

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
[CITY, STATE]**

<p>IN THE MATTER OF</p> <p>████████████████████</p> <p>(RESPONDENT)</p>	<p>IN REMOVAL PROCEEDINGS</p> <p>A# ██████████</p>
---	---

MOTION TO REOPEN REMOVAL PROCEEDINGS

COMES NOW INTO COURT, ██████████, Respondent herein through undersigned counsel, and respectfully represents as follows:

1. Pursuant to 8 C.F.R. § 1003.23(b)(4)(ii), Respondent ██████████ requests the reopening of his removal proceedings for the purpose of seeking Suspension of Deportation/Special Rule Cancellation of Removal under Section 203 of the Nicaraguan Adjustment and Central American Relief Act, Public Law 105-100 (NACARA) as relief from deportation.
2. “An order of removal entered in absentia or in removal proceedings pursuant to Section 240(b)(5) of the Act may be rescinded only upon a motion to reopen filed within 180 days after the date of the order of removal, if the alien demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act.” 8 C.F.R. § 1003.23(b)(4)(ii).
3. Respondent was scheduled for an Individual NACARA Hearing on ██████████ 2009 at ██████████ before the Honorable Judge ██████████. (Ex. E, Copy of the Honorable Immigration Judge ██████████’s Decision dated ██████████ 2009).
4. However, the Respondent missed the Hearing before the Honorable Judge ██████████ due to a serious illness beyond his control that continues to plague him today. “The term ‘exceptional circumstances’ refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or

parent of the alien, but not including less compelling circumstances) beyond the control of the alien.” 8 C.F.R. § 1129a(e)(1).

6. Approximately a week and a half prior to the Hearing on [REDACTED] 2009, Respondent was stricken by unusual and serious symptoms affecting his muscles, mobility, head, vision and abdomen. Respondent experienced extreme pain and difficulty moving and could not walk on his own rendering him unable to physically appear before the Honorable Judge on [REDACTED] 2009. Respondent’s entire body, including his face and jaw, was practically immobile. Furthermore, the sudden and severe manner in which he experienced these symptoms overwhelmed and disoriented Respondent rendering him mentally incapable of pursuing his immigration case during this crucial time. (Ex. G, Respondent’s Affidavit; Ex. H, Affidavit of Respondent’s wife, [REDACTED]; Ex. L, Letter from [REDACTED], President of [REDACTED] attesting to Respondent’s serious health condition on and around [REDACTED] 2009).
7. A couple of days following the hearing, Respondent’s symptoms subsided, but then approximately two weeks after the hearing some of the symptoms returned. Realizing the unusual and serious nature of his condition, Respondent sought emergency medical attention, despite his difficult financial situation and lack of medical insurance, evidence of which Respondent proffers.¹ (Ex. I, Copy of Emergency Medical Assessment and Testing of Respondent conducted by Emergency Physician at [REDACTED]; Ex. J, Copy of Bill from [REDACTED] Accounting for Respondent’s Emergency Room Visit). The emergency room physician conducted tests and prescribed Respondent Flexeril, a muscle relaxant used to treat skeletal muscle conditions, as well as 600 mg of Ibuprofen for Respondent’s pain. (Ex. K, Copy of Medicine Prescription issued to respondent by Emergency Physician at [REDACTED]).
8. Today, Respondent continues to experience similar symptoms of abdominal pain and muscle aches the cause of which remains unknown and Respondent continues to seek medical care to treat and diagnose his medical condition. (Ex. M, Respondent’s Medical Appointment Notice at [REDACTED]).
9. The Respondent intended to appear at this hearing to pursue Suspension of Deportation under Section 203 of the Nicaraguan Adjustment and Central American Relief Act and appeared at all prior immigration-related appointments and hearings. The Respondent failed to appear only because of an unforeseen and serious illness beyond his control, which rendered his physically and mentally incapable of pursuing his immigration case on [REDACTED] 2000.

¹ See *In re J-P*, 22 I&N Dec. 33 (BIA 1998) (holding that severe headache which kept the respondent bedridden for two days was not enough of an exceptional circumstance to grant a motion to reopen where the respondent introduced no evidence of his condition).

