

# **EOIR-40 Application for Suspension of Deportation: Legal Guide for Northern California Immigration Practice**

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## **FINDINGS**

# **EOIR-40 APPLICATION FOR SUSPENSION OF DEPORTATION: COMPREHENSIVE LEGAL GUIDE FOR NORTHERN CALIFORNIA IMMIGRATION PRACTICE**

### **Executive Summary**

The EOIR-40, Application for Suspension of Deportation, represents one of the most complex and strategically important relief options available to deportable noncitizens in removal proceedings under the former section 244 of the Immigration and Nationality Act.[1] This relief mechanism, though no longer available to applicants filing after June 21, 1999, remains actively litigated in Northern California Immigration Court where many pre-1999 applicants continue their proceedings.[2] Eligible applicants must establish three statutory requirements: continuous physical presence in the United States for a minimum period (seven years under the general rule, three years under Violence Against Women Act (VAWA) provisions, or ten years if deportable on criminal grounds), good moral character during the entire qualifying period, and extreme hardship to the applicant or a qualifying United States citizen or lawful permanent resident family member.[1] The filing fee is \$710 with an additional \$30 biometrics fee per person.[10] The evidentiary burden falls entirely on the applicant to prove eligibility by clear and convincing evidence, and discretion to grant the relief rests with the immigration judge even where statutory requirements are met.[1] Understanding the distinctions between suspension of deportation and related relief mechanisms such as cancellation of removal under section 240A and special rule relief under NACARA section 203 is essential for effective case evaluation and strategy development in Northern California immigration courts.

### **Legal Framework and Statutory Authority**

#### **Historical Development and Current Applicability**

The legal framework governing suspension of deportation derives from former section 244 of the Immigration and Nationality Act as it existed prior to April 1, 1997, when the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) substantially restructured immigration relief options.[2] The transition between the pre-IIRIRA and post-IIRIRA regimes created the temporal boundary that determines form selection and procedural requirements. Applications filed before April 1, 1997, utilize the former INA § 244 framework. Applications filed between April 1, 1997, and June 21, 1999, filed on Form EOIR-40, receive consideration under former INA § 244 with modified application procedures to immigration court jurisdiction.[2] Applications filed after June 21, 1999, must use Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal under NACARA, which applies section 203 of Public Law 105-100, the Nicaraguan Adjustment and Central American Relief Act (NACARA), with fundamentally different statutory requirements and relief pathways.[38]

The regulatory framework implementing suspension of deportation appears principally in 8 CFR §§ 1240.55 through 1240.63, which parallel but do not entirely duplicate the statutory language from former 8 U.S.C. § 1254(a) and related provisions.[2][9] Critical to understanding current practice is the recognition that 8 CFR § 1240.61 restricts eligibility to "any alien individual described in former section 241 of the Act, as in effect prior to April 1, 1997, except the provisions specified in paragraph (c) of this section", meaning the noncitizen must be deportable under pre-IIRIRA grounds of deportability.[2] This limitation excludes many contemporary grounds of deportability created or modified by IIRIRA, creating technical eligibility issues that

require careful statutory cross-referencing in cases where the deportability charge relies on post-IIRIRA grounds.

### **Three Statutory Pathways to Suspension of Deportation**

8 CFR § 240.65 establishes three distinct eligibility tracks, each with different temporal requirements and hardship standards.[2] Understanding which pathway applies to a particular applicant is foundational to eligibility analysis and evidence strategy.

The general rule pathway under former section 244(a)(1) requires that the applicant establish seven years of continuous physical presence immediately preceding the application date.[2] During the entire seven-year qualifying period, the applicant must have been and remain a person of good moral character.[2] The hardship showing requires demonstrating that deportation would result in extreme hardship to the applicant or to the applicant's spouse, parent, or child who is a United States citizen or lawful permanent resident.[2] This pathway applies to noncitizens deportable under any law except those specified in the regulation's paragraph (c), meaning it applies to deportable noncitizens whose deportability does not stem from criminal activity, document fraud, failure to register, or security-related grounds.[2]

The criminal grounds pathway under former section 244(a)(2) applies to noncitizens deportable under former section 241(a)(2), (3), or (4) of the pre-IIRIRA INA, encompassing criminal activity, document fraud, failure to register, and security threats.[2] These applicants face a substantially higher burden: they must establish ten years of continuous physical presence immediately following the commission of an act or the assumption of a status constituting a ground for deportation, not merely ten years of presence in the United States.[2] Good moral character must be demonstrated throughout this ten-year period.[2] The hardship standard shifts from simple "extreme hardship" to the considerably more demanding "exceptional and extremely unusual hardship" to the applicant or their qualifying United States citizen or lawful permanent resident spouse, parent, or child.[2] This elevated hardship standard reflects Congress's intent to limit relief for noncitizens with criminal deportability grounds to only the most compelling cases.[2]

The Violence Against Women Act (VAWA) pathway under former section 244(a)(3) provides substantially more favorable terms to noncitizens—predominantly women and some men—who have been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident spouse or parent.[1][2][20] The physical presence requirement reduces to three years immediately preceding the application, the shortest of all pathways.[2] Importantly, unlike cancellation of removal and other VAWA-based relief, the Notice to Appear "stop-time rule" does not apply to suspension of deportation under the VAWA pathway, meaning that even if the applicant has not accrued three years of continuous presence when the Department of Homeland Security serves them with removal charges, they may continue accruing time during removal proceedings and become eligible.[2][20] The applicant must establish that they have been battered or subjected to extreme cruelty and that their good moral character has been maintained during the three-year period.[2] The hardship standard reverts to simple "extreme hardship"—not the elevated standard required for the criminal grounds pathway—to the applicant, parent, or child.[2] VAWA-based suspension of deportation often remains available even when VAWA self-petitioning and adjustment of status are not options, such as when applicant-children "age out" or when the noncitizen survivor spouse has already been divorced from the abuser for more than two years.[20]

## **Eligibility Requirements: Detailed Analysis**

### **Continuous Physical Presence Requirement**

The continuous physical presence requirement represents both a chronological and conceptual threshold that applicants must establish with documentary and testimonial evidence. The clock begins counting on the date the applicant first arrives in the United States, whether through inspection or without inspection, and continues until the application is filed, subject to disruptions that constitute breaks in continuous presence.[1][2]

Computation of the Physical Presence Period. Under former INA § 244(c)(2), which carries forward in the regulations, an applicant is deemed to have failed to maintain continuous physical presence if the applicant has departed from the United States for any single period exceeding 90 days or for aggregate periods exceeding 180 days during the entire qualifying period.[1][2] These departure rules apply with rigid arithmetic—a single absence of 91 days, even if caused by family emergency or inadvertent failure to reenter, breaks continuous presence entirely.[2] The regulations provide an important exception for military service: noncitizens who have served for a minimum of 24 months in active-duty status in the Armed Forces of the United States and were in the United States at the time of enlistment are exempt from the continuous physical presence requirement and need not meet the temporal thresholds, provided separation from service was under honorable conditions.[1][2]

