



Chief Immigration Judge

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April 14, 1999

MEMORANDUM

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

FROM: The Office of the Chief Immigration Judge

SUBJECT: OPPM 99-2: Procedures on Handling Applications for Suspension/Cancellation Once Numbers are no Longer Available for Fiscal Year 1999

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I. Introduction

Under an interim regulation issued on September 30, 1998, (63 Fed. Reg. 52,134 (Sept. 30, 1998)), the Department of Justice eliminated the conditional grant process to implement the annual cap on grants of applications for suspension of deportation under the former section 244(a) of the Immigration and Nationality Act (INA) and cancellation of removal for nonpermanent residents pursuant to section 240A(b) of the INA (herein referred to as “cancellation”). See section 240A(e) of the INA. The regulation created a process in which the Immigration Court and the Board of Immigration Appeals (BIA) can decide suspension of deportation or cancellation of removal cases as long as numbers are available. Once numbers are no longer available in a fiscal year, Immigration Judges must, with some regulatory exceptions, reserve the decision in all suspension of deportation or cancellation of removal cases which are subject to the cap. See 8 C.F.R. § 240.21(c).

II. Implementation of the Suspension/Cancellation Cap in Fiscal Year 1999

A. Reserving Decision

When 3,800 suspension or cancellation cases have been granted in fiscal year 1999, the Office of the Chief Immigration Judge will notify the Immigration Courts. The date of this notification will be referred to as the “cut-off” date. As of the “cut-off” date, Immigration Judges must reserve their decision in any suspension/cancellation case which is subject to the cap. The exceptions to this procedure are applications which can be pretermitted based on lack of statutory eligibility pursuant to 8 C.F.R. § 240.21(c)(1) or which can be denied in the exercise of discretion pursuant to 8 C.F.R. § 240.21(c)(2) because the alien will be granted asylum or adjustment of status.

B. Allocating the Remaining Fiscal Year 1999 Numbers

Of the remaining fiscal year 1999 numbers, 90% will be allocated to the Immigration Court; the remainder will be allocated to the BIA. This is the approximate ratio in which the Immigration Courts and the BIA granted suspension and cancellation applications after October 1, 1998. After the “cut-off” date, the Office of the Chief Immigration Judge will allocate the remaining numbers based on the following order of priority:

Priority 1--Grants issued by Immigration Judges before the “cut-off” date that were not properly entered into the ANSIR system as suspension/cancellation grants but are subject to the cap; and

Priority 2--Reserved decisions that occurred on or after the “cut-off” date. In this case, numbers will be issued based on the date and the time that the Immigration Judge reserved decision.

III. Handling Suspension/Cancellation Cases After the “Cut-Off” Date

A. Immigration Judge Role

1. Which Cases Must Be Reserved

The regulations, at 8 C.F.R. § 240.21(c)(1), provide that when the cap is reached in a fiscal year, any further decisions whether to grant or deny must be reserved until a number becomes available in a subsequent fiscal year. As of the “cut-off” date, Immigration Judges must reserve the decision on any suspension/cancellation case, unless:

- a. The application can be pretermitted based on lack of statutory eligibility pursuant to 8 C.F.R. § 240.21(c)(1);
- b. The application is denied in the exercise of discretion pursuant to 8 C.F.R. § 240.21(c)(2) because the alien will be granted asylum or adjustment of status; or
- c. The alien is not subject to the annual cap under section 240A(e)(3) of the INA.

2. Reserving Decision

After the evidentiary record is closed, the Immigration Judge, outside the presence of the parties, must render a draft decision which is either dictated or written. The evidentiary record is not considered to be closed unless the Immigration Judge is prepared to issue a decision.

a. Concurrent Applications for Relief

If there is a concurrent pending application for any form of relief other than suspension/cancellation, the Immigration Judge must include these application(s) as part of his or her reserved decision. If the Immigration Judge would deny a concurrent application for relief, but for the requirement to reserve decision, new adjournment code “29” (concurrent application) must be entered. If the Immigration Judge grants an alien’s application for asylum or adjustment of status, an application for suspension or cancellation must be denied as a matter of discretion. See 8 C.F.R. § 240.21(c)(2)

b. Note the Date and Time When the Record Was Closed

When the Immigration Judge closes the record and reserves decision, he or she shall note that date and time on the Immigration Judge worksheet. The Immigration Judge shall not reveal to the parties, either on the record or off, whether he or she is contemplating a grant or denial of the

application(s). A copy of the worksheet will be sent to the Office of the Chief Immigration Judge, attention Cynthia Crosby.

c. Rendering a Draft Decision

The Immigration Judge must immediately dictate a draft oral decision or render a draft written decision outside the presence of the parties. It is very important for the Immigration Judge to issue a decision immediately after the record is closed. A failure to promptly render a draft decision may cause the alien to miss an opportunity to have his or her case granted later on in fiscal year 1999 or at the beginning of fiscal year 2000.

