# Penn State Law

## Practitioner's Toolkit on Cancellation of Removal for Lawful Permanent Residents

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# I. PREFACE

This toolkit is a compilation of information about INA §240A(a), or LPR Cancellation of Removal. The toolkit is intended to serve as a resource for immigration attorneys representing LPR clients facing removal from the United States. In addition to describing the LPR cancellation statute, the toolkit also provides information about aggravated felonies, the discretionary component of cancellation, individuals who are ineligible for LPR cancellation, options available to those who are ineligible for LPR cancellation, and an analysis of steps to take in order to apply for LPR cancellation.

The Center for Immigrants' Rights (Center) is an in-house clinic at the Pennsylvania State University Dickinson School of Law whose mission is to represent immigrants' interests through legal excellence, advocacy, education, and collaboration with key stakeholders and the community. The Center teaches law students the skills necessary to be effective immigration advocates and attorneys, primarily through organizational representation, where students work on innovative advocacy and policy projects relating to U.S. immigration policy and immigrants' rights. The Pennsylvania Immigration Resource Center (PIRC) is located less than a mile from York County Prison and has become the leading source of legal services to immigrants detained by DHS in Pennsylvania. PIRC offers limited direct pro bono representation to the most vulnerable immigrant detainees. In providing legal and educational resources to detained populations, PIRC seeks to empower unrepresented immigrants to evaluate and manifest their defenses against deportation from the United States. This toolkit was co-authored by Rosalind Newsholme and Modesta Salmeron, law students in the Center, under the supervision of Center Director, Professor Shoba Sivaprasad Wadhia. Feedback and edits were also provided by Megan Bremer, Managing Attorney at PIRC.

In creating the toolkit, we have reviewed and researched legal standards, case law, practice advisories, and related material pertaining to LPR Cancellation of Removal. We have spoken to immigration 'stakeholders' and collected suggested litigation strategies and sample documents to include in the toolkit. The sample documents include motions, memoranda, briefs, exhibit lists for supporting documents, certificates of service, direct examination questions, application checklists, client preparation checklists, and sample letters of recommendation. In addition, we have included sample forms from EOIR and the USCIS, and relevant case law and summaries.

Throughout this toolkit, we will use the following acronyms to refer to specific terminology:

- AEDPA – Anti-Terrorism and Effective Death Penalty Act of 1996
- BIA – Board of Immigration Appeals
- DHS – Department of Homeland Security
- EOIR – Executive Office for Immigration Review
- IIRIRA – Illegal Immigrant Reform and Immigrant Responsibility Act of 1996
- INA – Immigration and Nationality Act
- LPR – Lawful Permanent Resident
- NTA – Notice To Appear
- USCIS – United States Citizenship and Immigration Services

The 'stakeholders' involved with the toolkit are attorneys and advocates in the field of immigration law who have generously contributed advice and work from LPR cancellation cases that they have worked on previously. The Center and PIRC acknowledge the following stakeholders for their insights and contributions to this toolkit:

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# II. INTRODUCTION

## HISTORY OF LPR CANCELLATION OF REMOVAL

In 1996, Congress enacted two major pieces of legislation that modified the statutory requirements of relief from removal. The 1996 enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) merged the former § 212(c) waiver-of-deportation and suspension-of-deportation methods of relief, and consolidated them into a statutory scheme called "cancellation of removal."[1] One form of relief is cancellation of removal for LPRs and another form of relief is cancellation of removal for non LPRs. The other major piece of legislation was the Anti-Terrorism and Effective Death Penalty Act (AEDPA).[2]

Both IIRIRA and AEDPA greatly expanded the enumerated crimes falling under "aggravated felony" thereby limiting the forms of relief many noncitizens would otherwise be eligible for. IIRIRA applied special provisions and restrictions on noncitizens charged with aggravated felonies. For instance, an LPR charged with an "aggravated felony" after April 1, 1997 is ineligible for § 240A(a) Cancellation of Removal.[3]

Though Congress replaced § 212(c) relief with LPR cancellation of removal § 240A(a), § 212(c) relief still can be invoked in some instances by noncitizens whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea.[4]

INA § 240A(a) describes a remedy used most commonly for LPRs who face removal based on their criminal history or record.[5] INA § 240A(b) refers to cancellation of removal for certain nonpermanent residents, available for noncitizens who are out of status. Cancellation of Removal for non-LPRs is available to "an alien who is inadmissible or deportable."[6] Based on a plain reading of the statute, an LPR noncitizen who does not qualify for § 240A(a) LPR Cancellation but meets the requirements of § 240A(b) could conceivably invoke this form of relief.[7] The language of § 240A(b) applies to all noncitizens who may qualify, unlike the

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[1] Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, div. C; 110 Stat. 3009, 3009-46 to 724 (1996); H.R. Rep. 104-863 (1996). 104th Cong. 2d Sess,; H.R. Conf. Rep. No. 104-828, 104th Cong. 2d See. (1996); S. Rep. 104-249, 104th Cong. 2d Sess. (1996); 142 Cong. Rec. S4730-01, §150 (1996); 142 Cong. Rec. H2378-05, § 309 (1996); 8 USC §§ 1229b(a), 1229b(b) (2006); INA §§ 240A(a) and 240A(b).

[2] Antiterrorism and Effective Death Penalty Act (AEDPA), Pub. L. No. 104-132, title IV; 110 Stat. 1214, 1258-81, §440(e) (1996); 8 U.S.C. § 1101(a)(43) (2006).

[3] 8 U.S.C. § 1229b(a)(3) (2006); INA § 240A(a)(3).

[4] 8 C.F.R. §§§ 1003, 1212, 1240 (2004); INS v. St. Cyr, 533 U.S. 289 (2001); Under the former § 212(c) relief, an LPR who committed a crime or other act rendering him or her inadmissible or deportable from the United States is eligible for a waiver of deportation. This provision provides a waiver of what were known as exclusion grounds for long-term lawful permanent residents, but through a course of administrative and judicial decisions, became available to permanent residents in deportation proceedings as well. It allows lawful permanent residents rendered deportable primarily because of criminal convictions an opportunity to show countervailing equities to the immigration judge and thereby appeal for relief from deportation, provided they have been lawfully domiciled in the United States for seven years. Also, the former suspension of deportation or § 244(a) relief (now amended as INA § 240A(b)) provided a method for certain noncitizens to establish eligibility for discretionary suspension of deportation and obtain a grant of lawful status.

[5] Stephen H. Legomsky and Cristina M. Rodriguez, Immigration and Refugee Law and Policy, 595 (5th ed.) (2009).

[6] 8 USC §1229b(b)(1) (2006); INA §240A(b)(1).

[7] Stephen H. Legomsky and Cristina M. Rodriguez, Immigration and Refugee Law and Policy, 595 (5th ed.) (2009).

language of § 240A(a) that applies only to LPRs. The focus of this toolkit however is limited to § 240A(a): LPR Cancellation of Removal. § 240A(a) reads as follows:

> *The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien-*
> *(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,*
> *(2) has resided in the United States continuously for 7 years after having been admitted in any status, and*
> *(3) has not been convicted of any aggravated felony.*[8]

Under INA § 240A(a), the Attorney General may cancel the removal of a noncitizen and allow the noncitizen to remain as a lawful permanent resident of the United States.[9] The relief of cancellation under INA § 240A(a) applies to eligible noncitizens placed in removal proceedings on or after April 1, 1997.[10] Under § 240A(a), an LPR must (1) have been lawfully admitted for permanent residence for not less than five years, (2) have resided in the United States continuously for seven years after having been admitted in any status, and (3) not have been convicted of any aggravated felony.[11] As with most forms of relief, cancellation of removal is granted or denied at the discretion of the Immigration Judge.

INA § 240A(d), also known as the "stop-time" rule, defines when continuous residence or continuous physical presence ends. It states that continuous residence ends at the moment the noncitizen commits certain acts or crimes or is served with a Notice to Appear (NTA) for removal proceedings before an Immigration Judge.[12] Specifically, the time stops accruing "when the alien is served a notice to appear under section 239(a), or (B) when the alien has committed an offense referred to in section 212(a)(2) that renders the alien inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4), whichever is earliest."[13]

In addition to establishing statutory eligibility, the applicant must also show that he or she merits a favorable exercise of discretion.[14] Immigration Judges are vested with the discretion to determine whether cancellation of removal relief should be granted to a particular applicant. An Immigration Judge must balance the adverse factors evidencing the individual's undesirability as a permanent resident with the social and humane considerations presented by the noncitizen to determine whether the granting of relief appears in the best in interest of the United States.[15] When exercising discretion in a cancellation of removal case, an Immigration Judge may consider positive factors such as family ties in the United States, residence of long duration in the United States, evidence of hardship to the applicant and his family if removal occurs, a

[8] 8 USC §1229b(a) (2006); INA §240A(a).
[9] See Id.
[10] Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, div. C; 110 Stat. 3009, 3009-46 to 724 (1996); H.R. Rep. 104-863 (1996). 104th Cong. 2d Sess,; H.R. Conf. Rep. No. 104-828, 104th Cong. 2d See. (1996); S. Rep. 104-249, 104th Cong. 2d Sess. (1996); 142 Cong. Rec. S4730-01, §150 (1996); 142 Cong. Rec. H2378-05, § 309 (1996).
[11] 8 USC §1229b(a) (2006); INA §240A(a).
[12] 8 U.S.C. § 1229b(d) (2006); (2006); INA §240A(d).
[13] 8 U.S.C. § 1229b(d)(1)(B) (2006); INA §240A(d)(1)(B).
[14] See Matter of C.V.T., 22 I. & N. Dec. 7 (BIA 1998).
[15] See Matter of Marin, 16 I. & N. Dec. 581 (BIA 1978).

history of employment, existence of property or business ties, proof of genuine rehabilitation if a criminal record exists, and other evidence attesting to the applicant's good moral character.[16] An Immigration Judge may also consider negative factors such as the nature and underlying circumstances of the removal, additional significant immigration violations, the existence of a criminal record, and other evidence of bad character or undesirability.[17]

[16] See Matter of C.V.T., 22 I. & N. Dec. 7 (BIA 1998).
[17] Ira J.Kurzban, Kurzban's Immigration Law Sourcebook, 985 (11th ed.) (2008).

# III. STATUTE – LPR CANCELLATION OF REMOVAL: INA § 240(A)(a) and 8 U.S.C. §1229b:

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien – (1) has been an alien lawfully admitted for permanent residence for not less than 5 years, (2) has resided in the United States continuously for 7 years after having been admitted in any status, and (3) has not been convicted of any aggravated felony.

# SECTION 1 –
# (1) HAS BEEN AN ALIEN LAWFULLY ADMITTED FOR PERMANENT RESIDENCE FOR NOT LESS THAN 5 YEARS

The key terms under this provision are "lawfully admitted for permanent residence." "Lawfully admitted for permanent residence" means having been lawfully accorded the entry of an alien into the United States after inspection and authorized by an immigration officer."[1] A person who obtains legal permanent status by fraud or mistake is deemed to have not been "lawfully admitted for permanent residence" and thus is ineligible for cancellation.[2]

[1] 8 USC § 1101(a)(20) (2009); INA § 101(a)(20).
[2] See Matter of Koloamatangi, 23 I. & N. Dec. 548 (BIA 2003).

# SECTION 2 –
# (2) HAS RESIDED IN THE UNITED STATES CONTINOUSLY FOR 7 YEARS AFTER HAVING BEEN ADMITTED IN ANY STATUS

An "admission" is a lawful entry of a noncitizen into the United States after inspection and authorization by an immigration officer.[1] A noncitizen who is present in the United States without inspection has not made a lawful admission.[2] Likewise, a noncitizen who was paroled into the United States has not made a lawful admission.[3] Hence, a noncitizen's entry without inspection or a parole does not commence continuous residence.

Importantly, § 240A(a)(2) does not require an alien to have resided in the United States in a lawful immigration status; rather it requires an admission in "any status."[4] Also, the continuous physical presence requirement does not apply to a noncitizen who has served 24 months in active-duty status in the United States armed forces, was in the United States at the time of enlistment or induction, and was honorably discharged.[5]

[1] 8 U.S.C. § 1101(a)(13) (2006); INA § 101(a)(13).
[2] 8 U.S.C. § 1182 (a)(6)(A) (2006); INA § 212(a)(6)(A).
[3] 8 U.S.C. § 1101(a)(13)(B) (2006); INA §101(a)(13)(B).
[4] In re Perez, Int. Dec. 3389 (BIA 1999).
[5] 8 U.S.C. § 1229b(d)(3) (2006); INA § 240A(d)(3).

# SECTION 3 –
# (3) HAS NOT BEEN CONVICTED OF ANY AGGRAVATED FELONY

An LPR is deportable if convicted of an aggravated felony at any time after admission.[1] Furthermore, under INA §240A(a)(3), an LPR convicted of an aggravated felony is ineligible for cancellation of removal relief. As mentioned earlier, the list of aggravated felonies under INA §101(a)(43) expanded as a result of two pieces of legislation: the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). According to one scholar, "These Acts are massive and complicated pieces of legislation which curtail, and in most cases end the U.S. life for an alien, and in numerous cases cause extreme hardships and undue separation of families."[2]

An attorney representing an applicant for LPR cancellation of removal should be aware of the extensive list of aggravated felonies under INA §101(a)(43). An attorney should also be aware that the aggravated felony definition applies retroactively, which means that a crime that did not constitute an aggravated felony at the time of an applicant's conviction may be classified as such at the time of application for LPR cancellation. When this retroactivity occurs, the previous crime will be considered an aggravated felony and will prevent the LPR from successfully obtaining cancellation of removal.

An aggravated felony is defined under **INA §101(a)(43)** as:
(A) murder, rape, or sexual abuse of a minor[3];
(B) illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18)[4];
(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of Title 18) or in explosive materials (as defined in section 841(c) of that title);
(D) an offense described in section 1956 of Title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;
(E) an offense described in –

(i) section 842(h) or (i) of Title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) or Title 18 (relating to firearms offenses); or
(iii) section 5861 of Title 26 (relating to firearms offenses);

[1] Matter of Rosas, 22 I. & N. Dec. 616 (BIA 1999); 8 U.S.C. §1227(a)(2)(A)(iii) (2006); INA §237(a)(2)(A)(iii).
[2] Chea Sochet, The Evolving Definition of an Aggravated Felony, *available at* http://www.employmentvisaimmigration.com/images/Articles/DefinitionFelony.pdf (last visited Sept. 22, 2009).
[3] Matter of Small, 23 I. & N. Dec. 448 (BIA 2002). Sexual abuse of a minor includes people charged with misdemeanor sexual abuse.
[4] Wilson v. Ashcroft, 350 F.3d 377 (3d Cir. 2003). Drug trafficking crimes include "any felony punishable under the Controlled Substances Act, the Controlled Substance Import and Export Act, or the Maritime Drug Law Enforcement Act." 18 U.S.C. §924(c)(2) (2006). The statute requires that the drug being sold is a controlled substance or otherwise falls under the federal law crimes. *See* Id.

(F) a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment is at least one year.

- Under 18 U.S.C. §16(a), "The term 'crime of violence' means an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another."[5]
- Under 18 U.S.C. §16(b), "The term 'crime of violence' means any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."[6]
- Crime of violence under 18 U.S.C. §16 has been ruled to include[7]:
  Arson in the first degree;
  Assault (simple);
  Assault in the second degree;
  Assault in the third degree;
  Assault of public safety;
  Assault and battery;
  Assault and battery on a police officer;
  Battery (simple);
  Battery (aggravated);
  Burglary of a dwelling;
  Burglary of a habitation;
  Burglary of a non-residential structure or vehicle;
  Child abuse;
  Child, lewd acts upon;
  Child, risk of injury;
  Criminal contempt;
  Domestic abuse under Massachusetts law;
  Firearm, aggravated discharge of;
  Imprisonment;
  Indecent assault and battery;
  Indecency with a child;
  Injury (risk of) to a minor;
  Use of interstate commerce facility in the commission of a murder-for-hire;
  Kidnapping;
  Lewd assault;
  Manslaughter in the first degree;
  Mayhem;
  Menacing;
  Resisting arrest;
  Robbery;
  Sexual abuse;
  Sexual assault;
  Sexual battery;
  Spousal corporal injury;

[5] 18 U.S.C.S. §16(a) (West 2009).
[6] 18 U.S.C.S. §16(b) (West 2009).
[7] Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 166-190, (11th ed.) (2008).

Statutory rape;
Terrorism;
Terrorist threats;
Threats;
Criminal trespass;
Vehicular homicide;
Unauthorized use of a vehicle;
Use of vehicle to facilitate intentional discharge of firearm;
Weapon, exhibiting a deadly weapon with intent to evade arrest;
Weapon, possession with intent to use

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year. Examples include[8]:

Attempted possession of stolen property;
Attempted robbery;
Larceny (theft of services);
Possession of stolen mail;
Possession of stolen property;
Theft;
Theft of services;
Petty theft with a prior jail term;
Vehicle theft

(H) an offense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom). Ransom offenses include[9]:

Using interstate communications to demand ransom or threaten kidnap;
Using mails to make threatening communication;
Making threatening communications from foreign countries;
Receiving, possessing, or disposing of ransom money or property

(I) an offense described in section 2251, 2251A, or 2252 of Title 18 (relating to child pornography). Child pornography offenses include[10]:

Employing, using, or coercing minors to engage in pornography;
Selling or transferring custody of a child with knowledge that the child will be used for pornography;
Receiving or distributing child pornography

(J) an offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that –

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;
(ii) is described in section 2421, 2422, or 2423 of Title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or
(iii) is described in any sections 1581-1585 or 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

[8] *See* Id.
[9] *See* Id.
[10] *See* Id.

(L) an offense described in –

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18;

(ii) section 421 of Title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) section 421 of Title 50 (relating to protecting the identity of undercover agents);

(M) an offense that –

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 274(a) [8 U.S.C.A. §1324(a)] (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

(O) an offense described in section 275(a) [8 U.S.C.A. 1325(a)] or 276 [8 U.S.C.A. 1326] committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of Title 18, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.

# SECTION 4 – DISCRETIONARY COMPONENT OF LPR CANCELLATION OF REMOVAL

In addition to satisfying the three statutory eligibility requirements under INA §240A(a) (applicant (1) has been an alien admitted for permanent residence for not less than 5 years; (2) has resided in the U.S. continuously for 7 years after having been admitted in any status and (3) has not been convicted of any aggravated felony), **an applicant for LPR cancellation of removal must establish that he or she warrants relief as a matter of discretion.** An Immigration Judge has discretion to determine whether a particular applicant should be granted cancellation of removal relief. An Immigration Judge must balance the adverse factors evidencing the individual's undesirability as a permanent resident with the social and humane considerations presented in his or her behalf to determine whether the granting of relief appears in the best in interest of the United States.[1]

When exercising discretion in an LPR cancellation of removal case, an Immigration Judge may consider **positive factors.** The BIA described the following positive factors in Matter of C-V-T, 22 I. & N. Dec. 7 (BIA 1998):

- Family ties within the U.S.;
- Residency of long duration in the U.S.;
- Evidence of hardship to the respondent and family if deportation occurs;
- Service in Armed Forces;
- History of employment;
- Existence of property or business ties;
- Existence of value and service to the community;
- Proof of genuine rehabilitation if a criminal record exists;
- Evidence attesting to a respondent's good character.

In addition to the aforementioned positive factors, the BIA also described in Matter of Arreguin, 21 I&N Dec. 38 (BIA 1995) the existence of U.S. citizen minor children as a positive factor that an Immigration Judge may consider.

In regard to **positive factors**, it is important to note that equities that accrue after a final order or after knowledge of potential deportation are diminished.[2] In addition, the BIA may give less weight to a record of employment, where employment was unauthorized, and long residence in the U.S., where status was undocumented.[3]

[1] Matter of Marin, 16 I. & N. Dec. 581 (BIA 1978).
[2] Matter of Correa, 19 I. & N. Dec. 130 (BIA 1984).
[3] Varela-Blanco v. INS, 18 F.3d 584 (8th Cir. 1994).

An attorney representing an applicant for LPR cancellation of removal should prepare documents in support of the **positive factors** relating to discretion as follows:[4]

- Family ties within the U.S.:
  - A copy of the marriage certificate if the noncitizen is married or, if the noncitizen is divorced, then a certified copy of any divorce decrees and, where relevant, maintenance or support orders, child support orders, and visitation orders;
  - Copies of birth certificates of natural and adopted children;
  - Copies of daycare records and receipts;
  - Proof of child support payments;
  - Tax returns showing the child as dependent;
  - Copies of evidence of family members in the U.S., including U.S. birth certificates, U.S. passports, certificates or naturalization or citizenship, alien registration cards, employment authorization documents, I-94s, other evidence of authorized presence in the U.S., etc.; family members for whom evidence should be provided include spouse, children, grandparents, aunts, uncles, siblings, and grandchildren;
  - School records of children (report cards, rewards, letters from teachers);
  - Vaccination records of children;
  - Evidence of community involvement of children (sports, church, scouts);
  - Letters from counselors or teachers regarding children's progress in school;
  - Evidence of community involvement of spouse (employment, church, community relations, education);
  - Copies of life insurance policy showing spouse or children as beneficiary;
  - Death decrees, if appropriate;
  - Affidavits from family members establishing their relationship with the applicant and existence (or lack thereof) of family in the country designated for removal;
  - Photographs

- Residency of long duration in the U.S.:
  - Copies of rental agreements, house title, mortgage, and any other documents proving the noncitizen's residence in the U.S.;
  - Apartment leases;
  - Mortgage or rent payments;
  - Deeds
  - Medical and/or dental records of the noncitizen;
  - Copies of LPR cards (Green Cards), immigration stamps in passports, Forms I-94;
  - DHS receipts and immigration records;

[4] The following documents in support of the positive factors relating to discretion have been derived from different sources including: Anna M. Gallagher and Maria Baldini-Potermin, Immigration Trial Handbook §6:29 (2009); M. Holper, Esq., Recommended Supporting Documents for LPR Cancellation Case, *available at* Appendix VIII: Sample Documents, Briefs, Forms, and Manuals From Stakeholders; J. Ferguson, Supporting Documents: Applications for Cancellation of Removal for Permanent Residents Form EOIR-42A, AILA's Focus on Waivers under the Immigration and Nationality Act (2008), *available at* Appendix VIII: Sample Documents, Briefs, Forms, and Manuals From Stakeholders under 'Troy Elder, Esq.'; J. Herzig, Esq., Checklist for Cancellation of Removal Cases for Certain Permanent Residents, *available at* Appendix VIII: Sample Documents, Briefs, Forms, and Manuals From Stakeholders.

- School records such as report cards or transcripts;
- Bank records;
- Pay stubs;
- Credit card receipts;
- Tax payment records and income tax returns;
- Dated receipts from purchases;
- Prior mail received with postmarks;
- Social security records;
- Telephone or other utility bills;
- Affidavits from friends or acquaintances

- Evidence of hardship to the applicant and family if deportation occurs:[5]
  - Affidavits attesting to the hardship from family members, religious organization members, religious leaders, employer, neighbors, etc.;
  - If the hardship is connected to a family member's medical condition, medical records attesting to that condition and statements from medical providers;
  - Documentation of psychiatric or social problems such as letters from psychologists, psychiatrists, therapists, counselors, copies of treatment records;
  - Evidence of educational or behavioral problems with children such as letters from teachers, principal counselors, other experts or health professionals;
  - Documentation related to country conditions, including unemployment, economic growth, political conditions, educational opportunities, language(s) spoken in country designated for removal, availability of medical care and location of medical facilities, and attitudes toward U.S. citizens if U.S. citizen family members were to move to the country upon removal of the noncitizen from the U.S.

- Service in Armed Forces:
  - If the noncitizen has served in the military, submit a copy of his discharge papers; for male noncitizens, evidence of selective service registration can be obtained at http://www.sss.gov

[5] In many cases where hardship is a component for eligibility for LPR Cancellation, attorneys have found it useful to submit supporting documentation in two scenarios: (1) the applicant's family is forced to leave the U.S. with the applicant when he or she is removed or (2) the applicant is removed from the U.S. and must leave his or her family behind in the U.S. An attorney should submit supporting documentation showing applicant's financial ties to the U.S.; medical problems of the applicant (if any) and the care that he or she currently receives; medical problems of the applicant's children (if any) and care received; the ages of the children; the predicted effects of removal on the children's education; separation from other relatives; the predicted difficulties in adjusting to life in a foreign country; the applicant's support of his or her family in the U.S.; and economic hardship in the event of removal such as evidence of high unemployment in the country of return and the family members' inability to support themselves. *See* Stephen Legomsky and Cristina Rodriguez, Immigration and Refugee Law and Policy, 615, (5th ed.) (2009); Julie Ferguson, Cancellation of Removal for Lawful Permanent Residents – INA 240A(a), AILA's Focus on Waivers under the Immigration and Nationality Act, (2008).

- History of employment:
  - Copies of pay stubs;
  - Social security records;
  - Letters or affidavits from current and former employers verifying dates of employment, position, and salary or wage;
  - Copies of federal income tax returns, Forms W-2 and/or 1099, and any schedules filed; where payment of taxes is owed, evidence of a payment plan agreed to between the noncitizen and the IRS should be submitted to the immigration court along with proof of payments made

- Existence of property or business ties:
  - A copy of the titles(s) of any motor vehicles owned by the noncitizen and/or his spouse;
  - Property title if the noncitizen or his spouse owns a home or other real estate in the U.S.;
  - If the noncitizen runs his own business, copies of the company's income tax returns, a copy of the business license, and other documentation to demonstrate that the company is in compliance with federal and state laws;
  - If the noncitizen is a member of local, state, or national business organizations, a letter from each organization verifying membership and any leadership roles of the noncitizen;
  - Letter(s) from bank(s) regarding account(s) held by the noncitizen, whether the accounts are joint accounts and with whom, and whether the accounts are in good standing

- Existence of value and service to the community:
  - Affidavits and letters from neighbors and community members attesting to the noncitizen's good character and the effect of his removal on family, friends, and the community;
  - Evidence of any community service or volunteer awards or honors;
  - Newsletters or other documents that mention the noncitizen's community or volunteer work;
  - Letters from any religious organizations and members of the organization regarding his membership and/or attendance at services and activities;
  - Letters from community organizations in which the noncitizen is involved

- Proof of genuine rehabilitation if a criminal record exists:
  - A certified copy of the noncitizen's criminal record, arrest report, information or indictment, disposition, probation records, community service;
  - Evidence of completion of any prison or jail term(s), community or public service hours, Alcoholic Anonymous (AA) or Narcotics Anonymous (NA) attendance, rehabilitation classes, probation/supervision/conditional discharge/parole, payment of fines and court costs, etc.;
  - Where a noncitizen has reported to a probation officer, a letter from that officer and certificates of completion for classes (i.e., anger management, career development, life skills training) and steps in the AA or NA programs;

  - If relevant, prison records attesting to the noncitizen's participation in rehabilitative activities, including affidavits from counselors, case managers, or prison supervisors;
  - A letter from a prison counselor or chaplain;
  - Declaration from applicant stating how long he/she has been clean, the length of his/her rehab and level of remorse;
  - Declaration from family stating how long applicant has been clean, the length of applicant's rehab and his/her level of remorse;
  - Psychological evaluation, including violence risk assessment or other tests to measure recidivism

- In addition, an attorney representing an applicant for LPR cancellation of removal may prepare documents relating to the education background of the applicant.[6] Such documents may include:
  - Grade school, high school, or GED certificate and college, technical, or vocational school and graduate diplomas if completed;
  - Where a noncitizen has not completed a program, transcripts of courses completed;
  - Certificates for any courses completed related to employment

When exercising discretion in an LPR cancellation of removal case, an Immigration Judge may also consider **negative factors** such as:[7]

- Nature and underlying circumstances of grounds of removal;
- Additional significant immigration violations;
- Existence of criminal record;
- Other evidence of bad character or undesirability

If an attorney has prepared documents in support of the positive factors relating to discretion, he or she may be able to refute any negative factors that an Immigration Judge considers. In addition to submitting supporting documents, an attorney should prepare his or her client to discuss negative factors in a hearing before the Immigration Judge, in case these factors are brought up. An applicant should be prepared to speak honestly about negative factors, to take responsibility for past actions, and to emphasize rehabilitation.[8]

It is important to note that an Immigration Judge may consider all crimes that an applicant has committed, including crimes that are not aggravated felonies, for the purpose of determining whether a favorable exercise of discretion is warranted. While considering such crimes, an Immigration Judge may inquire into circumstances surrounding the commission of the crimes. However, an Immigration Judge may not look to an applicant's criminal record in order to reassess his or her ultimate guilt or innocence.[9]

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[6] Anna M. Gallagher and Maria Baldini-Potermin, Immigration Trial Handbook §6:29 (2009).

