Withdrawal of Application for Admission in EOIR Removal Proceedings: A Legal Analysis

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FINDINGS

WITHDRAWAL OF APPLICATION FOR ADMISSION IN EOIR REMOVAL PROCEEDINGS: A COMPREHENSIVE LEGAL ANALYSIS

Executive Summary

The withdrawal of an application for admission represents a discretionary relief mechanism available to individuals in removal proceedings before the Executive Office for Immigration Review (EOIR) immigration courts. Unlike the more punitive expedited removal process, which carries a mandatory five-year reentry bar, withdrawal of application for admission permits an arriving alien to voluntarily exit the United States without triggering a formal removal order and its attendant immigration law consequences.[1][2] This relief is governed by INA § 235(a)(4), which vests discretion in the Attorney General (delegated to immigration judges in removal proceedings), and is implemented through detailed regulatory standards in 8 C.F.R. § 1235.4 and 8 C.F.R. § 1240.1(d).

The critical legal framework for withdrawal in removal proceedings imposes a two-part test: the respondent must demonstrate both (1) the intent and means to depart the United States immediately, and (2) that factors directly relating to the issue of inadmissibility indicate that granting withdrawal would serve the interest of justice.[3] This "best interest of justice" standard, established by the Board of Immigration Appeals in Matter of Gutierrez, 19 I&N Dec. 562 (BIA 1988), requires a careful balancing of factors including the seriousness of the immigration violation, prior findings of inadmissibility, the respondent's intent to violate law, the ability to overcome the ground of inadmissibility, humanitarian considerations, and public interest factors.[4] Importantly, immigration judges typically grant withdrawal only with the concurrence or acquiescence of the Department of Homeland Security, as the regulatory language makes clear that such permission "should ordinarily be granted only with the concurrence of the Service" once the issue of inadmissibility has been resolved.[5]

A withdrawal of application for admission differs fundamentally from a formal removal order in its long-term immigration consequences. An individual who withdraws is not considered formally removed and therefore does not incur the five-year, ten-year, or twenty-year bars to reentry that accompany removal orders.[6] This creates a significant strategic advantage: once the ground of inadmissibility is overcome, the individual may be eligible to apply for a new visa or readmission to the United States without first obtaining "consent to reapply" (Form I-212) from the Department of Homeland Security, which would otherwise be required following a removal order.[7]

Statutory and Regulatory Framework for Withdrawal of Application for Admission

The Foundational Statutory Authority

The authority to permit withdrawal of applications for admission flows directly from INA § 235(a)(4), which provides that "an alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States."[8] This statute represents a deliberate legislative choice to authorize a discretionary alternative to formal removal proceedings, serving as a counterbalance to the more streamlined expedited removal process that was created in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.[9] The statutory language emphasizes three critical elements: first, the withdrawal is purely discretionary ("may be permitted"), creating no right to withdrawal regardless of circumstances; second, the authority resides with the Attorney General

and is delegated to immigration judges; and third, the withdrawal must be coupled with immediate departure from the United States.[10]

The legislative history surrounding this provision reflects Congress's recognition that not every case of inadmissibility warrants the severity of a formal removal order. When expedited removal became available for certain categories of arriving aliens, Congress recognized that officers implementing the expedited removal process would require an alternative mechanism for cases in which justice would not be served by issuing a removal order with its attendant immigration law consequences. The withdrawal authority thus serves as an important prosecutorial discretion mechanism within the immigration enforcement system, though notably this discretion is exercised at the front-end (at ports of entry by CBP) and, in removal proceedings, by the immigration judge after a Notice to Appear has been issued.

Regulatory Standards for Withdrawal in Removal Proceedings

The primary regulatory framework for withdrawal in removal proceedings appears in 8 C.F.R. § 1240.1(d), which specifically addresses the immigration judge's authority to permit withdrawal.[11] This regulation provides that "an immigration judge may allow only an arriving alien to withdraw an application for admission," thereby limiting the availability of this relief to individuals who retain the status of "arriving aliens" as defined in 8 C.F.R. § 1.2.[12] The regulation further specifies that "once the issue of inadmissibility has been resolved, permission to withdraw an application for admission should ordinarily be granted only with the concurrence of the Service."[13] This language establishes a critical procedural requirement: after the immigration judge has determined that the individual is indeed inadmissible, the presumptive rule is that withdrawal requires agreement with the Department of Homeland Security. The use of "should ordinarily" rather than "must" suggests some judicial discretion, but in practice, immigration judges rarely grant withdrawal without explicit DHS agreement.

The substantive standard for withdrawal in removal proceedings is established by the two-part test in § 1240.1(d): "An immigration judge shall not allow an alien to withdraw an application for admission unless the alien, in addition to demonstrating that he or she possesses both the intent and the means to depart immediately from the United States, establishes that factors directly relating to the issue of his admissibility indicate that the granting of the withdrawal would be in the interest of justice."[14] This formulation represents a refinement of prior jurisprudence, as established in Matter of Gutierrez and discussed below, and establishes a narrower focus than a general balancing of equities test.

Complementary regulations in 8 C.F.R. § 1235.4 address withdrawals at ports of entry and provide that "permission to withdraw an application for admission should not normally be granted unless the alien intends and is able to depart the United States immediately."[15] Although this regulation addresses port-of-entry withdrawals by CBP officers, the principle applies equally in removal proceedings: immediacy of departure is a foundational requirement. The regulation further specifies that "an alien permitted to withdraw his or her application for admission shall normally remain in carrier or Service custody pending departure, unless the district director determines that parole of the alien is warranted."[16] This custody requirement recognizes that permitting withdrawal is conditional upon the individual's actual departure from the United States.

Inspector's Field Manual Guidance on "Best Interest of Justice"

The Inspector's Field Manual Chapter 17.2, which applies to CBP officers at ports of entry, provides the most detailed guidance on factors relevant to the "best interest of justice" determination, and these factors inform immigration judge analysis as well.[17] The manual specifies that immigration officers "should carefully consider all facts and circumstances related to the case to determine whether permitting withdrawal would be

in the best interest of justice, or conversely, that justice would be ill-served if an order of removal were issued." The manual identifies non-exhaustive factors that "might include, but are not limited to":

(1) The seriousness of the immigration violation;

(2) Previous findings of inadmissibility against the alien;

(3) Intent on the part of the alien to violate the law;

(4) Ability to easily overcome the ground of inadmissibility (i.e., lack of documents);

(5) Age or poor health of the alien; and

(6) Other humanitarian or public interest considerations.[18]

The manual further provides that "an expedited removal order should ordinarily be issued, rather than permitting withdrawal, in situations where there is obvious, deliberate fraud on the part of the applicant. For example, where counterfeit or fraudulent documents are involved, an expedited removal order is normally the appropriate response." Conversely, "in a situation where the alien may have innocently or through ignorance, misinformation, or bad advice obtained an inappropriate visa but has not concealed information during the course of the inspection, withdrawal should ordinarily be permitted."[19] This guidance, while formally applicable to CBP officers, reflects the underlying policy considerations that immigration judges apply when evaluating withdrawal requests in removal proceedings.

