

Memorandum



BIA 06-01

Subject Case Hold - Effect of departure to Canada to obtain refugee status on removal proceedings	Date February 16, 2006
--	-------------------------------

To

Board Legal Staff

From

Lori L. Scialabba, Chairman

Immigration Judges have reached inconsistent rulings with respect to the issue of whether an alien is subject to removal under section 237(a)(1)(B) of the Act (overstay charge), as a result of the alien's "departure" from the United States to Canada during the course of proceedings in order to seek protection as a refugee in Canada. On December 13, 2005, the en banc Board examined this issue, and requested that Panel One conduct further inquiry to address (1) the applicability of section 237(a)(1)(B) overstay charge of removability to an alien who has departed the United States during the course of proceedings, and (2) what status should be accorded an alien returned by Canada to the United States after an unsuccessful attempt to obtain refugee status in Canada, i.e., should the alien be returned to the status of an alien facing overstay charges in removal proceedings? Panel One is now in the process of scheduling oral argument to consider these questions.

Accordingly, pursuant to 8 C.F.R. § 1003.1(e)(8)(iii), I am directing that the adjudication time limits (90 day or 180 day) be temporarily suspended in cases which involve aliens who traveled from the United States to Canada to seek a refugee determinations and the applicability of various charges (especially overstay charges) to such aliens who may remain in or be placed in removal proceedings, regardless of whether they have or have not been returned by Canada under the Reciprocal Agreement. If you have or find a case involving this circumstance, it is essential that you bring the case to the attention of your team leader or SPA so that the adjudication clock may be stopped in CASE, and that the ROP may be placed in designated cabinets.