



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: MaryBeth Keller 
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 17-04: *Applications for Cancellation of Removal or Suspension of Deportation that are Subject to the Cap*

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I. Introduction

This Operating Policies and Procedures Memorandum (OPPM) supersedes and replaces OPPM 12-01, *Procedures on Handling Applications for Suspension/Cancellation in Non-Detained Cases Once Numbers are no Longer Available in a Fiscal Year*. This OPPM is effective as to hearings that are concluded on or after January 4, 2018.

Section 240A(e) of the Immigration and Nationality Act (INA) provides that the Attorney General may not cancel the removal and adjust the status under INA § 240A(b), nor suspend the deportation and adjust the status under INA § 244(a)(1), of more than 4,000 aliens in any fiscal year. This annual limitation on grants of non-permanent resident cancellation of removal¹ and suspension of deportation is referred to as the “cap.” This OPPM sets forth the procedures for handling cases involving cancellation of removal or suspension of deportation that are subject to the cap. *See* 8 C.F.R. § 1240.21(c).

When the cap is about to be reached, the Office of the Chief Immigration Judge (OCIJ) will notify Immigration Judges that they must reserve decisions granting cancellation or suspension, with some exceptions as described below. OCIJ is administering the cap so as to permit detained cases involving relief in the form of cancellation of removal or suspension of deportation to proceed to decision throughout the fiscal year. Accordingly, Immigration Judges are not required to reserve decisions in these detained cases. However, as explained below, court staff must enter certain specialized data into CASE even in detained cancellation and suspension cases.

In order to track cases in which hearings have been concluded, OCIJ has created the “Cancellation of Removal (CoR) Cap Date.” The CoR Cap Date is a field in CASE located under the “Case Info” tab. It remains fixed in CASE regardless of whether either party files an appeal and regardless of any subsequent remand. The CoR Cap Date will therefore remain with the case irrespective of its posture before the Immigration Court or the Board. Guidance on setting the CoR Cap Date is included in Section VII, below.

II. Exceptions to Requirement to Reserve Decision

In the following situations, Immigration Judges are not required to reserve decision:

- The application is denied or pretermitted for any reason;
- The application pertains to a detained respondent; or
- The relevant application is one for suspension of deportation filed by a battered spouse or parent during proceedings in which the charging document was filed prior to April 1, 1997, or is an application for

¹ This memorandum pertains only to cancellation of removal for certain non-permanent residents pursuant to INA § 240A(b) and not to cancellation of removal for certain permanent residents pursuant to INA § 240A(a).

cancellation of removal under section 203 of NACARA. See INA § 240A(e)(3).

Note: When a cancellation or suspension application is denied, a CoR Cap Date will still be automatically generated even though the judge is not required to reserve decision. See sections VII and VIII, below. In cases covered by the third bullet, a CoR Cap Date will not be generated.

III. Concurrent Applications for Relief

If an Immigration Judge is going to grant an application for cancellation or suspension and there is a concurrent pending application for any other form of relief or protection, the Immigration Judge must address that other application as part of his or her reserved decision. If the Immigration Judge is going to deny a concurrent application for relief, but the decision must be reserved because of the cancellation or suspension cap, an adjournment code “RR” (Reserved Decision) must be entered into CASE.²

If the Immigration Judge grants an application for asylum or adjustment of status, the application for cancellation or suspension must be denied as a matter of discretion, so the decision need not be reserved (although a CoR Cap Date will still be automatically generated). 8 C.F.R. § 1240.21(c)(2). See section II (Exceptions to Requirement to Reserve Decision), above.

IV. Number Availability and Notification to the Immigration Courts

OCIJ will alert the Immigration Courts when there are no available numbers for the remainder of the fiscal year, and OCIJ will designate a “cut-off date.” As of the cut-off date, Immigration Judges must reserve decisions granting cancellation or suspension until further notice from OCIJ for all non-detained cases. However, Immigration Judges may continue to deny cancellation or suspension after the cut-off date.

V. At the Conclusion of the Hearing

When the Immigration Judge denies or preterms a cancellation or suspension application for any reason, the decision should be issued and not reserved. Court staff should enter the decision into the CASE system, reflecting a denial of the application for cancellation or suspension.

When concluding a hearing on cancellation or suspension after the cut-off date, where the cancellation or suspension application is potentially going to be granted, the Immigration Judge must reserve the decision, taking the following steps:

² If an asylum application was withdrawn, then adjournment code 23 must be used.

1. Ask DHS to confirm on the record that background checks are current and complete and to state the expiration date of the background checks;³
2. Record on the worksheet the date and time the potential grant is reserved. The worksheet should remain in the left-hand side of the Record of Proceedings. The worksheet and ROP should be given to the court staff to record the reserved information into CASE. *See* section VII, below.
3. Prepare a draft reserved decision. *See* section VI, below.

