



U.S. Department of Justice
Immigration and Naturalization Service


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Office of the Executive Associate Commissioner

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Washington, DC 20536

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MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS

FROM: 
Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Proposed Soriano Regulation and Deportation Moratorium

On July 18, 2000, the Attorney General promulgated a regulation which provides a mechanism for aliens to apply for waivers of deportability under the Immigration and Nationality Act (Act) under § 212(c), § U.S.C. § 1182(c).¹ The Attorney General is attempting to resolve some of the cases affected by the litigation which followed her decision in Matter of Soriano, Int. Dec. 3289 (1997). The regulation provides a mechanism for reopening the deportation proceedings of some aliens with final administrative orders of deportation, regardless of whether the final order was obtained after a hearing before an immigration judge or before the Board of Immigration Appeals (BIA). This memorandum provides all Immigration and Naturalization Service (INS) Detention and Deportation personnel with instructions on how to identify such aliens and how to handle such cases.

INS personnel are not to effectuate the deportation of aliens who may qualify for relief under the proposed regulation.

¹ Prior to the passage of the Antiterrorism and Effective Death Penalty Act (AEDPA), relief from deportation was available to aliens who were convicted of committing criminal offenses through application under § 212(c), § U.S.C. § 1182(c)(1995) of the Immigration and Nationality Act (the Act). Section 440(d) of AEDPA substantially modified § 212(c) by eliminating relief for aliens who had committed crimes described in §§ 241(a)(2)(A)(iii), (B), (C), or (D), or any offense described in § 241(a)(2)(A)(ii) for which both predicate offenses were covered by § 241(a)(2)(A)(I). In Matter of Soriano, the Attorney General determined that the changes made by § 440(d) should apply to all aliens not having a final grant of § 212(c). The effect of Matter of Soriano was to render all aliens in proceedings ineligible for relief under § 212(c).

Moratorium on Deportation

The proposed regulation makes necessary that the INS place a moratorium on the deportation of a certain class of criminal aliens. At this time, the regulation is only a proposed regulation. For the next few months, the Department of Justice will accept and consider comments from the public on the regulation. These comments sometimes lead to a modification of the proposed regulation prior to its final form. All Detention and Deportation personnel will receive further instructions when the regulation is published in its final form. Until that time, the aliens currently described in the regulation are **not to be deported**. The field will receive written notice when the moratorium is lifted.

Class of Aliens Affected

The class of aliens affected by this regulation is limited. Not all aliens who were denied § 212(c) relief under the Attorney General's opinion in Matter of Soriano will be eligible for relief under this regulation. Aliens who fit the following characteristics fall under the regulation and are covered by the moratorium:

1. Aliens who were in deportation proceedings that commenced before April 24, 1996; and
2. Were eligible for a hearing on a § 212(c) waiver while before the Immigration Judge regardless of whether they applied for a waiver; or were denied a § 212(c) waiver because of the Attorney General's decision in Matter of Soriano; and
3. Are presently eligible for a § 212(c) hearing under the statute as it existed prior to AEDPA;
4. Who have not been physically deported since their final order became final.

Detention and Deportation personnel are instructed to examine carefully the orders from the immigration judge and the BIA in each alien's file. The documents in the file should be carefully examined to determine if the alien is covered by the moratorium. After the examination of the file, any questions regarding whether an alien is covered by the moratorium should be referred to the district counsel's office.