

§ 1229a. Removal proceedings

(a) Proceeding.

(1) In general. An **immigration** judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.

(2) Charges. An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 212(a) [8 USCS § 1182(a)] or any applicable ground of deportability under section 237(a) [8 USCS § 1227(a)].

(3) Exclusive procedures. Unless otherwise specified in this Act, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States. Nothing in this section shall affect proceedings conducted pursuant to section 238 [8 USCS § 1228].

(b) Conduct of proceeding.

(1) Authority of **immigration** judge. The **immigration** judge shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. The **immigration** judge may issue subpoenas for the attendance of witnesses and presentation of evidence. The **immigration** judge shall have authority (under regulations prescribed by the Attorney General) to sanction by civil money penalty any action (or inaction) in contempt of the judge's proper exercise of authority under this Act.

(2) Form of proceeding.

(A) In general. The proceeding may take place—

(i) in person,

(ii) where agreed to by the parties, in the absence of the alien,

(iii) through video conference, or

(iv) subject to subparagraph (B), through telephone conference.

(B) Consent required in certain cases. An evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or through video conference.

(3) Presence of alien. If it is impracticable by reason of an alien's mental incompetency for the alien to be present at the proceeding, the Attorney General shall prescribe safeguards to protect the rights and privileges of the alien.

(4) Aliens rights in proceeding. In proceedings under this section, under regulations of the Attorney General—

(A) the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings,

(B) the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government but these rights shall not entitle the alien to examine such national security information as the Government may proffer in opposition to the alien's admission to the United States or to an application by the alien for discretionary relief under this Act, and

(C) a complete record shall be kept of all testimony and evidence produced at the proceeding.

(5) Consequences of failure to appear.

(A) In general. Any alien who, after written notice required under paragraph (1) or (2) of section 239(a) [8 USCS § 1229(a)] has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable (as defined in subsection (e)(2)). The written notice by the Attorney General shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under section 239(a)(1)(F) [8 USCS § 1229(a)(1)(F)].

(B) No notice if failure to provide address information. No written notice shall be required under subparagraph (A) if the alien has failed to provide the address required under section 239(a)(1)(F) [8 USCS § 1229(a)(1)(F)].

(C) Rescission of order. Such an order may be rescinded only—

(i) upon a motion to reopen filed within 180 days after the date of the order of **removal** if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (e)(1)), or

(ii) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 239(a) [8 USCS § 1229(a)] or the alien demonstrates that the alien was in Federal or State custody and the failure to appear was through no fault of the alien.

The filing of the motion to reopen described in clause (i) or (ii) shall stay the **removal** of the alien pending disposition of the motion by the **immigration** judge.

(D) Effect on judicial review. Any petition for review under section 242 [8 USCS § 1252] of an order entered in absentia under this paragraph shall (except in cases described in section 242(b)(5) [8 USCS § 1252(b)(5)]) be confined to (i) the validity of the notice provided to the alien, (ii) the reasons for the alien's not attending the proceeding, and (iii) whether or not the alien is removable.

(E) Additional application to certain aliens in contiguous territory. The preceding provisions of this paragraph shall apply to all aliens placed in proceedings under this section, including any alien who remains in a contiguous foreign territory pursuant to section 235(b)(2)(C) [8 USCS § 1225(b)(2)(C)].

(6) Treatment of frivolous behavior. The Attorney General shall, by regulation—

(A) define in a proceeding before an **immigration** judge or before an appellate administrative body under this title, frivolous behavior for which attorneys may be sanctioned,

(B) specify the circumstances under which an administrative appeal of a decision or ruling will be considered frivolous and will be summarily dismissed, and

(C) impose appropriate sanctions (which may include suspension and disbarment) in the case of frivolous behavior.

Nothing in this paragraph shall be construed as limiting the authority of the Attorney General to take actions with respect to inappropriate behavior.

(7) Limitation on discretionary relief for failure to appear. Any alien against whom a final order of **removal** is entered in absentia under this subsection and who, at the time of the notice described in paragraph (1) or (2) of section 239(a) [8 USCS § 1229(a)], was provided oral notice, either in the alien's native language or in another language the alien understands, of the time and place of the proceedings and of the consequences under this paragraph of failing, other than because of exceptional circumstances (as defined in subsection (e)(1)) to attend a proceeding under this section, shall not be eligible for relief under section 240A, 240B, 245, 248, or 249 [8 USCS § 1229b, 1229c, 1255, 1258, or 1259] for a period of 10 years after the date of the entry of the final order of **removal**.

(c) Decision and burden of proof.

(1) Decision.

(A) In general. At the conclusion of the proceeding the **immigration** judge shall decide whether an alien is removable from the United States. The determination of the **immigration** judge shall be based only on the evidence produced at the hearing.

(B) Certain medical decisions. If a medical officer or civil surgeon or board of medical officers has certified under section 232(b) [8 USCS § 1222(b)] that an alien has a disease, illness, or addiction which would make the alien inadmissible under paragraph (1) of section 212(a) [8 USCS § 1182(a)], the decision of the **immigration** judge shall be based solely upon such certification.

(2) Burden on alien. In the proceeding the alien has the burden of establishing—

(A) if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 212 [8 USCS § 1182]; or

(B) by clear and convincing evidence, that the alien is lawfully present in the United States pursuant to a prior admission.

In meeting the burden of proof under subparagraph (B), the alien shall have access to the alien's visa or other entry document, if any, and any other records and documents, not considered by the Attorney General to be confidential, pertaining to the alien's admission or presence in the United States.

