



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*

Chairman

5107 Leesburg Pike, Suite 2400  
Falls Church, Virginia 22041

October 29, 2015

**BIA 15-05**

**MEMORANDUM TO:** Board Legal Staff

**FROM:** David L. Neal *DLN*  
Chairman

**SUBJECT:** Handling Cases Involving Certain Applications for Cancellation and Suspension

By statute, the Attorney General may not cancel the removal and adjust status nor suspend the deportation of more than 4,000 aliens in any fiscal year. *See* section 240A(e)(1) of the Immigration and Nationality Act (INA). The Board, along with the Office of the Chief Immigration Judge (OCIJ) and the Immigration Judges, is responsible for ensuring that EOIR does not exceed this statutory limitation. As part of the agency's coordinated approach to the "cancellation cap," it is important that we identify cases before the Board that fall within the scope of section 240A(e)(1) of the INA. A case that may be subject to section 240A(e)(1) will be referred to as a "CoR Cap Case."

In addition, when OCIJ and the Board have granted a designated number of the 4,000 cancellation/suspension cases in a fiscal year, the Board, like the Immigration Courts, will reserve issuance of decisions in certain CoR Cap Cases in accordance with 8 C.F.R. § 1240.21(c). The Senior Legal Advisors in conjunction with the Clerk's Office will oversee this portion of the Board's processing of CoR Cap Cases.

This memorandum provides Board legal staff with guidance on identifying and reporting a CoR Cap Case.

## **I. IDENTIFICATION OF CoR CAP CASES BEFORE THE BOARD**

### **What is a CoR Cap Case?**

A case in removal or deportation proceedings where the underlying relief sought by the respondent before the Immigration Judge is either:

- § 240A(b) cancellation of removal and adjustment of status (Form EOIR-42B), or
- § 244(a) suspension of deportation (Form EOIR-40).

However, if the respondent meets either exception below, then the case is *not* a CoR Cap Case:

- certain nationals of Guatemala, El Salvador, and former Soviet bloc countries as described in section 203(a)(1) of the Nicaraguan Adjustment and Central American Relief Act (NACRA) (Form I-881), or
- alien in deportation proceedings prior to April 1, 1997, who applied for suspension of deportation pursuant to section 243(a)(3) of the INA (as effective prior to April 1, 1997).

### **What if case type is a motion to reopen or reconsider in removal/deportation proceedings?**

If the respondent has filed a motion to reopen or motion to reconsider with the Board, assess whether or not the case is a CoR Cap Case, and complete the “CoR Cap Case?” field on the applicable circulation sheet.

### **What if the appealing party has filed a motion to withdraw their appeal?**

Regardless of whether an appealing party in removal/deportation proceedings advises the Board that they wish to withdraw their appeal, assess whether or not the case is a CoR Cap Case.

### **What if the respondent is in bond or custody proceedings?**

Bond and custody proceedings are separate and apart from removal or deportation proceedings, so cancellation cap procedures do not apply. The CoR Cap Case field is not listed on the circulation sheets used for bond or custody proceeding.

### **What if the CoR Cap Case also has an application relief other than EOIR-42B or EOIR-40?**

If the case meets the CoR Cap Case definition above, the case must be identified and treated as such, even if the respondent is seeking another form of relief. Please see section III of this memorandum.

**II. CIRCULATION SHEET –**

**A. “CoR CAP CASE” FIELD**

When completing a circulation sheet, *always* mark whether the case being circulated is a CoR Cap Case. See image below. This is required for every circulation sheet. If this field is not completed when the case is circulated or re-circulated, the case will be returned to the circulating attorney or paralegal.

The image shows a sample circulation sheet form. At the top, there is a header section with a blue background containing the text "ATTORNEY / PARALEGAL". Below this is a section labeled "SPECIAL INSTRUCTION TO DOCKET" with a cross-hatched pattern. A large blue rectangular area is intended for the special instruction. Below the blue area, there are several checkboxes: "Copy of Circulation Sheet to ATTY/PL, TL & SPA", "IJC (Circle if IJ conduct issue exists)", and "AC (Circle if referral to OGC for attorney discipline)". The "CoR Cap Case?" field is circled in red and includes "YES" and "NO" checkboxes. At the bottom of the form, there is a section labeled "COMMENTS/ANALYSIS".