[7] Matter of Edwards, 10 I. & N. Dec. 506 (BIA 1964); Matter of Marin, 16 I. & N. Dec. 581 (BIA 1978).

[8] The Florence Immigrant and Refugee Rights Project, *available at* http://www.firrp.org (follow "Publications" hyperlink; then follow "How to Apply For Cancellation of Removal for Certain Legal Permanent Residents" hyperlink), (last visited Nov. 24, 2009).

[9] Matter of Roberts, 20 I. & N. Dec. 294 (BIA 1991).

# SECTION 5 – INDIVIDUALS INELIGIBLE FOR LPR CANCELLATION RELIEF

INA § 240A(c) Aliens ineligible for relief[1]
The provisions of subsection (a) and (b)(1) shall not apply to any of the following aliens:

(1) An alien who entered the United States as a crewman subsequent to June 30, 1964.

(2) An alien who was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J), or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 212(e).

(3) An alien who-

(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J) or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training,

(B) is subject to the two-year foreign residence requirement of section 212(e), and

(C) has not fulfilled that requirement or received a waiver thereof.

(4) An alien who is inadmissible under section 212(a)(3) or deportable under section 237(a)(4).

(5) An alien who is described in section 241(b)(3)(B)(i).

(6) An alien whose removal has previously been canceled under this section or whose deportation was suspended under section 244(a) or who has been granted relief under section 212(c), as such sections were in effect before the date of the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Explanation of INA § 240A(c)- Section 240A(c) lists classes of noncitizens who are ineligible for 240A(a) relief.

1. Crewmen who entered subsequent to June 30, 1964;
2. Persons admitted on J visas to receive graduate medical training regardless of whether subject to or have received a waiver of the home residency requirement;
3. Persons admitted on J visa or acquired such status after admission with 2 year foreign residency requirement who never fulfilled the requirement or received a waiver;
4. Persons inadmissible or deportable for security or related reasons;
5. Persons determined to have persecuted others;
6. Persons previously granted cancellation of removal or related relief from removal.

[1] 8 U.S.C. § 1229b(c) (2006); INA § 240A(c).

# SECTION 6 – OPTIONS AVAILABLE TO INDIVIDUALS WHO ARE DENIED OR INELIGIBLE FOR RELIEF UNDER INA §240A(a)

Noncitizens who do not meet the statutory requirements of INA § 240A(a) LPR Cancellation of Removal may be eligible to apply for the alternative forms of relief discussed below. In addition to meeting the statutory requirements for some of these alternative forms of relief, the REAL ID Act of 2005 allows the Immigration Judge greater independence in determining credibility and requiring corroboration evidence from the noncitizen.[1] The Immigration Judge has greater discretion in determining whether or not the testimony of the noncitizen or other witness in support of the noncitizen is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the noncitizen has satisfied its burden of proof.[2]

**Non-LPR Cancellation of Removal**- Cancellation of removal for non-LPRs is available to noncitizens who have resided continuously in the United States for at least 10 years, are of good moral character, and have not been convicted of any crimes that would make the individual inadmissible or deportable.[3] Unlike cancellation of removal under INA § 240A(a), which is available only to LPRs, "cancellation part B can be invoked by anyone who otherwise meets its requirements."[4]

**§ 212(c) Waiver**- A section 212(c) discretionary waiver, now repealed under the INA, provides that noncitizens lawfully admitted for permanent residence, who committed a crime or other act rendering him or her inadmissible or deportable from the United States; who has not had an order of deportation; and who has had a lawful unrelinquished domicile of seven consecutive years, may be eligible for a waiver of deportation.[5] However, this relief is only available to those who pleaded guilty prior to April 1, 1997 with the intention to apply for § 212(c) relief.[6] The Immigration Judge weighs the negative factors, such as the severity of the crime, against positive factors, such as the noncitizen's rehabilitation and connections with the community in making his determination on whether the noncitizen merits a favorable exercise of discretion.[7]

**§ 212(h) Waiver**- Noncitizens who have committed crimes of moral turpitude, have a single controlled substance violation involving possession of thirty grams or less of marijuana, have engaged in prostitution, or have received immunity from prosecution, may obtain a § 212(h) waiver. Such individuals may qualify for a § 212(h) waiver if (1) the crime was committed more than fifteen years before the application or admission or if it was a prostitution offense, the noncitizen has been rehabilitated; (2) the individual is the spouse, parent, son, or daughter of a United States citizen or permanent legal resident and denying the waiver would cause extreme

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[1] 8 U.S.C. §§ 1158(b)(1)(B)(i), 1229a(c)(4)(A) (2006); INA §§ 208(b)(1)(B)(i), 240(c)(4)(A).
[2] 8 U.S.C. §§ 1158(b)(1)(B)(ii), 1229a(c)(4)(A) (2006); INA §§ 208(b)(1)(B)(ii), 240(c)(4)(A).
[3] 8 U.S.C. §§ 1229b(b)(1)(A)-(C) (2006); INA §§ 240A(b)(1)(A)-(C).
[4] Stephen H. Legomsky and Cristina M. Rodriguez, Immigration and Refugee Law and Policy, 602 (5th ed.) (2009).
[5] 8 U.S.C. §1182(c) (2006); INA § 212(c).
[6] C.F.R. §§§ 1003, 1212, 1240 (2004); INS v. St. Cyr, 533 U.S. 289 (2001).
[7] Matter of Marin, 16 I. & N. Dec. 581 (BIA 1978).

hardship to the citizen or permanent resident; or (3) the individual is seeking permanent residence after being battered by a United States citizen or permanent resident spouse or parent.[8] When the waiver is sought based on the passage of 15 years since the commission of the offense, the noncitizen also must show that admission would not be contrary to the national welfare, safety, or security and that the noncitizen has been rehabilitated.[9]

**Asylum**- A person may apply for asylum as a defense to removal if the noncitizen meets the definition of "refugee" under the Act and is not subject to one of the statutory bars.[10] A "refugee" is defined as "any person who is outside any country in which such person's nationality or … any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[11] A noncitizen who "ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion" is barred from asylum relief.[12]

**Withholding of Removal**- A noncitizen in removal proceedings may apply for withholding of removal if the noncitizen can show that s/he may not be returned to a place where s/he will face persecution because of the his or her race, religion, nationality, membership in a particular group, or political opinion.[13] Withholding is similar to asylum, in that it provides protection for persons fleeing persecution on account of one of the aforementioned five grounds, but withholding, in fact, requires a higher standard of proof. Thus, in order to obtain withholding of removal, the noncitizen must show by a clear probability that he or she faces the requisite harm of a threat to life or freedom in the proposed country of removal.[14]

**Protection under the Convention Against Torture Act**- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, which Congress codified into United States law, prohibits the removal of a noncitizen to a country where there are substantial grounds for believing that the noncitizen would be in danger of torture or subject to inhuman or degrading torture.[15] A noncitizen in removal proceedings may apply for this form of relief if he or she can establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal."[16]

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[8] 8 U.S.C. § 1182(h) (2006); INA §§ 212(h).
[9] 8 U.S.C. § 1182(h)(1)(A)(ii), (iii) (2006); INA §§ 212(h)(1)(A)(ii), (iii).
[10] 8 U.S.C. § 1101(a)(42)(A) (2006); INA § 208.
[11] 8 U.S.C. § 1101(a)(42)(A) (2006); INA §101(a)(42)(A).
[12] 8 U.S.C. § 1101(a)(42)(B) (2006); INA § 101(a)(42)(B).
[13] 8 U.S.C. § 1231(b)(3)(A) (2006); INA § 241(b)(3)(A).
[14] 8 C.F.R. § 208.16(c) (2009).
[15] Convention Against Torture and Other Cruel and Unhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85. The CAT was incorporated into United States law by the Foreign Affairs Reform and Reconstructuring Act of 1998 (FARRA), Pub. L. No. 105-277 (1987); 8 C.F.R. §§ (1)208.16, (1)208.17, (1)208.18 (2009).
[16] 8 C.F.R. §§ (1)208.16, (1)208.17, (1)208.18 (2009).

**Voluntary Departure-** Noncitizens in removal proceedings who meet the statutory requirements of INA § 240B may request voluntary departure instead of receiving a formal removal order.[17] There are three different forms of voluntary departure, depending on the stage of the proceeding when granted. Voluntary departure can be granted: (1) before the removal hearing; (2) during the removal hearing; and (3) after the removal hearing.[18] Under § 240B(a), the Secretary of Homeland Security may permit certain noncitizens to depart voluntarily, either in lieu of removal proceedings or before removal proceedings have been completed, at the noncitizen's own expense.[19] If granted pre or post-hearing departure, the noncitizen has to depart within 120 days and s/he may be required to post bond.[20] Under § 240B(b) noncitizens may get voluntary departure at the conclusion of the removal proceedings, at the noncitizen's expense.[21] Bond under subsection (b) applicants is mandatory.[22] If voluntary departure is granted under subsection (b), the maximum period the noncitizen has to depart is 60 days.[23] Persons who have been convicted of an aggravated felony or who are deportable as terrorists are ineligible for this form of relief.[24]

**Temporary Protected Status (TPS)-** Noncitizens from certain countries experiencing political or environmental upheaval may request this form of relief.[25] Countries that are currently designated for TPS are: El Salvador, Honduras, Nicaragua, Somalia, and Sudan.[26]

**Prosecutorial Discretion-** Prosecutorial discretion, in the immigration context, is the authority by the Department of Homeland Security to decide whether to enforce, or not to enforce, the law against a noncitizen. According to the former Immigration and Naturalization Service Commissioner, Doris Meissner, "Service officers are not only authorized by law but expected to exercise discretion in a judicious manner at all stages of the enforcement process- from planning investigations to enforcing final orders- subject to their chains of command and to the particular responsibilities and authority applicable to their specific position."[27] For a noncitizen in removal proceedings, a favorable exercise of prosecutorial discretion means the following: "seeking expedited removal or other forms of removal by means other than a removal proceeding; settling or dismissing a proceeding; granting deferred action or staying a final order; agreeing to voluntary departure … and approving deferred action."[28]

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[17] 8 U.S.C. § 1229c (2006); INA § 240B.
[18] Id.
[19] 8 U.S.C. § 1229c (2006); INA § 240B(a).
[20] 8 C.F.R. § 1240.26 (2009); 8 U.S.C. § 1229c (2006); INA § 240B(a)(3).
[21] 8 U.S.C. § 1229c (2006); INA § 240B(b).
[22] 8 U.S.C. § 1229c (2006); INA § 240B(b)(3).
[23] 8 U.S.C. § 1229c (2006); INA § 240B(b)(2).
[24] 8 USC § 1229c(a)(1) (2006); INA § 240B(a)(1).
[25] 8 USC §§§ 1254a(b)(1)(A), (B), (C) (2006).
[26] United States Citizenship and Immigration Services, *available at* http://www.uscis.gov (follow "Topics" hyperlink; then follow "Humanitarian Benefits" hyperlink; then follow "Temporary Protected Status" hyperlink), (last visited Dec. 11, 2009).
[27] Memorandum from Doris Meissner on Exercising Prosecutorial Discretion to Regional Directors, District Directors, Chief Patrol Agents, Regional and District Counsel (Nov. 17, 2000) *available at* http://www.bibdaily.com/pdfs/prosecutorial%20discretion.pdf (last visited Dec. 11, 2009).
[28] Id.

**Deferred Action-** The decision to indefinitely delay proceedings is wholly a discretionary determination within the jurisdiction of the Department of Homeland Security.[29] It is a discretionary form of relief that is granted by ICE and not the Immigration Judge.[30] "Some of the factors that ICE may consider in making such a decision are the likelihood of obtaining a removal order, the presence of sympathetic factors (especially if adverse publicity might cause difficulties for the agency), and whether the person is in a class of persons, such as aggravated felons, who are a high priority for removal."[31]

## Administrative and Judicial Relief[32]

**Motions to Reopen or Reconsider** – An alien may move to reopen or to reconsider a previous decision by filing a timely motion with an Immigration Judge or the BIA. The central purpose of a motion to reopen is to introduce new and additional evidence that is material and that was unavailable at the original hearing. A motion to reconsider seeks a reexamination of the decision based on alleged errors of law and facts. Unless an exception applies, a party may file only one motion to reopen and one motion to reconsider. With a few exceptions, a motion to reopen proceedings must be filed within 90 days of the final removal order, while a motion to reconsider must be filed within 30 days of the date of the final order. The filing of such motions does not suspend the execution of the removal decision unless a stay is ordered by the Immigration Judge, the BIA, DHS, or the alien seeks to reopen an *in absentia* order (a decision made when the alien was absent at the proceeding).

**Stay of Removal** – A stay of removal prevents DHS from executing an order of removal, deportation, or exclusion. Depending on the situation, a stay of removal may be automatic or discretionary. An alien is entitled to an automatic stay of removal during the time allowed to file an appeal (unless a waiver of the right to appeal is filed), while an appeal is pending before the BIA, or while a case is before the BIA by way of certification. Except in cases involving *in absentia* orders, filing a motion to reopen or reconsider will not stay the execution of any decision made in a case. Similarly, filing a petition for review in Federal court also does not result in an automatic stay of a removal order. Thus, a removal order can proceed unless the alien applies for and is granted a stay of execution as a discretionary form of relief by the BIA, Immigration Judge, DHS, or a Federal court. Such a stay is temporary and is often coupled with a written motion to reopen or reconsider filed with the Immigration Court, the BIA, or an appeal to a Federal Circuit Court.

**Administrative Appeal** – The BIA is the highest administrative body with the authority to interpret Federal immigration laws. The BIA has jurisdiction to hear appeals from decisions of Immigration Judges and certain decisions of DHS. Either an alien or DHS may appeal a decision from the Immigration Judge. In deciding cases, the BIA can dismiss or sustain the appeal, remand the case to the deciding Immigration Judge, or, in rare cases, refer the case to the

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[29] Richard A. Boswell, Essentials of Immigration Law, 74 (2nd ed.) (2009).
[30] Id.
[31] Richard A. Boswell, Essentials of Immigration Law, at 74.
[32] United States Department of Justice, Executive Office for Immigration Review, *available at* http://www.justice.gov/eoir/press/04/ReliefFromRemoval.pdf (last visited Dec. 11, 2009).

Attorney General for a decision. A precedent decision by the BIA is binding on DHS and Immigration Judges throughout the country unless the Attorney General modifies or overrules the decision. With respect to the filing deadline, the appeal of an Immigration Judge's decision must be received by 30 calendar days from the date it was issued by the court.

**Judicial Review** – The Immigration and Nationality Act confers Federal courts jurisdiction over certain decisions appealed from the BIA. However, subsequent laws have substantially restricted judicial review of removal orders. An alien has 30 days from the date of a final removal decision to file a judicial appeal, which is generally filed with the Court of Appeals. The procedures and applicability of judicial review in immigration cases are complex and governed by a number of court decisions and interpretations that, in many circumstances, are not clearly resolved. For an understanding of how judicial review might apply in a specific case, qualified legal counsel should be consulted.

# IV. REGULATIONS

**8 C.F.R. §1240.20: Cancellation of removal and adjustment of status under INA §240A:**

(a) Jurisdiction. An application for the exercise of discretion under section 240A of the Act shall be submitted on Form EOIR-42, Application for Cancellation of Removal, to the Immigration Court having administrative control over the Record of Proceeding of the underlying removal proceeding under section 240 of the Act. The application must be accompanied by payment of the filing fee as set forth in §103.7(b) of 8 CFR chapter I or a request for a fee waiver.

(b) Filing the application. The application may be filed only with the Immigration Court after jurisdiction has vested pursuant to §1003.14 of this chapter.

**8 C.F.R. §1240.11(a): Creation of the status of an alien lawfully admitted for permanent residence:**

(1) In a removal proceeding, an alien may apply to the immigration judge for cancellation of removal under section 240A of the Act, adjustment of status under section 245 of the Act, adjustment of status under section 1 of the Act of November 2, 1966 (as modified by section 606 of Pub. L. 104-208), section 101 or 104 of the Act of October 28, 1977, section 202 of Pub. L. 105-100, or section 902 of Pub. L. 105-277, or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. **The application shall be subject to the requirements of 1240.20, and 8 CFR parts 1245 and 1249.** The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act) shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on Residence required by section 216(c) of the Act, or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with 8 CFR part 1216.

(2) In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the alien is inadmissible under any provision of section 212(a) of the Act, and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she may apply to the immigration judge for such waiver. The immigration judge shall inform the alien of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the alien an opportunity to make application during the hearing, in accordance with the provisions of 1240.8(d). In a relevant case, the immigration judge may adjudicate the sufficiency of an Affidavit of Support Under Section 213A (Form I-864), executed on behalf of an applicant for admission or for adjustment of status, in accordance with the provisions of section 213A of the Act and 8 CFR part 213a.

(3) In exercising discretionary power when considering an application for status as a permanent resident under this chapter, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the alien, provided the Commissioner has determined that such information is relevant and is classified under the applicable Executive Order as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the alien of the general nature of the information in order that the alien may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

# V. CASE LAW[1]

## (a) UNITED STATES SUPREME COURT

INS v. ENRICO ST. CYR, 533 U.S. 289 (2001):

- **ISSUE** - Whether IIRIRA statutory restrictions on discretionary relief from deportation apply to removal proceedings brought against noncitizens who pled guilty to a deportable crime before the statutory enactments.

- Enrico St. Cyr came from Haiti to the United States as a lawful permanent resident in 1986. A decade later in Connecticut, he pled guilty in a Connecticut state court to selling a controlled substance, $100 worth of cocaine, and thus became deportable. If the INS would have taken custody of St. Cyr at the completion of his sentence, he would have been eligible for a waiver of deportation under INA § 212(c). Because the INS did not begin proceedings against St. Cyr until 1997, he could no longer file a motion for § 212(c) even though he committed the crime when the waiver was still being granted. He was now subject to the new retroactive laws passed in 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Represented by the ACLU, St. Cyr sued the federal government on the grounds that he was lawfully eligible for the waiver. The case reached the United States Supreme Court in 2001. The Court ruled that Congress never intended for INS to apply its new rule retroactively in cases involving plea bargains made prior to the enactment of IIRIRA. That meant that St. Cyr, and other immigrants whose convictions were obtained through plea agreements, remain eligible for § 212(c) waiver if they would have been eligible for § 212(c) relief at the time of their plea.

- This case is important because it held that the effective date of the changes from INA § 212(c) to cancellation of removal for LPRs, Apr. 1, 1997, does not bar § 212(c) relief for certain pre-IIRIRA convictions. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 976, (11th ed.) (2008)).

ROSENBERG v. FLEUTI, 374 U.S. 449 (1963):

- **ISSUE** - Whether an LPR's return to the United States constitutes an entry within the meaning of INA §101(a)(13).

- "Prior to the 1996 amendments, some returning permanent residents were protected from the inadmissibility provision under this decision…the Court held that the grounds of inadmissibility were inapplicable to an LPR who was returning from an 'innocent, casual and brief' trip abroad. The Fleuti or reentry doctrine, as it became known, protected LPRs from being subjected to the inadmissibility provisions that were different from the provisions for

[1] Most of the case summaries included with each case in this section are from Lexis and Westlaw. Where a case summary is from a different source, it is cited.

deportability. While the definition of entry as embodied in the immigration statute has replaced the Fleuti doctrine, whether LPRs are entitled to greater protections than those who have arrived only recently is not entirely clear." (Richard A. Boswell, Essentials of Immigration Law, 31 (2nd ed.) (2009)).

- This case is important because prior to the passage of IIRIRA, a lawful permanent resident who pled guilty to an offense making him inadmissible retained the right under INA §101(a)(13) to make "innocent, casual and brief" overseas trips without being classified as seeking "entry" upon return and thus being exposed to a charge of being inadmissible. See Rosenberg v. Fleuti, 374 U.S.449, 463. Under current law, however, many LPRs with a criminal conviction who leave (even for a few hours) and then return to the United States are treated as "seeking admission" – no matter how old or minor the offense. This causes LPRs to be automatically detained at reentry and placed in removal proceedings.

## (b) UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

LYONEL JEAN-LOUIS v. ATTORNEY GENERAL OF THE U.S., 582 F.3d 462 (3d Cir. 2009):

- **ISSUE** - Whether simple assault under Pennsylvania law, where the victim is under 12 years of age and the assailant is over 20 years of age, is a crime involving moral turpitude for purposes of cancellation of removal.

- Prior to his seventh year of residency in the United States, petitioner Jean-Louis, a native and citizen of Haiti, struck his wife's daughter, who was under the age of 12, to discipline her. Jean-Louis was subsequently convicted of the Pennsylvania crime of simple assault. The Immigration Judge concluded, and the BIA affirmed, that Jean-Louis's conviction for simple assault of a child under 12 years of age under the state law constituted a Crime of Moral Turpitude (CMT), rendering Jean-Louis, a LPR, ineligible for cancellation of removal. The Third Circuit court disagreed with the BIA and instead applied the modified categorical approach in determining whether a particular crime should be designated as a crime involving moral turpitude. The modified categorical approach enables a court to look to the record of conviction in the limited circumstance where there is multiplicity in an underlying criminal statute that an individual has been convicted under, and where the minimal conduct contemplated to substantiate a conviction under separate parts of the statute may or may not necessarily involve acts that involve moral turpitude. In this limited situation, a court may look to the facts of the case in an effort to determine what portion of a criminal statue an individual was found guilty under if there is ambiguity. Once this determination is made, the court must then turn away from the record of conviction, thereby precluding the court from entertaining an analysis of the particular facts of the case that resulted in a conviction, and must only categorically analyze the specific subsection of a criminal statute to determine if it necessarily involves moral turpitude. The Third Circuit Court concluded that Jean-Louis was not convicted

of a CMT, thereby discarding the realistic probability test recently adopted by the Attorney General in Matter of Silva-Trevino when rendering its decision.

- This case is important because the U.S. Court of Appeals for the Third Circuit addressed the recent opinion of the Attorney General, Matter of Silva-Trevino, 24 I&N Dec. 687, that adopts a novel framework for determining whether a noncitizen petitioner had been convicted of a crime involving a CMT.[2] The Third Circuit concluded that the noncitizen petitioner was not convicted of a CMT, and that as a result the court would apply the established methodology for analyzing CMT, rather than the approach adopted by the Attorney General in Matter of Silva-Trevino. The Court determined that simple assault under Pennsylvania law, where the victim is under 12 years of age and the assailant is over 20 years of age, is not considered a crime involving moral turpitude for purposes of cancellation of removal.

EVANSON v. ATTORNEY GENERAL OF THE U.S., 550 F.3d 284 (3d Cir. 2008):

- **ISSUE** - Whether an LPR's marijuana offense in violation of 35 Pa. Stat. Ann. § 780-113 constitutes an aggravated felony and causes the LPR to be ineligible for cancellation of removal.

- Wister Evanson, a native and citizen of Trinidad and Tobago, was admitted to the U.S. as a permanent resident in December of 1981. In 2005, Evanson pled guilty to possession of marijuana with intent to deliver and criminal conspiracy in violation of Pennsylvania law. After the state judge sentenced him to probation and community service, the Department of Homeland Security commenced removal proceedings. The Immigration Judge found that Evanson's offense did not constitute an aggravated felony and granted cancellation of removal. However, based on information found only in a sentencing document, the BIA found that the offense constituted an aggravated felony and ordered removal. The Third Circuit concluded that the BIA erred in failing to apply the modified categorical approach set forth in Taylor v. United States, 495 U.S. 575 (1990) and Shepard v. United States, 544 U.S. 13 (2005), and therefore erred when it considered Evanson's sentencing document to determine whether he had been convicted of an aggravated felony. The court granted Evanson's petition for review and remanded for further proceedings.

- This case is important because an LPR's marijuana offense in violation of 35 Pa. Stat. Ann. §780-113 may or may not constitute an aggravated felony and cause the LPR to be ineligible for cancellation of removal. Aggravated felonies require the modified categorical approach set forth in Taylor v. United States, 495 U.S. 575 (1990) and Shepard v. United States, 544 U.S. 13 (2005), not the BIA's expansive approach.

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[2] In Matter of Silva-Trevino, the following novel idea was adopted: a finding of moral turpitude under the Act requires that a perpetrator have committed the reprehensible act with some form of scienter. The Attorney General treated the perpetrator's knowledge regarding the victim's age as a critical consideration in forming the depravity of the crime. See Matter of Silva-Trevino, 24 I. & N. Dec. 687, 706 (BIA 2008).

AUGUSTIN v. ATTORNEY GENERAL OF THE U.S., 520 F.3d 264 (3d Cir. 2008):

- **ISSUE** - Whether a noncitizen who entered the United States as a minor can impute his parent's years of continuous residence in order to meet the seven-year requirement for cancellation of removal.

