

Removal Proceedings 101



Christine Lin, Clinical Teaching Fellow
Refugee & Human Rights Clinic
UC Hastings College of the Law

Misha Seay, Staff Attorney
Center for Gender & Refugee Studies

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Survey Questions



1. Please select one of the following. I am a:
 - Immigration attorney
 - Non-immigration attorney
 - Law student
 - Paralegal or other legal advocate
 - Other _____

2. How many removal defense cases have you done before?
 - 0
 - 1-3
 - 5-10
 - 10+

3. Are you representing someone in removal proceedings on a pro bono basis?
 - Yes
 - No

4. If you received your pro bono case from a non-profit organization, what organization did you receive it from?
 - Organization name: _____

About CGRS



Expert Consultation & Training

- One-on-one consultation in asylum cases
- Trainings on various topics, including refugee policy, asylum law, gender and child-based asylum claims, removal proceedings, and more

Tracking & Decision Analysis

- One of a kind database tracking outcomes in asylum cases at all levels of adjudication
- Analysis of decision-making trends

Impact Litigation

- Domestic violence
- Femicide and gender-based violence
- Female genital cutting
- Sexual slavery and human trafficking
- Forced marriage
- Children
- LGBT
- Gang

Policy Advocacy

- Child migrants
- Refugee protection
- Comprehensive immigration reform
- Violence against women

International Human Rights Work

- Migration of children from Central America & Mexico
- Femicide and gender-based violence in Central America
- Sexual and gender-based violence in Haiti
- Gender-based violence in Afghanistan and Tajikistan

To request assistance in an asylum case, visit our website at:
cgrs.uchastings.edu/assistance/request

Presentation Overview



- ❖ Overview and chronology of removal proceedings
- ❖ Overview of the Notice to Appear and challenges before removal proceedings commence
- ❖ What to expect at the Master Calendar Hearing
- ❖ What to expect at the Merits Hearing
- ❖ Other aspects of removal proceedings

Overview of Removal Proceedings



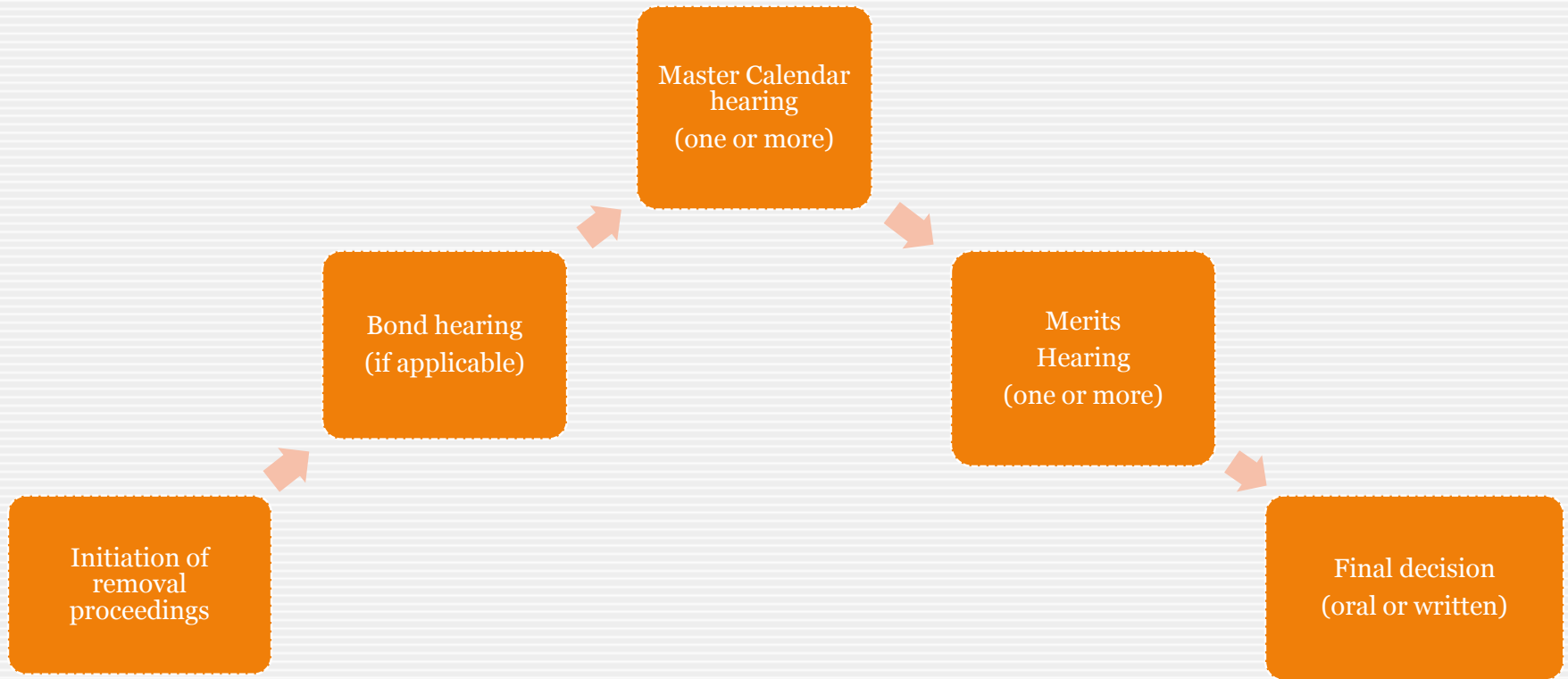
- Any noncitizen can be subject to removal
- Government is represented by a trial attorney for the Assistant Chief Counsel of ICE
- Noncitizen (“respondent”) has right to an attorney at her own expense
- Deportation/exclusion vs. removal proceedings
 - IIRIRA of 1996 – effective April 1, 1997
 - Order to Show Cause vs. Notice to Appear

