board affirms without opinion the decision of the Immigration Judge or DHS officer as provided at 8 C.F.R. § 1003.1(e)(4).

SAV This code applies when the Board affirms without opinion the decision of the Immigration Judge as provided at 8 C.F.R. § 1003.1(e)(4), but further grants voluntary departure.

SUD This code applies when an appeal is summarily dismissed for any of the reasons stated at 8 C.F.R. §§ 1003.1(d)(2)(i)(A)-(H).

DEN This code applies when the motion is denied. This code also applies when a motion is number or timed barred.

GNR This code applies when a motion is granted and the Board disposes of the case **without remanding** the matter to the Immigration Judge or District Director.

BCR This code **MUST** be selected if the sole basis for the remand to the Immigration Court is for background and security checks to be completed or updated by the DHS. For example, the proposed decision provides that the alien is eligible for cancellation of removal, but the record does not reveal that security checks have been reported to the Immigration Judge by DHS or the record does not reveal that the prior reported checks are current.

NOTE: It is very important to select this code when the case is being remanded for the purpose of allowing DHS the opportunity to complete or update background and security checks. If not selected, the Immigration Court will not be able to properly process the case.

REM This code must be selected if ANY part of the decision, other than for background or security checks, remands the case to the Immigration Court or District Director.

NOTE: It is very important to select this code when the case is being remanded for any purpose other than for background and security checks. If not selected, the Immigration Court will not be able to properly process the case.

NJU This code applies where the Board lacks jurisdiction to review the merits of the appeal or motion. For example, this code is used when an alien files a direct appeal of an *in absentia* order, or an appeal is untimely.

CPG The CPC code was used to designated conditional asylum grants based upon coercive population control policies and has been replaced in CASE by the CPG code. Although the cap placed on CPC grants has been abolished, the requirement to record asylum grants based on coercive population control policies remains. However, unless the Board issues grants of relief as opposed to remanding pursuant to the security check rule, the **BCR** code

should be selected when the respondent is found eligible for asylum based on coercive population control policies.

Note: The CPG code also applies when the decision is dismissing a DHS appeal of an Immigration Judge's grant of asylum on a conditional basis or the decision summarily affirms the appeal, or the appeal is withdrawn.

WDL This code applies when an appeal or motion is withdrawn.

TER This code applies when the Board's decision results in the proceedings being terminated because deportability or alienage has not been established. In this regard, the alien is not subject to exclusion/deportation/removal proceedings. Some other examples include when an alien is deceased; DHS adjusts the alien's status to that of a lawful permanent resident; or the alien is granted US citizenship by DHS. However, this code should **not** be selected when an application for relief, for example, asylum, is granted.

MBD This code applies (1) when a bond appeal is dismissed as moot per *Matter of Valles*, 21 I&N Dec. 769 (BIA 1997) (while an appeal is pending from an IJ's bond redetermination decision the IJ renders a second bond redetermination); (2) when the primary issue in the alien's deportation or removal proceeding is decided by the Board or IJ (administratively final decision); or (3) where the alien departed the United States (no longer considered in DHS custody).

OTH This code applies only when none of the other codes accurately reflect the outcome of the case.

CON This code applies when proceedings are being continued indefinitely. Currently, this code is being used to identify cases that are administratively closed because of repapering eligibility.

DED This code applies to cases that are administratively closed because the alien is subject to deferred enforced departure through Presidential Order.

TPS This code applies to cases administratively closed because the Attorney General or Department of Homeland Security has granted Temporary Protected Status to aliens of this nationality.

ABC This code applies to cases administratively closed pursuant to the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F.Supp. 796 (N.D.Cal. 1991) ("*ABC*"). Note: This code is in the process of being activated and will be placed on the circulation sheet in the near future. Until then, if you have a case in which this code is appropriate, please consult with your Team Leader or Senior Panel Attorney.

- Disposition code - only one code may be selected.

  Y This should be selected if the proposed order would subject the alien to an administratively final order of exclusion/deportation/removal with no voluntary departure or would leave such a preexisting order in effect. For example, this category would include initial orders of exclusion/deportation/removal where no relief of voluntary departure is granted and all subsequent orders denying an alien's motion to reopen or reconsider. Additionally, this code should also be selected for asylum or withholding only proceedings. This code is also selected when the only form of relief granted is withholding of removal or withholding or deferral under CAT, as DHS may remove the alien to a third country.

  N This should be selected in all exclusion/deportation/removal cases where the alien is not or is no longer excludable/deportable/removable. This would include cases where relief is granted or the proceeding are terminated, proceedings are reopened or reconsidered, or no order of removal is entered. Additionally, this code is used for case appeals that are administratively closed, such as a continuation of a case indefinitely (CON), Deferred Enforced Departure (DED), Temporary Protected Status (TPS) orders, *ABC* Settlement cases (ABC).

  REMINDER - Background Check Rule: Where the Board determines that relief should be granted or affirmed, but the record of proceedings does not reveal that checks have been completed, or that checks are current, the Board **must** remand the record to the Immigration Judge - BCR remand.

  Z This code should be selected for proceedings where there is no decision on deportability or relief from removal such as when the case is remanded (BCR or REM decision codes). Also applies to visa petitions, fine proceedings, bond proceedings, rescission cases, interlocutory appeals, and recognition and accreditation cases, since these proceedings would not result in an order of exclusion/deportation/removal for the alien.

  V This disposition code should be selected for cases where the Board's order grants or reinstates voluntary departure.

