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Immigration Issues

EOIR PROPOSES ALLOWING SUMMARY AFFIRMANCE OF IJ DECISIONS BY INDIVIDUAL BIA MEMBERS – The Executive Office for Immigration Review (EOIR) has published a proposed rule that would streamline Board of Immigration Appeals decision-making by replacing review of immigration judge decisions by a panel of three BIA members with a process in which a single member determines whether a case requires review by a BIA panel. The rule also allows a single member to adjudicate contested motions. A separate final rule expands the BIA to eighteen permanent members.

The commentary to the proposed rule explains that there has been an unprecedented increase in the number of appeals being filed with the BIA. In 1984, the BIA received fewer than 3,000 cases, compared to more than 14,000 cases in 1994, and more than 25,000 in 1997. While from 1984 to the present the BIA has expanded from five members to fifteen and is now further expanding to eighteen, the agency believes that it also needs new case management techniques.

Under the proposed rule, a single BIA-member is authorized to affirm the decision of the immigration judge or the INS where (1) the result reached below was correct; (2) any errors in the decision were harmless or nonmaterial; and (3) either (a) the issue on appeal is squarely controlled by existing precedent and does not involve the application of such precedent to a novel fact situation, or (b) the factual and legal questions raised on appeal are so insubstantial that review by three members is not warranted. If the BIA-member finds the case appropriate for affirmance without opinion, he or she will simply sign an order to that effect, without further explanation or reasoning. Under the proposed rule, three-member panels also are authorized to issue affirmances without additional explanation or reasoning. The regulation explains that the order "approves the result reached in the decision below . . . [but] does not necessarily imply approval of all of the reasoning of that decision."

Under the proposed rule, the BIA chair may designate individual BIA-members who are authorized to exercise the authority to affirm cases without opinion. The BIA chair also may designate certain categories of cases as suitable for review by single members. The commentary to the rule explains that these categories may include, but are not limited to, (1) cases challenging findings of fact where the findings below are not against the weight of the evidence; (2) cases controlled by precedents of the BIA, the controlling U.S. court of appeals, or the Supreme Court, where there is no basis for overruling or distinguishing the precedent; (3) cases seeking discretionary relief for which the appellant appears clearly to be statutorily ineligible; (4) cases challenging discretionary decisions where it does not appear that the decision-maker has applied the wrong criteria or devi-

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FOUNDED IN 1979, THE NATIONAL IMMIGRATION LAW CENTER PROVIDES TECHnical help to legal services programs, community-based nonprofits, and pro bono attorneys throughout the United States. NILC also counsels impact litigation, conducts policy analysis and trainings, and publishes legal reference materials. NILC's staff specializes in immigration law and in immigrants' employment and public benefits rights. In addition to this newsletter, NILC produces legal manuals, a referral directory, and other community education materials.

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ated from precedent; and (5) cases challenging only procedural rulings or deficiencies that do not appear to be material to the outcome of the case.

In addition, the proposed rule would expand the categories of motions that could be adjudicated by a single BIA-member or the chief attorney examiner. At present, single members can adjudicate unopposed motions or motions to withdraw appeals. Under the proposed rule, single members or the chief attorney examiner may adjudicate (1) INS motions to remand an appeal from the denial of a visa petition where the INS Regional Service Center requests the remand for further consideration, (2) cases where remand is necessary because of a defective or missing transcript, and (3) other procedural or ministerial adjudications as determined by the BIA chair. The commentary notes, for example, that under this provision the chair could determine that motions to dismiss an appeal as moot where the alien has become a lawful permanent resident should be adjudicated by single BIA-members.

The proposed rule also would amend the existing grounds for summary dismissal of appeals to add (1) cases in which the appeal or motion does not fall within the BIA's jurisdiction, (2) cases in which jurisdiction lies with the IJ rather than with the BIA, (3) untimely appeals and motions, and (4) cases in which the right of appeal was affirmatively waived.

The EOIR invites public comment on the proposed rule. To be considered in the development of a final rule, comments must be received on or before Nov. 13, 1998.

In a separate, final rule, the EOIR has expanded the BIA to eighteen permanent members, including sixteen members plus a chair and a vice chair. The rule also recognizes the position of deputy director in the organizational hierarchy of the EOIR. This rule took effect upon its Sept. 28, 1998, publication date.

[63 Fed. Reg. 49,043–46 (Sept. 14, 1998) (proposed rule re. summary affirmances) and 63 Fed. Reg. 51,518–19 (Sept. 28, 1998) (final rule expanding BIA).]

INS AND EOIR PUBLISH RULE TO IMPLEMENT CAP ON SUSPENSION AND CANCELLATION GRANTS – The Immigration and Naturalization Service and the Executive Office for Immigration Review (EOIR) have published an interim rule revising the agencies' procedures for implementing the provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) that established an annual limitation of 4,000 aliens who may adjust to permanent residence by means of suspension of deportation or cancellation of removal in any one fiscal year. The interim rule replaces the "conditional grant" procedure that the EOIR established in October 1997.

Since the enactment in September 1996 of the numerical limit of 4,000 adjustments, the EOIR has adopted a series of interim measures to implement it. On Feb. 13, 1997, Chief Immigration Judge Michael Creppy and BIA Chair Paul Schmidt issued directives to the immigration judges and the BIA prohibiting them from granting suspension cases pending further instruction. Then, on Oct. 3, 1997, the Department of Justice issued an interim rule that established a "conditional grant" procedure. Under this rule, IJs and the BIA could grant suspension of deportation and cancellation of removal only on a conditional basis. The rule did not establish a procedure for turning conditional grants into unconditional ones. This issue was instead left for future rulemaking.

Implementation of the 4,000-adjustments cap was further complicated by the enactment of the Nicaraguan Adjustment and Central American Relief Act (NACARA) on Nov. 19, 1997. The NACARA made exceptions to the cap for certain aliens — nationals of Guatemala, El Salvador, and former Soviet bloc countries if they are eligible for special suspension of deportation or cancellation of removal under the NACARA. It also clarified that the 4,000-adjustments cap did not apply to suspension cases that were granted prior to Apr. 1, 1997. Because of the Creppy and Schmidt memoranda, no suspension or cancellation cases were granted after Apr. 1, 1997, in the 1997 fiscal year (which ended Sept. 30, 1997). Thus, all 4,000 adjustments that could have been used in fiscal year 1997 are available for fiscal year 1998, allowing a total of 8,000 grants for that year. In September 1998, the EOIR issued directives to all IJs and the BIA directing them not to issue any further conditional grants. IJs were instructed not to grant or deny cases, but rather to reserve decision until the next fiscal year, which began Oct. 1, 1998. The purpose of the directives is to avoid issuing more conditional grants than are allowed under the 8,000-adjustments limit for fiscal year 1998. These directives are reproduced at 75 INTERPRETER RELEASES 1314–21 (Sept. 21, 1998).

