



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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June 25, 1998

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Judicial Law Clerks
All Court Personnel

FROM: Office of the Chief Immigration Judge

SUBJECT: Operating Policy and Procedures Memorandum 98-3, Regulations Implementing Motions to Reopen for Suspension of Deportation/Cancellation of Removal under NACARA and other NACARA cases (Replaces my June 10, 1998, memorandum entitled "Regulations Implementing Motions to Reopen for Suspension of Deportation/Cancellation of Removal under NACARA")

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This OPPM replaces my June 10, 1998, memorandum entitled "Regulations Implementing Motions to Reopen for Suspension of Deportation/Cancellation of Removal under NACARA." In addition, it addresses several issues concerning the handling of NACARA cases. Attached to this OPPM is the Uniform Docketing System Manual Supplement. This supplement replaces the one issued on June 10, 1998.

Introduction

On January 21, 1998, a notice was published in the Federal Register concerning motions to Reopen under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). This notice informed the public that the statutory, 240-day period to file such a motion to reopen lasts from January 16, 1998, until September 11, 1998. In addition, the notice provided that an alien must file an application form (Form EOIR-40) with the motion, unless an application had previously been filed. The Department will be promulgating a separate proposed rule in the near future which will address applications for suspension of deportation and cancellation of removal under section 203 of NACARA. However, until an interim or final rule is issued and the new application forms are available, persons applying for suspension of deportation or special rule cancellation of removal under section 203 of NACARA must submit their applications on Form EMIR-40.

Attached is an interim regulation which is expected to be published in the Federal Register on June 11, 1998. The interim regulation, which will become 8 C.F.R. § 3.43, will be effective upon publication and makes some significant changes to the regular motion to reopen requirements for motions to reopen under section 203 of NACARA. These changes are described in the following paragraphs.

A. **"Bifurcated" motion procedure.**

The regulation sets forth a two-step process whereby an alien may file an "abbreviated" motion to reopen under section 203 of NACARA on or before September 11, 1998, and then complete the motion by submitting the EOIR-40 (until the new Application for Suspension of Deportation or Special Rule Cancellation of Removal form, Form 1-881, is available), and supporting documents on or before February 8, 1999. See 8 C.F.R. § 3.43(c).

B. Interpretation of the phrase "has become eligible" by NACARA.

Section 203(c) of NACARA states "any alien who has become eligible" for suspension/cancellation as a result of the amendments made by section 203 of NACARA may file one motion to reopen without regard to the general statutory limitations on motions to reopen. The regulation interprets the phrase "has become eligible" by NACARA and provides that an alien filing a motion to reopen under section 203 of NACARA must establish prima facie eligibility for relief. See 8 C.F.R. § 3.43(b)(1).

Administrative Closure of ABC Cases Following Reopening.

The supplementary information to the interim regulation states that American Baptist Churches v. Thombure-h- (ABC) class members may request that their case be administratively closed if the motion to reopen is granted to allow them to apply for suspension/cancellation with the INS Asylum Office;

D. Sole Jurisdiction Over NACARA Motions to Reopen with the Immigration Court.

The regulation provides that all motions to reopen filed under section 203 of NACARA must be filed with the Immigration Court, even if the Board of Immigration Appeals issued the final order. See 8 C.F.R. § 3.43(e)(1).

E. Unique Filing Procedures.

For motions to reopen under section 203 of NACARA, the usual geographical requirements for filing motions to reopen will not apply.

II. Two-Step Filing Process

The most significant change in the motion to reopen procedures is the bifurcated process which allows applicants to file an abbreviated motion **before the September 11, 1998, deadline** and then "complete" the filing by submitting the application form and supporting documents on or before February 8, 1999. The Immigration and Naturalization Service (INS) will have 45 days from the service of the completed motion to reopen to respond. **It is important to note that an alien is not required to file an abbreviated motion, but may submit a complete motion to reopen with the application form and supporting documentation on or before September 11, 1998.**