- **Important:** Be sure to consult the most recent Chairman memorandum that is posted on the BIA Page for more detailed information regarding the selection of the appropriate decision and disposition code Non Responsive

Note: Circuit Court remands have the same decision code restrictions as case appeals entered in CASE. As a result, the decision codes associated with motions may not be entered in CASE.

APPENDIX - A

HEARING LOCATIONS

This appendix contains a listing of hearing locations, city and state. This list is not all-inclusive; rather it should be used a guide.

- The hearing location for removal, deportation, exclusion, asylum and adjustment proceedings is based upon the designated hearing location as set forth in the charging document or subsequent notice of hearing issued by the Immigration Court.

State/Territory	Hearing City & State
Alabama	Mt. Meigs, AL Talladega, AL
Alaska	Anchorage, AK
Arizona	Buckeye, AZ Douglas, AZ Eloy, AZ Florence, AZ Goodyear, AZ Phoenix, AZ Tucson, AZ Winslow, AZ
Arkansas	Pine Bluff, AR
California	Blythe, CA Calipatria, CA Dublin, CA El Centro, CA Imperial, CA Lancaster, CA Lompoc, CA Los Angeles, CA Otay Mesa, CA San Diego, CA San Quentin, CA San Pedro, CA San Francisco, CA Terminal Island, CA
Connecticut	Somers, CT Suffield, CT Danbury, CT Hartford, CT Niantic, CT
Delaware	Smyrna, DE

State/Territory	Hearing City & State
Florida	Bushnell, FL Chipley, FL Florida City, FL Ft. Lauderdale, FL Immokalee, FL Indiantown, FL Key West, FL Lake Butler, FL Lecanto, FL Miami, FL Orlando, FL Palmetto, FL Polk City, FL Pompano Beach, FL Punta Gorda, FL Sarasota, FL Starke, FL
Georgia	Atlanta, GA Jackson, GA
Guam	Hagatna, GU
Hawaii	Honolulu, HI
Idaho	Boise, ID Kuna, ID
Illinois	Chicago, IL Menard, IL
Indiana	Plainfield, IN
Iowa	Des Moines, IA Oakdale, IA
Kansas	Lansing, KS Leavenworth, KS
Kentucky	Lexington, KY Louisville, KY
Louisiana	Kinder, LA New Orleans, LA Oakdale, LA
Maine	Thomaston, ME
Maryland	Baltimore, MD Hagerstown, MD Jessup, MD

State/Territory	Hearing City & State
Massachusetts	Boston, MA Concord, MA Middleton, MA North Dartmouth, MA Plymouth, MA
Michigan	Detroit, MI Jackson, MI Monroe, MI
Minnesota	Bayport, MN Bloomington, MN Sandstone, MN
Mississippi	Pearl, MS
Missouri	Kansas City, MO Mineral point, MO St. Louis, MO
Montana	Deer Lodge, MT Helena, MT
Nebraska	Lincoln, NE Omaha, NE
Nevada	Carson City, NV Indian Springs, NV Las Vegas, NV Reno, NV
New York	Alden, NY Auburn, NY Batavia, NY Bedford Hills, NY Buffalo, NY Dannemora, NY Fishkill, NY Jamaica, NY Napanoch, NY New York, NY Ray Brook, NY Stormville, NY
New Hampshire	Concord, NH
New Jersey	Camden, NJ Elizabeth, NJ Newark, NJ
New Mexico	Albuquerque, NM Chaparral, NM Las Cruces, NM Santa Fe, NM

State/Territory	Hearing City & State
North Dakota	Bismark, ND
North Carolina	Charlotte, NC Raleigh, NC
Ohio	Cleveland, OH Cincinnati, OH Orient, OH
Oklahoma	Lexington, OK Oklahoma City, OK
Oregon	Portland, OR Pendleton, OR Salem, OR
Pennsylvania	Allentown, PA Camp Hill, PA Leesport, PA Philadelphia, PA Philipsburg, PA Pittsburgh, PA Whitedeer, PA York, PA
Puerto Rico	Guaynabo, PR
Rhode Island	Cranston, RI
South Dakota	Sioux Falls, SD
South Carolina	Columbia, SC
Tennessee	Memphis, TN Nashville, TN
Texas	Abilene, TX Amarillo, TX Anthony, TX Big Spring, TX Brazoria, TX Brownsville, TX Dallas, TX Eagle Pass, TX Eden, TX El Paso, TX Gatesville, TX Harlingen, TX Haskell, TX Houston, TX Humble, TX Huntsville, TX

State/Territory	Hearing City & State
Texas	Laredo, TX Los Fresnos, TX Midway, TX Navasota, TX Palestine, TX Pecos, TX Raymondville, TX Rosharon, TX Rusk, TX San Antonio, TX Sugar Land, TX Tennessee Col., TX
Utah	Draper, UT Salt Lake City, UT
Virginia	Arlington, VA Falls Church, VA Norfolk, VA State Farm, VA
Virgin Islands	Kings Hill, VI St. Croix, VI St. Thomas, VI
Vermont	South Burlington, VT
Washington	Airway Heights, WA Blaine, WA Tacoma, WA Blaine, WA Monroe, WA Seattle, WA Walla Walla, WA
Wisconsin	Waupun, WI
Wyoming	Rawlings, WY

APPENDIX - B

The following is a list of grounds of exclusion and deportation charges, as amended by the Immigration Act of 1990, to be used in Board decisions. The effective date for the new exclusion grounds is June 1, 1991, and the new deportation charges apply to proceedings for which notice was given to the alien after March 1, 1991. The grounds of exclusion and charges of deportation previously in effect may appear in some older cases. The appropriate superseded sections may be found in an appendix to the Committee Print of the Act. *See* House Comm. on the Judiciary, 104th Cong., 1st Sess., *Immigration and Nationality Act with Notes and Related Laws*, App. II, at 368-83 (Comm. Print, 10th ed. 1995).