The new interim rule, which took effect Sept. 30, 1998, provides for up to 8,000 of the aliens who were given conditional grants to have their grants become permanent. These permanent grants are to take effect as of the date the conditional grant was made by the IJ or the BIA, unless the case is currently on appeal. The EOIR will remove the condition from and adjust to permanent residence the first 8,000 aliens (in the order that their cases were granted conditionally), except in the cases of Nicaraguan and Cuban nationals, as explained below. The rule states that this conversion from conditional grants to permanent grants will take place before the end of fiscal year 1998 — i.e., on Sept. 30, 1998, the rule's effective date.

The commentary to the rule notes that over 1,000 nationals of Nicaragua and Cuba were given conditional grants of suspension or cancellation during fiscal year 1998. Most of these individuals are also eligible for adjustment of status under the special provisions of the NACARA. In order to avoid using the limited number of permanent grants of suspension or cancellation for individuals who have other means of adjustment, the attorney general is requiring that all Cuban and Nicaraguan conditional grantees explore their eligibility for NACARA adjustment. Under the rule, these individuals' applications for suspension or cancellation will be deemed to be a concurrent request for NACARA adjustment.

Nicaraguans and Cubans with conditional grants will be sent a notice informing them of the date, time, and place at which they must appear before an INS officer to perfect their request for NACARA adjustment. They will need to complete a special form to attest to facts regarding their eligibility for NACARA adjustment. No fee will be charged for this application, nor for any applications for waivers of inadmissibility that may be necessary. In order to expedite the processing of these cases, the attorney general has deemed that the special attestation form satisfies the documentary requirements for NACARA adjust-

ment, and applicants will not be required to submit medical examination records or a new set of fingerprints. Absent contrary evidence arising at the interview or by other means, the INS will accept the attestation form as sufficient evidence of an alien's admissibility, including his or her admissibility on health-related grounds and satisfaction of the continuous physical presence requirement.

The commentary to the rule notes that the attorney general "has determined that these extraordinary measures are justified in this limited instance because these aliens already have been found eligible to obtain lawful permanent resident status, and in fact will obtain such status on the basis of suspension of deportation or cancellation of removal even if they do not seek or are found ineligible for NACARA adjustment." Cubans and Nicaraguans with conditional grants who do not wish to apply for NACARA adjustment, or who fail to appear at the interview, or who are found ineligible for NACARA adjustment will have their conditional grants converted to permanent grants of suspension or cancellation. All these NACARA adjustment eligibility determinations are to be completed by Dec. 31, 1998. After that date, applications by Nicaraguans or Cubans for suspension or cancellation will no longer be deemed to also constitute applications for NACARA adjustment.

In the event that conditional grants remain outstanding after the first 8,000 conditional grants from fiscal year 1998 are converted to permanent grants, they will be converted to permanent grants in fiscal year 1999 and count against the 4,000-adjustments limit for that year. From now on, the EOIR will no longer issue conditional grants. Instead, suspension and cancellation will be granted on a "first in time" basis. When grants are no longer available in a fiscal year, the immigration court and the BIA will reserve all decisions on suspension of deportation and cancellation of removal until the next fiscal year. Persons with reserved decisions will be considered still to be "in proceedings" while their decisions are reserved. However, the IJ and the BIA need not reserve a decision, even though the cap has been reached in a particular fiscal year, in cases where they determine that the applicant is statutorily ineligible for suspension or cancellation.

The rule also requires the immigration court and the BIA to adjudicate concurrently all other forms of relief for which the applicant has applied. The suspension or cancellation application should be denied if the alien is granted asylum or adjustment of status. However, if the grant of asylum or adjustment is overturned on appeal, the denial of suspension or cancellation must be reconsidered.

Finally, the rule acknowledges that individuals who were issued conditional grants in fiscal year 1998 may have had legitimate reasons to travel. Accordingly, aliens with conditional grants who left the country before publication of this rule and temporarily traveled abroad, or who are abroad and have not returned, shall not lose their conditional grants as a result of their departure. However, upon publication of this rule, aliens with conditional grants must obtain a grant of advance parole prior to leaving the U.S.

The interim rule took effect on its publication date, Sept. 30, 1998. The EOIR invites comments from the public to be considered in the development of a final rule. Comments must be received on or before Nov. 30, 1998.

[63 Fed. Reg. 52,134–40 (Sept. 30, 1998).]

BIA FINDS TEXAS DEFERRED ADJUDICATION CONSTITUTES A "CONVICTION" – The Board of Immigration Appeals has ruled that a non–U.S. citizen who entered a plea of nolo contendere and was then placed on probation under a deferred adjudication procedure in Texas was nonetheless "convicted" for immigration purposes. The decision interprets changes that were made in the Immigration and Nationality Act's definition of *conviction* by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

The respondent in this case adjusted to permanent residence on Jan. 6, 1993. On Aug. 26, 1993, in a Texas court, he entered a plea of nolo contendere to a charge of attempted murder. On that same day, the trial judge deferred adjudication of the criminal charge and placed the respondent on probation until Aug. 25, 2001. Under Texas law, upon completion of the respondent's probation, the criminal charges would be dismissed. On Jan. 10, 1997, the INS issued an Order to Show Cause against the respondent, alleging that the respondent is deportable as an aggravated felon. The immigration judge ruled that the respondent's deferred adjudication constituted a conviction for an aggravated felony, and the respondent appealed.

The BIA concluded that the INA's new definition of *conviction*, contained in INA section 101(a)(48)(A), encompasses the respondent's deferred adjudication. The BIA held that Congress expressly expanded the definition of *conviction* that the BIA had formulated in *Matter of Ozkok*, 19 I. & N. Dec. 546 (BIA 1988). In *Ozkok*, the BIA established a three-pronged test to determine whether a state court procedure constituted a conviction: (1) a judge or jury had to have found the alien guilty, or the alien had to have entered a plea of guilty or nolo contendere or admitted sufficient facts to warrant a guilty finding; (2) the judge had to have ordered some form of punishment, penalty, or restraint on the alien's liberty; and (3) a judgment or adjudication of guilt may be entered if the person fails to comply with the terms of probation or other requirements of the court's order without further proceedings to determine the person's guilt or innocence. The definition of *conviction* enacted in the IIRIRA does not contain the third prong of this test. Accordingly, the BIA concluded that a deferred adjudication constitutes a conviction for immigration purposes, even where further proceedings to determine guilt or innocence may occur.