A. Filing an Abbreviated Motion to Reopen

Once an alien files an abbreviated motion to reopen pursuant to 8 C.F.R. § 3.43(c)(1), the provisions of 8 C.F.R. § 3.43 will apply to the adjudication of the motion. The abbreviated motion to reopen should contain a statement which alleges: 1) prima facie eligibility for suspension/cancellation under section 203 of NACARA; 2) that he or she was or would be statutorily ineligible for suspension or cancellation based on the "stop-time rule" (section 309(c)(5) of the Illegal Immigration and Immigrant Responsibility Act of 1996, as in effect prior to November 19, 1997); 3) that he or she has not been convicted of an aggravated felony; and 4) that he or she is a "NACARA beneficiary." See 8 C.F.R. § 3.43(c)(1). There is no fee required for this motion. See 8 C.F.R. § 3.43(d). The motion to reopen must contain a certificate of service on the INS District Counsel's Office and must have an A-number. See also part III, B, 1 of this memorandum.

B. Completing an Abbreviated Motion to Reopen

An abbreviated motion to reopen under section 203 of NACARA will not be adjudicated until the alien has had an opportunity to supplement the abbreviated motion to reopen by submitting the NACARA application form and supporting documentation on or before February 8, 1999. If the alien fails to submit the NACARA application and/or documentation to complete the motion on or before February 8, 1999, the motion must be denied as abandoned. See 8 C.F.R. § 3.43(c)(2).

C. Adjudicating an Abbreviated Motion to Reopen

If the alien supplements the abbreviated motion to reopen with the required form and documentation on or before February 8, 1999, the motion to reopen is complete. The INS has 45 days thereafter to respond. The motion to reopen cannot be adjudicated until the 45-day period has elapsed or the INS files a response, whichever is first. In order for the motion to reopen to be granted, an Immigration Judge must be satisfied that the alien meets the requirements set forth in 8 C.F.R. § 3.43(b).

D. Adjudicating an Unabbreviated Motion to Reopen

If an alien files a complete, unabbreviated motion to reopen on or before the September 1, 1998, deadline, the Immigration Court may adjudicate the motion to reopen before February 8, 1999, after affording the INS its 45-day period to respond.

M. Procedures for Handling NACARA Motions to Reopen in the Immigration Court

A. Establishing NACARA Motion to Reopen Points of Contact.

1. Liaison Immigration Judge Responsibility.

In those circumstances in which Court staff cannot determine whether a motion to reopen filed with the Court shall be considered a motion to reopen under section 203 of NACARA, the Liaison Judge in every Court shall be responsible for making the final determination. The Liaison Judge may delegate this responsibility to a Judicial Law Clerk.

2. Court Administrator Responsibility.

The Court Administrator shall designate a contact in each Court under his or her supervision who will be responsible for conducting searches for records of proceedings (ROPS) and for transferring ROPs to the proper Court. This individual will be referred to in this memorandum as the "NACARA MTR contact." The searches may entail looking up Court records, contacting the Board of Immigration Appeals (BIA) and the INS District Counsel's Office and ensuring that NACARA motions to reopen are processed and sent to the proper Court. In addition, the NACARA MTR contact is responsible for completing search requests which may come from other Immigration Courts. This designation must occur within seven days of the issuance of this memorandum and must be reported by E-mail to your ACIJ and to Michael Straus.

3. Board of Immigration Appeals Contact.

Any inquiries directed to the BIA should be addressed to April Verner by E-mail or telephone (703) 605-1007.

4. INS Contact.

Any inquiries regarding NACARA motions to reopen should be directed to a contact in the INS District Counsel's Office who is assigned to handle NACARA motions to reopen inquiries from the Immigration Court. This person will be responsible for attempting to locate the record of proceedings by searching INS records.

B. Processing NACARA Motions to Reopen in the Immigration Court

1. Identification of a NACARA Motion to Reopen

Motions to reopen under section 203 of NACARA must be handled differently from other motions to reopen filed with the Immigration Court, thus, the identification of NACARA motions to reopen is a critical step. In the supplementary information to the interim regulation, aliens are instructed to place the notation "**Special NACARA Motion**" on the front page of the motion and on any envelope containing a motion to reopen filed under section 203 of NACARA. Any motion submitted to the Court which is marked with the notation "**Special NACARA Motion**" must be handled under these special procedures.

