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FACT SHEET

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December 2017

Executive Office for Immigration Review: An Agency Guide

This fact sheet provides an agency overview for general informational purposes only and is not a substitute for legal advice. It neither constitutes any legal opinion by the Department of Justice nor creates any rights or benefits. Further, it does not address all applicable laws or case interpretations, and is subject to change as new laws and regulations are enacted and circuit case precedent changes.

Agency Mission

The primary mission of the Executive Office for Immigration Review is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws.

The Department of Justice's Executive Office for Immigration Review (EOIR) administers the Nation's immigration court system. After the Department of Homeland Security (DHS) charges a foreign born individual, an alien, with violating immigration laws, EOIR decides whether that individual is removable from the country and if found removable, whether they qualify for protection or relief from removal. To make these determinations, EOIR's Office of the Chief Immigration Judge (OCIJ) has approximately 350 immigration judges who conduct removal hearings and other administrative court proceedings in approximately 60 immigration courts nationwide.

EOIR's appellate component, the Board of Immigration Appeals (BIA), hears appeals from certain immigration judge and DHS decisions. The majority of appeals involve orders of removal and applications for protection or relief from removal. The BIA designates certain orders as precedent decisions which are then published and apply to immigration cases nationwide. The federal circuit courts may also issue precedent decisions on immigration law issues that are then controlling in that particular federal circuit. The BIA is the highest administrative tribunal for interpreting and applying U.S. immigration law.

Also residing within EOIR is the Office of the Chief Administrative Hearing Officer (OCAHO), which hears cases involving employer sanctions for illegal hiring of unauthorized workers and employment eligibility verification violations, unfair immigration-related employment practices, and civil penalty document fraud. (See EOIR's [OCAHO Fact Sheet](#) for more information.)

Removal Proceedings Process

DHS initiates removal proceedings when it serves an alien with a Notice to Appear (NTA) and files that charging document with one of EOIR's immigration courts. The NTA orders the alien to appear before an immigration judge and provides notice of several important facts, including: (1) the removal proceedings; (2) the alleged immigration law violations; (3) the ability of the alien to seek legal representation at no expense to the government; and (4) the consequences of failing to appear at scheduled hearings.

During removal proceedings, a DHS attorney from U.S. Immigration and Customs Enforcement represents the Government and presents evidence on the Government's behalf. The alien, referred to as a respondent, may provide a defense to the charges or apply for any available and appropriate form of protection or relief from removal. Respondents may, at no expense to the Government, seek an attorney or other authorized representative to represent them before the immigration court (see EOIR's [Who Can Represent Aliens Fact Sheet](#)). The immigration judge impartially and independently decides the case in accordance with applicable laws, regulations, and relevant case precedent.

When the immigration court receives the NTA from DHS, the court schedules an initial hearing before an immigration judge. At this hearing, called the master calendar hearing, the immigration judge explains the respondent's rights and the alleged immigration law violations, and addresses representation. The immigration judge may also give the respondent the opportunity to plead to the factual allegations and charge(s) of removability. The immigration judge may then determine removability and, if found removable and the respondent wishes to apply for protection or relief from removal, the immigration judge will schedule an individual merits hearing, during which both the respondent and the DHS attorney may present arguments and evidence related to the respondent's application. If the immigration judge finds the alien eligible for protection or relief from removal, the application will be granted.

If the respondent fails to appear for a scheduled hearing, the immigration judge will conduct an *in absentia* hearing, which is a removal hearing without the respondent present. The immigration judge will order the respondent removed *in absentia* if DHS establishes by clear, unequivocal, and convincing evidence that: (1) the respondent is removable; (2) DHS served the respondent with a written NTA for the hearing that included information about the consequences of being absent for a hearing; and (3) the immigration court provided notice of the hearing to the address of record of the respondent or the respondent's representative of record. Respondents are responsible for notifying the immigration court within five days of any change of address.

Forms of Protection or Relief from Removal

If an immigration judge finds that a respondent is removable as charged in the NTA, the respondent may apply for protection or relief from removal. What follows, while not exhaustive, is a list of the most common forms of protection and relief from removal.

Asylum

Asylum relief may be granted to eligible applicants, regardless of their country of origin, who are unable or unwilling to return to their country of nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence, because of past persecution or a well-founded fear of future persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion. An asylum application must be filed within one year of the applicant's arrival in the U.S. unless the applicant demonstrates changed circumstances that materially affect the applicant's eligibility for asylum or extraordinary circumstances related to the delay in filing the application.

