



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2545

Falls Church, Virginia 22041

December 20, 1990

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

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

SUBJECT: Operating Policies and Procedures Memorandum
90-9: El Salvadoran Cases Subject to
Temporary Protected Status and Settlement in
American Baptist Churches v. Thornburgh

I. Temporary Protected Status for El Salvadorans.

As you know, Section 302 of the Immigration Act of 1990 establishes a new status--temporary protected status (TPS)--for nationals of countries meeting certain conditions and so designated by the Attorney General. Section 303 specifically places El Salvadorans into a special TPS and describes the special eligibility requirements and other conditions for this status.

II. American Baptist Churches v. Thornburgh Settlement.

The same class of El Salvadorans are also the subjects of a settlement agreement that was approved yesterday by the U.S. District Court for the Northern District of California in the case of American Baptist Churches v. Thornburgh (ABC), a case originally brought against INS and the Department of State and later interpreted to include EOIR because the Attorney General was a defendant. This case involved the due process accorded to El Salvadorans and Guatemalans in the adjudication of applications for political asylum.

III. Administrative Closing of El Salvadoran Cases Pending Before IJs on Date Certain in January.

In coordination with the INS and as a result of the settlement in ABC, EOIR intends to automatically administratively close all deportation and exclusion cases involving El Salvadorans who entered the United States on

or before September 19, 1990, whose cases were pending before an Immigration Judge on November 30, 1990, whose cases are still pending before an Immigration Judge at the time of administrative closing, and who are not detained or charged with any criminal ground of deportation.

Each case described above that is pending before an Immigration Judge on the date certain in January, 1991, will receive an order administratively closing the case (see Attachment A). That order and the notices required under TPS and ABC will be sent to the respondent or his/her counsel/accredited representative of record from EOIR in Falls Church, Virginia. Copies of the order will also be sent from Falls Church to the District Counsel responsible for the city where the case was located. The original will be sent to the Office of the Immigration Judge having administrative control over the Record of Proceeding (ROP) for filing in the ROP, proper entry of the order in ANSIR no later than March 1, 1990, and closing of the ROP.

In addition, only the notices required by TPS and ABC will be sent to each El Salvadoran (or his/her counsel/accredited representative of record) whose case was completed (including by administrative closing) by an Immigration Judge from November 29, 1990, until the date certain in January, 1991. These notices will also be sent from EOIR in Falls Church, Virginia.

IV. El Salvadoran Cases Scheduled Before IJs Between Now and Administrative Closing of Cases in January.

A. Instructions for Immigration Judges.

1. Cases to be Continued.

All El Salvadorans who entered the United States before September 19, 1990, and who are not in detention and are not charged with being deportable on any criminal grounds (including as an aggravated felon), shall be notified that he/she may be eligible for TPS and/or to apply for asylum before the new INS asylum officers pursuant to the ABC settlement. Each of these cases described above will be continued to Saturday, March 2, 1991, on a Master Reset calendar. The adjournment code to be used is "14--Other Operational Factors". This will allow sufficient time for the entry into ANSIR of all administratively closed cases after receipt in each OIJ of the orders in those cases.

2. Cases in Detention.

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 prior to September 19, 1990, 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 July 1, 1991, using adjournment code "14--Other Operational Factors". If the individual is released from detention, the case should then be administratively closed pursuant to Paragraph 3 below.

3. Cases with Criminal Grounds of Deportation (except aggravated felons).

Pursuant to the ABC settlement, non-detained El Salvadorans who entered the United States on or before September 19, 1990, and (1) who are charged with being deportable on criminal grounds (except for aggravated felons) or (2) whose charging document was filed with EOIR after November 30, 1990, may be eligible to apply for asylum with the new INS asylum officers and may request to have their cases administratively closed as a result. If they so request, their cases will be administratively closed (see Attachment B).

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 an aggravated felon will be completed in the normal course of events.

5. Scheduling Cases in Time Slots Available After Automatic Administrative Closing of El Salvadoran Cases.

After all automatically administratively closed cases have been entered in ANSIR, your calendars (depending on your location) will have obvious gaps. In order to minimize further disruptions to your calendars and to avoid further work by your support staff, those gaps will be filled in the normal course of events as you calendar new cases. Please make every effort to fill these gaps with new cases as they come before you so you can make the very best use of this newly available time.

B. Instructions for Management Officers.

1. IJ Master Reset Calendar on Saturday, March 2, 1991.

Initialize on every IJ's calendar a full day of Master Reset time on Saturday, March 2, 1991, with as many as 100 cases possible to be scheduled for that date. This should provide more than enough space for any cases on an individual IJ's calendar to be continued to that date. If it is not, please increase the number sufficiently to accommodate the rescheduling of all cases to that date.

