

OVERVIEW OF REMOVAL PROCEEDINGS UNDER INA § 240

How do aliens get placed in removal proceedings?

- Controlling unauthorized migration
 - Where and how
- Enforcement authority of immigration officers INA § 287

REMOVAL PROCEEDINGS IN IMMIGRATION COURT

- A removal proceeding is a hearing to decide a charge of inadmissibility or deportability.
- INA § 240

Who is subject to a charge of inadmissibility?

These grounds apply to aliens seeking admission, and to aliens present in the U.S. after entering without inspection.

Example: Jose entered the U.S. without inspection in March 2000. Even though he has now lived in the U.S. for 8 years, if Jose is placed in removal proceedings, he will be charged with a ground of inadmissibility because he was never inspected and admitted when he first entered the U.S.

Who is subject to a charge of deportability?

These grounds apply to aliens who are in the U.S. after inspection by an immigration officer

Example: Jolie entered the U.S. in March 2004 as a student authorized to stay in the United States for the duration of her status as a student. When she graduated from Princeton University in 2009, Jolie never left. If Jolie is placed in removal proceedings, she will be charged with a ground of deportability because she was inspected and admitted

Inadmissibility vs. Deportability

- Distinction Of Consequence
 - Charge of Inadmissibility – Burden Falls On Alien
 - Charge of deportgability – Burden Falls On DHS

INA ' 212(a) & INA ' 237(a)

1. Health related grounds
2. Criminal grounds
3. National security grounds
4. Likely to become public charge
5. Labor protection grounds
6. Fraud and unlawful entry
7. Lack of proper documentation
8. Prior immigration violations

1. Inadmissible at time of entry or adjustment
2. Criminal grounds
3. Failure to register and falsification of documents
4. Security, terrorism, and related grounds
5. Becoming a public charge
6. Unlawful voters

Commencement of Removal Proceedings

- DHS Has Ultimate Discretion, Which Is Not Subject To Judicial Review
- Notice To Appear
 - Issuing
 - Serving
 - Filing

BASIC ELEMENTS OF NTA

- Explain Nature Of Proceedings
- Identify Legal Authority For Proceedings
- Identify Acts Or Conduct That Violate Law
- Identify Charges Of Inadmissibility Or Deportability
- Explain Alien's Right To Counsel

BASIC ELEMENTS OF NTA

- Explain Obligation To Immediately Provide Written Record Of Address And Telephone Number
- Provide Address Of Immigration Court Where DHS Will File NTA
- Explain Obligation Of Alien To Notify The Immigration Court Of Any Change In Address
- Explain The Consequences Of Failing To Update Address Or Failing To Appear As Ordered

SERVICE OF NTA

- “[S]hall be” In Person, If Practicable
- May Be Mailed To Alien Or Counsel Of Record
- Regular Mail Is Sufficient
- In Absentia Proceedings

BURDEN OF PROOF

ICE charges Jolie Student with being a student visa violator. Who has the burden to prove it?

ICE charges Giovanni Salamone with entering the U.S. without papers. Who has the burden?

BURDEN OF PROOF cont.

- Inadmissibility Proceedings
- Burden Falls On Alien
 - If Seeking Admission - INA § 240(c)(2)(A)
 - Clearly And Beyond Doubt Entitled To Be Admitted And Not Inadmissible
 - **ABOUT AN LPR WHO IS RETURNING TO U.S.?**
 - If Present In The United States - INA § 240(c)(2)(B)
 - By Clear And Convincing Evidence That the Alien Is Lawfully Present Pursuant To A Prior Admission

BURDEN OF PROOF cont.

- Deportation Proceedings
 - The DHS Must Establish By Clear And Convincing Evidence That An Admitted Alien Or LPR Is Deportable.
 - INA § 240(c)(3)(A)
- In Absentia Proceedings - INA § 240(b)(5)(A)
Burden Always On DHS To Show By Clear, Unequivocal, And Convincing Evidence

Hearings before IJ



- Authority Of Immigration Judges
 - Removal Determinations
 - Asylum/Withholding/CAT
 - Relief From Removal /Adjustment of Status
 - Voluntary Departure

MASTER CALENDAR HEARING

- This is a preliminary hearing for pleading and scheduling, where the alien respondent answers charges against him
- Alien Must Be Advised Of Right To Representation

MERITS HEARINGS

This is the hearing on the substance of the respondent's case. This may involve challenges to the underlying charge or pursuing a remedy to avoid or delay removal. The merits hearing is also where the IJ considers requests for relief from removal.

ELEMENTS OF MERITS HEARING

- Documentary Evidence
 - Charging Document – Notice to Appear
 - Conviction Documents
 - Immigrant Visa
 - Passports
 - Rules of Evidence Generally Do Not Apply

ELEMENTS OF MERITS HEARING

- Witnesses
 - Government
 - DHS/ICE/USCIS Investigator
 - Alien
 - Family members
 - Friends
 - Alien



IJ DECISION

- Memorandum Of Oral Decision
- Right to Appeal To Board Of Immigration Appeals
 - Alien
 - Department Of Homeland Security

APPEALS TO BIA

- The “Right” To Appeal Exists As An Exercise Of The Authority Given The Attorney General Over Immigration Matters.
 - 8 C.F.R. § 1003.1(b)(3).
- Types Of Review:
 - Single Board Member
 - Affirmance Without Opinion
 - Full-Panel

Right to Counsel INA ‘ 292

- **Aguilera-Enriquez (p. 1029)**
- **Saakian – (p. 1065)**
 - Lozada (p.1068)
- **Anin (p. 1069)**
- **Compean (Supp)**

MOTIONS TO REOPEN

- The end is the beginning
- General Rules
 - Limited To One Motion
 - Must Be Filed Within 90 Days Of Final Order
- Special Rules
 - Asylum And Withholding And CAT
 - In Absentia