When asylum applicants are granted relief, they are permitted to remain in the U.S. Asylum relief may also be granted to an applicant's spouse and children who are in the U.S. and were included in the approved application. In time, asylees may apply for lawful permanent residence and, eventually, citizenship. In many cases, asylum applicants are eligible for work authorization 180 days after they file their asylum application.

An affirmative asylum application is one that an alien, who is not in removal proceedings, files with U.S. Citizenship and Immigration Services (USCIS), a component of DHS. A defensive asylum application is one a respondent files while already in removal proceedings. (See EOIR's [Asylum/Withholding/CAT Fact Sheet](#) for more information.)

Withholding of Removal

Withholding of removal is granted to qualified applicants who have established that it is more likely than not that their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion in the proposed country of removal.

An order granting withholding of removal prohibits an alien's removal to the country where his or her life or freedom would be threatened, but allows possible removal to a third country where the alien's life or freedom would not be threatened. Withholding of removal pertains solely to the applicant and, therefore, eligible family members must file their own individual applications for withholding of removal. This form of relief cannot lead to lawful permanent residence status or citizenship. A grant of withholding of removal does not entitle a respondent to a grant of work authorization.

Convention Against Torture (CAT)

CAT protections relate to the obligations of the U.S. under Article 3 of the United Nations Convention Against Torture. This is an international treaty provision designed to protect individuals from being returned to countries where it is more likely than not that they would face torture inflicted by, at the instigation of, or with the consent or acquiescence of a person acting in an official capacity, such as a public official. In accordance with CAT, certain respondents may qualify to have their removal withheld or deferred. Protection under CAT is not relief from removal.

Cancellation of Removal

Cancellation of removal is a form of discretionary relief that is available to both certain legal permanent residents (LPRs) and non-LPRs, each with differing requirements:

- A respondent who is an LPR must have resided continuously in the U.S. for at least seven years, including at least five years as an LPR, and not been convicted of an aggravated felony. After establishing these requirements, an LPR respondent must also demonstrate that he or she warrants a favorable exercise of the court's discretion.
- A respondent who is a non-LPR must have resided continuously in the U.S. for at least 10 years immediately preceding the cancellation application, be of good moral character during that time period, not have been convicted of certain criminal offenses, have a qualifying relative who is a U.S. citizen or LPR, and establish that the qualifying relative will suffer exceptional and extremely unusual hardship if the respondent is removed. After establishing these requirements, a non-LPR respondent must also demonstrate that he or she warrants a favorable exercise of the court's discretion.

The law caps the number of cancellation of removal applications that may be granted to non-LPRs each year. This can cause delays in the issuance of the immigration judge's decision following the final hearing.

Fraud Warning: *There have been many reports of fraud perpetrated by unscrupulous individuals, including notarios and other non-attorneys, advising immigrants to use the "10-year rule" to get a green card. Anyone seeking to file an immigration petition is advised to seek competent legal advice from a licensed attorney or someone permitted to practice immigration law. (See EOIR's [Fraud Prevention Fact Sheet](#) and [Can Someone Represent You before EOIR?](#) for more information.)*

Adjustment of Status

Adjustment of status is a form of discretionary relief that changes an applicant's status from a non-immigrant to an LPR while the applicant is present in the U.S. There are multiple ways to adjust status, but most adjustments in removal proceedings are based on an applicant's qualifying relationship with a U.S. citizen or LPR family member.

In general, an applicant for adjustment of status in removal proceedings must have been inspected and admitted or paroled into the U.S. and establish that they are eligible for an immigrant visa, have one immediately available, and are otherwise admissible to the U.S. Discretionary waivers are available for certain grounds of inadmissibility.

Voluntary Departure

A grant of voluntary departure allows removable aliens to leave the U.S. within a prescribed timeframe at their own expense. Voluntary departure also allows removable aliens to avoid some of the consequences of a removal order. For example, someone who voluntarily departs is not automatically barred from legally returning to the U.S. at a later date. A respondent may request voluntary departure throughout the removal process, but the requirements become more rigorous as

the process proceeds. As a general matter, aliens found to be removable due to an aggravated felony (as defined in immigration law) or terrorist activities, or to otherwise be a security risk to the U.S. are ineligible for voluntary departure at any stage.

