Form I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal Under NACARA Section 203: EOIR Filing Process, Procedural Requirements, and Considerations

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FINDINGS

FORM I-881 APPLICATION FOR SUSPENSION OF DEPORTATION OR SPECIAL RULE CANCELLATION OF REMOVAL UNDER NACARA SECTION 203: EOIR FILING PROCESS, PROCEDURAL REQUIREMENTS, AND STRATEGIC CONSIDERATIONS

Executive Summary

The Form I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal represents a critical pathway to relief for certain Central American nationals, nationals of the former Soviet bloc, and their qualifying family members who meet the specific eligibility criteria established under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100.[1][2][3] This report provides comprehensive guidance on the filing process with the Executive Office for Immigration Review (EOIR), procedural requirements, eligibility determinations, and the evidentiary standards that govern this relief category. The analysis encompasses the jurisdictional distinctions between EOIR and USCIS filing authority, the six distinct eligibility categories under NACARA § 203, the continuous physical presence and good moral character requirements that apply to each category, the extreme hardship standards that must be satisfied, and the procedures for dependent family members to file derivative applications. This relief category remains particularly significant for the Northern California immigration practice, given the substantial Salvadoran and Guatemalan populations in the region and the historical context of the ABC settlement agreement class members who continue to pursue NACARA benefits through immigration court proceedings.

Legal Framework Governing NACARA Section 203 Relief

Statutory Foundation and Congressional Intent

Section 203 of NACARA, codified at [8 U.S.C. § 1255 note][1], was enacted as part of Public Law 105-100 on November 19, 1997, as a legislative response to the historical circumstances affecting nationals of Guatemala, El Salvador, and the former Soviet bloc countries who had fled persecution but were barred from accessing the more favorable suspension of deportation standards that existed prior to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996.[34] The statutory framework permits eligible individuals to apply for suspension of deportation or special rule cancellation of removal under standards that approximate those that existed before IIRIRA's enactment on April 1, 1997.[15] Congress specifically exempted NACARA beneficiaries from the "stop-time rule," which would otherwise terminate the accrual of continuous physical presence upon service of removal proceedings.[34] This exemption was critical because it allowed applicants to accumulate the necessary seven-year continuous physical presence period without regard to when removal or deportation proceedings were initiated.[34]

The legislative history demonstrates that Congress intended NACARA § 203 to provide meaningful relief to individuals who had established roots in the United States over extended periods but faced removal under the more stringent post-IIRIRA standards.[34] Sponsors of the legislation emphasized the importance of presuming extreme hardship for certain class members, particularly the ABC settlement agreement class members who had been subject to special asylum interview procedures.[56] The statute also reflects Congress's intention to extend relief not only to the principal applicants but also to their spouses, children, and unmarried sons or daughters over the age of 21, creating a derivative eligibility pathway that allows family

reunification.[13][16]

Regulatory Implementation Framework

The Attorney General delegated authority to implement NACARA § 203 through a combination of USCIS and EOIR jurisdiction, as reflected in the procedural regulations codified at 8 CFR Part 240 Subpart H.[6][18] The regulatory framework establishes that the Immigration Court retains exclusive jurisdiction over applications filed by applicants who are in active deportation or removal proceedings, while USCIS maintains limited authority over applications filed by certain categories of individuals whose proceedings have been administratively closed or whose asylum applications remain pending.[2][30] The regulations at [8 CFR § 1240.61][7] identify the six categories of aliens eligible to apply for NACARA § 203 relief, and [8 CFR § 1240.66][3] delineates the specific eligibility requirements that must be satisfied by each category, including the continuous physical presence period, good moral character requirement, and the hardship standard that must be demonstrated.

The implementing regulations distinguish between two primary eligibility pathways: the general rule under [8 CFR § 1240.66(b)][3], which requires seven years of continuous physical presence and a showing of extreme hardship, and the heightened standard under [8 CFR § 1240.66(c)][3], which applies to applicants with certain criminal grounds of deportability or inadmissibility and requires ten years of continuous physical presence immediately following the commission of an act constituting a ground for removal and a showing of exceptional and extremely unusual hardship.[3] The regulations further establish that ABC class members who file applications satisfying the requirements of [8 CFR § 1240.61(a)(1) or (a)(2)][7] receive a rebuttable presumption of extreme hardship upon submission of their initial application, with the burden shifting to the Department of Homeland Security to rebut the presumption by demonstrating that neither the applicant nor qualified relatives would suffer extreme hardship.[19] This presumption-based framework represents a significant departure from the standard allocation of burden in cancellation of removal cases and reflects Congressional and regulatory recognition of the particular circumstances affecting the ABC class.

Procedural Rules for EOIR Applications

The procedural requirements for filing Form I-881 applications with EOIR are established in [8 CFR Part 240 Subpart H][6] and the [Immigration Court Practice Manual][37], which together govern the filing, service, evidence submission, and adjudication processes. An applicant seeking to file with the Immigration Court must be in active deportation or removal proceedings at the time of filing.[1][2][9] The applicant must submit an original completed Form I-881 with all attachments and supporting documents to the appropriate Immigration Court having jurisdiction over the case.[1][9] Simultaneously, the applicant or their representative must serve one copy of the completed Form I-881 with all attachments and supporting documents on the DHS District Counsel.[1][9] The applicant must also pay the applicable filing fee, which as of February 2026 amounts to $775.00 for suspension of deportation or special rule cancellation of removal for lawful permanent residents, and $1,705.00 for special rule cancellation of removal for non-lawful permanent residents, unless a fee waiver is granted under [8 CFR § 1003.24][52].[5][32]

Additionally, if the applicant is required to provide biometrics, they must attend a scheduled appointment at an Application Support Center (ASC) designated by USCIS and obtain a biometrics confirmation document.[1][9][17] All applicants fourteen years of age or older must be fingerprinted and photographed, and if required, provide their signature at the ASC appointment.[1][9] The applicant must file a copy of the USCIS fee receipt evidencing payment of the filing fee with the Immigration Court within the time frame directed by the immigration judge.[1][9][17] Forms G-325A (Biographic Information Sheet) must be submitted if the applicant is between 14 and 79 years of age.[1][9] The applicant must bring all original supporting documents

to the immigration court hearing, submit copies with their filing, and retain copies for their records.[1][9]

The Six Eligibility Categories Under NACARA Section 203

Categories (A) Through (D): Principal Applicants

The NACARA § 203 eligibility framework establishes six distinct categories of individuals who may apply for relief, with the first four categories (typically referred to as categories (a) through (d) on Form I-881) representing principal applicants who meet specific nationality, entry date, and asylum application filing requirements.[1][2][21] The regulation at [8 CFR § 1240.61(a)][7] specifies that relief is available to registered ABC settlement agreement class members who have not been apprehended at the time of entry after December 19, 1990.[7] ABC class membership, established through the ABC v. Thornburgh settlement agreement, requires that the individual be a Salvadoran or Guatemalan national who filed an asylum application with the Service (or immigration court) prior to specific deadlines: January 31, 1996, for Salvadorans (with administrative grace period extended to February 16, 1996), or January 3, 1995, for Guatemalans.[7][27][33] Alternatively, the regulation permits Guatemalan or Salvadoran nationals who filed asylum applications on or before April 1, 1990, to qualify for NACARA relief even without ABC registration.[7]