Defining "Arriving Alien" Status: The Critical Jurisdictional Requirement

The Definition of "Arriving Alien"

The withdrawal authority in 8 C.F.R. § 1240.1(d) applies exclusively to "arriving aliens," making this definitional issue central to determining withdrawal eligibility.[20] An "arriving alien" is defined in 8 C.F.R. § 1.2 as "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport."[21] Critically, "[a]n arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked."[22]

This definition is broader than it initially appears and captures multiple scenarios. An individual who arrives at a port of entry with proper travel documents, is inspected by CBP, and is found inadmissible remains an arriving alien even if CBP defers the inspection and later issues a Notice to Appear for removal proceedings. An individual who is paroled into the United States after arrival also retains arriving alien status. However, there is an important exception: "an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien."[23] This exception is narrow and applies only to individuals who obtained advance parole in the United States before departing and then returned.

Consequences of Losing Arriving Alien Status

The significance of arriving alien status cannot be overstated, because an individual who is not an arriving alien is entirely ineligible for withdrawal of application for admission under the regulation. The loss of

arriving alien status typically occurs when an individual has been admitted to the United States, even if that admission later becomes subject to rescission proceedings. Once admitted, an individual transitions from "arriving alien" status to another immigration status (such as nonimmigrant visitor, student, or temporary worker) or to unlawful presence if they overstay or violate the terms of admission. Individuals who enter without inspection at land or sea borders and are apprehended in the interior of the United States are not arriving aliens unless they are encountered within a specific proximity to the border and within a specific timeframe, depending on the expedited removal designation in effect.[24]

This jurisdictional requirement creates a significant practical limitation: withdrawal of application for admission is not available to individuals who have been in the United States for an extended period, who have been admitted and later found subject to removal on deportability grounds, or who entered without inspection and were not apprehended at or near the border. These individuals may be eligible for other forms of relief, such as cancellation of removal, voluntary departure, or asylum, but withdrawal is not available to them.

The "Best Interest of Justice" Standard: Substantive Analysis and Case Law

Matter of Gutierrez: The Controlling BIA Precedent

The most authoritative interpretation of the "best interest of justice" standard in the withdrawal context comes from Matter of Gutierrez, 19 I&N Dec. 562 (BIA 1988), a Board of Immigration Appeals decision that remains binding precedent.[25] In Gutierrez, the Board addressed an immigration judge's grant of withdrawal to an applicant who had attempted fraudulent entry. The Board rejected the immigration judge's use of a "balancing of equities test," finding that "a balancing of the equities test is not an appropriate method by which to determine whether an alien merits permission to withdraw an application for admission, and that a narrower focus was intended."[26]

Instead, the Board articulated the governing standard: "An immigration judge should not allow withdrawal unless an alien, in addition to demonstrating that he possesses both the intent and the means to depart immediately from the United States, establishes that factors directly relating to the issue of his admissibility indicate that granting withdrawal would be in the interest of justice (i.e., that justice would be ill served if an order of exclusion was entered)."[27] This holding emphasizes several critical points. First, the factors relevant to the "best interest of justice" determination must relate directly to the issue of inadmissibility; they cannot be broader equity considerations about the applicant's family ties, humanitarian circumstances, or life plans unrelated to the ground of inadmissibility. Second, the standard requires a showing that justice would be "ill served" by issuing a removal order-a formulation suggesting that withdrawal should be granted only when there is affirmative evidence that permitting the individual to withdraw better serves justice than issuing a removal order.

The Board further noted a critical timing consideration: "we find that, once the exclusion hearing has been conducted and the issues of excludability have been resolved, such permission should ordinarily only be granted with the concurrence of the Service."[28] This language, drawn from the regulation, reflects the recognition that once the government has invested time and resources in a hearing and determined that the individual is inadmissible, the presumptive rule shifts to require government agreement for withdrawal. This principle applies with equal force in modern removal proceedings under § 1240.1(d).

Application of the Gutierrez Standard to Contemporary Cases

Courts and immigration judges have applied the Gutierrez standard across a range of fact patterns, consistently requiring that the factors supporting withdrawal relate directly to the ground of inadmissibility. For example,

when an individual is found inadmissible due to lack of proper travel documents, the ability to readily obtain those documents (either before reapplication or upon the basis of new information about how to overcome the defect) weighs heavily in favor of withdrawal. Conversely, when an individual is inadmissible due to fraud or misrepresentation, the intentionality of the conduct becomes relevant: fraud knowingly perpetrated weighs against withdrawal, while inadvertent misstatement based on ignorance, misinformation, or bad advice may support withdrawal, particularly if the individual did not conceal information during inspection.

The Inspector's Field Manual guidance reflects this approach: "An expedited removal order should ordinarily be issued, rather than permitting withdrawal, in situations where there is obvious, deliberate fraud on the part of the applicant. For example, where counterfeit or fraudulent documents are involved, an expedited removal order is normally the appropriate response."[29] However, "in a situation where the alien may have innocently or through ignorance, misinformation, or bad advice obtained an inappropriate visa but has not concealed information during the course of the inspection, withdrawal should ordinarily be permitted."[30]

Humanitarian factors, such as advanced age, serious health conditions, or family hardship, do support withdrawal only insofar as they relate to the ground of inadmissibility itself. For example, if an individual's health condition impairs their ability to prepare for reapplication and overcome the ground of inadmissibility, that factor is directly related. However, humanitarian considerations standing alone-such as family ties in the United States or children born to a U.S. citizen-are not appropriate factors under the Gutierrez formulation, because they do not relate directly to the issue of inadmissibility. Those humanitarian factors would instead be relevant to other forms of relief, such as cancellation of removal or adjustment of status, but not to the withdrawal determination.

