

OPERATING PROCEDURES FOR CERTAIN CLASSES OF ALIENS

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Whereas, there are certain classes of aliens who, after gaining lawful entry and admission and having signified a bona fide intention to remain as lawful non-immigrants or immigrants in the Philippines, are now out of status due to an unintended failure to comply with alien admission and alien registration requirements due to force majeure, fortuitous event, serious and/or lingering illness, debilitating advanced age, excusable neglect, irreversible error, mistake arising from a difficult question of law, indigence and other similar circumstances;

Whereas, public interest warrants the promulgation of responsive operating procedures that will effectively allow these aliens, under certain conditions or limitations, to be reinstated to their bona fide status as lawful non-immigrants or immigrants in the Philippines;

Whereas, the Commissioner of Immigration is vested with authority to address this concern by prescribing such operating procedures as may be necessary by filing in details not provided by existing law under the principle of subordinate legislation;

Wherefore, pursuant to Commonwealth Act No. 613, Section 3, as amended, and Republic Act No. 562, Section 2, as amended, in relation to Letter of Implementation No. 20 (1972), Section 15.1(a) and (c) and Executive Order (E.O.) No. 292 (1987), Book III, Title I, Chapter 3, Section 10, the following operating procedures for certain aliens are hereby issued, to wit:

SECTION 1. Coverage. - These operating procedures shall apply only to aliens and their respective dependents, who gained lawful entry and admission into the Philippines and who have signified a bona fide intention to maintain, retain and/or enhance their status as non-immigrants or immigrants, but who are now out of status due to an unintended failure to comply with alien admission and alien registration requirements due to force majeure, fortuitous event, serious and/or lingering illness, debilitating advanced age, excusable neglect, irreversible error, mistake arising from a difficult question of law, indigence and other similar circumstances.

SECTION 2. Disqualification - The following aliens are, however, disqualified from the coverage of these operating procedures:

- Aliens being investigated and/or ready charged under C.A. No. 613, Sections 23, 37, 45 and 46 and/or other laws, rules and regulations;
- Aliens undergoing proceedings before a court or any other administrative body;
- Aliens charged with and/or convicted of capital offenses;
- Aliens fugitives from local or international law enforcement and/or intelligence agencies;
- Aliens suspected of participating, either directly or indirectly, in terrorist activities, drug-trafficking, human trafficking/smuggling and smuggling of contraband; and

(vi) Aliens inimical to national security, public health and public welfare, as determined by the Commissioner of Immigration, Secretary of Justice or by the President.

SECTION 3. Filing of Notice of Intent. Contents. - Aliens under Section 1 shall have within a non-extendible sixty (60) days from the effective date of this memorandum circular to file a notarized Notice of Intent to the proper immigration field offices, embassies, consulates or accredited foreign associations. The Notice of Intent shall indicate a clear intention, within the non-extendible 60-day period under this memorandum circular, by the aliens concerned to: (i) Secure an appropriate visa and/or extension of stay under C.A. No. 613, as amended; (ii) Comply with alien registration and documentation requirements imposed by R.A. No. 562, as amended, and (iii) Remit such fines, fees and penalties as determined by the Commissioner of Immigration.

SECTION 4. Options if aliens unable to comply. Effects. When summary deportation applies. - Aliens, who are unable to comply with the provisions of Section 3, may within the non-extendible sixty (60) days from the effective date of this memorandum circular exercise any of the following options:

- Option No. 1 - Submit a notarized Request for Voluntary Departure to the Board of Commissioners (BoC). In such case, the BOC shall direct, without further proceedings, the aliens concerned to voluntarily depart from the Philippines within a period of seven (7) days, subject to the provisions of Section 2 of this memorandum circular; or
- Option No. 2 - submit a notarized Declaration of Indigence to the Commissioner of Immigration. In such case, the commissioner of Immigration shall direct, without further proceedings, the removal of the subject aliens as indigents under C.A. No. 613, Section 43, as amended, subject to the provisions of Section 2 of this memorandum circular.

In case of Option No. 1, the aliens concerned shall be excluded from re-entry, unless the Commissioner of Immigration issues a written waiver of exclusion prior to embarkation to the Philippines under C.A. No. 613, Section 29(a)(15), (b)(1) or (b)(2).

In case of Option No. 2, the aliens concerned shall be excluded from re-entry, unless the Commissioner of Immigration issues a written waiver of exclusion, with the prior express consent of the BoC, before embarking for the Philippines under C.A. No. 613, Section 29(a)(16), (b)(1) or (b)(2).

In case of failure, without meritorious reason or reasons, to comply with the departure or removal order issued under this section, the aliens in either option shall be subject to summary deportation proceedings.

SECTION 5. Creation and powers of Special Immigration Branch (SIB). Composition of SIB. SIB authority to issue rules. Prior approval by the Commissioner of Immigration. - An ad hoc Special Immigration Branch (SIB) at the Bureau of Immigration is hereby constituted to review/re-evaluate the Notice of Intent under Section 3. For this purpose, the SIB shall be composed of an Associate Commissioner, the Executive Director and the Chief of the Immigration Regulation Division. All regulations and rulings issued by the SIB in the implementation of this memorandum circular shall, however, be subject to the prior and express affirmation by the Commissioner of Immigration, whose decision shall be final and immediately executory.

SECTION 6. Effect of affirmation of SIB recommendation. Restoration of lawful status. - Upon affirmation of the SIB recommendation to grant the Notice of Intent under Section 3, the Commissioner of Immigration shall issue any order directing: (i) The issuance of the appropriate visa and/or extension of stay, (ii) The issuance of the corresponding alien registration and/or documentation requirement and/or (iii) The payment of the necessary fees, fines and penalties, as the case may be. Upon compliance with the directives under (i), (ii) and (iii) of this section, the aliens concerned shall be reinstated to their bona fide and lawful status as non-immigrants or immigrants in the Philippines.

SECTION 7. Sixty (60) day cease and desist initiative. Exception. - To maximize the effective application of these operating procedures, all officers, officials and employees of this Bureau, whether organic, detailed,

contractual or otherwise, shall cease and desist, under pain of administrative/disciplinary action, from conducting operations, proceedings, inquiries and the like, of whatever kind and nature, and/or for whatever purpose, against aliens during the effectivity of this memorandum circular, unless otherwise expressly directed by the Commissioner of Immigration, Secretary of Justice or by the President.

SECTION 8. Reportorial requirements. Submission of weekly reports and comprehensive performance by the SIB. - For effective monitoring purposes, the Honorable Secretary of Justice shall be provided by the SIB, through official endorsement by the Commissioner of Immigration, with detailed, regular, weekly reports concerning the implementation of this non-extendible 60-day memorandum circular. At the conclusion of this non-extendible 60-day period, the Honorable Secretary of Justice shall also be furnished with an official copy of the comprehensive performance record of the SIB in the implementation of this memorandum circular, through official endorsement by the Commissioner of Immigration.

SECTION 9. Effectivity. - This memorandum circular shall take effect five (5) days after its publication in a newspaper of general circulation.

Adopted: 14 Sept. 2004

(SGD.) ALIPIO F. FERNANDEZ, JR.
Commissioner

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