Suspension of Deportation

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") eliminated the relief of suspension of deportation and substituted a similar remedy, cancellation of removal under INA § 240A. See Section 304(a)(3) Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. 104-208, 110 Stat. 3009-546. Nonetheless, an alien who was placed in deportation proceedings prior to April 1, 1997, may apply for suspension of deportation as it existed under former INA § 244(a)(1). See Patel v. McElroy, 143 F.3d 56, 60 (2d Cir. 1998). In addition, certain nationals from Guatemala, El Salvador, and former Soviet bloc countries are eligible to apply for suspension of deportation pursuant to section 203 of the Nicaraguan Adjustment and Central American Relief Act ("NACARA").[1] See Pub. L. No. 105-100, 111 Stat. 2160 (1997). Suspension of deportation is not available to aliens placed in *exclusion* proceedings prior to the enactment of IIRIRA. Patel, 143 F.3d at 60; Tanov v. INS, 443 F.3d 195, 199 (2d Cir. 2006).

A deportable alien may be granted suspension of deportation if he has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of his or her application, and he demonstrates good moral character during that period of time. INA § 244(a)(1) (1995). An applicant for suspension must also demonstrate that his deportation would result in extreme hardship to the applicant or to his United States citizen or lawful permanent resident spouse, parent, or child. INA § 244(a)(1) (1995). Finally, the applicant must prove that his or her application should be granted in the exercise of discretion. See, e.g., Matter of Pilch, 21 I&N Dec. 627, 629 (BIA 1996).

A. Continuous Physical Presence

The seven-year period of continuous presence is not broken by a brief, casual and innocent departure from the United States that is not "meaningfully interruptive." INA § 244(b)(2) (1995). However, pursuant to the "stop-time" rule, any period of continuous physical presence shall be deemed to end when the applicant is served with an Order to Show Cause or a Notice to Appear, or when the applicant commits an offense referred to in INA § 212(a)(2) that renders him inadmissible under INA § 212(a)(2) or removable under INA §§ 237(a)(2) or 237(a)(4). INA § 240A(d)(1); Matter of Nolasco, 22 I&N Dec. 632, 637-641 (BIA 1999) (holding that the "stop-time" rule applies to suspension of deportation and applies retroactively in proceedings where the charging document was filed prior to the enactment of IIRIRA); Tablie v. Gonzales, 471 F.3d 60, 64 (2d Cir. 2006) (same). "The continuous physical presence clock does not start anew after the service of an Order to Show Cause so as to allow an alien to accrue the time required to establish eligibility for suspension of deportation subsequent to the service of an Order to Show Cause." Matter of Mendoza-Sandino, 22 I&N Dec. 1236, 1239 (BIA 2000).

B. Good Moral Character

[1] The requirements for suspension of deportation under NACARA are slightly different from the requirements for suspension of deportation under former INA § 244(a)(1), including, for example, additional criminal bars to relief. See 8 C.F.R. § 1240.66(b)(1). Please see the NACARA boilerplate for more details.

A finding of good moral character is both a statutory and discretionary matter. An applicant may be unable to demonstrate that he is a person of good moral character based on his status or commission of certain acts enumerated in the Act, or the Court may find, as a matter of discretion, that for other reasons, an applicant is or was not a person of good moral character. INA § 101(f). Discretionary determinations may be based on criminal behavior that does not render the alien ineligible for relief. Matter of Seda, 17 I&N Dec. 550, 554 (BIA 1980), modified on other grounds by Matter of Ozkok, 19 I&N Dec. 546 (BIA 1988).

C. Extreme Hardship

To evaluate whether the applicant or his qualifying family member would suffer "extreme hardship," the following factors should be considered: length of residence in the United States; family ties in the United States and abroad; the health of the alien and his or her family members; the economic and political situation in the country of deportation; financial status, business, or occupation; other means for adjustment of status; immigration history; whether the alien is of special assistance to the United States; and the alien's position in his or her community. Matter of Anderson, 16 I&N Dec. 596, 597 (BIA 1978).

> Conditions in an alien's homeland are relevant in determining hardship, as the Committee pointed out. It is obvious, however, that laying critical emphasis on the economic and political situation would mandate a grant of relief in most cases for it is a demonstrable fact that despite the beleaguered state of our own economy, the United States enjoys a standard of living higher than that in most of the other countries of the world. For this reason, most deported aliens will likely suffer some degree of financial hardship. Nonetheless, we do not believe that Congress intended to remedy this situation by suspending the deportation of all those who will be unable to maintain the standard of living at home which they have managed to achieve in this country. Clearly, it is only when other factors such as advanced age, severe illness, family ties, etc. combine with economic detriment to make deportation extremely hard on the alien or the citizen or permanent resident members of his family that Congress has authorized suspension of the deportation order.

Anderson, 16 I&N Dec. at 598.