- The court was asked to decide whether the BIA erred in refusing to impute to the noncitizen his father's years of continuous residence in order to meet the seven-year requirement for cancellation of removal under INA §240A(a)(2). The noncitizen was admitted to the United States as a lawful permanent resident at the age of 13 to join his parents who had previously come to the United States. Approximately five years after coming to the United States, the noncitizen committed a crime involving moral turpitude. He was later charged with being removable based in part on that crime. The noncitizen admitted the allegations but argued that he was eligible for cancellation of removal based on his father's seven years of continuous residence in the United States prior to any of the crimes being committed. The BIA rejected that argument, interpreting the statute as requiring that the noncitizen himself actually dwell in the United States for seven years before committing the crime. On review, the court held that the BIA's denial of cancellation of removal and its refusal to impute the father's years of residence was permissible because it was a straightforward application of the statute's requirements.

- This case is important because it affirms under the second step of Chevron the view that a parent's residence may not be imputed to his or her minor child for purposes of the seven-year residence provision of cancellation. See Matter of Escobar, 24 I. & N. Dec. 231 (BIA 2007). (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 973 (11th ed.) (2008)).

PARK v. ATTORNEY GENERAL OF THE U.S., 472 F.3d 66 (3d Cir. 2006):

- **ISSUE** - Whether a conviction for trafficking in counterfeit goods or services in violation of the Trademark Counterfeiting Act of 1984, 18 U.S.C. §2320, is a conviction for "an offense relating to...counterfeiting," pursuant to INA §101(a)(43)(R) (and an aggravated felony).

- Yong Wong Park is a native and citizen of the Republic of Korea. He was admitted to the U.S. as an immigrant on or around February 12, 1998. On February 18, 2000, Park pleaded guilty in the U.S. District court for the Southern District of New York to one count of trafficking in counterfeit goods or services from at least February 1997 through October 1997, in violation of 18 U.S.C. § 2320. After his conviction, the DHS initiated removal proceedings. The court found that Park's conviction under 18 U.S.C. §2320 was an offense relating to counterfeiting for purposes of the definition of "aggravated felony" under INA § 101(a)(43)(R). Park applied for LPR Cancellation under INA § 240A(a) but because he had been convicted of an aggravated felony, he was ineligible for cancellation of removal. Park's petition for review was dismissed.

- This case is important because a conviction for trafficking in counterfeit goods or services in violation of the Trademark Counterfeiting Act of 1984, 18 U.S.C. §2320, is an aggravated felony because it is a conviction for "an offense relating to...counterfeiting," pursuant to INA § 101(a)(43)(R). Therefore, a noncitizen with this type of conviction will be unsuccessful applying for LPR Cancellation of Removal.

OKEKE v. ATTORNEY GENERAL OF THE U.S., 407 F.3d 585 (3d Cir. 2005):

- **ISSUE** - Whether a noncitizen is entitled to a new period of continuous physical presence, commencing upon his lawful reentry into the U.S., so as to allow him to accrue the time required to establish eligibility for cancellation of removal.

- Anderson Jude Okeke, a native and citizen of Nigeria, petitioned for review of two orders from the BIA. Those orders affirmed the Immigration Judge's decision that Okeke could not demonstrate the requisite continuous physical presence in the U.S. in order to qualify for non-LPR cancellation of removal. Essentially, the BIA found that the 'stop-time' provision (INA § 240A(d)(1)), once triggered, precluded the accrual of a new period of continuous presence, which in this case commenced with Okeke's lawful reentry into the U.S. That lawful reentry – the critical fact on appeal – occurred after Okeke committed a controlled substance offense, which, pursuant to INA § 240A(d)(1), clearly ended any prior period of continuous physical presence. This court concluded that the clock should have restarted upon Okeke's reentry. Pursuant to the express terms of the Notice to Appear (NTA), it was the final entry that should have been considered in calculating continuous physical presence.

- This case is important because a noncitizen is entitled to a new period of continuous physical presence under INA § 240A(d)(1), commencing upon his lawful reentry into the U.S., so as to allow him to accrue the time required to establish eligibility for cancellation of removal.

RODRIGUEZ-MUNOZ v. ATTORNEY GENERAL OF THE U.S., 419 F.3d 245 (3d Cir. 2005):

- **ISSUE** - Whether a noncitizen who has been convicted of an aggravated felony can seek simultaneous INA §212(c) and cancellation of removal relief.

- Richard Jose Rodriguez-Munoz was a native and citizen of the Dominican Republic. He was admitted to the U.S. as an LPR in 1976. In 1992, he pled guilty to four drug offenses in New York state court, including third degree criminal sale of a controlled substance (crack cocaine). In 1994, the INS charged Rodriguez-Munoz with deportability as an alien convicted of an aggravated felony and as being convicted of a violation relating to a controlled substance. While the immigration proceedings were pending, Rodriguez-Munoz pled guilty in New York to two additional offenses: fifth degree criminal possession of marijuana and seventh degree criminal possession of a controlled substance. The

government acknowledged that there was no question that Rodriguez-Munoz was eligible to apply for a INA § 212(c), waiver of deportation concerning his 1992 conviction. Indeed, § 212(c) relief remained available for aliens whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea under the law then in effect. Rodriguez-Munoz apparently did not argue before the BIA that his 1992 conviction was not an aggravated felony, nor did he raise such an argument on appeal. Although a waiver of deportation gave him a chance to stay in the U.S. despite his misdeed, it did not expunge his conviction. Thus, even if Rodriguez-Munoz's deportation based on his 1992 conviction were waived under § 212(c), that conviction would nonetheless remain an aggravated felony for purposes of precluding his application for cancellation of removal under INA§ 240A. Thus, he was deportable.

- This case is important because a noncitizen who has an aggravated felony conviction along with other crimes of moral turpitude cannot seek simultaneous INA § 212(c) and cancellation of removal relief because the aggravated felony makes him or her ineligible for cancellation of removal.

BRISENO-FLORES v. ATTORNEY GENERAL OF THE U.S., 492 F.3d 226 (3d Cir. 2004):

- **ISSUE** - Whether a noncitizen can accrue a period of continuous physical presence to qualify for suspension of deportation (now cancellation of removal) after his or her first period of continuous physical presence was stopped by the stop-time rule.

- On November 16, 1996, the INS commenced deportation proceedings against Jesus Briseno-Flores, a citizen of Mexico who had entered the U.S. without inspection in 1984. Briseno admitted to the allegations against him and was found deportable, but pursued an application for suspension of deportation under the statute then in effect, INA § 244(a)(1). The Immigration Judge granted Briseno's application for suspension of deportation but the INS appealed to the BIA. The BIA sustained the appeal, finding that Briseno could not establish the seven years of continuous physical presence required under the statute for eligibility for suspension of deportation. The BIA found that Briseno had committed petty theft on two occasions, in 1985 and 1989, and that, under INA § 240(d) (the stop-time rule), continuous physical presence is deemed to end on the date that a crime is committed. It was clear from the record that Briseno pleaded guilty to the crime of petty theft on July 12, 1989 for stealing two bottles of rum from a supermarket. Briseno's criminal record, offered as evidence by the INS in the hearings at the administrative level, also reflected a 1985 guilty plea by Briseno to the crime of petty theft. Each of these petty thefts constituted a crime of moral turpitude. Thus, Briseno stopped accruing a period of continuous physical presence in 1985, and did not achieve the required seven years of presence. As a result, he was not eligible for suspension of deportation under INA § 244(a)(1).

- This case is important because the Third Circuit ruled that it would follow the BIA's view that once a noncitizen's first period of continuous presence is stopped (for example by committing a petty theft crime), it is impossible to accrue a second period of continuous presence to satisfy one of the requirements for suspension of removal (cancellation of removal since April 1, 1997). This case is distinguishable from Okeke v. Attorney General of the U.S., 407 F.3d 585 (3d Cir. 2005) because in Okeke, the court concluded that pursuant to the express terms of the Notice to Appear (NTA), it was the final entry that should have been considered in calculating continuous physical presence.

MURALI KRISHNA PONNAPULA v. JOHN ASHCROFT, 373 F.3d 480 (3d Cir. 2004):

- **ISSUE** - Whether the Department of Homeland Security can apply a new law retroactively in a way that will alter the immigration consequences of a noncitizen's decision made under prior law.

- The noncitizen was indicted for grand larceny and falsifying business records in violation of New York law after his brother submitted a loan application with the noncitizen's forged signature and without the noncitizen's knowledge. In reliance on counsel's advice, the noncitizen turned down a misdemeanor plea agreement, went to trial when former INA § 212(c) was still in effect, and was convicted. The court rejected the Government's contention that St. Cyr precluded the noncitizen from claiming an impermissible retroactive effect of the repeal of § 212(c). The court concluded that St. Cyr was simply one application of the general principles articulated in Landgraf that counseled against interpreting statutes to apply retroactively. With respect to the noncitizen, who reasonably could have relied on the potential availability of § 212(c) relief, the court found that application of the Landgraf principles showed that the repeal of § 212(c) had an impermissible retroactive effect. Although the court concluded that actual reliance was not necessary, the court found that the noncitizen demonstrated clear and reasonable actual reliance on the former statutory scheme in making the decision to go to trial.

- This case is important because the noncitizen reasonably believed that even if he was convicted of a felony after trial he would still likely be eligible for hardship relief from deportation pursuant to former § 212(c). In reliance of this, the noncitizen decided to turn down the misdemeanor offer and proceeded to trial. The Third Circuit court utilized St. Cyr and allowed the noncitizen to avail himself of § 212(c) relief.

ATKINSON v. ATTORNEY GENERAL OF THE U.S., 479 F.3d. 222 (3d Cir. 2007)

- **ISSUE-** Whether persons who were convicted after trial (as opposed to entering a plea agreement) are eligible for section 212(c) relief?

- The noncitizen, a national and citizen of Jamaica, was convicted of state criminal offenses in 1991. He received a notice to appear in 1997, notifying him that he was removable based upon his convictions. The Immigration Judge denied the noncitizen's request for a waiver of deportation under former § 212(c) (repealed 1996), finding that he was ineligible for that relief. A month after the BIA denied the noncitizen's appeal, the U.S. Supreme Court issued its decision in St. Cyr. The noncitizen filed his habeas petition after his reconsideration motion, based on St. Cyr, was denied. The district court held that the he was not entitled to relief because he failed to show that he had relied on § 212(c) when he was convicted in 1991. In conformity with the REAL ID Act, the court treated the habeas petition as a petition for review. The court held that the noncitizen was not precluded from applying for § 212(c) relief. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) did not apply retroactively to noncitizens who were convicted of aggravated felonies prior to the IIRIRA's effective date, regardless of whether they pleaded guilty or were convicted by a jury.

- This case is important because the Third Circuit Court of Appeals held that § 212(c) is available to individuals who elected to go to trial and were convicted (as opposed to entering a plea agreement).

SCHEIDEMANN v. INS, 83 F.3d 1517 (3d Cir. 1996):

- **ISSUE** - Whether an LPR who has served at least five years of imprisonment for a crime defined as an aggravated felony (under the original 1988 definition) is eligible to apply for a discretionary waiver of deportation under § 212(c).

- James Scheidemann is a native and citizen of Columbia who had been an LPR in the U.S. since 1959. Scheidemann sought review of an order of the Board of Immigration Appeals (BIA), which dismissed his appeal to overturn a deportation order. Scheidemann faced deportation on account of a 1987 drug trafficking conviction for which he had served over five years in prison. Scheidemann did not contest his deportability. Rather, he argued that he was eligible to apply for a discretionary waiver of deportation under § 212(c), the Immigration and Nationality Act. The court held that Congress intended § 212(c) to restrict the attorney general's power to exercise discretionary relief, immediately after the enactment of the bar on November 3, 1990, with respect to aliens who had served at least five years imprisonment from crimes defined as aggravated felonies under the original 1988 definition, regardless of the conviction date. Accordingly, Scheidemann's petition for review was denied.

- This case is important because an LPR who has served at least five years of imprisonment for a crime defined as an aggravated felony (under the original 1988 definition) will not be eligible to apply for a discretionary waiver of deportation under the former § 212(c). Therefore, an LPR who is ineligible for

LPR Cancellation of Removal because he or she committed an aggravated felony, and who has served at least five years of imprisonment for the aggravated felony, will not be able to apply for a discretionary waiver of deportation as an alternative form of relief.

GILSON COSTA v. ATTORNEY GENERAL OF THE U.S., 257 Fed. Appx. 543 (3d Cir. 2007):

- **ISSUE** - Whether inaccurate statements provided under oath during an asylum interview constitute false testimony for purposes of establishing a noncitizen's lack of good moral character even though they were voluntarily corrected by the alien prior to any exposure by the government?

- The noncitizen originally applied for asylum and stated during his asylum interview that he sought asylum on the basis that he was a homosexual. The noncitizen subsequently married a lawful permanent resident whose two children were American citizens. The noncitizen withdrew the asylum application and applied for cancellation of removal; as part of his application, he submitted an affidavit stating that he had incorrectly claimed during the asylum interview to have been a homosexual. The Immigration Judge found that the noncitizen was not a person of good moral character by giving false testimony for the purpose of obtaining a benefit under the immigration laws. The court of appeals found that the noncitizen's inaccurate statements during the asylum interview were not "false testimony" because he corrected the statements voluntarily and prior to any exposure by the government. Remand was necessary to determine whether the noncitizen was eligible for cancellation of removal.

- This case is important because the court held that the BIA and the Immigration Judged erred in finding that noncitizen lacked good moral character for purposes of meeting the requirements of non-LPR cancellation of removal.

**UNPUBLISHED THIRD CIRCUIT DECISIONS**

JURADO-DELGADO v. ATTORNEY GENERAL OF THE U.S., 2009 U.S. App. LEXIS 742 (3d Cir. 2009):

- **ISSUE** - Whether INA § 240A(a) can be applied retroactively to crimes committed by an LPR in 1991, before INA §240 was enacted.

- Jimmy Jurado-Delgado, a native and citizen of Ecuador, was admitted to the U.S. as a permanent resident in 1985. Jurado-Delgado conceded before an Immigration Judge ("IJ") that he was removable either under INA § 237(a)(2)(A)(ii) for having been convicted of two crimes involving moral turpitude in 1997, or under INA § 237(a)(3)(D), for having falsely represented himself to be a United States citizen, but he requested cancellation of removal under INA §240A(a). The court held that Jurado-Delgado's 1991 crimes stopped his accrual of time toward a period of seven years of continuous residence because they were crimes involving moral turpitude, which rendered him

inadmissible under § 212(a)(2)(A)(i). Jurado-Delgado petitioned for review of a final order of the Board of Immigration Appeals ("BIA"). He argued, among other things, that the BIA's determination that he was ineligible for cancellation of removal is the result of an impermissible, retroactive application of that statute. In his view, the BIA, when determining whether he was statutorily eligible for cancellation of removal, was not entitled to take into account crimes that he committed prior to Congress's creation of that remedy. Because the BIA applied the law in effect at the time Jurado-Delgado committed the deportable offense, no question of retroactivity was implicated. Here, the Third Circuit Court denied Jurado-Delgado's petition for review.

- This case is important because it suggests that INA § 240A(a) can be applied retroactively to crimes committed by an LPR before INA § 240 was enacted, such that the crimes can stop accrual of time toward a period of seven years of continuous residence.

JOSEPH v. ATTORNEY GENERAL OF THE U.S., 236 Fed. Appx. 787 (3d Cir. 2007):

- **ISSUE** - Whether an LPR is eligible for cancellation of removal under INA § 240A(a) when he commits a controlled substance violation, triggering the statute's "stop-time" provision under § 240A(d)(1).

- Joseph, a native and citizen of Trinidad, entered the U.S. in 1992 as a conditional resident. He became a permanent resident in 1994. He was placed in removal proceedings by a Notice To Appear, dated June 15, 2005, which charged him with being removable for having committed a controlled substance violation and an aggravated felony. The Immigration Judge found him removable for the controlled substance violation, but found that the Government had not met its burden of showing that any of his convictions were also aggravated felonies. The Immigration Judge found Joseph ineligible for cancellation of removal under INA § 240A(a), the only relief for which he applied. The BIA affirmed, specifically noting that the Immigration Judge did not err in denying cancellation of removal, concluding that Joseph had not accrued five years of continuous presence from the time he was admitted as a permanent resident in December 1994 to the time he was convicted of a controlled substance violation in January 1998. Joseph timely filed a petition for review and a motion for stay of removal. The court specifically held that the BIA erroneously found that the alien had not met the first requirement of five years of permanent residence because the alien had been a permanent resident for over nine years at the time of the Immigration Judge's decision. However, the Third Circuit Court found Joseph was ineligible for cancellation of removal under the second requirement, lack of continuous residence for seven years, because Joseph, who was admitted to the United States in December of 1992, had committed a controlled substance violation, triggering the statute's 'stop-time' provision under INA § 240A(d)(1) in August of 1997. Thus, Joseph did not accrue seven years of "continuous residence" under the statute. The court denied Joseph's petition for review.

- This case is important because it reaffirms that an LPR must satisfy all three statutory elements of INA § 240A(a) in order to be eligible for cancellation of removal under the statute.

FORTEAU v. ATTORNEY GENERAL OF THE U.S., 240 Fed.Appx. 531 (3d Cir. 2007):

- **ISSUE** - Whether courts can review the BIA's discretionary decisions to grant or deny relief under INA § 240A(a).

- Removal proceedings were commenced against Lenroy Forteau, a lawful permanent resident, after he was convicted of disorderly conduct and endangering the welfare of a minor. The Immigration Judge granted cancellation of removal and the government appealed. The BIA sustained the Government's appeal and reversed the grant of cancellation of removal. In its dismissal motion, the government argued that the court lacked jurisdiction because 8 U.S.C. § 1252(a)(2)(B)(I) explicitly stripped it of jurisdiction to review the BIA's discretionary decision to grant or deny relief under INA § 240A(a). The court noted that 8 U.S.C.S. § 1252(a)(2)(D) specifically allowed it to review constitutional and legal questions raised by Forteau. The court summarily granted Forteau's petition for review pursuant to 3rd Cir. R. 27.4 and 3rd Cir. R., Internal Operating P 10.6, and remanded his case back to the BIA for further proceedings consistent with its opinion.

- This case is important because it demonstrates that after reviewing the requirements of 8 C.F.R. § 1003.1(d)(3)(I) and (iv) (that the BIA defer to the Immigration Judge's factual findings and not engage in independent fact finding), the Third Circuit Court held that the BIA improperly engaged in its own independent fact-finding and as a result, applied the wrong standard of review in overturning the Immigration Judge's decision.

CURI v. ATTORNEY GENERAL OF THE U.S., 206 Fed. Appx. 204 (3d Cir. 2006):

- **ISSUE** – Whether a noncitizen is eligible for cancellation of removal if he fails to depart on time, in compliance with an agreement to voluntarily depart.

- Armando Curi, a citizen of Peru, conferred conditional permanent resident status on November 24, 1997, based on his marriage to a U.S. citizen. On November 24, 1999, Curi's conditional permanent resident status was terminated because he failed to establish his marriage was entered into in good faith. On March 7, 2000, the former INS issued a Notice to Appear, charging Curi with removal for having his permanent resident status terminated. Curi applied for relief from removal in the form of cancellation of removal, or, alternatively, voluntary departure. On August 17, 2001, an Immigration Judge denied Curi's application for cancellation of removal and granted Curi's motion for voluntary departure. The grant of voluntary departure required Curi to post a bond of $2000 and to depart on or before September 17, 2001, with an alternate order of removal to Peru. Curi did not appeal the Immigration Judge's decision. On November 15, 2001, Curi

submitted a motion to reopen his removal proceedings based on new evidence. A second Immigration Judge granted the motion to reopen on January 30, 2002. But after a merits hearing and a motion from the INS, the Immigration Judge vacated the January 30, 2002 decision, finding Curi statutorily ineligible for cancellation of removal. The Immigration Judge reinstated Curi's August 17, 2001 order of removal. Curi was found to be statutorily ineligible for cancellation of removal under INA § 240A. Pursuant to INA § 240A(d)(1) Curi's failure to voluntarily depart on time made him ineligible for cancellation of removal for a period of ten years.

- This case is important because it suggests that a noncitizen's failure to voluntarily depart on time will make him or her ineligible for cancellation of removal for a period of ten years.

DUDNEY v. ATTORNEY GENERAL OF THE U.S., 129 Fed. Appx. 747 (3d Cir. 2005):

- **ISSUE** – Whether an LPR's 1998 conviction stopped the clock for purposes of the continuous residence requirement of INA §240A(a)(2).

- Barrington Dudney, a native and citizen of Jamaica, was admitted to the U.S. as an immigrant in August 1992. In October 1998, he was convicted of possession, and possession with the intent to deliver, a controlled substance (92 packets of marijuana) in Pennsylvania state court. On August 3, 1999, Dudney was convicted of possession of a controlled substance (marijuana), simple assault and resisting arrest in an incident on August 20, 1998. Dudney also was convicted on August 31, 1999 of charges of simple assault, possession of an instrument of crime and recklessly endangering another person in an incident on February 19, 1999. In June 1999, the INS issued a Notice to Appear charging Dudney with removability based upon his October 1998 conviction. A removal order was entered after Dudney failed to appear for his hearing, but the Immigration Judge later terminated the proceedings due to insufficient evidence. In October 2001, the INS issued another Notice to Appear charging Dudney with removability for having committed an aggravated felony (drug trafficking), two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, and a violation of law relating to a controlled substance, other than a single offense involving possession for one's own use of 30 grams or less of marijuana. These charges were based on the October 1998 and August 31, 1999 convictions. The Notice to Appear was then amended, and the August 3, 1999 convictions for drug possession and simple assault, and another aggravated felony charge were added. Through counsel, Dudney sought cancellation of removal as a permanent resident pursuant to INA § 240A(a). The Immigration Judge found Dudney removable for a violation of law relating to a controlled substance, other than a single offense involving possession for one's own use of 30 grams or less of marijuana, based on his August 3, 1999 drug conviction. The BIA also agreed with the Immigration Judge that Dudney was not eligible for cancellation of removal because he did not meet the requirement that he have continuous residence here for seven years. The

BIA explained that even if Dudney could not be removed based upon his October 1998 conviction because the proceedings related to this conviction were terminated, the October 1998 conviction stopped the clock for purposes of the seven-year residence requirement.

- This case is important because it affirms that an LPR must satisfy subsection 2 of INA § 240A(a), the seven-year continuous residence requirement, in order to be eligible for LPR Cancellation.

## (c) BOARD OF IMMIGRATION APPEALS (BIA)

MATTER OF DEANDA-ROMO, 23 I. & N. Dec. 597 (BIA 2003):

- **ISSUE** - Whether a noncitizen who has committed two crimes involving moral turpitude is precluded from establishing the requisite 7 years of continuous residence for cancellation of removal under INA §240A(a)(2), where his first crime was a petty offense that was committed within the 7-year period and the second crime was committed more than 7 years after his admission to the United States.

- The noncitizen was admitted to the United States as a lawful permanent resident on January 8, 1992. On September 21, 1999, he was convicted in Texas of two misdemeanor offenses of assault with bodily injury to his spouse, one occurring on October 30, 1998, and the other on June 20, 1999. He was sentenced to imprisonment for both offenses. He conceded removability and applied for LPR cancellation of removal. The IJ terminated the application after finding that the noncitizen was ineligible for relief under the "stop-time" rule. The BIA held that the noncitizen was not precluded by the stop-time rule from establishing the requisite seven years of continuous residence because his first crime qualified as a petty offense and, thus, did not render him inadmissible. Thus, according to the BIA, the noncitizen had accrued the requisite seven years of continuous residence before the second offense was committed.

- This case is important because the court held that the stop-time rule does not apply until the second conviction where the first conviction was a petty offense.

MATTER OF CAMPOS-TORRES, 22 I. & N. Dec. 1289 (BIA 2000):

- **ISSUE** - Whether the noncitizen's commission of a firearms offense, which is not referred to in INA § 212(a)(2), precluded him from satisfying the requirement in INA § 240A(a)(2) that he have resided in the United States continuously for 7 years after having been admitted in any status.

- The noncitizen, a native and citizen of Mexico, was admitted to the United States as a temporary resident on May 4, 1988, and adjusted his status to that of a lawful permanent resident on December 13, 1990. On September 23, 1993 the noncitizen was convicted of a single offense of unlawful use of a weapon. The noncitizen was sentenced to 18 months of probation. On June 25, 1997, the INS

issued and served a Notice To Appear (NTA) commencing removal proceedings and charging the noncitizen with removability. The issue that was raised before the Immigration Judge and argued in the initial briefs submitted on appeal concerned the appropriate date to apply in determining when accrual of continuous presence ends. The noncitizen argued that under the plain language of the statute, firearms offenses do not cut off continuous presence because they are not "referred to" in § 212(a)(2) of the Act. The government argued that the plain language of INA § 240A(d)(1) does not clearly support either its position or that of the noncitizen because the statute is ambiguous. The BIA found that because the noncitizen's firearms offense, which rendered him deportable under INA § 237(a)(2)(C), is not referred to in INA § 212(a)(2), it did not stop time under INA § 240A(d)(1).

- This case is important because the BIA held that "continuous presence is not stopped by commission of an offense that is not 'referred to in section 212(a)(2)." (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 974 (11th ed.) (2008)).

MATTER OF ROBLES-URREA, 24 I. & N. Dec. 22 (BIA 2006):

- **ISSUE** - For purposes of the stop-time rule, does continuous presence stop on the date the offense is committed or on the date of the conviction?

- The noncitizen entered the United States as an LPR on July 6, 1983. On March 3, 2003 he was convicted of a felony (conspiracy to possess marijuana and cocaine with intent to distribute). He was sentenced to 9 months in prison. The DHS charged the noncitizen as inadmissible under INA §212(a)(2)(c) as a noncitizen who the Attorney General had reason to believe had been an illicit trafficker of a controlled substance. An additional charge was lodged that the noncitizen was also inadmissible under INA § 212(a)(2)(A)(i)(I) as a noncitizen who had been convicted of a crime involving moral turpitude. The Immigration Judge ordered the noncitizen removed. The noncitizen appealed the order by arguing that the "stop-time" rule should not apply in his case because his crime was committed prior to the effective date of IIRIRA. The BIA found that the noncitizen was ineligible for cancellation of removal based on his conviction for a crime involving moral turpitude, which terminated his continuous residence within 7 years of his admission. Accordingly, the BIA concluded that the noncitizen's appeal be dismissed.

- This case is important because the BIA held that continuous presence stops on the date the offense is *committed*, not on the date of the conviction.

MATTER OF MARIN, 16 I. & N. Dec. 581 (BIA 1978):

- **ISSUE** - Whether a waiver of deportation/cancellation of removal provides an indiscriminate waiver for all who demonstrate statutory eligibility for such relief.