Special Exception for VAWA Applicants. Violence Against Women Act applicants benefit from a departure rule substantially more favorable than the general rule. Under INA § 240A(d)(2), which applies by analogy to suspension of deportation under section 244(a)(3), an applicant may demonstrate a connection between an absence and battering or extreme cruelty perpetrated against the applicant.[33] No absence or portion of an absence connected to battering or extreme cruelty counts toward the 90-day or 180-day limits.[33] This provision recognizes that abuse survivors frequently leave the United States to escape violence, seek protection, or access services, and that such departures should not penalize their pursuit of legal relief.[20] The burden falls on the applicant to establish the causal connection between the departure and the abuse, typically through testimony describing the circumstances of the departure and the abuser's conduct that necessitated leaving.

The Stop-Time Rule and Notice to Appear. The regulations establish that continuous physical presence periods end when the noncitizen is served with a Notice to Appear (NTA) initiating removal proceedings.[2][8] This "stop-time rule," codified for cancellation of removal in INA § 240A(d)(1), also applies to suspension of deportation under the general rule and criminal grounds pathways.[2][8] The critical date for the stop-time rule is the date of service of the NTA, not the date the removal proceedings are actually filed with the court.[2] For VAWA applicants, the stop-time rule does not apply; instead, the three-year period may continue accruing during removal proceedings, allowing an applicant who enters removal proceedings with less than three years of continuous presence to become eligible while the case is pending.[2][20]

Establishing Continuous Presence with Documentary Evidence. The EOIR-40 instructions specify that applicants should submit police records from each jurisdiction in which they resided during the entire physical presence period as documentary proof.[1] While police clearance letters may seem counterintuitive, the theory is that absence from police records during the entire period is circumstantial evidence of continuous presence.[1] In practice, applicants in Northern California should obtain clearance letters or records requests from the sheriff's departments of any California county where they resided, as well as from local police departments in cities of substantial residence. Beyond police records, the EOIR-40 instructions recommend utility bills, lease agreements, tax returns, employment records showing continued work in the United States, school records for children, medical records documenting treatment at United States healthcare facilities, church or community organization records, and any other documentation establishing a pattern of continuous United States residence.[1] Digital records and metadata have become increasingly important; cell phone service records, internet service provider records, and social media activity with United States location data

can supplement traditional documentary evidence, though courts vary in their weight given to such materials.

## **Good Moral Character Requirement**

Good moral character (GMC) constitutes one of the most heavily litigated and fact-dependent eligibility requirements for suspension of deportation. Unlike the physical presence requirement, which is essentially a mathematical exercise once the pertinent dates and absences are established, good moral character involves a holistic evaluation of the applicant's conduct over the entire qualifying period and requires analysis of multiple statutory bars and discretionary considerations.[1][2]

**Statutory Bars to Good Moral Character.** INA § 101(f) establishes categorical disqualifications from good moral character.[1][2] An applicant cannot establish good moral character if, during the requisite period, the applicant has been convicted of a single crime involving moral turpitude (unless it falls within the petty offense exception), a crime of violence, controlled substance offenses (with a limited exception for a single offense of simple possession of 30 grams or less of marijuana), prostitution or related offenses, crimes of fraud involving money or property worth \$10,000 or more, certain crimes of violence involving danger to others, or specific enumerated crimes such as habitual drunkenness, illegal gambling, money laundering, and trafficking in persons.[1][12] An applicant is also barred from establishing good moral character if during the qualifying period the applicant spent 180 days or more in jail or prison for any conviction, was a habitual drunkard, engaged in illegal gambling as a means of income, or gave false testimony for the purpose of obtaining immigration benefits.[1][28]

The petty offense exception to the moral turpitude ground requires careful analysis. A crime involving moral turpitude does not bar good moral character if the offense carries a potential sentence of one year or less and the actual sentence imposed was six months or less.[25] This is distinct from the petty offense exception in the context of crimes of inadmissibility, where the standard differs slightly. Northern California practitioners should obtain detailed sentencing documents and criminal dispositions showing both the potential sentence and actual sentence imposed, as ambiguity can be fatal to the good moral character showing.

**Aggravated Felony Conviction as Absolute Bar.** The regulations provide that an applicant convicted of an aggravated felony on or after November 29, 1990, is absolutely barred from establishing good moral character regardless of the time period or other conduct.[1][2][21] This operates as an absolute prohibition on suspension of deportation for any applicant with a post-1990 aggravated felony conviction, making it critical to analyze whether any noncitizen client's conviction constitutes an aggravated felony under current law. The term "aggravated felony" encompasses crimes of violence, trafficking offenses, fraud offenses involving loss to the victim exceeding \$10,000, crimes of dishonesty or moral turpitude with a term of imprisonment of at least one year, drug trafficking offenses, illegal reentry after deportation, prostitution offenses, money laundering, and several other categories, many of which carry technically low state-law sentences that exceed the federal threshold when the potential sentence is evaluated.[21] Practitioners in Northern California should consult the National Immigration Project's comprehensive guide to aggravated felonies and current Ninth Circuit jurisprudence before concluding that a conviction does not constitute an aggravated felony.

**Discretionary Exercise of Good Moral Character.** Separate from the statutory bars, immigration judges retain discretion to determine whether an applicant who does not fall within the statutory bars has nonetheless demonstrated good moral character through evidence of rehabilitation, community ties, employment history, family support, and other positive conduct.[1] The immigration judge must weigh credible testimony and documentary evidence addressing the applicant's conduct over the entire qualifying period. Evidence supporting a finding of good moral character includes letters of reference from United States citizens, particularly from employers, clergy, and community leaders; evidence of employment and tax-payment

history; evidence of supporting family members or dependents; evidence of voluntary community service and religious participation; evidence of completing educational or rehabilitation programs; and evidence of absence of criminal arrests or convictions beyond those already established in the record.[1][48] For applicants with criminal histories, evidence of rehabilitation since the conviction, including program participation, job stability, family responsibility, and the passage of time, can weigh favorably in the immigration judge's discretionary analysis.

### **Extreme Hardship Standard**

The extreme hardship requirement constitutes the most subjective and strategically complex element of suspension of deportation eligibility. Unlike the temporal and factual nature of continuous physical presence or the rule-based nature of good moral character, extreme hardship demands presentation of evidence regarding the emotional, financial, medical, educational, and relational consequences that would befall the applicant or a qualifying family member if deportation occurred.

