IMMIGRATION DETENTION AND REMOVAL: A Guide for Detainees and Their Families

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October, 2004

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Introduction

United States immigration laws have changed dramatically over the past ten years. These changes are most noticeable in the area of detention and deportation or removal of non-citizens with criminal convictions. Many more crimes make immigrants including lawful permanent residents (green card holders) subject to mandatory detention and mandatory deportation.

The effect of these changes has been dramatic. In 1995, approximately 5,500 people were detained on any given day by immigration authorities and some 33,000 were deported. In 2003, over 20,000 people were detained on any given day and over 77,000 were deported.

For many, detention and the commencement of deportation proceedings (now called removal) arise suddenly. The legal process leading to removal can be overwhelming. Although everyone in removal proceedings has the right to be represented by a lawyer, you do not have the right to a court appointed attorney. You must find your own lawyer. There are very few free lawyers for these cases so you may have to pay for a lawyer.

This pamphlet is a guide for those who have been detained by immigration authorities and placed in removal proceedings primarily because of criminal convictions, and their families. This pamphlet is for information purposes only. **This pamphlet does not substitute for the legal advice of a qualified immigration expert.** Immigration law and procedure is a very complex and rapidly changing field and statements made in this pamphlet may no longer be accurate by the time you read this.

This booklet gives general information for low-income consumers and advocates. The booklet is not a substitute for specific legal advice from an immigration expert about your case. If you have any questions about your legal rights or how to proceed with your case, you should get advice from an immigration expert. To learn more about the Legal Aid Society or to find a Legal Aid office serving your area, call (212) 577-3300. There is also a list of resources at the end of the booklet.

Detention

Immigrants who are subject to removal are now much more likely to be detained by immigration authorities. The law requires that non-citizens convicted of certain crimes must be detained and that persons deemed to be arriving aliens are ineligible for bond and release from custody. This section discusses the ways in which people are identified and detained by immigration authorities. Many people who are subject to removal are detected and detained in four main ways.

Stopped at the Airport after Traveling Abroad: Upon re-entering the United States, all non-citizens have to go through Department of Homeland Security (DHS, formerly known as the Immigration and Naturalization Service) screening. Many have traveled to their home countries in the past without any problem, but the government now regularly updates its computers at airport inspection. The computers have access to criminal records and prior orders of deportation. There is no statute of limitations under the immigration laws and you may be stopped for convictions that occurred many years ago. If you have a criminal conviction you should consult a reputable immigration practitioner before traveling abroad to make sure that you will be able to re-enter the United States without a problem.

Interviewed While in Jail: The DHS has officers at most New York City jails and state prisons. You will likely be interviewed by a DHS agent and will be asked about your immigration status. You may not even realize that DHS was interviewing you. You will be placed into removal proceedings if there is a basis under the immigration laws to do so. The DHS officer will first place a "detainer" on you. Once you have completed your time in prison or jail, you will be transferred to DHS custody. Federal law says that state and local law enforcement authorities may only hold persons on immigration detainers for 48 hours after the completion of their jail time. This means that once you have completed your jail time, the immigration officials must take you into custody within two days. If they do not, you should contact your criminal defense lawyer and ask him or her to file a writ of habeas corpus with the state court demanding your release.

Immigration Applications: Most, if not all, applications to the United States Citizenship and Immigration Services (USCIS), an agency within DHS, now require security clearances and/or fingerprints as part of the application process. This includes applications for citizenship, renewal of green cards, employment authorization documents and even "status inquiries" to USCIS. USCIS now uses very sophisticated databases for their security clearances which identify old criminal convictions from anywhere in the U.S. When fingerprints are taken, USCIS gets a list of all your arrests and convictions. If you have a conviction that makes you removable, your application is likely to be denied and you very likely will be placed in removal proceedings.

Prior Orders of Deportation: DHS has a campaign to pick up persons living in the United States who have orders of deportation. Some people may not even know that they have been ordered deported or they may think that because the deportation order was entered many years ago it is no longer a problem. If you were ever in immigration court proceedings before but did

not return to court, you may have been ordered deported in your absence. Persons with prior orders of deportation have been entered onto a national "absconder" list. Immigration authorities have been working together with local law enforcement to pick up "absconders." This can happen anywhere including at the border or even if you are stopped for a traffic violation.

Detention Facilities: United States Immigration and Customs Enforcement (USICE), an agency within DHS, operates or has contracts with detention facilities all over the country. Some facilities, such as the Global Enforcement Outsourcing facility in Queens, New York (formerly known as Wackenhut) or the Elizabeth New Jersey facility, are used exclusively for people seeking political asylum. Others are just for immigration detainees such as the facilities in Oakdale in Louisiana and Krome in Florida. Most detainees are held in local jails that are paid a fee by the government for holding detainees. At this time, there is no facility for holding detainees in New York City. Detainees from New York are first taken to the immigration detention center at Varick Street in Manhattan. From Varick Street, detainees are most often sent either to Oakdale, Louisiana, or the Passaic County Jail in Paterson, New Jersey. The decision by USICE to send you to a particular facility is based on the availability of beds and the type of immigration violation at the time of your apprehension.

Bond

Not all immigrants are eligible for release from detention. Depending on your immigration status and/or criminal record, you may be subject to mandatory detention. If you are not eligible for bond, you will have to fight your removal from inside immigration detention.

I. MANDATORY DETENTION: The Immigration and Nationality Act and federal regulations state that the government must take you into custody and hold you without bond if you have been convicted of certain removable offenses and released from jail after October 8, 1998. If you were convicted of a removable offense but not sentenced to jail (for example if you were sentenced to community service, probation, or a conditional discharge) you may still be eligible for bond. If you think that you are entitled to bond, you must write to the immigration court and ask for a "Joseph Hearing" where you can try to convince the judge that the mandatory detention law does not apply to you.

Grounds for Mandatory Detention of Lawful Permanent Residents in the United States, Persons Who Have Overstayed Their Visa, or Persons Who Have Been Lawfully Admitted into the United States: If you are a lawful permanent resident or overstayed your visa or were admitted into the United States in some manner, you may be subject to mandatory detention if you were released from jail after October 8, 1998, and convicted of any of the following crimes (these are explained in more detail in the section entitled Grounds of Removability Based on Criminal Convictions):

* Two Crimes Involving Moral Turpitude (CIMT) at any time after your admission in the United States;

* An aggravated felony;

* A controlled substance offense;

* A Firearms offense.

