

# Do I need an attorney in my removal proceedings?

## Tales from the Arena



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REMOVAL proceedings create understandable apprehensions because they could ruin dreams of a better life in the US. Removal also entails consequences that would affect an individual for years to come. A person removed from the US cannot return for a period of 10 years. Opportunities are lost. Families are torn apart. The deportee and his relatives in the US suffer in unimaginable ways. If the stakes are this high one would imagine that a person who faces removal proceedings would exhaust all available means to avoid the catastrophe of removal.

However, facts belie this impression. Statistics from the Executive Office for Immigration Review (EOIR), which includes the Immigration Judges (IJ) and the Board of Immigration Appeals (BIA), paint a disturbing picture. In 2010, there were 122,465 aliens who were represented by counsel in their removal proceedings but there were 164,742 aliens who were not represented. Even IJs are concerned by this situation because they have to take extra care and spend additional efforts in explaining matters to unrepresented aliens to protect their rights. It comes as no surprise then that in 2010, out of the 229,909 cases disposed by the IJs, 166,424 resulted in removal. Thus, a staggering 74.7 percent of all IJ case dispositions ended in removal. Only 30,838 obtained relief or 13.8 percent and 24,317 or 10.9 percent had their cases terminated because the charges could not be sustained.

This leads us to wonder how the presence of counsel could

make a difference in removal proceedings. I'm not inclined to think that the presence of counsel would magically transform a lost cause into an astonishing victory. That's pure fantasy. On the other hand, I cannot deny that an inspired defense by counsel could spell the difference between removal and relief. Despite the inherent dangers of removal proceedings, one should recognize the rare opportunities that might present themselves for obtaining a green card in these proceedings. Somewhere between illusion and despair, lies reality. This is no less true in removal proceedings. The value of counsel in removal proceedings is to help the alien distinguish between a faint hope and a doomed cause, between a probably winning case and a definitely losing argument, between the possibility of relief and the certainty of removal.

Unfortunately, the majority of aliens in removal proceedings will never know the difference because they do not have counsels to guide them. Guidance does not necessarily mean that counsel would always find relief for the alien. The availability of relief depends to a large extent on the law. Not everyone is entitled to relief. If removal is warranted, the alien will be removed no matter how the IJ sympathizes with his plight. However, guidance from counsel may also take the form of advising the alien to accept voluntary departure when there are no other alternatives. Departing voluntarily and graciously has its own advantages. It could spare the alien from unnecessary costs. It could also enable the alien to return to the US within a short period. On the other extreme, guidance may take the form of advising the alien to exhaust all available remedies despite

initial setbacks based on the assessment that there is a reasonable interpretation of the law that favors the alien and that interpretation would withstand appellate scrutiny.

One cannot ignore the fact that some aliens who proceed without counsel during their removal hearings do so based on financial constraints. That is unfortunate and unavoidable. However, there might well be a segment of those unrepresented aliens who are unrepresented not by necessity but by choice. This phenomenon exists in the realm of green card and citizenship applications before USCIS. Some applicants submit applications before USCIS without the assistance or benefit of counsel. This is inspired by confidence as much as by thrift. In most cases, all ends well. But in some disturbing cases, unrepresented applicants are blindsided by obscure legal provisions or gray areas of the law. When this happens, the denial of the application is followed by costly appeals or re-filings that could have been averted by obtaining the advice of counsel at the beginning of the application process. Thus, the anticipated savings in not hiring counsel turn into unexpected expenses and even permanent disqualification from obtaining benefits when things go terribly wrong. That is unfortunate but avoidable. The same is true for unrepresented aliens in removal proceedings. If one decides to fight removal and his means permit it, he should hire counsel.

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