**The Regulatory Framework and Case-by-Case Evaluation.** 8 CFR § 1240.58 articulates the governing standard: to establish extreme hardship, an applicant must demonstrate that deportation would result in "a degree of hardship beyond that typically associated with deportation." [3][6] The regulation emphasizes that extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case, and that applicants are encouraged to cite and document all applicable hardship factors, as the presence or absence of any single factor may not be determinative.[3] The regulation further provides that 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.[3] This framework grants immigration judges substantial discretion in determining what constitutes "extreme hardship" in a particular case.

**Non-Exclusive List of Hardship Factors.** 8 CFR § 1240.58(b) enumerates fourteen factors that may be considered in evaluating extreme hardship, though the list is explicitly non-exhaustive.[3] These factors include the age of the alien both at entry and at application; the age, number, and immigration status of the alien's children and their ability to speak the native language and adjust to life in the country of return; the health condition of the alien or the alien's children, spouse, or parents and the availability of required medical treatment in the country of return; the alien's ability to obtain employment in the country of return; the length of residence in the United States; the existence of other family members legally residing in the United States; the financial impact of the alien's departure; disruption of educational opportunities; psychological impact of deportation; current political and economic conditions in the country of return; family and other ties to the country of return; contributions to and ties to a community in the United States; immigration history including authorized residence; and the availability of other means of adjusting to permanent resident status.[3] These factors overlap with those considered under other forms of relief-cancellation of removal under INA § 240A and I-601 hardship waivers-yet the case law makes clear that suspension of deportation demands heightened hardship showing compared to other relief forms.

**The "Degree of Hardship Beyond that Typically Associated with Deportation" Standard.** Courts interpreting the extreme hardship standard have consistently held that the separation of family members, standing alone, is insufficient to establish extreme hardship.[3][6] Simple economic hardship-such as the loss of the applicant's income forcing the remaining family members to reduce expenses-is similarly insufficient.[6] Instead, courts look for evidence that the family would face hardship extraordinary in degree, not merely in kind, from the applicant's deportation. This might include medical conditions in a qualifying relative requiring specialized treatment unavailable in the country of return, documented persecution or safety risks in the country of return

that would affect the remaining family members, educational disruption that would cause demonstrable harm to a child's development or future prospects, or psychological trauma documented through professional evaluation that goes beyond normal grief and separation.

**Medical and Psychological Hardship Evidence.** Among the hardship factors, medical and psychological conditions have proven particularly effective in establishing extreme hardship, though courts require substantial documentary support. For medical hardship, practitioners should obtain detailed medical records from treating physicians documenting the condition, required ongoing treatment and medication, specialist appointments, and-critically-documented evidence that the required medical care is unavailable or substantially degraded in the country of return.[3][6][51] A psychological evaluation conducted by a licensed mental health professional can provide clinical foundation for emotional hardship to a qualifying relative, documenting baseline mental health status, the likely psychological consequences of separation, and any pre-existing vulnerabilities that would be exacerbated by the applicant's deportation.[54] However, practitioners should avoid generic hardship evaluations; immigration judges increasingly demand specific clinical findings, diagnoses where appropriate, detailed assessment of how the particular conditions would be affected by the applicant's deportation, and documentation of whether the qualifying relative is currently receiving treatment.[51] Declarations or testimony from treating therapists or physicians carries substantial weight with immigration judges.

**Cumulative Hardship Analysis.** Where no single hardship factor is independently sufficient to establish extreme hardship, courts have permitted applicants to aggregate multiple factors and argue that the cumulative effect rises to the level of extreme hardship.[3][6][51] For example, an applicant with moderate financial hardship to a United States citizen spouse, combined with educational disruption to minor children, combined with the spouse's documented mental health treatment for anxiety triggered by immigration uncertainty, may successfully argue that the totality of circumstances constitutes extreme hardship even though none of the three factors standing alone would be dispositive.[3] This cumulative approach requires careful organization of evidence and clear legal argument connecting the various hardship components to the overall claim.

**Qualifying Relative Issues.** The applicant's deportation must result in extreme hardship to the applicant or to the applicant's spouse, parent, or child who is a United States citizen or lawful permanent resident.[1][2] This means the hardship inquiry focuses not solely on the applicant's experience of deportation, but on the experience of qualifying family members who remain in the United States. The applicant cannot establish extreme hardship by showing that a qualifying relative would relocate to the applicant's country of return; the hardship analysis assumes either that the qualifying relative remains in the United States facing separation, or that the qualifying relative chooses to relocate with the applicant and therefore faces the hardship of living in a foreign country with potentially inferior economic, medical, or educational conditions.[3][6] An applicant with minor children who are United States citizens faces a particularly compelling hardship scenario-uprooting United States citizen children to a foreign country where they may not speak the language, where educational standards may differ substantially, and where family ties are minimal presents compelling hardship that has persuaded many immigration judges.[3][6]

## **Procedural Requirements and Filing Process**

### **Forms, Fees, and Electronic Filing**

The current EOIR-40, revised in July 2025, is the controlling form for applicants in removal proceedings who were in deportation proceedings before April 1, 1997, or who filed suspension applications between April 1, 1997, and June 21, 1999.[1][10] The form is obtainable from the Executive Office for Immigration Review

website and from USCIS, and can be completed on screen and printed or printed and completed by typewriter or hand.[1][13] The application requires comprehensive biographical information including complete name, alien registration number, date and place of birth, passport information, Social Security number if applicable, current address, and all previous addresses during the period of residence claimed for the application.[1]

The filing fee for EOIR-40 is \$710, with an additional \$30 per person for biometrics collection.[10] The applicant must pay the filing and biometrics fees to USCIS in accordance with DHS instructions and obtain receipt of fees and biometrics appointment instructions, which must be included with the application filed to the immigration court.[1] Fee waiver requests may be submitted on Form EOIR-26A if the applicant demonstrates inability to pay through submission of an affidavit detailing monthly income from all sources and monthly expenses.[44] Immigration judges have discretion to grant fee waivers where the applicant establishes financial hardship, though fee waiver requests must be carefully documented and should be submitted with the application or motion for which the waiver is sought.[44]

As of 2025, the EOIR-40 can be uploaded and filed through the ECAS Case Portal by registered attorneys and accredited representatives with full accreditation to practice before EOIR.[1][10][13] Electronic filing through ECAS eliminates many of the service requirements that would otherwise apply to paper filings; if the opposing party is participating in ECAS, electronic service notification is provided automatically and the applicant is not required to serve paper copies on the Assistant Chief Counsel.[1][7] For practitioners without ECAS registration or for applicants proceeding without counsel, paper filing remains available, though paper filings require physical service on the Assistant Chief Counsel for the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) at the field office address provided in the EOIR-40 instructions.[1]

### **Required Supporting Documentation**

The EOIR-40 instructions specify that the applicant bears the burden of proof to establish eligibility, and that to meet this burden, responses should be as detailed and complete as possible, supplemented by documents demonstrating eligibility.[1] The following categories of supporting documentation should be assembled:

**Evidence of Continuous Physical Presence.** Police clearance letters or records from each jurisdiction in which the applicant resided constitute the primary documentary evidence, supplemented by utility bills (showing the applicant's name and address), lease agreements or mortgage documentation, property tax records, birth certificates of United States citizen children born in the United States, school enrollment records for children, medical records from United States healthcare providers, employment letters documenting the dates of employment, tax returns (both federal and state) showing United States residence, and business licenses or self-employment documentation.[1] The aggregation of multiple documents from different time periods creates a documentary trail demonstrating continuous presence.[1] In contemporary practice, practitioners should also gather cell phone service records showing United States service provider billing addresses, internet service provider records, social media activity with location information, and digital photographs with metadata indicating United States locations and dates, though courts vary in their weight given to such evidence.

**Evidence of Good Moral Character.** The EOIR-40 instructions recommend that applicants submit affidavits from witnesses attesting to good moral character, with preference for United States citizens, and particularly for employers where the applicant is employed.[1] The affidavit from an employer should include information regarding the applicant's job responsibilities, length of employment, reliability, honesty, and reputation with colleagues and supervisors.[1] Beyond affidavits, applicants should submit evidence of tax-paying history, proof of supporting dependents (birth certificates, proof of financial support), letters from community

organizations documenting volunteer service, church attendance or religious participation records, evidence of completion of any rehabilitation or educational programs, certificates of achievement in employment or education, and absence of criminal arrests or convictions.[1] For applicants with criminal history, evidence of rehabilitation-including completion of substance abuse treatment, anger management, domestic violence counseling, or other programming-should be presented alongside evidence of employment stability, family responsibility, and passage of time since the last offense.

Evidence of Extreme Hardship. The nature of hardship evidence varies significantly depending on the factual basis of the hardship claim. For medical hardship, complete medical records from treating physicians documenting the condition, current treatment, ongoing needs, and prognosis should be obtained, supplemented by documentation of medical care available in the country of return (often obtained through country conditions research).[3][6][51] For psychological hardship, a psychological evaluation conducted by a licensed mental health professional is critical, including clinical interview, assessment of emotional status, diagnosis where appropriate, and specific analysis of how the qualifying relative's mental health would be affected by the applicant's deportation.[51][54] For educational hardship, school records showing the child's academic performance, progress in United States schools, and documented educational needs or special services should be obtained, along with evidence of educational resources in the country of return.[3] For financial hardship, tax returns, employment records, bank statements, and bills documenting the family's financial dependence on the applicant's income should be submitted.[3] For family ties hardship, birth certificates, marriage certificates, adoption papers, and evidence of custody and support relationships should be gathered.[3]

### **Filing Location and Service Requirements**

The application must be filed with the appropriate immigration court where the applicant's removal proceedings are pending.[1] For applicants in the Northern District of California, this includes the San Francisco Immigration Court with locations at 100 Montgomery Street, Suite 800, San Francisco; 630 Sansome Street, 4th Floor, Room 475, San Francisco; and the Concord Hearing Location at 1855 Gateway Boulevard, Suite 850, Concord.[50] Practitioners should verify the correct mailing address for the specific immigration court location through the EOIR website or by contacting the immigration court directly.

The applicant must also serve copies of the application on the Assistant Chief Counsel for DHS, U.S. Immigration and Customs Enforcement at the field office address provided in the form instructions.[1] The proof of service must be included with the immigration court filing and should indicate the date and manner of service (mail, hand delivery, electronic service through ECAS, or service at the master calendar hearing).[1] If the application is filed electronically through ECAS and the opposing party is also participating in ECAS, electronic service notification substitutes for manual service.[1] The regulations require that all documents be filed with the appropriate immigration court, and any filings not received by the immigration court within applicable deadlines are considered untimely.[50]

### **Timing and Deadlines**

The EOIR-40 does not itself have a statutory deadline for filing; rather, deadlines are established by the immigration judge at the master calendar hearing and typically follow the deadlines in the EOIR Immigration Court Practice Manual.[1][16][50] At the initial master calendar hearing, the applicant's attorney or representative should request a specific date by which the suspension application will be filed, and the immigration judge will set that deadline, typically thirty to sixty days from the date of the master calendar hearing for non-detained respondents.[50] For detained respondents, filing deadlines are more compressed and are established by the immigration judge based on the case circumstances.[50]

The significance of the application filing deadline is substantial: failure to file by the deadline specified by the immigration judge may result in the application being deemed abandoned or waived, depending on the immigration judge's interpretation and whether a continuance request is granted.[50] Practitioners should calendar these deadlines with substantial buffer time and submit applications well in advance of the deadline to ensure receipt by the immigration court and proper service on DHS before the deadline passes.

## **Northern California-Specific Implementation and Practice Considerations**

### **San Francisco Immigration Court Characteristics and Judge-Specific Practices**

The San Francisco Immigration Court, which encompasses the Northern District of California, has developed distinct characteristics and procedural tendencies that distinguish it from other circuit jurisdictions. The court processes a substantial caseload including asylum cases from Central American countries (Guatemala, El Salvador, Honduras, Nicaragua), significant Mexican and Mexican-American applicants, technology sector workers on H-1B status, DACA and Temporary Protected Status (TPS) populations, and applicants navigating the interplay between state criminal law consequences and immigration relief eligibility.[1][2] Suspension of deportation applications continue to appear before San Francisco immigration judges, though at substantially lower rates than cancellation of removal applications under section 240A, reflecting the historical application date cutoff for EOIR-40 eligibility.

Individual immigration judges in San Francisco vary substantially in their receptiveness to continuance requests for evidence gathering, their evidentiary standards for extreme hardship, and their discretionary approach to granting relief even where statutory requirements are met. Practitioners with experience before specific judges should understand those judges' documented patterns: some judges favor early continuances and detailed written submissions over live testimony; others prefer consolidated hearing schedules with all evidence presented at a single individual calendar hearing; some judges are particularly receptive to expert testimony regarding country conditions and medical/psychological hardship, while others favor direct testimony from family members and community witnesses.[1][2][16] The San Francisco court's master calendar assignment process typically assigns cases to immigration judges based on a rotation system, though practitioners may request assignment before a specific judge if there are demonstrated conflicts or prior familiarity with a judge's docket.

### **California State Law Interactions and Collateral Consequences**

A unique feature of Northern California immigration practice involves the interaction between California state criminal law modifications and immigration consequences, particularly through California Penal Code § 1473.7 (motion to vacate conviction with immigration consequences), PC § 1203.43 (post-conviction relief for immigration consequences), and PC § 18.5 (Proposition 47 reduction of certain offenses from felonies to misdemeanors). For applicants with criminal histories that affect good moral character eligibility or that constitute grounds of deportability, California state court relief may be available to modify or reduce convictions, potentially opening pathways to suspension of deportation that were previously foreclosed.[1][2] Practitioners should routinely investigate whether PC § 1473.7 or PC § 1203.43 relief is available for any conviction affecting immigration eligibility, as successful post-conviction relief can eliminate good moral character bars and allow pursuit of suspension of deportation where it would otherwise be barred.[1][2]

The California Values Act (SB 54) limits cooperation between state and local law enforcement and immigration authorities, and while this does not directly affect immigration court procedures, it may affect the availability of criminal history records and the enforcement environment surrounding applicants with undocumented immigration status.[1][2] Practitioners in Northern California should be familiar with local and

county law enforcement policies regarding immigration holds and data sharing with ICE.

### **San Francisco Asylum Office Interview Patterns (Relevant to Concurrent Applications)**

While suspension of deportation is not an asylum matter, many applicants file both suspension applications and asylum applications concurrently.[1][2][56] The San Francisco Asylum Office processes a substantial volume of asylum cases from the Northern California region. Understanding the procedural interaction between asylum and suspension is important: if an applicant is granted asylum, the conditional grant framework requires that suspension be rescinded and denied as a matter of discretion pursuant to 8 CFR 240.21(a), because asylum relief displaces the necessity for suspension relief.[56] Conversely, if only suspension is granted (and asylum is denied or remains pending), the applicant should receive conditional suspension pending finality of the asylum determination.[56]

## **Strategic Analysis: Advantages, Disadvantages, and Decision Framework**

### **Advantages of Pursuing Suspension of Deportation**

The strategic advantage of pursuing suspension of deportation in appropriate cases stems from several factors distinct from cancellation of removal and other relief options. First, for applicants with pre-1997 deportation grounds, suspension of deportation may be the only available relief, as many pre-IIRIRA deportation grounds no longer exist in the current legal framework and thus cannot support deportability under modern law.[2] Second, the reduced physical presence requirement for VAWA applicants (three years instead of ten years) makes suspension of deportation significantly more accessible than non-LPR cancellation for victims of domestic violence with shorter periods of United States residence.[2][20] Third, the absence of the stop-time rule for VAWA suspension allows applicants to continue accruing the three-year physical presence requirement even after removal proceedings are initiated, creating flexibility for applicants who have not yet accrued sufficient time when served with removal charges.[2][20]

Fourth, suspension of deportation may be available to applicants with certain criminal convictions that would bar cancellation of removal, depending on the nature of the conviction and the specific deportability ground.[1][2][12][24][25] For example, an applicant with a single conviction of a crime involving moral turpitude that comes within the petty offense exception may be barred from non-LPR cancellation but potentially eligible for suspension of deportation under the general rule (assuming ten years of continuous presence and good moral character if deportable on criminal grounds).[1][2][12][25]

Fifth, if the applicant is also eligible for NACARA relief under Form I-881, suspension of deportation may provide a faster pathway to relief than NACARA relief, which may require multiple filings and involve special rule cancellation requirements that add complexity.[38] Sixth, the presumption of extreme hardship for certain NACARA-eligible applicants does not apply to EOIR-40 suspension applicants, meaning that even applicants not qualifying for NACARA can pursue suspension by developing factual extreme hardship evidence.[38]

### **Disadvantages and Strategic Risks**

Pursuing suspension of deportation involves substantial risks and disadvantages that must be carefully considered alongside potential advantages. First, the elevated hardship standard for criminal grounds deportability applicants (exceptional and extremely unusual hardship) makes relief substantially more difficult than under the general rule, and case law suggests that this elevated standard is met only rarely.[2][3][6] An applicant deportable on criminal grounds should carefully evaluate whether the hardship evidence is genuinely compelling before expending resources on litigation.

Second, failed suspension applications may result in adverse credibility findings or waiver of alternative relief options.[1][2][56] If an applicant testifies at length regarding extreme hardship and the immigration judge finds the testimony unpersuasive or not credible, that adverse credibility determination may affect subsequent applications for other relief such as cancellation of removal or asylum.[1][2] Practitioners must carefully evaluate the strength of hardship evidence and witness credibility before committing to live testimony.

Third, suspension of deportation is "not available to individuals in removal proceedings," according to the strict language of the EOIR-40 form.[1][46][49] This creates a technical ambiguity: while the form states this, it is universally understood that individuals in removal proceedings apply for suspension through the immigration court's procedures (unlike the pre-1997 regime when suspension applications were filed with USCIS prior to deportation proceedings being initiated). However, the language creates potential arguments that suspension is a defective filing or that the applicant's status as someone "in removal proceedings" creates a jurisdictional impediment.[1][46][49] This is a legacy issue unlikely to result in dismissal, but practitioners should be aware of it.

Fourth, criminal convictions that are undisclosed or inadequately documented may result in good moral character bars that preclude relief entirely.[1][28] Unlike cancellation of removal, where an applicant can sometimes argue that the deportability ground does not itself bar good moral character, suspension of deportation requires affirmative good moral character showing, and criminal history is scrutinized heavily.[1][2] Practitioners must conduct thorough criminal history investigation before advising clients to pursue suspension.

### **Decision Framework: When to Pursue Suspension Versus Alternatives**

The decision whether to pursue suspension of deportation, cancellation of removal, or alternative relief should follow a structured analytical framework. First, determine eligibility: Is the applicant's deportability ground pre-IIRIRA (making suspension potentially available) or post-IIRIRA (potentially barring suspension if no alternative pre-IIRIRA ground applies)? Does the applicant meet the physical presence requirement for any pathway (7 years general, 3 years VAWA, 10 years criminal)? Can good moral character be established?

Second, evaluate the hardship evidence. For general rule suspension applicants, the hardship must be "extreme." For VAWA applicants, hardship must still be "extreme" but the pathway to demonstrating it may be more straightforward given the context of documented abuse. For criminal grounds applicants, the hardship must be "exceptional and extremely unusual," which is substantially more demanding. Practitioners should honestly assess whether the available evidence meets the applicable standard before committing to litigation.

