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Suspension of Deportation: Tighter Standards for Canceling Removal

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Background. Since 1940, Congress has allowed the Attorney General to grant lawful status to certain aliens who, though not lawfully admitted, have established deep roots here. As first enacted, the Attorney General could suspend the deportation of aliens who could show 5 years of good moral character and prospective "serious economic detriment" to lawfully present members of their immediate families. However, several classes of aliens were ineligible, and Congress retained power to overturn relief by resolution.

Over time, Congress has changed the basic eligibility rules for suspension of deportation, the classes of ineligible aliens, and the role of Congress. As enacted, the Immigration and Nationality Act of 1952 (INA) expanded potential eligibility by allowing relief premised on hardship to the prospective deportee and by shortening the list of ineligible groups, but relief could only be granted if both the Attorney General and Congress acted. The lists of ineligible groups for suspension under the INA, which still is our primary immigration statute, subsequently were amended further. Also, the Supreme Court has precluded congressional participation in individual suspension cases.

New name, new standards. Congress amended suspension of deportation under the INA in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Before IIRIRA, relief could be granted to an alien who had been physically present for 7 years, who had had good moral character, and whose deportation would result in extreme hardship to the alien or to the alien's citizen or permanent resident spouse, child, or parent. Stricter standards -- 10 years' presence and "exceptional and extremely unusual hardship" -- existed for aliens who were deportable on certain criminal, fraud, or security grounds, while eased standards existed for certain abused spouses and children.

IIRIRA tightened standards for suspension of deportation and made it part of a new remedy called "cancellation of removal." The new "suspension" remedy permits the Attorney General to cancel the removal of an alien who has been physically present at least 10 years, has had good moral character, has not been convicted of a crime that makes the alien removable, and whose removal would result in exceptional and extremely unusual

hardship to the alien's permanent resident or citizen spouse, parent, or child. Thus, IIRIRA (1) generally adopts the stricter 10-year presence and "exceptional and extremely unusual hardship" standards (except for abused aliens), (2) eliminates prospective hardship to the alien as a basis for relief, and (3) disqualifies most criminal aliens (previously, criminal conviction was relevant only as it bore on "good moral character").

Generally, the new IIRIRA rules cover removal cases initiated on or after April 1, 1997. However, two provisions (discussed below) have clouded potential relief for certain aliens, like the many Central Americans who came here during the civil strife of the 1980s, whose deportation cases were initiated long ago but who have been allowed to remain and work for extended periods while their cases are pending. The Attorney General has acted to foreclose application of these restrictive provisions in cases started before April 1 by vacating a decision by the Board of Immigration Appeals. Meanwhile, a bill introduced at the Administration's request, S. 1076, would protect certain Central Americans and others from the IIRIRA rules, as would a more limited House bill, H.R. 2302.

Numerical limits. IIRIRA imposes three separate limits of 4,000 per fiscal year on relief. A 4,000 per year limit is placed on adjustments to permanent resident status of aliens granted cancellation of removal. Another 4,000 per year limit is placed on combined "cancellations and adjustments" under IIRIRA and "suspensions and adjustments" under cases continued under prior law. A third 4,000 per year limit is placed on "suspensions and adjustments" under prior law.

Both the subject of these limitations and their implementation have been problematic. Some argue that the latter two limitations are, like the first, essentially limits on adjustments only. They interpret "cancel and adjust" and "suspend and adjust" as both comprised of two distinct acts and argue that it is permissible to "cancel" or "suspend" the expulsion of more than 4,000 aliens in one year so long as no more than 4,000 of them are adjusted in the same year. Such an interpretation bypasses the apparent arbitrariness of denying relief or delaying consideration to those aliens with meritorious applications that come before immigration judges after the yearly cancellation/suspension limit has been reached. However, such an interpretation also raises issues as to the status of those whose expulsion has been suspended or canceled but who have not yet been able to adjust. It also may be seen as a vehicle for bypassing any meaningful limit on suspensions or adjustments. If the limit on "suspension and adjustment" means only that both acts may not occur in the same year for more than 4,000 aliens, what would prevent suspending 20,000 deportations during one year and allowing those 20,000 to adjust in the subsequent year?

Retroactive application of tolling provisions. IIRIRA changed the practice of allowing time spent here after the initiation of deportation proceedings to be counted toward the physical presence requirements. Under IIRIRA, "presence" ends when an alien (1) commits certain criminal or terrorist acts or (2) is served with a "notice to appear," a document established by IIRIRA for the initiation of removal proceedings. IIRIRA states that the new termination rules cover "notices to appear" before IIRIRA's enactment. Legal decisions have disagreed as to whether this means that the new rules apply to suspension of deportation in cases that were initiated by "orders to show cause" under pre-IIRIRA practice (See CRS Rept. 97-702, *Suspension of Deportation: Effect of § 309(c)(5) of IIRIRA on Pending Deportation Cases*).

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