Board-member Lory Rosenberg wrote an opinion concurring in part and dissenting in part. She contended that, separate and apart from the criteria of *Ozkok*, a conviction must be sufficiently "final" to constitute a basis for deportation. Since the respondent could directly appeal any finding of guilt resulting from the deferred adjudication, Rosenberg argued that the deferred adjudication should not constitute a final conviction for immigration purposes.

Matter of Punu, Int. Dec. 3364 (BIA Aug. 18, 1998).

INS REINSTATEMENT OF 1991 DEPORTATION ORDER TRUMPS IJ'S ERROR – The Board of Immigration Appeals does not have jurisdiction to review a decision by the Immigration and Naturalization Service that reinstates a prior deportation order against

a Nigerian national who was deported in 1991 and who returned to the United States in 1995, the BIA has found. The BIA found that the plain language of Immigration and Nationality Act section 241(a)(5)—which was added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)—and of the related regulation, 8 C.F.R. section 241.8(a), precludes the immigration judge, and thus the BIA, from reviewing the INS's decision to reinstate the prior deportation order. The BIA therefore dismissed the respondent's appeal despite also finding that an IJ had erred in terminating removal proceedings against him—proceedings commenced in May 1997—without giving him the chance to argue against the termination.

In an opinion that partly concurs with but mostly dissents from the majority's, BIA-member Lori Rosenberg disagreed with her colleagues' reading of the statute. She argued that the statute's plain language, coupled with the presumption that a statute may not be applied retroactively unless Congress explicitly states that it must be, "support[s] the conclusion that section 241(a)(5) does not apply to the respondent's reentry in . . . 1995." The case, she argued, therefore should be remanded to the IJ so that the respondent may seek whatever relief is available to him.

According to INA section 241(a)(5), which took effect on Apr. 1, 1997, "If the Attorney General finds that an alien has reentered the United States illegally after having been removed . . ., the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry."

Under the related regulation, such an alien "has no right to a hearing before an Immigration Judge . . . ." To reinstate the prior deportation order, the INS officer needs to determine only (1) whether the person was subject to a prior deportation order, (2) whether the person for whom the order is being reinstated is the person to whom it was issued (i.e., the person's identity must be confirmed), and (3) whether the person reentered the U.S. unlawfully.

In the case before the BIA, the prior order of deportation had become administratively final on May 8, 1991, when the BIA dismissed the respondent's appeal after an IJ had found him deportable as an alien convicted of a crime involving moral turpitude (specifically, mail fraud). Several months after he reentered the U.S. in 1995, the respondent filed a motion with the BIA to reopen the 1991 deportation proceedings.

On May 5, 1997, the INS issued the respondent a notice to appear, alleging that he was subject to removal because he was present in the U.S. without having been admitted or paroled. On May 8, the INS filed the notice to appear with the immigration court. However, on May 14, the INS moved to terminate the removal proceedings, informing the immigration judge that it intended, pursuant to INA section 241(a)(5), to reinstate the 1991 deportation order. The next day (May 15), without first notifying the respondent about the INS's motion, the IJ ordered the removal proceedings terminated—and he stated in the termination order that neither of the parties had opposed termination. On May 16, the INS issued the respondent a Notice of Intent/Decision to Reinstate Prior Order, which, among other things, advised him that he had no right to a hearing before an IJ, but that he could contest the INS's determination in his case by making a written or oral statement to an immigration officer. When the respondent refused to sign the notice, the decision to reinstate the prior deportation order became final that same day.

The respondent, unrepresented by counsel, appealed to the BIA. He argued that he should have been allowed the opportunity to contest the INS's motion to terminate removal proceedings, since he wanted to appear before the IJ and pursue any relief available to him. He also stated that he had sought advance permission from the attorney general to reenter the U.S. after having been deported, and that when he arrived in New York in 1995, he had presented his passport and green card to an immigration officer, who inspected and admitted him.

The BIA disagreed with the INS's argument, in response to the respondent's appeal, that the agency has exclusive authority to control the prosecution of deportable aliens in immigration court. Before the court takes jurisdiction over the case—i.e., before the notice to appear issued against a respondent is filed with the immigration court—the decision whether to institute or cancel proceedings rests entirely with the INS, the BIA found. However, once proceedings are commenced in immigration court, the INS may move to dismiss the case (8 C.F.R. § 239.2(c)), but the IJ or the BIA must make an informed ruling on the motion "based on an evaluation of the factors underlying the Service's motion." Thus, the IJ erred in terminating removal proceedings without giving the respondent a chance to present arguments against termination.

However, the BIA also found that the respondent suffered no prejudice from the IJ's error, since the arguments he raised on appeal would not have changed the outcome of his case. According to the BIA, since the (unrepresented) respondent "does not specify for what relief he is eligible to apply . . . [w]e are . . . not satisfied that any useful purpose would be served by remanding this case." Furthermore, the BIA found that it has no jurisdiction to review the INS's reinstatement of the prior order of deportation. And finally, the BIA dismissed the respondent's Nov. 12, 1996, motion to reopen the 1991 deportation proceedings, finding that it "lacks jurisdiction over a motion to reopen after the respondent's departure from the [U.S.] pursuant to a final order of deportation."

In re G–N–C–, Int. Dec. 3366 (BIA Sept. 17, 1998).

TPS FOR SOMALIANS EXTENDED; LIBERIA REDESIGNATED FOR TPS – The attorney general has granted a one-year extension of temporary protected status (TPS) for nationals of, or individuals of no nationality who last habitually resided in, Somalia; and she has *redesignated* Liberia as a country whose nationals and residents qualify for TPS. The extension of TPS for persons from Somalia applies to individuals in the U.S. who are already registered for TPS or who qualify for late initial registration. Under the redesignation of Liberia, persons from Liberia qualify to register for TPS if they have been "continuously physically present" in the U.S. since Sept. 29, 1998, the effective date of the redesignation.

