

PROCEDURES DUE TO THE CAP ON NON-LPR CANCELLATION

General Guidelines:

Note: Cancellation of removal for non-LPRs (240A(b)(1)), VAWA cancellation (240A(b)(2)), and suspension of deportation cases (old 244) are all subject to the 4,000 annual cap; NACARA cases are not.

In most cases, the IJ will conduct the hearing on the merits of the cancellation case and reserve a decision unless: (1) the case is administratively closed (e.g. DHS exercise of prosecutorial discretion); (2) another remedy is granted; (3) the respondent is detained. **Detained cases may be decided without reserving a decision.**

The IJ may **only** deny/pretermitt cancellation of removal without reserving a decision if the respondent is statutorily ineligible due to: lack of 10 years of continuous presence or a conviction of an offense specified under sections 212(a)(2), 237(a)(2), or 237(a)(3) of the Act. 8 C.F.R. § 1240.21(c)(1).

- The IJ may NOT deny, without reserving a decision, for lack of good moral character, hardship, or in the exercise of discretion. All denials based on these reasons must be reserved. *See* OPPM 12-01.

Procedures:

To reserve a decision:

- Note the time and date when the record is closed.
- The reset code will be **R to Grant** or **R to Deny**.

Once you have reserved a decision, you may:

1. Reserve a decision to be completed once a number becomes available. This will require the IJ to issue an oral or written decision at that time in the future.
 2. Render a draft oral decision. This is dictated outside the presence of the parties using a tape recorder. The tape should be prepared within 5 days after the hearing and placed in the green envelope developed for this purpose which is placed in the file.
 3. Render a draft written decision. This is a written decision which should be prepared within 30 days after the hearing. The draft is placed in the green envelope and placed in the file to be signed when a number becomes available.
- Note: Consult your court administrator to be sure you understand the worksheet or stamp that your court uses for reserved decisions. This will ensure that your decisions are placed in the queue by the proper time and date.

To issue a final decision when a number becomes available:

- Each court will be notified by the Office of the Chief Immigration Judge when numbers become available. Typically this happens in batches throughout the year. If the background checks remain current, the IJ may issue the written reserved decision, the transcribed oral decision or schedule the case for a hearing to issue the oral decision.
- Note: DHS will need to re-run the background checks.

To request a number in urgent cases:

- The OCIJ may release a number for a cancellation case for compelling humanitarian reasons. For example, in a case where the sole qualifying relative is dying and may not survive until a number becomes available in the ordinary course.
- Consult your ACIJ in such cases as he/she may want to review the reasons for the request and give you permission to request the number. The person in charge of releasing the numbers is Chief Clerk Mark Pasierb (b) (6) @usdoj.gov; (b) (6)).