The second principal applicant category encompasses nationals of the former Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia, who entered the United States on or before December 31, 1990, and filed an asylum application on or before December 31, 1991.[7][21] This category reflects Cold War-era asylum policies and extends relief to individuals from Eastern European and former Soviet bloc countries who met specific entry and asylum filing deadlines.[7] The regulatory framework at [8 CFR § 1240.61(a)(3)][7] establishes that such nationals must have entered the United States on or before December 31, 1990, and filed their asylum application on or before December 31, 1991, to qualify for NACARA § 203 relief.[7] At the time of filing the asylum application, the individual must have been a national of one of the specified countries.[7]

All principal applicants in categories (a) through (d) (or items 1 through 4 on Form I-881) must satisfy four core eligibility requirements.[3][19][23] First, the applicant must not be inadmissible under section 212(a)(2) or (3) of the Immigration and Nationality Act (INA) or deportable under section 237(a)(2), (3), or (4) of the INA, which relates to criminal activity, document fraud, failure to register, and security threats.[3][19] Second, the applicant must establish seven years of continuous physical presence in the United States immediately preceding the date the application was filed.[3][19] Third, the applicant must demonstrate that they have been a person of good moral character during the entire seven-year period of continuous physical presence.[3][19][20] Fourth, the applicant must establish that their removal from the United States would result in extreme hardship to the applicant themselves or to the applicant's spouse, parent, or child who is a United States citizen or an alien lawfully admitted for permanent residence.[3][19][23]

Category (E): Applicants with Criminal Grounds

The fifth eligibility category, designated as category (e) on Form I-881, applies to applicants who have committed certain criminal offenses but who may still qualify for relief under heightened standards.[1][21][24] These applicants must be described in one of the categories (a) through (d) (items 1 through 4) as described above, but they have been convicted of an offense that renders them deportable or inadmissible under criminal or certain other grounds.[1][3][21] For applicants falling into this category, NACARA § 203 imposes significantly more stringent requirements than for the general category of

applicants.[3][23]

Under the heightened standard established in [8 CFR § 1240.66(c)][3], an applicant in category (e) must establish that they are inadmissible under section 212(a)(2) of the INA (relating to criminal activity) or deportable under section 237(a)(2) (other than section 237(a)(2)(A)(iii), relating to aggravated felony convictions) or section 237(a)(3) of the INA (relating to criminal activity, document fraud, and failure to register).[3] The applicant must also establish that they have been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act or the assumption of a status constituting a ground for removal.[3][41] This ten-year continuous physical presence requirement is measured from the applicant's most recent ground of removal, as established in [Matter of Castro-Lopez, 26 I&N Dec. 693 (BIA 2015)][41], which clarified that when an applicant has multiple grounds of removal, the ten-year period is calculated from the most recent act or event triggering deportability or inadmissibility.[41]

Additionally, the applicant in category (e) must have been a person of good moral character during the required ten-year continuous physical presence period.[3] Most significantly, the applicant must establish that their removal from the United States would result in exceptional and extremely unusual hardship to the applicant themselves or to the applicant's spouse, parent, or child who is a United States citizen or an alien lawfully admitted for permanent residence.[3][23][25] This represents a heightened hardship standard that is more demanding than the "extreme hardship" standard applied to categories (a) through (d).[8][23][25]

Category (F): Family Members Subject to Battery or Extreme Cruelty

The sixth eligibility category encompasses family members who have suffered battery or extreme cruelty by an individual described in the principal applicant categories.[1][21][24][44] This category was expanded through amendments made by the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) and the Legal Immigration Family Equity (LIFE) Act Amendments of 2000.[4] The regulation provides that an alien who has been battered or subjected to extreme cruelty by an individual described in the principal categories, and who was the spouse or child of that individual at the time that individual filed an application for suspension of deportation or cancellation of removal, registered for ABC benefits, applied for temporary protected status (TPS), or applied for asylum, is eligible to apply for NACARA § 203 relief.[1][21]

Additionally, an alien whose child has been battered or subjected to extreme cruelty by a spouse of the principal applicant (where that spouse is described in the principal categories) is also eligible to file.[1][21][44] Applicants in category (f) must establish three years of continuous physical presence in the United States (rather than the seven years required for principal applicants) and good moral character for that three-year period.[1][21] They must also demonstrate that their removal from the United States would result in extreme hardship to themselves or their spouse, parent, or child who is a United States citizen or an alien lawfully admitted for permanent residence.[1][21] Importantly, applications by individuals in category (f) may only be filed with the Immigration Court (EOIR), not with USCIS.[1][2][21][49]

Dependent/Derivative Applicants

In addition to the six primary eligibility categories, NACARA § 203 permits spouses, children, unmarried sons or daughters over 21 years of age, and parents to file as derivative applicants based on a principal applicant's grant of suspension of deportation or special rule cancellation of removal.[13][16][50] For a dependent to qualify, the relationship to the principal applicant must exist at the time that the principal applicant is granted relief.[13][16][50] Unmarried sons or daughters over the age of 21 must have entered the United States on or before October 1, 1990.[13][50] Spouses and children who were under 21 years of age at the time the

principal applicant filed for NACARA relief may qualify as derivatives even if they have since aged out or married, provided that the relationship existed at the time the principal's application was filed or approved.[13][16][50]

The derivative applicant's own burden of proof differs from that of principal applicants. While the derivative must demonstrate that they are eligible for suspension of deportation or cancellation of removal in their own right (satisfying the nation and entry date requirements of categories (a) through (d)), they need not meet the nationality requirements of NACARA, nor are dependents required to independently demonstrate other criteria within the principal categories beyond proving their family relationship to the principal and their own continuous physical presence and good moral character.[13][50] However, if a dependent is not eligible to apply on their own basis as a principal applicant, they may still file a derivative application if they can demonstrate continuous physical presence for seven years and good moral character for that period.[13][50] As of February 2026, USCIS guidance permits dependent family members to file Form I-881 applications simultaneously with their principal or after the principal's grant of relief, provided that the required family relationship can be proven.[13][16][50]

Continuous Physical Presence Requirements

General Rule: Seven Years of Continuous Physical Presence

The cornerstone of NACARA § 203 eligibility for principal applicants in categories (a) through (d) is the requirement that the applicant establish seven years of continuous physical presence in the United States immediately preceding the date the application was filed.[3][19][23][27] This continuous physical presence requirement is calculated backward from the filing date of the Form I-881 application.[1][2][9][22] The regulation at [8 CFR § 1240.64(b)][10][22] establishes that for purposes of calculating continuous physical presence under NACARA § 203, certain breaks in presence are not considered to meaningfully interrupt continuous physical presence: specifically, a single absence of 90 days or less, or absences that in the aggregate total no more than 180 days, shall be considered brief.[10][22][27]

However, the burden is on the applicant to prove that any absence or multiple absences were brief, casual, and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States.[10][22] Absences exceeding 90 days for any single departure, or absences totaling more than 180 days in the aggregate, require the applicant to establish on a case-by-case basis that the absence was casual, innocent, and did not meaningfully interrupt continuous physical presence.[10][22] An absence is not considered casual and innocent if it was undertaken for the purpose of committing an unlawful act or if it was made under the threat of deportation.[10][22] Additionally, the continuous physical presence period is terminated whenever an alien is removed from the United States under an order issued pursuant to any provision of the INA, or when the alien has voluntarily departed under the threat of deportation, or when the departure is made for purposes of committing an unlawful act.[10][22]

Applicants who have served in the United States Armed Forces for a minimum of 24 months in an active-duty status and were separated under honorable conditions are exempt from the continuous physical presence requirement, provided that they were in the United States at the time of their enlistment or induction.[10][22] For purposes of documenting continuous physical presence, applicants may rely on a variety of evidence sources, including bankbooks, leases and deeds, licenses, receipts, letters, birth records, church records, school records, employment records, evidence of tax payments (including IRS computer printouts), and Employment Authorization Documents or other documents issued by USCIS.[1][9][21][24][49]

Heightened Requirement: Ten Years for Applicants with Criminal Grounds

Applicants in category (e) who have committed certain criminal offenses must establish not merely seven years but ten years of continuous physical presence immediately following the commission of an act or the assumption of a status constituting a ground for removal.[3][23][41] The BIA's decision in [Matter of Castro-Lopez, 26 I&N Dec. 693 (BIA 2015)][41] clarified that when an applicant has multiple grounds of removal arising from different acts or events, the ten-year continuous physical presence period is measured from the applicant's most recent ground of removal, not the earliest offense.[41] This ruling ensures that applicants cannot accumulate time before their most recent criminal ground and then count backward; rather, the ten-year accumulation period begins after the most recent act or status that triggers deportability or inadmissibility.[41]

This heightened standard reflects the recognition that applicants with criminal grounds pose different considerations for adjudication and that Congress intended to impose a more stringent gatekeeping requirement for such individuals.[3][23][41] Importantly, the ten-year period is not reduced even if the applicant would otherwise have accrued sufficient time for the seven-year requirement applicable to principal applicants without criminal grounds.[3][41]

Shortened Requirement: Three Years for Category (F) Applicants

Applicants in category (f), namely those who have been battered or subjected to extreme cruelty, must establish only three years of continuous physical presence in the United States (rather than seven years required for principal applicants or ten years for applicants with criminal grounds) and good moral character for that three-year period.[1][2][21][49] This reduced requirement reflects the recognition that family members who have suffered abuse may have disrupted presence or may have entered proceedings subsequent to the principal applicant, and the VTVPA amendments expanded the eligibility pathway to include such family members.[4][21]

Good Moral Character Requirement

Statutory Definition and Regulatory Framework

All applicants seeking NACARA § 203 relief must establish good moral character during the requisite continuous physical presence period: seven years for principal applicants in categories (a) through (d), ten years for applicants with criminal grounds, and three years for family members subject to battery or extreme cruelty.[3][19][23][1][2] Good moral character is evaluated under the statutory definition provided in [8 U.S.C. § 1101(f)][20], which incorporates by reference the various bars to establishing good moral character established in the INA.[20] A conviction for a crime of moral turpitude (CMT) is a bar to a finding of good moral character, but unlike aggravated felonies, a CMT conviction does not permanently bar an applicant from demonstrating good moral character.[20][48] Rather, the period during which an applicant is barred from establishing good moral character runs backward from the date of the application and is limited to five or ten years depending on the nature of the offense and the date of conviction.[20][48]

An applicant who has been convicted of a crime of moral turpitude will be barred for a limited period of time from demonstrating good moral character for applications such as cancellation of removal and NACARA suspension and special cancellation.[20][48] A person is permanently barred from establishing good moral character if they have been convicted of murder at any time, regardless of the date of conviction.[20][48] Additionally, a person is barred from establishing good moral character if they have served 180 or more actual days in jail during the statutory period required for the application.[20][48] However, the BIA has held on multiple occasions that a CMT conviction falling within the "petty offense" exception does not disqualify an applicant from demonstrating good moral character, as the applicant would not then be described in INA

section 212(a)(2)(A).[20][48]

In determining good moral character, an immigration judge or other adjudicator may take into account criminal acts for which the applicant was not convicted, as long as the applicant has admitted commission of the acts.[20][48] Conversely, the adjudicator may consider convictions that have been expunged under state law, as the expungement does not erase the conviction for immigration purposes.[20][48] However, a criminal act not resulting in a conviction that would not be considered a CMT if the act did result in a conviction should not bar an applicant from demonstrating good moral character.[20][48] Evidence supporting good moral character may include affidavits, declarations, or letters from at least two witnesses, preferably U.S. citizens; affidavits, declarations, or letters from the applicant's employer, if employed; and evidence of tax payments, which may include IRS computer printouts.[1][9][21][24][49]

Bars to Good Moral Character

Several specific conduct categories constitute bars to establishing good moral character under the statutory definition.[20][48] These include being a habitual drunkard, deriving income principally from illegal gambling, giving false testimony for the purpose of obtaining immigration benefits, engaging in prostitution or unlawful commercialized vice, being involved in a serious criminal offense and asserting immunity from prosecution, and aiding or abetting another person to enter the United States illegally.[1][47][49] For applicants with criminal convictions, the critical inquiry is whether the conviction constitutes a crime of moral turpitude, which involves assessing whether the offense, as defined in the applicable state or federal statute and as applied to the applicant's conduct, contains an element of moral depravity or inherent wrongfulness.[20][48]

The determination of whether a particular offense constitutes a crime of moral turpitude is conducted on a case-by-case basis, examining the statute of conviction and any charging documents, plea agreements, or other documents establishing the nature of the offense and the applicant's conduct.[20][48] This inquiry can be complex, particularly in cases involving state crimes that may or may not fall within the federal definition of CMT depending on how the statute is construed and applied.[20][48]

Extreme Hardship Standards

The Extreme Hardship Requirement for Categories (A) Through (D)

Applicants in categories (a) through (d) must establish that their removal from the United States would result in extreme hardship to the applicant themselves or to the applicant's spouse, parent, or child who is a United States citizen or an alien lawfully admitted for permanent residence.[3][19][23][25] The term "extreme hardship" is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case.[25][28] Applicants are encouraged to cite and document all applicable factors in their applications, as the presence or absence of any one factor may not be determinative in evaluating extreme hardship.[25][28] Adjudicators must weigh all relevant factors presented and consider them in light of the totality of the circumstances, though they are not required to offer an independent analysis of each listed factor when rendering a decision.[25][28]

The regulation at [8 CFR § 1240.58][25][28] establishes non-exhaustive factors that may be considered in evaluating whether deportation would result in extreme hardship to the alien or to the applicant's qualified relative, including the age of the applicant at the time of entry to the United States and at the time of application; the age, number, and immigration status of the applicant's children and their ability to speak the native language and to adjust to life in the country of return; the health condition of the applicant or the

applicant's children, spouse, or parent; the established ties to the United States, including the degree of integration into society; the financial resources of the applicant and their availability in the country of return; family ties in the United States; the applicant's immigration history, including authorized residence in the United States; and the availability of other means of adjusting to permanent resident status.[25][28]

The Supreme Court's decision in [INS v. Cardoza-Fonseca, 480 U.S. 421 (1987)][25], while addressing the "well-founded fear of persecution" standard in asylum law, has influenced immigration judges' understanding that hardship determinations require demonstrating a degree of hardship beyond that typically associated with deportation.[25][28] Evidence of an extended stay in the United States without fear of deportation and with the benefit of work authorization, when present in a particular case, shall be considered relevant to the determination of whether deportation will result in extreme hardship.[25][28]

The Heightened Standard: Exceptional and Extremely Unusual Hardship for Category (E)

Applicants in category (e) with criminal grounds must establish not merely extreme hardship but exceptional and extremely unusual hardship to the applicant or to the applicant's spouse, parent, or child who is a United States citizen or an alien lawfully admitted for permanent residence.[3][23][25] This is a significantly higher threshold than the extreme hardship standard applied to principal applicants without criminal grounds.[3][23][25][8] The term "exceptional and extremely unusual" conveys that the hardship must be substantially more severe than typical extreme hardship and must involve circumstances that are distinctive or remarkable in some way.[3][25]

The regulatory guidance provided in [8 CFR § 1240.58(c)][25] establishes that for cases raised under the heightened hardship standard, adjudicators should consider additional factors specific to applicants with criminal grounds, including the nature and extent of the physical or psychological consequences of abuse (if applicable), the impact of loss of access to the United States courts and criminal justice system, and the applicant's needs and those of their child(ren) for social, medical, mental health or other supportive services that are unavailable or not reasonably accessible in the home country.[25][28] These additional factors reflect the recognition that applicants with criminal grounds may face particular barriers in establishing exceptional and extremely unusual hardship and that adjudicators should consider the full context of the applicant's circumstances, including potential harm in the country of return.

The Rebuttable Presumption of Extreme Hardship for ABC Class Members

An exceptionally significant feature of NACARA § 203 relief is the rebuttable presumption of extreme hardship established for certain class members. Under [8 CFR § 1240.64(d)(1)][19], an applicant described in paragraphs (a)(1) or (a)(2) of [8 CFR § 1240.61][7] who has submitted a completed Form I-881 or Form EOIR-40 to either USCIS or the Immigration Court, in accordance with [8 CFR § 1240.63][6][18], shall be presumed to have established that deportation or removal from the United States would result in extreme hardship to the applicant or to their spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence.[19][56] This category includes registered ABC class members who have not been apprehended at the time of entry after December 19, 1990, and Guatemalan or Salvadoran nationals who filed asylum applications before the applicable deadlines.[7][19][56]

The presumption is rebuttable, meaning that the Department of Homeland Security may rebut the presumption by demonstrating that it is more likely than not that neither the applicant nor a qualified relative would suffer extreme hardship if the applicant were deported or removed from the United States.[19][56] In making such a determination, the adjudicator shall consider relevant factors, including those listed in [8 CFR § 1240.58][25][28].[19] Importantly, when a presumption of extreme hardship applies, the burden of proof

shifts to the government to establish that the applicant would not suffer extreme hardship, rather than requiring the applicant to affirmatively prove extreme hardship.[19][56] This burden-shifting mechanism recognizes the particular historical circumstances of the ABC class and was adopted as a matter of prosecutorial discretion following extensive advocacy and legislative guidance.[56]

Applicants who qualify for the presumption but are unsure about whether they fall within the presumptive categories are strongly encouraged to submit documents supporting their claim that removal would result in extreme hardship, as this provides additional evidence that the adjudicator may consider and ensures that the government is aware of factors suggesting that the presumption might be difficult to rebut.[1][9][21][24][49][56] ABC class members who check category (a) or (b) in Part 2 of Form I-881 are not required to submit documentation to support a claim that removal would result in extreme hardship, though they must provide explanations to their responses to the hardship-related questions in Part 9 of the Form.[1][9][21][24][49]

Evidence of Extreme Hardship

The evidentiary support for extreme hardship claims may include psychological evaluations, medical records indicating health conditions of the applicant or qualifying family members, employment records and tax returns demonstrating financial ties to the United States, school enrollment records for children and documentation of their educational progress, evidence of community integration such as volunteer work or organizational memberships, and sworn declarations from family members, employers, community members, or mental health professionals attesting to the hardship that would result from the applicant's removal.[1][9][21][24][25][28][49] The USCIS instructions to Form I-881 recommend that applicants submit documents to help support their claims regarding extreme hardship, and immigration judges routinely consider such evidence in their adjudications.[1][9][21][24][49]

EOIR Filing Procedures and Requirements

Jurisdictional Determination: When EOIR Has Authority

An applicant may file a Form I-881 application with the Immigration Court (EOIR) only if the applicant is in active deportation or removal proceedings at the time of filing.[1][2][9][21][49][53] This jurisdictional requirement distinguishes EOIR filing from USCIS filing, which applies in limited circumstances for certain categories of applicants. If an applicant is not in active removal or deportation proceedings, they must instead file with USCIS (if eligible to do so) or await placement in removal proceedings by DHS before they can file with the Immigration Court.[1][2][9][21][49][53] Applications by applicants in category (f), namely those alleging battery or extreme cruelty, may only be filed with EOIR (Immigration Court); such applicants cannot file with USCIS even if they otherwise meet the filing requirements.[1][2][21][49]

Additionally, an applicant who has a final order of deportation that has not been executed may not apply for suspension of deportation with USCIS unless the applicant has filed and been granted a motion to reopen their deportation proceedings under [8 CFR § 1003.43][42].[2][49] Once the deportation proceedings have been reopened, the applicant must ask the immigration judge to administratively close the proceedings so that they may proceed with their suspension of deportation application with USCIS.[2][49] This procedural requirement recognizes that applicants with final deportation orders are barred from applying with USCIS unless they first obtain judicial relief to reopen their completed case.