2. Entry of administrative closing orders.

When the administrative closing orders arrive in your Office, assure that each order is placed in the ROP and entered into ANSIR not later than March 1, 1991, and that the ROP is then appropriately closed.

V. Guatemalan Cases.

Further instructions with regard to Guatemalan cases subject to the ABC settlement will be forthcoming at a later date and are not affected by any of the provisions of this OPPM. Their cases may proceed in the normal course until further notice.



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December 28, 1990

MEMORANDUM TO: All Management Officers

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

SUBJECT: Preparation Procedures for Automatic
Administrative Closing Orders on
El Salvadoran and Guatemalan Cases

This memorandum mandates the procedures necessary to prepare for the automatic administrative closing orders on pending El Salvadoran and Guatemalan cases mentioned in OPPM 90-9 dated December 20, 1990.

I. These procedures include Automated Reports generation, data verification or collection, and data base update or correction. All ANSIR updates or corrections must be made on El Salvadoran and Guatemalan cases by close-of-business January 11, 1991, so EOIR headquarters staff can issue administrative closing orders and notices on the weekend of January 12-13, 1991.

A. Automated Reports/Edit Table Generation.

All field offices must generate the following ANSIR Reports:

1. Missing Information Report (immediately).
2. Using ANSIR's WRITER program, generate a Detained Status Report on all El Salvadoran and Guatemalan Cases (no later than COB 1/7/91).
3. Attorney Edit Table (immediately).
4. Off-Calendar Report (immediately).

B. Data Verification and Collection.

1. Pull all Records of Proceedings (ROPs) listed on the Missing Information Report, obtain (at a minimum) the Nationality Code for all cases listed, and enter all other missing information with priority on all El Salvadoran and Guatemalan cases.

B. Data Verification and Collection (continued).

2. Verify (no later than COB 1/10/91) detained status with Immigration and Naturalization Service (INS) of any El Salvadoran or Guatemalan cases listed on the Detained Status Report. If the respondent has been released from detention obtain a current mailing address and update detained status and all other information in ANSIR.
3. Verify current attorney/representative addresses (particularly those who specialize in or are currently representing El Salvadoran or Guatemalan clients) by checking attorney edit table against ROP of most recent case received by OIJ in which the attorney has filed an EOIR-28 containing the attorney/representative's address.

II. Beginning the weekend of January 12-13th (COB), the Executive Office for Immigration Review (EOIR) in Falls Church, Virginia, will print administrative closing orders on El Salvadoran and Guatemalan cases that are not detained or charged with any criminal ground of deportation. The Headquarters Office will begin serving those orders on both parties (including the notices for the respondents/applicants) during the week of January 21st.

A. Pending Cases.

The ANSIR System will automatically update the Decision and Completion Date fields. Your office will receive the original order and your personnel must file all orders in the appropriate ROP. These closed cases should then be inter-filed within the closed files no later than March 1, 1991.

B. Closed El Salvadoran and Guatemalan Appealed Cases.

1. Appeal filed, transcript not yet requested.
All appeals received as of January 11, 1991, must be entered in ANSIR by COB January 11, 1991. Do not send any cassette tapes to OMA in these cases. Retain them in the ROP. When the Board order continuing these cases indefinitely is received from BIA, your personnel must enter the received date in the ANSIR System Appeal Screen in the "Date from BIA" and the "Appeal Completion Date" fields.

B. Closed El Salvadoran and Guatemalan Appealed Cases (continued).

2. Appeal filed, cassette returned not transcribed.
The Office of Management and Administration has already sent all untranscribed cassette tapes back to your office. Your personnel must enter the received date in the ANSIR System Appeal Screen in the "Date Ret'd to Off" field prior to COB January 11, 1991. When the Board order continuing these cases indefinitely is received from BIA, your personnel must enter the received date in the ANSIR Appeal Screen in the "Date from BIA" and the "Appeal Completion Date" fields.
3. Appeal filed, transcript returned from OMA, but ROP not yet sent to Board of Immigration Appeals. Serve all transcripts received from OMA on the parties without further review by IJ or establishment of briefing schedule. If IJ has already reviewed and briefing schedule has been established, notify parties that briefs need not be filed. When the Board order continuing these cases indefinitely is received from BIA, your personnel must enter the received date in the ANSIR Appeal Screen in the "Date from BIA" and the "Appeal Completion Date" fields.
4. Appeal filed, ROP at Board of Immigration Appeals. ROPs will be returned with a Board order continuing the case indefinitely. Process according to regular Uniform Docketing System/ANSIR procedures.

I appreciate your expeditious handling of these matters. Should you have any questions please call Tony Padden on FTS 756-6558.