In addition, the grounds of inadmissibility and deportability in removal proceedings are listed. Former section 241 of the Act was redesignated as section 237 by section 305(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Div. C, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996) ("IIRIRA").

This is not all-inclusive; rather it should be used as a guide.

Please note that, when grounds and/or charges are listed in the caption of the Board's order, all grounds and charges alleged by the DHS should be stated on the order, even if the Immigration Judge found they were not sustained or they are not at issue in the appeal.

IMPORTANT REMINDER

1. The grounds of inadmissibility and deportability macros in WordPerfect pertain to Removal proceedings and NOT exclusion or deportation proceedings.

2. The description for each charge listed in the heading must be included.

I. Grounds of inadmissibility and deportability in Removal proceedings

A. Inadmissibility grounds

Sec. 212(a)(1)(A)(i), I&N Act [8 U.S.C. § 1182(a)(1)(A)(i)] - Communicable disease

Sec. 212(a)(1)(A)(ii), I&N Act [8 U.S.C. § 1182(a)(1)(A)(ii)] - No proof of vaccination

Sec. 212(a)(1)(A)(iii)(I), I&N Act [8 U.S.C. § 1182(a)(1)(A)(iii)(I)] - Physical or mental disorder with associated threatening behavior

Sec. 212(a)(1)(A)(iii)(II), I&N Act [8 U.S.C. § 1182(a)(1)(A)(iii)(II)] - Physical or mental disorder with history of associated threatening behavior

Sec. 212(a)(1)(A)(iv), I&N Act [8 U.S.C. § 1182(a)(1)(A)(iv)] - Drug abuser or addict

Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] - Crime involving moral turpitude

Sec. 212(a)(2)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(II)] - Controlled substance violation

Sec. 212(a)(2)(B), I&N Act [8 U.S.C. § 1182(a)(2)(B)] - Multiple criminal convictions

Sec. 212(a)(2)(C), I&N Act [8 U.S.C. § 1182(a)(2)(C)] - Controlled substance trafficker

Sec. 212(a)(2)(D)(i), I&N Act [8 U.S.C. § 1182(a)(2)(D)(i)] - Prostitution

Sec. 212(a)(2)(D)(ii), I&N Act [8 U.S.C. § 1182(a)(2)(D)(ii)] - Procured, imported, or received proceeds from prostitution

Sec. 212(a)(2)(D)(iii), I&N Act [8 U.S.C. § 1182(a)(2)(D)(iii)] - Unlawful commercialized vice

Sec. 212(a)(2)(E), I&N Act [8 U.S.C. § 1182(a)(2)(E)] - Exercised immunity from prosecution

Sec. 212(a)(3)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(3)(A)(i)(I)] - Seeks entry to violate or evade law relating to espionage or sabotage

Sec. 212(a)(3)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(3)(A)(i)(II)] - Seeks entry to violate or evade law relating to prohibited exports

Sec. 212(a)(3)(A)(ii), I&N Act [8 U.S.C. § 1182(a)(3)(A)(ii)] - Seeks entry to engage in unlawful activity

Sec. 212(a)(3)(A)(iii), I&N Act [8 U.S.C. § 1182(a)(3)(A)(iii)] - Seeks entry to oppose, control, or overthrow the Government by unlawful means

Sec. 212(a)(3)(B)(i)(I), I&N Act [8 U.S.C. § 1182(a)(3)(B)(i)(I)] - Engaged in terrorist activity

Sec. 212(a)(3)(B)(i)(II), I&N Act [8 U.S.C. § 1182(a)(3)(B)(i)(II)] - Likely to engage in terrorist activity

Sec. 212(a)(3)(B)(i)(III), I&N Act [8 U.S.C. § 1182(a)(3)(B)(i)(III)] - Incited terrorist activity

Sec. 212(a)(3)(B)(i)(IV), I&N Act [8 U.S.C. § 1182(a)(3)(B)(i)(IV)] - Representative of foreign terrorist organization

Sec. 212(a)(3)(B)(i)(V), I&N Act [8 U.S.C. § 1182(a)(3)(B)(i)(V)] - Member of foreign terrorist organization

Sec. 212(a)(3)(C)(i), I&N Act [8 U.S.C. § 1182(a)(3)(C)(i)] - Presents serious adverse foreign policy risk

Sec. 212(a)(3)(D), I&N Act [8 U.S.C. § 1182(a)(3)(D)] - Immigrant affiliated with totalitarian party

Sec. 212(a)(3)(E)(i), I&N Act [8 U.S.C. § 1182(a)(3)(E)(i)] - Participated in Nazi persecution

Sec. 212(a)(3)(E)(ii), I&N Act [8 U.S.C. § 1182(a)(3)(E)(ii)] - Engaged in genocide

Sec. 212(a)(4)(A), I&N Act [8 U.S.C. § 1182(a)(4)(A)] - Public charge

Sec. 212(a)(4)(C), I&N Act [8 U.S.C. § 1182(a)(4)(C)] - Family-sponsored immigrant with no affidavit of support

