

(e) *Dismissal of the application.* An asylum officer shall dismiss without prejudice an application for suspension of deportation or special rule cancellation of removal submitted by an applicant who has been granted asylum, or who is in lawful immigrant or non-immigrant status. An asylum officer may also dismiss an application for failure to appear, pursuant to §240.68. The asylum officer will provide the applicant written notice of the statutory or regulatory basis for the dismissal.

(f) *Special provisions for certain ABC class members whose proceedings before EOIR were administratively closed or continued.* The following provisions shall apply with respect to an ABC class 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.
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- 241.10 Special care and attention of removable aliens.
- 241.11 Detention and removal of stowaways.
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- 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 Countries to which aliens may be removed.
- 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 Commenced 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, 1228, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101, *et seq.*); 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 becomes final in accordance with 8 CFR 1241.1.

[70 FR 673, Jan. 5, 2005]

§ 241.2 Warrant of removal.

(a) *Issuance of a warrant of removal—*
(1) *In general.* A Form I-205, Warrant of Removal, based upon the final administrative removal order in the alien's case shall be issued by any of the following immigration officials:

- (i) Director, Detention and Removal Operations;
- (ii) Deputy Assistant Director, Field Operations;
- (iii) Field Office Directors;
- (iv) Deputy Field Office Directors;
- (v) Assistant Field Office Directors;
- (vi) Officers in Charge;
- (vii) Special Agents in Charge;
- (viii) Deputy Special Agents in Charge;
- (ix) Associate Special Agents in Charge;
- (x) Assistant Special Agents in Charge;
- (xi) Group Supervisors;
- (xii) Resident Agents in Charge;
- (xiii) District Field Officers;
- (xiv) Chief Patrol Agents;
- (xv) Deputy Chief Patrol Agents;
- (xvi) Assistant Chief Patrol Agents;
- (xvii) Patrol Agents in Charge;
- (xviii) Unit Chief, Law Enforcement Support Center;
- (xix) Section Chief, Law Enforcement Support Center;
- (xx) Port Directors;
- (xxi) Deputy Port Directors;
- (xxii) Assistant Port Directors;
- (xxiii) Director, Field Operations;
- (xxiv) Deputy Director, Field Operations;
- (xxv) Assistant Director, Field Operations; and
- (xxvi) Other officers or employees of the Department or the United States who are delegated the authority as provided in 8 CFR 2.1 to issue Warrants of Removal.

(2) *Costs and care during removal.* The immigration officials listed in paragraphs (a)(1)(i) through (xxv) of this section, and other officers or employees of the Department or the United States who are delegated the authority as provided in 8 CFR 2.1, 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 8 CFR 287.5(e)(3) to execute administrative warrants of arrest may execute a warrant of removal.

[70 FR 67089, Nov. 4, 2005]