Initiation of Removal Proceedings



- Most common reasons a noncitizen is put into removal proceedings
 - Unsuccessfully applied for asylum, permanent residency, citizenship, or other immigration benefit
 - Apprehended at or near the border
 - Following criminal arrest or after individual has completed his or her sentence
 - Workplace raids
 - Permanent residents seeking admission at airports or other ports of entry
 - Post 9/11 security initiatives

Chronology of Removal Proceedings



How to Become Attorney of Record



- Once retained by a client in removal proceedings, enter your appearance with the Immigration Court and notify DHS
- Step-By-Step:
 1. If you did not register as an attorney with EOIR after June 10, 2013 (when eRegistry began), you must complete the registry process online before you can enter an appearance in a specific case
 - ✦ This includes online submission of contact information and Bar ID number
 - ✦ In-person appearance at any EOIR location to confirm your identity
 2. Enter appearance in your specific case by filing Form EOIR-28 (green paper) with the Immigration Court OR filing the EOIR-28 online using EOIR's eRegistry
 3. Serve Form G-28 on DHS, and file a copy of the G-28 with the Immigration Court

More info on eRegistry here: <http://www.justice.gov/eoir/engage/eRegistration.htm>

Two Stages of Proceedings



1. Removability

- Is the respondent removable?
- If not, proceedings must be terminated

2. Relief

- Is the respondent eligible for immigration relief?
- If the form of relief requested is discretionary, does the respondent warrant a grant of relief?

The Notice to Appear



- DHS prepares NTA and files with immigration court
- NTA officially initiates removal proceedings on date filed with immigration court
- Client must receive copy of NTA
- 10 days notice required before first hearing
- Classifies respondent under one of three categories of “aliens”
- Contains factual allegations supporting the grounds of inadmissibility or removability



U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] FINS #: [REDACTED] File No: [REDACTED]
DOB: [REDACTED] Event No: [REDACTED]

In the Matter of: [REDACTED]

Respondent: [REDACTED] currently residing at:

[REDACTED] (Number, street, city and ZIP code) [REDACTED] (Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are removable for the reasons stated below.

Category of Alien

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of EL SALVADOR and a citizen of EL SALVADOR;
3. You arrived in the United States at or near RIO GRANDE CITY, TEXAS, on or about September 22, 2013;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

Factual Allegations

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following

provision(s) of law: 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

Charges

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30(f)(2) 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: 2005 West Jefferson Avenue, Suite 300 Harlingen TX US 78550

on a date to be set at a time to be set to show why you should not be removed from the United States based on the

JEFFERY WIGGINS SUPERVISORY BORDER PATROL AGENT
Rio Grande City, Texas

Date: September 22, 2013

NTA date

See reverse for important information

Form I-862 (Rev. 08/01/07)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Notice: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding, provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at <http://www.ice.gov/about/dhs/contact.htm>. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before: _____ (Signature of Respondent)

Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

Certificate of Service

This Notice to Appear was served on the respondent by me on September 22, 2013, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

- in person by certified mail, returned receipt requested by regular mail
- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear at the hearing pursuant to section 240(b)(7) of the Act.

