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**DPC - Box 033 - Folder 013**

**Immigration - NACARA**

**[Nicaraguan Adjustment and  
Central Relief Act] Regulation**

Immigratic - NACARA rule

Irene Bueno

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Record Type: Record

To: Elena Kagan/OPD/EOP, Maria Echaveste/WHO/EOP, Scott Busby/NSC/EOP, Janet Murguia/WHO/EOP  
cc: See the distribution list at the bottom of this message  
Subject: NACARA Internal Qs and As

I am sending you by fax INS's internal Qs and As on the NACARA reg.

Fyi - the INS briefed a small group on these regs and they were very pleased and look forward to discussions about legislation.

Maria - in follow up to your question - INS clarified that the NACARA regs are interim rule because they are slight departure from the proposed rule particularly on the presumption issue and therefore, they are requesting comments and the rule would be effective 30 days after publication.

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U.S. Department of Justice  
IMMIGRATION AND NATURALIZATION SERVICE  
Washington, DC 20536



Immigration - NACARA  
regulation

## NEWS RELEASE

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May 20, 1999

### **INS Announces New Program for NACARA Beneficiaries; Interim Rule Describes Simplified, Accessible Application Process**

WASHINGTON – Immigration and Naturalization Service (INS) Commissioner Doris Meissner announced today new implementation rules for a special program under which certain qualified Salvadoran, Guatemalan and former Soviet Bloc nationals can apply for relief from deportation through simplified and more accessible procedures. These procedures are described in an interim regulation implementing section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) of 1997.

NACARA allows beneficiaries to apply for suspension of deportation or cancellation of removal under the more generous standards in effect before the 1996 immigration law. Individuals granted relief under NACARA will have their status adjusted to that of legal permanent resident.

The regulation will affect approximately 300,000 people: 290,000 Central Americans including 240,000 Salvadorans and Guatemalans who are registered members of the *American Baptist Churches v. Thornburgh* (ABC) settlement and approximately 10,000 Eastern Europeans. These are people who have been in the United States for nearly a decade or longer. The interim rule will be published in the Federal Register on May 21, 1999 and will become final on June 21, 1999, after a 30 day comment period.

In a specially designed new procedure, the program will:

- Allow asylum officers, in most cases, to hear suspension claims in non-adversarial settings and to grant permanent relief without the need for the applicant to appear before an immigration judge;
- Simplify the application form for relief, minimizing the need for expensive legal counsel or burdensome searches for documents;
- Identify by regulation the "extreme hardship" standard for relief, which was previously developed through decades of judicial and administrative decisions; and
- Presume that those Salvadorans and Guatemalans who are ABC class members would suffer extreme hardship if returned, greatly expediting the consideration of their applications.

(more)

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"Consistent with the commitment President Clinton made when he visited Central America in March, the new program is the culmination of the Administration's efforts to create as accessible and straightforward a process as the law permits," said INS Commissioner Meissner. "We have concluded that the ABC class members' unique immigration history, deep roots in our society, and contributions to our communities mean that the overwhelming number of them are the people Congress meant to reach by providing relief under NACARA. The presumption of extreme hardship simplifies the process of achieving that goal."

The interim rule incorporates many of the comments and suggestions submitted by the public in more than 400 comments. Almost all endorsed expanding the authority of the asylum officers to decide these applications and encouraged the Department to adopt a presumption of hardship that further simplifies the process.

The process implemented by this interim regulation benefits the government as well as the applicant by using government resources as effectively as possible.

**Presumption of Hardship**

The presumption of hardship is grounded in the common past experiences and present circumstances of Salvadorans and Guatemalans who are ABC class members within the scope and intent of NACARA. These Salvadorans and Guatemalans, who fled civil war and political violence have all been in the United States for at least eight years, many for much longer. They are a defined and limited group of people who have been known to the government for years. Their "temporary" stay has been authorized by a series of statutory, administrative and judicial actions. During this time, most have developed deep roots in and made significant contributions to this country. These common characteristics strongly predict that the removal of individuals who are members of the ABC class would cause extreme hardship.

The presumption will simplify and expedite the consideration of ABC claims. The regulations nevertheless require a case-by-case review of each application, and allow the government to challenge the application for relief when there is no evidence of factors associated with extreme hardship (for example, where an applicant has no family in the United States, no work history and no ties to the community) or where evidence in the record significantly undermines the basic assumption on which the presumption is based (such as where an applicant has substantial resources in his or her own country).