Aliens may request voluntary departure at their master calendar hearing before the immigration judge. When aliens ask for voluntary departure prior to the conclusion of removal proceedings, they must give up their right to any other form of relief from removal and waive their right of appeal to the BIA, among other conditions. An immigration judge may grant up to 120 days to depart. If travel documents are not immediately available to an alien, an immigration judge may grant up to 120 days to voluntarily depart on the condition that the alien secure travel documents and present them to DHS within 60 days. If the alien does not produce the travel documents, the voluntary departure order is vacated and the alien is ordered removed from the U.S.

Aliens may also request voluntary departure from the immigration judge at their individual hearing. Aliens requesting voluntary departure at this stage must meet several requirements. They must have been physically present in the U.S. for at least one year before the date DHS issued the NTA, have been a person of good moral character for the five years preceding the request, not be deportable as an aggravated felon or terrorist, demonstrate the ability to leave the U.S. at their own expense (including the ability to present valid travel documents), and demonstrate the financial ability to post a bond of no less than \$500. The alien must also demonstrate that he or she warrants a favorable exercise of the court's discretion. An immigration judge in this circumstance may grant up to 60 days for the alien to leave the U.S.

It is also important to note that aliens may request voluntary departure from DHS in advance of their first hearing before an immigration judge. In this circumstance, an alien may be required to depart immediately or be given up to 120 days to leave the U.S. The alien and DHS can agree to up to 120 days of voluntary departure at any time prior to the completion of the final hearing before the immigration judge.

Termination

Termination of proceedings dismisses the case related to a particular charging document. Sometimes the parties may agree to jointly terminate proceedings and must then present a joint motion to the immigration judge for review and decision. Additionally, if an immigration judge finds that a respondent is not removable as charged or that the respondent has established eligibility for citizenship, the immigration judge may terminate proceedings. It is important to note, however, that terminated cases do not exempt the respondent from future proceedings under a new charging document, and termination does not confer any status upon the respondent. While not a form of protection or relief from removal, an immigration judge's decision to terminate proceedings may enable a respondent to be granted voluntary departure by DHS or to pursue other relief claims.

Other Hearings and Reviews

While immigration judges primarily conduct removal proceedings, they may also conduct the following hearings and reviews:

- **Bond Proceedings** – to determine whether to set a bond amount in the absence of DHS setting one, or to change a bond amount DHS has already set, for a detained respondent. Detained respondents may make a request for a bond redetermination hearing with an immigration judge.
- **Rescission Hearings** – to determine whether an alien’s status as an LPR should be revoked because the alien was not entitled to become an LPR.
- **Withholding-Only Hearings** – to determine whether an alien who has a reinstated order of removal or an expedited removal order based on an aggravated felony conviction is eligible for withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act or under CAT. (See EOIR’s [Asylum/Withholding/CAT Fact Sheet](#).)
- **Asylum-Only Hearings** – to determine whether certain aliens (e.g., crewmen; stowaways) who are not entitled to a removal hearing, but claim a well-founded fear of persecution in their country of nationality, are eligible for asylum. (See EOIR’s [Asylum/Withholding/CAT Fact Sheet](#).)
- **Credible Fear Review** – to assess a USCIS asylum officer’s negative credible fear finding to determine whether an alien in expedited removal proceedings has a credible fear of persecution or torture in their country of nationality. (See EOIR’s [Asylum/Withholding/CAT Fact Sheet](#).)
- **Reasonable Fear Review** – to assess a USCIS asylum officer’s negative reasonable fear finding to determine whether a respondent who has a reinstated order of removal or an expedited removal order based on an aggravated felony conviction has a reasonable fear of persecution or torture in their country of nationality. (See EOIR’s [Asylum/Withholding/CAT Fact Sheet](#).)
- **Claimed Status Review** – to determine whether an individual in expedited removal has a valid claim to U.S. citizenship, legal permanent residency, or refugee or asylum status when the individual claims under oath to have such status.

Immigration Judge Decisions

At the conclusion of removal proceedings, the immigration judge may issue an oral decision, or reserve the decision for the issuance of a written order. Immigration judge decisions are made on a case-by-case basis according to applicable laws, regulations, and relevant case precedent.

When the immigration judge determines a respondent is either not removable or grants the respondent protection or relief from removal, the respondent may remain in the U.S. either temporarily or permanently, depending on the form of relief or protection granted. Both parties have the opportunity to appeal an immigration judge’s decision to the BIA. If the immigration judge orders the respondent removed and the respondent does not file a timely appeal with the BIA, DHS may remove the respondent from the U.S.