JOEL CHEN JR. BORDER PATROL AGENT
Witnessed by _____ (Signature and Title of Officer)

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [REDACTED]

DOB: [REDACTED]

File No: [REDACTED]

Event No: [REDACTED]

In the Matter of: [REDACTED]

Respondent: _____ currently residing at

DHS ICE CUSTODY

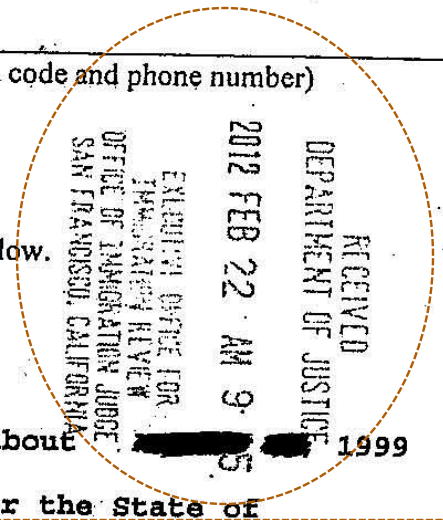
(Number, street, city and ZIP code)

(Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of [REDACTED] and a citizen of [REDACTED];
3. You were admitted to the United States at NEW YORK, NY on or about [REDACTED] 1999 as a RES;
4. You were, on [REDACTED] convicted in the Superior Court for the State of California in and for the County of Alameda for the offense in violation of California Penal Code 245(a)(1).



Court receipt stamp: Date removal proceedings officially commenced

Categories of “Aliens”



Three categories of “aliens”

1. Arriving aliens
 - Individuals seeking admission at the border
 - Lawful permanent residents (LPRs) returning to the U.S. are NOT considered to be seeking admission UNLESS one of six scenarios applies – see INA §101(a)(13)(C)
2. Aliens present in the U.S. without admission or parole (entering without inspection, “EWI”)
3. Aliens who have been lawfully admitted but are deportable

Burdens of Proof



- Arriving aliens
 - ✦ The **noncitizen** must prove clearly and beyond a doubt entitled to admission and not inadmissible
 - ✦ In the case of returning LPRs, the **government** must first prove the LPR shall be deemed an applicant for admission because she falls under one of the six categories in INA § 101(a)(13)(C). Once established, burden shifts to **noncitizen** to prove clearly and beyond a doubt entitled to admission and not inadmissible
- Aliens present without admission or parole (EWI)
 - ✦ The **government** must first prove alienage by clear, unequivocal and convincing evidence
 - ✦ Once alienage established, burden shifts to **noncitizen** to prove she is lawfully present pursuant to a prior admission
- Aliens lawfully admitted to the United States
 - ✦ The **government** must prove the noncitizen is deportable by clear and convincing evidence

Inadmissibility vs. Deportability



Inadmissibility

INA § 212 /
8 U.S.C. § 1182

Applies to (1) arriving aliens, (2) aliens present in the U.S. without admission or parole, and (3) returning LPRs deemed to be applicants for admission

Removability

INA § 237 /
8 U.S.C. § 1227

Applies to individuals who have been lawfully admitted to the U.S. (e.g. LPRs and visa holders)

Preparing to Plead to the NTA



- Carefully review the NTA for insufficiencies or errors
 - Is the respondent **properly classified** as an arriving alien / alien who entered without inspection or parole / lawfully admitted but deportable alien?
 - Are the **factual allegations** correct? If not, move to amend the NTA or deny any allegations you wish to contest

Preparing to Plead to the NTA



- Carefully review the **charges of removability**
 - What evidence has the government offered to sustain the charges of removability?
 - If you disagree with the charges, contest removability (especially if related to criminal history)
- Carefully review what evidence the government has offered of **alienage** (birth outside the U.S.)
 - What is the evidence of alienage? (Examples: copy of birth certificate or identification document, admission by respondent in Form I-213)
 - Was the evidence obtained in violation of the 4th or 5th amendments prohibiting unlawful searches and seizures and coercive questioning?
 - ✦ If so, consider possible motion to suppress evidence and terminate