Grounds for Mandatory Detention for Lawful Permanent Residents Returning From a Trip Abroad, Persons Who Entered Without Inspection (EWI), or Persons Seeking Admission into the United States: If you are a lawful permanent resident returning from a trip outside the United States or entered without inspection or are seeking admission into the United States, you may be subject to mandatory detention if you were released from jail after October 8, 1998, and convicted of any of the following crimes. (These grounds are explained in more detail in the section entitled Grounds of Removability Based on Criminal Convictions):

* One CIMT (which may be waived as a petty offense if you have no prior criminal history, the offense was not punishable by more than one year in jail and you did not serve more than six months in jail);

* Controlled substance offense;

* Drug trafficking offense;

* Two or more offenses with aggregate sentence of 5 years incarceration;

* Prostitution;

* Domestic violence or violation of protection order.

II. PROCEDURES FOR SETTING BOND: If you are not subject to mandatory detention and you are not an arriving alien, then you are eligible for bond.

DHS Will Set Initial Bond: If you are detained but eligible for bond, the government will set an initial bond amount. If you post this bond, you will be released. If you cannot afford the bond, you can write to the immigration court and ask for a bond re-determination hearing.

Bond Hearing: To set the amount of bond, the judge will look at two factors: (i) are you are a flight risk or somebody who would not come back to court if released, and (ii) are you a danger to the community? The judge will look at things about your life which show that you are responsible. It is very important that you present as much evidence as possible about your life. Some of the things that are important to the judge are:

* **Relatives in Court:** The fact that you have a family that cares enough about you to come to court means a lot to the judge;

* **Letters of Support:** Get letters from relatives who cannot come to court, neighbors, friends, co-workers, and clergy that state that they know you to be a good and reliable person. These letters should be notarized;

* **Apartment Lease or Mortgage** showing you have a place to live if you are released;

* **Letters from Employers and Pay Stubs** showing you have a regular job or have a job offer and are reliable;

* **Marriage Certificate** showing you have family to live with and care for (but only if your spouse is a United States citizen or lawful permanent resident);

* **Children's Birth Certificates** (but only if children are United States citizens or lawful permanent residents);

* **Attendance in Rehabilitation Programs** showing that you are trying to fix your drug, drinking, or anger problems;

* **Warrant History:** Have you ever failed to go to court on any of your criminal cases so that a warrant was issued? If not, you can show the judge that you were reliable when you had to go to court in the past;

* **School Records** including GED;

* **Tax Records:** Judges expect that people who have lived and worked in the United States have complied with all tax laws;

* **Eligibility for Relief:** If you have no way to remain in the United States, the judge is likely to set a higher bond. But if you are eligible for relief the judge will take that into consideration. (See Forms of Relief beginning at page 12);

Amount of the Bond: The immigration judge is not allowed to set a bond below $1,500 but can order your release "on your own recognizance." This means the judge can let you go without any bond. The bond may be paid in cash or you may use a bail bondsman. The bondsman will post the bail on your behalf, but will charge you a non-refundable fee and will require that you pay a certain percentage of the bond amount. If your family pays the bond directly to the government, the bond money will be returned to your family only when your court case is completed and only if you have complied with the court's order, even if that order is to leave the country.

Bond Appeal: If you disagree with the judge's determination of your bond request, you may file a bond appeal with the Board of Immigration Appeals (BIA). When the judge decides your appeal, she will give you a form known as a Notice of Appeal. You must complete and file the Notice of Appeal with the BIA within 30 days of the judge's decision. The BIA may take several months to decide your bond appeal and the immigration judge may order you removed before

you receive a decision from the BIA. You will be held in detention while your appeal is being decided.

The Government May Also Appeal the judge's decision if the government lawyer believes that the judge should not have set bond or set the bond too low. The government also has a limited time to file the appeal. If they do not file an appeal, the judge's bond decision becomes final. Again, the immigration judge may decide to order you deported before you receive a decision from the BIA on the question of your bond.

Notice To Appear

The Notice to Appear or NTA is the document the government gives you and the court to explain why you should be removed from the United States. The NTA starts the case against you. DHS must give you the NTA within 72 hours of your detention. The NTA is divided into two parts. The first part which is labeled "ALLEGATIONS" has your name, the country you are from, and the date and manner you entered the United States. It also gives the factual basis or reason for your removal. The second part is called "CHARGES." It lists the sections of the law under which you may be removed. You must examine this document carefully and check for accuracy. For example, does it have the proper date that you entered the United States? This may affect your ability to fight your removal. Does it correctly state your criminal convictions? A mistake in this section may make the difference between being held in mandatory detention or receiving bond.

Immigration Court Proceedings

Proceedings Can Be Anywhere: If you are detained, there is no guarantee that you will be detained in the state where you live or that your case will be heard in the state where you live. DHS has the authority to detain you anywhere it wishes.

Change of Venue: The immigration court may transfer your case to an immigration court near your home if you ask it do so. If you are detained, however, it is much more difficult to obtain a change in venue. The factors the judge will consider are:

* **Nature of the evidence and its importance to your claim**: If you are eligible for some form of relief from removal and the evidence you need to support your claim such as witnesses or official records are in another state and cannot otherwise be obtained by you, you will have a better chance of having your case transferred;

* **The number of prior continuances in the case**. The earlier you request a change in venue, the better your chance. If there have already been a number of court dates the court is less likely to grant your request.

MASTER CALANDAR HEARINGS: Your first date to see the immigration judge is usually scheduled within one or two weeks after you receive your NTA. It may be longer. Your first appearances before an immigration judge are known as the Master Calendar Hearings. These court appearances are usually very brief and are used by the court to take the pleadings, to decide if you are removable, and to identify the relief from removal you are eligible to apply for. A judge will have many cases scheduled for her master calendar day. If you make an application for relief such as cancellation of removal, adjustment of status, or asylum your case will be adjourned for a full hearing to decide whether you are eligible for the relief. This is called the Individual Hearing. The judge will schedule only a few cases a day for individual hearings.

Adjournments to Find a Lawyer: At your first court appearance the court will ask if you have an attorney or would like time to obtain one. If you wish to fight your removal then you should ask the court for time to get an attorney. The court will give you an adjournment to find a lawyer. If you cannot find one by the next date, the court may go ahead with your case.

Free Lawyers: While all detainees have the right to be represented by counsel, in immigration court, you are <u>not</u> entitled to have an attorney assigned to you at the government's expense. There are a few organizations that provide free or low cost representation to detainees. The court will provide you with a list of such organizations when you ask for time to find a lawyer.