Third, compare timing and processing. Suspension of deportation through EOIR-40 may resolve more quickly than NACARA-based relief through Form I-881, which involves initial USCIS adjudication before referral to immigration court. For applicants facing imminent removal, suspension through the immigration court may be more tactically favorable.[1][38]

Fourth, consider alternative relief simultaneously. Most applicants who are eligible for suspension are also eligible for cancellation of removal under section 240A (which has more favorable hardship standards for certain applicants) or adjustment of status if they have access to visa petitions. The decision to pursue suspension should not foreclose these alternatives; instead, applications should typically be filed concurrently with careful attention to any regulatory provisions that would preclude discretionary grants of multiple forms of relief.[1][2][56]

Fifth, evaluate discretionary factors. Even where all statutory requirements are met, immigration judges retain discretion to deny suspension as a matter of discretion. Practitioners should evaluate the applicant's credibility,

the strength of community ties, rehabilitation evidence, family circumstances, and other positive factors that might support a favorable discretionary exercise.[1]

## **Evidence Strategy and Trial Preparation**

### **Documentary Evidence Organization and Presentation**

The presentation of evidence in suspension of deportation cases follows the master calendar / individual calendar hearing structure typical of immigration court practice.[50] At the master calendar hearing, the applicant's attorney should indicate that a suspension application will be filed and request a hearing date for presentation of evidence on the merits.[50] The immigration judge will set a deadline for filing the application and may set an individual calendar hearing date, or may schedule further master calendar conferences to address procedural matters and continuance requests.[50]

The application and supporting documents should be organized in logical chronological order and by category to facilitate the immigration judge's review. A typical organization would include the completed EOIR-40 form; copies of all supporting documents referenced in the form (with a table of contents listing exhibits); police clearance letters in chronological order; employment letters and tax returns in chronological order; family relationship documents (birth certificates, marriage certificates, adoption papers); evidence of continuous residence (utility bills, lease agreements, property records); medical records and doctor's letters; psychological evaluation and treating therapist correspondence; community letters; and affidavits from witnesses attesting to good moral character, hardship, and the applicant's character and contributions to the community.[1][48][50]

Color-coding or highlighting critical documents can assist the immigration judge in quickly locating key evidentiary components. Practitioners should avoid submitting original documents with the immigration court (copies suffice and prevent loss of originals) and should clearly label exhibits as "Exhibit A," "Exhibit B," etc., with a cover sheet listing all exhibits and their descriptions.[50]

### **Witness Preparation and Live Testimony Strategy**

The individual calendar hearing for suspension of deportation typically involves live testimony from the applicant describing the years of United States residence, family circumstances, work history, community ties, and hardship that would result from deportation.[1][50] The applicant should be thoroughly prepared to testify regarding specific dates, places, employers, family members, and the reasons for leaving the country of origin and decision to establish residence in the United States.[1] Practitioners should conduct detailed witness preparation sessions addressing the applicant's testimony, anticipated cross-examination by DHS counsel, and credibility considerations.

Other witnesses may include family members (particularly United States citizen or LPR spouses, parents, and children) who can testify to the applicant's hardship and the dependent's hardship from the applicant's deportation; employers who can testify to the applicant's work history, reliability, and character; community organization representatives who can testify to the applicant's volunteer service and community ties; treating physicians who can testify to medical conditions requiring treatment in the United States; and licensed mental health professionals who can testify to psychological conditions and hardship to qualifying relatives.[1][48][50][51][54] Expert witnesses on country conditions can testify regarding economic and social conditions, availability of medical care, and safety risks in the applicant's country of origin, though country conditions evidence may also be presented through documentary evidence including State Department Country Reports on Human Rights Practices, Human Rights Watch reports, and Amnesty International

analysis.[1][3][6]

## **Applicant Credibility and Cross-Examination Strategy**

Immigration judges explicitly assess credibility in suspension of deportation cases, noting on the record whether they find the applicant and witnesses credible and whether their testimony is persuasive.[50][51] Credibility determinations rest on several factors: consistency between testimony and documentary evidence, specificity in describing dates and locations, logical coherence of the narrative, demeanor and manner of testimony, consistency with prior statements, absence of obvious evasion or hedging, and consistency with other witnesses' testimony.[1][2][50]

Practitioners should thoroughly prepare applicants and witnesses for cross-examination by DHS counsel, which typically focuses on establishing the applicant's immigration status at entry, any prior immigration violations, consistency regarding physical presence dates and locations, any undisclosed criminal history, and details regarding claimed hardship to family members.[1][2][50] Cross-examination often employs specific documents (lease agreements, employment letters, passport stamps) to test the witness's reliability in describing specific time periods and locations.[50] Applicants should be prepared to acknowledge when they cannot recall specific details rather than guessing or fabricating responses, as evasiveness often damages credibility more substantially than honest acknowledgment of memory limitations.[1][50]

## **Criminal Grounds and Good Moral Character Issues**

### **Aggravated Felony Analysis**

The most critical criminal law issue affecting suspension of deportation eligibility is the presence of an aggravated felony conviction, which operates as an absolute bar to good moral character and thus to suspension relief for any applicant with a post-November 29, 1990 aggravated felony conviction.[1][2][21] Practitioners must conduct thorough analysis of whether any conviction in the applicant's criminal history constitutes an aggravated felony under current law, using the categorical approach developed in case law and applying the definition in INA § 101(a)(43), which encompasses crimes of violence, drug trafficking offenses, crime of fraud involving loss to victim exceeding \$10,000, crime of dishonesty or moral turpitude involving sentence of at least one year, and numerous other categories.[21]

Many state convictions that are classified as felonies under state law do not constitute aggravated felonies under immigration law, and conversely, some misdemeanor-level state convictions constitute aggravated felonies for immigration purposes.[21] The categorical approach requires examining the elements of the offense as defined in the statute of conviction (not the facts underlying the particular conviction), and comparing those elements to the federal definition of aggravated felony.[21] For California convictions, this requires detailed analysis of the applicable Penal Code section, determination of whether the conviction is divisible (allowing examination of which version of the offense was charged and proven), and comparison to federal definitions.[21] Practitioners in Northern California should consult current Ninth Circuit authority on specific California offenses and should not rely on outdated caselaw, as interpretations have evolved substantially over recent years.

### **Crimes of Moral Turpitude and the Petty Offense Exception**

Crimes involving moral turpitude (CIMTs) that do not qualify for the petty offense exception bar good moral character and may also constitute grounds of deportability depending on the conviction date and sentence imposed.[1][2][25] The petty offense exception for the moral turpitude ground of inadmissibility requires that the offense carry a potential sentence of one year or less and that the sentence actually imposed be six months

or less.[1][25] The petty offense exception for purposes of deportability has a slightly different formulation, requiring that the offense carry a potential sentence of less than one year.[1][25] For good moral character purposes, a conviction of a single crime involving moral turpitude that comes within the petty offense exception is not a statutory bar to establishing good moral character.[1][25]

Practitioners should obtain certified sentencing documents showing both the statute of conviction and the maximum potential sentence under that statute, as well as the actual sentence imposed. Ambiguity regarding potential sentence can be resolved through research into the applicable statute as of the conviction date, consulting sentencing guidelines or statute language to determine the authorized maximum penalty.[25]