Pleading to the NTA



- **Factual allegations**
 - Admit or deny one by one
- **Charges of removability**
 - Concede or deny
 - Conceding removability waives right to challenge removability later
 - When in doubt, deny the allegations and charges and hold the government to their burden of proof
- **Designation of country of removal**
 - Should decline to designate if applying for asylum, withholding of removal, CAT
 - Trial attorney may request to designate country of removal
 - IJ will make ultimate decision and direct the country of removal in the event removal is necessary
- **Forms of Relief**
 - Indicate forms of relief client intends to seek

Sample Pleadings



- Pleadings can be oral or in writing
- Samples:

“The respondent admits factual allegations one through five; concedes removability as charged; and declines to designate a country of removal. Respondent will be seeking relief from removal in the form of asylum, withholding of removal, and protection under the Convention Against Torture, and voluntary departure in the alternative.”

“The respondent admits factual allegations one through three, denies allegation five and six, and admits allegation seven; respondent denies the two charges of removability; and respondent declines to designate a country of removal. Respondent will be applying for cancellation of removal for certain permanent residents.”

Amending the Charges



- Note: the trial attorney can amend the NTA or allege additional charges by filing a Form I-261
- This can happen at any time before a final order of removal is entered

Master Calendar Hearing



- Group hearing; usually quick
- Pleadings and determination re removability
 - If there are major arguments re removability, IJ may require briefing and/or a merits hearing to resolve the issue
- Narrow the legal issues
- Request and file applications for relief from removal
- Set deadlines for filings and schedule merits hearing
- Can request continuances for attorney preparation if not ready to proceed to merits hearing

Merits Hearing



- Individual hearing; can last up to several hours
- If not completed at MC hearing, will review evidence
 - IJ will mark and admit evidence into record
 - Parties can make objections to admission of evidence
- Present testimony of client and any witnesses
- Additional hearings may be necessary
- Closing arguments (where applicable/desired)
- Oral IJ Decision (where applicable)

Burden of Proof at Relief Stage



- Once removability has been established and sustained, the **noncitizen** always carries the burden of establishing eligibility for relief from removal.
 - See 8 C.F.R. § 1240.8(d)

Relief from Removal



- Main forms of relief (can request all that apply)
 - Asylum, Withholding of Removal, and Convention Against Torture (CAT) relief
 - Cancellation of removal for LPRs and non-LPRs
 - VAWA cancellation of removal
 - NACARA cancellation or suspension
 - Adjustment of status (in limited circumstances)
 - Waivers (e.g. 212(c), 212(h))
 - ✦ Stand alone or in conjunction with adjustment of status
 - Voluntary departure – pre and post hearing
- When no relief available, can request prosecutorial discretion from ICE

Asylum, Withholding of Removal, and CAT



- For individuals who experienced persecution or torture in their home country and/or fear persecution or torture in the future
- Requirements for Asylum - INA § 101(a)(42):
 - Meet the definition of a refugee: well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
 - Must file for asylum within one-year of last arrival in US
 - Asylum requires a “reasonable possibility” (1 in 10 chance) of persecution
- Requirements for Withholding of Removal - INA § 241(b)(3):
 - Must show that “life or freedom would be threatened” in country of origin on account race, religion, nationality, political opinion, or membership in a particular social group
 - Withholding requires a “clear probability” (51% chance or more) of persecution

Asylum, Withholding, and CAT



- Requirements for Protection under the Convention Against Torture - 8 C.F.R. § 208.18(a):
 - Must establish that it is “more likely than not” (51% chance or more) that applicant would be tortured by or with the consent or acquiescence of a government official if removed to the proposed country of removal
 - 2 types of protection under CAT: (1) withholding of removal or (2) deferral of removal
- Form I-589: Application form for asylum, withholding of removal, and CAT – no fee
- Asylum offers pathway to permanent residence/citizenship, withholding of removal/CAT do not
- Asylum permits derivative status for spouses and children, withholding of removal/CAT do not

Cancellation of Removal



- **LPRs (Form EOIR-42A) – INA § 240(A)(a)**
 - Been an LPR for at least 5 years
 - 7 years continuous physical residence after admission in any status
 - No aggravated felony convictions
 - Deserving of favorable exercise of discretion