It is possible that some motions to reopen, particularly those filed by pro se aliens, may not have the appropriate notation. As the Courts receive motions to reopen, each one should be carefully examined to determine whether it should be treated as a NACARA motion. Factors in making this determination are as follows:

Guatemalan, Salvadoran, or Eastern European nationality. Only nationals of those countries may file a motion to reopen under section 203 of NACARA.

Absence of a fee. NACARA motions to reopen do not require a fee.

References in the motion to a "special motion," to the September 11, 1998, deadline, or to "NACARA."

If there is a possibility that the motion can be construed as a section 203 NACARA motion to reopen, it should be handled as such. Questionable cases may be referred to the Liaison Judge or his or her designee. If it is decided that the motion is not filed under section 203 of NACARA, the motion should be handled under the regular procedures for motions to reopen set forth at 8 C.F.R. § 3.23.

Once a determination is made that the motion to reopen is a special NACARA motion under 8 C.F.R. § 3.43(c)(1), the motion must be stamped and noted as follows: "**Motion to Reopen Under Section 203 of NACARA.**" Court Administrators should purchase such a rubber stamp locally, using the EMIR charge card. Then, the Court employee must determine whether a record exists in the ANSIR system.

A motion to reopen which has been identified as a special NACARA motion to reopen can be rejected only if it lacks an A-number or a certificate of service on the INS District Counsel's Office. These motions to reopen **shall not be rejected** on jurisdictional grounds, i.e., the BIA issued a final order, a different Immigration Court issued a final order, or for lack of fee.

2. Cases in Which the BIA Issued a Final Order.

Under 8 C.F.R. § 3.43(e)(1), all motions to reopen under section 203 of NACARA must be filed with the Immigration Court, even if the BIA issued a final order, and, would normally have jurisdiction over any other motion to reopen.

3. Cases that Can be Located in the ANSIR System

If a record exists in the ANSIR system, the legal technician must determine which Immigration Court has jurisdiction over the case. The procedure for legal technicians to follow is set forth in the attached Uniform Docketing System Manual Supplement Processing NACARA Motions.

4. Cases Which are Not in the ANSIR System

It is anticipated that a number of motions to reopen will be submitted by aliens who have final orders of deportation which were issued before the ANSIR system was fully implemented. These motions will require various searches to determine which Court has jurisdiction and to locate the ROP. The attached Uniform Docketing System Manual Supplement --Processing NACARA Motions describes the procedures to search for the ROP.

5. Cases Which are not Located After the Required Searches Should be Returned to the Alien

If the Immigration Court is unable to determine if any Court has jurisdiction over the motion to reopen or to locate an ROP in order to verify whether there is a final order of deportation, the Court must reject the motion for lack of jurisdiction and return the motion to the alien. The rejection notice must inform the alien that he or she may resubmit the motion to reopen along with additional documentation indicating where he or she has previously been in deportation proceedings. The alien may resubmit the motion with the required documents to the Immigration Court. The Immigration Court shall consider a resubmitted motion as timely **filed** as long as the alien submits evidence that the motion was originally filed on or before September 11, 1998, with the Immigration Court.

C. Adjudication of a NACARA Motion to Reopen

1. Referral to an Immigration Judge

The ANSIR system will contain a call-up code that will inform the Court whether the alien submitted the required documentation to supplement the abbreviated motion on or before February 8, 1999. If the alien does not supplement the abbreviated motion, the ROP should be referred to an

Immigration Judge to issue an order denying the motion as abandoned. See 8 C.F.R. § 3.43(c)(2). If a completed NACARA motion has been filed or properly supplemented, the ANSIR system will establish a call-up system that will inform the Court whether the INS has filed its response within the 45-day time period. It is anticipated that the ANSIR system will prepare a report to ensure timely adjudication of motions to reopen filed under section 203 of NACARA.

2. Immigration Judge Decision

An Immigration Judge will adjudicate a motion to reopen under section 203 of NACARA pursuant to 8 C.F.R. § 3.43(b). If the motion to reopen is granted, the case should be calendared for a hearing on the merits of the application for NACARA suspension/cancellation.