Document Preparation and Filing Requirements

Form I-881 is available in multiple versions, and applicants must use the current version as specified in the

EOIR Forms webpage.[5][40][47] As of February 2026, the Form I-881 has been updated to address current regulatory requirements and contains detailed instructions for each part of the application.[1][9][21][24][44][47][49][50]. The form must be completed in English, with all answers typed or printed legibly in black ink.[1][9][21][24][49] All questions must be fully and accurately answered, and if any question does not apply to the applicant, the applicant should write "None" or "N/A" in the response field rather than leaving the question blank.[1][9][21][24][49]

An applicant must include all relevant parts of Form I-881 and must check the appropriate eligibility category in Part 2 of the form, which corresponds to one or more of the six categories outlined in the eligibility instructions.[1][9][21][24][47][49][50][53] Applicants in category (e) (alleged battery or extreme cruelty) must also submit evidence of the past relationship with the individual described in the principal categories and evidence of the battery or extreme cruelty.[1][9][21][24][44][49][53] All applicants must provide explanations to the answers to the questions in Part 9 regarding hardship (or Part 10 in some versions of the form), where required by the instructions.[1][9][21][24][49]

If an applicant filed Form EOIR-40 (Application for Suspension of Deportation) before June 21, 1999, and is later eligible to apply for suspension of deportation or special rule cancellation of removal with USCIS, the applicant may submit the Form EOIR-40 attached to a completed first page of Form I-881; however, USCIS will not accept Form EOIR-40 if the applicant is applying for section 203 NACARA relief and does not meet the narrow criteria for the exception.[1][2][9][21][49][53] For EOIR filing, the predecessor Form EOIR-40 is generally no longer required and should not be submitted as the primary application form.[1][2][9][21][49][53]

Filing Locations and Service Requirements

Applicants in active removal or deportation proceedings must file their Form I-881 applications with the Immigration Court that has jurisdiction over their case.[1][9][21][49][53] As of February 2026, in Northern California, the San Francisco Immigration Court has exclusive jurisdiction over cases pending before it. The main San Francisco Immigration Court location is at [100 Montgomery Street, Suite 800, San Francisco, CA 94104][33], with additional hearing locations at [630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111][33] and the Concord Hearing Location at [1855 Gateway Blvd., Suite 850, Concord, CA 94520][33]. Applicants should verify the correct location with their immigration judge or by consulting the EOIR website for current information regarding their case assignment.[33]

At the time of filing with the Immigration Court, the applicant or their representative must serve one copy of the completed Form I-881 with all attachments and supporting documents on the DHS District Counsel.[1][9][21][49][53] The applicant must also file a certificate showing service of these documents on the DHS District Counsel with the Immigration Court, unless service is made on the record at the hearing.[1][9][21][49][53] Service on DHS District Counsel may be accomplished by personal delivery, mail, electronic transmission (where permitted), or other means authorized by the Immigration Court Practice Manual, provided that the method of service is documented.[37]

Fees and Fee Waivers

As of February 2026, the filing fees for Form I-881 applications are as follows: $775.00 for suspension of deportation (whether filed with USCIS or EOIR), $775.00 for special rule cancellation of removal when the applicant is a lawful permanent resident, and $1,705.00 for special rule cancellation of removal when the applicant is not a lawful permanent resident.[5][32][35] Additionally, each applicant fourteen years of age or older must pay a biometrics services fee of $30.00 per person for USCIS to take fingerprints, photograph, and

signature (if required).[1][9][17][21][24][45][49]

An applicant unable to pay the filing fee may request a fee waiver under [8 CFR § 1003.24][52]. The fee waiver request must be accompanied by a properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. § 1746, establishing the applicant's inability to pay the fee and setting forth the applicant's income and assets.[49][52] For EOIR filing, the applicant must submit the fee waiver request to the immigration judge, and the immigration judge will issue a written decision regarding the waiver request.[49][52] If the immigration judge grants the fee waiver, the applicant should retain a copy of the decision for their records and submit it with their application.[49] It is important to note that only immigration judges (not USCIS) can waive the filing fee when filing with EOIR, and only USCIS can waive the biometrics services fee.[1][9][21][45][49]

Biometrics Requirements

Applicants seeking relief under NACARA § 203 are generally required to provide biometrics (fingerprints, photograph, and signature) as part of the application process.[1][9][17][21][24][45][49] If the applicant is in active removal or deportation proceedings before the Immigration Court, they will be provided with notice at their master calendar hearing of their biometrics appointment details, including the date, time, and location of the Application Support Center (ASC) where they must appear.[1][9][17][21][24][45][49] The applicant must attend the scheduled ASC appointment on the specified date and time and must bring the ASC notice with them to the appointment.[1][9][17][21][24][45][49]

At the ASC appointment, applicants fourteen years of age or older must be fingerprinted and photographed, and if required, provide their signature.[1][9][17][21][24][45][49] All applicants must sign an oath reaffirming that they provided or authorized all information in the application, reviewed and understood all of the information contained in and submitted with the application, and that all of this information was complete, true, and correct at the time of filing.[1][9][17][21][24][45][49] The ASC will provide the applicant with a biometrics confirmation document at the completion of the appointment, and the applicant must retain this document as proof that their biometrics were taken and must bring it to all future Immigration Court hearings.[1][9][17][21][24][45][49]

If an applicant fails to attend their scheduled biometrics appointment without good cause, USCIS may dismiss the application or refer the case to the immigration judge, which may result in the denial of the application or placement in removal proceedings if the applicant is not already in proceedings.[1][9][17][21][24][45][49] Applicants who anticipate they will be unable to attend their scheduled appointment should contact USCIS immediately to request a reschedule.[1][9][17][21][24][45][49]

Supporting Documentation and Evidentiary Requirements

Documentation of Continuous Physical Presence

To establish the required continuous physical presence, applicants must submit documentation demonstrating their presence in the United States during the applicable period (seven years for categories (a)-(d), ten years for category (e), or three years for category (f)).[1][9][21][24][49] The Form I-881 instructions and USCIS policy provide non-exhaustive lists of acceptable documentation, including bankbooks, leases and deeds showing residency, driver's licenses or other state identification documents, receipts for payments, letters from individuals corroborating the applicant's presence, birth certificates or church records, school or employment records, evidence of tax payments (including IRS computer printouts), and Employment Authorization Documents or other documents issued by USCIS.[1][9][21][24][49] The applicant should submit as many

documents as possible to demonstrate continuous presence, as the greater the documentary evidence, the stronger the claim and the less likely that the adjudicator will credit government challenges to the applicant's account of their time in the United States.

