



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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January 11, 1991

MEMORANDUM FOR: All Immigration Judges
All Management Officers
All Judicial Law Clerks
All Support Personnel

FROM: William R. Robie *WR*
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum
91-1: El Salvadoran and Guatemalan Cases
Subject to Temporary Protected Status and
Settlement in American Baptist Churches v.
Thornburgh--II

I. Temporary Protected Status for El Salvadorans.

The interim final regulations implementing temporary protected status ("TPS") pursuant to Sections 302 and 303 of the Immigration Act of 1990 have been forwarded to each Immigration Judge under separate cover. See 56 Federal Register 617-624 (January 7, 1991) as attached to Memorandum for All Immigration Judges dated January 8, 1991. Currently, TPS may apply only to El Salvadorans who entered the United States prior to September 19, 1990, and meet certain other statutory and regulatory requirements.

II. American Baptist Churches v. Thornburgh Settlement.

The settlement in American Baptist Churches et al. v. Richard L. Thornburgh, et al., No. 85-3255 (N.D. Cal., Dec. 19, 1990) has been forwarded to each Immigration Judge under separate cover. See Stipulated Settlement Agreement as attached to Memorandum for All Immigration Judges and all Management Officers dated January 3, 1991. The members of the class covered by the settlement include El Salvadorans who entered the United States on or before September 19, 1990 and Guatemalans who entered the United States on or before October 1, 1990. Some members of the class are entitled to a de novo asylum adjudication before an INS asylum officer pursuant to the asylum regulations that became effective on October 1, 1990.

III. Administrative Closing of El Salvadoran and Guatemalan Cases Subject to TPS and ABC.

A. Cases to be Automatically Administratively Closed.

All El Salvadoran and Guatemalan cases pending before an Immigration Judge (including deportation, exclusion, and motion to reopen or recalendar matters) at the close of business on January 11, 1991, will be administratively closed unless the ANSIR data reflect that the individual is detained or charged with any criminal ground of deportation. We have purposely been over rather than under inclusive in our decisions to administratively close matters in order to assure the broadest opportunity to TPS and ABC eligible individuals. Any individuals who wish to pursue their cases before an Immigration Judge (or INS if they believe the individual is not eligible for TPS or ABC) may file a motion to recalendar that will place them back into proceedings if the case has been administratively closed.

B. The Administrative Closing Order and/or Notice of TPS/ABC Rights.

1. El Salvadoran Cases.

The administrative closing order for El Salvadorans (see Attachment A) will be signed by me and dated January 14, 1991. Each El Salvadoran whose case has been administratively closed will receive a copy of the administrative closing order and the required TPS/ABC notices (see Attachment B) directed to the respondent/applicant if unrepresented or to the attorney/representative if represented as indicated in ANSIR. Each El Salvadoran whose case was completed by an Immigration Judge subsequent to November 30, 1990, for which no motion to reopen has been filed, and whose case is not pending before the BIA on January 11, 1991, will receive a copy of the TPS/ABC notices only. All administrative closing orders and notices will be sent from Falls Church. The original of each administrative closing order will be sent in bulk to the appropriate OIJ for appropriate filing in the ROP no later than March 1, 1991, and file retirement after the appropriate period if no further action has occurred. A copy of each administrative closing order will also be sent in bulk to the appropriate District Counsel.

2. Guatemalan Cases.

The administrative closing order for Guatemalans (see Attachment C) will be signed by me and dated January 14, 1991. Each Guatemalan whose case has been administratively closed will receive a copy of the administrative closing order directed to the respondent/applicant if unrepresented or to the attorney/representative if represented as indicated in ANSIR. The original of each administrative closing order will be sent in bulk to the appropriate OIJ for filing in the ROP no later than March 1, 1991, and file retirement after the appropriate period if no further action has occurred. Copies of the administrative closing orders will also be sent in bulk to the appropriate District Counsel. All administrative closing orders will be sent from Falls Church. Guatemalans will also receive ABC (but not TPS) notices from Falls Church after July 1, 1991, pursuant to the ABC settlement.

C. Handling of Administratively Closed Cases Until Administrative Closing Orders Have Reached Recipients.

Since it will require some time after the printing of the administrative closing orders for the duplication of those orders, the preparation of the TPS/ABC notices for El Salvadorans, and the stuffing and mailing of the orders and/or notices, the following procedures will be followed in order to assure a reasonably smooth transition period:

1. In all administratively closed cases that were scheduled for hearings before an Immigration Judge from January 14-February 1, 1991 (and perhaps later), the parties will probably appear at the scheduled hearing time since they will not have received their administrative closing orders until after January 28, 1991, at the earliest. Parties who appear for these cases should be informed by support staff of the administrative closing of the case and that each will receive an appropriate notice in the near future. Management Officers should print new hearing calendars as early on Monday, January 14, 1991, as possible in order to establish which cases actually remain on calendar.