In the supplementary information to the interim rule, it is noted that ABC class members who have filed asylum applications with an INS Asylum Office before the requisite dates have the option of applying for suspension of deportation with an asylum **officer**. An ABC class member may, in their motion to reopen, request administrative closure of his or her case. If the Immigration Judge reopens the case, he or she should then administratively close the case without calendaring it, so long as the INS indicates in its response that it does not oppose administrative closure. The Immigration Judge may also administratively close an ABC class member's case at a hearing with the consent of the INS.

IV. Interim Data Entry Procedure for NACARA Applicants (EOIR-40)

A. Filing NACARA applications before the Immigration Court

Anyone who is eligible for suspension of deportation or special rule cancellation of removal under section 203 of NACARA, regardless of the type of proceedings (deportation or removal), must submit their application on an **EOIR-40** until an interim or final rule relating to suspension of deportation and special rule cancellation of removal under the provisions of NACARA is issued and the new application form (Form I-881) is available.

B. Tracking NACARA applications before the Immigration Court

1. Data Entry of the Form EOIR-40.

The application portion of the ANSIR record does not contain a specific block to allow for filing a suspension application (Form EOIR-40) in removal proceedings. However, until the Form I-881 is available, NACARA eligible aliens in removal proceedings will file Form EOIR-40.

In order to track these applications until the new Form I-881 procedures are finalized, EOIR-40s filed by NACARA eligible aliens in removal proceedings should be data entered as "SUSP" under the "other application" field. ANSIR will be modified to accept the Form I-881 once the new form is available.

2. Case Identifier Codes and Definitions

NACARA cases will be identified in ANSIR by using one of the following two letter case identifier codes:

CA - Nicaraguan/Cuban Adjustment Cases:

Used only for Nicaraguan/Cuban Adjustment Cases adjudicated under section 202 of NACARA.

CN - BIA Remanded Nicaraguan/Cuban Adjustment Cases:

Used only for Nicaraguan/Cuban Adjustment cases under section 202 of NACARA remanded by BIA.

SC - Suspension of Deportation/Special Rule Cancellation of Removal Cases:

Used only for Suspension of Deportation/Special Rule Cancellation of Removal cases adjudicated under section 203 of NACARA.

ND - Dependents of NACARA- A Suspension of Deportation/Special Rule Cancellation of Removal Cases.

Used for dependents of NACARA Suspension of Deportation/Special Rule Cancellation of Removal cases under section 203 of NACARA.

NOTE: These codes will be used to track the various NACARA case types throughout the case processing. Do not change the initial NACARA case identifier code.

C. Procedure For Immigration Judges' Completion of NACARA Suspension of Deportation/Special Rule Cancellation of Removal Case.

The immigration judge must do the following after entering his or her decision on a Suspension of Deportation/Special Rule Cancellation of Removal case under section 203 of NACARA.

1. In Deportation Cases

Note granted decisions as "G 203" or denied as "D 203" in the decision **field** of the Suspension Application field on the IJ Worksheet.

2. In Removal Cases

Note granted decisions as "G 203" or **denied as** "D 203" in the decision field of the "other application" field on the IJ Worksheet.

D. Data Entry Procedures for Completed NACARA Cases

ANSIR will be modified to include a "pop-up" screen at the time the Suspension of Deportation/Special Rule Cancellation of Removal completion is entered on a Case. This "pop-up" screen will ask the data entry clerk if the case was adjudicated under Section 203 of NACARA. It will require either a Y (yes) or N (no) answer. This information can be found on the IJ Worksheet. (See Section **C.1** and **C.2** in this memorandum.)

E Questions

If there are any questions regarding this matter, please contact my counsel, Michael Straus at (703) 305-1716.