Procedural Requirements for Filing a Motion to Withdraw in Immigration Court

Motion Practice and Filing Requirements

The procedural requirements for filing a motion to withdraw an application for admission before an immigration court are governed by the EOIR Immigration Court Practice Manual, which establishes uniform filing standards applicable across all immigration courts.[31] A motion to withdraw must be filed as a written motion and comply with the procedural requirements established in Chapter 5.2 of the Practice Manual on filing motions.[32]

All motions, including a motion to withdraw an application for admission, must include specific elements. The motion should have a cover page labeled "MOTION TO WITHDRAW APPLICATION FOR ADMISSION" (or a similar clear caption indicating the nature of the motion).[33] The cover page must include a complete caption identifying the respondent, file number, the immigration court, and the judge assigned to the case. The practitioner of record or the respondent (if unrepresented) must include their name, address, telephone number, and fax number on the cover page. If the motion involves special circumstances (such as the respondent being detained), this information should appear prominently in the top right corner of the cover page and be highlighted.

The motion itself must contain a clear statement of the relief requested and the factual and legal basis for the request. In the context of a withdrawal motion, this means the motion should specify that the respondent seeks permission to withdraw the application for admission in lieu of removal proceedings, and should explicitly address both prongs of the § 1240.1(d) test: (1) the respondent's intent and means to depart immediately from the United States, and (2) the factors directly relating to the ground(s) of inadmissibility that indicate withdrawal would be in the interest of justice.

The motion should be accompanied by supporting documentation that establishes the respondent's claims. To demonstrate intent and means to depart immediately, the respondent should provide evidence such as a valid passport or travel document, proof of return transportation (such as a flight reservation or ticket confirmation), and financial documentation establishing the ability to pay for departure. Some respondents may need to provide affidavits attesting to their willingness and ability to depart, particularly if they are currently detained and lack obvious means of immediate departure.

To address the "best interest of justice" prong, the motion should present evidence that factors directly relating to the ground of inadmissibility support withdrawal. If the inadmissibility is based on lack of proper documentation, the respondent might present evidence demonstrating that the documentation can be readily obtained through normal channels. If the inadmissibility is based on visa overstay due to circumstances beyond the respondent's control, affidavits explaining those circumstances might be appropriate. The motion should reference the factors identified in Inspector's Field Manual Chapter 17.2 and the Gutierrez standard, and should carefully distinguish the factors presented from general humanitarian considerations that do not directly relate to the ground of inadmissibility.

Filing Deadlines and Service Requirements

The timing of a motion to withdraw depends on whether the respondent is detained or released and whether the next scheduled hearing is a master calendar hearing or an individual merits hearing. For non-detained respondents, the Practice Manual establishes that filings must be submitted at least fifteen (15) days in advance of a master calendar hearing if requesting a ruling at or prior to the hearing.[34] If a filing is submitted at least fifteen days prior to a master calendar hearing, the response must be submitted within ten (10) days after the original filing.

For detained respondents, filing deadlines are "as specified by the Immigration Court," meaning the specific immigration court may impose different deadlines based on operational capacity and local practice.[35] It is essential to consult the specific immigration court's administrative procedures or the individual judge's standing orders to determine applicable filing deadlines.

If the motion is filed less than fifteen days prior to a master calendar hearing, the response may be presented at the master calendar hearing either orally or in writing. A respondent may also file a motion to advance the hearing date if additional time is needed to prepare the motion, and may file a motion for continuance to obtain documents or prepare the record.[36] However, these procedural motions should be filed with adequate advance notice and must explain the reasons for the request with particularity.

Service requirements require that a copy of the motion be served on the Department of Homeland Security (ICE prosecution) and proof of service must be included with the filing.[37] The Practice Manual specifies that proof of service must identify the name and address of the person served, the date of service, and the method of service (such as mail, email, fax, or in-person delivery).[38] If the respondent is represented by counsel, the practitioner of record files the motion; if the respondent is unrepresented, the respondent files the motion directly with the court.

Proposed Order and Formatting Standards

A motion to withdraw should be accompanied by a proposed order for the immigration judge's consideration.[39] The proposed order should specify the relief requested in clear terms-for example, "IT IS ORDERED that the respondent's Motion to Withdraw Application for Admission is GRANTED, and the respondent is permitted to withdraw the respondent's application for admission for the United States. IT IS FURTHER ORDERED that the respondent shall depart the United States by [date], and shall report to

[custody location] by [date] to make departure arrangements."

Documents must be formatted according to specific standards: documents should be on 8.5 x 11-inch paper, with one-inch margins on all sides.[40] Text should be in 12-point font or larger, double-spaced (except for block quotes, which may be single-spaced). All documents filed with the immigration court must be in the English language or accompanied by a certified English translation.[41] If supporting documents are exhibits, they should be compiled in a table of contents and referenced in the motion.

Factors Immigration Judges Consider in Withdrawal Decisions

The Seriousness of the Immigration Violation

Immigration judges evaluate the seriousness of the specific ground of inadmissibility as the starting point for the "best interest of justice" analysis.[42] Visa overstays constitute immigration violations, but their seriousness varies depending on the duration of the overstay, whether the individual was aware of the expiration date, and whether the individual took steps to address the status issue. An individual who remained in the United States for a few days beyond the authorized period of stay due to misunderstanding the I-94 card or lack of awareness of the expiration date is in a different position than an individual who remained for months or years with knowledge of the violation.

Fraudulent entry or use of counterfeit documents represents a more serious violation than administrative overstay, because it involves dishonesty in the inspection process itself. The Gutierrez standard explicitly contemplates that withdrawal is disfavored when "obvious, deliberate fraud" is involved, while withdrawal is favored when inadvertent misstatement based on ignorance occurs.[43] Immigration judges in Northern California and nationwide consistently apply this principle, recognizing that fraud strikes at the integrity of the inspection process, whereas documentation deficiencies or visa status violations can be remedied through normal channels.

Lack of proper travel documents at the time of arrival constitutes a ground of inadmissibility under INA § 212(a)(7)(a)(i) (not in possession of proper documents), but such violations are often easily remedied. An individual who arrives without a visa but is otherwise admissible, or who arrives with an expired passport that can be renewed, presents a case favoring withdrawal, because the ground of inadmissibility can be overcome relatively straightforwardly upon reapplication.

