

§ 239.3

(6) The notice to appear was inadvertently issued, or

(7) Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.

(b) A notice to appear issued pursuant to section 235(b)(3) of the Act may be canceled under provisions in paragraphs (a)(2) and (a)(6) of this section only by the issuing officer, unless it is impracticable for the issuing officer to cancel the notice.

(c) *Motion to dismiss.* After commencement of proceedings pursuant to § 3.14 of this chapter, Service counsel, or any officer enumerated in paragraph (a) of this section may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. Dismissal of the matter shall be without prejudice to the alien or the Service.

(d) *Motion for remand.* After commencement of the hearing, Service counsel, or any officer enumerated in paragraph (a) of this section may move for remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration. Remand of the matter shall be without prejudice to the alien or the Service.

(e) *Warrant of arrest.* When a notice to appear is canceled or proceedings are terminated under this section any outstanding warrant of arrest is canceled.

(f) *Termination of removal proceedings by immigration judge.* An immigration judge may terminate removal proceedings to permit the alien to proceed to a final hearing on a pending application or petition for naturalization when the alien has established prima facie eligibility for naturalization and the matter involves exceptionally appealing or humanitarian factors; in every other case, the removal hearing shall be completed as promptly as possible notwithstanding the pendency of an application for naturalization during any state of the proceedings.

§ 239.3 Effect of filing notice to appear.

The filing of a notice to appear shall have no effect in determining periods

8 CFR Ch. I (1–1–98 Edition)

of unlawful presence as defined in section 212(a)(9)(B) of the Act.

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

Subpart A—Removal Proceedings

- Sec.
- 240.1 Immigration judges.
 - 240.2 Service counsel.
 - 240.3 Representation by counsel.
 - 240.4 Incompetent respondents.
 - 240.5 Interpreter.
 - 240.6 Postponement and adjournment of hearing.
 - 240.7 Evidence in removal proceedings under section 240 of the Act.
 - 240.8 Burdens of proof in removal proceedings.
 - 240.9 Contents of record.
 - 240.10 Hearing.
 - 240.11 Ancillary matters, applications.
 - 240.12 Decision of the immigration judge.
 - 240.13 Notice of decision.
 - 240.14 Finality of order.
 - 240.15 Appeals.
 - 240.16 Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Public Law 104-208.
 - 240.17–240.19 [Reserved]

Subpart B—Cancellation of Removal

- 240.20 Cancellation of removal and adjustment of status under section 240A of the Act.
- 240.21 Suspension of deportation and adjustment under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment under section 240A(b) of the Act for certain nonpermanent residents.
- 240.22–240.24 [Reserved]

Subpart C—Voluntary Departure

- 240.25 Voluntary departure—authority of the Service.
- 240.26 Voluntary departure—authority of the Executive Office for Immigration Review.
- 240.27–240.29 [Reserved]

Subpart D—Exclusion of Aliens (for proceedings commenced prior to April 1, 1997)

- 240.30 Proceedings prior to April 1, 1997.
- 240.31 Authority of immigration judges.
- 240.32 Hearing.
- 240.33 Applications for asylum or withholding of deportation.