EOIR Immigration Court

Implementing the permanent amnesty

by Juan Mann

Amnesty for illegal aliens is alive and well and living inside the United States Department of Justice. The amnesty provisions of the 1986 Immigration Reform and Control Act passed by Congress and signed by President Ronald Reagan may have been the most public display of "amnesty" in the United States. But though the IRCA 1986 amnesty deadlines are long gone, it doesn't mean that amnesty is dead. In fact, amnesty never died at all.

The Executive Office for Immigration Review (EOIR) — a federal agency made up of the U.S. Immigration Court system and its appellate body, the Board of Immigration Appeals, functions as the centerpiece of a largely unknown, ongoing permanent amnesty for illegal aliens and criminal alien residents operating every day in the DOJ. With the complicity of the Immigration and Naturalization Service, the EOIR litigation bureaucracy forms the hidden piece of the puzzle of institutionalized mass immigration in the federal government.

The Immigration and Nationality Act is so filled with exceptions, waivers and outright benefits, that the deportation of foreign nationals in the U.S. is largely voluntary. While Congress should accept responsibility for this emasculation of federal immigration law enforcement, there is plenty of blame left for the EOIR. The litigation bureaucracy of the EOIR is the facilitator of the many ongoing undeclared amnesty programs buried within the Immigration Act.

The lengthy EOIR system of hearings and appeals enables illegal aliens and criminal alien residents to remain in the United States both legally and illegally. The EOIR and the INS allow detained aliens facing deportation to be released back to the streets on an immigration bond or paroled out of INS custody during the EOIR hearing process, giving every non-detained illegal alien and criminal alien the option of disappearing back into the U.S. regardless of the outcome of their Immigration Court hearings.

While immigration judges, federal appellate judges, BIA members, DOJ attorneys and the private bar fight over pieces of paper (ultimately marked "removal order") illegal aliens and criminal alien residents relish the built-in delays of the EOIR system. If an Immigration Court case reaches the stage where an alien is actually physically removed from the U.S., deported aliens again flaunt the system. The current lack of physical security on the land border exposes the EOIR litigation process for the charade that it is since deported aliens can just walk right back in.

A Federal Case Out of Every Illegal Alien

After reviewing Immigration Court decisions at the Board of Immigration Appeals (EOIR's own appellate body) the EOIR system offers another appellate review in the federal circuit courts for the deportation cases of every illegal alien and every criminal alien resident in the country. With optional appeals at every stage of the process, not counting the possibility of motions to "reopen" or "reconsider," EOIR hearings and appeals are never really over until the alien wins. The EOIR simply is not designed for detaining and deporting aliens.

The EOIR bureaucracy unnecessarily formalizes simple review processes that already are entrusted to lesser-paid State Department consular officers, INS adjudications officers, INS inspectors, INS special agents, INS deportation officers and INS asylum officers all over the country and the world. The country's over 200 EOIR immigration judges (not counting the "chief immigration judges" and members of the BIA) earn from $103,840 to $136,476 per year. If "homeland security" is truly a goal for immigration policy, the entire EOIR bureaucracy should be abolished with its functions

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parceled out to a law enforcement agency that can do the job of deporting illegal aliens and criminal alien residents.

The bounty of relief from deportation available to illegal aliens and criminal alien residents in EOIR Immigration Court proceedings is staggering. So much so that considering the laundry list of relief available, EOIR removal proceedings are really "get to stay" proceedings. The EOIR routinely grants the benefit of lawful permanent resident (LPR) alien status to illegal aliens, ordering the INS to issue them a brand new "green card." The EOIR also permits criminal aliens who already have LPR status to remain in the United States in spite of criminal convictions that would make them deportable.

The green card is the gateway to citizenship. Someone who has maintained LPR status in the U.S. for five years becomes eligible to file an application for naturalization with the INS. Once naturalization is complete, then the threat of deportation is gone forever. The truth is that today's green card holders are tomorrow's naturalized citizens. The EOIR immigration bureaucracy creates newly-minted green card holders every day, implementing the permanent amnesty provisions of the Immigration Act. The bottom line is that as a deportation mechanism, the EOIR is designed for failure.

As institutionalized mass immigration, the EOIR is a raging success!

Cancellation of Removal for Non-permanent Residents

This unknown rolling amnesty allows illegal aliens to receive "green cards" (lawful permanent resident status) if they have lived in the United States illegally for ten years and have a spouse, parent or child who is a U.S.citizen or an LPR. Immigration judges determine whether the alien's deportation would cause "exceptional and extremely unusual hardship" to the qualifying relative.