VI. Preparing the Draft Reserved Decision

When granting cancellation or suspension, Immigration Judges may not reschedule a case for the purpose of issuing a decision once a number becomes available for that case. Instead, after completing the worksheet the Immigration Judge must prepare a draft decision in one of the following two ways:

1. **Draft Dictated Decision.** Within 15 workdays, the Immigration Judge may dictate a draft decision outside the presence of the parties. The draft decision should be recorded electronically using the Microsoft Recorder on the judge's workstation and then stored on the EOIR network. OCIJ will transfer the recording to the Transcription Unit to render a Word document of the draft decision, and this will be e-mailed back to the Immigration Judge once completed.⁴

Upon receipt of the draft decision, the Immigration Judge should review, and edit if necessary, the decision within 5 workdays. Once the judge is satisfied with the decision, the judge should print the decision and give it with the ROP to the Court Administrator (CA), indicating that it is ready for issuance as of that date but has not been signed. Within 5 days of being notified that a number is available, the judge will revise the decision, if necessary, and sign and return it to the CA for issuance.

Note: Immigration Judges must not record a draft decision using the Digital Audio Recording (DAR) system.

2. **Draft Written Decision.** Immigration Judges may prepare a draft written decision. If an Immigration Judge chooses to draft a written decision, it must be completed within 60 workdays after the hearing.⁵ Once the judge is satisfied with the decision, the judge should give the decision and the ROP to the CA,

³ Immigration Judges need no longer record on the worksheet the status or the expiration date of the background checks.

⁴ Immigration Judges may be instructed not to use this method of preparing a draft decision during the final months of the fiscal year.

⁵ This sixty-day time frame may be shortened during the final months of the fiscal year.

indicating that it is ready for issuance as of that date but has not been signed. Within 5 days of being notified that a number is available, the judge will revise the decision, if necessary, and sign and return it to the CA for issuance.

Note: When reserving a decision, in no case should a draft decision be released to the parties or to the public.

VII. Setting the CoR Cap Date

When a cancellation or suspension hearing is concluded, court staff must update CASE as follows:

- Reserved decisions: If the Immigration Judge is granting cancellation or suspension, court staff must enter the date and time the Immigration Judge reserved the decision and that the decision is a potential CoR Cap Grant.
- Non-Reserved decisions: When an Immigration Judge is issuing a final decision, court staff must enter the appropriate application decision code and case decision code in CASE. *See* section II, above.

Entry of this information into CASE by court staff automatically generates the CoR Cap Date. Court staff no longer needs to fax the worksheets to OCIJ.

VIII. Tracking Reserved Decisions

CAs must establish a tracking system for reserved decisions in their courts so that when the CA is notified that numbers are available, the correct decisions are ready to be issued. The tracking system must be designed to ensure that the CA can monitor whether the reserved decisions have been drafted within the deadlines stated in this OPPM. *See* section VI, above.

IX. Procedure When an Immigration Judge is Unavailable to Issue a Reserved Decision

If the Immigration Judge who drafted the reserved decision is unavailable to issue that decision when a number becomes available, an Assistant Chief Immigration Judge shall reassign the case to him or herself or to another Immigration Judge. The newly-assigned Immigration Judge “shall familiarize himself or herself with the record in the case” and shall state in the written decision “that he or she has done so.” 8 C.F.R. § 1240.1(b). The newly-assigned Immigration Judge is not bound by the original Immigration Judge’s preliminary decision but should consider, among all the other facts and circumstances present, that the original Immigration Judge had an opportunity to see and hear the witness(es) testify.

X. Issuing Decisions Granting Cancellation or Suspension

Cases in which the Immigration Judge grants cancellation or suspension are placed into a queue based on the chronological order of their CoR Cap Dates. When numbers become available, OCIJ will determine which reserved decisions may be issued based on their place in the queue.

Prior to allowing the issuance of the decisions that are in the queue, OCIJ will notify DHS of the A-numbers so that DHS can verify that the background checks are current and complete.⁶ In detained cases, the court should ensure that DHS has verified that background checks are current and complete.

Once DHS has verified the status of the background checks, court staff should enter the following into CASE:

1. The application decision code “F” (cancellation or suspension grant which is subject to the cap);
2. The case decision code “Q” (Final Grant of EOIR 42B/40); and
3. The codes as appropriate for other applications for relief.

After entering the appropriate codes in CASE, court staff should date and serve the decision and place the original (signed and dated) on the right side of the ROP with the transmittal letter (CASE notice FF).

XI. Conclusion

This OPPM sets forth the procedures for handling cases involving cancellation of removal or suspension of deportation that are subject to the cap. If you have any questions regarding this memorandum, please contact your ACIJ.

⁶ If DHS determines that the background check has revealed new criminal history or that the respondent has not complied with biometrics requirements, DHS will decide whether to file a motion to recalendar and, if so, will file the motion as usual with the court.