

**NO. 97-1784**

**(202) 616-4879**

**ATTORNEYS FOR RESPONDENT**

## **SUMMARY OF THE CASE**

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**Nicaraguan Adjustment and Central American Relief Act: 1996**





## **STATEMENT OF THE ISSUE**

Whether IIRIRA's transitional "stop-time" rule regarding suspension of deportation became effective on the date of its enactment (September 30, 1996), or

## **STATEMENT OF THE CASE**

This is a petition to review a decision of the Board of Immigration Appeals

On July 10, 1997, pursuant to 8 C.F.R. § 3.1(h)(1)(i) (1997), the Attorney General vacated the Board's decision in In re N-J-B-, and directed the Board to refer the case to the Attorney General for review. On July 22, 1997, pursuant to a request by the parties in this case, on July 22, 1997, the Court held briefing in abeyance until the Attorney General had decided In re N-J-B-, or until the Board issued another decision addressing the stop-time issue that had been decided in In re N-J-B-

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September 24, 1984. A.R. 413. She did not depart the United States upon the expiration of her visa, and she has remained in this country unlawfully since that time. Id

accumulated less than seven years' continuous physical presence in the United



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<sup>2</sup> As of April 1, 1997, all aliens charged as being "inadmissible" or "deportable"

no longer accrued, thus eliminating an alien's incentive for delaying his administrative proceedings. This provision has come to be referred to as the "stop-time" rule.

Under the general effective date provisions of IIRIRA §§ 309(a) and 309(c)(1), most of the IIRIRA amendments to the INA do not apply to aliens, such as

date, aliens were notified of the commencement of deportation proceedings by service of an order to show cause and notice of hearing.<sup>3</sup>

In In re N-J-B-

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<sup>3</sup> Former § 242B(a)(1) of the INA, 8 U.S.C. § 1252b(a)(1) (1994), provided the statutory authority and procedures for issuance and filing of an order to show cause commencing a deportation proceeding. This provision was stricken by § 308(b)(6) of IIRIRA and replaced by § 239(a) of the INA, 8 U.S.C. § 1229(a) (Supp. III 1997), entitled "Notice To Appear".

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<sup>4</sup> Section 203(a)(1) of NACARA provides an exception to the stop-time





did not arise in that case. While not addressing that issue, the Board in Nolasco

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Id.  
enacted IIRIRA stop-time rule. Id. Lopes petitioned for review in the Court of  
Appeals for the Third Circuit.

Following a remand requested by the INS, the Board found that it had  
properly applied the stop-time rule prior to April 1, 1997, stating that the amended  
IIRIRA § 309(c)(5) specifically provides that the stop-time rule "shall applye2bk4p-time rule pr

7  
**Id.**

Ms. Osei's case had the question been explicitly raised below. Now that the Board has addressed



date of April 1, 1997, regardless of whether they remained in proceedings "as of" that date.

The need for the amended language is illustrated by the transitional provision at IIRIRA section 309(c)(4), which governs judicial review of final orders of exclusion or deportation entered more than 30 days following the IIRIRA enactment date, i.e.

Like the transitional provision governing judicial review, IIRIRA § 309(c)(5),

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<sup>6</sup> The repealed "as of" language resurfaced in a memorandum prepared by the



The effective date for the new [INA] § 240A is "the first

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<sup>7</sup> The Ninth Circuit recently applied its erroneous Astrero holding in Guadalupe-Cruz, et al. v. INS, 240 F.3d 1209 (9th Cir. March 15, 2001), which





## **CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Eighth Circuit Rule 28A(c), I hereby certify that the Supplemental Brief For Respondent was prepared with WordPerfect software, has a Times New Roman typeface of Font size 14, and contains 640 lines of text.

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May 25, 2001



## **CERTIFICATE OF SERVICE**

I certify that on May 25, 2001, I served two copies of the foregoing Respondent's Supplemental Brief upon counsel for Petitioner by placing them in a mail collection room of the United States Department of Justice for same day delivery to: