

Prosecutorial Discretion + Prioritization = Hope

Several weeks ago, it was announced that lawyers for Immigration and Customs Enforcement (“ICE”) now had prosecutorial discretion. In other words, persons here in violation of U.S. immigration law needn’t be placed into removal proceedings as a matter of course. Rather, enforcement priority should be dedicated to those convicted of serious crimes. Just yesterday, the Obama Administration publicly announced a Prioritization Plan, namely: prosecute (for removal) those convicted of serious crimes; allow those in removal proceedings for minor criminal offenses and/or immigration violations only to remain in the United States with work authorization.

Similarly, those who have been previously ordered deported but never left the United States may seek to have removal orders stayed and cases reopened provided that they now have a form of immigration relief. Motions to reopen are not new; the government’s attitude towards said motions, however, is and in my opinion, the new and refreshing attitude is a direct result of the prosecutorial discretion memorandum.

A recent (success) story to illustrate: Manny and his wife entered the United States in 1984 seeking a better life. Manny and his wife started working and overstayed his visa. After 10 years, Manny and his wife bought their first house after having four beautiful children. They were living the American Dream, but unfortunately, they did not have legal immigration status. They previously applied for “work permits” which landed them in deportation proceedings. They had no relief at the time and were ordered deported by the immigration court. They never left. They carried on with their usual life: family, work, Church...being fugitives.

Manny and his wife received a dramatic wake-up call from the U.S. government. Immigration and Customs Enforcement (ICE) raided Manny’s house and arrested both him and his wife in efforts to execute the outstanding deportation orders. Manny and his wife were taken into custody for immediate deportation.

Luckily, Manny's oldest child, now 21, came to our office seeking assistance. Although, deportation seemed imminent, we fought for Manny and his wife even when there seemed to be no hope. We filed an application for stay of removal. An application for stay of removal basically is a request made to the deportation officer asking for a favorable exercise of discretion to withhold deportation. This type of application is purely discretionary. We conveyed to the government that Manny and his wife have been hard working individuals with an established family in the United States. They were law abiding individuals and risks losing everything in the U.S. if they were deported. If given enough time, Manny and his wife would perhaps be able to reopen their case and adjust their status. ICE approved our application for stay of deportation. Manny and his wife were released and given 6 months to complete their case. The case will now be reopened and our clients will be able to adjust their status to that of lawful permanent residence.

An application for stay of removal is just one of many types of relief available after deportation or removal has been ordered. Nevertheless, relief is not easily obtained. Each case varies with its own unique facts. If you have been ordered deported or have a loved one that has been ordered deported, we urge that you take action now. Seek a competent and reliable immigration attorney who is able to assess your case. Don't wait until ICE comes knocking on your door. There is still hope.