PLEADINGS: At the beginning of your case the judge will "take the pleadings." The judge will review the NTA with you. The judge will ask you if the facts contained in the NTA are true, if you admit that you are removable, and whether you will be applying for any form of relief from removal. The government, however, must first prove the following:

* **Government Must Prove Alienage:** The government must prove that you are an alien, meaning that you are not a United States citizen. If you are a lawful permanent resident, they can do this by showing the judge a copy of your visa "face sheet" - the document which you received when you first entered into the United States. If you entered without inspection, they may rely on any statements you made or any other evidence showing that you were not lawfully admitted into the United States. If the government cannot prove that you are an alien, then the case must be terminated;

* **Government Must Prove Removability:** If you are a lawful permanent resident or were otherwise lawfully admitted into the United States, the government must also prove by clear and convincing evidence that you are removable. They must show that you have done something to violate immigration law which permits the government to send you back to your country of origin. For example, if the NTA states that you are removable due to a conviction for a crime, the government will need to produce a certificate of disposition or some other court record to verify that you were convicted of the crime. The government will also have to show that the crime you were convicted of is one that allows the government to deport you. In deciding whether you are removable because of a criminal conviction, the judge can only consider the type of crime you were convicted

of and cannot consider what actually happened in your criminal case

If you want to fight your case, do not admit these allegations. Ask the court to make the government prove its case. Challenging the government's claim that you are removable is legally complicated. You should consult with an immigration specialist who may help you prove that the crime you were convicted of is not a removable offense.

Contesting a Factual Allegation: If any of the facts in the NTA are not true, you should deny the charges or allegations and demand that the government provide proof of the charges or allegations. For example, if the NTA alleges that you were convicted of a certain crime but you were convicted of a different crime, you may be eligible to request a waiver or may not even be removable.

What is a Conviction? A conviction is a finding of guilt with some form of punishment. You may be convicted of a crime by pleading guilty or by a guilty verdict after a trial. Convictions include no contest pleas or deferred adjudications when a person pleads guilty but later withdraws their plea after completing a treatment program. Adjournments in Contemplation of Dismissal (ACD) are not convictions because there was never a finding of guilt.

Citizenship: Some people may be citizens without even knowing it. This is particularly true if your parents became citizens while you were in the United States and under the age of 18, or you were born outside the United States and your parents were United States citizens. A person who qualifies as a citizen under these circumstances is said to derive or acquire citizenship from their parents. This is a very complicated area of the law, however, and whether you derived or acquired citizenship will depend on various factors such as the particular law in effect at the time you were born, when your parents became citizens, whether your parents were married, or divorced, and who had legal custody of you. If you believe that you may be a citizen, you should alert the judge so that she may investigate it.

Grounds of Removability Based on Criminal Convictions

Most non-citizens are placed in removal proceedings because they do not have legal immigration status (entered the United States without inspection, or overstayed their visa) or because they violated immigration rules. In this booklet we will focus on the ways in which non-citizens are put into removal proceedings as a result of criminal convictions.

In general, in removal proceedings there is a three-step inquiry. First, the judge will decide if you are removable because you have triggered one of the grounds of inadmissibility or deportability in immigration law. Next, the judge will decide if there is "relief" available to you. There are many different types of relief from removability including asylum, adjustment of status, and "waivers" that would allow you to remain in the U.S. despite your removability. Finally, the judge will decide whether you have met the legal and discretionary standards to be given that form of relief.

Step One: Determining Whether You Are Removable

DEPORTABILITY V. INADMISSIBILITY: Under the Immigration and Nationality Act, non-citizens can be removed from the United States if they violate either the statutory grounds of "inadmissibility" or "deportability." The "inadmissibility" grounds apply to people who (1) make an initial application to enter the United States lawfully; (2) travel abroad as lawful permanent residents and get stopped by immigration on trying to reenter the country, or (3) are in the United States and make an application for legal status. The "deportability" grounds apply to people who have been legally admitted into the US as lawful permanent residents or visitors.

I. CRIMINAL GROUNDS OF DEPORTABILITY: You may be subject to removal on deportability grounds if you have been lawfully admitted into the United States and have been convicted of:

* An aggravated felony;

* A crime involving moral turpitude (CIMT) committed within five years of the date of your admission and for which a sentence of one year or longer may be imposed;

* Two CIMTs at any time after your admission;

* A controlled substance offense (other than a single offense involving possession for one's own use of thirty grams of less of marijuana);

* Certain firearms offenses;

* A crime of domestic violence (including violation of an order of protection).

There are also other grounds of deportability not mentioned above found in section 237 of the Immigration and Nationality Act. Each of the grounds of deportability listed above is discussed further below.

> **Aggravated Felonies:** A conviction for an aggravated felony, or an attempt or a conspiracy to commit an act defined as an aggravated felony, has the most serious immigration consequences of any kind of conviction. An aggravated felony conviction will bar you from most forms of relief and will likely make you subject to mandatory removal.
>
> The term "aggravated felony" as used here is an immigration term and has no connection to the definition of a felony in state criminal law. A crime can be considered an aggravated felony even if it is a misdemeanor under state penal law. Whether a felony conviction under state law is an aggravated felony depends upon whether the federal law treats the crime as a felony. Consequently, you may be able to challenge the government's allegation that you were convicted of an aggravated felony if the state

definition of the crime differs from the federal definition of the crime. Many crimes become aggravated felonies if the sentence is for one year or more, even if the sentence is suspended. Other crimes may be aggravated felonies no matter how long the sentenced imposed.

Types of aggravated felonies

* **Crimes of violence** for which the penalty imposed are at least one year (felony or misdemeanor). These are defined as (a) an offense that has as an element the use, attempted use, or threatened use of physical force against a person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense;

* **Murder**;

* **Drug Trafficking:** The law is currently in a state of flux. It is clear that a felony drug sale is an aggravated felony and that a first time misdemeanor possession is not. However, anything in between has not been settled at the time of this writing;

* **Theft or Burglary** for which the penalty imposed is imprisonment for at least one year (felony or misdemeanor). Theft and burglary have been defined by federal courts with reference to the federal definition of theft. It is sometimes possible to argue that a state offense does not fall within the generic definition of theft or burglary;

* **Any Firearms Trafficking Offense** (*e.g.*, sale, distribution);

* **Failure to Appear for Service of Sentence** if the underlying offense is punishable for a term of five years, or more;

* **A Conviction Related to Failure to Appear Before a Court on a Felony Charge** for which a sentence of two years of imprisonment or more may be imposed;

* **Rape**;

* **Sexual Abuse of a Minor** (felony or class A misdemeanor) - State sex offenses involving a minor are not "sexual abuse of a minor" if they do not contain the same elements as the federal offense of sexual abuse of a minor;

* **Crime of Fraud or Deceit, in which the Loss to the Victim Exceeds $10,000** - An offense is not a "fraud or deceit" offense unless fraud or deceit is a necessary or proven element of the crime;

* **Prostitution Business** - crimes related to owning, controlling, managing or supervising a prostitution business;

* **Crime Related to Commercial Bribery**, counterfeiting, forgery, or trafficking in cars with altered vehicle identification numbers (VIN), where the penalty imposed is imprisonment for one year or more (felony or misdemeanor);

* **Crime Relating to Obstruction of Justice, Perjury or Subornation of Perjury, or Bribery of a Witness**, where the penalty imposed is imprisonment for one year or more (felony or misdemeanor);

* **Failure to Appear in Criminal Court for Felony Charge That Could Result in a Sentence of Two or More Years**.