2. All contract interpreter orders for cases to be administratively closed on January 14, 1991, have been cancelled by OMA. OMA will inform each Management Officer of those orders that have been cancelled.

D. Handling of Motions to Recalendar Administratively Closed Cases.

Any case administratively closed pursuant to the ABC settlement and this OPPM may not be heard by an Immigration Judge until a motion to recalendar has been filed by either party and scheduled in the normal course of events on a normal Master Calendar by the support staff as with any new incoming charging document. Motions to recalendar in any administratively closed case (not only those involved in this particular OPPM) will not be presented to Immigration Judges for a decision as to whether the case should be recalendared; all motions to recalendar will be treated as a new charging document and calendared on the next available Master Calendar as with all new cases. Immigration Judges may, of course, make any appropriate rulings concerning the case when the case appears on the Master Calendar.

IV. El Salvadoran and Guatemalan Cases Scheduled Before IJs On or After January 14, 1991--Instructions for Immigration Judges.

A. El Salvadorans.

1. Cases to be Administratively Closed Automatically Unless Objection and Waiver of ABC Rights--Non-Detained Non-Criminally Charged.

El Salvadorans who entered the United States on or before September 19, 1990, and who are not in detention and are not charged with being deportable or excludable on any criminal grounds (including as an aggravated felon), shall be notified that they may be eligible for TPS and/or to apply for asylum before the new INS asylum officers pursuant to the ABC settlement. In such cases, the Immigration Judge will automatically administratively close the case unless the respondent/applicant objects and waives the right to apply for asylum under the ABC settlement (in which case, the Immigration Judge may complete the case in the normal course of events). The administrative closing order contained in Attachment A (with appropriate changes to reflect the correct date, OIJ address and Immigration Judge) will be used by the Immigration Judge to administratively close the case. The respondent/applicant or his/her attorney/representative receiving the administrative closing order will also be provided with a copy of Attachment B of this OPPM at the same time. Few cases are expected to fall within this category.

2. Cases Administratively Closed Upon Request--Non-Detained Criminally Charged (except Aggravated Felons).

El Salvadorans who entered the United States on or before September 19, 1990, and who are not in detention and are charged with being deportable or excludable on any criminal ground except as an aggravated felon, shall be notified that they may be eligible for TPS and/or to apply for asylum before the new INS asylum officers pursuant to the ABC settlement. If the respondent/applicant requests that his/her case be administratively closed, the case will be administratively closed pursuant to paragraph 19, page 23, of the ABC Stipulated Settlement Agreement. The administrative closing order contained in Attachment A (with appropriate changes to reflect the correct date, OIJ address and Immigration Judge) will be used by the Immigration Judge to administratively close the case. The respondent/applicant or his/her attorney/representative receiving an administrative closing order will also be provided with a copy of Attachment B of this OPPM at the same time. Few cases are expected to fall within this category.

3. Cases in Detention Continued (except Aggravated Felons).

Pursuant to the ABC settlement, INS has agreed to detain only those El Salvadoran class members who "are otherwise subject to detention under current law and who: (1) have been convicted of a crime involving moral turpitude for which the sentence actually imposed exceeded a term of imprisonment in excess of six months; or (2) pose a national security threat; or (3) pose a threat to public safety." Any detainee meeting the above-described criteria (except an aggravated felon) who entered the United States on or before September 19, 1990, shall be notified that he/she may be eligible for TPS and/or to apply for asylum to the new INS asylum officers pursuant to the ABC settlement. If they indicate that they wish to apply for TPS and/or asylum, continue their cases until after July 1, 1991, using adjournment code "14--Other Operational Factors". At the same time, provide the respondent/applicant or his/her attorney/representative with a copy of Attachment B of this OPPM. If the individual is released from detention, the case may be administratively closed pursuant to Paragraphs 1 or 2 above. Few cases are expected to fall within this category. Further instructions will be provided prior to July 1, 1991, concerning appropriate actions to be taken in these cases if the respondent/applicant is still detained at that time.

4. Cases to be Completed.

All El Salvadoran cases in which the alien entered the United States after September 19, 1990, or in which the alien is charged with being deportable or excludable as an aggravated felon will be completed in the normal course of events. You should experience the bulk of the cases in this category.