Michael J. Creppy
Chief Immigration Judge

**U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF IMMIGRATION JUDGE**



UNIFORM DOCKETING SYSTEM MANUAL SUPPLEMENT
PROCESSING NACARA MOTIONS AND OTHER NACARA MATTERS

(REVISED JUNE 25, 1998)

SECTION I

A. Introduction

On January 21, 1998, a notice was published in the Federal Register concerning motions to reopen under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). This notice informed the public that the statutory 240-day period to file such a motion to reopen lasts from January 16, 1998, until September 11, 1998. In addition, the notice provided that the alien must file the application form (Form EOIR-40) with the motion, unless an application had previously been filed.

An interim regulation, which creates 8 C.F.R. § 3.43, will be effective upon publication. This regulation makes some significant changes to the regular motion to reopen requirements for motions to reopen under section 203 of NACARA.

B. Important NACARA MTR Filing Differences and Definitions:

1. No Filing Fee Required

2. Administrative Control Filing Rule Modified. Administrative control requirements for filing motions to reopen will not apply. MTRs filed in the wrong court will be forwarded to the immigration court having administrative control.

3. Immigration Court has Sole Jurisdiction Over NACARA Motions to Reopen. This new regulation provides that **all NACARA MTRs** must be filed with the Immigration Court, even if the Board of Immigration Appeals issued the final order. The BIA will remand the case back to

the immigration court having administrative control when notified of the NACARA MTR filing.

C. Definition of Terms

- 1. "Abbreviated Motions"** contain minimal information which basically notifies the immigration court and the INS that the alien feels they are eligible for relief under the NACARA regulations and that they intend to "complete" the motion filing at a later date. Abbreviated MTRs **must be filed on or before September 11, 1998.**

- 2. "Completed Motions"** refer to the alien's filing the supplemental information to the abbreviated motion, i.e.; an EOIR-40 or the new INS Application for Suspension of Deportation or (Special Rule Cancellation of Removal Form I-881 when available) and other supporting documents. The alien must complete their filing **on or before February. 8, 1999.**

NOTE: An alien can file a "completed" motion at any time on or before the February 8, 1999 deadline and is NOT required to file under the two-step procedure mentioned in C. 1. and C.2. of this Section.

SECTION II

A. Identifying a NACARA Motion to Reopen

If the motion to reopen:

1. has been notated with the phrase "**Special** NACARA Motion" on the envelope/ cover; or contains any reference to a "**special motion**", to **NACARA**, or to the September 11, 1998 filing **deadline**; and
2. does not have a fee receipt or request for fee waiver attached; and
4. involves a national from Guatemala, El Salvador, or Eastern Europe (Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the **former** Yugoslavia.), then it is most likely a NACARA motion to reopen and should be processed as outlined below.

Remember, however, that pro se aliens may not have clearly identified their motion. Questions on determining a NACARA motion should be addressed to your liaison judge or his/her designee. If the motion is determined not to be NACARA eligible, process it under the regular Uniform Docketing System procedures.

B. Rejecting a NACARA Motion to Reopen

1. For **improper filing** only when it does not include either an A-number or Certificate of Service on the INS.
2. For **Unidentified Administrative Control** only after a thorough search of automated (ANSIR), manual (docket cards), BIA and INS case records. See Section II.D. for more detail.

C. Labeling a NACARA Motion to Reopen

Once a NACARA motion has been identified it should be labeled with the phrase "**Motion to Reopen Under section 203 of NACARA.**" The Office of the Chief Immigration Judge will distribute a rubber stamp containing this phrase.

D. Determining Administrative Control/Jurisdiction

1. Check the ANSIR System's Central Site to determine if your **court** has administrative control over the motion's Record of Proceeding (ROP). If you do, retrieve the ROP from either your local files or request it from your Federal Record Center.
2. If another **immigration court** has administrative control, forward the NACARA Motion to Reopen to that court (cc: INS) using the standard transmittal letter in this manual. You must also notify the filing party that the motion has been forwarded to the appropriate immigration court. Include the court's address and phone number in your letter.. A standard letter has been included

in this manual.

NOTE: Only NACARA Motions to Reopen should be forwarded. Other motions that are not within your court's jurisdiction should be return to the filing party.