Crimes Involving Moral Turpitude (CIMT): Defined as crimes which are "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." In general, crimes of moral turpitude fall into the following categories: i) crimes in which an intent to steal or defraud is an element; ii) crimes in which bodily harm is caused or threatened, by an intentional or willful act; iii) crimes in which serious bodily harm is caused or threatened by a reckless act; or iv) sex offenses. They include -- but are not limited to -- aggravated assault, sexual abuse (even if it did not involve a minor), kidnapping, arson, malicious destruction of property, criminal possession of stolen property, bribery, forgery, any crime involving either theft (such as robbery, burglary or larceny) or fraud (such as welfare fraud).

Controlled Substances Offenses: This category includes any conviction for sale of a controlled substance, possession of a controlled substance with intent to sell, or simple possession, with the exception of a single conviction for possession of less than 30 grams of marijuana. Drug abuse or addiction (whether resulting in a criminal conviction or not) also renders a non-citizen removable.

Firearms: As previously noted, any firearms trafficking offense is an aggravated felony, subjecting a non-citizen to mandatory removal. However, any conviction for mere possession of a firearm, including a class a misdemeanor, renders a non-citizen removable. Note that this ground of removability refers to firearms and not weapons in general. In some instances, a challenge can be made that you cannot be removed because the particular statute under which you were convicted is "divisible" because it includes other types of weapons. The government must then prove with the record of conviction that the weapon was a firearm and not any other type of weapon.

Domestic Violence & Stalking: Convictions in this category include crimes involving domestic violence, stalking, or child abuse, neglect or abandonment. You may be able to challenge this charge if the government cannot prove there was a relationship between

you and the victim that falls within the definition in the immigration law.

Violation of Orders of Protection: Any conviction that constitutes an admission to violating an Order of Protection renders an alien removable if committed at any time after entry, no matter what the actual sentence is.

II. CRIMINAL GROUNDS OF INADMISSIBILITY: You may be subject to removal on inadmissibility grounds if you entered without inspection (EWI) and/or were convicted of certain crimes or admit to having committed these crimes:

* A controlled substance offense;

* A crime involving moral turpitude (CIMT) subject to the petty offense exception.

Each of these grounds of inadmissibility is discussed further below.

Controlled Substances Offenses: Note that unlike the controlled substance ground of deportability there is no exception for a single conviction for possession of less than 30 grams of marijuana.

Crimes Involving Moral Turpitude: Defined as crimes which are "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." In general, crimes of moral turpitude fall into the following categories: i) crimes in which an intent to steal or defraud is an element; ii) crimes in which bodily harm is caused or threatened, by an intentional or willful act; iii) crimes in which serious bodily harm is caused or threatened by a reckless act; or iv) sex offenses. They include -- but are not limited to -- aggravated assault, sexual abuse (not involving a minor), kidnapping, arson, malicious destruction of property, criminal possession of stolen property, bribery, forgery, any crime involving either theft (such as robbery, burglary or larceny) or fraud (such as welfare fraud). There are two exceptions to this ground of removal:

* **Petty Offense Exception**: There is an exception that bars removability based on a CIMT if you have been convicted of only one CIMT. In order to fall within this exception the maximum penalty possible for the crime cannot exceed one year in prison and you were not sentenced to a term of imprisonment of more than 6 months;

* **Crime Committed When You Were under 18.** Another exception is if you were convicted of only one CIMT which you committed when you were under 18 years old, and the crime was committed more than 5 years before your application for admission

Step Two: Forms of Relief

Again, you may want to challenge the government's claim that you are removable. With legal help, you may be able to show that the offense you committed is not a basis for removal. In deciding whether the offense you were convicted of is a removable offense, the judge is allowed only to look at the type of crime and not what actually happened in your criminal case.

Once the court has determined that you are removable, you may ask the court to determine whether you are eligible for relief from removal. There are different types of relief available depending on various factors.

The following discussion of forms of relief provides only general information. More specific and detailed explanations on how to apply for these forms of relief can be found at the Florence Immigrant Rights Project web site at www.lirs.org.

Cancellation of Removal for Lawful Permanent Residents: If you are a lawful permanent resident (LPR) in removal proceedings, you may apply for cancellation of removal if you meet the following criteria:

* You must have continuously resided in United States for 7 years after you were admitted and before you were served the Notice to Appear or committed an offense that subjects you to removal on inadmissibility grounds;

* You must have been an LPR for 5 yrs;

* You cannot have a conviction for an aggravated felony;

* You cannot have previously been granted cancellation of removal or waiver under 212(c) of the Immigration and Nationality Act (INA);

* You cannot be a terrorist, crewman, or exchange visitor;

Once you satisfy these requirements, the judge must decide if the positive factors in your life outweigh the negative factors before s/he can grant relief.

212(c) waiver: Prior to 1996, this was the most common form of relief from deportation or inadmissibility available to LPRs who had been convicted of a crime. In 1996, Congress eliminated this form of relief and replaced it with cancellation of removal discussed above. You may still qualify for 212(c) waiver if you meet the following criteria:

* You are an LPR and pled guilty to a crime (including an aggravated felony but not including a firearm offense) before 4/24/96;

* You have lived in the US for 7 years;

* The positive factors in your life outweigh the negative ones;

Note that if you served a term of imprisonment of 5 years or more for one or more aggravated felony convictions, you may be ineligible for 212(c) relief.