On April 3, 2002, the Board of Immigration Appeals set the threshold high in the case of *In re Andazola-Rivas* (Int. Dec. 3467 (BIA 2002)), but to no avail. For the EOIR, out-of-wedlock children and medical expenses shouldered by American taxpayers for indigent alien relatives are seen as an "equity" in the immigration world turned upside down. To reward the aliens' stealth in hiding successfully in the U.S. for ten years, EOIR judges give out "green cards" in the same court proceedings that were supposedly started to deport the alien in the first place.

Thanks to this perverse incentive built into the immigration law, illegal aliens can benefit from their skill in breaking the law, hiding from immigration authorities and procreating – without anyone in the major media even knowing that the EOIR exists, much less reporting on the ongoing "cancellation of removal" amnesty for illegal aliens. INA Section 240A(b)(1)

Suspension of Deportation

This benefit was the first incarnation of the "non-resident cancellation of removal" rolling amnesty. If an illegal alien avoided detection in the United States for seven years, the alien didn't even need to have a "qualifying relative" as in the "cancellation of removal" green card give-away. The alien's own hardship (caused by going back home abroad) is enough to win a green card. The alien could claim that he or she alone would suffer "extreme hardship" if deported, regardless of any hardship suffered by any qualifying relatives. Again, this give-away is a reward for illegal aliens who have broken the immigration laws by living and working in the U.S. illegally. INA Section 244(a) [repealed].

Special NACARA Suspension of Deportation

The Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA) gives special benefits to prior political asylum applicants regardless of whether or not their asylum claims have any validity. This benefit allows aliens to apply under the former suspension of deportation standard (see above) if the aliens merely filed a political asylum application and have been living in the United States illegally from the following countries: Nicaragua, Cuba, El Salvador, Guatemala, former Soviet Union, Russia, Latvia, Estonia, Lithuania, Poland, Czech Republic, Slovakia, Romania, Hungary, Bulgaria, Albania, former East Germany, former Yugoslavia, Macedonia, Serbia, Montenegro, Bosnia, Croatia, Slovenia, Belarus, Ukraine, Georgia, Armenia, Azerbaijan, Moldova, Kazakstan, Uzbekistan, Turkmenistan, Tajikistan and Kyrgystan. NACARA. Sections 202, 203.

Registry

This benefit is yet another stealth amnesty for aliens who didn't bother to apply for the IRCA 1986 amnesty give-away. Aliens who have been living illegally in the United States since 1972 can get a

"green card" through registry. INA Section 249.

ADJUSTMENT OF STATUS UNDER SECTION 245

Under Section 245 adjustment, an alien admitted in some legal status can apply for resident alien status during the very same Immigration Court proceedings that were supposed to be deporting the alien. In order to apply, the alien must be the beneficiary of an approved immigrant visa petition with a visa number currently available. Immigration judges have the option of stalling the Immigration Court proceedings long enough for visa numbers to become current for the aliens to apply. The EOIR also has the power to "readjust" permanent resident aliens who are convicted of certain crimes, in order to turn around and give the aliens their green cards back – all done in the very same hearings that were set up to deport the alien for those crimes in the first place. INA Section 245.

ADJUSTMENT OF STATUS UNDER SECTION 245(I)

Section 245(i) is the most famous stealth amnesty program currently in the news. The EOIR administers 245(i) relief for aliens in Immigration Court hearings as yet another way for aliens facing deportation to avoid being deported. Is Section 245(i) an amnesty? – Absolutely! If an alien who is illegally in the United States without current legal status is not deported, then the alien is being given the benefit of an amnesty. Section 245(i) allows aliens who have no legal status in the United States to avoid deportation as long as they filed a visa petition (through a spouse, parent, child, brother, sister or an employer) prior to a certain date. The application date has been set three times so far since 1995 in order to give more aliens a chance to apply for the give-away, but there is no future application date as of this writing.

By definition, aliens benefiting from 245(i) are all deportable because they lack legal status; otherwise they could adjust under the regular Section 245 provision. Aliens would not need Section 245(i) if they did not have the need to waive the unlawful presence grounds of the immigration law. The 245(i) aliens could have all been deported from the United States. They all could have been on a bus or a plane heading out of the U.S. instead of being given the opportunity to file visa petitions. But Congress has been threatening to extend this benefit for a fourth time, or even permanently. The Section 245(i) aliens, by their actions, have already shown that they are not willing to abide by the immigration laws of the United States. Section 245(i) beneficiaries jumped the line ahead of the thousands of visa beneficiaries who have lawfully waited their turn outside of the U.S. until a visa number becomes available for their petitions. But instead of waiting their turn to enter, the Section 245(i) crowd that violated the law now legally benefits from their fraud. INA Section 245(i).