When calculating continuous physical presence, the applicant must be prepared to explain any periods of absence from the United States, including the dates of departure and return, the duration of each absence, the reason for the absence, and why the absence was casual and innocent and did not meaningfully interrupt continuous physical presence.[10][22][27] If the applicant's absences exceed 90 days for any single departure or total more than 180 days in the aggregate, the applicant must provide detailed documentation and explanation establishing why the absence should be considered casual and innocent.[10][22][27] Departure records from the U.S. Department of State (including passport stamps or I-94 Departure Records), airline tickets, hotel receipts from the destination country, and other corroborating evidence can support the applicant's explanation of departures and returns.[1][9][21][24][49]

Documentation of Good Moral Character

To establish good moral character during the required continuous physical presence period, applicants should submit affidavits, declarations, or letters from at least two witnesses, preferably U.S. citizens, who can attest to the applicant's moral character, law-abiding conduct, and reputation in the community.[1][9][21][24][49] Employers may provide letters regarding the applicant's work history, reliability, and trustworthiness.[1][9][21][24][49] Evidence of tax payments, including IRS computer printouts and tax returns, demonstrates the applicant's financial responsibility and integration into the U.S. tax system.[1][9][21][24][49] Any criminal convictions, arrests, or contact with law enforcement must be disclosed, as immigration judges will conduct background checks and discovery of undisclosed conduct can result in adverse credibility findings or denial of the application.[1][9][21][24][49]

If the applicant has any criminal history, the applicant should proactively address this in the application and supporting materials by providing copies of the charging documents, disposition orders, and sentencing records, along with detailed explanation of the circumstances of the offense, the applicant's rehabilitation efforts since the conviction, and any relevant factors mitigating the severity of the offense (such as the applicant's age at the time, substance abuse that has since been treated, or family circumstances).[1][9][21][24][49]

Documentation of Extreme Hardship

For applicants in categories (a) through (d) who do not qualify for the presumption of extreme hardship, and for all applicants in category (e) who must establish exceptional and extremely unusual hardship, comprehensive documentation is essential.[1][9][21][24][25][28][49] Applicants should submit psychological evaluations or clinical assessments from licensed mental health professionals who can address the emotional and psychological impact of separation from family members, the applicant's ties to the United States, and any mental health conditions that would be exacerbated by removal.[1][9][21][24][25][28][49] Medical evidence regarding the applicant's health status and the health status of qualifying family members, including evidence of ongoing medical treatment in the United States and the unavailability of equivalent treatment in the country of return, can support extreme hardship claims.[1][9][21][24][25][28][49]

School records and educational progress reports for the applicant's children demonstrate their integration into the U.S. educational system and the disruption and hardship that would result from removal.[1][9][21][24][25][28][49] Employment records, letters from employers, and evidence of job history and financial resources in the United States establish the applicant's economic integration and financial

dependence on U.S. employment.[1][9][21][24][25][28][49] Bank statements, property records, and other financial documentation demonstrate the applicant's financial ties to the United States.[1][9][21][24][25][28][49] Letters or declarations from family members, friends, community leaders, and others who can attest to the applicant's relationships, community ties, and the hardship that family members would face upon the applicant's removal provide powerful testimonial evidence.[1][9][21][24][25][28][49]

For applicants claiming that their removal would result in hardship to a U.S. citizen or lawful permanent resident spouse, parent, or child, evidence regarding the dependent's ability to accompany the applicant to the country of return (or the extreme hardship if they remain in the United States separated from the applicant) is critical.[1][9][21][24][25][28][49] If the qualifying relative is unable to accompany the applicant due to employment, educational pursuits, custody obligations, or other factors, detailed explanation of why accompaniment is not feasible, along with supporting documentation, strengthens the hardship claim.[1][9][21][24][25][28][49]

For applicants in category (f) alleging battery or extreme cruelty, documentation of the abuse is essential and may include police reports, protective orders or restraining orders, medical records documenting injuries, photographs of injuries or property damage, evidence of domestic violence services utilization (such as shelter stays or counseling records), and declarations from domestic violence counselors, therapists, friends, or family members who can attest to the abuse and its effects.[26][29] The applicant must provide detailed narratives explaining the nature, frequency, and severity of the abuse and how it affected the applicant and any children.[26][29]

Derivative and Dependent Filing Procedures

Eligibility Requirements for Dependent Applicants

Spouses, children (including unmarried children under 21 years of age at the time the principal applicant filed), unmarried sons or daughters over the age of 21 (who must have entered the United States on or before October 1, 1990), and parents of applicants granted suspension of deportation or special rule cancellation of removal under NACARA § 203 may file derivative applications for the same relief.[13][16][50] The requisite family relationship must exist at the time the principal applicant is granted relief, though spouses and children who have since aged out or married may still qualify if the relationship existed when the principal's application was approved.[13][16][50]

Dependent applicants do not need to independently establish that they fall within one of the principal categories (registered ABC class member, asylum filer on a specific date, etc.), but they must demonstrate their own continuous physical presence and good moral character for the requisite period (seven years for principal dependents, ten years for dependents of applicants with criminal grounds, or three years for dependents of applicants in category (f)).[13][16][50] Additionally, the dependent must demonstrate that they have a qualifying family relationship to the principal applicant through submission of proof such as marriage certificates, birth certificates, or adoption decrees.[13][16][50]

Dependent Filing With USCIS

If a principal applicant's Form I-881 is pending with USCIS, a dependent may file their own Form I-881 application at the same time as the principal's application, while the principal's application is still pending, or after the principal has been granted relief, provided that the required family relationship is established and the dependent meets the continuous physical presence and good moral character

requirements.[1][2][13][16][50][53] When a dependent is filing with USCIS because the principal has filed with USCIS, the dependent should ensure that their application clearly references the principal's application and establishes the family relationship through submission of appropriate documentation.[1][2][13][16][50][53]

Dependent Filing With EOIR

If the principal applicant is in removal or deportation proceedings before the Immigration Court and has filed or is filing Form I-881 with EOIR, the dependent may also file with the Immigration Court if the dependent is also in proceedings, or the dependent may file with USCIS if the principal's proceedings have been administratively closed or the dependent's proceedings have been administratively closed to allow the dependent the opportunity to apply.[1][2][13][16][50][53] A dependent whose proceedings have been administratively closed or continued to allow them to apply with USCIS while the principal applies with USCIS must file the application with USCIS during the applicable time frame before the case is recalendared.[1][2][13][16][50][53]

Family Members Subject to Battery or Extreme Cruelty

Family members of principal applicants who have been battered or subjected to extreme cruelty by the principal or by another person described in the principal categories may file in category (f).[1][21][24] These family members must establish only three years of continuous physical presence (rather than the seven or ten years required of principal applicants) and good moral character for that three-year period.[1][21][24] However, as noted previously, applications by individuals in category (f) may only be filed with EOIR (Immigration Court), not with USCIS.[1][2][21][49]

San Francisco and Northern California Implementation

San Francisco Immigration Court Jurisdiction and Procedures

The San Francisco Immigration Court has exclusive jurisdiction over removal and deportation proceedings for applicants in the Northern California region, with three official hearing locations: the main courthouse at [100 Montgomery Street, Suite 800, San Francisco, CA 94104][33], an additional courthouse location at [630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111][33], and the Concord hearing location at [1855 Gateway Blvd., Suite 850, Concord, CA 94520][33]. NACARA § 203 applications filed by applicants in active removal or deportation proceedings in Northern California must be filed with the appropriate San Francisco Immigration Court location that has jurisdiction over the applicant's case.[33]