Although INS determined that a blanket presumption of hardship could not be supported by law, non ABC class members may also meet the "extreme hardship" standard for relief depending on their individual circumstances.

(more)

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The regulations apply to cases made before asylum officers and immigration judges. Both INS and EOIR plan to hold training prior to implementation of the rule on June 21, to ensure that the provisions of the regulation are applied consistently and fairly in each case.

**NOTE:** For further information about today's announcement a Fact Sheet and Questions and Answers are available upon request or can be found on the INS website, [www.ins.usdoj.gov](http://www.ins.usdoj.gov)

- INS -

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## FACT SHEET

05/20/99

### Section 203 of the Nicaraguan Adjustment And Central American Relief Act

#### ■ Benefits

Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) provides that certain Guatemalans, Salvadorans and nationals of former Soviet bloc countries are eligible to apply for suspension of deportation or special rule cancellation of removal under standards similar to those that existed for suspension of deportation prior to the enactment of the September 1996 immigration law.

The rule published today by INS creates a new program that expands the authority of INS asylum officers to consider the vast majority of NACARA applications. This expanded authority of INS asylum officers streamlines the process and provides an efficient and simplified method for resolving a large number of the claims at an earlier stage in the administrative process. To provide guidance to applicants and adjudicators, the rule codifies for the first time a non-exhaustive list of the relevant factors for evaluating extreme hardship that are identified within existing case law. The rule further simplifies the process for most NACARA beneficiaries by creating a rebuttable presumption of extreme hardship for class members of the *American Baptist Churches vs. Thornburgh* (ABC) lawsuit.

#### ■ Eligibility

Individuals may apply for benefits under NACARA if they are in any of the four categories described below and have not been convicted of an aggravated felony.

#### ■ Salvadoran nationals who filed applications for asylum on or before April 1, 1990, OR who meet each of the following requirements:

- First entered the United States on or before September 19, 1990;
- Registered for benefits under the *American Baptist Churches vs. Thornburgh* (ABC) settlement agreement on or before October 31, 1991, (either by submitting an ABC registration form or by applying for Temporary Protected Status); AND
- Were not apprehended at the time of entry, if they entered the United States after December 19, 1990.

#### ■ Guatemalan nationals who filed applications for asylum on or before April 1, 1990, OR who meet each of the following requirements:

- First entered the United States on or before October 1, 1990;
- Registered for benefits under ABC on or before December 31, 1991; AND
- Were not apprehended at the time of entry if, they entered the United States after December 19, 1990.

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■ Individuals who at the time they filed an asylum application as noted below were nationals of the Soviet Union, Russia, any republic of the former Soviet Union, Albania, Bulgaria, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Yugoslavia or any state of the former Yugoslavia, and

- Entered the United States on or before December 31, 1990; AND
- Filed an application for asylum on or before December 31, 1991.

■ Individuals who are the spouse, child or unmarried son or daughter of a person described in the above categories and who also meet the following requirements:

- The spouse or parent described in one of the three categories above has been granted suspension of deportation or cancellation of removal;
- The relationship to that spouse or parent existed when the spouse or parent was granted the benefit; AND
- Unmarried sons or daughters who were 21 years of age or older at the time their parent was granted the benefit must have entered the United States on or before October 1, 1990.

■ **Eligibility for Suspension of Deportation or Special Rule Cancellation of Removal**

Individuals who are inadmissible or deportable from the United States may qualify for special rule cancellation of removal (inadmissible or deportable) or suspension of deportation (only deportable) if:

- They have been in the United States for seven years;
- They are found to have had good moral character during those seven years;
- Return to their country would result in extreme hardship to them or their spouse, child or parent who is a U.S. citizen or lawful permanent resident; and
- They merit a favorable exercise of discretion.

Individuals convicted of crimes may still be eligible to apply under a heightened standard, depending on the type of crime committed. The heightened standard includes, among other requirements, a longer continuous physical presence requirement (10 years) and a higher degree of hardship if they are removed or deported. Anyone convicted at any time of a crime defined as an aggravated felony under immigration law is not eligible to apply.