B. Guatemalans.

1. Cases to be Administratively Closed Automatically Unless Objection and Waiver of ABC Rights--Non-Detained Non-Criminally Charged.

Guatemalans who entered the United States on or before October 1, 1990, and who are not in detention and are not charged with being deportable or excludable on any criminal grounds (including as an aggravated felon), shall be notified that they may be eligible to apply for asylum before the new INS asylum officers pursuant to the ABC settlement. In such cases, the Immigration Judge will automatically administratively close the case unless the respondent/applicant objects and waives the right to apply for asylum under the ABC settlement (in which case, the Immigration Judge may complete the case in the normal course of events). The administrative closing order contained in Attachment C (with appropriate changes to reflect the correct date, OIJ address and Immigration Judge) will be used by the Immigration Judge to administratively close the case. Few cases are expected to fall within this category.

2. Cases Administratively Closed Upon Request--Non-Detained Criminally Charged (except Aggravated Felons).

Guatemalans who entered the United States on or before October 1, 1990, and who are not in detention and are charged with being deportable or excludable on any criminal ground except as an aggravated felon, shall be notified that they may be eligible to apply for asylum before the new INS asylum officers pursuant to the ABC settlement. If the respondent/applicant requests that his/her case be administratively closed, the case will be administratively closed pursuant to paragraph 19, page 23, of the ABC Stipulated Settlement Agreement. The Administrative closing order contained in attachment A (with appropriate changes to reflect the correct date, OIJ address and Immigration Judge) will be used by the Immigration Judge to administratively close the case. Few cases are expected to fall within this category.

3. Cases in Detention Continued (except Aggravated Felons).

Pursuant to the ABC settlement, INS has agreed to detain only those Guatemalan class members who "are otherwise subject to detention under current law and who: (1) have been convicted of a crime involving moral turpitude for which the sentence actually imposed exceeded a term of imprisonment in excess of six months; or (2) pose a national security threat; or (3) pose a threat to public safety." Any detainee meeting the above-described criteria (except an aggravated felon) who entered the United States on or before October 1, 1990, shall be notified that he/she may be eligible to apply for asylum before the new INS asylum officers pursuant to the ABC settlement. If he/she indicates that he/she wishes to apply for asylum, continue his/her case until after July 1, 1991, using adjournment code "14--Other Operational Factors." If the individual is subsequently released from detention, the case may be administratively closed pursuant to Paragraphs 1 or 2 above. Few cases are expected to fall within this category. Further instructions will be provided prior to July 1, 1991, with regard to any cases involving individuals still detained at that time.

4. Cases to be Completed.

Guatemalan cases in which the alien entered the United States after October 1, 1990, or in which the alien is charged with being deportable or excludable as an aggravated felon will be completed in the normal course of events. You should experience the bulk of the cases in this category.

V. Scheduling Cases in Time Slots Available After Automatic Administrative Closing of El Salvadoran and Guatemalan Cases.

After all of the cases have been administratively closed under III. above, there will be obvious gaps in Immigration Judge hearing calendars. In order to minimize further disruptions to your calendars and to avoid further work by your support staff to recalendar existing cases to close those gaps, Immigration Judges must make every effort to fill those gaps with new cases so we can make the very best use of this newly available time.

VI. Additional Instructions for Management Officers.

A. Administrative Closing Orders.

The administrative closing orders to be used by Immigration Judges in IV. above should be available in ANSIR as form orders. I have authorized Gary Bowden to place these orders in your available form orders. Please work with him to assure that the correct information is entered for your Office(s).

B. Hearing Calendars.

Please be certain to run all Immigration Judge hearing calendars on January 14, 1991, so you, the Immigration Judges, and your staff will know which cases are actually on calendar after the completion of the automatic administrative closing during the weekend of January 12-13, 1991. Be sure you post the new calendars and make them available to INS District Counsel as INS will not have knowledge of which cases have been closed until their copies arrive later.

C. Completion Code for Guatemalan and El Salvadoran Administratively Closed Cases.

Please be sure that your support staff enters the completion on any Guatemalan and El Salvadoran administratively closed cases under IV.A. and IV.B. above under "Other Completion" using the code "P" in that field. This will enable us to identify cases that have been administratively closed under TPS and the ABC settlement agreement.

The cooperation of everyone in our organization is essential to assuring the successful implementation of this important settlement agreement. Your personal assistance will be greatly appreciated.

Attachments