TPS is granted to persons from countries that are designated by the attorney general as experiencing ongoing armed conflict, environmental disaster, or certain other conditions that prevent those persons from returning. Under the attorney general's no-

tice regarding Somalia, the extension of designation was effective Sept. 18, 1998, and will remain in effect until Sept. 17, 1999. Under her notice regarding Liberia, the redesignation is effective from Sept. 29, 1998, until Sept. 28, 1999.

To apply to register or reregister for TPS under the redesignation (Liberia) or extension (Somalia), applicants must file Forms I-821 (Application for Temporary Protected Status) and I-765 (Application for Employment Authorization). Persons from Somalia must have filed during the period between Sept. 28, 1998, and Oct. 27, 1998; persons from Liberia must file between Sept. 29, 1998, and Mar. 29, 1999. (Late reregistration is also possible for persons from Somalia if the reregistrant can show that he or she had a good reason for failing to meet the deadline.) The $70 fee for the Form I-765 must be included, unless the applicant either does not seek work authorization or makes a properly documented fee waiver request. (However, persons who file on or after Oct. 13, 1998, will be required to pay the higher filing fee from the INS's recently revised fee schedule: $100.)

Individuals from Somalia also may apply for late initial TPS registration if they have been "continuously physically present" in the United States since Sept. 16, 1991, had a valid immigrant or nonimmigrant status during the original registration period, and register for TPS within 30 days of the expiration of their other valid status.

The attorney general estimates that there are about 350 persons from Somalia who have been granted TPS status and are eligible for reregistration. She estimates that there are no more than 10,000 nationals of, or persons of no nationality who last habitually resided in, Liberia who are eligible for TPS under the redesignation. [63 Fed. Reg. 51,602–03 (Sept. 28, 1998) (Somalia); 51,958–59 (Sept. 29, 1998) (Liberia).]

CONGRESS INCLUDES IMMIGRATION PROVISIONS IN OMNIBUS BUDGET BILL – Congress included several immigration provisions in the Omnibus Budget Bill that it passed on Oct. 21, 1998, and that President Bill Clinton is expected to sign. These provisions include increasing the number of H-1B visas (for specialized temporary workers) from 65,000 to 115,000 in fiscal years 1999 and 2000, and to 107,500 in fiscal year 2001.

In addition, Congress included in the bill a provision to grant permanent residence to certain Haitian nationals. This relief is similar to the special adjustment relief that was provided to Nicaraguans and Cubans in the Nicaraguan Adjustment and Central American Relief Act (NACARA). To be eligible for this relief, Haitians must have been in the United States since 1995 and must fit one of the following categories: orphaned, abandoned, or unaccompanied minor children at the time of entry; paroled into the U.S. because U.S. authorities determined they had a credible fear of persecution; paroled into the U.S. for emergent reasons or for reasons deemed strictly in the public interest; or had applied for asylum prior to Dec. 31, 1995. Eligible spouses and minor children of Haitians meeting these requirements may also adjust under the provision.

The Omnibus Budget Bill also delays for 30 months the implementation of section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This provision requires establishment of an automated entry/exit control system to record all departures of aliens and to match these records with arrival records.

In addition, the bill includes additional resources for the Immigration and Naturalization Service's Examinations Fee Account, to be used for processing backlogged naturalization cases. These funds largely come from reprogramming of existing accounts and balances from prior years. The additional resources for naturalization amount to approximately $171 million.

[American Immigration Lawyers' Association.]

Litigation

NINTH CIRCUIT STAYS PROCEEDINGS BECAUSE PETITIONERS MAY QUALIFY AS DERIVATIVE BENEFICIARIES UNDER NACARA – The Ninth Circuit Court of Appeals has issued an order staying proceedings in a case in which two Salvadoran nationals seek to review a decision of the Board of Immigration Appeals denying them asylum and withholding of deportation. The court stayed proceedings based on the fact that the petitioners may qualify as derivative beneficiaries for suspension of deportation under the Nicaraguan Adjustment and Central American Relief Act (NACARA).

The petitioners in this case are the spouse and the child of a Salvadoran national who registered for temporary protected status (TPS) and therefore is eligible for suspension of deportation under the special provisions of the NACARA. Before the principal alien can receive this benefit, however, he must apply to the Immigration and Naturalization Service for suspension under procedures that have not yet been finalized. The INS plans to have asylum officers process the suspension applications of members of the class in *American Baptist Churches v. Thornburgh* who qualify for NACARA suspension, but these regulations have yet to be finalized (see "EOIR Issues Interim Rule for NACARA Motions to Reopen," IMMIGRANTS' RIGHTS UPDATE, June 17, 1998, p. 3).

In this case, the petitioners filed motions to reopen their deportation cases to seek relief under the NACARA; and they filed prior to the Sept. 11, 1998, deadline for such motions. However, under the statute, they cannot seek this relief until the principal alien is granted NACARA suspension of deportation. Accordingly, the Ninth Circuit stayed the proceedings to allow them to pursue this relief when they become eligible for it.

Ardon-Matute v. INS, __ F.3d __, 1998 U.S. App. LEXIS 23346, No. 97-70689 (9th Cir. Sept. 23, 1998).

SECOND CIRCUIT RULES AEDPA'S LIMITATION ON 212(c) RELIEF DOES NOT APPLY TO PENDING CASES – The U.S. Court of Appeals for the Second Circuit has found that the provision of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) that limits eligibility for waivers under Immigration and Nationality Act section 212(c) does not apply to cases that were pending prior to the law's enactment. With this opinion, the Second Circuit joins the First and the Ninth in finding that federal district courts have jurisdiction to review deportation orders based on criminal convictions by means of habeas corpus petitions despite the "court-stripping" provisions of the AEDPA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (see "First Circuit Rules AEDPA's

Limitation on 212(c) Relief Does Not Apply to Cases Pending When AEDPA Was Enacted," IMMIGRANTS' RIGHTS UPDATE, Jun. 17, 1998, p. 10, and "9th Circuit Rules That District Court Has Jurisdiction to Review Deportation Orders," IRU, Sept. 16, 1998, p. 4).