- The noncitizen was admitted to the United States as a lawful permanent resident on February 3, 1965. In March 1976, he pled guilty to the felony charge of

criminal sale of cocaine. He served 30 months in New York State penal institutions. In May 1977 he was served with an order to show and was charged with being deportable. The Immigration Judge found him deportable and he appealed. The noncitizen argued that he was eligible for 212(c) relief. The BIA stated that Section 212(c) does not provide an indiscriminate waiver for all who demonstrate statutory eligibility for such relief. Instead, the Attorney General is required to determine as a matter of discretion whether an applicant warrants the relief sought. The BIA concluded that the noncitizen bears the burden of demonstrating that his application merits favorable consideration. The noncitizen was unable to advance any substantial equities and the BIA dismissed his appeal.

- This case is important because the BIA held that in keeping with the standards developed under former INA §212(c), courts should consider a noncitizen's record as a whole. Courts should balance the adverse factors evidencing the noncitizen's undesirability as a permanent resident with the social and humane considerations presented in his or her behalf to determine whether relief should be granted.

MATTER OF C-V-T, 22 I. & N. Dec. 7 (BIA 1998):

- **ISSUES** - (1) What standards for the exercise of discretion should be used in considering an application for cancellation of removal under INA §240A(a) and (2) under the appropriate standards, has the noncitizen adequately demonstrated that he warrants, as a matter of discretion, cancellation of removal under this section of law?

- The noncitizen was a native of Vietnam who entered the United States as a refugee on March 1983. He became a lawful permanent resident in 1991. In June 1997, he was convicted of the offense of misconduct involving controlled substances. He was sentenced to 90 days imprisonment. Removal proceedings were instituted in June 1997. The noncitizen applied for cancellation of removal under INA §240A(a). The Immigration Judge found the noncitizen statutorily eligible for relief. The BIA found that the noncitizen has adequately demonstrated that he warranted a favorable exercise of discretion and a grant of cancellation of removal under section 240A(a) of the Act.

- This case is important because the BIA acknowledges the general standards developed in Matter of Marin for the exercise of discretion under INA § 212(c), which was repealed by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), as also being applicable to the exercise of discretion under INA § 240A(a).

MATTER OF EDWARDS, 20 I. & N. Dec. 191 (BIA 1990):

- **ISSUE** - Whether cancellation of removal provides an indiscriminate waiver for individuals who demonstrate statutory eligibility.

- The noncitizen was a native and citizen of Barbados, who was admitted to the United States as a lawful permanent resident in 1968. He married a United States citizen with whom he had four United States citizen children. He incurred criminal convictions while in the U.S. that entailed him serving some 2 and 1/2 years of imprisonment. The noncitizen implored that he be allowed to remain in the United States because of his family. He insisted that he would work hard to change his ways. He stated that his wife and children, as well as his mother and siblings, resided here and that he knew no one in Barbados. The Immigration Judge determined that the noncitizen was statutorily eligible for a section 212(c) waiver. However, he denied that relief in the exercise of discretion. On appeal, the noncitizen argued that the Immigration Judge erred by failing to consider all of the favorable factors presented in his case. The BIA balanced the various factors in the noncitizen's case and took note of his favorable equities, which the court found to be unusual or outstanding. However, when the BIA weighed these equities against the adverse factors of the noncitizen's extensive criminal record, the BIA determined that a favorable exercise of discretion was not warranted.

- This case is important because the BIA states that in keeping with the standards developed under former INA § 212(c), courts should consider the record as a whole. Courts should balance the adverse factors evidencing the noncitizen's undesirability as a permanent resident with the social and humane considerations presented in his/her favor in order to determine whether a grant of relief would be in the best interest of the U.S.

MATTER OF SOTELO-SOTELO, 23 I. & N. Dec. 201 (BIA 2001):

- **ISSUE** - Whether a noncitizen is required to satisfy a threshold test of showing "unusual or outstanding equities" for the consideration of whether a favorable exercise of discretion is warranted.

- The noncitizen was a native from Mexico who adjusted his status to that of a lawful permanent resident on December 1, 1990. On July 24, 2000, he was convicted of the following offenses: possession and passing fraudulent resident alien cards, failure to provide migrant workers with terms and conditions of employment, and illegal entry or aiding and abetting illegal entry. The noncitizen was sentenced to 8 months of imprisonment for each of the first two offenses, and to 6 months of imprisonment for the third offense. In proceedings before the Immigration Judge, the noncitizen conceded removability as charged and applied for cancellation of removal under INA §240A(a). The Immigration Judge denied the noncitizen's application for relief, and the noncitizen appealed. The BIA found that the favorable factors presented in support of the noncitizen's application for cancellation of removal did not outweigh the adverse factors. In doing so, the BIA rejected the use of an 'outstanding and unusual equities' requirement as a threshold for relief and instead found that the Immigration Judge should weigh the favorable and adverse factors to determine whether the 'totality of the evidence' on balance indicates that a favorable discretion is warranted

- This case is important because the BIA rejected the use of an 'outstanding and unusual equities' requirement as a threshold for relief and instead found that the Immigration Judge should weigh the favorable and adverse factors to determine whether the 'totality of the evidence' on balance indicates that a favorable discretion is warranted. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 985 (11th ed.) (2008)).

MATTER OF HUANG, 19 I. & N. Dec. 749 (BIA 1988):

- **ISSUE** - Who has the burden of establishing abandonment of lawful permanent resident status?

- The noncitizens were natives and citizens of Taiwan and included an adult female and her two minor children. They were initially admitted to the United States as lawful permanent residents on June 5, 1982. The noncitizen's husband was admitted as a lawful permanent resident one week earlier. The noncitizen's husband, after receiving his Alien Registration Receipt Card, returned to Japan to continue studying and working at a university's medical school as a medical doctor. Soon after, the noncitizen wife and the children returned to Japan. The noncitizen and her two children last sought to reenter the United States on May 10, 1986, at which time they were placed in exclusion proceedings and ordered removed. She appealed. The INS contended on appeal that the noncitizens had abandoned their lawful permanent resident statuses. The BIA noted that the INS has the burden of proving that a noncitizen is ineligible for admission as a returning permanent resident. The BIA found that the INS had met the burden and the BIA ordered the noncitizen and her children removed from the U.S.

- This case is important because the BIA held that the DHS bears the ultimate burden of showing abandonment of lawful permanent resident status.

IN RE CERVANTES-TORRES, 21 I. & N. Dec. 351 (BIA 1996):

- **ISSUE** - Whether a brief, casual, and innocent departure from the United States constitutes a "meaningfully interruptive" departure for purposes of demonstrating 7 years of continuous physical presence in the United States.

- The noncitizen respondent departed from the United States for a 3-day trip to Mexico in order to visit his ill father during the pendency of his deportation proceedings. The Immigration Judge found that the noncitizen could not demonstrate 7 years of continuous physical presence in the United States as a result of this 3-day trip. The Court found persuasive evidence to support the noncitizen's argument that his 3-day departure to Mexico did not meaningfully interrupt his 7 years of continuous physical presence in the United States for purposes of establishing eligibility for suspension of deportation.

- This case is important because the BIA outlined the factors considered to support a finding that a brief, casual, and innocent departure from the United States does

not meaningfully interrupt a noncitizen's continuous physical presence in the United States.

MATTER OF ARREGUIN, 21 I. & N. Dec. 38 (BIA 1995):

- **ISSUE** - Whether relief is warranted in the exercise of discretion.

- The noncitizen, a 41-year-old native and citizen of Mexico, began residing in the United States in 1970, when she was 17 years old. She was admitted into the United States as an immigrant on December 12, 1975. On September 29, 1993, the noncitizen was convicted of importing marijuana. She was arrested upon her attempted entry and, because of the marijuana found in the truck and her subsequent conviction, was placed in exclusion proceedings. The noncitizen did not contest her excludability, but applied for a waiver under INA §212(c). The Immigration Judge decided that relief under INA §212(c) was not warranted in the exercise of discretion, and ordered her deportation to Mexico. On appeal, the noncitizen asserted that the Immigration Judge erred in his evaluation of the equities in her case. The BIA granted relief based on the totality of the circumstances presented in her case.

- This case is important because the BIA noted that in regard to the exercise of discretion, positive equities include long residence in the United States and the existence of United States citizen minor children. Also, rehabilitation is a relevant consideration in the exercise of discretion. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 985 (11th ed.) (2008)).

IN RE BLANCAS-LARA, 23 I. & N. Dec. 458 (BIA 2002):

- **ISSUE** - Whether the period of a noncitizen's residence in the United States after admission as a nonimmigrant may be considered in calculating the 7 years of continuous residence required to establish eligibility for cancellation of removal.

- The noncitizen was first admitted to the United States in August 1986 with a border crossing card. He adjusted his status to that of a lawful permanent resident on August 5, 1991. The noncitizen's period of continuous residence under section 240A(a)(2) of the Act ended on April 1, 1998, when he was served with a Notice to Appear. At that point, the noncitizen had resided in the United States as a lawful permanent resident for about 6 years and 8 months. The Immigration Judge concluded that the noncitizen could count time he spent in the United States as a child before his admission as a lawful permanent resident toward the accrual of 7 years of continuous residence under section 240A(a)(2), because the lawful residence of his father, a citizen and resident of the United States, could be imputed to him. On appeal the BIA found that the noncitizen established that, at the time of his application for relief, he had resided in the United States continuously for 7 years after having been admitted as a nonimmigrant. Thus, an applicant who is admitted with a nonimmigrant visa, and accrues the 7 years of continuous residence to meet the second element of the statute, does not need an

imputation argument. Accordingly, the BIA concurred with the Immigration Judge's decision and dismissed the appeal.

- This case is important because the BIA stated that the period of a noncitizen's residence in the United States after admission as a nonimmigrant may be considered in calculating the seven years of continuous residence required to establish eligibility for cancellation of removal.

MATTER OF KOLOAMATANGI, 23 I. & N. Dec. 548 (BIA 2003):

- **ISSUE** - Whether a noncitizen who acquired permanent resident status through fraud or misrepresentation has been "lawfully admitted for permanent residence" for purposes of eligibility for LPR Cancellation of Removal under INA § 240A(a).

- The noncitizen obtained permanent resident status in 1985 by virtue of his marriage to a United States citizen, which resulted in the birth of a child in this country in 1988. However, the noncitizen's marriage was bigamous, as he was then married to a Tongan national. The Immigration Judge determined that although the respondent was facially and procedurally in lawful permanent resident status for more than the requisite number of years to qualify for cancellation of removal under INA §240A(a), he was never an alien "lawfully admitted for permanent residence" because his acquisition of that status was procured by fraud. The BIA agreed on appeal.

- This case is important because the BIA held that "an alien who acquired permanent resident status through fraud or misrepresentation has never been 'lawfully admitted for permanent residence' and is therefore ineligible for cancellation of removal under Section 240A(a) of the Act.

MATTER OF RAMIREZ-VARGAS, 24 I. & N. Dec. 599 (BIA 2008):

- **ISSUE** - Whether a parent's lawful permanent resident status can be imputed to a child for purposes of calculating the 5 years of lawful permanent residence required to establish for cancellation of removal under § 240A(a)(1).

- In a decision dated February 26, 2008, an Immigration Judge found the respondent, a native and citizen of Mexico and lawful permanent resident of the United States, removable as an alien convicted of a controlled substance violation but granted his application for cancellation of removal. The DHS appealed arguing that he erred in finding the respondent to be statutorily eligible for that relief because the lawful permanent residence of the noncitizen's father could not be imputed to the noncitizen. The BIA sustained the appeal.

- This case is important because it has been disagreed with by MATTER OF ESCOBAR, 24 I. & N. Dec. 231 (BIA 2007) and MERCADO-ZAZUETA v. HOLDER, 2009 WL 2857197. The BIA held that a parent's period of residence in the United States cannot be imputed to a child for purposes of calculating the 7

years of continuous residence required to establish eligibility for cancellation of removal under INA § 240A(a)(2).

MATTER OF ESCOBAR, 24 I. & N. Dec. 231 (BIA 2007):

- **ISSUE** - Whether a parent's lawful permanent resident status can be imputed to a child for purposes of calculating the 5 years of lawful permanent residence required to establish eligibility for cancellation of removal under INA § 240A(a)(1).

- The noncitizen, a native and citizen of El Salvador, was born on March 28, 1978. She came to the United States as an unemancipated minor. Her mother became a lawful permanent resident in 1992, and the noncitizen was admitted for lawful permanent resident on February 15, 2003. On August 12, 2006, the noncitizen was arrested for attempting to smuggle an undocumented noncitizen into the United States. The Immigration Judge found that the noncitizen admitted to officers of the Department of Homeland Security that she had knowingly attempted to smuggle an 8-year-old Mexican citizen into the United States. Based on these admissions, which were found to be knowing, voluntary, and intelligent, the Immigration Judge held that the respondent was removable. Regarding the respondent's application for relief from removal, the Immigration Judge found that because the respondent was admitted as a lawful permanent resident in February 2003, she had not accrued the requisite 5 years of lawful permanent residence to apply for cancellation of removal under section 240A(a) of the Act. In so holding, the Immigration Judge rejected the respondent's argument that she could apply her mother's years of lawful permanent residence to extend her period of residence and thereby qualify for relief. The noncitizen appealed the decision to the BIA. On appeal, the noncitizen reiterates her argument that her mother's period of lawful permanent residence can be imputed to her for purposes of satisfying the eligibility requirements under section 240A(a)(1) of the Act. The DHS argued that a noncitizen's status as a lawful permanent resident cannot be transferred from one person to another, even from a parent to an unemancipated minor. The BIA agreed with the DHS argument and dismissed the appeal.

- This case is important because the BIA held that "a parent's LPR status may not be imputed to his or her child to give the child the necessary five years of LPR status to qualify for cancellation." (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 972 (11th ed.) (2008)).

MATTER OF PEREZ, 22 I. & N. Dec. 689 (BIA 1999):

- **ISSUE** - Whether the "stop-time" rule operates to terminate the period of continuous residence required for cancellation of removal as of the date the noncitizen commits the offense that renders him/her deportable.

- In removal proceedings commenced on September 26, 1997, the noncitizen admitted, through his counsel, each of the factual allegations in the Notice to Appear. Specifically, the noncitizen stated that he is a native and citizen of El

Salvador, that he was first admitted as a temporary resident on September 21, 1989, and that his status was subsequently adjusted to that of a lawful permanent resident on December 7, 1990. The noncitizen further admitted that he was convicted on July 11, 1997, in Texas, of possession of cocaine, and that this offense was committed on or about August 4, 1992. The noncitizen conceded that he was removable as charged under section 237(a)(2)(B)(i) of the Act on the basis of this conviction and the Immigration Judge ordered him removed. The noncitizen appealed to the BIA on the basis of the retroactive effect of § 240A, arguing that the section's rules limiting eligibility for relief from removal should not apply to him. The BIA, after finding that applying Section 240A would not have an impermissible "retroactive effect," concluded that the respondent's period of continuous residence is deemed to have ended on the date he committed his controlled substance violation. The commission of that offense was prior to his attainment of the required 7 years of continuous residence. Therefore, he was statutorily ineligible for section 240A(a) cancellation of removal. Accordingly, they found that the Immigration Judge's pretermission of his application for cancellation of removal was proper. The appeal was dismissed.

- This case is important because the BIA concluded that "admission in any status" includes admission as a temporary resident. Also, "Under INA 240A(d)(1)(B), continuous residence is deemed to end upon the commission of an admissible offense under INA § 212(a)(2), or a removable offense under INA § 237(a)(2) or § 237(a)(4). The time period is measured from the commission of the crime, not the conviction." (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 974 (11th ed.) (2008)).

MATTER OF BAUTISTA-GOMEZ, 23 I. & N. Dec. 893 (BIA 2006):

- **ISSUE** - Whether a noncitizen seeking to reopen his or her case for consideration of an application for cancellation of removal must have satisfied the continuous physical presence requirement at the time of service of a notice to appear.

- The noncitizen, a 22-year-old native and citizen of Mexico arrived in the United States with her parents when she was 3 months old. At a hearing in removal proceedings on April 17, 2000, an Immigration Judge granted her parents cancellation of removal pursuant to section 240A(b)(1) of the Immigration and Nationality Act. Although the Department of Homeland Security reserved appeal, it never appealed the Immigration Judge's decision regarding the noncitizen's parents' case. The noncitizen, not having a qualifying relative at the time of the hearing, was only granted voluntary departure. On June 13, 2000, the noncitizen filed a motion to reopen stating that her parents had become lawful permanent residents since they were granted cancellation of removal, and that, consequently, she now has the qualifying relatives required to establish eligibility for that relief. She therefore requested that she be allowed to apply for cancellation of removal. The DHS opposed the respondent's motion to reopen, stating that she had not established that the conditions which apply to her parents' approved applications for cancellation of removal had been lifted. The Immigration Judge denied the

motion to reopen, holding that the noncitizen was not eligible for cancellation of removal because at the time of the service of the NTA, her parents were not LPS. The noncitizen appealed. The BIA found that the Immigration Judge improperly found the noncitizen ineligible for cancellation of removal, by only focusing on the first part of regulation and not reading it as a whole. The BIA concluded that the record should be remanded for further consideration of her motion to reopen to apply for that relief.

- This case is important because "The stop-time rule only applies to the seven year continuous residence issue and has no bearing on the other requirements for cancellation of removal, including the issues of qualifying relatives, hardship, or good moral character." (Ira. J. Kurzban, Kurzban's Immigration Law Sourcebook, 974 (11th ed.) (2008)).

MATTER OF NOLASCO-TOFINO, 22 I. & N. Dec. 632 (BIA 1999):

- **ISSUE** - Whether the period of continuous physical presence ends at the issuance of the Notice to Appear, former Order to Show Cause and Notice of Hearing?

- The noncitizen, a 25-year-old male native and citizen of Mexico entered the United States on or about May 17, 1989. On March 26, 1996, the Immigration and Naturalization Service issued an Order to Show Cause and Notice of Hearing and placed him in deportation proceedings. On July 17, 1996, the noncitizen appeared at his master calendar hearing and declared his intention to seek suspension of deportation. On October 9, 1996, the noncitizen filed an application for that relief. At the merits hearing of June 26, 1997, however, the Immigration Judge pretermitted the application, observing that the noncitizen had not acquired 7 years' continuous physical presence in the United States prior to the issuance and service of his Order to Show Cause. Citing the BIA decision in Matter of N-J-B-, Interim Decision 3309 (BIA 1997), the Immigration Judge concluded that the respondent was prima facie ineligible for suspension of deportation. The noncitizen appealed. The BIA held that the respondent's period of continuous physical presence concluded when he was served with the charging document. Accordingly, the BIA concluded that the noncitizen was unable to satisfy the eligibility requirements for suspension of deportation, and his application for that relief was properly pretermitted by the Immigration Judge.

- This case is important because the BIA held that under the former suspension of deportation, now INA §240A(d)(1)(A), continuous residence for purposes of cancellation of removal is deemed to end upon service of a Notice to Appear. It is also noteworthy that the Order to Show Cause, now the Notice To Appear, was filed pre-1997.

MATTER OF MENDOZA-SANDINO, 22 I. & N. Dec. 1236 (BIA 2000):

- **ISSUE** - Whether an applicant for suspension of deportation who has not accrued 7 years of continuous physical presence prior to the service of an Order to Show

Cause [Notice To Appear] may accrue the requisite continuous physical presence subsequent to its service.

- The noncitizens are natives and citizens of Nicaragua. Two of the noncitizens entered the United States on February 28, 1986, and each was served with an Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien on March 2, 1986. The other three respondents entered the United States on June 1, 1986, and each was served with an Order to Show Cause on June 2, 1986. The noncitizens filed applications for asylum and withholding of deportation. The noncitizens were scheduled to appear for hearings on their applications for asylum and withholding of deportation. The noncitizens failed to appear. The noncitizens were deemed to have abandoned their applications for asylum and withholding of deportation. Two of them were granted voluntary departure and the others were ordered deported in absentia. On April 15, 1996, the noncitizens filed motions to reopen to apply for suspension of deportation. The Service opposed the motions arguing that the noncitizens had not shown reasonable cause for their failure to appear at the scheduled hearings. On May 22, 1996, an Immigration Judge granted the noncitizen's motions. The Immigration Judge determined that section 240A(d)(1) of the INA did not apply to the respondents, as they were issued Orders to Show Cause and placed in deportation proceedings, rather than being in removal proceedings after the issuance of a notice to appear. The government appealed. On appeal the government argued that the respondents were unable to establish the requisite 7 years of continuous physical presence before the service of the Orders to Show Cause because they were subject to section 240A(d)(1) of the Act. The issue before the BIA was whether an applicant for suspension of deportation who has not accrued 7 years of continuous physical presence prior to the service of an Order to Show Cause may accrue the requisite continuous physical presence subsequent to its service. The BIA held the respondents accrued more than the requisite 7 years of continuous physical presence after service of the Orders to Show Cause and before they filed their applications for suspension. Because the Immigration Judge correctly determined that they were eligible for suspension of deportation, the BIA affirmed the Immigration Judge's order granting relief to each of the respondents.

- This case is important because the BIA stated that in the suspension context, a person may not accrue a new 7 years subsequent to the service of the Notice to Appear, as service of the Notice to Appear ends continuous physical presence.

MATTER OF JURADO-DELGADO, 24 I. & N. Dec. 29 (BIA 2007):

- **ISSUE** - Whether a noncitizen needs to be actually charged with a crime and found inadmissible or removable on the applicable ground in order for the criminal conduct in question to terminate continuous residence.

- The noncitizen, a native and citizen of Ecuador, was admitted to the United States as a lawful permanent resident on September 15, 1985. He was convicted in 1991 of retail theft in violation of Pennsylvania law. In 1992 he was also convicted of

unsworn falsification to authorities. In addition, the noncitizen was convicted in 1997 of two crimes involving moral turpitude that were the basis of the charge of removability in his Notice to Appear. In proceedings before the Immigration Judge, the noncitizen conceded that he was removable, both on the initial charge and on a lodged charge that he falsely represented himself to be a United States citizen. He applied for cancellation of removal under section 240A(a) of the Act, which the Immigration Judge granted. On appeal, the DHS contended that the noncitizen failed to demonstrate the requisite period of continuous residence to establish his eligibility for cancellation of removal. The BIA agreed and found that the Immigration Judge erred in concluding that the noncitizen was eligible for cancellation of removal.

- This case is important because the BIA concluded that the time period of a crime is measured from the commission of the crime, not the conviction. The BIA has found that a conviction is not even necessary; applicant need not actually be convicted, as admission is sufficient. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 974 (11th ed.) (2008)).

**(d) UNITED STATES COURT OF APPEALS (persuasive decisions from other circuits):**

MERCADO-ZAZUETA v. HOLDER, 580 F.3d 1102 (9th Cir 2009):

- **ISSUE** - Whether a noncitizen can impute his parent's lawful permanent resident status for purposes of eligibility for cancellation of removal.

- The noncitizen, a native and citizen of Mexico, entered the United States as a visitor in 1992, at the age of seven. With the exception of a brief 2005 vacation, he has remained in the U.S. ever since. In 1992, the noncitizen's mother married a lawful permanent resident of the United States, who legally adopted the noncitizen in 1998 when he was thirteen years old. The noncitizen obtained independent lawful permanent resident status in 2002, at the age of seventeen. In 2006, he pled guilty to one count of aggravated assault. The Department of Homeland Security initiated removal proceedings. The noncitizen applied for LPR cancellation of removal. The Immigration Judge denied relief and the noncitizen appealed. The BIA declined to allow imputation for the five-year permanent residence requirement, and dismissed the noncitizen's appeal. The noncitizen filed a timely application for review with the Ninth Circuit Court. The Ninth Circuit Court concluded that the BIA's interpretation of section 240A(a)(1) was unreasonable. In so holding, the BIA did not guarantee that the noncitizen and others in his situation may remain in the United States. On the contrary, they merely granted access to the possibility of cancellation of removal, leaving the ultimate determination to the sound discretion of the Attorney General.

- This case is important because the United States Court of Appeals for the Ninth Circuit overruled MATTER OF ESCOBAR, 24 I. & N. Dec. 231 (BIA 2007),

which held that a parent's LPR status may not be imputed to his or her child to give the child the necessary five years of LPR status to qualify for cancellation. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 972 (11th ed.) (2008)).

SINOTES-CRUZ v. GONZALES, 468 F.3d 1190 (9th Cir. 2006):

- **ISSUE** - Whether the time-stop rule applies retroactively to the seven-year continuous residence requirement for an individual who pled guilty before the enactment of IIRIRA and was eligible for discretionary relief at the time IIRIRA became effective.

- The noncitizen initially entered the United States without inspection in 1981. He was granted lawful temporary resident status in May 1988 and was granted lawful permanent resident status in June 1990. In 1993 he pled guilty to two counts of attempted aggravated assault. In 1997 he pled guilty to child or vulnerable adult abuse. On October 2, 2000, the former Immigration and Naturalization Service ("INS") commenced removal proceedings against the noncitizen by serving him with a Notice to Appear. The notice charged removability on two grounds. First, it charged removability under INA § 237(a)(2)(A)(ii), for having been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. Second, it charged removability under INA § 237(a)(2)(E)(i), for having been convicted of the crime of child abuse in 1997. The Immigration Judge held that the noncitizen was removable based on the 1993 charges and the charge in 1997. The noncitizen did not contest his removability in those proceedings. Instead, he filled out Form EOIR-42A, requesting cancellation of removal under INA § 240A(a). The Immigration Judge stated that based on the noncitizen's admissions and concessions he was removable under the two initial charges of removability. The noncitizen appealed. The BIA held that the Immigration Judge properly applied the stop-time rule to the seven-year continuous residence requirement. The appellate court found that the BIA was justified in relying on court records in concluding that the noncitizen was convicted of two crimes that involved moral turpitude, one crime that involved child abuse, and one crime of moral turpitude committed within five years of admission. However, the permanent stop-time rule did not apply retroactively to stop the alien's accrual of seven years of continuous residence.

- This case is important because the court held that the stop-time rule may not be applied retroactively to prevent noncitizens from fulfilling the seven-year continuous residence requirement.

BECKER v. GONZALES, 473 F.3d 1000 (9th Cir. 2007):

- **ISSUE** - Whether a previous grant of relief from deportation under the former § 212 (c) expunges the noncitizen's conviction?

- The noncitizen, a native and citizen of Germany, was admitted to the United States at the age of six, and was a lawful permanent resident. In 2004, he pleaded guilty to the offense of "Possession of Drug Paraphernalia," a Class 6 felony

under Arizona law. Removal proceedings were initiated against the noncitizen for being a noncitizen convicted of a controlled substance, in violation of INA § 237(a)(2)(B)(I). The noncitizen conceded that he was removable as charged, but requested LPR cancellation of removal. The Immigration Judge denied his application for relief because it found his conviction to be an aggravated felony and ordered the noncitizen removed to Germany. The BIA affirmed. The appellate court noted that the issue was whether the noncitizen's 1978 conviction for possession of marijuana for sale could be treated as a disqualifying aggravated felony conviction for purposes of his current request for cancellation of removal following his 2004 controlled substance conviction. The court noted that the crimes alleged to be grounds for deportability did not disappear from the noncitizen's record for immigration purposes. Even if the noncitizen was able to waive his 1978 conviction under § 212(c) of the Immigration and Nationality Act, it would nonetheless remain an aggravated felony for purposes of precluding the noncitizen's application for cancellation of removal because of his 2004 conviction.