### **Crimes Barring Good Moral Character Beyond Moral Turpitude**

Beyond crimes of moral turpitude, INA § 101(f) bars good moral character for conviction of controlled substance offenses (with a limited exception for single offense of simple possession of 30 grams or less of marijuana), prostitution or commercialized vice, crimes of violence, crimes of fraud involving money or property exceeding \$10,000, and specific enumerated crimes such as money laundering, trafficking in persons, and smuggling offenses.[1][2] Additionally, an applicant cannot establish good moral character if during the requisite period the applicant spent 180 days or more in jail or prison for any conviction, was a habitual drunkard, engaged in illegal gambling as a means of income, or gave false testimony for the purpose of obtaining immigration benefits.[1][28]

For applicants with these kinds of convictions in their history, the conviction analysis must carefully examine whether the conviction falls within the specific statutory bar. For drug convictions, the analysis must determine whether the conviction involves a controlled substance (which requires research into state drug statutes and federal controlled substance schedules) and whether any exception applies (the marijuana exception applies only to simple possession of 30 grams or less and only to one offense).[1][2] For crimes of violence, the categorical approach requires examining whether the offense necessarily involves the use, attempted use, or threatened use of physical force.[1][2][25]

### **Strategic Approaches to Criminal Convictions**

For applicants with criminal convictions that affect suspension eligibility, several strategic approaches may be available. First, investigate whether California state post-conviction relief is available under PC § 1473.7 or PC § 1203.43 to vacate or modify the conviction, potentially eliminating the good moral character bar or changing the deportability charge.[1][2] Successful post-conviction relief allows pursuit of suspension that would otherwise be foreclosed.

Second, if post-conviction relief is not available or would not substantially change the immigration analysis, investigate whether the conviction falls within recognized exceptions (petty offense, youthful offender, etc.) or whether alternative statutory interpretations might allow the applicant to escape the specific bar.[1][25] This requires detailed legal research and consultation with practitioners experienced in criminal immigration law.

Third, if the conviction cannot be challenged or avoided through post-conviction relief or alternative legal theory, evaluate whether the applicant is nonetheless eligible for alternative relief such as cancellation of removal, U visa, T visa, or adjustment of status through family petitions, which may have different criminal bars or may permit waivers of criminal bars in certain circumstances.[1][2]

## **VAWA-Based Suspension of Deportation**

### **Special Eligibility Pathway for Victims of Domestic Violence**

Violence Against Women Act-based suspension of deportation under former section 244(a)(3) provides substantially more favorable eligibility terms than the general rule or criminal grounds pathways, reflecting the intent to provide refuge to victims of battering or extreme cruelty by United States citizen or lawful permanent resident intimate partners or parents.[2][20][23] The pathway is gender-neutral, despite the statute's name; men, women, and transgender and non-binary individuals who have been victimized are eligible.[20][23]

The physical presence requirement reduces to three years immediately preceding the application date, rather than seven or ten years.[2][20] Critically, the Notice to Appear stop-time rule does not apply to VAWA suspension applicants; instead, the three-year period may continue accruing during removal proceedings, allowing applicants with less than three years of continuous presence when served with removal charges to become eligible while their case is pending.[2][20] This creates a significant advantage for victims who have not yet accrued three years at the time of deportation proceedings initiation.[2][20] The battering or extreme cruelty requirement requires that the applicant have been battered or subjected to extreme cruelty in the United States by a United States citizen or lawful permanent resident spouse or parent, or that the applicant be the parent of a child who has been battered or subjected to extreme cruelty by such citizen or permanent resident parent.[2][20] "Extreme cruelty" encompasses physical abuse, but extends substantially beyond it to include psychological abuse, emotional abuse, isolation, controlling behavior, financial abuse, threats, and other patterns of control that cause severe psychological injury.[2][20][23]

Good moral character must be established during the three-year period, subject to the same statutory bars that apply in other suspension contexts.[2][20] The hardship standard is simple "extreme hardship" to the applicant, parent, or child-not the elevated "exceptional and extremely unusual" standard that applies to criminal grounds applicants.[2][20] The hardship analysis for VAWA suspension includes specific factors unique to domestic violence cases, including the nature and extent of physical or psychological consequences of abuse, impact of loss of access to United States courts and criminal justice system (including protective orders and family law proceedings), likelihood that the abuser's family or others would harm the applicant or children in the country of return, availability of social and medical services for abuse victims in the country of return, and existence of laws or social practices that punish victims of domestic violence in the country of return.[2][3][20]

### **VAWA Departure Rule and Departure Tolerance**

A distinctive feature of VAWA-based relief is the departure rule that permits absences connected to battering or extreme cruelty.[2][20][33] An applicant may demonstrate a connection between an absence from the United States and battering or extreme cruelty perpetrated against the applicant, and no absence or portion of an absence connected to such abuse counts toward the 90-day or 180-day limits that would otherwise break continuous physical presence.[2][20][33] This allows VAWA applicants who fled to escape abuse, who left to access services, or who were forced to leave by the abuser to overcome what would otherwise be disqualifying departures.[2][20][33]

The burden falls on the applicant to establish the connection between the departure and the abuse. Practitioners should obtain detailed testimony or affidavit evidence from the applicant describing the circumstances of each departure-whether the abuser forced the applicant to leave, whether the applicant left to escape violence, whether the absence was necessitated by the need to access services or protection. Documentation from domestic violence service providers, law enforcement reports, protective order proceedings, and healthcare providers can corroborate claims of abuse and the necessity of departures.[2][20][23]

## **Evidentiary Standards for Battering and Extreme Cruelty**

Establishing battering or extreme cruelty requires substantial evidence demonstrating a pattern of abusive conduct by the United States citizen or lawful permanent resident partner or parent. Evidence may include police reports documenting domestic violence calls, arrest records, protective order petitions and final orders, photographs of injuries, medical records documenting injuries and abuse-related treatment, statements from witnesses to the abuse, expert evaluations of intimate partner violence, psychological evaluations documenting trauma consistent with abuse, and testimony from the applicant regarding specific incidents and the pattern of control and abuse.[2][20][23]

The abuse need not have resulted in criminal conviction of the abuser; many victims never report abuse to law enforcement or pursue criminal prosecution.[20][23] Instead, the applicant's testimony corroborated by circumstantial evidence may be sufficient to establish that abuse occurred.[2][20] Practitioners should work with domestic violence advocates and service providers to gather documentation and structure the narrative of abuse in compelling form.[20][23]

## **Appeal Process and Preservation of Issues**

### **Immigration Judge Decision and Immediate Appeals**

When an immigration judge denies a suspension of deportation application, the applicant may appeal the immigration judge's decision to the Board of Immigration Appeals within 30 calendar days of the immigration judge's oral decision or the mailing of a written decision.[31][34] The Notice of Appeal is filed using Form EOIR-26, and a copy must be served on the Department of Homeland Security.[31][34] The Board does not follow the "mailbox rule"; instead, it calculates deadlines according to the time of receipt at the Clerk's Office.[31] The 30-day deadline applies to all parties, including persons detained in DHS custody.[31]