■ **Factors in Determining Extreme Hardship**

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

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- Age of the individual, both at the time of entry to the United States and at the time of application for NACARA relief;
- Age, number and immigration status of the individual's children and their ability to speak the native language and to adjust to life in the country of return;
- Health condition of the individual or the individual's children, spouse or parents and the availability of any required medical treatment in the country to which the individual would be returned;
- Length of residence in the United States;
- Existence of other family members who are or will be legally residing in the United States;
- Financial impact of the individual's departure;
- Impact of a disruption of educational opportunities;
- Psychological impact of the individual's departure;
- Current political and economic conditions in the country to which the individual would be returned;
- Family and other ties to the country to which the individual would be returned;
- Contributions and ties to a community in the United States, including degree of integration into the society;
- Immigration history, including authorized residence in the United States; and
- Availability of other means of adjusting to permanent resident status.

### ■ Rebuttable Presumption of Extreme Hardship

Because ABC class members generally share several identifiable factors that have been found to lead to a finding of extreme hardship, the rule gives NACARA-eligible ABC class members a rebuttable presumption of extreme hardship. All Guatemalans who entered the United States on or before October 1, 1990, and all Salvadorans who entered the United States on or before September 19, 1990, are members of the ABC class.

ABC class members will be presumed to have established extreme hardship if they submit a completed application form that answers basic questions regarding extreme hardship. The presumption may be rebutted if INS shows that neither the applicant nor the applicant's qualified relative, if any, would suffer extreme hardship. Circumstances that may rebut the presumption include a finding of ample personal financial resources in the country of return or a lack of ties to the community and the absence of any other factors that would result in hardship. The presumption allows INS to adopt a streamlined approach to processing the applications, but still requires a case-by-case review.

Although the presumption of extreme hardship extends only to NACARA-eligible ABC class members, some other NACARA beneficiaries may have characteristics that are similar to those shared by the ABC class. The regulations specifically require adjudicators to consider the presence of those characteristics, such as evidence of an



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extended stay in the United States without fear of deportation and with the benefit of work authorization, in evaluating extreme hardship.

### ■ Application Procedures

#### Who Can Apply With INS?

Most NACARA beneficiaries will be able to apply for suspension of deportation or special rule cancellation of removal with the INS asylum program. This includes the following

- ABC class members who are eligible for benefits of the ABC settlement agreement and have asylum applications pending with INS;
- Guatemalan or Salvadoran nationals who applied for asylum on or before April 1, 1990 and whose asylum applications are still pending with INS;
- Former Soviet Bloc nationals who are eligible to apply under section 203 of NACARA and whose asylum applications are still pending with INS; and
- Certain qualified family members of individuals who have applied to INS for benefits under section 203 of NACARA.

Generally, individuals who have been placed in deportation or removal proceedings must apply for relief under section 203 with the immigration judge. However, certain individuals whose proceedings have been closed by the immigration judge or continued by the Board of Immigration Appeals may be able to apply with INS. These include the following:

- An ABC class member who had proceedings administratively closed by the immigration judge or continued by the Board of Immigration Appeals and who is entitled to a new asylum adjudication before INS under the ABC settlement;
- An ABC class member who is entitled to a new asylum adjudication before INS under the ABC settlement and is subject to a final order of deportation or removal and who filed and was granted a motion to reopen as permitted by NACARA.
- A qualified family member of a NACARA beneficiary who has already filed a NACARA application with INS, if the immigration judge has administratively closed the family member's proceedings.

#### When to Apply

Applications may be submitted to INS once the interim rule is effective on June 21, 1999. Individuals who are in deportation or removal proceedings have been able to submit applications to the Immigration Court since NACARA was enacted and may continue to do so.

#### How to Apply

A separate Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), must be completed and submitted for each person

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applying for suspension of deportation or special rule cancellation of removal. INS expects to have this form available to the public by the effective date of the interim rule.

Each applicant must send the following documents to the INS Service Center with jurisdiction over their state of residence:

- Completed Form I-881 (original and one copy);
- Two passport-style photographs; and
- Payment of the appropriate fee.

An applicant is also encouraged to include supporting documents that show the applicant has been continuously present in the United States for the previous seven years, has good moral character, and will experience extreme hardship if removed to his or her native country. Applicants who are eligible to apply because of a relationship to another NACARA beneficiary (spouse or parent) should include documentation establishing the relationship.

ABC class members will not initially have to submit documents or other evidence demonstrating extreme hardship.

### Fees

The fees for NACARA 203 are as follows:

- Form I-881 – \$215 for an individual or \$430 for a family if all applications are submitted together in a single packet;
- Fingerprinting Fee – \$25 for each applicant over 14 years of age; and
- Form I-765, Application for Employment Authorization – \$100 (This form is only needed if an applicant does not have and wishes to receive employment authorization based on eligibility for NACARA benefits).