- This case is important because the court held that crimes alleged to be grounds for deportability do not disappear from a noncitizen's record for immigration purposes; a waiver of deportation gives a noncitizen a chance to stay in the United States, but it does not erase his conviction.

# CASE LAW –ARRANGED BY STATUTORY ELEMENT[1]

***(1) has been an alien lawfully admitted for permanent residence for not less than 5 years;***

MATTER OF ESCOBAR, 24 I. & N. Dec. 231 (BIA 2007):

- **ISSUE** - Whether a parent's lawful permanent resident status can be imputed to a child for purposes of calculating the 5 years of lawful permanent residence required to establish eligibility for cancellation of removal under INA § 240A(a)(1).

- The noncitizen, a native and citizen of El Salvador, was born on March 28, 1978. She came to the United States as an unemancipated minor. Her mother became a lawful permanent resident in 1992, and the noncitizen was admitted for lawful permanent resident on February 15, 2003. On August 12, 2006, the noncitizen was arrested for attempting to smuggle an undocumented noncitizen into the United States. The Immigration Judge found that the noncitizen admitted to officers of the Department of Homeland Security that she had knowingly attempted to smuggle an 8-year-old Mexican citizen into the United States. Based on these admissions, which were found to be knowing, voluntary, and intelligent, the Immigration Judge held that the respondent was removable. Regarding the respondent's application for relief from removal, the Immigration Judge found that because the respondent was admitted as a lawful permanent resident in February 2003, she had not accrued the requisite 5 years of lawful permanent residence to apply for cancellation of removal under section 240A(a) of the Act. In so holding, the Immigration Judge rejected the respondent's argument that she could apply her mother's years of lawful permanent residence to extend her period of residence and thereby qualify for relief. The noncitizen appealed the decision to the BIA. On appeal, the noncitizen reiterates her argument that her mother's period of lawful permanent residence can be imputed to her for purposes of satisfying the eligibility requirements under section 240A(a)(1) of the Act. The DHS argued that a noncitizen's status as a lawful permanent resident cannot be transferred from one person to another, even from a parent to an unemancipated minor. The BIA agreed with the DHS argument and dismissed the appeal.

- This case is important because the BIA held that "a parent's LPR status may not be imputed to his or her child to give the child the necessary five years of LPR status to qualify for cancellation." (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 972 (11th ed.) (2008)).

[1] Many of the case summaries included with each case in this section have been obtained from Lexis and Westlaw. Where a case summary has been obtained from a different source, it is noted with the case summary.

CURI v. ATTORNEY GENERAL OF THE U.S., 206 Fed. Appx. 204 (3d Cir. 2006):

- **ISSUE** – Whether a noncitizen is eligible for cancellation of removal if he fails to depart on time, in compliance with an agreement to voluntarily depart.

- Armando Curi, a citizen of Peru, conferred conditional permanent resident status on November 24, 1997, based on his marriage to a U.S. citizen. On November 24, 1999, Curi's conditional permanent resident status was terminated because he failed to establish his marriage was entered into in good faith. On March 7, 2000, the former INS issued a Notice to Appear, charging Curi with removal for having his permanent resident status terminated. Curi applied for relief from removal in the form of cancellation of removal, or, alternatively, voluntary departure. On August 17, 2001, an Immigration Judge denied Curi's application for cancellation of removal and granted Curi's motion for voluntary departure. The grant of voluntary departure required Curi to post a bond of $2000 and to depart on or before September 17, 2001, with an alternate order of removal to Peru. Curi did not appeal the Immigration Judge's decision. On November 15, 2001, Curi submitted a motion to reopen his removal proceedings based on new evidence. A second Immigration Judge granted the motion to reopen on January 30, 2002. But after a merits hearing and a motion from the INS, the Immigration Judge vacated the January 30, 2002 decision, finding Curi statutorily ineligible for cancellation of removal. The Immigration Judge reinstated Curi's August 17, 2001 order of removal. Curi was found to be statutorily ineligible for cancellation of removal under INA § 240A. Pursuant to INA § 240A(d)(1) Curi's failure to voluntarily depart on time made him ineligible for cancellation of removal for a period of ten years.

- This case is important because it suggests that a noncitizen's failure to voluntarily depart on time will make him or her ineligible for cancellation of removal for a period of ten years.

MATTER OF KOLOAMATANGI, 23 I. & N. Dec. 548 (BIA 2003):

- **ISSUE** - Whether a noncitizen who acquired permanent resident status through fraud or misrepresentation has been "lawfully admitted for permanent residence" for purposes of eligibility for LPR Cancellation of Removal under INA § 240A(a).

- The noncitizen obtained permanent resident status in 1985 by virtue of his marriage to a United States citizen, which resulted in the birth of a child in this country in 1988. However, the noncitizen's marriage was bigamous, as he was then married to a Tongan national. The Immigration Judge determined that although the respondent was facially and procedurally in lawful permanent resident status for more than the requisite number of years to qualify for cancellation of removal under INA §240A(a), he was never an alien "lawfully admitted for permanent residence" because his acquisition of that status was procured by fraud. The BIA agreed on appeal.

- This case is important because the BIA held that "an alien who acquired permanent resident status through fraud or misrepresentation has never been 'lawfully admitted for permanent residence' and is therefore ineligible for cancellation of removal under Section 240A(a) of the Act.

MATTER OF HUANG, 19 I. & N. Dec. 749 (BIA 1988):

- **ISSUE** - Who has the burden of establishing abandonment of lawful permanent resident status?

- The noncitizens were natives and citizens of Taiwan and included an adult female and her two minor children. They were initially admitted to the United States as lawful permanent residents on June 5, 1982. The noncitizen's husband was admitted as a lawful permanent resident one week earlier. The noncitizen's husband, after receiving his Alien Registration Receipt Card, returned to Japan to continue studying and working at a university's medical school as a medical doctor. Soon after, the noncitizen wife and the children returned to Japan. The noncitizen and her two children last sought to reenter the United States on May 10, 1986, at which time they were placed in exclusion proceedings and ordered removed. She appealed. The INS contended on appeal that the noncitizens had abandoned their lawful permanent resident statuses. The BIA noted that the INS has the burden of proving that a noncitizen is ineligible for admission as a returning permanent resident. The BIA found that the INS had met the burden and the BIA ordered the noncitizen and her children removed from the U.S.

- This case is important because the BIA held that the DHS bears the ultimate burden of showing abandonment of lawful permanent resident status.

ROSENBERG v. FLEUTI, 374 U.S. 449 (1963):

- **ISSUE** - Whether an LPR's return to the United States constitutes an entry within the meaning of INA §101(a)(13).

- "Prior to the 1996 amendments, some returning permanent residents were protected from the inadmissibility provision under this decision...the Court held that the grounds of inadmissibility were inapplicable to an LPR who was returning from an 'innocent, casual and brief' trip abroad. The Fleuti or reentry doctrine, as it became known, protected LPRs from being subjected to the inadmissibility provisions that were different from the provisions for deportability. While the definition of entry as embodied in the immigration statute has replaced the Fleuti doctrine, whether LPRs are entitled to greater protections than those who have arrived only recently is not entirely clear." (Richard A. Boswell, Essentials of Immigration Law, 31 (2nd ed.) (2009)).

- This case is important because prior to the passage of IIRIRA, a lawful permanent resident who pled guilty to an offense making him inadmissible retained the right under INA §101(a)(13) to make "innocent, casual and brief" overseas trips without being classified as seeking "entry" upon return and thus being exposed to

a charge of being inadmissible. See Rosenberg v. Fleuti, 374 U.S.449, 463. Under current law, however, many LPRs with a criminal conviction who leave (even for a few hours) and then return to the United States are treated as "seeking admission" – no matter how old or minor the offense. This causes LPRs to be automatically detained at reentry and placed in removal proceedings.

***(2) has resided in the United States continuously for 7 years after having been admitted in any status;***

MERCADO-ZAZUETA v. HOLDER, 580 F.3d 1102 (9th Cir 2009):

- **ISSUE** - Whether a noncitizen can impute his parent's lawful permanent resident status for purposes of eligibility for cancellation of removal.

- The noncitizen, a native and citizen of Mexico, entered the United States as a visitor in 1992, at the age of seven. With the exception of a brief 2005 vacation, he has remained in the U.S. ever since. In 1992, the noncitizen's mother married a lawful permanent resident of the United States, who legally adopted the noncitizen in 1998 when he was thirteen years old. The noncitizen obtained independent lawful permanent resident status in 2002, at the age of seventeen. In 2006, he pled guilty to one count of aggravated assault. The Department of Homeland Security initiated removal proceedings. The noncitizen applied for LPR cancellation of removal. The Immigration Judge denied relief and the noncitizen appealed. The BIA declined to allow imputation for the five-year permanent residence requirement, and dismissed the noncitizen's appeal. The noncitizen filed a timely application for review with the Ninth Circuit Court. The Ninth Circuit Court concluded that the BIA's interpretation of section 240A(a)(1) was unreasonable. In so holding, the BIA did not guarantee that the noncitizen and others in his situation may remain in the United States. On the contrary, they merely granted access to the possibility of cancellation of removal, leaving the ultimate determination to the sound discretion of the Attorney General.

- This case is important because the United States Court of Appeals for the Ninth Circuit overruled MATTER OF ESCOBAR, 24 I. & N. Dec. 231 (BIA 2007), which held that a parent's LPR status may not be imputed to his or her child to give the child the necessary five years of LPR status to qualify for cancellation. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 972 (11th ed.) (2008)).

JURADO-DELGADO v. ATTORNEY GENERAL OF THE U.S., 2009 U.S. App. LEXIS 742 (2009):

- **ISSUE** - Whether INA § 240A(a) can be applied retroactively to crimes committed by an LPR in 1991, before INA §240 was enacted.

- Jimmy Jurado-Delgado, a native and citizen of Ecuador, was admitted to the U.S. as a permanent resident in 1985. Jurado-Delgado conceded before an Immigration Judge ("IJ") that he was removable either under INA

§ 237(a)(2)(A)(ii) for having been convicted of two crimes involving moral turpitude in 1997, or under INA § 237(a)(3)(D), for having falsely represented himself to be a United States citizen, but he requested **cancellation** of removal under INA §240A(a). The court held that Jurado-Delgado's 1991 crimes stopped his accrual of time toward a period of seven years of continuous residence because they were crimes involving moral turpitude, which rendered him inadmissible under § 212(a)(2)(A)(i). Jurado-Delgado petitioned for review of a final order of the Board of Immigration Appeals ("BIA"). He argued, among other things, that the BIA's determination that he was ineligible for **cancellation** of removal is the result of an impermissible, retroactive application of that statute. In his view, the BIA, when determining whether he was statutorily eligible for **cancellation** of removal, was not entitled to take into account crimes that he committed prior to Congress's creation of that remedy. Because the BIA applied the law in effect at the time Jurado-Delgado committed the deportable offense, no question of retroactivity was implicated. Here, the Third Circuit Court denied Jurado-Delgado's petition for review.

- This case is important because it suggests that INA § 240A(a) can be applied retroactively to crimes committed by an LPR before INA § 240 was enacted, such that the crimes can stop accrual of time toward a period of seven years of continuous residence.

AUGUSTIN v. ATTORNEY GENERAL OF THE U.S., 520 F.3d 264 (3d Cir. 2008):

- **ISSUE** - Whether a noncitizen who entered the United States as a minor can impute his parent's years of continuous residence in order to meet the seven-year requirement for cancellation of removal.

- The court was asked to decide whether the BIA erred in refusing to impute to the noncitizen his father's years of continuous residence in order to meet the seven-year requirement for cancellation of removal under INA §240A(a)(2). The noncitizen was admitted to the United States as a lawful permanent resident at the age of 13 to join his parents who had previously come to the United States. Approximately five years after coming to the United States, the noncitizen committed a crime involving moral turpitude. He was later charged with being removable based in part on that crime. The noncitizen admitted the allegations but argued that he was eligible for cancellation of removal based on his father's seven years of continuous residence in the United States prior to any of the crimes being committed. The BIA rejected that argument, interpreting the statute as requiring that the noncitizen himself actually dwell in the United States for seven years before committing the crime. On review, the court held that the BIA's denial of cancellation of removal and its refusal to impute the father's years of residence was permissible because it was a straightforward application of the statute's requirements.

- This case is important because it affirms under the second step of Chevron the view that a parent's residence may not be imputed to his or her minor child for

purposes of the seven-year residence provision of cancellation. See Matter of Escobar, 24 I. & N. Dec. 231 (BIA 2007). (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 973 (11th ed.) (2008)).

MATTER OF RAMIREZ-VARGAS, 24 I. & N. Dec. 599 (BIA 2008):

- **ISSUE** - Whether a parent's lawful permanent resident status can be imputed to a child for purposes of calculating the 5 years of lawful permanent residence required to establish for cancellation of removal under § 240A(a)(1).

- In a decision dated February 26, 2008, an Immigration Judge found the respondent, a native and citizen of Mexico and lawful permanent resident of the United States, removable as an alien convicted of a controlled substance violation but granted his application for cancellation of removal. The DHS appealed arguing that he erred in finding the respondent to be statutorily eligible for that relief because the lawful permanent residence of the noncitizen's father could not be imputed to the noncitizen. The BIA sustained the appeal.

- This case is important because it has been disagreed with by MATTER OF ESCOBAR, 24 I. & N. Dec. 231 (BIA 2007) and MERCADO-ZAZUETA v. HOLDER, 2009 WL 2857197. The BIA held that a parent's period of residence in the United States cannot be imputed to a child for purposes of calculating the 7 years of continuous residence required to establish eligibility for cancellation of removal under INA § 240A(a)(2).

MATTER OF JURADO, 24 I. & N. Dec. 29 (BIA 2007):

- ISSUE - Whether a noncitizen needs to be actually charged with a crime and found inadmissible or removable on the applicable ground in order for the criminal conduct in question to terminate continuous residence.

- The noncitizen, a native and citizen of Ecuador, was admitted to the United States as a lawful permanent resident on September 15, 1985. He was convicted in 1991 of retail theft in violation of Pennsylvania law. In 1992 he was also convicted of unsworn falsification to authorities. In addition, the noncitizen was convicted in 1997 of two crimes involving moral turpitude that were the basis of the charge of removability in his Notice to Appear. In proceedings before the Immigration Judge, the noncitizen conceded that he was removable, both on the initial charge and on a lodged charge that he falsely represented himself to be a United States citizen. He applied for cancellation of removal under section 240A(a) of the Act, which the Immigration Judge granted. On appeal, the DHS contended that the noncitizen failed to demonstrate the requisite period of continuous residence to establish his eligibility for cancellation of removal. The BIA agreed and found that the Immigration Judge erred in concluding that the noncitizen was eligible for cancellation of removal.

- This case is important because the BIA concluded that the time period of a crime is measured from the commission of the crime, not the conviction. The BIA has found that a conviction is not even necessary; applicant need not actually be convicted, as admission is sufficient. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 974 (11th ed.) (2008)).

JOSEPH v. ATTORNEY GENERAL OF THE U.S., 236 Fed. Appx. 787 (3d Cir. 2007):

- **ISSUE** - Whether an LPR is eligible for cancellation of removal under INA § 240A(a) when he commits a controlled substance violation, triggering the statute's "stop-time" provision under § 240A(d)(1).

- Joseph, a native and citizen of Trinidad, entered the U.S. in 1992 as a conditional resident. He became a permanent resident in 1994. He was placed in removal proceedings by a Notice To Appear, dated June 15, 2005, which charged him with being removable for having committed a controlled substance violation and an aggravated felony. The Immigration Judge found him removable for the controlled substance violation, but found that the Government had not met its burden of showing that any of his convictions were also aggravated felonies. The Immigration Judge found Joseph ineligible for cancellation of removal under INA § 240A(a), the only relief for which he applied. The BIA affirmed, specifically noting that the Immigration Judge did not err in denying cancellation of removal, concluding that Joseph had not accrued five years of continuous presence from the time he was admitted as a permanent resident in December 1994 to the time he was convicted of a controlled substance violation in January 1998. Joseph timely filed a petition for review and a motion for stay of removal. The court specifically held that the BIA erroneously found that the alien had not met the first requirement of five years of permanent residence because the alien had been a permanent resident for over nine years at the time of the Immigration Judge's decision. However, the Third Circuit Court found Joseph was ineligible for cancellation of removal under the second requirement, lack of continuous residence for seven years, because Joseph, who was admitted to the United States in December of 1992, had committed a controlled substance violation, triggering the statute's 'stop-time' provision under INA § 240A(d)(1) in August of 1997. Thus, Joseph did not accrue seven years of "continuous residence" under the statute. The court denied Joseph's petition for review.

- This case is important because it reaffirms that an LPR must satisfy all three statutory elements of INA § 240A(a) in order to be eligible for cancellation of removal under the statute.

MATTER OF ROBLES-URREA, 24 I. & N. Dec. 22 (BIA 2006):

- **ISSUE** - For purposes of the stop-time rule, does continuous presence stop on the date the offense is committed or on the date of the conviction?

- The noncitizen entered the United States as an LPR on July 6, 1983. On March 3, 2003 he was convicted of a felony (conspiracy to possess marijuana and cocaine with intent to distribute). He was sentenced to 9 months in prison. The DHS charged the noncitizen as inadmissible under INA §212(a)(2)(c) as a noncitizen who the Attorney General had reason to believe had been an illicit trafficker of a controlled substance. An additional charge was lodged that the noncitizen was also inadmissible under INA § 212(a)(2)(A)(i)(I) as a noncitizen who had been convicted of a crime involving moral turpitude. The Immigration Judge ordered the noncitizen removed. The noncitizen appealed the order by arguing that the "stop-time" rule should not apply in his case because his crime was committed prior to the effective date of IIRIRA. The BIA found that the noncitizen was ineligible for cancellation of removal based on his conviction for a crime involving moral turpitude, which terminated his continuous residence within 7 years of his admission. Accordingly, the BIA concluded that the noncitizen's appeal be dismissed.

- This case is important because the BIA held that continuous presence stops on the date the offense is *committed*, not on the date of the conviction.

SINOTES-CRUZ v. GONZALES, 468 F.3d 1190 (9th Cir. 2006):

- **ISSUE** - Whether the time-stop rule applies retroactively to the seven-year continuous residence requirement for an individual who pled guilty before the enactment of IIRIRA and was eligible for discretionary relief at the time IIRIRA became effective.

- The noncitizen initially entered the United States without inspection in 1981. He was granted lawful temporary resident status in May 1988 and was granted lawful permanent resident status in June 1990. In 1993 he pled guilty to two counts of attempted aggravated assault. In 1997 he pled guilty to child or vulnerable adult abuse. On October 2, 2000, the former Immigration and Naturalization Service ("INS") commenced removal proceedings against the noncitizen by serving him with a Notice to Appear. The notice charged removability on two grounds. First, it charged removability under INA § 237(a)(2)(A)(ii), for having been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. Second, it charged removability under INA § 237(a)(2)(E)(i), for having been convicted of the crime of child abuse in 1997. The Immigration Judge held that the noncitizen was removable based on the 1993 charges and the charge in 1997. The noncitizen did not contest his removability in those proceedings. Instead, he filled out Form EOIR-42A, requesting cancellation of removal under INA § 240A(a). The Immigration Judge stated that based on the noncitizen's admissions and concessions he was removable under the two initial charges of removability. The noncitizen appealed. The BIA held that the Immigration Judge properly applied the stop-time rule to the seven-year continuous residence requirement. The appellate court found that the BIA was justified in relying on court records in concluding that the noncitizen was convicted of two crimes that involved moral turpitude, one crime that involved

child abuse, and one crime of moral turpitude committed within five years of admission. However, the permanent stop-time rule did not apply retroactively to stop the alien's accrual of seven years of continuous residence.

- This case is important because the court held that the stop-time rule may not be applied retroactively to prevent noncitizens from fulfilling the seven-year continuous residence requirement.

MATTER OF BAUTISTA GOMEZ, 23 I. & N. Dec. 893 (BIA 2006):

- **ISSUE** - Whether a noncitizen seeking to reopen his or her case for consideration of an application for cancellation of removal must have satisfied the continuous physical presence requirement at the time of service of a notice to appear.

- The noncitizen, a 22-year-old native and citizen of Mexico arrived in the United States with her parents when she was 3 months old. At a hearing in removal proceedings on April 17, 2000, an Immigration Judge granted her parents cancellation of removal pursuant to section 240A(b)(1) of the Immigration and Nationality Act. Although the Department of Homeland Security reserved appeal, it never appealed the Immigration Judge's decision regarding the noncitizen's parents' case. The noncitizen, not having a qualifying relative at the time of the hearing, was only granted voluntary departure. On June 13, 2000, the noncitizen filed a motion to reopen stating that her parents had become lawful permanent residents since they were granted cancellation of removal, and that, consequently, she now has the qualifying relatives required to establish eligibility for that relief. She therefore requested that she be allowed to apply for cancellation of removal. The DHS opposed the respondent's motion to reopen, stating that she had not established that the conditions which apply to her parents' approved applications for cancellation of removal had been lifted. The Immigration Judge denied the motion to reopen, holding that the noncitizen was not eligible for cancellation of removal because at the time of the service of the NTA, her parents were not LPS. The noncitizen appealed. The BIA found that the Immigration Judge improperly found the noncitizen ineligible for cancellation of removal, by only focusing on the first part of regulation and not reading it as a whole. The BIA concluded that the record should be remanded for further consideration of her motion to reopen to apply for that relief.

- This case is important because "The stop-time rule only applies to the seven year continuous residence issue and has no bearing on the other requirements for cancellation of removal, including the issues of qualifying relatives, hardship, or good moral character." (Ira. J. Kurzban, Kurzban's Immigration Law Sourcebook, 974 (11th ed.) (2008)).

DUDNEY v. ATTORNEY GENERAL OF THE U.S., 129 Fed. Appx. 747 (3d Cir. 2005):

- **ISSUE** – Whether an LPR's 1998 conviction stopped the clock for purposes of the continuous residence requirement of INA §240A(a)(2).

- Barrington Dudney, a native and citizen of Jamaica, was admitted to the U.S. as an immigrant in August 1992. In October 1998, he was convicted of possession, and possession with the intent to deliver, a controlled substance (92 packets of marijuana) in Pennsylvania state court. On August 3, 1999, Dudney was convicted of possession of a controlled substance (marijuana), simple assault and resisting arrest in an incident on August 20, 1998. Dudney also was convicted on August 31, 1999 of charges of simple assault, possession of an instrument of crime and recklessly endangering another person in an incident on February 19, 1999. In June 1999, the INS issued a Notice to Appear charging Dudney with removability based upon his October 1998 conviction. A removal order was entered after Dudney failed to appear for his hearing, but the Immigration Judge later terminated the proceedings due to insufficient evidence. In October 2001, the INS issued another Notice to Appear charging Dudney with removability for having committed an aggravated felony (drug trafficking), two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, and a violation of law relating to a controlled substance, other than a single offense involving possession for one's own use of 30 grams or less of marijuana. These charges were based on the October 1998 and August 31, 1999 convictions. The Notice to Appear was then amended, and the August 3, 1999 convictions for drug possession and simple assault, and another aggravated felony charge were added. Through counsel, Dudney sought cancellation of removal as a permanent resident pursuant to INA § 240A(a). The Immigration Judge found Dudney removable for a violation of law relating to a controlled substance, other than a single offense involving possession for one's own use of 30 grams or less of marijuana, based on his August 3, 1999 drug conviction. The BIA also agreed with the Immigration Judge that Dudney was not eligible for cancellation of removal because he did not meet the requirement that he have continuous residence here for seven years. The BIA explained that even if Dudney could not be removed based upon his October 1998 conviction because the proceedings related to this conviction were terminated, the October 1998 conviction stopped the clock for purposes of the seven-year residence requirement.

- This case is important because it affirms that an LPR must satisfy subsection 2 of INA § 240A(a), the seven-year continuous residence requirement, in order to be eligible for LPR Cancellation.

OKEKE v. ATTORNEY GENERAL OF THE U.S., 407 F.3d 585 (3d Cir. 2005):

- **ISSUE** - Whether a noncitizen is entitled to a new period of continuous physical presence, commencing upon his lawful reentry into the U.S., so as to allow him to accrue the time required to establish eligibility for cancellation of removal.

- Anderson Jude Okeke, a native and citizen of Nigeria, petitioned for review of two orders from the BIA. Those orders affirmed the Immigration Judge's decision that Okeke could not demonstrate the requisite continuous physical presence in the U.S. in order to qualify for non-LPR cancellation of removal.

Essentially, the BIA found that the 'stop-time' provision (INA § 240A(d)(1)), once triggered, precluded the accrual of a new period of continuous presence, which in this case commenced with Okeke's lawful reentry into the U.S. That lawful reentry – the critical fact on appeal – occurred after Okeke committed a controlled substance offense, which, pursuant to INA § 240A(d)(1), clearly ended any prior period of continuous physical presence. This court concluded that the clock should have restarted upon Okeke's reentry. Pursuant to the express terms of the Notice to Appear (NTA), it was the final entry that should have been considered in calculating continuous physical presence.

- This case is important because a noncitizen is entitled to a new period of continuous physical presence under INA § 240A(d)(1), commencing upon his lawful reentry into the U.S., so as to allow him to accrue the time required to establish eligibility for cancellation of removal.

BRISENO-FLORES v. ATTORNEY GENERAL OF THE U.S., 492 F.3d 226 (3d Cir. 2004):

- **ISSUE** - Whether a noncitizen can accrue a period of continuous physical presence to qualify for suspension of deportation (now cancellation of removal) after his or her first period of continuous physical presence was stopped by the stop-time rule.

- On November 16, 1996, the INS commenced deportation proceedings against Jesus Briseno-Flores, a citizen of Mexico who had entered the U.S. without inspection in 1984. Briseno admitted to the allegations against him and was found deportable, but pursued an application for suspension of deportation under the statute then in effect, INA § 244(a)(1). The Immigration Judge granted Briseno's application for suspension of deportation but the INS appealed to the BIA. The BIA sustained the appeal, finding that Briseno could not establish the seven years of continuous physical presence required under the statute for eligibility for suspension of deportation. The BIA found that Briseno had committed petty theft on two occasions, in 1985 and 1989, and that, under INA § 240(d) (the stop-time rule), continuous physical presence is deemed to end on the date that a crime is committed. It was clear from the record that Briseno pleaded guilty to the crime of petty theft on July 12, 1989 for stealing two bottles of rum from a supermarket. Briseno's criminal record, offered as evidence by the INS in the hearings at the administrative level, also reflected a 1985 guilty plea by Briseno to the crime of petty theft. Each of these petty thefts constituted a crime of moral turpitude. Thus, Briseno stopped accruing a period of continuous physical presence in 1985, and did not achieve the required seven years of presence. As a result, he was not eligible for suspension of deportation under INA § 244(a)(1).