Cancellation of Removal for Non-LPRs: If you are a refugee, asylee, or an unauthorized and undocumented non-citizen, you may be eligible for cancellation of removal for non-LPRs, if you meet the following criteria:

* You must have had continuous physical presence in the United States for 10 years;

* The time counted towards the ten years stops when either (i) DHS serves you the NTA, or (ii) when you have committed a criminal offense which makes you removable under INA Section 212(a)(2).

  In other words, if the government serves an NTA on you or you commit an offense under INA 212(a) (2) within ten years of your arrival in the U.S., you will be ineligible for this form of cancellation;

* You must show that you have never been absent from the US for more than 90 days on one trip or more than 180 days in combined trips;

* You must show that you were a person of "Good Moral Character" during the ten years prior to your application;

* You must also have a United States citizen or lawful permanent resident spouse, child or parent and you must show that your departure from the United States would cause any family members exceptional and extremely unusual hardship.

Adjustment of Status: Under certain very limited circumstances, a non-citizen with a criminal conviction may avoid removal by adjusting his/her status to a lawful permanent resident. This can work even if the person may already be a LPR. To adjust your status, you will need a relative or employer to petition for a visa on your behalf. Visas are distributed according to certain preference categories based upon the family relationship. The spouse or child of a USC or the parents of a USC over 21 years old are immediately eligible for a visa and are not subject to the waiting periods for those in preference categories. The visa preference categories are listed below:

preference categories	
First	Single (+21) child of USC
2A	Spouse, unmarried (-21) child of LPR
2B	Unmarried child (+21) of LPR
3	Married child of USC

Note: Only LPRs or people who entered with a visa and who overstayed or certain Cuban parolees are eligible for this form of relief. At this time, there is no way for a person who entered illegally to adjust their status except for those who on whose behalf an I-130 or I-140 visa petition was filed before April 30, 2001.

212(h) Waiver: If your criminal conviction falls under the CIMT or prostitution ground of inadmissibility or if you have a single marijuana possession conviction involving less than 30 gms of marijuana, you may be eligible for a waiver pursuant to Section 212(h) of the INA. To be eligible for this waiver you must meet the following criteria:

* You have not been convicted of a drug offense (except for one time simple possession of 30 gms of marihuana);

* If you committed your crime more than 15 years ago of your crime was prostitution, you will need to show that you are rehabilitated;

* If your crime was committed less than 15 years ago and it did not involve prostitution, you will need to show that you have a spouse, parent, son or daughter who is a United States Citizen or a lawful permanent resident, and denial of your admission would result in extreme hardship to your qualifying relative;

* If you are an LPR you must have lived in the United States for 7 years before your immigration case started;

You cannot apply for a 212(h) waiver if you are a lawful permanent resident and have been convicted of an aggravated felony. Note, however, that this provision applies only to LPRs. A person who overstayed his or her visa or parolees may still apply for adjustment of status with a 212(h) waiver.

Asylum: Asylum is a form of relief given to persons who have a "well founded fear" of returning to their country for certain reasons. The criteria for asylum are:

* That you are unable or unwilling to return to your country because you have been persecuted there or you have a well founded fear of persecution on account of your race, religion, nationality, membership in a particular social group, or political opinion;

* Generally, you must apply for asylum within one year of your last arrival in the U.S. (there are limited exceptions);

* You cannot have been convicted of a "particularly serious crime." A particularly serious crime, like an aggravated felony, is a term used in immigration law. Generally, it includes crimes such as robbery, rape, or serious assaults. The government maintains that any drug trafficking crime is presumptively a particularly serious crime. This means that if you have been convicted of drug trafficking, you will need to prove that under the

circumstances of your case, the crime was not particularly serious;

* You must not have been convicted of an aggravated felony;

* You merit asylum in the exercise of discretion.

Withholding: Withholding of removal is very similar to asylum but much harder to get. Whereas asylum requires that you show a possibility of persecution, withholding requires that you show a probability of persecution. When the judge grants withholding of removal, he actually orders your removal but then orders that the removal be withheld until such time that it is safe for you to return to your country of citizenship.

DHS may continue to detain you even after withholding of removal is granted if it determines that you are a flight risk or a danger to the community. If you are released from custody, you will be paroled and required to report to DHS periodically. You will also be allowed to work legally within the United States. The criteria for withholding of removal are:

* Your life or freedom would be threatened because of race, religion, nationality, membership in a particular social group, or political opinion;

* You have not been convicted of a particularly serious crime (see above). A conviction for an aggravated felony in which you were sentenced to an aggregate term of five years in prison is automatically considered a particularly serious crime. If you were given less then a five year sentence, the government still has the discretion to classify the conviction as a particularly serious crime.

Convention Against Torture (CAT): Pursuant to an international treaty known as the Convention Against Torture, the United States is prohibited from returning anyone to a country where they may be subject to torture. In order to obtain this form of relief you must show that you would suffer severe pain and suffering, intentionally inflicted for an illicit purpose by or at the instigation of, or with the acquiescence of, a public official who has custody and control over you, and not arising out of a lawful sanction. You may qualify for "deferral" under CAT no matter what your criminal record.

Miscellaneous Forms of Relief

Cuban Refugee Adjustment and the **Nicaraguan Adjustment and Central American Relief Act:** Allows people from certain countries to adjust their status to a LPR following a period of time after their entry into the United States.

Temporary Protected Status (TPS): The President of the United States occasionally declares that citizens of certain countries will be allowed to live and work in the United States for a pecified period of time. This occurs when a country is at war or a country has experienced a

severe natural disaster such as an earthquake. Persons eligible for Temporary Protected Status must meet the deadlines for applications. If approved, you can work only while the designation is in place. People who are inadmissible due to a criminal conviction, or who have been convicted of certain crimes, may not be eligible for TPS.

Deferred Enforced Departure: This is very similar to Temporary Protected Status.

Step Three: Determining Whether You Meet the Standards for Relief

Applications: Once the judge finds that you are eligible to apply for a form of relief, she will allow you time to prepare the proper applications. There are different forms for each of the different types of relief. These forms ask very specific questions about things such as where you have lived and worked, your family, your arrest and conviction record, as well as many other things. The judge will give you the proper form. Most require that you pay a fee. If you do not have the money, ask for a fee waiver by explaining in writing how much money you have and why you cannot afford to pay the fee. You must be very careful when you fill out your applications for relief. You will be required to swear to their contents. If the judge finds that you did not answer a question truthfully, she may deny you the relief requested. After you have submitted your application, the judge will grant you additional time to collect and prepare your evidence in support of your application.

THE INDIVIDUAL HEARING: At the hearing, you will have to prove that you meet the requirements for the relief you have applied for. You will have to submit documents and present witnesses to prove your claims. The type of evidence you will need to present to the judge will depend on the type of relief you are seeking.