Appeals of Immigration Judge Decisions – BIA Review

Within 30 days of the immigration judge’s decision, either party may appeal the immigration judge’s decision to the BIA. The BIA decides the appeal by conducting a “paper” or record review. The BIA will generally set a time frame for the parties to file briefs to support their appeal. The BIA holds oral arguments only in select cases.

Appeals of BIA Decisions – Federal Court Review

If the respondent disagrees with the BIA’s final decision, the respondent may file an appeal (“petition for review”) with the appropriate federal circuit court of appeals. DHS may not appeal to the federal circuit courts.

Attorney General Review of BIA Decisions

The Attorney General may review BIA decisions and affirm, modify, or overrule those decisions. 8 C.F.R. § 1003.1(h)

Observing Immigration Court Hearings

Hearings in immigration court are generally open to the public. In certain circumstances as required by law, hearings will be closed. The immigration judge makes the final decision about whether a hearing should be closed to the public. (See EOIR’s [Observing Immigration Court Hearings Fact Sheet](#) for more information.)

Legal Access Programs

The Office of Legal Access Programs (OLAP) oversees programs to increase judicial efficiencies by providing information and self-help legal materials to respondents in removal proceedings, including the Legal Orientation Program (LOP) for individuals in DHS custody; the LOP for Custodians of Unaccompanied Alien Children (LOPC) for the adult caregivers of children released from Department of Health and Human Services, Office of Refugee Resettlement custody; and the Immigration Court Helpdesk Program (ICH) for non-detained respondents appearing before the immigration court.

OLAP also administers the Recognition and Accreditation Program, which authorizes certain non-attorneys to provide representation to respondents; the List of Pro Bono Legal Service Providers, which is provided to all respondents in immigration court hearings; the National Qualified Representative Program (NQRP), which oversees the appointment of counsel for detained respondents who are determined to be mentally-incompetent to represent themselves in immigration court proceedings; and the BIA Pro Bono Project, which assists in matching certain respondents who have pending case appeals before the BIA with pro bono counsel. (See EOIR’s [OLAP Fact Sheet](#) for more information.)

Immigration Court Interpreters

The immigration court accommodates the language needs of all respondents and witnesses. Interpreters

are provided at government expense to respondents whose command of the English language is not sufficient to fully understand and participate in immigration court proceedings.

EOIR's Anti-Fraud Efforts

Through its Fraud and Abuse Prevention Program, EOIR is committed to fighting fraud perpetrated against the government (e.g., fraudulent asylum claims; forged documents), as well as fraud committed against aliens by those perpetrating immigration-related scams and engaged in the unauthorized practice of law. EOIR reminds the public that *notarios*, “visa consultants,” and other unauthorized legal service providers are not permitted to represent individuals before EOIR, including the immigration courts and the BIA. Services provided by unauthorized practitioners, including promises to obtain work authorization, lawful permanent residence (i.e., a “green card”), or other immigration benefits are highly suspect. (See EOIR’s [Fraud Prevention Fact Sheet](#) and [Can Someone Represent You before EOIR?](#) for more information.)

Additional Information

- EOIR fact sheets <https://www.justice.gov/eoir/pa-fact-sheets>
- *Immigration Court Practice Manual* (immigration court procedures) <https://www.justice.gov/eoir/office-chief-immigration-judge-0>
- *BIA Practice Manual* (BIA procedures) <https://www.justice.gov/eoir/board-immigration-appeals-2>
- EOIR’s Virtual Law Library (immigration laws, regulations, procedures, decisions, and other resources) <https://www.justice.gov/eoir/virtual-law-library>
- Listing of immigration courts nationwide <https://www.justice.gov/eoir/eoirimmigration-court-listing>
- EOIR’s Office of Legal Access Programs <https://www.justice.gov/eoir/office-of-legal-access-programs>
- EOIR’s Operating Policy and Procedure Memoranda for OCIJ <https://www.justice.gov/eoir/oppm-log>
- EOIR statistics <https://www.justice.gov/eoir/statistics-and-publications>
- Fraud and Abuse Prevention Program Fact Sheet <https://www.justice.gov/eoir/page/file/eoirfraudprogramfactsheetjune2017/download>
- EOIR Attorney Discipline Program Fact Sheet <https://www.justice.gov/sites/default/files/eoir/legacy/2014/07/23/EOIRsDisciplineProgramFactSheet.pdf>