3. NACARA regulations established sole jurisdiction over NACARA Motions to Reopen with the immigration court. If the **BIA** currently has jurisdiction, Email April Verner or contact her at 703-605-1007. The Board will remand the case back to your court for further processing.
4. A search must be conducted if **no ANSIR record is found**. Since EOIR was created in 1983 and ANSIR implemented in stages starting in 1984, many older cases are either recorded on docket cards or contained within the [NS Administrative file. BIA is another source of information.
 - a. Any inquiries directed to the Board of Immigration Appeals should be addressed to April Verner by Email or telephone at (703) 605-1007.
 - b. INS will assign a person to handle NACARA motion to reopen inquiries. This person will be responsible for attempting to locate the ROP by searching the INS records.

Follow the procedures listed in Section II.D. of this manual once administrative control is established.

SECTION III

A. Processing Abbreviated Motions.

1. If **your court** has administrative control, create an ANSIR motion to reopen record. Retrieve the ROP from your files or request the ROP from your Federal Record Center. File the motion in the ROP. When the ANSIR System retrieves the case record enter the call-up code and the date February 8, 1999.
2. Enter "NACARA MTR sent to (court three digit code) on (date)" in the Remarks Screen in Central Site if **another court** has administrative control. The receiving court must enter the NACARA Motion and call-up information when received.
3. If **no ANSIR record was found** on Central Site, enter the motion information into the ANSIR System and conduct a search **as** mentioned in Section 3 of this manual.

SECTION IV

ENTERING NACARA CASES INTO THE ANSIR SYSTEM

A. Case Identifier Codes and Definitions

SECTION IV

ENTERING NACARA CASES INTO THE ANSIR SYSTEM (continued)

- B. Processing Abbreviated MTRs with No Record Found in the ANSIR System.** (continued)
- 2. Deleting the "Skeleton" ANSIR Case Record**

SECTION IV

ENTERING NACARA CASES INTO THE ANSIR SYSTEM (continued)

E. IJ's instructions to the Support Staff upon Completion NACARA Suspension of Deportation/Special Rule Cancellation of Removal Cases

The immigration judge must do the following after entering his or her decision on a Suspension of Deportation/Special Rule Cancellation of Removal under section 203 of NACARA:

1. In Deportation Cases

Note granted decisions as "G 203" or denied decisions as "D 203" in the decision field of the Suspension of Deportation Application field on the **IJ** Worksheet.

2. In Removal Cases

Note granted decisions as "G 203" or denied decisions as "D 203" in the decision field of the "other application" field on the IJ Worksheet.

F. Data Entry-Procedures for Completed NACARA Cases

The ANSIR System will be modified to include a "pop-up" screen at the time the Suspension of Deportation/Cancellation of Removal completion is entered on a Case. This "pop-up" screen will ask the data entry clerk if the case was adjudicated under section 203 of NACARA? It will require either a Y (yes) or N (no) answer. This information can be found on the IJ Worksheet. (see **Section IV.E.1.** and **E.2.** in this memorandum.)

G. Questions

Please call the Central Operations Unit at 703-305-1558, or Email its staff members, if you have any questions regarding this Manual.

STANDARD TRANSMITTAL LETTERS

**U.S. DEPARTMENT OF JUSTICE
IMMIGRATION COURT
(ADDRESS)**

We have received your motion to reopen under the Nicaraguan Adjustment and Central American Relief Act (NACARA). We have searched all automated and manual records and cannot identify an Immigration Court having administrative control over your case. Please resubmit your motion to reopen with any of the following additional information:

The city where your last hearing was held and approximate date

A copy of a hearing notice

A copy of an Immigration Judge Order

Please include a copy of this letter when you resubmit your motion to reopen-with the additional information.

**U.S. DEPARTMENT OF JUSTICE
IMMIGRATION COURT
(ADDRESS)**

We have received your motion to reopen under the Nicaraguan Adjustment and Central American Relief Act (NACARA) regulations. This court does not have administrative control over the motion to reopen, but is forwarding it to:

**IMMIGRATION COURT
(ADDRESS)**

If you have any questions regarding your **case**, you may call: *(the telephone number for the court where the motion has been forwarded)* **or** 1-800-898-7180.