- This case is important because the Third Circuit ruled that it would follow the BIA's view that once a noncitizen's first period of continuous presence is stopped

(for example by committing a petty theft crime), it is impossible to accrue a second period of continuous presence to satisfy one of the requirements for suspension of removal (cancellation of removal since April 1, 1997). This case is distinguishable from Okeke v. Attorney General of the U.S., 407 F.3d 585 (3d Cir. 2005) because in Okeke, the court concluded that pursuant to the express terms of the Notice to Appear (NTA), it was the final entry that should have been considered in calculating continuous physical presence.

MATTER OF DEANDA-ROMO, 23 I. & N. Dec. 597 (BIA 2003):

- **ISSUE** - Whether a noncitizen who has committed two crimes involving moral turpitude is precluded from establishing the requisite 7 years of continuous residence for cancellation of removal under INA §240A(a)(2), where his first crime was a petty offense that was committed within the 7-year period and the second crime was committed more than 7 years after his admission to the United States.

- The noncitizen was admitted to the United States as a lawful permanent resident on January 8, 1992. On September 21, 1999, he was convicted in Texas of two misdemeanor offenses of assault with bodily injury to his spouse, one occurring on October 30, 1998, and the other on June 20, 1999. He was sentenced to imprisonment for both offenses. He conceded removability and applied for LPR cancellation of removal. The IJ terminated the application after finding that the noncitizen was ineligible for relief under the "stop-time" rule. The BIA held that the noncitizen was not precluded by the stop-time rule from establishing the requisite seven years of continuous residence because his first crime qualified as a petty offense and, thus, did not render him inadmissible. Thus, according to the BIA, the noncitizen had accrued the requisite seven years of continuous residence before the second offense was committed.

- This case is important because the court held that the stop-time rule does not apply until the second conviction where the first conviction was a petty offense.

IN RE BLANCAS-LARA, 23 I. & N. Dec. 458 (BIA 2002):

- **ISSUE** - Whether the period of a noncitizen's residence in the United States after admission as a nonimmigrant may be considered in calculating the 7 years of continuous residence required to establish eligibility for cancellation of removal.

- The noncitizen was first admitted to the United States in August 1986 with a border crossing card. He adjusted his status to that of a lawful permanent resident on August 5, 1991. The noncitizen's period of continuous residence under section 240A(a)(2) of the Act ended on April 1, 1998, when he was served with a Notice to Appear. At that point, the noncitizen had resided in the United States as a lawful permanent resident for about 6 years and 8 months. The Immigration Judge concluded that the noncitizen could count time he spent in the United States as a child before his admission as a lawful permanent resident toward the accrual of 7 years of continuous residence under section 240A(a)(2), because the lawful

residence of his father, a citizen and resident of the United States, could be imputed to him. On appeal the BIA found that the noncitizen established that, at the time of his application for relief, he had resided in the United States continuously for 7 years after having been admitted as a nonimmigrant. Thus, an applicant who is admitted with a nonimmigrant visa, and accrues the 7 years of continuous residence to meet the second element of the statute, does not need an imputation argument. Accordingly, the BIA concurred with the Immigration Judge's decision and dismissed the appeal.

- This case is important because the BIA stated that the period of a noncitizen's residence in the United States after admission as a nonimmigrant may be considered in calculating the seven years of continuous residence required to establish eligibility for cancellation of removal.

MATTER OF CAMPOS-TORRES, 22 I. & N. Dec. 1289 (BIA 2000):

- **ISSUE** - Whether the noncitizen's commission of a firearms offense, which is not referred to in INA § 212(a)(2), precluded him from satisfying the requirement in INA § 240A(a)(2) that he have resided in the United States continuously for 7 years after having been admitted in any status.

- The noncitizen, a native and citizen of Mexico, was admitted to the United States as a temporary resident on May 4, 1988, and adjusted his status to that of a lawful permanent resident on December 13, 1990. On September 23, 1993 the noncitizen was convicted of a single offense of unlawful use of a weapon. The noncitizen was sentenced to 18 months of probation. On June 25, 1997, the INS issued and served a Notice To Appear (NTA) commencing removal proceedings and charging the noncitizen with removability. The issue that was raised before the Immigration Judge and argued in the initial briefs submitted on appeal concerned the appropriate date to apply in determining when accrual of continuous presence ends. The noncitizen argued that under the plain language of the statute, firearms offenses do not cut off continuous presence because they are not "referred to" in § 212(a)(2) of the Act. The government argued that the plain language of INA § 240A(d)(1) does not clearly support either its position or that of the noncitizen because the statute is ambiguous. The BIA found that because the noncitizen's firearms offense, which rendered him deportable under INA § 237(a)(2)(C), is not referred to in INA § 212(a)(2), it did not stop time under INA § 240A(d)(1).

- This case is important because the BIA held that "continuous presence is not stopped by commission of an offense that is not 'referred to in section 212(a)(2)." (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 974 (11th ed.) (2008)).

MATTER OF MENDOZA-SANDINO, 22 I. & N. Dec. 1236 (BIA 2000):

- **ISSUE** - Whether an applicant for suspension of deportation who has not accrued 7 years of continuous physical presence prior to the service of an Order to Show

Cause [Notice To Appear] may accrue the requisite continuous physical presence subsequent to its service.

- The noncitizens are natives and citizens of Nicaragua. Two of the noncitizens entered the United States on February 28, 1986, and each was served with an Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien on March 2, 1986. The other three respondents entered the United States on June 1, 1986, and each was served with an Order to Show Cause on June 2, 1986. The noncitizens filed applications for asylum and withholding of deportation. The noncitizens were scheduled to appear for hearings on their applications for asylum and withholding of deportation. The noncitizens failed to appear. The noncitizens were deemed to have abandoned their applications for asylum and withholding of deportation. Two of them were granted voluntary departure and the others were ordered deported in absentia. On April 15, 1996, the noncitizens filed motions to reopen to apply for suspension of deportation. The Service opposed the motions arguing that the noncitizens had not shown reasonable cause for their failure to appear at the scheduled hearings. On May 22, 1996, an Immigration Judge granted the noncitizen's motions. The Immigration Judge determined that section 240A(d)(1) of the INA did not apply to the respondents, as they were issued Orders to Show Cause and placed in deportation proceedings, rather than being in removal proceedings after the issuance of a notice to appear. The government appealed. On appeal the government argued that the respondents were unable to establish the requisite 7 years of continuous physical presence before the service of the Orders to Show Cause because they were subject to section 240A(d)(1) of the Act. The issue before the BIA was whether an applicant for suspension of deportation who has not accrued 7 years of continuous physical presence prior to the service of an Order to Show Cause may accrue the requisite continuous physical presence subsequent to its service. The BIA held the respondents accrued more than the requisite 7 years of continuous physical presence after service of the Orders to Show Cause and before they filed their applications for suspension. Because the Immigration Judge correctly determined that they were eligible for suspension of deportation, the BIA affirmed the Immigration Judge's order granting relief to each of the respondents.

- This case is important because the BIA stated that in the suspension context, a person may not accrue a new 7 years subsequent to the service of the Notice to Appear, as service of the Notice to Appear ends continuous physical presence.

MATTER OF NOLASCO-TOFINO, 22 I. & N. Dec. 632 (BIA 1999):

- **ISSUE** - Whether the period of continuous physical presence ends at the issuance of the Notice to Appear, former Order to Show Cause and Notice of Hearing?

- The noncitizen, a 25-year-old male native and citizen of Mexico entered the United States on or about May 17, 1989. On March 26, 1996, the Immigration and Naturalization Service issued an Order to Show Cause and Notice of Hearing and placed him in deportation proceedings. On July 17, 1996, the noncitizen appeared

at his master calendar hearing and declared his intention to seek suspension of deportation. On October 9, 1996, the noncitizen filed an application for that relief. At the merits hearing of June 26, 1997, however, the Immigration Judge pretermitted the application, observing that the noncitizen had not acquired 7 years' continuous physical presence in the United States prior to the issuance and service of his Order to Show Cause. Citing the BIA decision in Matter of N-J-B-, Interim Decision 3309 (BIA 1997), the Immigration Judge concluded that the respondent was prima facie ineligible for suspension of deportation. The noncitizen appealed. The BIA held that the respondent's period of continuous physical presence concluded when he was served with the charging document. Accordingly, the BIA concluded that the noncitizen was unable to satisfy the eligibility requirements for suspension of deportation, and his application for that relief was properly pretermitted by the Immigration Judge.

- This case is important because the BIA held that under the former suspension of deportation, now INA §240A(d)(1)(A), continuous residence for purposes of cancellation of removal is deemed to end upon service of a Notice to Appear. It is also noteworthy that the Order to Show Cause, now the Notice To Appear, was filed pre-1997.

MATTER OF PEREZ, 22 I. & N. Dec. 689 (BIA 1999):

- **ISSUE** - Whether the "stop-time" rule operates to terminate the period of continuous residence required for cancellation of removal as of the date the noncitizen commits the offense that renders him/her deportable.

- In removal proceedings commenced on September 26, 1997, the noncitizen admitted, through his counsel, each of the factual allegations in the Notice to Appear. Specifically, the noncitizen stated that he is a native and citizen of El Salvador, that he was first admitted as a temporary resident on September 21, 1989, and that his status was subsequently adjusted to that of a lawful permanent resident on December 7, 1990. The noncitizen further admitted that he was convicted on July 11, 1997, in Texas, of possession of cocaine, and that this offense was committed on or about August 4, 1992. The noncitizen conceded that he was removable as charged under section 237(a)(2)(B)(i) of the Act on the basis of this conviction and the Immigration Judge ordered him removed. The noncitizen appealed to the BIA on the basis of the retroactive effect of § 240A, arguing that the section's rules limiting eligibility for relief from removal should not apply to him. The BIA, after finding that applying Section 240A would not have an impermissible "retroactive effect," concluded that the respondent's period of continuous residence is deemed to have ended on the date he committed his controlled substance violation. The commission of that offense was prior to his attainment of the required 7 years of continuous residence. Therefore, he was statutorily ineligible for section 240A(a) cancellation of removal. Accordingly, they found that the Immigration Judge's pretermission of his application for cancellation of removal was proper. The appeal was dismissed.

- This case is important because the BIA concluded that "admission in any status" includes admission as a temporary resident. Also, "Under INA 240A(d)(1)(B), continuous residence is deemed to end upon the commission of an admissible offense under INA § 212(a)(2), or a removable offense under INA § 237(a)(2) or § 237(a)(4). The time period is measured from the commission of the crime, not the conviction." (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 974 (11th ed.) (2008)).

IN RE CERVANTES-TORRES, 21 I. & N. Dec. 351 (BIA 1996):

- **ISSUE** - Whether a brief, casual, and innocent departure from the United States constitutes a "meaningfully interruptive" departure for purposes of demonstrating 7 years of continuous physical presence in the United States.

- The noncitizen respondent departed from the United States for a 3-day trip to Mexico in order to visit his ill father during the pendency of his deportation proceedings. The Immigration Judge found that the noncitizen could not demonstrate 7 years of continuous physical presence in the United States as a result of this 3-day trip. The Court found persuasive evidence to support the noncitizen's argument that his 3-day departure to Mexico did not meaningfully interrupt his 7 years of continuous physical presence in the United States for purposes of establishing eligibility for suspension of deportation.

- This case is important because the BIA outlined the factors considered to support a finding that a brief, casual, and innocent departure from the United States does not meaningfully interrupt a noncitizen's continuous physical presence in the United States.

***(3) has not been convicted of any aggravated felony.***

LYONEL JEAN-LOUIS v. ATTORNEY GENERAL OF THE U.S., 582 F.3d 462 (3d Cir. 2009):

- **ISSUE** - Whether simple assault under Pennsylvania law, where the victim is under 12 years of age and the assailant is over 20 years of age, is a crime involving moral turpitude for purposes of cancellation of removal.

- Prior to his seventh year of residency in the United States, petitioner Jean-Louis, a native and citizen of Haiti, struck his wife's daughter, who was under the age of 12, to discipline her. Jean-Louis was subsequently convicted of the Pennsylvania crime of simple assault. The Immigration Judge concluded, and the BIA affirmed, that Jean-Louis's conviction for simple assault of a child under 12 years of age under the state law constituted a Crime of Moral Turpitude (CMT), rendering Jean-Louis, a LPR, ineligible for cancellation of removal. The Third Circuit court disagreed with the BIA and instead applied the modified categorical approach in determining whether a particular crime should be designated as a crime involving moral turpitude. The modified categorical approach enables a

court to look to the record of conviction in the limited circumstance where there is multiplicity in an underlying criminal statute that an individual has been convicted under, and where the minimal conduct contemplated to substantiate a conviction under separate parts of the statute may or may not necessarily involve acts that involve moral turpitude. In this limited situation, a court may look to the facts of the case in an effort to determine what portion of a criminal statue an individual was found guilty under if there is ambiguity. Once this determination is made, the court must then turn away from the record of conviction, thereby precluding the court from entertaining an analysis of the particular facts of the case that resulted in a conviction, and must only categorically analyze the specific subsection of a criminal statute to determine if it necessarily involves moral turpitude. The Third Circuit Court concluded that Jean-Louis was not convicted of a CMT, thereby discarding the realistic probability test recently adopted by the Attorney General in Matter of Silva-Trevino when rendering its decision.

- This case is important because the U.S. Court of Appeals for the Third Circuit addressed the recent opinion of the Attorney General, Matter of Silva-Trevino, 24 I&N Dec. 687, that adopts a novel framework for determining whether a noncitizen petitioner had been convicted of a crime involving a CMT.[2] The Third Circuit concluded that the noncitizen petitioner was not convicted of a CMT, and that as a result the court would apply the established methodology for analyzing CMT, rather than the approach adopted by the Attorney General in Matter of Silva-Trevino. The Court determined that simple assault under Pennsylvania law, where the victim is under 12 years of age and the assailant is over 20 years of age, is not considered a crime involving moral turpitude for purposes of cancellation of removal.

EVANSON v. ATTORNEY GENERAL OF THE U.S., 550 F.3d 284 (3d Cir. 2008):

- **ISSUE** - Whether an LPR's marijuana offense in violation of 35 Pa. Stat. Ann. § 780-113 constitutes an aggravated felony and causes the LPR to be ineligible for cancellation of removal.

- Wister Evanson, a native and citizen of Trinidad and Tobago, was admitted to the U.S. as a permanent resident in December of 1981. In 2005, Evanson pled guilty to possession of marijuana with intent to deliver and criminal conspiracy in violation of Pennsylvania law. After the state judge sentenced him to probation and community service, the Department of Homeland Security commenced removal proceedings. The Immigration Judge found that Evanson's offense did not constitute an aggravated felony and granted cancellation of removal. However, based on information found only in a sentencing document, the BIA found that the offense constituted an aggravated felony and ordered removal. The Third Circuit concluded that the BIA erred in failing to apply the modified

[2] In Matter of Silva-Trevino, the following novel idea was adopted: a finding of moral turpitude under the Act requires that a perpetrator have committed the reprehensible act with some form of scienter. The Attorney General treated the perpetrator's knowledge regarding the victim's age as a critical consideration in forming the depravity of the crime. See Matter of Silva-Trevino, 24 I. & N. Dec. 687, 706 (BIA 2008).

categorical approach set forth in Taylor v. United States, 495 U.S. 575 (1990) and Shepard v. United States, 544 U.S. 13 (2005), and therefore erred when it considered Evanson's sentencing document to determine whether he had been convicted of an aggravated felony. The court granted Evanson's petition for review and remanded for further proceedings.

- This case is important because an LPR's marijuana offense in violation of 35 Pa. Stat. Ann. §780-113 may or may not constitute an aggravated felony and cause the LPR to be ineligible for cancellation of removal. Aggravated felonies require the modified categorical approach set forth in Taylor v. United States, 495 U.S. 575 (1990) and Shepard v. United States, 544 U.S. 13 (2005), not the BIA's expansive approach.

BECKER v. GONZALES, 473 F.3d 1000 (9th Cir. 2007):

- **ISSUE** - Whether a previous grant of relief from deportation under the former § 212 (c) expunges the noncitizen's conviction?

- The noncitizen, a native and citizen of Germany, was admitted to the United States at the age of six, and was a lawful permanent resident. In 2004, he pleaded guilty to the offense of "Possession of Drug Paraphernalia," a Class 6 felony under Arizona law. Removal proceedings were initiated against the noncitizen for being a noncitizen convicted of a controlled substance, in violation of INA § 237(a)(2)(B)(I). The noncitizen conceded that he was removable as charged, but requested LPR cancellation of removal. The Immigration Judge denied his application for relief because it found his conviction to be an aggravated felony and ordered the noncitizen removed to Germany. The BIA affirmed. The appellate court noted that the issue was whether the noncitizen's 1978 conviction for possession of marijuana for sale could be treated as a disqualifying aggravated felony conviction for purposes of his current request for cancellation of removal following his 2004 controlled substance conviction. The court noted that the crimes alleged to be grounds for deportability did not disappear from the noncitizen's record for immigration purposes. Even if the noncitizen was able to waive his 1978 conviction under § 212(c) of the Immigration and Nationality Act, it would nonetheless remain an aggravated felony for purposes of precluding the noncitizen's application for cancellation of removal because of his 2004 conviction.

- This case is important because the court held that crimes alleged to be grounds for deportability do not disappear from a noncitizen's record for immigration purposes; a waiver of deportation gives a noncitizen a chance to stay in the United States, but it does not erase his conviction.

PARK v. ATTORNEY GENERAL OF THE U.S., 472 F.3d 66 (3d Cir. 2006):

- **ISSUE** - Whether a conviction for trafficking in counterfeit goods or services in violation of the Trademark Counterfeiting Act of 1984, 18 U.S.C. §2320, is a

conviction for "an offense relating to...counterfeiting," pursuant to INA §101(a)(43)(R) (and an aggravated felony).

- Yong Wong Park is a native and citizen of the Republic of Korea. He was admitted to the U.S. as an immigrant on or around February 12, 1998. On February 18, 2000, Park pleaded guilty in the U.S. District court for the Southern District of New York to one count of trafficking in counterfeit goods or services from at least February 1997 through October 1997, in violation of 18 U.S.C. § 2320. After his conviction, the DHS initiated removal proceedings. The court found that Park's conviction under 18 U.S.C. §2320 was an offense relating to counterfeiting for purposes of the definition of "aggravated felony" under INA § 101(a)(43)(R). Park applied for LPR Cancellation under INA § 240A(a) but because he had been convicted of an aggravated felony, he was ineligible for cancellation of removal. Park's petition for review was dismissed.

- This case is important because a conviction for trafficking in counterfeit goods or services in violation of the Trademark Counterfeiting Act of 1984, 18 U.S.C. §2320, is an aggravated felony because it is a conviction for "an offense relating to...counterfeiting," pursuant to INA § 101(a)(43)(R). Therefore, a noncitizen with this type of conviction will be unsuccessful applying for LPR Cancellation of Removal.

RODRIGUEZ-MUNOZ v. ATTORNEY GENERAL OF THE U.S., 419 F.3d 245 (3d Cir. 2005):

- **ISSUE** - Whether a noncitizen who has been convicted of an aggravated felony can seek simultaneous INA §212(c) and cancellation of removal relief.

- Richard Jose Rodriguez-Munoz was a native and citizen of the Dominican Republic. He was admitted to the U.S. as an LPR in 1976. In 1992, he pled guilty to four drug offenses in New York state court, including third degree criminal sale of a controlled substance (crack cocaine). In 1994, the INS charged Rodriguez-Munoz with deportability as an alien convicted of an aggravated felony and as being convicted of a violation relating to a controlled substance. While the immigration proceedings were pending, Rodriguez-Munoz pled guilty in New York to two additional offenses: fifth degree criminal possession of marijuana and seventh degree criminal possession of a controlled substance. The government acknowledged that there was no question that Rodriguez-Munoz was eligible to apply for a INA § 212(c), waiver of deportation concerning his 1992 conviction. Indeed, § 212(c) relief remained available for aliens whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea under the law then in effect. Rodriguez-Munoz apparently did not argue before the BIA that his 1992 conviction was not an aggravated felony, nor did he raise such an argument on appeal. Although a waiver of deportation gave him a chance to stay in the U.S. despite his misdeed, it did not expunge his conviction.

Thus, even if Rodriguez-Munoz's deportation based on his 1992 conviction were waived under § 212(c), that conviction would nonetheless remain an aggravated felony for purposes of precluding his application for cancellation of removal under INA§ 240A. Thus, he was deportable.

- This case is important because a noncitizen who has an aggravated felony conviction along with other crimes of moral turpitude cannot seek simultaneous INA § 212(c) and cancellation of removal relief because the aggravated felony makes him or her ineligible for cancellation of removal.

SCHEIDEMANN v. INS, 83 F.3d 1517 (3d Cir. 1996):

- **ISSUE** - Whether an LPR who has served at least five years of imprisonment for a crime defined as an aggravated felony (under the original 1988 definition) is eligible to apply for a discretionary waiver of deportation under § 212(c).

- James Scheidemann is a native and citizen of Columbia who had been an LPR in the U.S. since 1959. Scheidemann sought review of an order of the Board of Immigration Appeals (BIA), which dismissed his appeal to overturn a deportation order. Scheidemann faced deportation on account of a 1987 drug trafficking conviction for which he had served over five years in prison. Scheidemann did not contest his deportability. Rather, he argued that he was eligible to apply for a discretionary waiver of deportation under § 212(c), the Immigration and Nationality Act. The court held that Congress intended § 212(c) to restrict the attorney general's power to exercise discretionary relief, immediately after the enactment of the bar on November 3, 1990, with respect to aliens who had served at least five years imprisonment from crimes defined as aggravated felonies under the original 1988 definition, regardless of the conviction date. Accordingly, Scheidemann's petition for review was denied.

- This case is important because an LPR who has served at least five years of imprisonment for a crime defined as an aggravated felony (under the original 1988 definition) will not be eligible to apply for a discretionary waiver of deportation under the former § 212(c). Therefore, an LPR who is ineligible for LPR Cancellation of Removal because he or she committed an aggravated felony, and who has served at least five years of imprisonment for the aggravated felony, will not be able to apply for a discretionary waiver of deportation as an alternative form of relief.

***Discretionary Component of LPR Cancellation of Removal***

GILSON COSTA v. ATTORNEY GENERAL OF THE U.S., 257 Fed. Appx. 543 (3d Cir. 2007):

- **ISSUE** - Whether inaccurate statements provided under oath during an asylum interview constitute false testimony for purposes of establishing a noncitizen's

lack of good moral character even though they were voluntarily corrected by the alien prior to any exposure by the government?

- The noncitizen originally applied for asylum and stated during his asylum interview that he sought asylum on the basis that he was a homosexual. The noncitizen subsequently married a lawful permanent resident whose two children were American citizens. The noncitizen withdrew the asylum application and applied for cancellation of removal; as part of his application, he submitted an affidavit stating that he had incorrectly claimed during the asylum interview to have been a homosexual. The Immigration Judge found that the noncitizen was not a person of good moral character by giving false testimony for the purpose of obtaining a benefit under the immigration laws. The court of appeals found that the noncitizen's inaccurate statements during the asylum interview were not "false testimony" because he corrected the statements voluntarily and prior to any exposure by the government. Remand was necessary to determine whether the noncitizen was eligible for cancellation of removal.

- This case is important because the court held that the BIA and the Immigration Judged erred in finding that noncitizen lacked good moral character for purposes of meeting the requirements of non-LPR cancellation of removal.

INS v. ENRICO ST. CYR, 533 U.S. 289 (2001):

- **ISSUE** - Whether IIRIRA statutory restrictions on discretionary relief from deportation apply to removal proceedings brought against noncitizens who pled guilty to a deportable crime before the statutory enactments.

- Enrico St. Cyr came from Haiti to the United States as a lawful permanent resident in 1986. A decade later in Connecticut, he pled guilty in a Connecticut state court to selling a controlled substance, $100 worth of cocaine, and thus became deportable. If the INS would have taken custody of St. Cyr at the completion of his sentence, he would have been eligible for a waiver of deportation under INA § 212(c). Because the INS did not begin proceedings against St. Cyr until 1997, he could no longer file a motion for § 212(c) even though he committed the crime when the waiver was still being granted. He was now subject to the new retroactive laws passed in 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Represented by the ACLU, St. Cyr sued the federal government on the grounds that he was lawfully eligible for the waiver. The case reached the United States Supreme Court in 2001. The Court ruled that Congress never intended for INS to apply its new rule retroactively in cases involving plea bargains made prior to the enactment of IIRIRA. That meant that St. Cyr, and other immigrants whose convictions were obtained through plea agreements, remain eligible for § 212(c) waiver if they would have been eligible for § 212(c) relief at the time of their plea.

- This case is important because it held that the effective date of the changes from INA § 212(c) to cancellation of removal for LPRs, Apr. 1, 1997, does not bar § 212(c) relief for certain pre-IIRIRA convictions. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 976, (11th ed.) (2008)).

MATTER OF SOTELO-SOTELO, 23 I. & N. Dec. 201 (BIA 2001):

- **ISSUE** - Whether a noncitizen is required to satisfy a threshold test of showing "unusual or outstanding equities" for the consideration of whether a favorable exercise of discretion is warranted.

- The noncitizen was a native from Mexico who adjusted his status to that of a lawful permanent resident on December 1, 1990. On July 24, 2000, he was convicted of the following offenses: possession and passing fraudulent resident alien cards, failure to provide migrant workers with terms and conditions of employment, and illegal entry or aiding and abetting illegal entry. The noncitizen was sentenced to 8 months of imprisonment for each of the first two offenses, and to 6 months of imprisonment for the third offense. In proceedings before the Immigration Judge, the noncitizen conceded removability as charged and applied for cancellation of removal under INA §240A(a). The Immigration Judge denied the noncitizen's application for relief, and the noncitizen appealed. The BIA found that the favorable factors presented in support of the noncitizen's application for cancellation of removal did not outweigh the adverse factors. In doing so, the BIA rejected the use of an 'outstanding and unusual equities' requirement as a threshold for relief and instead found that the Immigration Judge should weigh the favorable and adverse factors to determine whether the 'totality of the evidence' on balance indicates that a favorable discretion is warranted

- This case is important because the BIA rejected the use of an 'outstanding and unusual equities' requirement as a threshold for relief and instead found that the Immigration Judge should weigh the favorable and adverse factors to determine whether the 'totality of the evidence' on balance indicates that a favorable discretion is warranted. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 985 (11th ed.) (2008)).

MATTER OF C-V-T, 22 I. & N. Dec. 7 (BIA 1998):

- **ISSUES** - (1) What standards for the exercise of discretion should be used in considering an application for cancellation of removal under INA §240A(a) and (2) under the appropriate standards, has the noncitizen adequately demonstrated that he warrants, as a matter of discretion, cancellation of removal under this section of law?