The decision came in a case consolidating appeals of district court habeas decisions concerning four permanent resident aliens. The court of appeals first considered the government's contention that provisions of the AEDPA and the IIRIRA restricting review of deportation orders based on criminal convictions repealed district court jurisdiction over immigration matters under the habeas statute, 28 U.S.C. section 2241. In a lengthy discussion that reviews the exercise of habeas jurisdiction by federal courts in immigration cases since 1885, the court rejected this argument. The court noted that throughout the period from 1891 to 1952, when Congress had intended to make immigration decisions nonreviewable to the fullest extent possible under the Constitution, federal courts continued to exercise habeas jurisdiction to review claims by aliens that immigration officials had acted under erroneous interpretations of the law. The court then went on to find that neither the AEDPA nor the IIRIRA repealed or modified habeas corpus jurisdiction under 28 U.S.C. section 2241.

Turning to the issue of the scope of review that is available under habeas jurisdiction, the court rejected the government's contention that it could not review the attorney general's interpretation of the statute. The court noted that the issue in this case is purely a matter of statutory interpretation rather than one of reviewing the agency's factual findings or its exercise of discretion. Analyzing the historic practice of federal courts that reviewed immigration decisions during the period when only habeas review was available, the court found that federal courts routinely considered statutory questions in conducting this review. Moreover, "review of statutory questions was deemed essential to ensuring due process of law." The court concluded that federal courts have jurisdiction to review, at a minimum, statutory questions "affecting the substantial rights of aliens."

For a court to have personal jurisdiction in a habeas action, the "custodian" of the alien subject to detention must be subject to the court's service of process. Two of the petitioners were transferred from New York to Louisiana after they were taken into INS custody, so that the district director for the New Orleans INS District has primary custodial power over them. The court of appeals found that the determination of whether federal district courts in New York can exercise personal jurisdiction over the INS district director in New Orleans depends upon the proper interpretation of New York's long-arm statute. The court certified this issue to the New York Court of Appeals to determine this question of New York state law.

Finally, turning to the merits of the petitioners' claims that the attorney general erred in applying the AEDPA retroactively to deprive them of eligibility for 212(c) relief, the court agreed with the petitioners. The court concluded that the provision of the AEDPA that limits the availability of 212(c) waivers does not apply to aliens whose deportation or exclusion proceedings were pending on the date of the law's enactment.

Henderson v. INS, __ F.3d __, 1998 U.S.App. LEXIS 24393 (2d Cir. Sept. 18, 1998).

DISTRICT COURT UPHOLDS INS DETAINEES' RIGHT TO SUE UNDER ALIEN TORT CLAIMS ACT AND INTERNATIONAL LAW – The U.S. District Court for the District of New Jersey has ruled that aliens held in detention can bring suit for violations of their rights under international law, in addition to pursuing the remedies that are available under U.S. law. The ruling came on a motion by the Immigration and Naturalization Service to dismiss an action brought by asylum applicants detained at a facility in Elizabeth, New Jersey, that was run by Correctional Services Corporation, formerly known as Esmor Correctional Services, Inc., a private contractor.

The plaintiffs in the case alleged that they were detained in overcrowded dormitories that were filthy and smelled of human waste. They were served spoiled food, given filthy and inadequate clothing, and often were shackled to their beds. Detainees were forced to shower and use the toilet in front of guards and other detainees and were subjected to degrading strip searches and body cavity searches. They were physically beaten by guards and insulted with racial and ethnic epithets, such as being called "African monkeys from the jungle." They were denied adequate medical treatment. Often, they were denied access to the telephone, or, if they were female, the guards forced them to submit to unwanted sexual advances as a condition for using the phone.

The Esmor facility was closed after a revolt by the detainees on June 18, 1995, and subsequently reopened under other management. Some of the plaintiffs subsequently were granted asylum, some have been deported, and others remain in detention in other facilities. On Oct. 1, 1998, the *New York Times* reported that detainees at the facility had gone on a hunger strike to protest conditions there.

The plaintiffs brought suit, raising numerous claims against several groups of defendants, including the individual Esmor guards, the Esmor corporation, individual INS officials, and the INS. Under established precedent, federal detainees can sue individual officers for violations of constitutional rights by bringing a *Bivens* action. They also can sue for "torts," or civil damages, under the Federal Tort Claims Act (FTCA). However, an FTCA action cannot be brought unless an administrative claim is made within two years of the violation's occurrence. In this case, the fact that the plaintiffs were detained apparently made it difficult for many of them to file timely administrative claims. The government also had a number of technical objections to their claims and to their causes of action based on these claims. For these reasons, the plaintiffs relied heavily on international law as a basis for their claims.

The Alien Tort Claims Act (ATCA), 28 U.S.C. section 1350, provides district courts with jurisdiction over civil actions brought by aliens for torts "committed in violation of the law of nations or a treaty of the United States." The plaintiffs alleged that defendants' actions violated "customary international law" — rules that nations generally follow because of a sense of legal obligation. The plaintiffs argued, and the court agreed, that the treatment they allegedly received violated customary international law. The court found that "the right to be free from cruel, unhuman [sic] or degrading treatment is a universally accepted customary human rights norm." Moreover, the fact that U.S. laws provide constitutional and legislative protection against

these kinds of abuses does not preclude plaintiffs from bringing international law claims under the ATCA.

The court found that the INS cannot be sued under the ATCA because Congress has not explicitly provided for a waiver of sovereign immunity. However, the court found that individual INS officers can be sued in their individual capacities under the ATCA. Esmor and its guards also were acting under contract to the INS, and they also can be sued under ATCA.

Jama, et al., v. U.S. Immigration and Naturalization Service, et al., No. 97-3093 (DRD), 1998 U.S. Dist. LEXIS 15454 (D.N.J. Oct. 1, 1998).

Employment Issues

DOCUMENT FRAUD: ALJ QUESTIONS WHETHER WAIVER OF RIGHT TO HEARING WAS VOLUNTARY AND KNOWING – An administrative law judge considering a document fraud case has ruled that before she can approve a proposed settlement agreement between the respondent and the Immigration and Naturalization Service, she must be assured that the respondent's waiver of his right to a hearing is both voluntary and knowing. The ALJ, who is part of the Office of the Chief Administrative Officer (OCAHO) within the U.S. Department of Justice, ordered the respondent and the INS to each describe, with sufficient detail so that she could make a determination about whether the respondent's waiver was voluntary and knowing, the circumstances under which they entered the settlement agreement.

ALJs within the OCAHO hear cases involving charges of document fraud brought under section 274C of the Immigration and Nationality Act, as well as cases brought under the INA's "employer sanctions" and employment antidiscrimination provisions. In this case, the INS had charged the respondent, a non–U.S. citizen, with possessing and using a fraudulent alien registration card and a fraudulent Social Security number to satisfy a requirement of the INA.