Sec. 212(a)(4)(D), I&N Act [8 U.S.C. § 1182(a)(4)(D)] - Employment-based immigrant with no affidavit of support

Sec. 212(a)(5)(A)(i), I&N Act [8 U.S.C. § 1182(a)(5)(A)(i)] - No valid labor certification

Sec. 212(a)(5)(B), I&N Act [8 U.S.C. § 1182(a)(5)(B)] - Unqualified physician

Sec. 212(a)(5)(C), I&N Act [8 U.S.C. § 1182(a)(5)(C)] - Uncertified foreign health-care worker

Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

[or]

Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Arrived at a time or place not designated by the Attorney General

Sec. 212(a)(6)(B), I&N Act [8 U.S.C. § 1182(a)(6)(B)] - Failed to attend removal proceedings

Sec. 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -
Fraud or willful misrepresentation of material fact

Sec. 212(a)(6)(C)(ii), I&N Act [8 U.S.C. § 1182(a)(6)(C)(ii)] -
False claim of United States citizenship

Sec. 212(a)(6)(D), I&N Act [8 U.S.C. § 1182(a)(6)(D)] -
Stowaway

Sec. 212(a)(6)(E)(i), I&N Act [8 U.S.C. § 1182(a)(6)(E)] -
Alien smuggler

Sec. 212(a)(6)(F)(i), I&N Act [8 U.S.C. § 1182(a)(6)(F)(i)] -
Subject to section 274C final order

Sec. 212(a)(6)(G), I&N Act [8 U.S.C. § 1182(a)(6)(G)] -
Violated student status under section 214(I) of the Act

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document

Sec. 212(a)(7)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(II)] -
Immigrant - visa not properly issued

Sec. 212(a)(7)(B)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(B)(i)(I)] -
Nonimmigrant - no valid passport

Sec. 212(a)(7)(B)(i)(II), I&N Act [8 U.S.C. § 1182(a)(7)(B)(i)(II)] -
Nonimmigrant - no valid nonimmigrant visa or border crossing card

Sec. 212(a)(8)(A), I&N Act [8 U.S.C. § 1182(a)(8)(A)] -
Immigrant - ineligible for citizenship

Sec. 212(a)(8)(B), I&N Act [8 U.S.C. § 1182(a)(8)(B)] -
Draft evader

Sec. 212(a)(9)(A)(i), I&N Act [8 U.S.C. § 1182(a)(9)(A)(i)] -
Previously ordered removed at arrival

Sec. 212(a)(9)(A)(ii), I&N Act [8 U.S.C. § 1182(a)(9)(A)(ii)] -
Previously ordered removed or departed while order of removal
was outstanding

Sec. 212(a)(9)(B)(i)(I), I&N Act [8 U.S.C. § 1182(a)(9)(B)(i)(I)] -
Previously unlawfully present for more than 180 days but less than 1 year
and voluntarily departed prior to commencement of proceedings

Sec. 212(a)(9)(B)(i)(II), I&N Act [8 U.S.C. § 1182(a)(9)(B)(i)(II)] - Previously unlawfully present for a year or more

Sec. 212(a)(9)(C)(i)(I), I&N Act [8 U.S.C. § 1182(a)(9)(C)(i)(I)] - Reentry without admission after prior unlawful presence for an aggregate period of more than a year

Sec. 212(a)(9)(C)(i)(II), I&N Act [8 U.S.C. § 1182(a)(9)(C)(i)(II)] - Reentry without admission after being ordered removed

Sec. 212(a)(10)(A), I&N Act [8 U.S.C. § 1182(a)(10)(A)] - Immigrant coming to practice polygamy

Sec. 212(a)(10)(B), I&N Act [8 U.S.C. § 1182(a)(10)(B)] - Required to accompany helpless inadmissible alien

Sec. 212(a)(10)(C), I&N Act [8 U.S.C. § 1182(a)(10)(C)] - International child abductor

Sec. 212(a)(10)(D), I&N Act [8 U.S.C. § 1182(a)(10)(D)] - Voted unlawfully

Sec. 212(a)(10)(E), I&N Act [8 U.S.C. § 1182(a)(10)(E)] - Renounced United States citizenship to avoid taxation

B. Deportability

Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 212___, I&N Act [8 U.S.C. § 1182___] - (description of section 212 charge)

Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] - In the United States in violation of law

Sec. 237(a)(1)(C)(i), I&N Act [8 U.S.C. § 1227(a)(1)(C)(i)] - Nonimmigrant - violated conditions of status

Sec. 237(a)(1)(C)(ii), I&N Act [8 U.S.C. § 1227(a)(1)(C)(ii)] - Nonimmigrant - violated conditions of entry under section 212(g) of the Act

Sec. 237(a)(1)(D)(i), I&N Act [8 U.S.C. § 1227(a)(1)(D)(i)] - Conditional resident status terminated

Sec. 237(a)(1)(E)(i), I&N Act [8 U.S.C. § 1227(a)(1)(E)(i)] - Alien smuggler

Sec. 237(a)(1)(G)(i), I&N Act [8 U.S.C. § 1227(a)(1)(G)(i)] - Marriage fraud - marriage annulled or terminated

Sec. 237(a)(1)(G)(ii), I&N Act [8 U.S.C. § 1227(a)(1)(G)(ii)] - Marriage fraud - failed or refused to fulfill marital agreement

Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

Sec. 237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] - Convicted of two or more crimes involving moral turpitude

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

Sec. 237(a)(2)(A)(iv), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iv)] - Convicted of violation of 18 U.S.C. § 758

