

## MITIGATION GUIDANCE

There may be occasions in which the Determining Official decides that a grant of remission of forfeiture to an owner-petitioner or lienholder-petitioner is not justified, while (at the same time) a denial of all relief from forfeiture is too harsh. So, mitigation of forfeiture may be granted in those circumstances where the petitioner's case does not justify remission, yet extenuating circumstances exist. For instance:

- Some relief should be granted to avoid extreme hardship; or
- Return of the conveyance and imposition of a monetary penalty will promote the interests of justice and will not diminish the deterrent effect of Section 274(b) of the INA

Mitigation penalty assessments should be designed to create a deterrent effect by penalizing a *particular* individual for committing a specific violation(s). A penalty is generally calculated to impose a punishment that is commensurate with the extent or degree of the petitioner's culpability. The penalty has a "deterrent" effect, to the extent that it represents to the violator something more than just the "price of doing business" or it otherwise punishes the violator in a realistic manner.

In general, a penalty should be an amount which is consistent with the extent or degree of misconduct and the appraised value of the conveyance. More significant violations, of course, justify higher or harsher penalties, while less-serious violations warrant lower penalties. While the severity of the violation will always be a consideration, there are many other factors which may or *may* not be present in any particular case. These factors, such as humanitarian concerns, petitioner cooperation, *etc.*, *may* at times outweigh the seriousness of the offense.

The apparent financial resources of the petitioner may also be considered in determining an appropriate penalty. Since the enforcement objective in mitigation is deterrence, the assessed penalty must meet this goal, while taking into consideration the petitioner's personal financial means. Therefore, a minimal penalty may be sufficient to deter a petitioner of limited financial means but be no more than a "nuisance" to someone with significant resources.

Incorporating the foregoing considerations into setting an appropriate penalty increases the likelihood that the desired deterrent effect will be achieved, while maintaining proportionality (based on individual financial means) and basic fairness

In adjudicating petitions for mitigation of forfeiture, Service personnel should remember to review and consider every case, individually, based on its own merits under law and regulation. In that regard, the "Decision making Factors" below are intended as a guide, not all encompassing list.

***Factors in Decision-making***

In making mitigation decisions consideration should be given to the following factors:

**Culpability /Aggravating Factors:**

1. Smuggling for financial gain
2. Vehicle altered for the purpose of smuggling
3. Hazardous conditions created by smuggler
4. Previous history of alien smuggling
5. Concealment of smuggled aliens
6. Number of aliens smuggled
7. Number of individuals and vehicles involved in the conspiracy to violate the law
8. Documented false claim to U.S. citizenship or lawful permanent resident status
9. Verbal false claim to U.S. citizenship or lawful permanent resident status
10. Presentation of false immigration documents (counterfeit, altered or fraudulently obtained)
11. Intending immigrant
12. Returning to illegally held residence
13. False statements made at time of seizure
14. Record of prior immigration violations
15. Material false statements under oath presented in petition
16. Persistence in making false claims or misrepresentations throughout seizure/forfeiture/petition process; violation spanned several hours; opportunity to recant ignored
17. Complexity of the conspiracy (i.e., planned well in advance, rehearsed misrepresentations, premeditated violation, etc.)
18. History of criminal activity
19. Degree petitioner's knowledge of circumstances surrounding the violation or inadmissibility

***Mitigating Factors***

1. First alien smuggling violation
2. Family relationship
3. Incidental nature of entry (Temporary visit, lost, etc.)
4. Hardship issues for petitioner
5. Admission of wrongdoing
6. Minimal level of knowledge of inadmissibility
7. Lack of criminal record

8. Lack of prior immigration violations
9. Negative economic consequences of seizure and forfeiture
10. Presentation of sworn testimony in petition corroborating violator's lack of intent to violate the law
11. Character references in petition
12. Relationship between smuggler and alien
13. Relationship between petitioner and alien or smuggler
14. Petitioner's lack of knowledge of criminal record of offender
15. Level of cooperation with law enforcement

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