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CHALLENGING A NONIMMIGRANT VISA REVOCATION IN REMOVAL PROCEEDINGS

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A visa is a travel document and is not the same as having a nonimmigrant status. Ordinarily, revocation of an F-1 visa while the student is in the United States prevents the student from using that visa for a future admission until they obtain a new visa stamp, but does not by itself terminate nonimmigrant status. That familiar distinction, however, does not end the inquiry. Congress expressly made deportable a noncitizen "whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked" under INA § 221(i). *See* INA § 237(a)(1)(B). Thus, DHS may attempt to convert the State Department's revocation of the visa foil into a charge of deportability even when the F-1 student has continued to attend school and otherwise complied with the conditions of status.

THE STATUTORY BASIS FOR REVIEW

INA § 221(i) gives the Secretary of State or a consular officer authority to revoke a visa "at any time, in his discretion." It expressly forecloses judicial review of the revocation—including review through habeas corpus, mandamus, or the All Writs Act—except in the context of a removal proceeding when the revocation provides the sole ground for removal under INA § 237(a)(1)(B). The bar applies to review of the revocation itself; it does not necessarily foreclose habeas or other review of a legally distinct claim concerning detention, transfer, or another collateral government action merely because a visa revocation appears in the factual background.

The regulation likewise confirms broad revocation authority, including

provisional revocation, while requiring notice only "if practicable." 22 C.F.R. § 41.122. The regulation should nevertheless be read together with the governing statute and the State Department's own rules and procedures. Because there appears to be no reported decision defining the scope of review permitted by § 221(i) in removal proceedings, the respondent should first require DHS to prove that an authorized official actually revoked the visa, that the revocation was final and remained operative, and that the revocation concerned the visa or other documentation on which the charge rests. The respondent should also preserve the argument that § 221(i)'s review proviso permits the immigration judge to consider legal and constitutional objections to the revocation when it supplies the sole ground of removability, while recognizing that the extent of such review remains unsettled. A dismissal of the criminal charge underlying the revocation may be relevant to that challenge, but does not necessarily establish that the revocation lacked a legally sufficient basis. In all events, DHS must establish the charge of removability by clear and convincing evidence. *See* INA § 240(c)(3)(A); 8 C.F.R. § 1240.8(a).

WHAT THE IMMIGRATION JUDGE CAN DECIDE?

The immigration judge has statutory and regulatory authority to determine removability. INA § 240(a)(1), (c)(1)(A); 8 C.F.R. § 1240.1(a)(1). If the only charge is the visa-revocation clause of § 237(a)(1)(B), the judge must determine whether DHS has proved every element of that charge. The respondent should further argue that § 221(i)'s express exception permits the presentation of legal and constitutional objections to the revocation in that proceeding; otherwise, the statutory phrase permitting review "in the context of a removal proceeding" would appear to do no work. Because no reported decision has defined the scope of that review, however, counsel should preserve the argument without assuming that the immigration judge may reconsider every factual or discretionary premise underlying the State Department's action.

That does not necessarily mean that an immigration judge can order the Department of State to reissue or reinstate a visa. The immigration judge may terminate proceedings if DHS fails to prove deportability. The respondent should also preserve the argument that termination is warranted if the revocation on which the sole charge depends was legally ineffective, while recognizing that the immigration judge's authority to adjudicate the underlying validity of the revocation remains unsettled. Counsel should build the

administrative record with the revocation notice, the State Department communication, the consular file to the extent obtainable, the SEVIS history if the respondent is a student, the Form I-20 record, proof of continuing study, and any evidence bearing on the stated ground for revocation. If the asserted basis implicates speech or an unsupported inadmissibility finding, those issues should be raised expressly before the immigration judge and again before the BIA.

WHY A PETITION FOR REVIEW IS STILL NECESSARY?

If the judge sustains the charge, the respondent should appeal to the BIA and exhaust each legal and constitutional claim. That course is reinforced by Acting Director Sirce E. Owen's Policy Memorandum 25-45, *Consideration of Constitutional Arguments in Agency Adjudications* (Sept. 5, 2025), which states that EOIR adjudicators generally may consider arguments arising under constitutional law and, in particular, constitutional challenges to the application of a statute in an individual case, subject to limited exceptions. Judicial review of the final order of removal would then ordinarily be sought through a petition for review in the appropriate court of appeals under INA § 242, rather than through an action in federal district court under the Administrative Procedure Act. The petition for review must ordinarily be filed within 30 days of the final order. INA § 242(b)(1). Counsel should invoke the court of appeals' authority to review preserved questions of law and constitutional claims, while recognizing that no reported decision appears to have determined whether, or to what extent, § 221(i) permits review of the underlying discretionary revocation in that posture.

The principal practical obstacle may be access to the revocation record. Visa records are generally confidential under INA § 222(f), and DHS may rely on database entries, interagency communications, or summaries rather than the underlying consular material. Counsel should request the documents on which DHS relies, object when a conclusory notation does not establish who revoked the visa, when the action occurred, whether it remains operative, or the statutory basis invoked, and seek appropriate safeguards if the government invokes classified or law-enforcement-sensitive information. The respondent need not disprove an undisclosed rationale; DHS bears the burden of proving the charged ground with reliable evidence in the removal record.

The "sole ground" limitation is crucial. If DHS pleads both revocation and a separate status violation—for example, failure to pursue a full course of study—the government may argue that § 221(i)'s review proviso has not been triggered. Counsel should contest unsupported alternative allegations, demand clarity about whether the charges are genuinely independent, and preserve the argument that the government cannot defeat Congress's review mechanism merely by repackaging the same alleged conduct as a second charge.

HAS A COURT OF APPEALS RECENTLY DECIDED THE ISSUE?