Sec. 237(a)(2)(A)(v), I&N Act [8 U.S.C. § 1227(a)(2)(A)(v)] - Failure to register as a sex offender

Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] - Convicted of controlled substance violation

Sec. 237(a)(2)(B)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(B)(ii)] - Drug abuser or addict

Sec. 237(a)(2)(C), I&N Act [8 U.S.C. § 1227(a)(2)(C)] - Convicted of firearms or destructive device violation

Sec. 237(a)(2)(D)(i), I&N Act [8 U.S.C. § 1227(a)(2)(D)(i)] - Convicted of espionage, sabotage or sedition

Sec. 237(a)(2)(D)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(D)(ii)] - Convicted under 18 U.S.C. § 871

[or]

Sec. 237(a)(2)(D)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(D)(ii)] - Convicted under 18 U.S.C. § 960

Sec. 237(a)(2)(D)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(D)(iii)] - Convicted of violation of Military Selective Service Act

[or]

Sec. 237(a)(2)(D)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(D)(iii)] - Convicted of violation of Trading with the Enemy Act

Sec. 237(a)(2)(D)(iv), I&N Act [8 U.S.C. § 1227(a)(2)(D)(iv)] -
Convicted of violation of section 215 of the Act

[or]

Sec. 237(a)(2)(D)(iv), I&N Act [8 U.S.C. § 1227(a)(2)(D)(iv)] -
Convicted of violation of section 278 of the Act

Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] -
Convicted of crime of domestic violence, stalking, or child abuse, neglect, or abandonment

Sec. 237(a)(2)(E)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(E)(ii)] -
Violated court protective order

Sec. 237(a)(3)(A), I&N Act [8 U.S.C. § 1227(a)(3)(A)] -
Violated change of address notification requirement

Sec. 237(a)(3)(B)(i), I&N Act [8 U.S.C. § 1227(a)(3)(B)(i)] -
Convicted under section 266(c) of the Act

[or]

Sec. 237(a)(3)(B)(i), I&N Act [8 U.S.C. § 1227(a)(3)(B)(i)] -
Convicted under section 36(c) of the Alien Registration Act of 1940

Sec. 237(a)(3)(B)(ii), I&N Act [8 U.S.C. § 1227(a)(3)(B)(ii)] -
Conviction relating to violation of Foreign Agents Registration Act of 1938

Sec. 237(a)(3)(B)(iii), I&N Act [8 U.S.C. § 1227(a)(3)(B)(iii)] -
Conviction relation to violation of 18 U.S.C. § 1546

Sec. 237(a)(3)(C)(i), I&N Act [8 U.S.C. § 1227(a)(3)(C)(i)] -
Subject to final order under section 274C of the Act

Sec. 237(a)(3)(D), I&N Act [8 U.S.C. § 1227(a)(3)(D)] -
False claim of United States citizenship

Sec. 237(a)(4)(A)(i), I&N Act [8 U.S.C. § 1227(a)(4)(A)(i)] -
Engaged in activity relating to espionage, sabotage, or prohibited exports

Sec. 237(a)(4)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(4)(A)(ii)] -
Engaged in criminal activity endangering public safety or national security

Sec. 237(a)(4)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(4)(A)(iii)] -
Engaged in criminal activity to oppose, control, or overthrow the Government by unlawful means

Sec. 237(a)(4)(B), I&N Act [8 U.S.C. § 1227(a)(4)(B)] -
Terrorist activity

Sec. 237(a)(4)(C)(i), I&N Act [8 U.S.C. § 1227(a)(4)(C)(i)] -
Presents serious adverse foreign policy risk

Sec. 237(a)(4)(D), I&N Act [8 U.S.C. § 1227(a)(4)(D)] -
Assisted in Nazi persecution or engaged in genocide

Sec. 237(a)(5), I&N Act [8 U.S.C. § 1227(a)(5)] -
Public charge within 5 years of entry

Sec. 237(a)(6), I&N Act [8 U.S.C. § 1227(a)(6)] -
Voted unlawfully

II Grounds of inadmissibility and deportability **after** the Immigration Act of 1990

A. Inadmissibility grounds

Sec. 212(a)(1)(A)(i), I&N Act [8 U.S.C. § 1182(a)(1)(A)(i)] -
Communicable disease

Sec. 212(a)(1)(A)(ii)(I), I&N Act [8 U.S.C. § 1182(a)(1)(A)(ii)(I)] -
Physical or mental disorder - behavior that may or has posed threat

Sec. 212(a)(1)(A)(ii)(II), I&N Act [8 U.S.C. § 1182(a)(1)(A)(ii)(II)] -
Physical or mental disorder - history of threatening behavior that is likely to recur or lead to other harmful behavior

Sec. 212(a)(1)(A)(iii), I&N Act [8 U.S.C. § 1182(a)(1)(A)(iii)] -
Drug abuser or addict

Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] -
Crime involving moral turpitude

Sec. 212(a)(2)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(II)] -
Controlled substance violation

Sec. 212(a)(2)(B), I&N Act [8 U.S.C. § 1182(a)(2)(B)] -
Multiple convictions - aggregate sentences to confinement of 5 years or more

Sec. 212(a)(2)(C), I&N Act [8 U.S.C. § 1182(a)(2)(C)] -
Controlled substance trafficker

Sec. 212(a)(2)(D)(i), I&N Act [8 U.S.C. § 1182(a)(2)(D)(i)] -
Prostitution

Sec. 212(a)(2)(D)(ii), I&N Act [8 U.S.C. § 1182(a)(2)(D)(ii)] -
Procuring prostitution