If you ask for asylum, withholding, or relief under the Convention Against Torture, you will need to present evidence about conditions in your country of origin and why you fear persecution or torture. This evidence may include:

* **Country Reports** on human rights practices in your country prepared by the United States Department of State and/or human rights organizations such as Amnesty International or Human Rights Watch;

* **Newspaper and Magazine Articles** describing instances of persecution;

* **Testimony or Affidavits** from experts on your country such as professors or diplomats, or of other people from your country who have suffered persecution.

If you ask for a 212(c) waiver, cancellation of removal or adjustment of status, you will need to present information about your past and present life in the United States and the lives of your family members. The judge must then balance the good and bad factors in your case and makes a

discretionary decision as to whether you deserve to remain in the United States. This means that even though you qualified to apply for a waiver, the judge can still deny the waiver if she feels that you do not deserve it.

If you ask for a 212(h) waiver or adjustment of status you will also need to show that your removal would be an extreme and unusual hardship to your United States Citizen or lawful permanent resident spouse or children. The law regarding extreme and unusual hardship is complex. In general, means more than what one would expect from being separated from a family member.

In making that decision the judge will look at positive and negative factors about your life. Some of the positive factors the judge will look for as well as the ways you can prove their existence are listed below.

* **Your Family Ties Within the United States:** Birth certificates, marriage certificates, family photos, copies of family member green cards, U.S. Passports or naturalization certificates, and letters from family members;

* **Your Long Term Residence in the United States:** Apartment leases or mortgages, letters from neighbors, and telephone, cable, and electric bills;

* **Evidence of Hardship to Your Family Members if You are Deported:** Records of any medical, psychiatric or educational disabilities of family members who depend on you; testimony or letter from your spouse (even if you are separated or divorced) showing that you provide financial and emotional support for your children;

* **Evidence of Hardship to You if You are Deported:** Medical or education records indicating a disability or chronic health condition;

* **Reports About Your Country:** Newspaper and magazine articles, or U.S. State Department Country Reports on the human rights and/or economic conditions in your home country;

* **Service in the United States Armed Forces:** Discharge papers, commendations, VA benefits statements;

* **History of Employment:** Letters from your employers, pay stubs, W-2 forms, social security earnings statements;

* **Ownership of Property in the United States:** Mortgage, bank statements;

* **Tax History:** Copies of your tax returns from as many years back as you can, a printout of tax filing from the IRS;

* **Proof of Rehabilitation:** Certificates of your attendance at drug or alcohol rehabilitation programs, letters from counselors, therapists, or your sponsor;

* **Community Service:** Letters from youth sports programs, church groups, and civic organizations;

* **Any Other Evidence That May Exist of Your Good Moral Character.**

Negative Factors: The judge must also consider why it is you are in removal proceedings. Negative factors include your criminal history and the circumstances of the crimes for which you have been convicted, lack of work history and payment of taxes, any other violations of the immigration laws, or any other evidence of bad character.

Your Testimony: You will be required to testify in support of your application for relief.

In the case of asylum, withholding, or CAT, your testimony must be detailed. It is not enough to say that you or members of your family were arrested or tortured. You must give the judge details such as when these events happened, where, and who was involved. It may be difficult, but you will need to describe how you were abused or tortured or how family members were killed.

In the cases of cancellation, 212(c), and adjustment, your life becomes an open book. The judge wants to hear about your whole life - your childhood, education, family and marital history, arrival in the United States, your work history, medical history, alcohol and drug abuse history, and generally any other important aspect of your life.

The Judge Cannot Reconsider Your Guilt: The immigration judge has no authority to reconsider whether you were actually guilty of the crimes you were convicted of. Even though you may have an explanation, the judge simply is not allowed to consider whether you were innocent or guilty. For the immigration judge, the important thing is that you have accepted responsibility and that you will not commit more crimes in the future. It may backfire if you deny that you committed the crime you pled guilty to. Therefore, since you have already been found eligible for relief, you should attempt to provide any mitigating evidence about those crimes. For example, document that you were addicted to drugs at the time but that you are rehabilitated now, or that you were under extreme stress at the time and have received counseling to learn to cope, or simply that it was a stupid thing to do which you greatly regret now.

Testimony of Others: You may call as many witnesses as necessary to testify in your case. This includes your spouse, children, siblings, friends, clergy, doctors, etc. They should be prepared to talk about how they know you, your good moral character, why they do not want you to be deported, and that they know about your convictions or other evidence of bad character. Witnesses should not testify if they are not legally in this country or if they could be put in removal proceedings.

The Judge's Decision: Most of the time, the judge will make her decision immediately after the hearing is over, but sometimes the judge will set a new date to give her decision or will send you (or your lawyer) the decision in the mail. The judge can give the decision orally or in writing. She will ask both you and the government lawyer if the decision is "final" meaning that the decision is acceptable to both parties. If you won, you can tell the judge that the decision is final. If you lost and want to appeal her decision you must tell the judge that you reserve the right to appeal. The government lawyer also can reserve the right to appeal.

Voluntary Departure

If you have no ability to remain in the United States, you should seriously consider requesting voluntary departure (VD). The advantage of voluntary departure is that you will not have a removal order against you. This is important if you ever hope to return to the United States. If you are ordered removed, you will be barred from returning to the United States for a number of years. With voluntary departure, you may be able to return much sooner. If you have been in the United States illegally for more than 180 days, however, voluntary departure may not help you re-enter the United States (see the next section "Unlawful Presence").

A voluntary departure removal order is much harder to reopen than a regular removal order. Therefore, you should carefully consider whether it is better take voluntary departure or an order of deportation. This is particularly true if you believe that you may become eligible for some form of relief, such as adjustment of status, at a later date and might seek to reopen your case.

In order to get voluntary departure you will need to show the judge: (i) that you have a valid travel document, and (ii) the means to buy a one way open ticket (a ticket without a departure date) to your country. If the judge grants you VD he will give you a certain period of time to get your documents and ticket, usually 30 days for people in detention.

You Cannot Get Voluntary Departure If You

* are an arriving alien; or

* have been convicted of an aggravated felony; or

* have a prior removal order.

When to Make the Request for VD: Certain additional conditions apply depending on when you ask for VD. If you request VD before the end of the immigration proceedings, the judge can give you a maximum of 120 days to leave. This would only apply to those who were not detained. If you make your request at the end of proceedings the judge can grant you a maximum of 60 days to depart. Moreover, you will have to show the judge that you were physically present in the United States for one year before the NTA was filed and that you have had good moral character for five years (not convicted of any crimes for five years). Thus, the earlier you request VD, the greater the chance the judge will grant it.

