

member who was in proceedings before the Immigration Court or the Board, and those proceedings were closed or continued pursuant to the *ABC* settlement agreement:

(1) *Suspension of deportation or asylum granted.* If an asylum officer grants asylum or suspension of deportation, the previous proceedings before the Immigration Court or Board shall be terminated as a matter of law on the date relief is granted.

(2) *Asylum denied and application for suspension of deportation not approved.* If an asylum officer denies asylum and does not grant the applicant suspension of deportation, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation. In the case where jurisdiction rests with the Board, an application for suspension of deportation that is referred to the Board will be remanded to the Immigration Court for adjudication.

(g) *Special provisions for dependents whose proceedings before EOIR were administratively closed or continued.* If an asylum officer grants suspension of deportation or special rule cancellation of removal to an applicant described in §240.61(a)(4) or (a)(5), whose proceedings before EOIR were administratively closed or continued, those proceedings shall terminate as of the date the relief is granted. If suspension of deportation or special rule cancellation of removal is not granted, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation or special rule cancellation of removal. In the case where jurisdiction rests with the Board, an application for suspension of deportation or special rule cancellation of removal that is referred to the Board will be remanded to the Immigration Court for adjudication.

(h) *Special provisions for applicants who depart the United States and return under a grant of advance parole while in*

*deportation proceedings.* Notwithstanding paragraphs (f) and (g) of this section, for purposes of adjudicating an application for suspension of deportation or special rule cancellation of removal under this subpart, if an applicant departs and returns to the United States pursuant to a grant of advance parole while in deportation proceedings, including deportation proceedings administratively closed or continued pursuant to the *ABC* settlement agreement, the deportation proceedings will be considered terminated as of the date of applicant's departure from the United States. A decision on the NACARA application shall be issued in accordance with paragraph (a), and paragraphs (c) through (e) of this section.

## PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

### Subpart A—Post-hearing Detention and Removal

#### Sec.

- 241.1 Final order of removal.
- 241.2 Warrant of removal.
- 241.3 Detention of aliens during removal period.
- 241.4 Continued detention of inadmissible, criminal, and other aliens beyond the removal period.
- 241.5 Conditions of release after removal period.
- 241.6 Administrative stay of removal.
- 241.7 Self-removal.
- 241.8 Reinstatement of removal orders.
- 241.9 Notice to transportation line of alien's removal.
- 241.10 Special care and attention of removable aliens.
- 241.11 Detention and removal of stowaways.
- 241.12 Nonapplication of costs of detention and maintenance.
- 241.13 Determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future.
- 241.14 Continued detention of removable aliens on account of special circumstances.
- 241.15 Information regarding detainees.

## Department of Homeland Security

## § 241.3

241.16–241.19 [Reserved]

### Subpart B—Deportation of Excluded Aliens (for Hearings Commenced Prior to April 1, 1997)

- 241.20 Proceedings commenced prior to April 1, 1997.
- 241.21 Stay of deportation of excluded alien.
- 241.22 Notice to surrender for deportation.
- 241.23 Cost of maintenance not assessed.
- 241.24 Notice to transportation line of alien's exclusion.
- 241.25 Deportation.
- 241.26–241.29 [Reserved]

### Subpart C—Deportation of Aliens in the United States (for Hearings Com- menced Prior to April 1, 1997)

- 241.30 Proceedings commenced prior to April 1, 1997.
- 241.31 Final order of deportation.
- 241.32 Warrant of deportation.
- 241.33 Expulsion.

AUTHORITY: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

SOURCE: 62 FR 10378, Mar. 6, 1997, unless otherwise noted.

### Subpart A—Post-hearing Detention and Removal

#### § 241.1 Final order of removal.

An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final:

- (a) Upon dismissal of an appeal by the Board of Immigration Appeals;
- (b) Upon waiver of appeal by the respondent;
- (c) Upon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time;
- (d) If certified to the Board or Attorney General, upon the date of the subsequent decision ordering removal;
- (e) If an immigration judge orders an alien removed in the alien's absence, immediately upon entry of such order; or
- (f) If an immigration judge issues an alternate order of removal in connection with a grant of voluntary departure, upon overstay of the voluntary departure period except where the respondent has filed a timely appeal with the Board. In such a case, the order

shall become final upon an order of removal by the Board or the Attorney General, or upon overstay of any voluntary departure period granted or reinstated by the Board or the Attorney General.

#### § 241.2 Warrant of removal.

(a) *Issuance of a warrant of removal.* A Form I-205, Warrant of Removal, based upon the final administrative removal order in the alien's case shall be issued by a district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs. The district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs, shall exercise the authority contained in section 241 of the Act to determine at whose expense the alien shall be removed and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

(b) *Execution of the warrant of removal.* Any officer authorized by § 287.5(e) of this chapter to execute administrative warrants of arrest may execute a warrant of removal.

[62 FR 10378, Mar. 6, 1997, as amended at 67 FR 39258, June 7, 2002]

#### § 241.3 Detention of aliens during removal period.

(a) *Assumption of custody.* Once the removal period defined in section 241(a)(1) of the Act begins, an alien in the United States will be taken into custody pursuant to the warrant of removal.

(b) *Cancellation of bond.* Any bond previously posted will be canceled unless it has been breached or is subject to being breached.

(c) *Judicial stays.* The filing of (or intention to file) a petition or action in a Federal court seeking review of the issuance or execution of an order of removal shall not delay execution of the Warrant of Removal except upon an affirmative order of the court.