### ■ Work Authorization

An applicants with an unexpired work authorization may continue to use it during the application process. Any applicant who wishes to obtain initial employment authorization, or continued authorization while a NACARA application is pending, should file a Form I-765, Application for Employment Authorization, with the INS Service Center where the applicant filed the NACARA application.

### ■ Travel

An applicant who plans to leave the United States before a decision is made on the NACARA application must request and receive advance parole to ensure permission to re-enter the country. Advance parole may be requested on a Form I-131, Application for a Travel Document. Certain absences from the United States, even with advance parole, may interrupt the required continuous physical presence in the United States, depending on the length of the absence and the purpose of the absence.

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## QUESTIONS AND ANSWERS

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5/20/99

### Section 203 of the Nicaraguan Adjustment And Central American Relief Act of 1997

#### *INS Publishes Interim Rule For Guatemalans, Salvadorans, Former Soviet Bloc Nationals And Their Qualified Family Members*

Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) provides that certain Guatemalans, Salvadorans and nationals of former Soviet bloc countries are eligible to apply for suspension of deportation or special rule cancellation of removal under standards similar to those that existed for suspension of deportation prior to the enactment of the September 1996 immigration law. Individuals granted suspension of deportation or cancellation of removal under NACARA will have their status adjusted to that of lawful permanent resident.

**Q1. What does the interim regulation do?**

A. The rule published today by INS creates a new program that expands the authority of INS asylum officers to consider the vast majority of NACARA applications. This expanded authority of INS asylum officers streamlines the process and provides an efficient and simplified method for resolving a large number of the claims at an earlier stage in the administrative process. To provide guidance to applicants and adjudicators, the rule codifies for the first time a non-exhaustive list of the relevant factors for evaluating extreme hardship that are identified within existing case law. The rule further simplifies the process for the majority of NACARA beneficiaries by creating a rebuttable presumption of extreme hardship for class members of the *American Baptist Churches vs. Thornburgh* (ABC) lawsuit.

**Q2: Why is INS issuing an interim rule? Why not a final rule?**

A: The adoption of a rebuttable presumption of hardship represents a significant and substantive change from the proposed rule. The Department of Justice and INS felt that issuing an interim rule and allowing comments would be the most appropriate course of action. The rule will become final on June 21 after a 30 day comment period.

**Q3: What is INS' estimate for the number of people who are effected by the regulation? What are the breakdowns?**

A: INS believes that there are approximately 300,000 people who are eligible to apply for suspension of deportation or cancellation of removal under section 203 of NACARA. Of that 300,000 INS estimates that 240,000 are ABC class members; 50,000 are Guatemalans and Salvadorans who are non ABC class members and 10,000 are nationals of former Soviet bloc countries.

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**Q4. What are suspension of deportation and cancellation of removal?**

A. Suspension of deportation and cancellation of removal are forms of discretionary relief from deportation or removal for individuals who are subject to deportation or removal. Individuals granted suspension of deportation or cancellation of removal under NACARA will have their status adjusted to that of a lawful permanent resident.

**Q5. What is the difference between suspension of deportation and special rule cancellation of removal?**

A. Suspension of deportation is available only to people who are deportable from the United States and who were placed in immigration proceedings prior to April 1, 1997. Special rule cancellation of removal is available to people who are inadmissible or removable and who were placed in immigration proceedings on or after April 1, 1997. The interim rule also makes special rule cancellation of removal available to qualified NACARA beneficiaries who have not been placed in removal proceedings and are eligible to apply for the benefit with the INS Asylum Program. The basic eligibility requirements for suspension of deportation and special rule cancellation of removal are very similar.

