



UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 97-1784

MARY OSEI,	}	
	}	
Petitioner	}	
	}	On Petition for Review
	}	from the Decision of the
	}	Board of Immigration Appeals
vs.	}	
	}	
IMMIGRATION AND NATURALIZATION	}	
SERVICE,	}	
	}	
Respondent	}	

**PETITIONER'S SUPPLEMENTAL BRIEF**

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## PETITIONER’S SUPPLEMENTAL BRIEF

The Petitioner, through counsel, submits the following supplemental argument in support of her eligibility for suspension of deportation.

We respectfully urge the Court to follow the well-reasoned decision of the Ninth Circuit Court of Appeals concerning the “stop-time” issue and to reverse its holding in prior cases such as Afolayan v. INS, 219 F.3d 784 (8<sup>th</sup> Cir. 2000). In Guadalupe-Cruz v. INS, 240 F.3d 1209 (9<sup>th</sup> Cir. 2001), the Court determined that the Immigration Court and Board of Immigration Appeals erred in applying the new stop-time provisions to applications filed prior to the new statute’s effective date of April 1, 1997. In that case, the Court specifically held that the Immigration Judge erred in applying the new rule to a suspension of deportation hearing held on March 28, 1997 (and that the Board thus erred in dismissing the alien’s appeal).<sup>1</sup>

Accordingly, the Court held that the case should be remanded to the Board and Immigration Judge so that the case may be properly adjudicated based on the law

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<sup>1</sup>The same court has subsequently reiterated the same holding in a series of unpublished decisions. *See* Fuentes v. INS, No. 99-71670 (9<sup>th</sup> Cir. Mar. 26, 2001); Valentin v. INS, No. 99-71265 (9<sup>th</sup> Cir. Mar. 26, 2001); De Rivera v. INS, No. 99-70833 (9<sup>th</sup> Cir. Mar. 1, 2001); Rubio-Marquez v. INS, No. 99-71030 (9<sup>th</sup> Cir. Mar. 26, 2001); Zambrano v. INS, No. 99-70864 (9<sup>th</sup> Cir. Mar. 22, 2001); Yanez-Rojas v. INS, No. 99-71147 (9<sup>th</sup> Cir. Mar. 26, 2001); Rodriguez v. INS, No. 00-70809 (9<sup>th</sup> Cir. Mar. 28, 2001).

that existed as of March 28, 1997. The Court's ruling in the cited cases was not based primarily on Constitutional considerations, rather, on the plain language of the statute (including fundamental due process considerations following the Board and Immigration Court's pure legal error).<sup>2</sup> We respectfully submit – based on basic principles of statutory interpretation and fundamental fairness – that Petitioner's case should be treated in an identical fashion due to the fact that: (a) Her motion to reopen for suspension of deportation was filed with the Board on January 26, 1996 (well over one year prior the new stop-time rule's effective date); and (b) The Board denied her motion, based exclusively on its incorrect interpretation of the applicability of the stop-time rule, on March 7, 1997, prior to the new statute's effective date.

Respectfully submitted by:

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<sup>2</sup>The Court of Appeals' decisions in the above-cited cases, concerning the application of the stop-time rule prior to its April 1997 effective date, follows its published holdings in related suspension of deportation cases including Astrero v. INS, 104 F.3d 264 (9<sup>th</sup> Cir. 1996) and Castillo-Perez v. INS, 212 F.3d 518 (9<sup>th</sup> Cir. 2000).

**CERTIFICATE OF COMPLIANCE**

I, hereby certify that the attached Petitioner's Supplemental brief has been prepared using WordPerfect for Windows 9 with Times New Roman Font Face in Font size 14, and the brief contains 445 words.

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**CERTIFICATE OF SERVICE**

I, Michael H. Davis, hereby certify that a copy of the attached Petitioner's supplemental brief has been served upon the Respondent's counsel on the 16<sup>th</sup> day of May, 2001 by mailing two (2) copies thereof, via first class U.S. Mail to:

John J. Andre  
U.S. Department of Justice  
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**ADDENDUM**

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