- The noncitizen was a native of Vietnam who entered the United States as a refugee on March 1983. He became a lawful permanent resident in 1991. In June 1997, he was convicted of the offense of misconduct involving controlled substances. He was sentenced to 90 days imprisonment. Removal proceedings were instituted in June 1997. The noncitizen applied for cancellation of removal

under INA §240A(a). The Immigration Judge found the noncitizen statutorily eligible for relief. The BIA found that the noncitizen has adequately demonstrated that he warranted a favorable exercise of discretion and a grant of cancellation of removal under section 240A(a) of the Act.

- This case is important because the BIA acknowledges the general standards developed in Matter of Marin for the exercise of discretion under INA § 212(c), which was repealed by section 304(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), as also being applicable to the exercise of discretion under INA § 240A(a).

MATTER OF ARREGUIN, 21 I. & N. Dec. 38 (BIA 1995):

- **ISSUE** - Whether relief is warranted in the exercise of discretion.

- The noncitizen, a 41-year-old native and citizen of Mexico, began residing in the United States in 1970, when she was 17 years old. She was admitted into the United States as an immigrant on December 12, 1975. On September 29, 1993, the noncitizen was convicted of importing marijuana. She was arrested upon her attempted entry and, because of the marijuana found in the truck and her subsequent conviction, was placed in exclusion proceedings. The noncitizen did not contest her excludability, but applied for a waiver under INA §212(c). The Immigration Judge decided that relief under INA §212(c) was not warranted in the exercise of discretion, and ordered her deportation to Mexico. On appeal, the noncitizen asserted that the Immigration Judge erred in his evaluation of the equities in her case. The BIA granted relief based on the totality of the circumstances presented in her case.

- This case is important because the BIA noted that in regard to the exercise of discretion, positive equities include long residence in the United States and the existence of United States citizen minor children. Also, rehabilitation is a relevant consideration in the exercise of discretion. (Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 985 (11th ed.) (2008)).

MATTER OF EDWARDS, 20 I. & N. Dec. 191 (BIA 1990):

- **ISSUE** - Whether cancellation of removal provides an indiscriminate waiver for individuals who demonstrate statutory eligibility.

- The noncitizen was a native and citizen of Barbados, who was admitted to the United States as a lawful permanent resident in 1968. He married a United States citizen with whom he had four United States citizen children. He incurred criminal convictions while in the U.S. that entailed him serving some 2 and 1/2 years of imprisonment. The noncitizen implored that he be allowed to remain in the United States because of his family. He insisted that he would work hard to change his ways. He stated that his wife and children, as well as his mother and siblings, resided here and that he knew no one in Barbados. The Immigration

Judge determined that the noncitizen was statutorily eligible for a section 212(c) waiver. However, he denied that relief in the exercise of discretion. On appeal, the noncitizen argued that the Immigration Judge erred by failing to consider all of the favorable factors presented in his case. The BIA balanced the various factors in the noncitizen's case and took note of his favorable equities, which the court found to be unusual or outstanding. However, when the BIA weighed these equities against the adverse factors of the noncitizen's extensive criminal record, the BIA determined that a favorable exercise of discretion was not warranted.

- This case is important because the BIA states that in keeping with the standards developed under former INA § 212(c), courts should consider the record as a whole. Courts should balance the adverse factors evidencing the noncitizen's undesirability as a permanent resident with the social and humane considerations presented in his/her favor in order to determine whether a grant of relief would be in the best interest of the U.S.

- **ISSUE** - Whether a waiver of deportation/cancellation of removal provides an indiscriminate waiver for all who demonstrate statutory eligibility for such relief.

- The noncitizen was admitted to the United States as a lawful permanent resident on February 3, 1965. In March 1976, he pled guilty to the felony charge of criminal sale of cocaine. He served 30 months in New York State penal institutions. In May 1977 he was served with an order to show and was charged with being deportable. The Immigration Judge found him deportable and he appealed. The noncitizen argued that he was eligible for 212(c) relief. The BIA stated that Section 212(c) does not provide an indiscriminate waiver for all who demonstrate statutory eligibility for such relief. Instead, the Attorney General is required to determine as a matter of discretion whether an applicant warrants the relief sought. The BIA concluded that the noncitizen bears the burden of demonstrating that his application merits favorable consideration. The noncitizen was unable to advance any substantial equities and the BIA dismissed his appeal.

- This case is important because the BIA held that in keeping with the standards developed under former INA §212(c), courts should consider a noncitizen's record as a whole. Courts should balance the adverse factors evidencing the noncitizen's undesirability as a permanent resident with the social and humane considerations presented in his or her behalf to determine whether relief should be granted.

# VII. APPENDIX – SAMPLE GOVERNMENT FORMS

**From the EOIR, Forms[1]-**

- Advice to Applicant: Application for Cancellation of Removal for Certain Permanent Residents
- Instructions: Application for Cancellation of Removal for Certain Permanent Residents
- Form EOIR – 42A: Application for Cancellation of Removal for Certain Permanent Residents
- Form EOIR – 28: Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court

**From the EOIR, Immigration Court Practice Manual[2] –**

- Sample Cover Page
- Sample Written Pleading
- Sample Proof of Service

**From the USCIS[3] –**

- Form G-325A: Biographic Information

[1] United States Department of Justice, Executive Office for Immigration Review (follow "Form EOIR-42A" hyperlink and "Form EOIR-28 hyperlink) *available at* www.justice.gov/eoir/formslist.htm (last visited Dec. 1, 2009).

[2] United States Department of Justice, Executive Office for Immigration Review, Immigration Court Practice Manual, *available at* http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm (follow "Appendices" hyperlink), (last visited Dec. 1, 2009).

[3] United States Citizenship and Immigration Services, *available at* www.uscis.gov/portal/site/uscis (follow "Forms" hyperlink; then follow "All Forms" hyperlink; then follow "Form G-325A" hyperlink), (last visited Dec. 1, 2009).

**U.S. Department of Justice**
Executive Office for Immigration Review

OMB#1125-0001

# Application for Cancellation of Removal for Certain Permanent Residents

## ADVICE TO APPLICANT

*PLEASE READ CAREFULLY. FEES WILL NOT BE RETURNED.*

I. **Permanent Resident Aliens Eligible for Cancellation of Removal:** You may be eligible to have your removal cancelled under section 240A(a) of the Immigration and Nationality Act (INA). To qualify for this benefit, you must establish in a hearing before an Immigration Judge that:

**A.** You have been a permanent resident for at least five (5) years;

**B.** Prior to service of the Notice to Appear, or prior to committing a criminal or related offense referred to in sections 212(a)(2) and 237(a)(2) of the INA, or prior to committing a security or related offense referred to in section 237(a)(4) of the INA;

-- you have at least seven (7)years continuous residence in the United States after having been lawfully admitted in any status; and

**C.** You have not been convicted of an aggravated felony.

**NOTE:** If you have served on active duty in the Armed Forces of the United States for at least 24 months, you do not have to meet the requirements of continuous residence in the United States. You must, however, have been in the United States when you entered the Armed Forces. If you are no longer in the Armed Forces, you must have been separated under honorable conditions.

II. **Permanent Resident Aliens NOT Eligible for Cancellation of Removal:** You are not eligible to have your removal cancelled under section 240A(a) of the INA if you:

**A.** Entered the United States as a crewman after June 30, 1964;

**B.** Were admitted to the United States as, or later became, a nonimmigrant exchange alien as defined in section 101(a)(15)(J) of the INA in order to receive a graduate medical education or training, regardless of whether you are subject to or have fulfilled the 2-year foreign residence requirement of section 212(e) of the INA;

**C.** Were admitted to the United States as, or later became, a nonimmigrant exchange alien as defined in section 101(a)(15)(J) of the INA, other than to receive graduate medical education or training, and are subject to the 2-year foreign residence requirement of section 212(e) of the INA but have neither fulfilled nor obtained a waiver of that requirement;

**D.** Are an alien who is either inadmissible under section 212(a)(3) of the INA or deportable under section 237(a)(4) of the INA;

**E.** Are an alien who ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion; or

**F.** Are an alien who was previously granted relief under section 212(c) of the INA, or section 244(a) of the INA as such sections were in effect prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, or whose removal has previously been cancelled under section 240A of the INA.

## III. How Permanent Resident Aliens Can Apply for Cancellation of Removal

If you believe that you have met all the requirements for cancellation of removal, you must answer all the questions on the attached Form EOIR-42A fully and accurately. You must pay the filing and biometrics fees and comply with the Department of Homeland Security (DHS) instructions for providing biometric and biographic information to USCIS [available at http://uscis.gov]. You must also serve a copy of your application on the Assistant Chief Counsel for the DHS, U.S. Immigration and Customs Enforcement (ICE) as required in the proof of service on page 7 of this application, and you must file your application with the appropriate Immigration Court. Please read the following instructions carefully before completing your application.

OMB#1125-0001

**U.S. Department of Justice**
Executive Office for Immigration Review

# Application for Cancellation of Removal for Certain Permanent Residents

## INSTRUCTIONS

### 1. PREPARATION OF APPLICATION.

To apply for cancellation of removal as a permanent resident alien under section 240A(a) of the Immigration and Nationality Act (INA), you must fully and accurately answer all questions on the attached Form EOIR-42A. You must also comply with all of the instructions on this form. These instructions have the force of law. A separate application must be prepared and executed for each person applying for cancellation of removal. An application on behalf of an alien who is mentally incompetent or is a child under 14 years of age shall be executed by a parent or guardian.

Your responses must be typed or printed legibly in ink. Do not leave any questions unanswered or blank. If any questions do not apply to you, write "none" or "not applicable" in the appropriate space.

To the extent possible, answer all questions directly on the form. If there is insufficient room to respond fully to a question, please continue your response on an additional sheet of paper. Please indicate the number of the question being answered next to your response on the additional sheet, write your alien registration number, print your name, and sign, date, and securely attach each additional sheet to the Form EOIR-42A.

### 2. BURDEN OF PROOF.

The burden of proof is on you to prove that you meet all of the statutory requirements for cancellation of removal for certain permanent resident aliens under section 240A(a) of the INA and that you are entitled to such relief as a matter of discretion. To meet this burden, your responses to the questions on the application should be as detailed and complete as possible. You should also attach to your application any documents that demonstrate your eligibility for relief (see "SUPPORTING DOCUMENTS" below).

### 3. SUPPORTING DOCUMENTS.

You should submit documentary evidence to show both that you have been a permanent resident alien for at least five (5) years, and that you have seven (7) years of continuous residence in the United States after having been lawfully admitted in any status. This evidence may include, but is not limited to, immigration stamps in passports, DHS Form I-94, leases, deeds, receipts, letters, church records, school records, employment records, and tax payment records.

The original of all supporting documents must be available for inspection at the hearing. If you wish to have the original documents returned to you, you should also present reproductions.

### 4. REQUIRED BIOMETRIC AND BIOGRAPHIC INFORMATION.

Each applicant 14 years of age or older must also comply with the requirement to supply biometric and biographic information. You will be given instructions on how to complete this requirement. You will be notified in writing of the location of the Application Support Center (ASC) or the designated Law Enforcement Agency where you must go to provide biometric and biographic information. You will also be given a date and time for the appointment. It is important to furnish all the required information. Failure to comply with this requirement may result in a delay in your appointment or in your application being deemed abandoned and dismissed by the Immigration Court.

### 5. TRANSLATIONS.

Any document in a foreign language must be accompanied by an English language translation and a certificate signed by the translator stating that he/she is competent to translate the document and that the translation is true and accurate to the best of the translator's abilities. Such certification must be printed legibly or typed.

## 6. FEES.

Before you file your Form EOIR-42A with the Immigration Court, you must pay the required $100 filing fee and the biometrics fee to the Department of Homeland Security (DHS). Evidence of payment of these fees in the form of a copy of the DHS, U.S. Citizenship and Immigration Services (USCIS) ASC notice of fee receipt and biometrics appointment instructions must accompany your Form EOIR-42A. These fees will not be refunded, regardless of the action taken on your application. Therefore, it is important that you read the advice, instructions, and application carefully before responding. **If you are unable to pay the filing fee, you may ask the Immigration Judge to permit you to file your Form EOIR-42A without fee (fee waiver).**

**DO NOT SEND CASH.** All fees must be submitted in the exact amount. Remittance may be made by personal check, cashier's check, certified bank check, bank international money order, or foreign draft drawn on a financial institution in the United States and payable to the "Department of Homeland Security" in United States currency. If the applicant resides in the Virgin Islands, the check or money order must be payable to the "Commissioner of Finance of the Virgin Islands." If the applicant resides in Guam, the check or money order must be made payable to the "Treasurer, Guam." Personal checks are accepted subject to collectibility. An uncollectible check will render the application and any documents issued pursuant thereto invalid. A charge of $30.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. When the check is drawn on an account of a person other than the applicant, the name and alien registration number of the applicant must be entered on the face of the check. All checks must be drawn on a bank located in the United States.

## 7. SERVING & FILING YOUR APPLICATION.

A. You must first comply with the DHS instructions for providing biometric and biographic information to USCIS, which involves sending a copy of the application to the appropriate USCIS Service Center. The DHS instructions also address payment of the application fees.

B. You must then serve the following documents on the Assistant Chief Counsel for DHS, U.S. Immigration and Customs Enforcement (ICE):

- a copy of your Form EOIR-42A, Application for Cancellation of Removal, with all supporting documents and additional sheets;
- a copy of the USCIS ASC notice of fee receipt and biometrics appointment instructions; and
- the original Biographical Information Form G-325A.

You must file the following documents with the appropriate Immigration Court:

- the original Form EOIR-42A with all supporting documents and additional sheets;
- a copy of the USCIS ASC notice of fee receipt and biometrics appointment instructions;
- a copy of the Biographical Information Form G-325A; and
- a completed certificate showing service of these documents (See Part 10 of the Application on page 7) on the ICE Assistant Chief Counsel, unless service is made on the record at the hearing.

Retain your USCIS ASC biometrics confirmation document or a copy of your Fingerprint Card, FD-258, if applicable, as proof that your biometrics were taken, and bring it to your future Immigration Court hearings.

## 8. PENALTIES.

You must answer all questions on Form EOIR-42A truthfully and submit only genuine documents in support of your application. **You will be required to swear or affirm that the contents of your application and the supporting documents are true to the best of your knowledge**. Your answer to the questions on this form and the supporting documents you present will be used to determine whether your removal should be cancelled and whether you should be permitted to retain your permanent resident status. Any answer you give and any supporting document you present may also be used as evidence in any proceeding to determine your right to be admitted or readmitted, re-enter, pass through, or reside in the United States. Your application may be denied if any of your answers or supporting documents are found to be false.

Presenting false answers or false documents may also subject you to criminal prosecution under 18 U.S.C. section 1546 and/or subject you to civil penalties under 8 U.S.C. section 1324c if you submit your application knowing that the application, or any supporting document, contains any false statement with respect to a material fact, or if you swear or affirm that the contents of your application and the supporting documents are true, knowing that the application or any supporting documents contain any false statement with respect to a material fact. If convicted, you could be fined up to $250,000, imprisoned for up to ten (10) years, or both. 18 U.S.C. sections 1546(a), 3559(a)(4), 3571(b)(3). If it is determined you have violated the prohibition against document fraud and a final order is entered against you, you could be subject to a civil penalty up to $2,000 for each document used or created for the first offense, and up to $5,000 for any second, or subsequent offense. In addition, if you are the subject of a final order for violating 8 U.S.C. section 1324c, relating to civil penalties for document fraud, you will be removable from the United States.

## 9. PAPERWORK REDUCTION ACT NOTICE.

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can easily be understood, and which impose the least possible burden on you to provide us with information. Often, this process is difficult because some immigration laws are very complex. The reporting burden for this collection of information is computed as follows: (1) learning about the form, 50 minutes, (2) completing the form, 2 hours, and (3) assembling and filing the form, 3 hours, for an average of 5 hours, 50 minutes per application. If you have comments regarding the accuracy of this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, you may write to the U.S. Department of Justice, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

**U.S. Department of Justice**
Executive Office for Immigration Review

OMB#1125-0001

# Application for Cancellation of Removal for Certain Permanent Residents

**PLEASE READ ADVICE AND INSTRUCTIONS BEFORE FILLING IN FORM**

**PLEASE TYPE OR PRINT**

Fee Stamp (Official Use Only)

## PART 1 - INFORMATION ABOUT YOURSELF

| | | | | |
|---|---|---|---|---|
| 1) My present true name is: *(Last, First, Middle)* | | 2) Alien Registration (or "A") Number(s): | | |
| 3) My name given at birth was: *(Last, First, Middle)* | | 4) Birth Place: *(City and Country)* | | |
| 5) Date of Birth: *(Month, Day, Year)* | 6) Gender: ❑ Male ❑ Female | 7) Height: | 8) Hair Color: | 9) Eye Color: |
| 10) Current Nationality and Citizenship: | 11) Social Security Number: | 12) Home Phone Number: ( ) | 13) Work Phone Number: ( ) | |

14) I currently reside at:

*Apt. number and/or in care of*

*Number and Street*

*City or Town* *State* *Zip Code*

15) I have been known by these additional name(s):

16) I have resided in the following locations in the United States: (List PRESENT ADDRESS FIRST, and work back in time for at least 7 years.)

| Street and Number - Apt. or Room # - City or Town - State - Zip Code | Resided From: *(Month, Day, Year)* | Resided To: *(Month, Day, Year)* |
|---|---|---|
| | | PRESENT |
| | | |
| | | |
| | | |
| | | |

## PART 2 - INFORMATION ABOUT THIS APPLICATION

17) I, the undersigned, hereby request that my removal be cancelled under the provisions of section 240A(a) of the Immigration and Nationality Act (INA). I believe that I am eligible for this relief because I have been a lawful permanent resident alien for 5 or more years, have 7 years of continuous residence in the United States, and have not been convicted of an aggravated felony. I was admitted as or adjusted to the status of an alien lawfully admitted for permanent residence on _____ *(Date)*

at _____ *(Place)*.

*Please continue answers on a separate sheet as needed.*

## PART 3 - INFORMATION ABOUT YOUR PRESENCE IN THE UNITED STATES

18) My first arrival into the United States was under the name of: *(Last, First, Middle)*

19) My first arrival to the United States was on: *(Month, Day, Year)*

20) Place or port of first arrival: *(Place or Port, City, and State)*

21) I:
- ❑ was inspected and admitted.
  - ❑ I entered using my Lawful Permanent Resident card which is valid until _____ *(Month, Day, Year)*.
  - ❑ I entered using a _____ *(Specify Type of Visa)* visa which is valid until _____ *(Month, Day, Year)*.
- ❑ was not inspected and admitted.
  - ❑ I entered without documents. Explain: _____.
  - ❑ I entered without inspection. Explain: _____.
- ❑ Other. Explain: _____.

22) I applied on _____ *(Month, Day, Year)* for additional time to stay and it was ❑ granted on _____ *(Month, Day, Year)* and valid until _____ *(Month, Day, Year)*, or ❑ denied on _____ *(Month, Day, Year)*.

23) Since the date of my first entry, I departed from and returned to the United States at the following places and on the following dates:
*(Please list all departures regardless of how briefly you were absent from the United States.)*
***If you have never departed from the United States since your original date of entry, please mark an X in this box:*** ❑

| | | | | |
|---|---|---|---|---|
| 1 | Port of Departure *(Place or Port, City and State)* | Departure Date *(Month, Day, Year)* | Purpose of Travel | Destination |
| | Port of Return *(Place or Port, City and State)* | Return Date *(Month, Day, Year)* | Manner of Return | Inspected and Admitted? ❑ Yes ❑ No |
| 2 | Port of Departure *(Place or Port, City and State)* | Departure Date *(Month, Day, Year)* | Purpose of Travel | Destination |
| | Port of Return *(Place or Port, City and State)* | Return Date *(Month, Day, Year)* | Manner of Return | Inspected and Admitted? ❑ Yes ❑ No |

24) Have you ever departed the United States:
a) under an order of deportation, exclusion, or removal?..... ❑ Yes ❑ No
b) pursuant to a grant of voluntary departure?..... ❑ Yes ❑ No

## PART 4 - INFORMATION ABOUT YOUR MARITAL STATUS AND SPOUSE *(Continued on page 3)*

25) I am not married: ❑
I am married: ❑

26) If married, the name of my spouse is: *(Last, First, Middle)*

27) My spouse's name before marriage was:

28) The marriage took place in: *(City and Country)*

29) Date of marriage: *(Month, Day, Year)*

30) My spouse currently resides at:

_____
*Apt. number and/or in care of*

_____
*Number and Street*

_____
*City or Town* *State/Country* *Zip Code*

31) Place and date of birth of my spouse: *(City & Country; Month, Day, Year)*

32) My spouse is a citizen of: *(Country)*

33) If your spouse is other than a native born United States citizen, answer the following:
He/she arrived in the United States at: *(Place or Port, City and State)* _____.
He/she arrived in the United States on: *(Month, Day, Year)* _____.
His/her alien registration number(s) is: A# _____.
He/she was naturalized on: *(Month, Day, Year)* _____ at _____ *(City and State)*.

34) My spouse ❑ - is ❑ - is not employed. If employed, please give salary and the name and address of the place(s) of employment.

| Full Name and Address of Employer | Earnings Per Week *(Approximate)* |
|---|---|
| | $ |
| | $ |
| | $ |

*Please continue answers on a separate sheet as needed.*

## PART 4 - INFORMATION ABOUT YOUR MARITAL STATUS AND SPOUSE *(Continued)*

35) I ❑ - have ❑ - have not been previously married: *(If previously married, list the name of each prior spouse, the dates on which each marriage began and ended, the place where the marriage terminated, and describe how each marriage ended.)*

| Name of prior spouse: *(Last, First, Middle)* | Date marriage began:<br>Date marriage ended: | Place marriage ended:<br>*(City and Country)* | Description or manner of how marriage was terminated or ended: |
|---|---|---|---|
| | | | |

| Name of prior spouse: *(Last, First, Middle)* | Date marriage began:<br>Date marriage ended: | Place marriage ended:<br>*(City and Country)* | Description or manner of how marriage was terminated or ended: |
|---|---|---|---|
| | | | |

36) Have you been ordered by any court, or are otherwise under any legal obligation, to provide child support and/or spousal maintenance as a result of a separation and/or divorce? ❑ - Yes ❑ - No

## PART 5 - INFORMATION ABOUT YOUR EMPLOYMENT AND FINANCIAL STATUS

37) Since my arrival into the United States, I have been employed by the following named persons or firms: *(Please begin with present employment and work back in time. Any periods of unemployment or school attendance should be specified. Attach a separate sheet for additional entries if necessary.)*

| Full Name and Address of Employer | Earnings Per Week *(Approximate)* | Type of Work Performed | Employed From: *(Month, Day, Year)* | Employed To: *(Month, Day, Year)* |
|---|---|---|---|---|
| | $ | | | PRESENT |
| | $ | | | |
| | $ | | | |

38) If self-employed, describe the nature of the business, the name of the business, its address, and net income derived therefrom:

39) My assets (and if married, my spouse's assets) in the United States and other countries, not including clothing and household necessities, are:

**Self**

Cash, Stocks, and Bonds..... $
Real Estate..... $
Auto (dollar value minus amount owed)..... $
Other (describe on line below)..... $
**TOTAL** $

**Jointly Owned With Spouse**

Cash, Stocks, and Bonds..... $
Real Estate..... $
Auto (dollar value minus amount owed)..... $
Other (describe on line below)..... $
**TOTAL** $

40) I ❑ - have ❑ - have not received public or private relief or assistance (e.g. Welfare, Unemployment Benefits, Medicaid, TANF, AFDC, etc.). If you have, please give full details including the type of relief or assistance received, date for which relief or assistance was received, place, and total amount received during this time:

41) Please list each of the years in which you have filed an income tax return with the Internal Revenue Service:

## PART 6 - INFORMATION ABOUT YOUR FAMILY *(Continued on page 5)*

42) I have _____ *(Number of)* children. Please list information for each child below, include assets and earnings information for children over the age of 16 who have separate incomes:

| Name of Child: *(Last, First, Middle)*<br>Child's Alien Registration Number: | Citizen of What Country:<br>Birth Date: *(Month, Day, Year)* | Now Residing At: *(City and Country)*<br>Birth Date: *(City and Country)* | Immigration Status of Child |
|---|---|---|---|
| _____<br>A#: _____ | _____ | _____<br>_____ | |
| Estimated Total of Assets: $ _____ | | Estimated Average Weekly Earnings: $_____ | |
| _____<br>A#: _____ | _____ | _____<br>_____ | |
| Estimated Total of Assets: $ _____ | | Estimated Average Weekly Earnings: $_____ | |
| _____<br>A#: _____ | _____ | _____<br>_____ | |
| Estimated Total of Assets: $_____ | | Estimated Average Weekly Earnings: $ _____ | |

43) If your application is denied, would your spouse and all of your children accompany you to your:

Country of Birth - ❑ Yes ❑ No

Country of Nationality - ❑ Yes ❑ No

Country of Last Residence - ❑ Yes ❑ No

If you answered "No" to any of the responses, please explain: _____

44) Members of my family, including my spouse and/or child(ren) ❑ - have ❑ - have not received public or private relief or assistance (e.g., Welfare, Unemployment Benefits, Medicaid, TANF, AFDC, etc.). If any member of your immediate family has received such relief or assistance, please give full details including identity of person(s) receiving relief or assistance, dates for which relief or assistance was received, place, and total amount received during this time: _____

45) Please give the requested information about your parents, brothers, sisters, aunts, uncles, and grandparents, living or deceased. As to residence, show street address, city, and state, if in the United States; otherwise show only country:

| Name: *(Last, First, Middle)*<br>Alien Registration Number: | Citizen of What Country:<br>Birth Date: *(Month, Day, Year)* | Relationship to Me:<br>Birth Date: *(City and Country)* | Immigration Status of Listed Relative |
|---|---|---|---|
| _____<br>A#: _____ | _____ | _____<br>_____ | |
| Complete Address of Current Residence, if Living: _____ | | | |
| _____<br>A#: _____ | _____ | _____<br>_____ | |
| Complete Address of Current Residence, if Living: _____ | | | |

*Please continue answers on a separate sheet as needed.*

## PART 7 - MISCELLANEOUS INFORMATION *(Continued on page 6)*

46) I ❑ - have ❑ - have not entered the United States as a crewman after June 30, 1964.

47) I ❑ - have ❑ - have not been admitted as, or after arrival in the United States acquired the status of, an exchange alien.

48) I ❑ - have ❑ - have not submitted address reports as required by section 265 of the Immigration and Nationality Act.

