

Department of Homeland Security

§ 239.2

issue a notice to appear to such alien. In addition, the following officers, or officers acting in such capacity, may issue a notice to appear:

- (1) District directors (except foreign);
- (2) Deputy district directors (except foreign);
- (3) Chief patrol agents;
- (4) Deputy chief patrol agents;
- (5) Assistant chief patrol agents;
- (6) Patrol agents in charge;
- (7) Assistant patrol agents in charge;
- (8) Field operations supervisors;
- (9) Special operations supervisors;
- (10) Supervisory border patrol agents;
- (11) Service center directors;
- (12) Deputy service center directors;
- (13) Assistant service center directors for examinations;
- (14) Supervisory district adjudications officers;
- (15) Supervisory asylum officers;
- (16) Officers in charge (except foreign);
- (17) Assistant officers in charge (except foreign);
- (18) Special agents in charge;
- (19) Deputy special agents in charge;
- (20) Associate special agents in charge;
- (21) Assistant special agents in charge;
- (22) Resident agents in charge;
- (23) Supervisory special agents;
- (24) Directors of investigations;
- (25) District directors for interior enforcement;
- (26) Deputy or assistant district directors for interior enforcement;
- (27) Director of detention and removal;
- (28) Field office directors;
- (29) Deputy field office directors;
- (30) Supervisory deportation officers;
- (31) Supervisory detention and deportation officers;
- (32) Directors or officers in charge of detention facilities;
- (33) Directors of field operations;
- (34) Deputy or assistant directors of field operations;
- (35) District field officers;
- (36) Port directors;
- (37) Deputy port directors;
- (38) Supervisory service center adjudications officers;
- (39) Unit Chief, Law Enforcement Support Center;
- (40) Section Chief, Law Enforcement Support Center; or

(41) Other officers or employees of the Department or of the United States who are delegated the authority as provided by 8 CFR 2.1 to issue notices to appear.

(b) *Service of notice to appear.* Service of the notice to appear shall be in accordance with section 239 of the Act.

[68 FR 35275, June 13, 2003, as amended at 70 FR 67089, Nov. 4, 2005]

§ 239.2 Cancellation of notice to appear.

(a) Any officer authorized by § 239.1(a) to issue a notice to appear may cancel such notice prior to jurisdiction vesting with the immigration judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

- (1) The respondent is a national of the United States;
- (2) The respondent is not deportable or inadmissible under immigration laws;
- (3) The respondent is deceased;
- (4) The respondent is not in the United States;
- (5) The notice was issued for the respondent's failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section 216(d)(2)(B) of the Act;
- (6) The notice to appear was improvidently issued, or
- (7) Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.

(b) A notice to appear issued pursuant to section 235(b)(3) of the Act may be canceled under provisions in paragraphs (a)(2) and (a)(6) of this section only by the issuing officer, unless it is impracticable for the issuing officer to cancel the notice.

(c) *Motion to dismiss.* After commencement of proceedings pursuant to 8 CFR 1003.14, ICE counsel, or any officer enumerated in paragraph (a) of this section, may move for dismissal of the matter on the grounds set out under paragraph (a) of this section.

(d) *Motion for remand.* After commencement of the hearing, ICE counsel, or any officer enumerated in paragraph (a) of this section may move for

§ 239.3

remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration.

(e) *Warrant of arrest.* When a notice to appear is canceled or proceedings are terminated under this section any outstanding warrant of arrest is canceled.

[62 FR 10366, Mar. 6, 1997, as amended at 68 FR 35276, June 13, 2003]

§ 239.3 Effect of filing notice to appear.

The filing of a notice to appear shall have no effect in determining periods of unlawful presence as defined in section 212(a)(9)(B) of the Act.

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

Subpart A—Removal Proceedings [Reserved]

Subpart B—Cancellation of Removal

Sec.

240.21 Suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment of status under section 240A(b) of the Act for certain nonpermanent residents.

Subpart C—Voluntary Departure

240.25 Voluntary departure—authority of the Service.

Subpart D—Exclusion of Aliens (for Proceedings Commenced Prior to April 1, 1997) [Reserved]

Subpart E—Proceedings to Determine Deportability of Aliens in the United States: Hearing and Appeal (for Proceedings Commenced Prior to April 1, 1997) [Reserved]

Subpart F—Suspension of Deportation and Voluntary Departure (for Proceedings Commenced Prior to April 1, 1997) [Reserved]

8 CFR Ch. I (1–1–07 Edition)

Subpart G—Civil Penalties for Failure to Depart [Reserved]

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Pub. L. 105–100

- 240.60 Definitions.
- 240.61 Applicability.
- 240.62 Jurisdiction.
- 240.63 Application process.
- 240.64 Eligibility—general.
- 240.65 Eligibility for suspension of deportation.
- 240.66 Eligibility for special rule cancellation of removal.
- 240.67 Procedure for interview before an asylum officer.
- 240.68 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprinting.
- 240.69 Reliance on information compiled by other sources.
- 240.70 Decision by the Service.

AUTHORITY: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

SOURCE: 62 FR 10367, Mar. 6, 1997, unless otherwise noted.

Subpart A—Removal Proceedings [Reserved]

Subpart B—Cancellation of Removal

§ 240.21 Suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment of status under section 240A(b) of the Act for certain nonpermanent residents.

(a) *Applicability of annual cap on suspension of deportation or cancellation of removal.* (1) As used in this section, the term *cap* means the numerical limitation of 4,000 grants of suspension of deportation or cancellation of removal in any fiscal year (except fiscal year 1998, which has a limitation of 8,000 grants) pursuant to section 240A(e) of the Act.

(2) The provisions of this section apply to grants of suspension of deportation pursuant to section 244(a) of the Act (as in effect before April 1, 1997) or cancellation of removal pursuant to