- **Non-LPRs (Form EOIR-42B) - INA § 240(A)(b)**
 - 10 years continuous physical presence (prior to issuance of NTA)
 - Not convicted of crime under INA § 212(a)(2), 237(a)(2), or 237(a)(3)
 - Good moral character for 10 years
 - Exceptional and extremely unusual hardship to USC or LPR spouse, parent, child
 - Deserving of favorable exercise of discretion

VAWA Cancellation of Removal



- VAWA cancellation (Form EOIR-42A) - INA § 240(A)(b)(2)
 - Been battered or subjected to extremely cruelty in the U.S. by USC or LPR spouse or parent OR noncitizen's child was subjected to such abuse by her USC or LPR parent
 - 3 years continuous physical presence (prior to NTA)
 - Good moral character during those 3 years
 - Not inadmissible under INA § 212(a)(2)(certain crimes) or 212(a)(3)(security related grounds), not deportable under 237(a)(1)(G)(marriage fraud), or 237(a)(2)-(4) (criminal, fraud, security related grounds), and not convicted of an aggravated felony
 - Removal would result in extreme hardship to you or your child who is the child of a USC or LPR
 - Deserving of favorable exercise of discretion

NACARA § 203: Special Rule Cancellation



- NACARA § 203 – special rule cancellation for certain applicants from El Salvador, Guatemala, and former Soviet bloc countries (Form I-881)
 - Eligibility requirements depend on where person is from (see NACARA § 203(a), but include:
 - ✦ First entry to US on or before certain date in 1990, applied for asylum by certain date, not apprehended at any time after entry, not convicted of aggravated felony
 - ✦ Family member of individual in category may qualify
 - ✦ Spouse/child battered or subject to extreme cruelty by someone falling into this class may be eligible for NACARA

NACARA§ 203: Special Rule Cancellation



- After determine eligibility for NACARA, need to show:
 - 7 years continuous presence in US
 - Good moral character during those 7 years
 - Not removable under certain criminal grounds
 - Deportation or removal cause extreme hardship to you or LPR/USC parent, spouse or child

NACARA § 202 – Adjustment of status



- Applies to certain Nicaraguan and Cuban nationals
- Continuous physical presence in US since December 1, 1995
- Apply for adjustment of status under NACARA before April 1, 2000 and physically present in US when filed
- Not subject to certain grounds of inadmissibility under INA § 212
- Spouse, child, unmarried son or daughter of applicant may qualify

Adjustment of Status



- **Eligibility:**

- Family and employment visa petitions, SIJS, VAWA Self-Petition
- Priority date current; check State Department Visa Bulletin:
<http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html>
- Admissibility
- Discretion
- Lawful Entry to US – “inspected, admitted or paroled” and maintained lawful immigration status
- Bars for unlawful employment, immigration status at time of filing, overstay of granted voluntary departure period
 - ✦ Exception for immediate relatives with lawful entry but not maintain status
 - ✦ Exemption of lawful entry/status under INA § 245(i) – visa petition filed before April 30, 2001 and approvable when filed
 - ✦ Unlawful unemployment exception for certain categories

Waivers



- INA 212(c)(repealed)
 - Waiver for lawful permanent residents who proceeded abroad temporarily and not under deportation and returned to unrelinquished domicile of 7 consecutive years
 - Expanded to include LPRs who did not go abroad but subject to certain grounds of excludability and deportability
 - *INS v. St. Cyr*, 533 U.S. 289 (2001) – waiver still eligible to LPR in removal proceedings who entered into plea agreement prior to April 1, 1997
 - Very complicated case law and retroactivity issues
- INA 212(h)
 - Waives limited crimes
 - ✦ Crimes of moral turpitude – INA § 212(a)(2)(A)(i)(I)
 - ✦ Single controlled substance offense for simple possession of 30 grams or less of marijuana – INA § 212(a)(2)(A)(i)(II)
 - ✦ Multiple criminal convictions where total aggregate sentence is 5+ years – INA § 212(a)(2)(B)
 - ✦ Prostitution and commercialized vice – INA § 212(a)(2)(D)
 - ✦ People who have asserted immunity from prosecution – INA § 212(a)(2)(E)
 - Available to
 - ✦ Noncitizens who are the spouse, parent, son or daughter of a USC or LPR and that relative would suffer extreme hardship if noncitizen is removed