As of October 2026, there does not appear to be a recent published BIA precedent or reported federal court of appeals decision squarely adjudicating a petition for review in which an F-1 student's visa revocation was the sole ground of removability under § 237(a)(1)(B). The scarcity of authority is itself significant. The 2025 student cases generated extensive district-court litigation over SEVIS terminations, detention, and constitutional claims, but they did not produce a reported merits decision defining the scope of § 221(i) review after an immigration judge and the BIA entered a final removal order. See Congressional Research Service, *Visa Issuances, Refusals, and Revocations: Selected Current Legal Considerations*, R49040, at 18–20 (July 21, 2026) (discussing visa revocations inside the United States, removal proceedings following revocation, and the 2025 student-visa enforcement actions, but identifying no modern reported appellate decision resolving the scope of § 221(i) review).

Older authority such as *Knoetze v. U.S. Department of State*, 634 F.2d 207 (5th Cir. 1981), reviewed a visa revocation under the Administrative Procedure Act and rejected a due-process challenge based on inadequate notice. Congress subsequently amended § 221(i) in 2004 to foreclose judicial review of a revocation except in the specified removal-proceeding context. *Knoetze* therefore does not define the nature or scope of the review now preserved when revocation supplies the sole ground of removal under § 237(a)(1)(B). Nor should decisions concerning the revocation of an approved visa petition—such as *Bouarfa v. Mayorkas*, 604 U.S. 6 (2024), which addressed DHS's authority under § 205, 8 U.S.C. § 1155—be conflated with the State Department's revocation of a visa under § 221(i).

THE ÖZTÜRK CASE: A SUCCESSFUL IJ CHALLENGE, BUT NO PETITION-FOR-REVIEW PRECEDENT

Rümeysa Öztürk's case provides a useful recent illustration of the administrative route, although it did not culminate in a court of appeals decision reviewing a final removal order. After the State Department revoked her F-1 visa and ICE arrested her in March 2025, she pursued parallel challenges: a habeas and constitutional action concerning her detention, a district-court challenge to DHS's termination of her SEVIS record, and a defense to removability in immigration court. A federal district court ordered her released in May 2025; the Second Circuit's reported decisions in *Öztürk v. Hyde*, 136 F.4th 382 (2d Cir. 2025), and *Öztürk v. Hyde*, 155 F.4th 187 (2d Cir. 2025), concerned habeas jurisdiction and detention—not review of the visa revocation under § 221(i).

On January 29, 2026, Immigration Judge Roopal Patel terminated Öztürk's removal proceedings after concluding that DHS had not met its burden of proving removability. *See* Petitioner-Appellee's Rule 28(j) Letter Regarding Removal Proceedings, *Öztürk v. Hyde*, No. 25-1019 (2d Cir. Feb. 9, 2026). Because the IJ's decision and the immigration-court record have not been made public, it is not known whether the IJ rejected the legal basis for the visa revocation, found DHS's evidence of revocation insufficient, concluded that revocation did not establish the charged statutory ground, relied on the restoration of Öztürk's SEVIS record, or identified some other deficiency in DHS's case. The ruling therefore demonstrates that DHS's reliance on an F-1 visa revocation did not automatically establish removability in Öztürk's case, but it cannot presently be cited for a specific construction of INA §§ 221(i) or 237(a)(1)(B). DHS appealed to the BIA, but the parties later jointly sought termination of the BIA proceedings as part of a settlement. The government acknowledged that Öztürk had been in lawful nonimmigrant status when DHS terminated her SEVIS record and had remained in lawful status while in the United States; her SEVIS record was to be treated as though the termination had never occurred. She completed her doctorate and returned to Turkey voluntarily in April 2026.

Öztürk's case demonstrates that a respondent can prevail before the immigration judge by requiring DHS to prove a legally sufficient ground of removability despite the prior visa revocation. Second, the case does not

answer the ultimate appellate question posed here: there was no final BIA removal order and hence no petition for review asking a circuit court to define the scope of review preserved by § 221(i).

PRESERVING THE VISA-REVOCATION CHALLENGE

1. **Separate visa revocation from status termination.** Determine whether DOS revoked only the visa, DHS terminated SEVIS, the school terminated the student's record, or some combination occurred. Each action has a different decisionmaker and legal consequence.
2. **Pin down the charge.** If the NTA relies solely on the visa-revocation language in § 237(a)(1)(B), invoke § 221(i)'s express review proviso. If DHS alleges a separate status violation, require proof of that independent charge.
3. **Contest removability before the IJ.** Challenge the fact, authorization, finality, and legal validity of the revocation; object to hearsay or conclusory database evidence; and insist that DHS carry its clear-and-convincing burden.
4. **Create and exhaust the record.** Raise statutory, regulatory, and constitutional objections before the IJ and BIA, even if the agency claims it lacks authority to grant affirmative relief against DOS.
5. **File a timely petition for review.** After the BIA's final order, seek review in the court of appeals and request a stay of removal where necessary. Frame the issue as review expressly preserved by § 221(i) in the context of the final removal order.

CONCLUSION

A visa revocation does not ordinarily erase a nonimmigrant's status, but Congress has made the revocation itself a possible ground of deportability. When DHS uses that ground alone, Congress has also preserved review. The immigration judge must first adjudicate the charge and should be asked to assess the legal effectiveness of the revocation; the BIA must then be given the opportunity to correct any error; and a court of appeals reviews the resulting final order through a petition for review. As a practical matter, nonimmigrants whose visas have been revoked while they remain in the United States generally do not appear to be placed in removal proceedings based solely on

the revocation. The absence of reported decisions may reflect the relative rarity of such cases. It may also reflect a reluctance by the government to pursue a charge that could produce precedent confirming a respondent's ability to challenge the revocation when it supplies the sole ground of deportability under INA § 237(a)(1)(B).