Sec. 212(a)(2)(D)(iii), I&N Act [8 U.S.C. § 1182(a)(2)(D)(iii)] -
Unlawful commercialized vice

Sec. 212(a)(2)(E), I&N Act [8 U.S.C. § 1182(a)(2)(E)] -
Departure as consequence of immunity from prosecution for serious offense - no subsequent full submission to United States court having jurisdiction over offense

Sec. 212(a)(3)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(3)(A)(i)(I)] -
Seeks to enter to violate law relating to espionage or sabotage

Sec. 212(a)(3)(A)(i)(II), I&N Act [8 U.S.C. § 1182(a)(3)(A)(i)(II)] -
Seeks to enter to violate or evade law relating to prohibited exports

Sec. 212(a)(3)(A)(ii), I&N Act [8 U.S.C. § 1182(a)(3)(A)(ii)] -
Seeks to enter to engage in unlawful activity

Sec. 212(a)(3)(A)(iii), I&N Act [8 U.S.C. § 1182(a)(3)(A)(iii)] -
Seeks to enter to engage in opposition to, or control or overthrow, of Government by unlawful means

Sec. 212(a)(3)(B), I&N Act [8 U.S.C. § 1182(a)(3)(B)] -
Terrorist activity

Sec. 212(a)(3)(C), I&N Act [8 U.S.C. § 1182(a)(3)(C)] -
Serious adverse foreign policy risk

Sec. 212(a)(3)(D), I&N Act [8 U.S.C. § 1182(a)(3)(D)] -
Immigrant who is or has been affiliated with totalitarian party

Sec. 212(a)(3)(E)(i), I&N Act [8 U.S.C. § 1182(a)(3)(E)(i)] -
Participated in Nazi persecution

Sec. 212(a)(3)(E)(ii), I&N Act [8 U.S.C. § 1182(a)(3)(E)(ii)] -
Engaged in genocide

Sec. 212(a)(4), I&N Act [8 U.S.C. § 1182(a)(4)] -
Likely to become public charge

Sec. 212(a)(5)(A), I&N Act [8 U.S.C. § 1182(a)(5)(A)] -
No valid labor certification

Sec. 212(a)(6)(A), I&N Act [8 U.S.C. § 1182(a)(6)(A)] -
No permission to reapply after exclusion

Sec. 212(a)(6)(B), I&N Act [8 U.S.C. § 1182(a)(6)(B)] -
No permission to apply or reapply after deportation or removal

Sec. 212(a)(6)(C), I&N Act [8 U.S.C. § 1182(a)(6)(C)] -
Fraud or willful misrepresentation of material fact

Sec. 212(a)(6)(D), I&N Act [8 U.S.C. § 1182(a)(6)(D)] -
Stowaway

Sec. 212(a)(6)(E)(i), I&N Act [8 U.S.C. § 1182(a)(6)(E)] -
Smuggling aliens

Sec. 212(a)(6)(F), I&N Act [8 U.S.C. § 1182(a)(6)(F)] -
Violation of section 274C

Sec. 212(a)(7)(A), I&N Act [8 U.S.C. § 1182(a)(7)(A)] -
No valid immigrant visa or entry document

Sec. 212(a)(7)(B)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(B)(i)(I)] -
Nonimmigrant without valid passport

Sec. 212(a)(7)(B)(i)(II), I&N Act [8 U.S.C. § 1182(a)(7)(B)(i)(II)] -
No valid nonimmigrant visa or border crossing card

Sec. 212(a)(8)(A), I&N Act [8 U.S.C. § 1182(a)(8)(A)] -
Ineligible for citizenship

Sec. 212(a)(8)(B), I&N Act [8 U.S.C. § 1182(a)(8)(B)] -
Draft evader

Sec. 212(a)(9)(A), I&N Act [8 U.S.C. § 1182(a)(9)(A)] -
Coming to the United States to practice polygamy

Sec. 212(a)(9)(B), I&N Act [8 U.S.C. § 1182(a)(9)(B)] -
Guardian required to accompany excluded alien

Sec. 212(a)(9)(C), I&N Act [8 U.S.C. § 1182(a)(9)(C)] -
International child abductor

B. Deportation grounds

Sec. 241(a)(1)(A), I&N Act [8 U.S.C. § 1251(a)(1)(A)] -
Excludable at entry under section 212___, I&N Act [8 U.S.C. § 1182___] -
(description of section 212 charge)

[or]

Sec. 241(a)(1)(A), I&N Act [8 U.S.C. § 1251(a)(1)(A)] -

Excludable at time of adjustment of status under section 212___, I&N Act [8 U.S.C. § 1182___] - *(description of section 212 charge)*

Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] - Entered without inspection

[or]

Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] - In the United States in violation of law

Sec. 241(a)(1)(C)(i), I&N Act [8 U.S.C. § 1251(a)(1)(C)(i)] - Nonimmigrant - failed to comply with conditions of status

Sec. 241(a)(1)(C)(ii), I&N Act [8 U.S.C. § 1251(a)(1)(C)(ii)] - Nonimmigrant - failed to comply with conditions of entry under section 212(g)

Sec. 241(a)(1)(D), I&N Act [8 U.S.C. § 1251(a)(1)(D)] - Conditional resident status terminated