Prior Findings of Inadmissibility and Immigration History

The Inspector's Field Manual identifies "previous findings of inadmissibility against the alien" as a relevant factor.[44] A respondent with a clean immigration record-never before found inadmissible, never removed, no prior violations-is in a stronger position to obtain withdrawal than a respondent with multiple prior findings of inadmissibility or with prior expedited removal orders that have been reinstated upon subsequent apprehension.

Immigration judges recognize that prior violations may indicate a pattern or demonstrate that the respondent has already had an opportunity to "get it right" and failed to do so. For example, an individual who was previously found inadmissible due to visa overstay, was granted withdrawal, overcame that ground of inadmissibility, and then returned to the United States and overstayed again, demonstrates a pattern that may weigh against granting a second withdrawal. Conversely, a first-time violation with no prior immigration issues supports withdrawal more readily.

The Respondent's Intent to Violate Law

The Manual specifies "intent on the part of the alien to violate the law" as a factor to consider.[45] This factor addresses whether the violation was intentional or inadvertent. An individual who intentionally overstays a visa, knowing that the authorized period of stay is ending and making a conscious decision to remain unlawfully, demonstrates intent to violate law. Conversely, an individual who misunderstands the terms of admission, believes they have valid status, or relies on incorrect advice from a third party demonstrates lack of intent to violate.

Immigration judges and CBP officers look to the respondent's actions during the inspection process and prior to the discovery of the violation to assess intent. If the respondent provided false information, concealed material facts, or affirmatively misrepresented their circumstances, intent to violate is more readily found. If the respondent was truthful during inspection, provided accurate information, and simply violated the terms of admission thereafter due to misunderstanding or circumstance, the intent factor weighs in favor of withdrawal.

Ability to Overcome the Ground of Inadmissibility

The Manual identifies "ability to easily overcome the ground of inadmissibility (i.e., lack of documents)" as a factor supporting withdrawal.[46] This factor is particularly relevant in cases where the ground of inadmissibility is documentary rather than substantive. An individual who lacks a valid passport can readily obtain one; an individual who lacks a required visa can apply for one; an individual who has visa overstayed can reapply after the requisite time period has elapsed and the overstay has been cured by departure.

The ability to overcome the ground of inadmissibility weighs heavily in favor of withdrawal because it demonstrates that the individual's reapplication is not futile. If the individual can readily overcome the ground and is willing to undertake the steps to do so, withdrawal serves the interest of justice by allowing the individual to cure the defect through normal administrative channels rather than bearing the burden of a removal order with its attendant bars to reentry.

Conversely, if the ground of inadmissibility cannot be overcome, or can only be overcome through a waiver or exceptional relief (such as a waiver under INA § 212(i) for fraud or misrepresentation), withdrawal may not be appropriate, because the individual's ability to reapply is substantially impaired.

Humanitarian and Public Interest Considerations

The Manual identifies "other humanitarian or public interest considerations" as potential factors, but these must be understood within the Gutierrez framework as factors "directly relating to the issue of admissibility."[47] Age and health are explicitly mentioned in the Manual as potential factors. An elderly respondent or one with serious health conditions may find withdrawal favored if the health condition impairs the ability to pursue the normal reapplication process or if departure from the United States would create humanitarian hardship related to obtaining necessary medical care in the home country.

However, family ties in the United States, employment, children, and other general life circumstances do not directly relate to the ground of inadmissibility and therefore should not, under a strict Gutierrez reading, be considered in the withdrawal analysis. These factors would instead be relevant to applications for cancellation of removal, adjustment of status, or other forms of relief available to certain categories of individuals, but not to the withdrawal determination.

DHS Role, Concurrence Requirement, and Prosecutorial Discretion

The Concurrence Requirement and Its Practical Effect

The regulations establish that "once the issue of inadmissibility has been resolved, permission to withdraw an

application for admission should ordinarily be granted only with the concurrence of the Service."[48] This language places significant practical limitation on the immigration judge's discretion, even though the regulation uses permissive language ("should ordinarily") rather than mandatory language ("shall").

In practice, immigration judges rarely grant withdrawal without explicit DHS agreement, because the concurrence requirement reflects a recognition that the decision to permit withdrawal is partly a government enforcement discretion decision. The Department of Homeland Security has invested investigative and prosecutorial resources in placing the individual in removal proceedings by issuing a Notice to Appear and initiating the formal hearing process. The concurrence requirement respects the government's interest in determining whether to pursue the removal case to conclusion or to permit the respondent to withdraw.

This concurrence requirement operates differently depending on the procedural stage. At a master calendar hearing, before the immigration judge has made a determination of inadmissibility, the issue of inadmissibility has not been "resolved" in the technical sense, and the concurrence requirement may not apply with full force. However, even at the initial master calendar stage, DHS opposition to withdrawal is a significant obstacle, and most immigration judges will not grant withdrawal over DHS opposition, because the government has not yet had a full opportunity to present its case and the judge has not yet made credibility findings or a detailed admissibility determination.

At the individual merits hearing, after the immigration judge has heard evidence and determined that the individual is inadmissible, the concurrence requirement applies most directly, and DHS opposition makes withdrawal nearly impossible to obtain. DHS opposition, viewed as a practical matter, constitutes a veto of the withdrawal request absent extraordinary circumstances.

Factors Influencing DHS Position on Withdrawal

The Department of Homeland Security's position on withdrawal depends on multiple factors, including the category of inadmissibility, the priority level of the case within DHS enforcement priorities, and the specific policies established by the particular ICE office handling the case. DHS has historically been more inclined to support withdrawal in cases involving documentation deficiencies or technical violations of status, where the individual can readily overcome the ground through normal channels. DHS has been less inclined to support withdrawal in cases involving fraud, security concerns, or criminal history.

The current federal enforcement priorities, as of early 2026, emphasize removal of individuals with criminal convictions and security concerns. DHS resources are directed toward individuals viewed as posing enforcement priorities under current administration policy. In this environment, withdrawal requests in cases not falling within identified enforcement priorities may encounter less government resistance, while withdrawal requests in cases involving individuals with any criminal history or security issues may face significant government opposition.

Counsel seeking withdrawal should consider engaging with DHS prosecution in advance of filing the motion to determine whether DHS would support withdrawal. Many immigration courts encourage counsel to discuss settlement possibilities, including withdrawal, with DHS before proceeding to the merits hearing. Early communication with DHS prosecution about a potential withdrawal request gives the government time to consider the request in light of their enforcement priorities and may result in the government consenting to withdrawal. This approach is far more likely to succeed than filing a motion for withdrawal in the absence of prior DHS consultation, because it allows the government to exercise its discretion in advance rather than placing the immigration judge in the position of ruling on a motion opposed by the government.

Effect of DHS Non-Opposition vs. Explicit Agreement

There is a distinction between DHS explicit agreement to withdrawal and DHS non-opposition. When DHS files a written response to a withdrawal motion stating "DHS does not oppose the motion," this substantially eases the immigration judge's burden. A finding that DHS does not oppose provides the immigration judge with evidence that the government has exercised its enforcement discretion and determined that removal is not essential. However, even DHS non-opposition does not eliminate the immigration judge's obligation to ensure that both prongs of the § 1240.1(d) test are satisfied: the respondent must still demonstrate intent and means to depart immediately, and must still establish that factors relating to inadmissibility indicate withdrawal is in the interest of justice.

When DHS explicitly states that it supports withdrawal, the motion becomes substantially easier to grant. DHS support effectively removes any question about whether the government's enforcement interests are served, and the immigration judge can focus entirely on the substantive requirements of the statute and regulation.

When DHS opposes withdrawal, the motion faces a much higher burden. The immigration judge would need to find that the respondent has made an exceptional showing that withdrawal serves the interest of justice despite DHS opposition. This is possible but rare, and would typically require evidence that the ground of inadmissibility is so readily overcome, or the respondent's circumstances are so compelling, that justice would clearly be ill-served by issuing a removal order in the face of government opposition.

Distinction From Other Removal Alternatives: Withdrawal vs. Voluntary Departure vs. Cancellation

Withdrawal vs. Voluntary Departure

Withdrawal of application for admission and voluntary departure are sometimes confused, but they operate on fundamentally different principles and have different eligibility requirements and consequences. Voluntary departure, governed by INA § 240B, permits a respondent to leave the United States at their own expense within a specified time period (typically 30 to 120 days) in lieu of a removal order.[49] Voluntary departure requires that the respondent either (1) request it before the immigration judge issues a decision on the merits ("pre-conclusion voluntary departure"), or (2) meet strict requirements if requesting it after the judge has decided the case against them ("post-conclusion voluntary departure").

For pre-conclusion voluntary departure, the respondent must have been in the United States for at least one year before receiving the Notice to Appear, must demonstrate good moral character, and must show intent and ability to depart. For post-conclusion voluntary departure, the respondent must have been in the United States for at least one year before service of the Notice to Appear, must pay a bond of at least $500, and must demonstrate good moral character for at least five years. Arriving aliens, notably, are ineligible for pre-conclusion voluntary departure because they have not had an opportunity to establish a one-year presence before the Notice to Appear is issued.[50] Arriving aliens may request voluntary departure at the conclusion of proceedings if they otherwise meet the requirements, but the one-year requirement typically cannot be satisfied by arriving aliens in practice, because the Notice to Appear is issued upon arrival or shortly thereafter.

Withdrawal of application for admission, by contrast, is available only to arriving aliens, does not require demonstration of good moral character, does not require the bond payment associated with post-conclusion voluntary departure, and does not require a one-year presence or residence period. Moreover, withdrawal results in no removal order whatsoever, whereas voluntary departure prevents a removal order but still places the individual in removal proceedings and requires strict compliance with the departure deadline. If an

individual granted voluntary departure fails to depart by the deadline, the immigration judge's removal order automatically becomes effective and is executed, resulting in a removal order with attendant bars to reentry.

Withdrawal vs. Cancellation of Removal

Cancellation of removal, governed by INA § 240A, is a form of affirmative relief available to certain non-lawful permanent residents who have been in the United States for at least ten years, have good moral character, and would suffer extreme hardship to a spouse, parent, or child who is a U.S. citizen or lawful permanent resident.[51] Cancellation of removal permits the respondent to obtain lawful permanent resident status and remain in the United States if the immigration judge finds that the respondent merits a favorable exercise of discretion.

Unlike withdrawal, cancellation of removal is an affirmative grant of status and does not require departure from the United States. However, cancellation of removal is only available to respondents who meet very specific statutory criteria, requires demonstration of good moral character over the requisite period, and requires proof of extreme hardship. Arriving aliens in removal proceedings may be eligible for cancellation of removal if they have been physically present in the United States for the requisite ten-year period (for non-LPR cancellation) or seven years (for LPR cancellation), but the majority of arriving aliens in removal proceedings do not satisfy the physical presence requirement, because they have only recently arrived and the Notice to Appear is issued shortly after arrival.

Withdrawal and cancellation of removal serve fundamentally different purposes and are not mutually exclusive strategies. A respondent might pursue both cancellation and withdrawal alternatively, arguing that if the immigration judge determines that the respondent is not eligible for cancellation or does not merit a favorable exercise of discretion, the respondent should be permitted to withdraw rather than face removal. However, once an immigration judge grants cancellation of removal and confers status, the removal proceedings are terminated and withdrawal becomes moot.

Withdrawal vs. Asylum and Other Forms of Affirmative Relief

Asylum, withholding of removal, and Convention Against Torture protection are forms of affirmative relief available to individuals with well-founded fear of persecution or torture. Unlike withdrawal, which does not address the underlying ground of inadmissibility but rather permits departure in lieu of a removal order, asylum and other protection claims allow the respondent to remain in the United States if they establish eligibility.

An individual might strategically pursue asylum as a primary claim while maintaining a withdrawal request in the alternative. For example, in asylum-only proceedings, where the respondent is a Visa Waiver Program applicant or otherwise ineligible for other forms of relief, the respondent might indicate an intent to apply for asylum (which preserves the right to withholding of removal and CAT protection) while simultaneously requesting withdrawal as an alternative if asylum is denied. This approach is sometimes referred to as a "withdrawal in the alternative" motion and has been accepted by some immigration courts, though it is not standard practice.

A respondent on credible fear review, who has been placed in removal proceedings after expressing fear of persecution, might request withdrawal if circumstances change or if the respondent no longer wishes to pursue an asylum claim. However, once an asylum application has been formally filed, withdrawal of application for admission may not be possible, because the respondent is no longer solely an applicant for admission but is also an applicant for asylum.

Long-Term Immigration Consequences of Withdrawal vs. Removal

The Critical Distinction: No Removal Order and No Reentry Bars

The most significant practical consequence of obtaining withdrawal, as opposed to receiving a removal order, is the absence of statutory bars to reentry.[52] A removal order under INA § 212(a)(9)(A)(i) renders an individual ineligible for a visa for five years (if first removal), or twenty years (if subsequent removal), or permanently (if the individual has been convicted of an aggravated felony). A removal order under INA § 212(a)(9)(A)(ii) (applying to individuals who have been ordered removed as inadmissible upon arrival under § 235(b)(1)) likewise imposes a five-year bar for first removal or twenty years for subsequent removal.

Withdrawal of application for admission, by contrast, does not trigger any of these bars, because the individual is not formally removed. The individual is permitted to withdraw the application and depart, but no removal order is entered. As the [Inspector's Field Manual specifies, "an applicant who withdraws his or her application for admission is not considered formally removed and therefore does not require permission to reapply for admission to the United States."[53] Once the reason for the inadmissibility is overcome, the alien may be eligible to apply for a new visa or admission to reenter the United States."[54]

This distinction has profound practical implications. An individual who receives a removal order and then, five years later, wishes to reapply for admission, must first obtain "consent to reapply" by filing Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, with the Department of Homeland Security.[55] The I-212 application is discretionary, and DHS may deny consent to reapply. An individual who withdraws the application for admission, by contrast, can simply apply for a new visa (if eligible) or attempt reentry without needing DHS consent, once the ground of inadmissibility has been overcome.

Immigration Record and Future Visa Applications

Although withdrawal does not impose statutory bars to reentry, a record of withdrawal will appear in the respondent's immigration file (USCIS SEVIS or system records) and will be noted if the individual subsequently applies for a visa. A consular officer reviewing a visa application may see that the applicant previously withdrew an application for admission and may inquire into the circumstances. The officer will want to understand why the withdrawal occurred, what ground of inadmissibility was at issue, and whether that ground has been overcome.

In cases involving technical violations or documentation deficiencies, the previous withdrawal is unlikely to materially affect a subsequent visa application, particularly if the ground has been clearly overcome and the officer is satisfied that the applicant now meets all eligibility requirements. In cases involving fraud or misrepresentation, a prior withdrawal may be noted in the file and could influence the officer's credibility assessment in subsequent applications, potentially resulting in a denial based on the prior misconduct or on inferences about the applicant's reliability.

The key distinction remains that withdrawal does not impose a statutory reentry bar, whereas a removal order does. This advantage of withdrawal over removal becomes more significant the longer the individual's absence from the United States, because a removal order imposes an absolute statutory prohibition on reentry for a defined period, whereas withdrawal merely creates a factual record that will be considered by immigration officers in future proceedings.

Future Family Sponsorship and Immigration Benefits

Individuals who have been removed from the United States face significant obstacles to obtaining future

immigration benefits, because they are subject to statutory bars and may be considered deportable if they attempt to return or adjust status. An individual who withdraws the application for admission, by contrast, avoids these obstacles. If a U.S. citizen family member wishes to sponsor the individual for an immediate relative visa (as spouse, parent, or child of a U.S. citizen), the individual can apply for consular processing abroad without first obtaining consent to reapply (unless other grounds of inadmissibility apply that are independent of the withdrawal).

Similarly, an individual who withdraws and subsequently qualifies for employment-based sponsorship can potentially pursue a green card through the employment channel without the additional burden of overcoming a prior removal order.

The long-term immigration consequences thus strongly favor withdrawal over removal, provided the respondent is willing and able to depart the United States immediately and is confident that the ground of inadmissibility can be overcome upon reapplication. Counsel must carefully evaluate whether withdrawal serves the respondent's long-term immigration goals before recommending that the respondent pursue this course, because withdrawal requires immediate departure and forecloses the possibility of remaining in the United States to pursue other forms of relief.

Appellate Standards and Review of Withdrawal Determinations

Jurisdiction Over Withdrawal Denials and Approvals

The Board of Immigration Appeals has jurisdiction to review immigration judge decisions on motions to permit withdrawal, but the scope of review is limited. Withdrawal determinations are discretionary determinations reviewed under a deferential standard. The [Ninth Circuit, which has jurisdiction over immigration court decisions arising in Northern California, applies a standard of review that distinguishes between factual findings and legal conclusions.][55] Factual findings made by the immigration judge are reviewed for "clear error," meaning the Board or Court of Appeals will overturn a finding of fact only if it is clearly erroneous, not merely wrong or debatable.[56] Legal conclusions and discretionary determinations are reviewed de novo, meaning the appellate tribunal applies its own independent judgment without deference to the immigration judge's determination.

A withdrawal determination involves both factual and legal components. The finding of whether the respondent has intent and means to depart immediately is largely factual and reviewed for clear error. The determination of whether factors relating to inadmissibility indicate that withdrawal is in the interest of justice involves both factual assessment (what factors are present) and legal judgment (how those factors should be weighed and whether they satisfy the Gutierrez standard).

Limited Appellate Authority on Withdrawal

The Board of Immigration Appeals and the Courts of Appeals have issued relatively few published decisions addressing withdrawal of application for admission in the removal proceeding context, compared to the volume of decisions addressing asylum, cancellation of removal, and other forms of relief. This limited appellate authority creates some uncertainty about how appellate courts would review certain withdrawal determinations that raise novel issues.

The controlling BIA decision remains Matter of Gutierrez, 19 I&N Dec. 562 (BIA 1988), which was decided in the exclusion proceeding context (the predecessor to modern removal proceedings under INA § 240). The Gutierrez standard has been applied to removal proceedings under 8 C.F.R. § 1240.1(d), but subsequent case law refining the standard in the removal proceeding context is sparse.

Whether a Withdrawal Determination Constitutes a Final Order of Removal

An important procedural question is whether an immigration judge's denial of a motion to withdraw constitutes part of a final order of removal that can be appealed to the Board of Immigration Appeals. Generally, an immigration judge's order of removal, denying an application for relief or denying a motion for voluntary departure, constitutes a final order of removal that triggers the 30-day appeal period to the Board.[57] A denial of a motion to withdraw would similarly be incorporated into the immigration judge's removal order or contained in the removal decision, triggering appellability.

Conversely, an immigration judge's grant of withdrawal does not constitute a removal order but rather a permission to depart in lieu of proceedings. Once withdrawal is granted and the respondent departs, the removal proceedings are effectively terminated, and there is no final order of removal against which an appeal can be taken. The Department of Homeland Security could potentially file a motion to reconsider asking the immigration judge to reconsider the withdrawal grant, but by that time the respondent has presumably already departed the United States.

San Francisco-Specific Immigration Court Context

San Francisco Immigration Court Procedural Practices

The San Francisco Immigration Court maintains two hearing locations: the main courthouse at 100 Montgomery Street, Suite 800, and an additional hearing location at 630 Sansome Street, 4th Floor. The court also maintains a satellite location in Concord serving Northern California residents in outlying areas. The court handles a substantial docket involving asylum seekers from Central America, Mexico, and other countries, as well as removal cases involving individuals with criminal history, overstays, and employment violations.

Immigration judges assigned to the San Francisco court have developed procedural practices and preferences that affect how withdrawal motions are handled. Some judges maintain standing orders requiring extensive written motions supported by specific documentation; others are more flexible about oral motions and evidentiary development at the master calendar stage. Counsel should consult the specific judge's standing orders (available through the EOIR eRegistry or the court's website) before filing a withdrawal motion to understand the judge's expectations regarding motion practice, evidence submission, and scheduling.

The San Francisco court generally encourages early resolution of cases through settlement discussions between counsel and DHS prosecution. Master calendar hearings are typically scheduled within 30-45 days of the Notice to Appear being issued, and judges frequently use the master calendar setting to discuss continuances, case settlement, and potential alternative resolutions. A withdrawal request, supported by DHS non-opposition or consent, is likely to receive favorable consideration if presented early in the proceedings, before substantial time and resources have been invested in case development.

San Francisco Asylum Office and Credible Fear Review Context

The San Francisco Asylum Office, which shares jurisdiction with the San Francisco Immigration Court in credible fear review proceedings, maintains specific procedures for individuals who express fear of persecution or torture upon arrival. An individual in expedited removal proceedings who expresses fear is referred to the Asylum Office for a credible fear determination. If the asylum officer determines that the individual has a credible fear, the expedited removal order is revoked and the individual is referred to removal proceedings before the immigration court, where they may apply for asylum and other forms of protection.

In the context of the San Francisco Asylum Office's jurisdiction, a respondent might initially be in expedited removal proceedings, then be referred to the Asylum Office for credible fear review, and then be referred to immigration court. At various stages of this process, withdrawal might be available. However, the Inspector's Field Manual notes that "withdrawal during the later stages of the expedited removal and credible fear process should be the exception rather than the normal course of action," because substantial government resources have been invested in the process.[58] A withdrawal request at the asylum office level would require asylum officer approval rather than immigration judge approval, and would require satisfaction of the same "best interest of justice" standard.

ICE Enforcement Priorities and Northern California Field Office Practice

The U.S. Immigration and Customs Enforcement (ICE) Field Office 1, which covers Northern California, operates under current enforcement priorities that emphasize removal of individuals with criminal convictions, gang affiliations, security concerns, and violations of immigration law. The field office's priorities influence whether DHS prosecution is likely to support withdrawal requests in particular cases. A respondent with no criminal history, no security concerns, and whose ground of inadmissibility can be readily overcome, is more likely to encounter DHS willingness to support withdrawal than a respondent with criminal history or other enforcement priorities.

The San Francisco-based ICE Enforcement and Removal Operations (ERO) maintains discretion over prosecutorial decisions and has internal guidance regarding settlement authority and the circumstances under which removal prosecution can be declined or modified. Understanding the field office's current priorities and the individual prosecutor's authority to settle cases is essential to effectively negotiating withdrawal requests with DHS counsel.

California State Law Interactions and Sentencing Effects on Immigration

Although withdrawal of application for admission is a federal immigration proceeding not directly affected by California state law, state criminal sentences and convictions can become relevant to immigration consequences if the respondent has been convicted of crimes while in the United States. California law, particularly Penal Code § 1473.7, permits defendants to move to vacate sentences imposed without proper advisals of immigration consequences. If a respondent has a prior conviction that may be relevant to grounds of removability or deportability, California state court relief under § 1473.7 or Penal Code § 1203.43 might be available to modify the sentence and reduce immigration consequences.

However, for respondents in removal proceedings based solely on being inadmissible (as opposed to deportable), criminal history generally does not affect the withdrawal analysis unless the crime rendered the respondent deportable or if the crime is relevant to moral character or credibility issues affecting the "best interest of justice" determination.

Procedural Roadmap and Strategic Considerations for Northern California Practitioners

Timing and Procedural Posture: Master Calendar vs. Individual Hearing

The optimal time to pursue a withdrawal motion depends on the procedent's stage of proceedings and the litigant's strategic goals. At the master calendar stage, before the immigration judge has made a determination of inadmissibility, a withdrawal motion can be filed relatively early in the proceedings, potentially before the respondent has disclosed all available evidence of relieving factors. An early withdrawal motion, supported by DHS consent or non-opposition, may result in quick resolution of the case without the need for a full merits

hearing.

However, filing a withdrawal motion at the master calendar stage, before the immigration judge has heard evidence and made findings of fact regarding the specific ground of inadmissibility, may be strategically disadvantageous if the factual record is underdeveloped. The immigration judge will not yet have made credibility determinations or detailed findings regarding the degree of fraud or the respondent's knowledge of the violation. In some cases, developing the factual record through testimony at an individual hearing, demonstrating the respondent's lack of fraudulent intent or the inadvertent nature of the violation, may make the withdrawal request more compelling.

An alternative approach is to file a notice of intent to pursue withdrawal early in the proceedings, to signal to DHS that the respondent is interested in this alternative resolution, while simultaneously preparing for the individual hearing and developing the factual record. If the individual hearing proceeds and the immigration judge makes findings supporting withdrawal, the motion becomes stronger because it is supported by the judge's own findings regarding the respondent's intent, the seriousness of the violation, and the ability to overcome the ground of inadmissibility.

DHS Engagement Strategy: Pre-Motion Negotiation

Before filing a formal motion to withdraw, counsel should contact the DHS prosecution team to determine whether DHS would support or oppose a withdrawal request. Many immigration courts encourage counsel to conduct settlement discussions with DHS, and early engagement with prosecution about withdrawal is far more likely to result in DHS consent than a motion filed without prior consultation.

In engaging with DHS, counsel should be prepared to explain why withdrawal serves the interests of justice, with reference to the Gutierrez factors and the specific factual circumstances of the case. Counsel should present evidence or arguments supporting the respondent's ability to overcome the ground of inadmissibility, the respondent's willingness to depart immediately, and any humanitarian factors relating directly to the ground of inadmissibility.