The respondent asked for a hearing regarding the document fraud charges. However, he then submitted a letter in which he indicated that he had agreed to pay a $500 fine regarding the charges and that he had gone to court and been granted a "pardon." Subsequently, the respondent entered into a formal agreement with the INS, which included withdrawing his request for the document fraud hearing. The respondent and the INS filed a document with the ALJ captioned "Withdrawal of Hearing Request and Joint Motion to Dismiss Complaint and Terminate Proceedings Before ALJ," accompanied by a photocopy of the respondent's check for $500 and the settlement agreement.

Pursuant to the terms of the settlement agreement, a final order was going to be issued against the respondent. Noncitizens with 274C final orders are automatically deportable, and they are ineligible for most forms of relief from deportation. Being the subject of a 274C final order is also a permanent ground of inadmissibility, forever barring the person from returning to the United States except in extremely limited situations where a waiver of the bar may be available. Under these circumstances, the ALJ found it inappropriate to accept the settlement agreement without a showing either (1) that the respondent had received constitutionally adequate notice of the immigration consequences of a final order pursuant to section 274C, or (2) that the "pardon" the respondent referred to in his letter was a discretionary waiver pursuant to INA section 237(a)(3)(C)(ii).

The ALJ cited *Walters v. Reno*, __ F.3d __, 1998 WL 257263 (9th Cir. 1998), in which the Ninth Circuit upheld a determination that the nationwide procedures by which the INS customarily obtains waivers of aliens' right to hearings in document fraud cases violated the aliens' right to due process of law (see "Ninth Circuit Upholds Nationwide Injunction of INS Civil Document Fraud Notice Forms and Procedures," IMMIGRANTS' RIGHTS UPDATE, June 17, 1998, p. 9). The ALJ stated that the respondent in this case appeared to have signed a withdrawal of his request for a hearing, but that the document he had signed suffered from the same defects as the notice form that the court in *Walters* had found to be constitutionally defective.

Furthermore, the ALJ noted that the term *waiver* refers to the voluntary relinquishment of a known right. She therefore ordered both parties to supply details that would be sufficient to show that the respondent had indeed waived his right to a hearing. They could do this in several ways, including (1) showing that the respondent had received a notice that conforms with the requirements set out in *Walters*, (2) showing that the "pardon" the respondent had been granted relieved him from the consequences of being found in violation of section 274C, or (3) showing that the totality of the circumstances demonstrated that the respondent's decision was both voluntary and knowing.

U.S. v. Iniguez-Casillas, 8 OCAHO 1001 (1998).

ANTIDISCRIMINATION GRANTS ANNOUNCED – In its latest round of grant-making, the Office of Special Council for Immigration Related Unfair Employment Practices (OSC) has awarded grants totaling $640,000 to eight nonprofit organizations in five states. The recipients are to use the money to educate workers and employers so as to reduce citizenship-, national origin–, and document-based discrimination arising out of the legal requirement that all employers in the United States must verify the employment eligibility of their employees. Activities funded under the grants include workshops, telephone hotlines, and information provided at neighborhood grocery stores.

The OSC awarded grants to the following organizations: Asian Pacific American Legal Center (Los Angeles, CA); Catholic Charities of Dallas, Immigration Counseling Services (Dallas, TX); Catholic Charities, Diocese of Galveston-Houston (Houston, TX); Erie Neighborhood House (Chicago, IL); Florida Immigrant Advocacy Center (Miami, FL); Greater Miami Chamber of Commerce (Miami, FL); Mexican American Grocers Association (Los Angeles, CA); Victims Services (New York, NY).

Immigrants & Welfare Update

CONGRESS RESTORES SSI TO SOME "NOT QUALIFIED" IMMIGRANTS – Congress has voted to restore Supplemental Security Income (SSI) and Medicaid eligibility to an estimated 12,000 elderly and disabled immigrants who were receiving SSI on Aug. 22, 1996, but whom the Social Security Administration (SSA) had coded as "not qualified" to continue receiving benefits after Sept. 30, 1998. The Clinton administration supports the restoration of the SSI benefits, and the president's signature on the

bill authorizing it is assured.

The day before the measure passed the Senate, Social Security Commissioner Kenneth Apfel wrote to every senator urging passage of the bill that "completes the 'grandfathering' of noncitizens which was begun in the 1997 Balanced Budget Act." Once signed by the president, the law will restore SSI eligibility to all immigrants who were receiving assistance when the welfare law was enacted on Aug. 22, 1996. As Apfel emphasized in his letter, the majority of the indigent immigrants are over 70 years of age and have lived in the U.S. for more than 25 years.

The U.S. House of Representatives had approved the SSI-restoration measure, H.R. 4558, on September 23, but the bipartisan bill stalled in the Senate due to a hold placed by Sen. Phil Gramm (R-TX). The hold was finally removed on October 8, freeing the bill for passage that same evening on a voice vote.

Over the past six months, advocates worked tirelessly to help immigrants update Social Security records, adjust their immigration status, and tell their tragic and compelling stories to members of Congress and the Clinton administration. Many SSI recipients facing the federal cutoff had serious physical infirmities, mental disabilities, limited English proficiency, and a desperate lack of resources, rendering them vulnerable to hunger, sickness, homelessness, and despair.

MORE DETAIL ON PROPOSED INS VERIFICATION REGS AND HHS "FEDERAL PUBLIC BENEFITS" NOTICE – As previously reported here, the U.S. Department of Health and Human Services (HHS) has issued a notice delineating which benefits governed by the agency are "federal public benefits," and the Immigration and Naturalization Service has issued a proposed rule that governs the procedures for verifying citizens' and immigrants' eligibility for federal public benefits. The 60-day period during which the public could comment on these two sets of regulations ended on Oct. 5, 1998. (Many organizations nationwide submitted comments; for a copy of the comments submitted by NILC, contact the Los Angeles office.)

The preamble to the proposed rule on verification states that it is intended to be used "in tandem" with the Justice Department's "Interim Guidance on Verification," published in the Federal Register on Nov. 17, 1997, and that the latter should continue to guide agencies where it does not conflict with the new proposed rule. Only *"federal public benefits"* and *"state public benefits"* are affected by the proposed rule on verification, but the rule does not clarify the meaning of these terms as used in the 1996 welfare bill, other than to paraphrase the statutory definitions.