(3) Burden on service in cases of deportable aliens.

(A) In general. In the proceeding the Service has the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable. No decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

(B) Proof of convictions. In any proceeding under this Act, any of the following documents or records (or a certified copy of such an official document or record) shall constitute proof of a criminal conviction:

(i) An official record of judgment and conviction.

(ii) An official record of plea, verdict, and sentence.

(iii) A docket entry from court records that indicates the existence of the conviction.

(iv) Official minutes of a court proceeding or a transcript of a court hearing in which the court takes notice of the existence of the conviction.

(v) An abstract of a record of conviction prepared by the court in which the conviction was entered, or by a State official associated with the State's repository of criminal justice

records, that indicates the charge or section of law violated, the disposition of the case, the existence and date of conviction, and the sentence.

(vi) Any document or record prepared by, or under the direction of, the court in which the conviction was entered that indicates the existence of a conviction.

(vii) Any document or record attesting to the conviction that is maintained by an official of a State or Federal penal institution, which is the basis for that institution's authority to assume custody of the individual named in the record.

(C) Electronic records. In any proceeding under this Act, any record of conviction or abstract that has been submitted by electronic means to the Service from a State or court shall be admissible as evidence to prove a criminal conviction if it is—

(i) certified by a State official associated with the State's repository of criminal justice records as an official record from its repository or by a court official from the court in which the conviction was entered as an official record from its repository, and

(ii) certified in writing by a Service official as having been received electronically from the State's record repository or the court's record repository.

A certification under clause (i) may be by means of a computer-generated signature and statement of authenticity.

(4) Applications for relief from **removal**.

(A) In general. An alien applying for relief or protection from **removal** has the burden of proof to establish that the alien—

(i) satisfies the applicable eligibility requirements; and

(ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion.

(B) Sustaining burden. The applicant must comply with the applicable requirements to submit information or documentation in support of the applicant's application for relief or protection as provided by law or by regulation or in the instructions for the application form. In evaluating the testimony of the applicant or other witness in support of the application, the **immigration** judge will determine whether or not the testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant has satisfied the applicant's burden of proof. In determining whether the applicant has met such burden, the **immigration** judge shall weigh the credible testimony along with other evidence of record. Where the **immigration** judge determines that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be

provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence.

(C) Credibility determination. Considering the totality of the circumstances, and all relevant factors, the **immigration** judge may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(5) Notice. If the **immigration** judge decides that the alien is removable and orders the alien to be removed, the judge shall inform the alien of the right to appeal that decision and of the consequences for failure to depart under the order of **removal**, including civil and criminal penalties.

(6) Motions to reconsider.

(A) In general. The alien may file one motion to reconsider a decision that the alien is removable from the United States.

(B) Deadline. The motion must be filed within 30 days of the date of entry of a final administrative order of **removal**.

(C) Contents. The motion shall specify the errors of law or fact in the previous order and shall be supported by pertinent authority.

(7) Motions to reopen.

(A) In general. An alien may file one motion to reopen proceedings under this section, except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv).

(B) Contents. The motion to reopen shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material.

(C) Deadline.

(i) In general. Except as provided in this subparagraph, the motion to reopen shall be filed within 90 days of the date of entry of a final administrative order of **removal**.

(ii) Asylum. There is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for relief under sections [section] 208 or 241(b)(3) [8 USCS § 1158 or 1251(b)(3)] and is based on changed country conditions arising in the country of nationality or the country to which **removal** has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding.

(iii) Failure to appear. The filing of a motion to reopen an order entered pursuant to subsection (b)(5) is subject to the deadline specified in subparagraph (C) of such subsection.

(iv) Special rule for battered spouses, children, and parents. Any limitation under this section on the deadlines for filing such motions shall not apply—

(I) if the basis for the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A) [8 USCS § 1154(a)(1)(A)], clause (ii) or (iii) of section 204(a)(1)(B) [8 USCS § 1154(a)(1)(B)], [,] section 240A(b) [8 USCS § 1229b(b)], or section 244(a)(3) (as in effect on March 31, 1997) [former 8 USCS § 1254(a)(3)];

(II) if the motion is accompanied by a cancellation of **removal** application to be filed with the Attorney General or by a copy of the self-petition that has been or will be filed with the **Immigration** and Naturalization Service upon the granting of the motion to reopen;

(III) if the motion to reopen is filed within 1 year of the entry of the final order of **removal**, except that the Attorney General may, in the Attorney General's discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child; and

(IV) if the alien is physically present in the United States at the time of filing the motion.

The filing of a motion to reopen under this clause shall only stay the **removal** of a qualified alien (as defined in section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B))[]) pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

(d) Stipulated removal. The Attorney General shall provide by regulation for the entry by an **immigration** judge of an order of **removal** stipulated to by the alien (or the alien's

representative) and the Service. A stipulated order shall constitute a conclusive determination of the alien's removability from the United States.

(e) Definitions. In this section and section 240A [8 USCS § 1229b]:

(1) Exceptional circumstances. The term “exceptional circumstances” refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.

(2) Removable. The term “removable” means—

(A) in the case of an alien not admitted to the United States, that the alien is inadmissible under section 212 [8 USCS § 1182], or

(B) in the case of an alien admitted to the United States, that the alien is deportable under section 237 [8 USCS § 1227].

History

[8 USCS § 1229a](#)