**Q6. Who can apply for benefits under the suspension/special rule cancellation provisions in NACARA?**

A. Individuals may apply for benefits under NACARA if they are in any of the four categories described below and have not been convicted of an aggravated felony,

- Salvadoran nationals who filed applications for asylum on or before April 1, 1990, OR who meet each of the following requirements:
  - First entered the United States on or before September 19, 1990;
  - Registered for benefits under the *American Baptist Churches vs. Thornburgh* (ABC) settlement agreement on or before October 31, 1991, (either by submitting an ABC registration form or by applying for Temporary Protected Status); AND
  - Were not apprehended at the time of entry if entry occurred after December 19, 1990.
- Guatemalan nationals who filed applications for asylum on or before April 1, 1990, OR who meet each of the following requirements:
  - First entered the United States on or before October 1, 1990;
  - Registered for benefits under ABC on or before December 31, 1991; AND
  - Were not apprehended at the time of entry if entry occurred after December 19, 1990.
- Individuals who at the time they filed an asylum application as noted below were nationals of the Soviet Union, Russia, any republic of the former Soviet Union, Albania, Bulgaria, Czechoslovakia, East Germany, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Yugoslavia or any state of the former Yugoslavia, and

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- Entered the United States on or before December 31, 1990; AND
- Filed an application for asylum on or before December 31, 1991.
- Individuals who are the spouse, child or unmarried son or daughter of a person described in the above categories and who also meet the following requirements:
  - The spouse or parent described in the three categories above has been granted suspension of deportation or cancellation of removal;
  - The relationship to that spouse or parent existed when the spouse or parent was granted the benefit; AND
  - Unmarried sons or daughters who were 21 years of age or older at the time their parent was granted the benefit must have entered the United States on or before October 1, 1990.

**Q7. What requirements are needed to be granted suspension of deportation or special rule cancellation of removal?**

A. Individuals who are inadmissible or deportable from the United States may qualify for special rule cancellation of removal (inadmissible or deportable) or suspension of deportation (only deportable) if:

- They have been continuously present in the United States for seven years;
- They are found to have had good moral character during those seven years;
- Return to their country would result in extreme hardship to them or their spouse, child or parent who is a U.S. citizen or lawful permanent resident; and
- They merit a favorable exercise of discretion.

Individuals convicted of crimes may still be eligible to apply under a heightened standard, depending on the type of crime committed. The heightened standard includes, among other requirements, a longer continuous physical presence requirement (10 years) and a higher degree of hardship if they are removed or deported. Anyone convicted at any time of a crime defined as an aggravated felony under immigration law is not eligible to apply.

**Q8. What factors are considered in evaluating extreme hardship?**

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

- Age of the individual, both at the time of entry to the United States and at the time of application for suspension of deportation;
- Age, number and immigration status of the individual's children and their ability to speak the native language and to adjust to life in the country of return;

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- Health condition of the individual or the individual's children, spouse or parents and the availability of any required medical treatment in the country to which the individual would be returned;
- Length of residence in the United States;
- Existence of other family members who are or will be legally residing in the United States;
- Financial impact of the individual's departure;
- Impact of a disruption of educational opportunities;
- Psychological impact of the individual's departure;
- Current political and economic conditions in the country to which the individual would be returned;
- Family and other ties to the country to which the individual would be returned;
- Contributions and ties to a community in the United States, including degree of integration into the society;
- Immigration history, including authorized residence in the United States; and
- Availability of other means of adjusting to permanent resident status.

Because ABC class members generally share several identifiable factors that have been found to lead to a finding of extreme hardship, the rule gives NACARA-eligible ABC class members a rebuttable presumption of extreme hardship. All Guatemalans who entered the United States on or before October 1, 1990, and all Salvadorans who entered the United States on or before September 19, 1990, are members of the ABC class.

**Q9. What is the effect of a rebuttable presumption of extreme hardship?**

A. Because ABC class members generally share several identifiable factors that have been found to lead to a finding of extreme hardship, the rule gives NACARA-eligible ABC class members a rebuttable presumption of extreme hardship. All Guatemalans who entered the United States on or before October 1, 1990, and all Salvadorans who entered the United States on or before September 19, 1990, are members of the ABC class.

ABC class members will be presumed to have established extreme hardship if they submit a completed application form that answers basic questions regarding extreme hardship. The presumption may be rebutted if INS shows that neither the applicant nor the applicant's qualified relative, if any, would suffer extreme hardship. Circumstances that may rebut the presumption include a finding of ample personal financial resources in the country of return or a lack of ties to the community and the absence of any other factors that would result in hardship. The presumption allows INS to adopt a streamlined approach to processing the applications, but still requires a case-by-case review.

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Although the presumption of extreme hardship extends only to NACARA-eligible ABC class members, some other NACARA beneficiaries may have characteristics that are similar to those shared by the ABC class. The regulations specifically require adjudicators to consider the presence of those characteristics, such as evidence of an extended stay in the United States without fear of deportation and with the benefit of work authorization, in evaluating extreme hardship.