10. The Respondent therefore demonstrates his failure to appear at his Hearing on [REDACTED] 2009 was due to exceptional circumstances as defined in Section 240(e)(1) of the Act.²
11. The Respondent is eligible for immigration relief as Respondent is within the class of persons who may apply for Special Rule Cancellation of Removal, as provided by Section 203 of NACARA. (Ex. O, Application for Relief, Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal Pursuant to Section 203 of Public Law 105-100, NACARA³). Specifically, Respondent is married to an individual granted a benefit pursuant to the settlement agreement in *American Baptist Churches v. Thornburgh (ABC)*, 760 F. Supp. 796 (N.D. Cal. 1991). (Ex. N, Marriage Certificate). Respondent's spouse, [REDACTED], obtained Legal Permanent Resident Status on [REDACTED] 2007 pursuant to Section 203 of NACARA. (Ex. O, Copy of [REDACTED]'s Legal Permanent Resident card issued under category Z15). Respondent entered the United States in 1987 and has been continuously physically present therein since this year. (Ex. P, Copy of taxes and other proof of physical presence for the past seven years). Respondent's spouse, to whom he has been married since 2000, and Respondent's two U.S. Citizen children ages ten and eighteen for whom he cares while his wife works and provides for her family would suffer extreme hardship. (Ex. Q, Birth Certificates for [REDACTED] and [REDACTED]'s sons, [REDACTED] [REDACTED]).
12. The Respondent previously applied for NACARA Section 203 immigration relief with the U.S. Citizenship and Immigration Services and on [REDACTED] 2007 respondent was referred to the Immigration Judge. (Ex. R, USCIS Notice Regarding referral of Application for Suspension of Deportation or Special Rule Cancellation of Removal). Respondent is prepared to present his case to the Honorable Judge and establish his good moral character, along with the help of his family, friends, and community if given this opportunity.
13. Alternatively, Respondent is eligible for Withholding of Removal as his life would be at risk based on his political opinion were Respondent to be returned to El Salvador. Respondent served in and was persecuted by the Army during the El Salvador civil war. (Ex. S, Form I-589, Request for Asylum in the United States dated [REDACTED] 1990⁴).
14. Alternatively, the Respondent requests the opportunity to present an application for relief under the Convention Against Torture pursuant to 8 C.F.R. 208.16(c) for

² See *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996)

³ Should the Honorable Judge choose to reopen this case, Respondent requests approval to submit a current and updated I-881 Form.

⁴ Please note the individual who helped Respondent prepare this asylum application included some erroneous temporal information, which has no bearing on his eligibility for immigration relief under Section 203 of NACARA.

the same aforementioned reason. (Ex. S, Form I-589, Request for Asylum in the United States dated [REDACTED] 1990).

15. Alternatively, Respondent requests reopening his case so he may pursue voluntary departure and therefore not incur a 10-year bar. Without the deportation bar, Respondent's Legal Permanent Resident wife can petition for Respondent. Additionally, Respondent's eighteen year old U.S. citizen son, [REDACTED], can petition for Respondent upon turning 21 years of age.
16. In conclusion, Respondent was subject to exceptional circumstances through no fault of his own warranting the reopening of the in absentia removal order so he may pursue relief under Section 203 of NACARA or any other available relief for which Respondent is eligible. Respondent's Motion to Reopen is timely filed within 180 days of the order under INA §240(b)(5)(C)(i) and he has paid the required motion fee (\$110.00). (Exhibit C, Fee Receipt for Motion to Reopen Deportation Proceedings). Apart from the prior deportation proceedings, which Respondent seeks to open on account of exceptional health circumstances, Respondent is not the subject to any judicial proceedings nor is the subject of any pending criminal proceedings.

WHEREFORE, IT IS MOVED, that this court accept the Motion to Reopen Removal Proceedings pursuant to 8 C.F.R. 1003.23(b)(4)(ii) and in the interest of fairness and justice so the Respondent may pursue the various forms of immigration relief for which he is eligible.

Respectfully submitted

[REDACTED]