Use only the fillable circulation sheets posted on the BIA Webpage. The CoR Cap Case field is listed on circulation sheets requiring completion of this field. There are, however, a few circulation sheets that do not require a CoR Cap Case field (i.e., Attorney Discipline Case, Bond Case, Civil Detention Bond Case, Visa Petition, Recognition and Accreditation).

**Do I need to complete a new circulation sheet if I am recirculating a CoR Cap Case?**

Yes. Be sure to use a fillable circulation sheets available on the BIA Webpage.

**What if only the lead (or a rider) is a CoR Cap Case?**

If any of the respondents associated with the decision meets the definition of a CoR Cap Case, then mark “yes” on the circulation sheet and indicate which respondent falls within the CoR Cap Case definition in the SPECIAL INSTRUCTIONS TO DOCKET field of the circulation sheet.

**B. DECISION CODES**

Our circulation sheets have also been revised to record when the Board’s decision results in a grant of a CoR Cap Case or overturns an Immigration Judge’s grant of relief. Specifically, Group III of the Decision Codes shall apply as follows:

- CFG = Board decision results in a final grant of a CoR Cap Case (certain EOIR-42B and EOIR-40 applications)
- CFD = Board overturns IJ grant of CoR Cap Case, no remand (certain EOIR-42B and EOIR-40 applications)

**When should the CFG decision code be used instead of a BCR?**

If the Board's decision is granting or affirming an Immigration Judge's grant of § 240A(b) cancellation of removal and adjustment of status (Form EOIR-42B) or § 244(a) suspension of deportation (Form EOIR-40), you must determine whether (1) DHS reported the results of background and security checks to the judge, and (2) are those checks "current" (i.e., reported expiration date has not elapsed). This step is *vital* to the proper adjudication of these cases.

*Detained alien.* Check the record of proceedings to confirm that DHS has reported checks to the Immigration Judge and determine whether those checks are current or have expired.

CFG = If the checks are current, then the Board does not need to Background Check Remand (BCR). The Board's decision, however, *must* meet certain requirements. Follow the procedures outlined in Chairman's Memorandum BIA 12-03.

BCR = If the record reveals that DHS did not report checks or previously reported checks have expired.

*Nondetained alien.* If the respondent is not detained, the previously reported checks are unlikely to be current. Check the record of proceedings to determine whether checks are current or have been updated by DHS.

**When should the DIS decision code be used?**

DIS = Board's decision dismisses an appeal from an Immigration Judge denial of § 240A(b) cancellation of removal and adjustment of status (Form EOIR-42B) or § 244(a) suspension of deportation (Form EOIR-40).

**III. CONCURRENT APPLICATIONS FOR RELIEF**

Whether or not the cancellation cap has been reached in the current fiscal year, the Board is required to adjudicate concurrently all other forms of relief for which a respondent has applied. *See* 8 C.F.R. § 1240.21(c)(2). The regulations provide that, if an application for asylum or adjustment of status is granted, the respondent's application for suspension or cancellation shall be denied in the exercise of discretion. Also, if the Board sustains a DHS appeal of an Immigration Judge's decision granting asylum or adjustment of status, the decision to deny suspension or cancellation in the exercise of discretion per this provision shall be reconsidered. *Id.*

If assigned a CoR Cap Case that has a concurrent application for relief, please consult your supervisor for guidance.

**IV. CONCLUSION**

It is important that we identify cases before the Board that are CoR Cap Cases (fall within the scope of section 240A(e)(1) of the INA). If you have a case involving these issues and you are unsure how to

proceed, please consult your supervisor or another appropriate attorney manager. Additionally, if you have any questions concerning this memorandum, please contact Senior Legal Advisor Amy Minton at (703) 605-0317.