To date, the only federal department to clarify the definition of *federal public benefit* is the HHS. All services or benefits that are wholly or partially funded with HHS resources are subject to the HHS Notice. Agencies administering non-HHS programs should await clarification from those other federal agencies before implementing the new regulations, both to avoid unnecessary and burdensome verification procedures and to avoid illegal denials of persons who remain eligible for assistance.

HHS NOTICE ON THE INTERPRETATION OF "FEDERAL PUBLIC BENEFIT"

Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) generally bars immigrants who are not "qualified immigrants" from eligibility for any "Federal public benefit." Clarification such as that provided by the HHS notice is needed because the term *"federal public benefit"* — as well as many of the terms used in the statutory definition — are not delineated by statutes or case law. The statute defines a *federal public benefit* as "any grant, contract, loan, professional license, or commercial license" provided to an individual, and also "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit."

The HHS notice clarifies that determining whether a particular service or benefit falls within the definition of *federal public benefit* is a multi-step process. Under Part A of the definition, a federal public benefit includes any grant, loan, or professional or commercial license provided by any HHS program to an individual, including research grants, student loans, or patent licenses; however, it does not include "block grants" to states or localities. If a benefit does not fall within Part A of the definition, it may still be a federal public benefit if it meets the requirements of Part B. Part B includes two conditions:

1. *Types of benefits.* To satisfy the definition, a benefit either (a) must provide one of the following types of benefit: retirement, welfare, health, disability, public or assisted housing, food assistance, or unemployment; or (b) must be a benefit "similar" to these. Certain benefits are therefore excluded from the definition because they do not fall within any of the specifically listed categories and they are not "similar" to any of the listed categories.

2. *Individual vs. community beneficiaries.* In addition, to qualify as a federal public benefit, (a) the benefit must be provided to an individual, household, or family; and (b) the individual, household, or family must constitute an "eligibility unit." In the statute, the term *"eligibility unit"* refers to individuals, households, or families that must meet specified eligibility requirements to qualify for assistance, as distinguished from communities or sectors of the population to whom benefits are broadly targeted.

A few programs provide a mix of services, some to communities and others to individuals, families, or households. Where that is the case, programs that are "primarily" designed to provide services to communities are not included among "federal public benefit" programs. Finally, even if a benefit meets the statutory definition for a federal public benefit, it may be excluded from the new verification requirements, and from the HHS's list of "federal public benefits" programs, as a result of one or more exemptions in the welfare bill.

In addition to clarifying the meaning of *federal public benefit*, the notice includes a list of all the programs within its jurisdiction that meet the definition and that therefore must verify alien eligibility according to the INS regulations. Programs that are not on the list are excluded from the verification requirements, either because they are not federal public benefits or because they are otherwise exempted from the restrictions on federal public benefits by the 1996 welfare law. The complete list of HHS "federal public benefits" programs is provided in "HHS Issues Public Benefits List and INS Proposes Rule on Verifying

Public Benefits Eligibility," IMMIGRANTS' RIGHTS UPDATE, Aug. 7, 1998, p. 14.

The HHS notice states that some assistance provided under the listed programs nevertheless may not be subject to INS verification requirements. Assistance falls within the term only when it is provided to an "individual, household, or family eligibility unit." Conversely, assistance is not a federal public benefit when it is "generally targeted to communities" or "targeted to certain populations based on their characteristics." For example, the notice explains that states may use Low Income Home Energy Assistance Program (LIHEAP) funds for weatherization of multiunit buildings. This assistance would not meet the definition of "federal public benefit" because it is not contingent on the eligibility of an individual, household, or family unit.

INS PROPOSED RULE ON VERIFICATION OF ELIGIBILITY FOR PUBLIC BENEFITS

Under the INS's proposed rule on verification of eligibility for public benefits, agencies administering federal programs have up to two years from the date that the rule goes into effect to implement the new verification procedures. Nonprofit charitable organizations are excluded from the definition of *"benefit granting agencies"* subject to the proposed regulation and are therefore exempt from any requirements under the 1996 welfare law for verifying immigrants' eligibility for federal, state, or local benefits before providing assistance.

In every case, the ultimate determination of eligibility is made by the benefit-granting agency. The INS's role is to provide "relevant information" from its records to enable the eligibility decision. The proposed rule provides the manner by which an agency must notify the immigrant of a denial of assistance due to immigration status and the mechanism by which the immigrant or agency can contest an INS determination.

A benefit-granting agency may verify the immigration or citizenship status of an individual "only to the extent that determination is relevant to the applicant's eligibility for the public benefit." The "applicant" is the individual who will receive the benefit.

All applicants for federal public benefits must submit a written declaration of immigration status. An agency may allow one adult in a household to execute the declaration and provide documents on behalf of all other applicants. Applicants who attest that they are U.S. citizens or nationals must also present the administering agency with evidence of their citizenship or nationality by providing a document that appears on the list of acceptable documents printed in the proposed regulation. All documents presented must be original and unexpired. An agency may rely on the attestation of citizenship or nationality while the applicant endeavors to obtain the requisite verifying documentation.

The immigration status of persons who do not claim citizenship must be verified via the Systematic Alien Verification for Entitlements (SAVE) program. Under SAVE, agencies collect documentation of applicants' immigration status, then contact the INS for authentication via either computer, phone, or letter.

As with U.S. citizens or nationals, the administering agency must first obtain an attestation of eligible immigrant status from the applicant along with original, unexpired evidence of eligible status. If such documentation is not available, the agency may accept a receipt as temporary evidence of status. Once documentation has been provided, the agency submits the information to SAVE, and the INS must respond with a preliminary determination within three working days (known as "primary verification"). If the response to primary verification is inconclusive, "secondary verification" is used. At the present time, this consists of a hand search by the INS of the applicant's immigration files. The INS insists that secondary verification generally takes only a few weeks, but advocates report that the wait can be much longer.

A number of legal provisions restrict the use of SAVE and the sharing of information gathered under SAVE. SAVE may not be used for employment verification, verification of citizenship, discrimination, or violation of privacy rights. The INS may not use the information it receives through SAVE against an individual in administrative deportation proceedings.

The procedures are slightly different for verifying the eligibility of persons who may qualify for public benefits as victims of domestic violence. The documentation procedures are significantly relaxed, and the proposed regulations provide modified rules for verifying immigration status. For further clarification, the regulations refer to the Interim Guidance and to the subsequent Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists between Battery or Extreme Cruelty and Need for Specific Public Benefits, 62 Fed. Reg. 65,285 (Dec. 11, 1997).

