

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of June 28, 2018

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Title 8: Aliens and Nationality

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

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

§1240.58 Extreme hardship.

(a) To be eligible for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, the alien must meet the requirements set forth in the Act, which include a showing that deportation would result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States, or an alien lawfully admitted for permanent residence. Extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case. Applicants are encouraged to cite and document all applicable factors in their applications, as the presence or absence of any one factor may not be determinative in evaluating extreme hardship. Adjudicators should weigh all relevant factors presented and consider them in light of the totality of the circumstances, but are not required to offer an independent analysis of each listed factor when rendering a decision. Evidence of an extended stay in the United States without fear of deportation and with the benefit of work authorization, when present in a particular case, shall be considered relevant to the determination of whether deportation will result in extreme hardship.

(b) To establish extreme hardship, an applicant must demonstrate that deportation would result in a degree of hardship beyond that typically associated with deportation. Factors that may be considered in evaluating whether deportation would result in extreme hardship to the alien or to the alien's qualified relative include, but are not limited to, the following:

(1) The age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;

(2) The age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in the country of return;

(3) The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;

(4) The alien's ability to obtain employment in the country to which the alien would be returned;

(5) The length of residence in the United States;

(6) The existence of other family members who are or will be legally residing in the United States;

(7) The financial impact of the alien's departure;

(8) The impact of a disruption of educational opportunities;

(9) The psychological impact of the alien's deportation;

(10) The current political and economic conditions in the country to which the alien would be returned;

(11) Family and other ties to the country to which the alien would be returned;

(12) Contributions to and ties to a community in the United States, including the degree of integration into society;

(13) Immigration history, including authorized residence in the United States; and

(14) The availability of other means of adjusting to permanent resident status.

(c) For cases raised under section 244(a)(3) of the Act, the following factors should be considered in addition to, or in lieu of, the factors listed in paragraph (b) of this section.

(1) The nature and extent of the physical or psychological consequences of abuse;

(2) The impact of loss of access to the United States courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);

(3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);

(4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;

(5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and

(6) The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's children from future abuse.

(d) Nothing in §1240.58 shall be construed as creating any right, interest, or entitlement that is legally enforceable by or on behalf of any party against the United States or its agencies, officers, or any other person.

[64 FR 27875, May 21, 1999]

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