

## COMMUNITY ADVISORY: ASIAN LAW CAUCUS AND THE VIETNAMESE AMERICAN BAR ASSOCIATION OF NORTHERN CALIFORNIA

### **QUESTIONS AND ANSWERS ABOUT THE VIETNAMESE REPATRIATION AGREEMENT**

*This advisory is not legal advice and does not substitute for the legal advice of an immigration lawyer with the facts of an individual case.*

**Q: Did the United States sign a repatriation agreement with Vietnam?**

A: Yes, on January 22, 2008, the United States and Vietnam announced that an agreement has been signed between the two countries to permit the repatriation of some of the Vietnamese citizens who have been or will be ordered deported to Vietnam.

**Q: Who will be impacted by the signing of this agreement?**

A: The determining factor is a person's date of entry into the United States. If a Vietnamese citizen arrived in the United States *on or after* July 12, 1995, and they have had a hearing with an Immigration Judge, and the Immigration Judge ordered the Vietnamese citizen to be deported to Vietnam, then this agreement allows the person to be deported to Vietnam. According to the U.S. Department of Homeland Security, approximately 1,500 Vietnamese individuals living in the United States will be directly affected by this agreement.

**Q: What if the person was not born in Vietnam?**

A: Many Vietnamese were born in refugee camps in other countries, such as the Philippines, and have never lived in Vietnam. This agreement does not cover these individuals. However, Vietnamese citizens who were born outside Vietnam but later resided in Vietnam at any point are covered by the agreement and could be deported as long as Vietnam recognizes their citizenship.

**Q: Who will *not* be deported?**

A: A naturalized U.S. citizen from Vietnam;  
A Vietnamese citizen who arrived in the U.S. *before* July 12, 1995;  
A Vietnamese citizen who does *not* have a final order of deportation.

**Q: What is a final order of deportation?**

A: Before a person can be deported from the United States, there must be an opportunity for a

hearing with an Immigration Judge, unless he or she signs a waiver form giving up this right. A hearing is conducted by an Immigration Judge to determine whether a person has the right to apply to stay in the United States or to apply for immigration relief to keep his or her green card. If an Immigration Judge has signed a decision ordering the United States government to return a person to his or her home country, then that person has a final order of deportation unless an appeal was filed on time. If all appeals have been denied, then the order of deportation is final.

**Q: How do I know if I have a final order of deportation?**

A: If you think that the repatriation agreement applies to you, you should not go to a U.S. government immigration building. Instead, you should first call 1-800-898-7180, then press "1" and enter your A-number (alien registration number or green card number). Once the phone system confirms your name, press "1" and then "3" to determine whether there is a final decision in your immigration case.

**Q: What was happening to Vietnamese citizens before the signing of the agreement?**

A: Before the repatriation agreement was signed on January 22, 2008, most Vietnamese citizens with final orders of deportation were released from immigration custody under an order of supervision. These individuals were permitted to stay in the United States and apply for a work authorization each year while awaiting deportation. Only those with an unexpired Vietnamese passport or Vietnamese travel document were returned to Vietnam.

**Q: What happens to those who *accepted* a final order of deportation because there was no agreement signed between the United States and Vietnam?**

A: Some individuals were in immigration detention during their removal proceedings. In order to be released from detention more quickly, many Vietnamese gave up their right to apply to remain in the United States. These individuals should talk to an immigration attorney right away to determine whether it is possible to reopen their deportation case.

**Q: Is it too late to reopen my deportation case?**

A: Generally, a motion to reopen must be filed with the Immigration Court that held the last deportation hearing within 90 days of the final order of the court. If an appeal of the deportation order was filed, the motion to reopen must generally be filed with the Board of Immigration Appeals within 90 days of the decision of the Board. Most Vietnamese citizens who are affected by the new agreement received a final order more than 90 days ago, and they should discuss their legal options with an immigration attorney to determine whether any exception to the 90 day filing requirement might apply.

**Q: Does the repatriation agreement between the U.S. and Vietnam expire?**

A: The repatriation agreement will be valid for five years from March 22, 2008, and will automatically be renewed for three years thereafter unless either the U.S. or Vietnam gives written notice of non-renewal to the other country six months before expiration. Either country

can cancel the agreement at any time by giving 30 days' notice.

**Q: Can the repatriation agreement be changed to include Vietnamese who arrived in the United States before July 12, 1995?**

A: The agreement allows the two countries to amend or supplement it in the future by written agreement.

**Q: Why should we care about the Vietnamese repatriation agreement?**

A: In 1996, Congress passed two harsh immigration laws, the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), that took away many immigrants' right to request that an Immigration Judge grant them permission to stay in the United States. For many people, even those with strong family and community ties to the United States, these laws eliminated an Immigration Judge's discretion to make deportation decisions on a case-by-case basis.

**Q: Where can I find additional immigration resources?**

A: (1) Asian Law Caucus (contact Phil Van at 415-896-1701), 939 Market Street, Suite 201, San Francisco, California 94103, by appointment only.

(2) Vietnamese American Bar Association of Northern California, (contact Mai D. Phan at (408)975-9321), The Garden Alameda, 1570 The Alameda, Suite 212, San Jose, California 95126.

(3) Southeast Asia Resource and Action Center (SEARAC), 202-667-4690, 1628 16<sup>th</sup> Street, Northwest, Washington, D.C. 20009.