The appellant must include with the Notice of Appeal either the filing fee (\$1,030 as of 2025) or a completed Fee Waiver Request Form EOIR-26A.[31][34] If the fee waiver request does not adequately establish inability to pay, the appeal is rejected and the appellant is given 15 days to re-file with the correct fee or corrected fee waiver request; the filing deadline is tolled during this 15-day cure period.[31] The 30-day appeal deadline is strict, and the Board has limited authority to extend it; extensions are granted only on showing of extraordinary circumstances through equitable tolling (requiring both diligence in attempting to file and extraordinary circumstances preventing timely filing).[31]

### **BIA Standard of Review and Arguments on Appeal**

The Board of Immigration Appeals reviews immigration judge decisions on the record, and substantial deference is given to the immigration judge's factual findings, including credibility determinations, if supported by substantial evidence in the record considered as a whole.[31] The applicant seeking to overturn the immigration judge's denial faces a high bar, as the Board will affirm unless the immigration judge's decision is clearly erroneous or contrary to law.[31] Factual findings regarding credibility and the weight accorded to evidence receive particular deference, making it very difficult to overturn credibility-based denials on appeal.[31]

Arguments on appeal typically focus on whether the immigration judge correctly applied the law to the facts, misunderstood the requirements of the statute or regulations, or failed to adequately consider evidence in the record. Arguments challenging the immigration judge's weighing of evidence or credibility assessments rarely succeed unless the immigration judge's determination is patently unreasonable or contradicted by overwhelming evidence in the record.[31]

## **Preservation of Issues for Federal Court Review**

If the Board of Immigration Appeals affirms the immigration judge's denial, the applicant may seek review in federal court through a petition for review filed in the relevant United States Court of Appeals within 30 calendar days of the Board's decision.[31][32][34] For cases originating in the Ninth Circuit (Northern California), the petition for review is filed in the United States Court of Appeals for the Ninth Circuit. The scope of federal court review is limited to questions of law and questions of whether the Board's factual findings are supported by substantial evidence.[31][32][34] Federal courts do not re-examine the immigration judge's or Board's weighing of evidence or credibility determinations.[31][32][34]

Critical to federal court review is the preservation of issues in the immigration court record. Arguments raised for the first time on BIA appeal or in federal court petition for review may be deemed waived if not raised before the immigration judge.[31][32] Practitioners should ensure that all legal arguments, evidentiary objections, and alternative theories are raised in the immigration court proceeding, either through oral argument at the individual calendar hearing, written submissions before the hearing, or motions filed during the proceedings.[31][50]

## **Conclusion and Practical Recommendations**

### **Strategic Assessment and Client Counseling**

The decision to pursue suspension of deportation relief requires careful evaluation of the applicant's factual circumstances, immigration history, criminal background, family composition, and hardship evidence. Practitioners should counsel clients honestly regarding the statutory requirements, the evidentiary burden, and the realistic probability of success. For applicants with pre-1997 deportation grounds who have maintained continuous physical presence and can establish good moral character and extreme hardship, suspension of deportation may represent the most direct pathway to permanent resident status. For VAWA applicants with shorter periods of United States residence, the reduced physical presence requirement and more favorable hardship standards make suspension substantially more accessible than cancellation of removal. For applicants with criminal histories, suspension may be foreclosed entirely if the conviction constitutes an aggravated felony or falls within other good moral character bars, unless post-conviction relief can eliminate the conviction.

### **Northern California Procedural Framework**

Northern California immigration practitioners pursuing suspension of deportation should be familiar with the specific immigration court locations (San Francisco, Oakland, Concord), the master calendar and individual calendar hearing procedures, the filing deadlines established by the immigration judge, and the filing procedures through the ECAS electronic case portal. The \$710 filing fee and \$30 biometrics fee represent modest costs relative to other immigration relief, and fee waivers may be available for applicants unable to pay. Electronic filing through ECAS substantially simplifies service requirements and expedites processing.

### **Evidence Gathering and Witness Preparation**

The strength of a suspension application depends substantially on the quality and organization of supporting documentation. Practitioners should begin evidence gathering early, targeting specific documents that establish continuous physical presence (police clearances, utility bills, lease agreements, tax returns, employment letters), demonstrate good moral character (character affidavits, community letters, rehabilitation evidence), and document extreme hardship (medical records, psychological evaluations, family letters, country conditions reports). Witness preparation-particularly preparation of the applicant for testimony and

cross-examination-significantly affects the outcome, as credibility determinations are often outcome-determinative. Practitioners should allocate substantial time to realistic mock cross-examination and preparation of potential complications in the applicant's narrative.

### **Timing and Strategic Considerations**

For applicants not yet in removal proceedings but potentially eligible for suspension, the decision whether to initiate suspension proceedings voluntarily or to await removal proceedings varies based on individual circumstances. Filing a suspension application before deportation proceedings are initiated allows the applicant to potentially adjust status while remaining outside the removal court system, though the post-1999 transition to Form I-881 and NACARA has substantially changed the landscape for contemporary applicants. For applicants already in removal proceedings, pursuing suspension through the immigration court-often concurrently with cancellation of removal and asylum applications-allows multiple pathways to relief to be litigated simultaneously.

### **Concurrent Relief Applications and Coordination**

Most applicants eligible for suspension of deportation are also eligible for alternative relief such as cancellation of removal under INA § 240A, asylum under INA § 208, or special rule cancellation under NACARA section 203. Practitioners should file multiple applications concurrently where possible, with careful attention to regulatory provisions that would preclude discretionary grants of multiple forms of relief (such as the provision that asylum or adjustment of status precludes discretionary grant of suspension or cancellation).[56] The decision to pursue relief should be informed by evaluation of the relative strength of the evidence for each form of relief, the applicable hardship standards and comparative difficulty of meeting them, and the procedural timeline for each form of relief.

Suspension of deportation remains a viable and sometimes preferable pathway to permanent resident status for carefully selected applicants with historical deportation grounds, documented continuous residence, established good moral character, and compelling evidence of extreme hardship to themselves or their qualifying family members. The form's requirements are exacting, the evidentiary burden is substantial, and success is never certain, yet for the applicant who meets the requirements and can present persuasive evidence, suspension of deportation offers a direct path to lawful permanent resident status and eventual citizenship eligibility. Northern California immigration practitioners should maintain current knowledge of the statutory framework, regulatory requirements, controlling case law, and procedural specifics of local immigration courts to effectively represent clients pursuing this complex and historically important relief option.

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