Failure to Depart After Granted Voluntary Departure: If you do not depart when required, the order of voluntary departure automatically becomes an order of deportation. If you are later apprehended by DHS, they can simply deport you. You will have no right to see a judge. A voluntary departure order is much harder to reopen than a regular removal order. Therefore, you should carefully consider whether it is better to take voluntary departure or an order of removal. If you are detained and you have a ticket and travel document by the date set by the judge but DHS is unable to remove you by that date, you should still get VD.

Unlawful Presence

If you overstay your visa or have entered the United States without inspection since April 1, 1997, you may begin to accrue "unlawful presence." Once you have accrued 180 days of unlawful presence, you will be subject to a three year bar to admission from the U.S. If you accrue one year of unlawful presence you will be subject to a ten year bar to admission. This means that if you leave the United States and then attempt to reenter lawfully, you will not be allowed to do so for three or ten years. This can be a problem if you want to adjust your status to become a lawful permanent resident within the United States. Note that unlawful presence does not begin to accrue until after you turn 18 years old.

Appeals to the Board of Immigration Appeals

The Board of Immigration Appeals (BIA) reviews the decisions made by the Immigration Judge. The BIA is located in Virginia and almost all of the proceedings before it are conducted on paper. The BIA has very strict rules about how to file and prepare an appeal. Failure to follow these rules may result in your appeal being dismissed.

Filing Deadlines/Extensions: Both you and the government have the right to appeal the decisions of the immigration judge. To appeal, you must file a Notice of Appeal with the BIA. The notice must be received by the BIA within 30 days of the judge's decision. When the judge decides the case she will give you a piece of paper where she has checked off her decisions. On the bottom of the page is the date by which you must file your appeal. **It is not good enough to mail it by the 30th day; the notice of appeal must actually be received in the clerk's office of the BIA by the 30th day.** If it arrives even one day late, the appeal will be dismissed.

To send by regular first class mail the Board's address is

Board of Immigration Appeals
Clerk's Office
P.O. Box 8530
Falls Church, VA 22041

To send by courier or overnight delivery the Board's address is

Board of Immigration Appeals
Clerk's Office
5201 Leesburg Pike, Suite 1300
Falls Church, VA 22041

The Notice of Appeal: This is a form that will be given to you by the immigration judge. On the form, state the reason for your appeal, giving all the legal claims you want to make. You must say whether you plan to file a legal brief. A few weeks after filing the Notice of Appeal, you will receive a letter from the BIA stating that they have received your appeal. If you said that you wanted to file a brief, you will later receive a transcript of the immigration hearing and a "briefing schedule." This tells you and the government when your briefs are due. You can ask for one extension of time, but you should do so early in the process. You may request oral argument, the chance to explain in person why your case was improperly decided by the immigration judge. Requests for oral argument are rarely granted.

The Brief: Writing a brief is not easy, even for lawyers. When writing a brief you should start with a statement of facts outlining the essential facts of the case including when you came to the United States, the manner in which you came, when proceedings began against you, and the specific charges the government made against you. You should then briefly state the evidence that was before the court. You cannot refer to anything that was not shown or presented to the immigration judge. When you have completed your statement of facts, you should then state your specific legal claim or claims. There is no need to use legal terms but you should cite to cases that you know support your argument. The BIA knows that you are not a lawyer. Note that if you tell the BIA in your notice of appeal that you will file a brief but then do not do so, your appeal may be dismissed.

The BIA decision: The BIA can take several months or even years to make a decision. Appeals involving detainees move relatively quickly.

Summary Affirmances: The Board recently adopted a policy of issuing summary affirmances. These are one-page and sometimes one-line decisions simply stating the Immigration Judge was correct without any discussion of the individual facts and circumstances of a case. There is currently much litigation in the federal courts regarding the legality of this type of decision.

Motions to Reopen or Reconsider

Under certain circumstances you may ask the immigration judge or the BIA to review your case again. The motion must be filed with the court that last decided your case. A motion to reconsider asks the court to reconsider the decision in light of new case law or changes in the law.

A Motion to Reopen asks the court to reconsider in light of new facts or new evidence. If you were ordered deported in your absence, you may file such a motion with the immigration judge who ordered you deported.

Basis for the Motion: The grounds upon which a motion to reopen may be granted are:

* **New Facts or Evidence:** You will need to show why this new evidence was previously unavailable to you and could not have been presented to the court earlier;

* **Circumstances Have Changed in Your Country Which Make it Unsafe for You to Return:** You will need to explain what has changed and why it is unsafe for you to return to your country at this time;

* **Lack of Notice:** If you were did not appear in court because you did not receive proper notice the court mat reopen your case. You will nee to explain why you did not get notice;

* **Ineffective Assistance of Counsel:** The court may not consider a claim of ineffective assistance of counsel unless you also file a formal complaint against your former attorney with the bar association in the state where your lawyer practices. Each state has different requirements on how to file a complaint.

Filing Deadlines: In some circumstances there is a deadline for filing a motion to reopen:

* If the basis is new facts or evidence, the deadline for filing a motion to reopen is 90 days from the date of the order. If you are unable to file within 90 days, you must ask the court to reopen as a matter of discretion and in the interest of justice;

* If the basis is changed circumstances in your country, there is no deadline to file the motion;

* If the basis is lack of notice, there is no deadline to file this motion;

* If the basis is failure to appear in court due to exceptional circumstances and/or ineffective assistance of counsel, the deadline for filing this motion is 180 days from the date of the final order. If you do not file within 180 days, the judge may reopen as a matter of discretion;

* If the removal order was issued in an exclusion or deportation proceeding that occurred before June 13, 1992, there is no deadline.

Fees: If the motion to reopen or reconsider is based on a lack of notice, no fee is required. If the basis of the motion is failure to appear due to exceptional circumstances or new facts or evidence, a filing fee of $110 is required. You may, however, request a fee waiver.

Stay of Removal Pending Decision on the Motion: If the motion is based on lack of notice or failure to attend your hearing due to exceptional circumstances, the filing of the motion to reopen automatically stays your removal/deportation. If the motion is based on new evidence or changed circumstances in your country, the filing of this motion does not automatically stay your

deportation/removal. You must ask the judge in writing for a stay of your removal.

Federal Court Review

The rules regarding review in federal courts is very complicated. You should not file anything with a federal court unless you have consulted an attorney.