**Q10. Who is eligible to apply with the INS Asylum Program for this benefit?**

A. Most NACARA beneficiaries will be able to apply for suspension of deportation or special rule cancellation of removal with the INS Asylum Program. This includes the following:

- ABC class members who are eligible for benefits of the ABC settlement agreement and have asylum applications pending with INS;
- Guatemalan or Salvadoran nationals who applied for asylum on or before April 1, 1990 and whose asylum applications are still pending with INS;
- Former Soviet Bloc nationals who are eligible to apply under section 203 of NACARA and whose asylum applications are still pending with INS and;
- Certain qualified family members of individuals who have applied to INS for benefits under section 203 of NACARA.

Generally, individuals who have been placed in deportation or removal proceedings must apply for relief under section 203 with the immigration judge. However, certain individuals whose proceedings have been closed by the immigration judge or continued by the Board of Immigration Appeals may be able to apply with INS. These include the following:

- An ABC class member who had proceedings administratively closed by the immigration judge or continued by the Board of Immigration Appeals and who is entitled to a new asylum adjudication before INS under the ABC settlement;
- An ABC class member who is entitled to a new asylum adjudication before INS under the ABC settlement and is subject to a final order of deportation or removal and who filed and was granted a motion to reopen as permitted by NACARA.
- A qualified family member of a NACARA beneficiary who has already filed a NACARA application with INS, if the immigration judge has administratively closed the family member's proceedings.

**Q11. What if an individual has received a final order of deportation or removal?**

An individual who has a final order of deportation or removal and has become eligible for suspension of deportation or special rule cancellation of removal as a result of NACARA, must have filed and been granted a motion to reopen proceedings before the individual may request relief under section 203 of NACARA.

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**Q12. If an individual eligible to apply for section 203 NACARA relief has not been placed in proceedings and does not have an asylum application pending with INS, how may that individual apply for NACARA 203 relief?**

A. The Department recognizes that registered ABC class members who never applied for asylum and who have not been placed in immigration proceedings are unable to apply for special rule cancellation of removal unless INS places them in removal proceedings by issuing charging documents. A person may request that the INS district office with jurisdiction over his or her place of residence place him or her in proceedings, but INS retains prosecutorial discretion to determine the priority status of such a request.

**Q13. When can a person apply with the INS Asylum Office for this benefit?**

A. Applications may be submitted to INS once the interim rule is effective on June 21, 1999. Individuals who are in deportation or removal proceedings have been able to submit applications to the Immigration Court since NACARA was enacted and may continue to do so.

**Q14. How does a person apply with the INS Asylum Office for this benefit?**

A. A separate Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), must be completed and submitted for each person applying for suspension of deportation or special rule cancellation of removal.

Each applicant must send the following documents to the INS Service Center with jurisdiction over their state of residence:

- Completed Form I-881 (original and one copy);
- Two passport-style photographs; and
- Payment of the appropriate fee.

An applicant is also encouraged to include supporting documents that show the applicant has been continuously present in the United States for the previous seven years, has good moral character and will experience extreme hardship if removed to his or her native country. Applicants who are eligible to apply because of a relationship to another NACARA beneficiary (spouse or parent) should include documentation establishing the relationship.

ABC class members will not initially have to submit documents or other evidence demonstrating extreme hardship.



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**Q15. What is the fee?****A. The fees for NACARA 203 are as follows:**

- **Form I-881** – \$215 for an individual or \$430 for a family if all applications are submitted together in a single packet;
- **Fingerprinting Fee** – \$25 for each applicant over 14 years of age; and
- **Form I-765, Application for Employment Authorization** – \$100 (this form is only needed if an applicant does not have and wishes to receive employment authorization based on eligibility for NACARA benefits).

**Q16: When will the form be ready?****A:** At this time the form is in the review process. INS expects that the form will be approved and available for use before the effective date of the interim regulation on June 21, 1999.**Q17. Can individuals eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA apply for employment authorization?****A. Yes.** INS believes that many people eligible for special rule cancellation of removal under section 203 of NACARA may already have work authorization based on a pending asylum application. However, if the applicant does not have work authorization and is found eligible to apply for section 203 NACARA relief, he or she may submit a Form I-765, application for employment authorization with the appropriate fee to the same Service Center to which the applicant submitted the I-881.**Q18. What will happen after the person applies with INS?****A. Once the INS Service Center receives the application the following steps will be taken:**