[63 Fed. Reg. 41,658 (Aug. 4, 1998) (HHS notice); 63 Fed Reg. 41,662, (Aug. 4, 1998) (INS proposed rule).]

HCFA CONFIRMS ONLY APPLICANTS FOR MEDICAID NEED PROVIDE AN SSN OR DISCLOSE IMMIGRATION STATUS – The Health Care Financing Administration (HCFA) recently issued a letter to state health officials addressing two eligibility-related issues in the Medicaid program: (1) who is required to provide a Social Security number (SSN) when an application is made; and (2) how (and whether) non–U.S. citizens are to provide evidence verifying their immigration status. The letter clarifies that only applicants can be required to provide an SSN and verify their immigration status. Nonapplicant family members cannot be required to do so.

With regard to Social Security numbers, the letter states that only applicants for and recipients of Medicaid benefits must supply an SSN. In all other cases, including nonapplicant parents of children applying for Medicaid and children applying for a separate (non-Medicaid) state Child Health Insurance Program (CHIP), states are prohibited from making the provision of an SSN by another family member a condition of the child's eligibility. This also applies to other members of the household whose income might be used in making the eligibility determination concerning the child. The letter clarifies that states have no legal basis for denying an application based upon a failure to supply the SSN for verification purposes.

With regard to the verification of immigration status, the letter states that children who are U.S. citizens and who are applying for either Medicaid or a separate state CHIP program may establish their citizenship by declaring that they are U.S. citizens. However, states are permitted to require further verifi-

cation as a condition of eligibility. Children applying for either program who are qualified aliens must present documentation of their immigration status, which states must verify using systems established for that purpose. The citizenship or immigration status of nonapplicant parents (or other household members), however, is irrelevant to their children's eligibility. States may not require that parents disclose this information.

The letter notes that from a programmatic point of view, asking nonapplicants for their SSNs or evidence of immigration status may discourage immigrant parents (who may not wish to disclose information about themselves) from applying for benefits on behalf of their children who are U.S. citizens. When this occurs, the children are denied access to medical care they both need and are eligible to receive under the law.

[Letter from HCFA Director Sally K. Richardson to State Health Officials (Sept. 10, 1998).]

STATE DEPARTMENT ANSWERS QUESTIONS ON NEW AFFIDAVIT OF SUPPORT – The U.S. State Department has issued a cable to all its diplomatic and consular posts answering questions that have arisen concerning the new affidavit of support, Form I-864. Under current law, the affidavit of support must be completed on behalf of immigrants obtaining family- and some employment-based visas.

Some of the questions and answers from the July 22, 1998, cable that may be relevant to advocates working with low-income individuals are reproduced below. (For a complete version of the cable, contact NILC.)

. . . 4. *Q:* Must each of the [sponsor's] last three years' income equal 125% of the poverty line?

A: No. The current year's income, supported by employment letters or other appropriate documentation to demonstrate continued employment/income, will govern. It is possible that a sponsor whose last three years of tax records are all below the minimum income requirement will still qualify as a sponsor if current income is sustainable and will meet or exceed the minimum income level. For example, someone who recently graduated from college may have had little or no income while in school, but is now employed with an income that meets or exceeds 125% of the poverty guideline for his/her household size. The visa should not be denied because of the previous years of low income. Conversely, a sponsor who earned a high income three years ago, but whose income is now below the poverty guideline, would need a joint sponsor, absent significant assets or an I-864 from a qualifying household member(s) to meet public charge concerns. . . .

5. *Q:* If a sponsor cannot present three years of tax returns because he/she was not obligated to file, can he/she qualify as a sponsor?

A: Yes. A sponsor is only required to submit returns for years in which he/she was obligated to file. The lack of tax returns if there was no obligation to file does not disqualify him/her as a sponsor. The deciding factor is current and sustainable income. . . .

21. *Q:* Can a petitioner's or joint sponsor's SSI [Supplemental Security Income] benefits be counted as income?

A: No. SSI benefits cannot be considered when computing the sufficiency of the I-864. (A sufficient I-864 is one that meets the minimum income requirement.)

22. *Q:* Can disability benefits be considered as income?

A: Yes.

23. *Q:* Can Social Security benefits (not SSI) be considered as income?

A: Yes.

24. Q: Can income from unemployment benefits or workman's compensation be considered as income for I-864 purposes?

A: UNEMPLOYMENT BENEFITS. Unemployment benefits are normally temporary in nature and would not meet the criteria of sustainable income. Such benefits should therefore not be considered for I-864 purposes.

WORKMAN'S COMPENSATION. If the sponsor can demonstrate that he/she will return to previous employment at the same salary level (or a level that meets public charge concerns) upon completion of medical treatment, workman's compensation could be counted toward the current year's income. Like unemployment benefits, workman's comp is generally of a temporary and finite nature. It would not meet the criteria of sustainable income, however, absent the ability to resume employment after appropriate medical treatment. . . .

[U.S. Department of State, I-864 Affidavit of Support, Update No. 17: More Qs and As, Cable No. 98-State-133584, July 22, 1998, reprinted in 75 *Interpreter Releases* 1338–43 (Sept. 28, 1998).]

Abbreviations

• AEDPA - Antiterrorism and Effective Death Penalty Act of 1996 • ALJ - administrative law judge • ATCA - Alien Tort Claims Act • BIA - Board of Immigration Appeals • CHIP - Child Health Insurance Program • EOIR - Executive Office for Immigration Review • FTCA - Federal Tort Claims Act • HCFA - Health Care Financing Administration • HHS - U.S. Department of Health and Human Services • IIRIRA - Illegal Immigration Reform and Immigrant Responsibility Act of 1996 • IJ - immigration judge • INA - Immigration and Nationality Act • INS - Immigration and Naturalization Service • LIHEAP - Low Income Home Energy Assistance Program • NACARA - Nicaraguan Adjustment and Central American Relief Act of 1997 • OCAHO - Office of the Chief Administrative Hearing Officer • OSC - Office of Special Counsel for Immigration Related Unfair Employment Practices • PRWORA - Personal Responsibility and Work Opportunity Reconciliation Act of 1996 • SAVE - Systematic Alien Verification for Entitlements • SSA - Social Security Administration • SSI - Supplemental Security Income • SSN - Social Security number • TPS - temporary protected status •

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