ANATOMY OF REMOVAL PROCEEDINGS

REMOVAL BOOTCAMP 2020

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NOTICE TO APPEAR: THE CHARGING DOCUMENT

- WHAT IS AN NTA?
- DID THE CLIENT RECEIVE IT?
- WHO SIGNED IT?
- ISSUANCE OF THE NTA V. COMMENCEMENT OF PROCEEDINGS

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WHAT IS REQUIRED ON THE NTA?
INA § 239 / 8 C.F.R. § 239

- (A) THE NATURE OF THE PROCEEDINGS AGAINST THE ALIEN
- (B) THE LEGAL AUTHORITY UNDER WHICH PROCEEDINGS ARE CONDUCTED
- (C) THE ACTS OR CONDUCT ALLEGED TO BE IN VIOLATION OF LAW
- (D) THE CHARGES AGAINST THE ALIEN AND THE ALLEGED VIOLATIONS
- (E) THE ALIEN MAY BE REPRESENTED BY COUNSEL AND THE ALIEN WILL BE PROVIDED A PERIOD OF TIME TO SECURE COUNSEL AND A CURRENT LIST OF COUNSEL
- (F) ALIEN MUST PROVIDE AN ADDRESS AND TELEPHONE NUMBER WHERE HE MAY BE CONTACTED
- (G) TIME AND PLACE OF WHERE PROCEEDINGS ARE TO BE HELD

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WHAT CONSTITUTES PROPER SERVICE?



- PERSONAL SERVICE OF NTA
- IF NOT PRACTICABLE-REGULAR MAIL-LAST KNOWN ADDRESS
- SERVICE UPON COUNSEL OF RECORD
- PRESUMPTION THAT IF IT WAS MAILED, THEN RECEIVED BY ALIEN. (MATTER OF M-D, 23 I&N DEC.540 BIA 2002)

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YOU'VE GOT THE NTA- NOW WHAT?

- READ ALL INFORMATION VERY CAREFULLY
- ARE THE FACTUAL ALLEGATIONS CORRECT?
- DOES IT CONTAIN ALL OF THE REQUIRED INFORMATION UNDER THE REGULATIONS?
- WAS IT SIGNED BY THE RIGHT PERSON?
- IS YOUR CLIENT IN §212 PROCEEDINGS OR §237 PROCEEDINGS?
- CAN THE GOVERNMENT SUSTAIN THE LEGAL CHARGES AGAINST YOUR CLIENT?
- DOES THE FACTUAL ALLEGATION RELATE TO THE ALLEGED GROUND OF REMOVAL/INADMISSIBILITY?

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BURDENS OF PROOF

- IF YOU ARE IN §237 PROCEEDINGS, THEN THE GOVERNMENT HAS THE BURDEN OF PROOF TO ESTABLISH THAT THE ALIEN IS DEPORTABLE BY "CLEAR AND CONVINCING EVIDENCE"- INA §240(C)(1)
- IF YOU ARE IN §212 PROCEEDINGS, THEN THE BURDEN IS ON THE ALIEN TO SHOW "CLEARLY AND BEYOND A DOUBT" ENTITLEMENT TO ADMISSION OR BY "CLEAR AND CONVINCING EVIDENCE" THAT THE ALIEN IS LAWFULLY PRESENT PURSUANT TO A PRIOR ADMISSION- INA §240(C)(2)

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