If DHS indicates a willingness to support or not oppose withdrawal, counsel should confirm this position in writing and should request that DHS file a written response to the motion indicating non-opposition or support. If DHS is unwilling to support withdrawal at the initial contact stage, counsel may propose discussing the issue further after the individual hearing, once the factual record has been developed and the immigration judge has made findings.

Evidence Development for Individual Hearing and Withdrawal Motion

If the respondent will proceed to an individual merits hearing, counsel should develop evidence supporting the withdrawal motion. This evidence might include:

Testimony from the respondent explaining the circumstances of the inadmissibility, the respondent's understanding of the applicable law or visa requirements, and any misunderstandings or misinformation that led to the violation. The respondent's credibility, demeanor, and candor during testimony will substantially affect the immigration judge's assessment of whether the violation was intentional or inadvertent.

Documentary evidence establishing the respondent's ability to overcome the ground of inadmissibility, such as evidence that the required visa can be obtained, that documentation can be secured, or that the legal basis for the visa overstay has been cured. For example, if the respondent overstayed due to a family emergency and the emergency has now been resolved, evidence of the resolution supports the claim that the ground of inadmissibility can be overcome.

Evidence of the respondent's ties to the home country and current plans to depart immediately and permanently. Bank statements showing adequate funds for transportation, flight reservations, or letters from family members in the home country establishing plans for the respondent's reception upon return provide evidence of intent and means to depart.

Humanitarian evidence relating directly to the ground of inadmissibility, such as medical records if age or health directly relates to overcoming the ground of inadmissibility, or evidence of the respondent's prior clean immigration history demonstrating that the violation was a one-time occurrence rather than a pattern.

Filing and Service: Practical Mechanics

Once counsel is prepared to file the motion, the motion should be drafted carefully with reference to the specific judge's standing orders and the Gutierrez framework. The motion should explicitly address both prongs of the § 1240.1(d) test and should cite to the specific facts in the record supporting each element.

The motion should be filed with the immigration court at least 15 days before the master calendar hearing (if a motion at the master calendar stage) or at least 15 days before the individual hearing (if a motion to be ruled on at the individual hearing). Service on DHS prosecution should be completed before filing, and proof of service should be included with the filing.

The motion should include a proposed order, and should request a specific ruling ("the respondent respectfully requests that this motion be granted and that the respondent be permitted to withdraw the application for admission"). The proposed order should specify the date by which the respondent must depart the United States (typically 10-30 days after the order is issued) and should address custody pending departure if the respondent is detained.

Post-Withdrawal Procedures and Departure

If the immigration judge grants the withdrawal motion, the order will specify the date by which the respondent must depart and may specify conditions such as reporting to ICE ERO or remaining in custody pending departure. The respondent is issued Form I-275 (Withdrawal of Application for Admission) which documents the withdrawal and specifies the reasons for inadmissibility.

The respondent is responsible for arranging and paying for transportation back to the country of origin (or another country where the respondent is entitled to enter). If the respondent is detained, ICE will facilitate departure arrangements and will maintain custody until the respondent boards the flight. If the respondent is released pending departure, the respondent must comply with the departure deadline, and failure to do so may result in enforcement action and a removal order.

Upon departure and completion of the withdrawal, the proceedings are terminated. The respondent is not considered removed and may reapply for admission once the ground of inadmissibility has been overcome, without needing to file Form I-212 or obtain DHS consent to reapply.

Conclusion: Strategic Synthesis and Recommended Framework for Decision-Making

Withdrawal of application for admission represents a valuable alternative to removal for arriving aliens in removal proceedings who wish to avoid the long-term immigration consequences of a formal removal order. The mechanism is governed by clear statutory and regulatory authority, implements a well-developed jurisprudential standard through Matter of Gutierrez, and is subject to specific procedural requirements and jurisdictional limitations that counsel must understand fully before pursuing this relief.

The critical elements of a successful withdrawal request are, first, a clear demonstration that the respondent is an arriving alien who has not been admitted or whose admission has not been substantially completed. Second, the respondent must establish both intent and means to depart immediately from the United States, typically supported by evidence of valid travel documents, transportation arrangements, and financial resources. Third, and most importantly, the respondent must present evidence that factors directly relating to the ground of inadmissibility indicate that withdrawal would serve the interest of justice. This requires a nuanced application of the Gutierrez standard, focusing exclusively on factors that bear on the substantive ground of inadmissibility rather than general humanitarian considerations.

Fourth, securing DHS consent or non-opposition substantially increases the likelihood that an immigration judge will grant withdrawal. The concurrence requirement reflects a judgment that the government's enforcement interests must be respected, and judicial override of DHS opposition is rare and requires exceptional circumstances.

Counsel evaluating withdrawal as an option for a client must carefully weigh the long-term immigration consequences against the benefits of avoiding a removal order. Withdrawal requires immediate departure from the United States, which forecloses the possibility of remaining to pursue other forms of relief such as cancellation of removal, asylum, or family sponsorship. However, the absence of statutory reentry bars and the ability to reapply without obtaining DHS consent to reapply represent substantial advantages over a formal removal order.

For respondents in Northern California removal proceedings, early engagement with the San Francisco Immigration Court and with ICE Field Office 1 DHS prosecution is essential. Understanding the specific judge's procedural preferences, developing a persuasive factual record supporting the withdrawal request, and securing DHS non-opposition or consent are the keys to successful withdrawal. Counsel who recognize that withdrawal may serve a client's long-term interests and who skillfully present the withdrawal request with adequate factual development and government engagement significantly enhance the likelihood of a favorable outcome that better positions the respondent for future reapplication and reentry into the United States.

References and Citations

Statutes and Regulations:

8 U.S.C. § 1225(a)(4) - Withdrawal of application for admission

8 C.F.R. § 1.2 - Definitions (arriving alien)

8 C.F.R. § 235.4 - Withdrawal of application for admission

8 C.F.R. § 1240.1(d) - Immigration judges, withdrawal of application for admission

Board of Immigration Appeals Decisions:

Matter of Gutierrez, 19 I&N Dec. 562 (BIA 1988)

Agency Guidance:

Inspector's Field Manual Chapter 17.2 - Withdrawal of Application for Admission

EOIR Immigration Court Practice Manual - Chapter 5 (Motions)

EOIR Immigration Court Practice Manual - Chapter 3 (Filing with the Immigration Court)

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