Sec. 241(a)(1)(E), I&N Act [8 U.S.C. § 1251(a)(1)(E)] - Smuggling

Sec. 241(a)(1)(F), I&N Act [8 U.S.C. § 1251(a)(1)(F)] - Special agricultural worker - failed to meet employment requirements

Sec. 241(a)(1)(G), I&N Act [8 U.S.C. § 1251(a)(1)(G)] - Marriage fraud

Sec. 241(a)(2)(A)(i), I&N Act [8 U.S.C. § 1251(a)(2)(A)(i)] - Crime involving moral turpitude

Sec. 241(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1251(a)(2)(A)(ii)] - Crimes involving moral turpitude

Sec. 241(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1251(a)(2)(A)(iii)] - Convicted aggravated felony

Sec. 241(a)(2)(B)(i), I&N Act [8 U.S.C. § 1251(a)(2)(B)(i)] - Convicted of controlled substance violation

Sec. 241(a)(2)(B)(ii), I&N Act [8 U.S.C. § 1251(a)(2)(B)(ii)] - Drug abuser or addict

Sec. 241(a)(2)(C), I&N Act [8 U.S.C. § 1251(a)(2)(C)] - Convicted of firearms violation

Sec. 241(a)(2)(D)(i), I&N Act [8 U.S.C. § 1251(a)(2)(D)(i)] -
Convicted of an offense under 18 U.S.C. § _____

Sec. 241(a)(2)(D)(ii), I&N Act [8 U.S.C. § 1251(a)(2)(D)(ii)] -
Convicted of an offense under 18 U.S.C. § _____

Sec. 241(a)(2)(D)(iii), I&N Act [8 U.S.C. § 1251(a)(2)(D)(iii)] -
Convicted of a violation of 50 U.S.C. App. _____

Sec. 241(a)(2)(D)(iv), I&N Act [8 U.S.C. § 1251(a)(2)(D)(iv)] -
Convicted of a violation of section _____, I&N Act [8 U.S.C. § 1182___] -
(description of section 215 or 278 charge)

Sec. 241(a)(3)(A), I&N Act [8 U.S.C. § 1251(a)(3)(A)] -
Failed to comply with section 265 requirements

Sec. 241(a)(3)(B)(i), I&N Act [8 U.S.C. § 1251(a)(3)(B)(i)] -
Convicted under section 266(c)

[or]

Sec. 241(a)(3)(B)(i), I&N Act [8 U.S.C. § 1251(a)(3)(B)(i)] -
Convicted under section 36(c) of the 1940 Alien Registration Act of 1938

Sec. 241(a)(3)(B)(ii), I&N Act [8 U.S.C. § 1251(a)(3)(B)(ii)] -
Conviction relating to Foreign Agents Registration Act of 1938

Sec. 241(a)(3)(B)(iii), I&N Act [8 U.S.C. § 1251(a)(3)(B)(iii)] -
Conviction relating to 18 U.S.C. § 1546

Sec. 241(a)(3)(C), I&N Act [8 U.S.C. § 1251(a)(3)(C)] -
Violated section 274C

Sec. 241(a)(4)(A)(i), I&N Act [8 U.S.C. § 1251(a)(4)(A)(i)] -
Engaged in violation of law relating to espionage or sabotage

[or]

Sec. 241(a)(4)(A)(i), I&N Act [8 U.S.C. § 1251(a)(4)(A)(i)] -
Engaged in violation or evasion of law relating to prohibited exports

Sec. 241(a)(4)(A)(ii), I&N Act [8 U.S.C. § 1251(a)(4)(A)(ii)] -
Engaged in criminal activity that endangers public safety or
national security

Sec. 241(a)(4)(A)(iii), I&N Act [8 U.S.C. § 1251(a)(4)(A)(iii)] -
Engaged in activity in opposition to, or control or overthrow of,
United States Government by unlawful means

Sec. 241(a)(4)(B), I&N Act [8 U.S.C. § 1251(a)(4)(B)] -
Terrorist activity

Sec. 241(a)(4)(C), I&N Act [8 U.S.C. § 1251(a)(4)(C)] -
Serious adverse foreign policy risk

Sec. 241(a)(4)(D), I&N Act [8 U.S.C. § 1251(a)(4)(D)] -
Participated in Nazi persecution

[or]

Sec. 241(a)(4)(D), I&N Act [8 U.S.C. § 1251(a)(4)(D)] -
Engaged in genocide

Sec. 241(a)(5), I&N Act [8 U.S.C. § 1251(a)(5)] -
Public charge

Sec. 242(f), I&N Act [8 U.S.C. § 1252(f)] -
Reentry after deportation as enumerated in section 242(e)

III. Grounds of inadmissibility and deportability **prior** to the Immigration Act of 1990

A. Inadmissibility (Exclusion)

Sec. 212(a)(4), I&N Act [8 U.S.C. § 1182(a)(4)] -
Afflicted with _____ (type of affliction)

Sec. 212(a)(5), I&N Act [8 U.S.C. § 1182(a)(5)] -
Drug addict

[or]

Sec. 212(a)(5), I&N Act [8 U.S.C. § 1182(a)(5)] -
Chronic alcoholic

Sec. 212(a)(6), I&N Act [8 U.S.C. § 1182(a)(6)] -
Afflicted with dangerous contagious disease

Sec. 212(a)(9), I&N Act [8 U.S.C. § 1182(a)(9)] -
Crime involving moral turpitude

Sec. 212(a)(10), I&N Act [8 U.S.C. § 1182(a)(10)] -
Convicted of two or more offenses with aggregate sentences of five years