The San Francisco Immigration Court has developed specific procedures and practices governing NACARA applications, including master calendar hearing scheduling, continuance practices for evidence gathering, and local requirements for document submission.[37] Applicants should consult with the immigration judge's office or review any local rules published by the court regarding specific procedural requirements, submission deadlines, and hearing protocols.[37] In general, NACARA applications are subject to the same procedural requirements as other relief applications before the Immigration Court, including timely filing of all documents, proper service on DHS District Counsel, and compliance with evidence submission deadlines established by the immigration judge.[37]

San Francisco Asylum Office NACARA Interview Procedures

For applicants whose asylum applications remain pending with the San Francisco Asylum Office (typically including registered ABC class members or other asylum applicants who filed by the applicable NACARA

filing deadlines), the asylum office may have jurisdiction to consider and adjudicate the NACARA § 203 application if the asylum application is still pending.[2][30] The San Francisco Asylum Office has specific interview procedures and practices regarding NACARA applications, including the timing of interviews, the availability of interpreters, and the interview format.[2][30] Applicants should contact the asylum office to schedule an interview appointment if their asylum application remains pending and they wish to apply for NACARA relief with the asylum office rather than with the Immigration Court.[2][30]

Northern California ICE Enforcement Considerations

Northern California falls within the jurisdiction of Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Field Office 1, which covers Northern California and portions of the Central Valley.[37] ICE enforcement priorities and detention practices in the region are relevant to NACARA applicants who may be at risk of detention or removal.[37] As of February 2026, ICE enforcement policies have prioritized removal of individuals with serious criminal convictions, gang affiliations, or recent border crossings, though these priorities can shift based on changes in federal administration policy.[37] Applicants with serious criminal backgrounds should be aware that filing a NACARA application does not automatically provide protection from removal or detention, though the pending application may be considered as a factor in prosecutorial discretion determinations.[37]

The San Ysidro and Otay Mesa ports of entry in San Diego County are the primary locations where Southern California applicants are encountered during port of entry processing, though Northern California applicants may encounter CBP or ICE at other ports of entry or in interior enforcement contexts.[37] Applicants should be aware of their rights during enforcement encounters and should carry identification documents and a copy of their Form I-881 application (if filed) or a receipt number (if already submitted), which may assist in protecting against expedited removal or other enforcement actions.[37]

California State Law Impacts on NACARA Applicants

California Penal Code Section 1473.7, as amended, permits non-citizens to petition to vacate criminal convictions if the non-citizen can demonstrate that their conviction was legally invalid due to the trial court's failure to advise them of the immigration consequences of their plea or sentence.[48] For NACARA applicants with criminal convictions that may impact their good moral character or eligibility determination, filing a motion to vacate under PC 1473.7 can eliminate the conviction and potentially strengthen the NACARA application.[48] Similarly, California Penal Code Section 1203.43 provides opportunities for post-conviction relief in cases involving crimes for which the applicant received a conditional sentence, which may be relevant for certain NACARA applicants with criminal backgrounds.[48]

California's SB 54 (the California Values Act) restricts state and local law enforcement cooperation with federal immigration enforcement, which may provide some protection to NACARA applicants in California against certain types of immigration enforcement action, though it does not prevent federal ICE enforcement activities.[37] NACARA applicants in California should be aware of these state law protections but should not rely on them as a substitute for pursuing federal immigration relief.[37]

Strategic Considerations and Risk Assessment

Timing and Deadline Issues

There is no statutory deadline for filing a NACARA § 203 application, as long as the applicant continues to meet the eligibility criteria.[2][30][31] However, applicants should be aware that if they are in active removal or deportation proceedings, delay in filing could result in their case being decided without NACARA relief

being considered, particularly if they do not affirmatively raise NACARA as an available option.[1][2][9][21][49] Additionally, applicants whose continuous physical presence requirement is approaching (i.e., applicants who are within one year of meeting the seven-year requirement) should prepare their applications in advance so that they can be filed promptly once the requirement is satisfied.[1][2][9][21][49]

For applicants in administratively closed proceedings who were given closure to file with USCIS, there are typically implicit expectations that the application will be filed within a reasonable period (generally interpreted as within 12-24 months of closure).[2][30] If an applicant fails to file during this period, DHS may file a motion to recalendar the case, and the applicant's opportunity to apply with USCIS may be lost, requiring instead that the applicant pursue relief through the Immigration Court.[2][30][55]

Adjudication Standards and Discretion

Even if an applicant establishes all four eligibility requirements for NACARA § 203 relief (proper category, continuous physical presence, good moral character, and extreme hardship), the granting of relief remains a matter of discretion.[11][38] The immigration judge or asylum officer may deny relief as a matter of discretion based on negative factors, even if the applicant has satisfied the statutory and regulatory requirements.[11][38] Discretionary factors that immigration judges commonly consider include the applicant's criminal history (even if not a bar to eligibility), employment history and contributions to the community, family ties and dependents who would be affected by removal, ties to the country of origin, and the degree to which the applicant's presence in the United States is consistent with U.S. law and immigration policy.[11][38]

The Ninth Circuit has held that the BIA's discretionary denial of NACARA special rule cancellation of removal is not subject to judicial review under 8 U.S.C. § 1252(a)(2)(B)(i), meaning that if an applicant establishes eligibility but the immigration judge or BIA denies relief as a matter of discretion, the applicant cannot appeal that decision to federal court.[11][38] This limitation on judicial review underscores the importance of presenting a compelling case regarding favorable discretionary factors (such as long residence, family ties, employment history, and community integration) alongside the technical eligibility requirements.[11][38]

Administrative Closure and Recalendaring Considerations

For applicants in administratively closed proceedings, recent EOIR guidance emphasizes that administrative closure is a docket management tool that should serve a specific, foreseeable purpose.[55] When a dependent is in proceedings and the principal applicant applies with USCIS, the dependent's proceedings may be administratively closed to allow them the opportunity to also apply with USCIS while the principal's application is pending.[1][2][55] However, if the dependent fails to file the application with USCIS within the expected timeframe, DHS may file a motion to recalendar the dependent's case, and the opportunity for USCIS filing may be lost.[1][2][55] Applicants with administratively closed cases should consult with their attorneys regarding the basis for closure and whether there are pending applications or circumstances that justify maintaining the closure versus allowing the case to be recalendared.[55]

Northern California Judge-Specific Considerations

While individual judge preferences are not controlling and should not be the basis for choosing a filing strategy, applicants should be aware that different San Francisco immigration judges may have varying tendencies regarding NACARA applications.[37] Some judges are known to be particularly receptive to evidence-based hardship arguments and may grant relief based on moderate showings of extreme hardship,

while others may require more robust evidence and more significant hardship.[37] Applicants should consult with experienced immigration counsel regarding the judge assigned to their case and should tailor their presentation of evidence and arguments to be most persuasive to that particular judge.[37]

Conclusion

The Form I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal under NACARA Section 203 remains a critical and viable pathway to permanent resident status for thousands of Central American nationals, former Soviet bloc nationals, and their family members who have established deep roots in the United States over extended periods but who would not qualify for other forms of relief under the post-IIRIRA standards. The procedural requirements for EOIR filing are technical and specific, requiring careful attention to jurisdictional prerequisites, timely filing with proper service, submission of comprehensive supporting documentation, and detailed explanation of the applicant's eligibility across all four required elements: category, continuous physical presence, good moral character, and extreme hardship.

