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Forms of Relief From Removal

The Executive Office for Immigration Review (EOIR), an agency of the Department of Justice, oversees three components which adjudicate matters involving immigration law matters at both the trial and appellate level. Under the Office of the Chief Immigration Judge, more than 200 Immigration Judges located in 53 Immigration Courts nationwide conduct proceedings and decide individual cases. The agency includes the Board of Immigration Appeals (BIA), which hears appeals of Immigration Judge decisions, and the Office of the Chief Administrative Hearing Officer, which handles employment-related immigration matters.

This fact sheet summarizes the most frequently requested forms of relief that are available to an alien who has been found to be removable. These descriptions are not fully inclusive and do not encompass the many regulatory and court interpretations that determine actual applicability of relief in an individual case. Also, the descriptions that follow are subject to change since Congress may legislate new laws. Accordingly, the following summaries are intended only to assist the public's general understanding of the types of relief from removal, and interested parties should thus refer to controlling law and regulations for a precise and complete understanding of the topics presented.

Discretionary Relief

Once an alien in proceedings is found to be removable, he or she, if eligible, may request one or more types of discretionary relief. This section describes some types of discretionary relief that are available during a hearing; administrative relief and judicial review after a hearing is completed are discussed below. The alien has the burden of proving that he or she is eligible for relief under the law, and usually that he or she deserves such relief as an exercise of discretion.

Voluntary Departure – Voluntary departure is the most common form of relief from removal and may be granted by Immigration Judges, as well as the Department of Homeland Security (DHS), which absorbed the functions of the former Immigration and Naturalization Service. Voluntary departure avoids the stigma of formal removal by allowing an otherwise removable alien to depart the

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United States at his or her own personal expense and return to his or her home country, or another country if the individual can secure an entry there. Immigration Judges will provide aliens information on the availability of this form of relief when taking pleadings. It is important to note that aliens granted voluntary departure must depart within the time specified by the Immigration Judge. Although an Immigration Judge has the discretion to set a shorter deadline, aliens granted voluntary departure prior to the completion of removal proceedings must depart within 120 days, and those granted such relief at the conclusion of removal proceedings must depart within 60 days. In addition, in order to avoid being penalized for choosing to appeal a decision rather than depart, the BIA usually will extend an earlier grant of voluntary departure for 30 days. As with other forms of discretionary relief, certain individuals will be found ineligible for voluntary departure, and those granted voluntary departure who fail to depart are subject to fines and a 10-year period of ineligibility for other forms of relief.

Cancellation of Removal – This form of discretionary relief is available to qualifying lawful permanent residents and qualifying non-permanent residents. For lawful permanent residents, cancellation of removal may be granted if the individual:

- Has been a lawful permanent resident for at least 5 years;
- Has continuously resided in the United States for at least 7 years after having been lawfully admitted; and
- Has not been convicted of an "aggravated felony," a term that is more broadly defined within immigration law than the application of the term "felony" in non-immigration settings.

Cancellation of removal for non-permanent residents may be granted if the alien:

- Has been continuously present for at least 10 years;
- Has been a person of good moral character during that time;
- Has not been convicted of an offense that would make him or her removable; and
- Demonstrates that removal would result in exceptional and extremely unusual hardship to his or her immediate family members (limited to the alien's spouse, parent, or child) who are either U.S. citizens or lawful permanent residents.

It is important to note that different standards are used in determining eligibility for victims of domestic violence.

Asylum – Under section 208(a) of the Immigration and Nationality Act, the Attorney General may, in his discretion, grant asylum to an alien who qualifies as a "refugee." Generally, this requires that the asylum applicant demonstrate an inability to return to his or her home country because of past persecution or a well-founded fear of future persecution based upon his or her race, religion, nationality, membership in a particular social group, or political opinion. However, an alien may be ineligible for asylum under certain circumstances, including having failed to file an asylum application within an alien's first year of arrival in the United States, being convicted of an aggravated felony, or having been found to be a danger to national security. Similar forms of relief are Withholding of Removal and applications under the United Nations Convention Against Torture.

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Adjustment of Status – This form of discretionary relief is available to change an alien's status from a non-immigrant to a lawful permanent resident. Aliens who have been previously admitted into the United States can apply to DHS for adjustment of status, while aliens in removal proceedings apply before an Immigration Judge. Several conditions must be met, including that the alien is admissible for permanent residence and an immigrant visa is immediately available at the time of application. Aliens who qualify for visas allowing an adjustment of status are often petitioned for by a spouse (or another family member) or an employer. Certain individuals, including criminals and aliens who fail to appear for proceedings or fail to depart after a grant of voluntary departure, and those who were ordered removed may be ineligible for adjustment of status.

Administrative and Judicial Relief

Motions to Reopen or Reconsider – An alien may move to reopen or to reconsider a previous decision by filing a timely motion with an Immigration Judge or the BIA. The central purpose of a motion to reopen is to introduce new and additional evidence that is material and that was unavailable at the original hearing. A motion to reconsider seeks a reexamination of the decision based on alleged errors of law and facts. Unless an exception applies, a party may file only one motion to reopen and one motion to reconsider. With a few exceptions, a motion to reopen proceedings must be filed within 90 days of the final removal order, while a motion to reconsider must be filed within 30 days of the date of the final order. The filing of such motions does not suspend the execution of the removal decision unless a stay is ordered by the Immigration Judge, the BIA, DHS, or the alien seeks to reopen an *in absentia* order (a decision made when the alien was absent at the proceeding).

Stay of Removal – A stay of removal prevents DHS from executing an order of removal, deportation, or exclusion. Depending on the situation, a stay of removal may be automatic or discretionary. An alien is entitled to an automatic stay of removal during the time allowed to file an appeal (unless a waiver of the right to appeal is filed), while an appeal is pending before the BIA, or while a case is before the BIA by way of certification. Except in cases involving *in absentia* orders, filing a motion to reopen or reconsider will not stay the execution of any decision made in a case. Similarly, filing a petition for review in Federal court also does not result in an automatic stay of a removal order. Thus, a removal order can proceed unless the alien applies for and is granted a stay of execution as a discretionary form of relief by the BIA, Immigration Judge, DHS, or a Federal court. Such a stay is temporary and is often coupled with a written motion to reopen or reconsider filed with the Immigration Court, the BIA, or an appeal to a Federal Circuit Court.

Administrative Appeal – The BIA is the highest administrative body with the authority to interpret Federal immigration laws. The BIA has jurisdiction to hear appeals from decisions of Immigration Judges and certain decisions of DHS. Either an alien or DHS may appeal a decision from the Immigration Judge. In deciding cases, the BIA can dismiss or sustain the appeal, remand the case to the deciding Immigration Judge, or, in rare cases, refer the case to the Attorney General for a decision. A precedent decision by the BIA is binding on DHS and Immigration Judges throughout the country

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unless the Attorney General modifies or overrules the decision. With respect to the filing deadline, the appeal of an Immigration Judge's decision must be received by 30 calendar days from the date it was issued by the court.

Judicial Review – The Immigration and Nationality Act confers Federal courts jurisdiction over certain decisions appealed from the BIA. However, subsequent laws have substantially restricted judicial review of removal orders. An alien has 30 days from the date of a final removal decision to file a judicial appeal, which is generally filed with the Court of Appeals. The procedures and applicability of judicial review in immigration cases are complex and governed by a number of court decisions and interpretations that, in many circumstances, are not clearly resolved. For an understanding of how judicial review might apply in a specific case, qualified legal counsel should be consulted.

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