(1) Dictate a Draft Decision Outside the Presence of the Parties

The draft decision must be rendered on a separate tape or tapes. If it is not possible to dictate a draft decision immediately upon the closing of the record, the Immigration Judge must complete the draft decision within 5 working days after closing of the record.

Once the Immigration Judge has completed the draft oral decision, he or she must mark "draft decision" and the A-number on the tape(s) and then place the tape(s) in a separate green envelope for transmittal to the Office of the Chief Immigration Judge for transcription purposes.

(2) Render a Draft Written Decision

In the interest of promptly completing the decision, Immigration Judges are encouraged to dictate a decision. If, however, an Immigration Judge decides to render a written decision, notwithstanding, OPPM 93-1, the written decision must be completed within 10 working days after closing of the record. The draft written decision shall then be put in a green envelope marked "Draft Decision" and placed on the left-hand side of the Record of Proceeding. The envelope must be inscribed with the alien's A-number.

A copy of the draft decision will be faxed to the Office of the Chief Immigration Judge, attention Cynthia Crosby, to ensure that the alien is in a position to receive an available number.

3. Rendering a Final Decision

Once the Immigration Judge receives the transcript of the draft oral decision or has completed a draft written decision,

It is anticipated that on or after June 1, 1999, the Office of the Chief Immigration Judge will notify Immigration Courts to issue decisions specified in accordance with Priority 2. On the date of that notification, Immigration Judges should issue as final the previously rendered draft decision. The Office of Chief Immigration Judge will notify the Immigration Courts in advance as to when these notifications will be made.

4. Scheduling Suspension/Cancellation Hearings

As stated in previous memoranda, suspension of deportation or cancellation of removal cases shall not be rescheduled to an earlier date for the purpose of permitting an alien to have his or her case heard at a time when numbers may be available under the cap. Cases can be rescheduled for an earlier date if there exists a legitimate docket management situation.

B. Court Administrator Role

1. Review Off-Calendar Reports Immediately After the "Cut-Off" Date

Court Administrators are responsible for determining whether there are any grants or denials of suspension/cancellation issued before the "cut-off" date which have not been entered into the ANSIR system (Priority 1 cases). The Court Administrator must obtain an off-calendar report and review the report to find those suspension/cancellation cases which were granted by the Immigration Judge before the "cut-off" date, but have not been entered into ANSIR. The Court Administrator must then obtain a copy of the Immigration Judge's decision and fax it to the Office of Chief Immigration Judge, attention Cynthia Crosby, at (703)305-0948, no later than 21 days following the "cut-off" date. The Office of the Chief Immigration Judge will ensure that the necessary ANSIR data is entered.

2. Remaining Fiscal Year 1999 Decisions

The Office of the Chief Immigration Judge will allow for the remaining numbers to be allocated on the basis of the date and time in which the Immigration Judge reserved the decision (Priority 2 cases). If the Office of the Chief Immigration Judge notifies the Court Administrator that a number is available in fiscal year 1999, the Court Administrator must immediately contact the Immigration Judge and inform the Judge that a decision must be signed by close of business on the date of notification. The Office of Chief Immigration Judge will notify the Immigration Courts in advance as to when these notifications will be made.

The Court Administrator must notify Cynthia Crosby in the Office of the Chief Immigration Judge that the decision went out so that the Office of the Chief Immigration Judge may update ANSIR

3. Processing Reserved Suspension/Cancellation Decisions

a. Entering Reserved Suspension/Cancellation Cases in ANSIR

Once the “cut-off” date has been reached, Immigration Court personnel will be unable to enter an outright grant in the ANSIR system, unless the alien is exempt from the cap. In other words, the ANSIR data entry code of “F” (suspension of deportation or cancellation of removal grant which is subject to the cap) can no longer be entered. The “G” data entry code (suspension of deportation or cancellation of removal grant which is not subject to the cap) may continue to be entered.

If an Immigration Judge reserves a suspension/cancellation case pursuant to these instructions, the application decision code shall be a “R”, for reserved decision. If the Immigration Judge would deny a concurrent application for relief (such as asylum), new adjournment code “29” (concurrent application) must be entered.

When the Immigration Judge closes the record and reserves decision, he or she is responsible for noting the date and time that the decision was reserved on the Immigration Judge Worksheet. Following the hearing, the support staff must ensure that the correct A-number and the date and time which the decision was reserved is on the worksheet, copy the worksheet and fax it to the attention of Cynthia Crosby in the Office of the Chief Immigration Judge at (703) 305-0948.

b. Handling a Dictated Decision

It is contemplated that most Immigration Judges will dictate a draft decision immediately following the closing of the record. Immigration Judges are required, outside the presence of the parties, to dictate a decision within 5 working days after the hearing.

The Immigration Judge should mark “draft decision” and the A-number on the tape(s) containing the dictated decision and then place the tape(s) in a separate green tape envelope. The Immigration Judge is required to forward the tape(s) to the Court Administrator or staff designated by the Court Administrator.

The Court Administrator is responsible for ensuring that the Immigration Court has an adequate supply of the green envelopes. When the Court Administrator or his or her designee receives the green tape envelope from the Immigration Judge, he or she must verify that the tape has the correct A-number and is marked “draft decision.” In no case, since it is not final, shall the dictated draft decision be released to the parties or to the public.

c. Forwarding of the Dictated Decision for Transcription

The Court Administrator must establish a tracking system for these decisions. The Court Administrator or his or her designee is responsible for forwarding the tape(s) containing the draft decision to the Office of the Chief Immigration. The green envelope containing the tape(s) must be mailed to the Office of the Chief Immigration Judge, attention Cynthia Crosby. The Office of the Chief Immigration Judge will, in turn, forward the draft oral decisions to the transcriber. It is estimated that the draft oral decision will be transcribed in 20 working days.

d. Returning Transcribed Decisions to the Immigration Court

The transcriber will send the transcribed decision and a computer diskette of the decision to the Office of the Chief Immigration Judge. The Office of the Chief Immigration Judge will, in turn, forward the decision with the diskette to the Court Administrator. The Court Administrator must ensure that the receipt of these decisions is tracked. Upon receipt of the transcribed decision, the Court Administrator or his or her designee must:

- (1) Mark "Draft Decision" on the green envelope.
- (2) Ensure that the transcribed decision and the diskette is in the green envelope and place the envelope on the left-hand side of the Record of Proceeding.
- (3) Forward the Record of Proceeding to the Immigration Judge who rendered the decision.

e. Handling a Written Decision

Immigration Judges are required to write any draft decision within 10 working days after the hearing. When the Immigration Judge has completed a draft written decision, the draft decision should be put in a green envelope and placed on the left-hand side of the Record of Proceeding. The Immigration Judge must provide a copy of the decision to the Court Administrator or his or her designee. The Court Administrator or his or her designee must immediately fax the decision to Cynthia Crosby in the Office of the Chief Immigration Judge at (703)305-0948.

f. Completing the Reserved Decision

After a suspension/cancellation decision has been reserved, the decision can be reviewed, signed and mailed to the parties on or after October 1, 1999, when fiscal year 2000 begins, unless the Office of the Chief Immigration Judge notifies the Immigration Court that a number is available in fiscal year 1999 (see part III, B, 2 of this OPPM). Starting on or after October 1, 1999, the Immigration Judge may sign and date the decision. The Court Administrator is responsible for mailing the decision to the parties at that time.

The Court Administrator is responsible for ensuring that once the reserved decision has been completed, the Record of Proceeding will be readily available for either the Immigration Judge's review or for the mailing of the decision. Before the decision has been mailed out to the parties, on or after October 1, 1999, the Court Administrator must ensure that the support staff update ANSIR.

If there are any questions regarding this memorandum, please contact my Legal Counsel, Michael Straus, at (703) 305-1247.

Michael J. Creppy
Chief Immigration Judge