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## NEWS RELEASE

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September 29, 2004

### **Final Rule Published to Implement Supreme Court's *St. Cyr* Decision** ***Rule Implements Procedures for Seeking Section 212(c) Relief from Deportation or Removal***

FALLS CHURCH, VA – The Attorney General yesterday published a final rule in the *Federal Register* establishing procedures for eligible lawful permanent residents (LPRs) with certain criminal convictions obtained by plea agreements prior to April 1, 1997, to apply for relief from deportation or removal under former section 212(c) of the Immigration and Nationality Act (INA). This rule becomes effective on October 28, 2004.

This relief is available to eligible individuals who are currently in removal proceedings, who may be placed in removal proceedings, or who have completed immigration proceedings and are under final orders of deportation or removal. It does not apply to those aliens who: have departed the United States and are currently outside the United States; returned illegally to the United States after being issued a final order of deportation or removal; or are present in the United States without having been admitted or paroled.

It is important to note that eligible individuals *under final orders of deportation or removal* who are still in the United States must apply for this relief by filing a special motion to seek section 212(c) relief with the Immigration Judge or Board of Immigration Appeals, on or before April 26, 2005. Individuals with a pending motion for section 212(c) relief filed before October 28, 2004, are not required to file a new special motion under this rule but are permitted to supplement their motions.

The final rule answered questions raised during the comment period after the proposed rule was published on August 13, 2002. The final rule adopts without substantial change the proposed rule, with a few exceptions – two of which are described below.

- ! The final retains the *Soriano* rule and will therefore allow motions that were filed pursuant to the *Soriano* rule that are still pending before EOIR to be adjudicated and granted if the requirements under the *Soriano* rule or this final rule are satisfied.

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**Final Rule Published to Implement Supreme Court's *St. Cyr* Decision**  
**Page 2**

*(Note: The Soriano rule preserved section 212(c) eligibility for those whose deportation proceedings began prior to April 24, 1996, the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)).*

- ! The final rule adopts the Ninth Circuit decision in *Toia v. Fasano*, which allows section 212(c) availability to persons who have been convicted of an aggravated felony and were imprisoned for 5 or more years *and* made plea agreements to criminal offenses prior to November 29, 1990. *(Note: A 1990 amendment to the INA precluded section 212(c) relief to those who have been convicted of an aggravated felony and served a term of imprisonment of at least 5 years. Toia v. Fasano held that this amendment does not apply to those who made plea agreements to criminal offenses prior to November 29, 1990 – the amendment's enactment date).*

Until April 1, 1997, section 212(c) allowed certain LPRs who resided in the United States for at least 7 consecutive years and had become deportable because of a criminal conviction to seek relief to avoid deportation. In considering whether to grant relief under section 212(c), an Immigration Judge would weigh negative factors, such as the severity of the crime, against positive factors, such as the individual's rehabilitation and ties to the community.

Congress sharply curtailed the availability of section 212(c) relief through provisions of AEDPA and then eliminated this relief altogether in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

On June 25, 2001, the Supreme Court decided in *INS v. St. Cyr* that LPRs – whose criminal convictions were obtained through plea agreements prior to April 1, 1997 – remain eligible for section 212(c) relief if they would have been eligible for this relief at the time they were convicted. The *St. Cyr* decision affects pending cases before EOIR and those in Federal court, as well as a potentially large number of individuals who have not yet come before an Immigration Court. This final rule establishes a fair and efficient process to restore section 212(c) relief to those who are eligible as a result of the *St. Cyr* decision.

The rule is on the Internet at [http://www.access.gpo.gov/su\\_docs/fedreg/a040928c.html](http://www.access.gpo.gov/su_docs/fedreg/a040928c.html)