- Receipts will be mailed to applicants. Applicants should retain this receipt for their records;
- Applications that are either incomplete or are not accompanied by the correct fee will be rejected and returned to the applicants;
- Employment authorization applications, if filed, will be processed for those applicants whose applications are accepted and;
- Applicants will be scheduled for fingerprinting at an Application Support Center if they are 14 years old or older.
- After the INS Asylum Office has received the results of security checks, applicants will be scheduled for non-adversarial interviews with INS Asylum Officers.
- If the Asylum Officer makes a favorable determination, an applicant will be asked to sign a statement conceding inadmissibility or deportability. This will only be done after a favorable determination is made and must be done before INS can actually grant suspension of deportation or cancellation of removal. Once the

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concession is made the NACARA application will be granted and the applicant's status will be adjusted to that of lawful permanent resident.

- If the Asylum Officer makes a determination that suspension of deportation or cancellation of removal is not warranted the case will be referred to an immigration judge for adjudication.

**Q19. How will applicants be notified as to the decision on their application?**

A. Where appropriate applicants may be notified at the time of the interview. In other cases applicants will be asked to come to the INS asylum office to receive a written decision or the decision may be mailed.

- INS -

## **Internal Q's and A's for NACARA Section 203**

**1 : When was the decision made to adopt presumption of extreme hardship? Does it not represent a change in your initial position?**

INS began to seriously explore the possibility of granting some kind of presumption in January, given the tremendous response to this issue. We received over 400 public comments on our proposed rule the majority of which strongly urged the Department to adopt a presumption of hardship.

**2 : Why didn't INS grant presumption of hardship to all NACARA eligible individuals? Why only to ABC class members?**

The ABC class is unique in that the INS has had extensive dealings with their cases. This allowed INS to make an informed and educated decision about the likelihood of an extreme hardship determination. INS has no similar general information about non-ABC class members, therefore it is necessary to make extreme hardship determinations on an individual case by case basis for non ABC class individuals.

**3 : Does this partial grant really fulfill the President's pledge to create equity between the groups granted benefits under NACARA?**

This program represents the culmination of the Administration's efforts to create as equitable, accessible and simple a process as the law permits. However, because the law does not permit the same treatment that was given to Nicaraguans and Cubans, and in order to further fulfill President Clinton's commitment to equity, the Administration will be proposing legislation in the near future that addresses this issue.

**4 : Is presumption of extreme hardship beyond the scope of NACARA and indeed a violation of the law as Congressman Smith contends?**

No, the Attorney General has the authority to create the appropriate rules and procedures for determining eligibility for suspension of deportation or special rule cancellation of removal. We are maintaining the established standards for proving extreme hardship, we are just evaluating the evidentiary requirements differently. In addition, the Department received more than 400 comments, almost all of which strongly urged the Department to adopt a presumption of extreme hardship.

The presumption that is being given to the ABC class members is simply a tool to expedite the process. The characteristics shared by this group of people were such that it was strongly predictable that they would prevail under

extreme hardship. It is not an avenue to grant people something that we do not believe they would have gotten anyway.

**5: Is the Administration going to introduce legislation this session to create full parity between the groups granted benefits by NACARA?**

President Clinton made a commitment to fair treatment. This rule goes as far as the law possibly permits, fulfilling the president's commitment to the fullest extent under the law. However, the law does not permit the same treatment for everyone as was given to Nicaraguans and Cubans. So in order to further fulfill the president's commitment, the Administration will be proposing legislation in the near future to address this issue.

**6: Isn't presumption of hardship just a cover for what is really an amnesty program?**

No. A rebuttable presumption operates very differently from a mandatory finding. The rebuttable presumption of hardship requires the applicant to produce some evidence of hardship and the presumption can be overturned by the INS. All applications must still be adjudicated on a case-by-case basis, there is no guarantee of extreme hardship.

**7: INS is providing training for its Asylum officers on these new procedures. Will the Immigration Judges, who are also involved in the process be receiving this training?**

No. One of the key aspects of section 203 of NACARA is allowing INS asylum officers the opportunity to adjudicate petitions for cancellation of removal or suspension of deportation. This is a function traditionally performed by Immigration Judges therefor it is not necessary to have them undergo training. In addition, Immigration Judges are under the jurisdiction of the Executive Office for Immigration Review, an agency separate from INS, if training was needed it would be EOIR's responsibility to provide it.