Voluntary Departure



- **Pre-Hearing – INA § 240B(a); 8 C.F.R. § 1240.26(b)**
 - Must request before or at master calendar hearing
 - Cannot be requested in conjunction with other forms of relief
 - Must concede removability and waive appeal
 - No aggravated felonies and not deportable for security related grounds
 - IJ may impose conditions, such as bond
 - Maximum time allowed is 120 days
- **Post-Hearing – 8 C.F.R. § 1240.26(c)**
 - Must have been physically present in the U.S. for **one year** prior to issuance of NTA
 - Good moral character for last 5 years
 - No aggravated felonies and not deportable for terrorism grounds
 - Show financial means to depart and intention to do so
 - Bond of at least \$500 within 5 days of IJ's order
 - Maximum time allowed is 60 days

Prosecutorial Discretion



- DHS officers have authority to exercise prosecutorial discretion at all stages of enforcement process
- In removal proceedings, prosecutorial discretion could include whether to:
 - Agree to join motion to admin close or terminate proceedings
 - Agree to continuance until eligible for relief at later date
 - Amend NTA to change/remove factual allegations/charges
 - Agree to limit issues/evidence
 - Agree not to oppose grant of voluntary departure
 - Agree not to appeal IJ's grant of relief
 - Grant deferred action or settle case

Factors Considered for Prosecutorial Discretion



- Immigration enforcement priorities
- Length of time in the US (lawful status helpful)
- Circumstances of individual's arrival (e.g. if child)
- Graduation from U.S. high school and pursuit of higher education in U.S.
- U.S. military service of individual or immediate relative
- Criminal history
- Immigration history
- National security or public safety concern
- Family ties and contribution to community
 - Is spouse, parent, or child LPR or USC?
 - Primary caretaker of physically/mentally ill/disabled relative?
- Ties to and conditions in home country
- Age of individual - elderly or minor?
- Cooperation with state, local, federal law enforcement
- Likelihood of permanent/temporary immigration relief
- Likelihood of removal

Obtaining Relief Outside Removal Proceedings



- IJs do not have jurisdiction over some forms of relief
- Noncitizen *may* be able to seek relief from USCIS while still in removal proceedings
 - Usually requires noncitizen to file a motion to continue or administrative close while the application is being adjudicated
- Examples:
 - Asylum cases involving Unaccompanied Alien Children (UACs)
 - Special Immigrant Juvenile Status
 - DACA, VAWA, U visa, and T visa
 - Certain adjustment of status applications: I-751

Testimony & Witnesses



- **Client's testimony**
 - Written (declaration) and oral
 - When client is deemed credible, oral and written testimony can be enough to meet burden of proof
 - BUT, generally advisable to provide corroborating evidence in form of witnesses and documentary evidence as well
- **Witnesses**
 - Good to identify potential witnesses early on
 - Witnesses should provide a declaration/affidavit/letter of support
 - ✦ Generally advisable to make the witness available for cross-examination to ensure greatest weight is given to testimony
 - ✦ Expert witnesses (such as psychologists, doctors, and country conditions experts) are not required, but can greatly benefit case in order to show the client meets the elements required for relief
- **Direct, cross-examination, re-direct of all witnesses**

Briefing/Arguments



- **Pre-Hearing Statements**

- Not required unless ordered by the IJ
- Usually includes:
 - ✦ Statements of facts and/or stipulated facts
 - ✦ List of proposed witnesses
 - ✦ List of exhibits w/ documents attached
 - ✦ Statement re: client's eligibility for relief from removal

- **Oral Arguments**

- Sometimes used in lieu of written briefs in less complicated cases
- Usually brief and focuses on most contested issues

- **Written Briefs**

- Not required unless ordered by the IJ, but may be requested
- Especially in cases with complicated legal issues, could be helpful in showing that the client meets all the elements and/or discretionary factors for relief
- Usually includes:
 - ✦ Summary of facts
 - ✦ Legal arguments

Motions



- Types are endless; most common:
 - Motion to suppress
 - Motion to terminate
 - Motion for administrative closure
 - Motion to continue
 - Motion to withdraw/substitute counsel
 - Motion to reopen/reconsider
 - Motion to change venue
 - Motion to present telephonic testimony
- See Immigration Court Practice Manual for details on rules regarding motions