ASYLUM

An alien granted asylum in the United States leaves Immigration Court as a "refugee" and can apply for a resident alien card in a year. The alien must prove past persecution (or a well-founded fear of future persecution) under one of five statutorily protected grounds, "race, religion, nationality, membership in a particular social group, or political opinion." These classifications are under a constant assault of expansion by EOIR immigration judges, the BIA and the federal appellate courts. Any alien that says the magic words "political asylum" and tells a convincing story could win a life in the United States.

Asylum hearings by the EOIR (coupled with INS policies of releasing aliens from detention) are an open door to the opportunists of the world. International alien smuggling enables virtually anyone in the world without legal documents to bypass the system of U.S. consular refugee processing abroad. Aliens who simply appear without documents at any U.S. land border or airport on American soil can request asylum through the "credible fear" process, be released from custody, travel on to another city, and perhaps later appear for a hearing to be awarded asylum by an EOIR immigration judge. The potential for abuse of the current system is so great, that the INS "credible fear" and EOIR asylum process has the potential to become the greatest back-door amnesty program of all. INA Sections 208, 209, 235.

WITHHOLDING OF REMOVAL

Withholding of removal is a stricter flavor of asylum where the alien can remain in the United States, but cannot apply for permanent resident status. INA Section 241.

WITHHOLDING OR DEFERRAL OF REMOVAL UNDER CONVENTION AGAINST TORTURE

As an alternative to asylum and withholding of removal, aliens in Immigration Court could also receive withholding or deferral of removal under the provisions of Article 3 of "The United Nations

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Under this standard, the alien must show a "clear probability" of being tortured in the alien's native country. The EOIR reviews these cases along with any asylum or withholding claims filed by the alien. 8 C.F.R. Sections 208.16, 208.17.

Cancellation of Removal for Certain Permanent Residents

This benefit allows criminal aliens who are already lawful permanent residents to maintain their LPR status in spite of being convicted of various crimes. The alien must have been a permanent resident for five years and have legal status of some kind for seven years in order to be eligible for cancellation of removal. But criminal aliens can only get this relief to prevent deportation once. This "one free shot" characterization of cancellation of removal tempts EOIR immigration judges to grant the relief routinely as a "second chance." But career criminal aliens frequently are not put into deportation proceedings automatically after their first crime. So even though the INS may miss many chances to deport an alien, the aliens always are eligible for a "second chance" in the eyes of the EOIR system. Permanent resident cancellation helps criminal aliens convicted of drug possession, alien smuggling, abuse of a spouse, drunk driving, robbery, burglary, theft, sexual assault and a host of other crimes. Only those aliens found to have been convicted of "aggravated felonies" under Section 101(a)(43) of the Act are not eligible to apply. INA Section 240A(a).

Section 212 (c) Waiver

This benefit is the first incarnation of the permanent resident "cancellation of removal" provision. Section 212 (c) relief also allowed resident alien criminals to keep their "green cards" in spite of being deportable for various crimes. Congress attempted to scale back this form of relief to deport many drug smugglers and violent felons, but their efforts were struck down by the U.S. Supreme Court on June 25, 2001. The case of *INS v. St. Cyr* (533 U.S. 289 (2001)) gave Section 212(c) relief – namely green cards and the pathway to U.S. citizenship – back to countless criminal aliens. INA Section 212(c) [repealed].

Laundry List of Waivers

Waivers for "crimes involving moral turpitude" including theft crimes, sex crimes and possession of less than 30 grams of marijuana – INA Section 212(h).

Waivers for alien smuggling – INA Sections 212(d)(11) and 241(a)(1)(E)(iii); and an exception under INA Section 241(a)(1)(E)(ii).

Waivers for immigration fraud – INA Sections 212(i) and 241(a)(1)(H).

More waivers for document fraud, exchange visitors, health-related reasons, labor certification requirements, reentry after deportation, conditional resident status, and crimes given a state or federal pardon: INA Section 211(b); INA Section 211(c); INA Section 212(d)(4); INA Section 212(e); INA Section 212(k); INA Section 216(c)(4); INA Section 241(a)(2)(A)(v); 8 C.F.R. 212.2.

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