**INS Training Plan:**

Asylum officers will be trained in June and July. The initial training sessions will last three days and cover the law and procedures. The training will be conducted in Los Angeles, Washington DC, Newark, Chicago, and Miami. Officers will travel from other offices to attend one of the trainings at the listed offices. We will follow up with practical exercises over a four week period, all gearing up for the first interviews. In addition, to training asylum officers we will be training INS information officers and contact representatives to respond to general questions.

**8: Will this create a backlog within the asylum program?**

No. At this time the INS asylum program is able to keep within its 180 day time frame for the majority of new asylum cases. This program will actually help eliminate the lingering asylum backlog which is comprised of mostly ABC cases.

**9: You say that the presumption can be overcome in limited circumstances, but the regulatory provision itself doesn't say anything which prevents the INS from challenging the presumption in every case. Why not?**

Because the law requires a case by case assessment of eligibility relief from deportation, the rule must provide the flexibility to determine whether there is sufficient evidence to overcome the presumption in each case. But the existence of the presumption itself acts to limit the nature and kinds of cases that the INS would choose to challenge, as rebuttal presumption requires a very high evidentiary showing. Asylum officers and trial attorneys currently work with presumptions in the asylum context, and understand how to evaluate whether there is sufficient evidence to overcome a presumption. The INS will also provide additional training to its personnel to help them identify the types of cases in which it is appropriate to the type of facts that might suggest that the presumption can be overcome.

**10: The regulations and materials talk about the unique experiences that ABC class members faced such as fleeing civil war and violence and being productive members of the community this is why they can be granted the presumption of hardship. Does this mean the INS feels that the other NACARA eligible beneficiaries, including people from the same countries as the ABC members, didn't flee civil war and violence and haven't made contributions to the community? Isn't that rather insulting?**

No. The ABC class is unique in that the INS has had extensive dealings with their cases. This allowed INS to make an informed and educated decision about the likelihood of an extreme hardship determination. INS in no way means to suggest that other NACARA beneficiaries have not encountered similar ordeals or made similar contributions to the community, nor does it mean to suggest that other NACARA beneficiaries will not prevail in the test for extreme hardship. In fact, if they share a lot of the same characteristics as the ABC class members, it is more than likely that they will prevail and will be granted extreme hardship.

This decision was based on the distinct legal identity of ABC class members. Non-ABC class members will still benefit greatly from the simplified and more accessible procedures.

**11: Isn't this partial presumption of extreme hardship just one more example of the Administration's waffling approach to foreign and domestic policy?**

**Meaning to grant a full presumption of hardship would anger key Republican leaders yet to not grant any would anger the ever more powerful Hispanic vote in an election year so the Administration adopted this middle of the road policy.**

The regulation is well grounded in NACARA's ameliorative purposes and balanced approach to fairness. The decision to grant a presumption of hardship for ABC class members was a result of the procedures involved in gathering comments and suggestions following the publication of the proposed rule in November of '98. The Department received more than 400 comments, almost all of which strongly urged the Department to adopt a presumption of extreme hardship.

The unique characteristics of the ABC class allowed INS to make a general conclusion on the likelihood of a favorable determination in applications for suspension of deportation or cancellation removal for ABC class members. The presumption was not extended to all NACARA beneficiaries because INS did not have the general information about this more disparate group to make a similar determination. This does not mean to suggest however, that other NACARA beneficiaries will not prevail in the test for extreme hardship. In fact, if they share a lot of the same characteristics as the ABC class members, it is more than likely that they will prevail and will be granted extreme hardship.

**12: When President Clinton sent to Congress the legislation that is now at issue, he promised that all he was doing was assuring that certain Salvadorans and Guatemalans "will continue to be considered and decided under the old suspension of deportation rules...This proposal dictates no particular outcome of any case." Doesn't today's regulation completely contradict that promise, since there was never any "presumption of extreme hardship" under the old rules?**

No. The regulation does not alter any of the legal standards for eligibility for suspension of deportation or special rule cancellation of removal. The rebuttable presumption of extreme hardship is an evidentiary tool that merely simplifies the process. It is not a blanket determination of hardship. ABC class members will receive a rebuttable presumption because their unique circumstances strongly suggest that their removal would result in extreme hardship. The INS anticipates that they would be able to establish extreme hardship whether or not a presumption exists. Each case will be evaluated individually on its merits. If an adjudicator finds evidence in the record that overcomes the presumption, the applicant will have failed to show the hardship necessary to qualify for NACARA relief.