PETITIONS FOR REVIEW TO THE FEDERAL APPEALS COURT: Direct appeals to federal courts in cases involving removal due to criminal convictions have largely but not totally been eliminated. You may still file a Petition for Review if your claim is that your criminal conviction is not a removable offense or that the government did not prove your alienage. If you were ordered removed before October 30, 1996, you may still be able to file a petition for review to the Federal Circuit Court with jurisdiction over your case. If your case concerned asylum, withholding or the Convention Against Torture, you must file a petition for review with the Federal Circuit Court in the judicial district where you immigration court decision was made. **Your Petition for Review must be filed within 30 days of the BIA decision you are appealing**.

HABEAS CORPUS PETITIONS IN FEDERAL DISTRICT COURT: You can file for a writ of Habeas Corpus in federal district court asking the judge to reverse the immigration judge's legal decisions or to release you from custody. Habeas Corpus relief is available to challenge removal orders based on criminal convictions.

* **Not Available for Discretionary Decisions:** The district court can only issue a writ of habeas corpus in cases that raise questions of law. For example, you may challenge a decision by the immigration judge that you were not eligible to apply for relief but cannot seek a writ on the grounds that the immigration judge abused her discretion when she held that you did not deserve cancellation of removal.

* **Exhaustion of Administrative Remedies:** A federal district court will generally require that you go through the entire administrative process in your case before raising your claim in a habeas corpus proceeding. You must show that your case was reviewed on appeal by the BIA and that you raised the specific issues contained in your habeas petition before the immigration judge and BIA.

* **Jurisdiction:** Your habeas petition must be filed with the district court that has jurisdiction over your custodian or the person with control over you. The issue of who is the proper custodian in an immigration case is not settled. Some courts have held that the only custodian is the warden of the jail where you are held. Other courts have held that the Secretary of the Department of Homeland Security is the custodian and that the habeas petition may be filed in the district court for the district in which your immigration case was decided. This issue is very important for immigrants in the New York/New Jersey metropolitan area who are detained in New Jersey jails but have their cases heard in New York immigration courts. To date there has been no definitive decision as to the

proper court for filing a habeas petition.

Post-Order Custody & Release from Indefinite Detention

Once you are ordered removed by the immigration judge and there are no more appeals or other challenges to your removal, the government has a limited period of time to physically remove you to your country of removal. The actual removal can take anywhere between a couple of days and several months. As a general rule, the government must remove you within six months. If DHS fails to do so, you may be released on parole. What this means is that you are allowed to go free, but you will need to report periodically to DHS. If the situation changes and DHS can remove you, you will be sent a "bag and baggage" order requiring you to appear at DHS on a certain date for removal.

90 Day Custody Review: If after 90 days from the date of your order you are still in DHS custody, your Deportation Officer (DO) is required to perform a custody review to determine whether there is any chance that DHS will be able to remove you from the United States. You should receive a notice of this review. If you do not receive a notice more than 90 days your removal order becomes final, you should write to the DO and request a "90 day custody review." The DO will also give you instructions as to various materials, such as passports, birth certificates, and other identity documents that you will need to provide him or her. If the DO determines that it is unlikely that DHS will be able to remove you in a reasonable period of time, DHS should release you. As a practical matter, however, few people are released after 90 days.

180 Day Custody Review: After 180 days, the Detention Unit at DHS in Washington, D.C. will conduct a review of your case to determine whether there is a reasonable possibility that you will be removed in the near future. If you do not receive notice of this review after you have been detained six months, you should request a review. There are several factors DHS will consider to determine whether you should be released on parole:

* **Is the Country to Which You Are to Be Removed Likely to Permit Removal in the Near Future:** Sometimes, the delay is caused by consulates or other government agencies in the country of removal. If the delay is due merely to a bureaucratic delay it is not likely you will be released. On the other hand, if the country to which you are to be removed is at war or if it does not have a repatriation agreement with the United States (such as Cuba), you have a strong argument for release;

* **Your Cooperation with the Removal Process:** If the DPO reports that you have failed to provide necessary documents such as a passport or birth certificate, you may be denied parole. Similarly, if the DPO reports that you have somehow interfered with your removal, you may be denied parole;

* **Flight Risk**: DHS could deny parole if it determines that you are a flight risk or somebody who would not report for parole as required. To avoid this provide your DPO with proof that you have a stable address (such as a letter from a relative with whom you

will live with after you are released) or a job when you are released;

* **Danger to the Community:** You may also be denied parole if DHS determines that you are a risk to the community or likely to commit more crimes. To avoid this, proof of rehabilitation should be provided to the DPO. You will also need to argue that your criminal record is not very serious or that it does not contain any crimes of violence.

Bars to Reentry

Once a person is removed, they are barred from returning to the United States for a period of time, depending on the basis for removal.

* Ordered removed on inadmissibility grounds (other than a controlled substance offense) . . . . . 5 years

* Ordered removed on deportation grounds (other than an aggravated felony) . . . . . 10 years

* Excluded or deported under old law . . . . . 10 years

* Two orders of removal . . . . . 20 years

* Failure to attend removal proceedings . . . . . 5 years

* Ordered removed for an Aggravated Felony or controlled substance offense . . . . . permanent

Certain kinds of waivers are available to allow certain kinds of re-entry despite these bars.

Illegal Reentry

If you illegally re-enter the United States after having been ordered removed and you are re-detained, you may be subject to criminal prosecution and prison for as much as twenty years depending on the basis of the original removal order.

Resources

United States Citizenship and Immigration Services - http://www.uscis.gov: This web site has links to the Immigration and Nationality Act and Code of Federal Regulations.

Executive Office for Immigration Review - http://www.usdoj.gov/eoir/: Contains a virtual law library with all of the precedent BIA decisions as well as links to important federal court cases. For information on the status of your case call
1-800-898-7180

Immigrant Defense Project, New York State Defenders Association- http://www.nysda.org: Primarily a resource for lawyers, this web site provides updates on recent developments in the law. Hotline: 1-212-898-4132

Florence Immigrant Rights Project - http://www.lirs.org:
This web site contains valuable guides on how to apply for specific types of relief in much greater detail than covered in this booklet.

United States State Department - http://state.gov:
Contains the annual human rights reports for countries around the world.

Amnesty International - http://www.amnesty.org:
Contains reports on human rights abuses in various countries which sometimes differ from the State Department reports.

The writing of this booklet was made possible through funds from a settlement with the Office of the Attorney General of the State of New York. The statements made and views expressed, however, are solely the responsibility of the Legal Aid Society