Sec. 212(a)(11), I&N Act [8 U.S.C. § 1182(a)(11)] -
Polygamist

Sec. 212(a)(12), I&N Act [8 U.S.C. § 1182(a)(12)] - Prostitution

Sec. 212(a)(14), I&N Act [8 U.S.C. § 1182(a)(14)] - No valid labor certification

Sec. 212(a)(15), I&N Act [8 U.S.C. § 1182(a)(15)] - Likely to become public charge

Sec. 212(a)(16), I&N Act [8 U.S.C. § 1182(a)(16)] - No permission to reapply after exclusion

Sec. 212(a)(17), I&N Act [8 U.S.C. § 1182(a)(17)] - No permission to reapply after deportation

Sec. 212(a)(18), I&N Act [8 U.S.C. § 1182(a)(18)] - Stowaway

Sec. 212(a)(19), I&N Act [8 U.S.C. § 1182(a)(19)] - Fraud or willful misrepresentation of a material fact

Sec. 212(a)(20), I&N Act [8 U.S.C. § 1182(a)(20)] - No valid immigrant visa

Sec. 212(a)(22), I&N Act [8 U.S.C. § 1182(a)(22)] - Evaded military service

[or]

Sec. 212(a)(22), I&N Act [8 U.S.C. § 1182(a)(22)] - Ineligible for citizenship

Sec. 212(a)(23), I&N Act [8 U.S.C. § 1182(a)(23)] - Convicted of (narcotics) or (marijuana) violation

[or]

Sec. 212(a)(23), I&N Act [8 U.S.C. § 1182(a)(23)] - Convicted of controlled substance violation

[or]

Sec. 212(a)(23), I&N Act [8 U.S.C. § 1182(a)(23)] - Trafficker

Sec. 212(a)(23)(A), I&N Act [8 U.S.C. § 1182(a)(23)(A)] - Convicted of controlled substance violation

Sec. 212(a)(23)(B), I&N Act [8 U.S.C. § 1182(a)(23)(B)] - Trafficker

Sec. 212(a)(25), I&N Act [8 U.S.C. § 1182(a)(25)] - Illiterate

Sec. 212(a)(26), I&N Act [8 U.S.C. § 1182(a)(26)] - No valid nonimmigrant visa

Sec. 212(a)(28)(C), I&N Act [8 U.S.C. § 1182(a)(28)(C)] - Communist Party member

Sec. 212(a)(31), I&N Act [8 U.S.C. § 1182(a)(31)] - Smuggling aliens for gain

Sec. 212(a)(32), I&N Act [8 U.S.C. § 1182(a)(32)] - Unaccredited medical school graduate

Sec. 212(a)(33), I&N Act [8 U.S.C. § 1182(a)(33)] - Participated in Nazi persecution

B. Deportability

Sec. 241(a)(1), I&N Act [8 U.S.C. § 1251(a)(1)] - Excludable at entry under section 212___, I&N Act [8 U.S.C. § 1182___] - *(description of section 212 charge)*

Sec. 241(a)(2), I&N Act [8 U.S.C. § 1251(a)(2)] - Entered without inspection

OR

Sec. 241(a)(2), I&N Act [8 U.S.C. § 1251(a)(2)] - Nonimmigrant - remained longer than permitted

Sec. 241(a)(2) and 241(c), I&N Act [8 U.S.C. §§ 1251(a)(2) and 1251(c)] - In the United States in violation of law - - entered with immigrant visa procured by fraudulent marriage

Sec. 241(a)(4), I&N Act [8 U.S.C. § 1251(a)(4)] - Crime(s) involving moral turpitude

Sec. 241(a)(4)(A), I&N Act [8 U.S.C. § 1251(a)(4)(A)] - Crime(s) involving moral turpitude

Sec. 241(a)(4)(B), I&N Act [8 U.S.C. § 1251(a)(4)(B)] - Convicted of aggravated felony

Sec. 241(a)(8), I&N Act [8 U.S.C. § 1251(a)(8)] -
Public charge

Sec. 241(a)(9), I&N Act [8 U.S.C. § 1251(a)(9)] -
Nonimmigrant - failed to comply with conditions of status

Sec. 241(a)(9)(A), I&N Act [8 U.S.C. § 1251(a)(9)(A)] -
Nonimmigrant - failed to comply with conditions of status

Sec. 241(a)(9)(B), I&N Act [8 U.S.C. § 1251(a)(9)(B)] -
Conditional resident status terminated

Sec. 241(a)(11), I&N Act [8 U.S.C. § 1251(a)(11)] -
Convicted of (narcotics) or (marihuana) violation

[or]

Sec. 241(a)(11), I&N Act [8 U.S.C. § 1251(a)(11)] -
Convicted of controlled substance violation

[or]

Sec. 241(a)(11), I&N Act [8 U.S.C. § 1251(a)(11)] -
Drug addict

Sec. 241(a)(12), I&N Act [8 U.S.C. § 1251(a)(12)] -
Prostitution

Sec. 241(a)(13), I&N Act [8 U.S.C. § 1251(a)(13)] -
Smuggling for gain

Sec. 241(a)(14), I&N Act [8 U.S.C. § 1251(a)(14)] -
Convicted of possessing _____(type of weapon)

Sec. 241(a)(19), I&N Act [8 U.S.C. § 1251(a)(19)] -
Participated in Nazi persecution

Sec. 241(a)(20), I&N Act [8 U.S.C. § 1251(a)(20)] -
Temporary resident - failed to meet requirements