The six distinct eligibility categories under NACARA § 203-registered ABC class members, asylum filers by specific dates, nationals of former Soviet bloc countries, spouses and children, unmarried sons and daughters over 21, and family members subject to battery or extreme cruelty-provide multiple pathways to relief, and the rebuttable presumption of extreme hardship for ABC class members significantly eases the evidentiary burden for that population. The continuous physical presence requirement, while generally fixed at seven years (or ten years for applicants with criminal grounds, or three years for family members subject to abuse), incorporates flexibility for brief absences and military service, allowing applicants with minor departures to nevertheless establish continuous presence.

The good moral character requirement, while potentially disqualifying for certain convictions, is not a permanent bar for most crimes of moral turpitude and should be carefully analyzed in light of the applicant's conduct since any criminal involvement, rehabilitation efforts, and the specific nature of the offense under federal immigration law. The extreme hardship standard, particularly the heightened "exceptional and extremely unusual" standard for applicants with criminal grounds, requires comprehensive factual development and sophisticated presentation of evidence regarding how the applicant's removal would impact both the applicant and qualifying family members.

For applicants in Northern California pursuing relief through the San Francisco Immigration Court, understanding local procedures, securing legal representation experienced with NACARA applications before this particular court, and developing a strategic approach to presenting evidence in light of known judicial preferences can meaningfully enhance the likelihood of success. The procedural complexity of NACARA filing, the significant consequences of errors or omissions, and the substantial discretionary component of the final adjudication all underscore the importance of early consultation with immigration counsel and careful preparation of a complete, well-documented application supported by compelling evidence of eligibility and favorable discretionary factors. For the immigrant communities of Northern California, particularly Salvadoran, Guatemalan, and other Central American nationals with long-term U.S. residence, NACARA § 203 relief offers a realistic opportunity to transition from uncertainty to permanent legal status, provided that the filing process is approached with strategic precision and thorough documentation of the applicant's remarkable personal circumstances.

Reference Materials

A. Statutes and Regulatory Citations

1. 8 U.S.C. § 1255 note (NACARA Section 203 - Suspension of Deportation and Special Rule Cancellation of Removal)

2. 8 U.S.C. § 1229b (Cancellation of Removal)

3. 8 CFR § 1240.66 - Eligibility for special rule cancellation of removal

4. 8 CFR § 1240.61 - Applicability

5. 8 CFR § 1240.64 - General (continuous physical presence and hardship)

6. 8 CFR Part 240 Subpart H - Applications for Suspension of Deportation and Special Rule Cancellation of Removal

7. 8 CFR § 240.58 - Extreme hardship

8. 8 CFR § 1003.24 - Fees pertaining to matters within the jurisdiction of Immigration Courts

9. 8 CFR § 1003.43 - Motions to reopen for suspension of deportation or special rule cancellation of removal

B. USCIS Forms and Instructions

1. Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Current Version)

2. Form I-881 Instructions (Current Version - USCIS)

3. Form EOIR-40, Application for Suspension of Deportation (Historical Reference - Limited Current Use)

4. Form I-765, Application for Employment Authorization (for NACARA applicants)

C. BIA and Federal Court Precedent

11. Monroy v. Lynch, 14-73933 (9th Cir. 2016) - Lack of jurisdiction to review discretionary denial of NACARA special rule cancellation

41. Matter of Castro-Lopez, 26 I&N Dec. 693 (BIA 2015) - Ten-year continuous physical presence for applicants with criminal grounds

D. EOIR Guidance and Procedures

4. Executive Office for Immigration Review - Interim Rule on Life Amendments (2001)

15. Suspension of Deportation and Special Rule Cancellation of Removal Under NACARA § 203 - Federal Register Notice

37. Immigration Court Practice Manual - Department of Justice

39. EOIR Forms and Fees Website

E. AILA Practice Guidance and Resources

13. INS on NACARA Dependents - AILA Memorandum (May 15, 1998)

16. Deep Screening for Family-Based Options - AILA Practice Advisory

34. NACARA Section 203 Overview - AILA (August 2010)

43. NACARA 31Aug10 - AILA Comprehensive Guidance

49. Instructions for Form I-881 - AILA Document (December 2018)

55. Responding to DHS Motions to Recalendar - AILA Practice Guide (July 2025)

56. Limited Presumption of Extreme Hardship under Section 203 of NACARA - AILA Legal Opinion

F. Hardship Standards and Evidence Guidance

8. Hardship in Immigration Law - Chapter 1 (ILRC - February 2017)

25. 8 CFR § 1240.58 - Extreme hardship factors (eCFR current version)

26. Proof of Battery or Extreme Cruelty - NIWAP Library Guide

29. What Proof Must Accompany the Application - NIWAP Library Guide

G. Fee Information and Current Rates

5. Executive Office for Immigration Review - Forms and Fees (Current 2026 Rates)

32. EOIR Forms and Fees - EOIR Website

35. Inflation Adjustment for EOIR OBBBA Fees; Fiscal Year 2026 - Federal Register

H. San Francisco Immigration Court and Northern California Resources

33. Nicaraguan Adjustment and Central American Relief Act (NACARA) - Law Office Overview (LaFontaine Law)

37. Immigration Court Practice Manual - EOIR

I. Criminal Consequences and Immigration Impacts

20. Good Moral Character Ineligibility - Norton Tooby (Section 3.14)

48. Aggravated Felonies and Immigration Status: California Perspective - Burga Law

J. Employment Authorization for NACARA Applicants

36. Quick Guide: EAD Eligibility for Asylum Applicants - ILRC

K. Administrative Closure and Case Management

55. Responding to DHS Motions to Recalendar - AILA Practice Guide (July 2025)

39. EOIR Reference Materials - Motions to Reopen

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Geographic Scope: Federal immigration law applicable nationwide, with emphasis on Ninth Circuit precedent and Northern California (San Francisco Immigration Court) implementation

Disclaimer: This report is provided for educational and informational purposes and does not constitute legal advice or create an attorney-client relationship. Applicants should consult with a qualified immigration attorney licensed to practice law in their jurisdiction before making filing decisions or strategic choices regarding NACARA § 203 applications. Immigration law is complex and fact-specific, and outcomes depend on individual circumstances, the specific immigration judge assigned, and developments in case law and policy. This report reflects law as of February 3, 2026, and does not account for developments after that date.