Misc. Aspects of Removal Proceedings



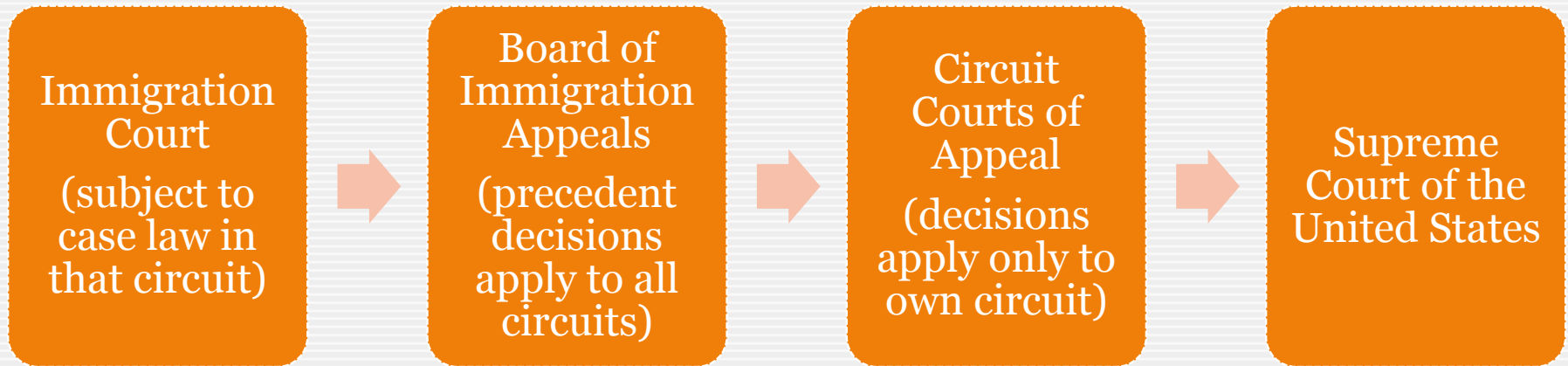
- **Change of Address**
 - Respondents required to notify court of change of address within 5 days of move (Form EOIR-33)
- **Interpretation**
 - Court must provide interpreter in client's best language
 - Courts now using full & complete interpretation, can be waived for portions of hearing
 - Objecting to poor interpretation/making a record for appeal
- **In Absentia Removal Orders**
 - IJ are entitled to order client removed in absentia if fails to appear at hearing
 - Can move to reopen in certain scenarios (e.g. deficient notice under regulations, failed to appear due to emergency)

Final Orders



- **Summary Orders**
 - One-page orders, IJ checks off boxes
- **Oral Decisions**
 - Delivered from the bench at last hearing
- **Written Decisions**
 - Prepared after last hearing, usually for more complicated cases
 - Often written by the court's law clerks/attorney advisors
 - Can be delivered by mail or issued in person in court

Appeal Process



Appeal Process



- **BIA**
 - Either side may appeal to BIA w/in 30 days of IJ's decision (Notice of Appeal, Form EOIR-26). If no appeal taken, IJ's decision is final.
 - BIA will set briefing schedule after receiving Notice of Appeal and producing transcripts of IJ proceedings
- **Circuit Courts of Appeal**
 - If BIA denies appeal, the respondent (not DHS) can appeal to the appropriate circuit court of appeal
 - Will only review legal and constitutional questions, not discretionary decisions
- **U.S. Supreme Court**

Removal Order Becomes Final: What's Next?



- Consequences of final orders of removal - INA § 212(a)(9)(A)
 - Inadmissible to the US for 5/10/20 years
 - Waiver may be available
- Physical removal from the United States
 - Detention and Removal Office (DRO) assists person in obtaining travel document, purchases necessary tickets, accompanied by ICE escort to country of removal

Resources



- **Procedures:**

- Immigration Court Practice Manual:

http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm

- BIA Practice Manual:

<http://www.justice.gov/eoir/vll/qapracmanual/apptmtn4.htm>

- **CGRS Resources:**

- Practice advisories on asylum claims
- Country conditions reports
- Expert affidavits for asylum claims
- Other publications

More information is available on our website:

cgrs.uchastings.edu

Questions & Answers