49) I ❑ - have ❑ - have never (either in the United States or in any foreign country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance (including, but not limited to, traffic violations or driving incidents involving alcohol). *(If answer is in the affirmative, please give a brief description of each offense including the name and location of the offense, date of conviction, any penalty imposed, any sentence imposed, and the time actually served.)*

_____

_____

_____

_____

50) Have you ever served in the Armed Forces of the United States? ❑ - Yes ❑ - No. If "Yes" please state branch *(Army, Navy, etc.)* and service number: _____

Place of entry on duty: *(City and State)* _____

Date of entry on duty: *(Month, Day, Year)* _____ Date of discharge: *(Month, Day, Year)* _____

Type of discharge: *(Honorable, Dishonorable, etc.)* _____

I served in active duty status from: *(Month, Day, Year)* _____ to *(Month, Day, Year)* _____.

51) Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? ❑ Yes ❑ No

52) Have you ever deserted from the military or naval forces of the United States while the United States was at war? ❑ Yes ❑ No

53) If male, did you register under the Military Selective Service Act or any applicable previous Selective Service (Draft) Laws? ❑ Yes ❑ No
If "Yes," please give date, Selective Service number, local draft board number, and your last draft classification: _____

_____

54) Were you ever exempted from service because of conscientious objection, alienage, or any other reason? ❑ Yes ❑ No

55) Please list your present or past membership in or affiliation with every political organization, association, fund, foundation, party, club, society, or similar group in the United States or any other place since your 16th birthday. Include any foreign military service in this part. If none, write "None." Include the name of the organization, location, nature of the organization, and the dates of membership.

| Name of Organization | Location of Organization | Nature of Organization | Member From: *(Month, Day, Year)* | Member To: *(Month, Day, Year)* |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
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| | | | | |
| | | | | |
| | | | | |
| | | | | |

*Please continue answers on a separate sheet as needed.*

## PART 7 - MISCELLANEOUS INFORMATION *(Continued)*

56) Have you ever:

- ❑ Yes ❑ No been ordered deported, excluded, or removed?
- ❑ Yes ❑ No overstayed a grant of voluntary departure from an Immigration Judge or the Department of Homeland Security (DHS), formerly the Immigration and Naturalization Service (INS)?
- ❑ Yes ❑ No failed to appear for deportation or removal?

57) Have you ever been:

- ❑ Yes ❑ No a habitual drunkard?
- ❑ Yes ❑ No one whose income is derived principally from illegal gambling?
- ❑ Yes ❑ No one who has given false testimony for the purpose of obtaining immigration benefits?
- ❑ Yes ❑ No one who has engaged in prostitution or unlawful commercialized vice?
- ❑ Yes ❑ No involved in a serious criminal offense and asserted immunity from prosecution?
- ❑ Yes ❑ No a polygamist?
- ❑ Yes ❑ No one who brought in or attempted to bring in another to the United States illegally?
- ❑ Yes ❑ No a trafficker of a controlled substance, or a knowing assister, abettor, conspirator, or colluder with others in any such controlled substance offense (not including a single offense of simple possession of 30 grams or less of marijuana)?
- ❑ Yes ❑ No inadmissible or deportable on security-related grounds under sections 212(a)(3) or 237(a)(4) of the INA?
- ❑ Yes ❑ No one who has ordered, incited, assisted, or otherwise participated in the persecution of an individual on account of his or her race, religion, nationality, membership in a particular social group, or political opinion?
- ❑ Yes ❑ No a person previously granted relief under sections 212(c) or 244(a) of the INA or whose removal has previously been cancelled under section 240A of the INA?

If you answered "Yes" to any of the above questions, explain:

_____

_____

_____

58) The following certificates or other supporting documents are attached hereto as a part of this application: *(Refer to the Instructions for documents which **should be attached.**)*

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

*Please continue answers on a separate sheet as needed.*

## PART 8 - SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT

*(Read the following information and sign below)*

I declare that I have prepared this application at the request of the person named in Part 1, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in a language the applicant speaks fluently for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form EOIR-42A may subject me to civil penalties under 8 U.S.C. 1324c.

| Signature of Preparer: | Print Name: | Date: |
|---|---|---|
| Daytime Telephone #:<br>( ) | Address of Preparer: *(Number and Street, City, State, Zip Code)* | |

## PART 9 - SIGNATURE

### APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE AN IMMIGRATION JUDGE

I swear or affirm that I know the contents of this application that I am signing, including the attached documents and supplements, and that they are all true to the best of my knowledge, taking into account the correction(s) numbered _____ to _____, if any, that were made by me or at my request.

_____

*(Signature of Applicant or Parent or Guardian)*

Subscribed and sworn to before me by the above-named applicant at _____

_____

*Immigration Judge*

_____

*Date: (Month, Day, Year)*

## PART 10 - PROOF OF SERVICE

I hereby certify that a copy of the foregoing Form EOIR-42A was: ❑ - delivered in person ❑ - mailed first class, postage prepaid

on _____ to the Assistant Chief Counsel for the DHS (U.S. Immigration and Customs Enforcement-ICE)
*(Month, Day, Year)*

at _____
*(Number and Street, City, State, Zip Code)*

_____

*Signature of Applicant (or Attorney or Representative)*

**U.S. Department of Justice**
Executive Office for Immigration Review
*Immigration Court*

OMB#1125-0006

# Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court

I hereby enter my appearance as attorney or representative for, and at the request of, the following named person:

**NAME:** _____
(First) (Middle Initial) (Last)

**ADDRESS:** _____
(Number and Street) (Apt. No.)

_____
(City) (State) (Zip Code)

DATE (mm/dd/yy): _____

ALIEN NUMBER(S) and NAME(S) (List lead alien number and all family member alien numbers and names, if applicable. Continue on next page as needed.)

Please check one of the following:

☐ 1. I am a member in good standing of the bar of the highest court(s) of the following state(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia:

| **Full Name of Court** | **State Bar No. (if applicable)** |
|---|---|
| | |
| | |

(Please use space on reverse side to list additional jurisdictions.)

I ☐ am not (or ☐ am - explain fully on reverse side) subject to any order of any court or administrative agency disbarring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law and the courts listed above comprise all of the jurisdictions (other than federal courts) where I am licensed to practice law.

☐ 2. I am an accredited representative of the following qualified non-profit religious, charitable, social service, or similar organization established in the United States, so recognized by the Executive Office for Immigration Review pursuant to 8 C.F.R. § 1292.2 (provide name of organization and expiration date of accreditation):

_____

☐ 3. I am a law student or law graduate, reputable individual, accredited official, or other person authorized to represent individuals pursuant to 8 C.F.R. § 1292.1 (explain fully on reverse side).

*I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representation before the Immigration Court. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.*

| SIGNATURE OF ATTORNEY OR REPRESENTATIVE | EOIR ID# | DATE (mm/dd/yy) |
|---|---|---|
| **X** | | |

| NAME OF ATTORNEY OR REPRESENTATIVE (type or print) | ADDRESS ☐ Check here if new address |
|---|---|
| PHONE NUMBER (with area code) | FAX NUMBER (with area code) |

## Proof of Service

I _____ mailed or delivered a copy of the foregoing Form EOIR-28 on _____
(Name) (Date-mm/dd/yy)

to the DHS (U.S. Immigration and Customs Enforcement - ICE) at _____ .
(Number and Street, City, State, Zip Code)

X _____
Signature of Attorney or Representative

**APPEARANCES** - An appearance shall be filed on a Form EOIR-28 by the attorney or representative appearing in each case before an Immigration Judge (see 8 C.F.R. § 1003.17). When an appearance is made by a person acting in a representative capacity, his/her personal appearance or signature constitutes a representation that, under the provisions of 8 C.F.R. part 1003, he/she is authorized and qualified to represent individuals. Thereafter, substitution or withdrawal may be permitted upon the approval of the Immigration Judge of a request by the attorney or representative of record in accordance with 8 C.F.R. § 1003.17(b). Please note that appearances for limited purposes are not permitted, unless specifically authorized by the Immgration Judge. A separate appearance form (Form EOIR-27) must be filed with an appeal to the Board of Immigration Appeals (see 8 C.F.R. § 1003.38(g)). Further proof of authority to act in a representative capacity may be required.

### Indicate type of appearance

I am entering an appearance as attorney or representative in this Form EOIR-28 in the capacity of:

❑ Primary Attorney or Representative ❑ Non-primary Attorney or Representative ❑ On behalf of _____

❑ Check this box if you are entering your appearance pro bono.

**AVAILABILITY OF RECORDS** - During the time a case is pending, a party to a proceeding or his/her attorney or representative shall be permitted to examine the Record of Proceeding in the Immigration Court having administrative control over the Record of Proceeding, in accordance with the standard procedures of the Court.

**REPRESENTATION** - A person entitled to representation may be represented by any of the following:

(1) Attorneys in the United States as defined in 8 C.F.R. § 1001.1(f).
(2) Law students and law graduates not yet admitted to the bar as defined in 8 C.F.R. § 1292.1(a)(2).
(3) Reputable individuals as defined in 8 C.F.R. § 1292.1(a)(3).
(4) Accredited representatives as defined in 8 C.F.R. § 1292.1(a)(4).
(5) Accredited officials as defined in 8 C.F.R. § 1292.1(a)(5).

All representatives must comply with the specific requirements to represent aliens before the Board of Immigration Appeals. For more information on the requirements, see 8 C.F.R. § 1292.1 and the particular subsections referenced above as applicable. Note that law students and law graduates must submit additional materials pursuant to 8 C.F.R. § 1292.1(a)(2).

**FREEDOM OF INFORMATION ACT** - This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is contained in 28 C.F.R. §§ 16.1 - 16.11 and appendices. For further information about requesting records from the EOIR under the Freedom of Information Act, see How to File a Freedom of Information Act (FOIA) Request With the Executive Office for Immigration Review, available through the EOIR's website at http://www.usdoj.gov/eoir.

**CASES BEFORE THE EOIR** - Automated information about cases before the EOIR is available by calling 1-800-898-7180.

**ADDITIONAL INFORMATION:**

(Please attach additional sheets of paper if necessary.)

# APPENDIX F
# Sample Cover Page

**A. Tourney, Esquire**
**1234 Center Street**
**Anytown, ST 99999**

*Filing party. If pro se, the alien should provide his or her own name and address in this location. If a representative, the representative should provide his or her name and complete business address.*

**DETAINED**

*Detention status. If the alien is detained, the word "DETAINED" should appear prominently in the top right corner, preferably highlighted.*

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**IMMIGRATION COURT**
**ANYTOWN, STATE**

*Court. The Immigration Court location (city or town) and state should be provided.*

**In the Matters of:**

**Jane Smith**
**John Smith**
**Jill Smith**

**In removal proceedings**

**File Nos.: A 12 345 678**
**A 12 345 679**
**A 12 345 680**

*A numbers. The alien registration number of every person included in the submission should be listed.*

*Name and type of proceeding. The full name of every person included in the submission should be listed.*

**Immigration Judge Susan Jones** **Next Hearing: September 22, 2008 at 1:00 p.m.**

*Name of the Immigration Judge and the date and time of the next hearing. This information should always be listed.*

**RESPONDENT'S PRE-HEARING BRIEF**

*Filing title. The title of the submission should be placed in the middle and bottom of the page.*

# APPENDIX L

## Sample Written Pleading

Prior to entering a pleading, parties are expected to have reviewed the pertinent regulations, as well as Chapter 4 of the Immigration Court Practice Manual (Hearings before Immigration Judges).

**[name and address of attorney or representative]**

**United States Department of Justice**
**Executive Office for Immigration Review**
**Immigration Court**
**[the court's location (city or town) and state]**

| | | |
|---|---|---|
| **In the Matter of:** | ) | |
| | ) | **File No.: [the respondent's A number]** |
| **[the respondent's name]** | ) | |
| | ) | |
| **In removal proceedings** | ) | |
| | ) | |

**RESPONDENT'S WRITTEN PLEADING**

On behalf of my client, I make the following representations:

1. The respondent concedes proper service of the Notice to Appear, dated _____.

2. I have explained to the respondent (through an interpreter, if necessary):

   a. the rights set forth in 8 C.F.R. § 1240.10(a);
   b. the consequences of failing to appear in court as set forth in INA § 240(b)(5);
   c. the limitation on discretionary relief for failure to appear set forth in INA § 240(b)(7);
   d. the consequences of knowingly filing or making a frivolous application as set forth in INA § 208(d)(6);
   e. the requirement to notify the court within five days of any change of address or telephone number, using Form EOIR-33/IC pursuant to 8 C.F.R. § 1003.15(d).

3. The respondent concedes the following allegation(s) _____, and denies the following allegation(s) _____.

4. The respondent concedes the following charge(s) of removability _____, and denies the following charge(s) of removability _____.

5. In the event of removal, the respondent;

❑ names _____ as the country to which removal should be directed;

OR

❑ declines to designate a country of removal.

6. The respondent will be applying for the following forms of relief from removal:

❑ Termination of Proceedings
❑ Asylum
❑ Withholding of Removal (Restriction on Removal)
❑ Adjustment of Status
❑ Cancellation of Removal pursuant to INA § _____
❑ Waiver of Inadmissibility pursuant to INA § _____
❑ Voluntary Departure
❑ Other (specify) _____
❑ None

7. If the relief from removal requires an application, the respondent will file the application (other than asylum), no later than fifteen (15) days before the date of the individual calendar hearing, unless otherwise directed by the court. The respondent acknowledges that, if the application(s) are not timely filed, the application(s) will be deemed waived and abandoned under 8 C.F.R. § 1003.31(c).

If the respondent is filing a defensive asylum application, the asylum application will be filed in open court at the next master calendar hearing.

8. If background and security investigations are required, the respondent has received the DHS biometrics instructions and will timely comply with the instructions. I have explained the instructions to the respondent (through an interpreter, if necessary). In addition, I have explained to the respondent (through an interpreter, if necessary), that, under 8 C.F.R. § 1003.47(d), failure to provide biometrics or other biographical information within the time allowed will constitute abandonment of the application unless the respondent demonstrates that such failure was the result of good cause.

9. The respondent estimates that _____ hours will be required for the respondent to present the case.

10. ❑ It is requested that the Immigration Court order an interpreter proficient in the _____ language, _____ dialect;

OR

❑ The respondent speaks English and does not require the services of an interpreter.

_____ _____
Date Attorney or Representative for the Respondent

**RESPONDENT'S PLEADING DECLARATION**

I, _____, have been advised of my rights in these proceedings by my attorney or representative. I understand those rights. I waive a further explanation of those rights by this court.

I have been advised by my attorney or representative of the consequences of failing to appear for a hearing. I have also been advised by my attorney of the consequences of failing to appear for a scheduled date of departure or deportation. I understand those consequences.

I have been advised by my attorney or representative of the consequences of knowingly filing a frivolous asylum application. I understand those consequences.

I have been advised by my attorney or representative of the consequences of failing to follow the DHS biometrics instructions within the time allowed. I understand those consequences.

I understand that if my mailing address changes I must notify the court within 5 days of such change by completing an Alien's Change of Address Form (Form EOIR-33/IC) and filing it with this court.

Finally, my attorney or representative has explained to me what this Written Pleading says. I understand it, I agree with it, and I request that the court accept it as my pleading.

_____ _____
Date Respondent

## CERTIFICATE OF INTERPRETATION

I,_____, am competent to translate and interpret from
(name of interpreter)

_____ into English, and I certify that I have read this entire document to the
(name of language)

respondent in _____, and that the respondent stated that he or she understood
(name of language)

the document before he or she signed the Pleading Declaration above.

_____
(signature of interpreter)

_____
(typed/printed name of interpreter)

**OR**

I, _____, certify that _____, a telephonic
(name of attorney or representative) (name of interpreter)

interpreter who is competent to translate and interpret from _____ into English, read
(name of language)

this entire document to the respondent in _____ and that the respondent stated
(name of language)

that he or she understood the document before he or she signed the Pleading Declaration above.

_____
(signature of attorney or representative)

_____
(typed/printed name of attorney or representative)

# APPENDIX G

## Sample Proof of Service

## *Instructions:*

By law, all submissions to the Immigration Court *must* be filed with a "Proof of Service" (or "Certificate of Service"). See Chapter 3.2 (Service on the Opposing Party). This Appendix provides guidelines on how to satisfy this requirement.

*What is required.* To satisfy the law, you must do *both* of the following:

1. *Serve the opposing party.* Every time you file a submission with the Immigration Court, you must give, or "serve," a copy on the opposing party. If you are an alien in proceedings, the opposing party is the Department of Homeland Security.

2. *Give the Immigration Court a completed Proof of Service.* You must submit a signed "Proof of Service" to the Immigration Court along with your document(s). The Proof of Service tells the Immigration Court that you have given a copy of the document(s) to the opposing party.

*Sample Proof of Service.* You do not have to use the sample contained in this Appendix. You may write up your own Proof of Service if you like. However, if you use this sample, you will satisfy the Proof of Service requirement.

*Sending the Proof of Service.* When you have to supply a Proof of Service, be sure to staple or otherwise attach it to the document(s) that you are serving.

*Forms that contain a Proof of Service.* Some forms, such as the Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A), contain a Certificate of Service, which functions as a Proof of Service for the form. You must complete the Certificate of Service to satisfy the Proof of Service requirement *for that form*. Such a Certificate of Service only functions as a Proof of Service for the form on which it appears, not for any supporting documents that you file with the form. If you are filing supporting documents with a form that contains a Certificate of Service, you must file a separate Proof of Service for those documents.

*Forms that do not contain a Proof of Service.* Forms that do not contain a Certificate of Service are treated like any other document. Therefore, you must supply the Proof of Service for those forms.

# Sample Proof of Service

_____
(Name of alien or aliens)

_____
("A number" of alien or aliens)

## PROOF OF SERVICE

On _____, I, _____,
(date) (printed name of person signing below)

served a copy of this _____
(name of document)

and any attached pages to _____
(name of party served)

at the following address: _____
(address of party served)

_____
(address of party served)

by _____.
(method of service, for example overnight courier, hand-delivery, first class mail)

_____ _____
(signature) (date)

OMB No. 1615-0008; Expires 06/30/2011

**Department of Homeland Security**
U.S. Citizenship and Immigration Services

# G-325A, Biographic Information

| (Family Name) | (First Name) | (Middle Name) | ☐ Male ☐ Female | Date of Birth (mm/dd/yyyy) | Citizenship/Nationality | File Number A |
|---|---|---|---|---|---|---|
| | | | | | | |

| All Other Names Used (include names by previous marriages) | City and Country of Birth | U.S. Social Security # *(if any)* |
|---|---|---|
| | | |

| | Family Name | First Name | Date of Birth (mm/dd/yyyy) | City, and Country of Birth (if known) | City and Country of Residence |
|---|---|---|---|---|---|
| Father | | | | | |
| Mother (Maiden Name) | | | | | |

| Current Husband or Wife (If none, so state) Family Name (For wife, give maiden name) | First Name | Date of Birth (mm/dd/yyyy) | City and Country of Birth | Date of Marriage | Place of Marriage |
|---|---|---|---|---|---|
| | | | | | |

| Former Husbands or Wives (If none, so state) Family Name (For wife, give maiden name) | First Name | Date of Birth (mm/dd/yyyy) | Date and Place of Marriage | Date and Place of Termination of Marriage |
|---|---|---|---|---|
| | | | | |

**Applicant's residence last five years. List present address first.**

| Street and Number | City | Province or State | Country | From Month | From Year | To Month | To Year |
|---|---|---|---|---|---|---|---|
| | | | | | | Present Time | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

**Applicant's last address outside the United States of more than one year.**

| Street and Number | City | Province or State | Country | From Month | From Year | To Month | To Year |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

**Applicant's employment last five years. (If none, so state.) List present employment first.**

| Full Name and Address of Employer | Occupation (Specify) | From Month | From Year | To Month | To Year |
|---|---|---|---|---|---|
| | | | | Present Time | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

**Last occupation abroad if not shown above. (Include all information requested above.)**

| | | | | | |
|---|---|---|---|---|---|
| | | | | | |

This form is submitted in connection with an application for:

☐ Naturalization ☐ Other (Specify):

☐ Status as Permanent Resident

**Signature of Applicant** **Date**

If your native alphabet is in other than Roman letters, write your name in your native alphabet below:

**Penalties: Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact.**

**Applicant: Print your name and Alien Registration Number in the box outlined by heavy border below.**

| Complete This Box (Family Name) | (Given Name) | (Middle Name) | (Alien Registration Number) A |
|---|---|---|---|
| | | | |

# Instructions

## What Is the Purpose of This Form?

Complete this biographical information form and include it with the application or petition you are submitting to U.S. Citizenship and Immigration Services (USCIS).

USCIS will use the information you provide on this form to process your application or petition.

If you have any questions on how to complete the form, call our National Customer Service Center at **1-800-375-5283**.

## Privacy Act Notice

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit for which you are filing. Our legal right to ask for this information can be found in the Immigration and Nationality Act, as amended. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your immigration benefit.

## Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 15 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Products Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529-2210. OMB No. 1615-0008. **Do not mail your application to this address.**

# X. APPENDIX – CITATION GUIDELINES FROM EOIR IMMIGRATION COURT PRACTICE MANUAL

The following manual provides guidelines for writing citations in compliance with the Board of Immigration Appeals within the Executive Office for Immigration Review (EOIR). An attorney should note that the Board generally follows A Uniform System of Citation, also known as the Blue Book, but digresses from that convention in certain ways. The Board appreciates but does not require citations that follow the examples used in the following manual. An attorney should adhere to the manual when writing citations but will not be penalized for doing otherwise.

# APPENDIX J

## Citation Guidelines*

When filing papers with the Immigration Court, parties should keep in mind that accurate and complete legal citations strengthen the argument made in the submission. This Appendix provides guidelines for frequently cited sources of law.

The Immigration Court generally follows *A Uniform System of Citation* (also known as the "Blue Book"), but diverges from that convention in certain instances. The Immigration Court appreciates but does not require citations that follow the examples used in this Appendix. The citation categories are:

I. Cases
II. Regulations
III. Statutes/laws
IV. Legislative history
V. Treaties and international materials
VI. Publications and communications by governmental agencies, and
VII. Commonly cited commercial publications

Note that, for the convenience of filing parties, some of the citation formats in this Appendix are less formal than those used in the published cases of the Board of Immigration Appeals. Once a source has been cited in full, the objective is brevity without compromising clarity.

This Appendix concerns the citation of legal authority. For guidance on citing to the record and other sources, see Chapter 3.3(e) (Source materials) and Chapter 4.18(d) (Citation).

As a practice, the Immigration Court prefers italics in case names and publication titles, but underlining is an acceptable alternative.

□ □ □ □ □

* This appendix is substantially based on Appendix J (Citation Guidelines) in the Board of Immigration Appeals Practice Manual. The Office of the Chief Immigration Judge wishes to acknowledge the efforts of all those involved in the preparation of that appendix.

# I. *Decisions, Briefs, and Exhibits*

**General guidance:**

*Abbreviations in case names.* As a general rule, well-known agency abbreviations (e.g., DHS, INS, FBI, Dep't of Justice) may be used in a case name, but without periods. If an agency name includes reference to the "United States," it is acceptable to abbreviate it to "U.S." However, when the "United States" is named as a party in the case, do not abbreviate "United States." For example:

| | | |
|---|---|---|
| *DHS v. Smith* | ..... | not *D.H.S. v. Smith* |
| *U.S. Dep't of Justice v. Smith* | ..... | not *United States Department of Justice v. Smith* |
| *United States v. Smith* | ..... | not *U.S. v. Smith* |

*Short form of case names.* After a case has been cited in full, a shortened form of the name may be used thereafter. For example:

full: *INS v. Phinpathya,* 464 U.S. 183 (1984)

short: *Phinpathya,* 464 U.S. at 185

full: *Matter of Nolasco,* 22 I&N Dec. 632 (BIA 1999)

short: *Nolasco,* 22 I&N Dec. at 635

*Citations to a specific point.* Citations to a specific point should include the precise page number(s) on which the point appears. For example:

*Matter of Artigas,* 23 I&N Dec. 99, 100 (BIA 2001)

*Citations to a dissent or concurrence.* If citing to a dissent or concurrence, this should be indicated in a parenthetical notation. For example:

*Matter of Artigas,* 23 I&N Dec. 99, 109-110 (BIA 2001) (dissent)

**Board decisions:**

*Published decisions.* Precedent decisions by the Board of Immigration Appeals ("Board") are binding on the Immigration Court, unless modified or overruled by the Attorney General or a federal court. All precedent Board decisions are available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. Precedent decisions should be cited in the "I&N Dec." form illustrated below. The citation must identify the adjudicator (BIA, A.G., etc.) and the year of the decision. Note that there are no spaces in "I&N" and that only "Dec." has a period. For example:

*Matter of Balsillie,* 20 I&N Dec. 486 (BIA 1992)

*Unpublished decisions.* Citation to unpublished decisions is discouraged because these decisions are not binding on the Immigration Court in other cases. When reference to an unpublished case is necessary, a copy of the decision should be provided, and the citation should include the alien's full name, the alien registration number, the adjudicator, and the precise date of the decision. Italics, underlining, and "*Matter of*" should not be used. For example:

Jane Smith, A12 345 678 (BIA July 1, 1999)

*"Interim Decision."* In the past, the Board issued precedent decisions in slip opinion or "Interim Decision" form. Because all published cases are now available in final form (as "I&N Decisions"), citations to "Interim Decisions" are no longer appropriate and are disfavored.

*"Matter of,"* not *"In re."* All precedent decisions should be cited as *"Matter of."* The use of *"In re"* is disfavored. For example: *Matter of Yanez*, not *In re Yanez*.

For a detailed description of the Board's publication process, see Board Practice Manual, which is available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir/biainfo.htm.

**IJ decisions:** If referring to an earlier decision in the case by the Immigration Judge, the decision should be cited. This applies whether the decision was issued orally or in writing. Citations to decisions of Immigration Judges should state the nature of the proceedings, the page number, and the date. For example:

IJ Bond Proceedings Decision at 5 (Dec. 12, 2008)

**AG decisions:** Precedent decisions by the Attorney General are binding on the Immigration Court, and should be cited in accordance with the rules for precedent decisions by the Board of Immigration Appeals. All precedent decisions by the Attorney General are available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir.

*Matter of Y-L-*, 23 I&N Dec. 270 (AG 2002)

**DHS decisions:** Precedent decisions by the Department of Homeland Security and the former Immigration and Naturalization Service should be cited in

accordance with the rules for precedent decisions by the Board of Immigration Appeals.

**Federal & state courts:**

*Generally.* Federal and state court decisions should generally be cited according to the standard legal convention, as set out in the latest edition of *A Uniform System of Citation* (also known as the "Blue Book"). For example:

> *INS v. Phinpathya*, 464 U.S. 183 (1984)
>
> *Saakian v. INS*, 252 F.3d 21 (1st Cir. 2001)
>
> *McDaniel v. United States*, 142 F. Supp. 2d 219 (D. Conn. 2001)

*U.S. Supreme Court.* The Supreme Court Reporter citation ("S.Ct.") should be used only when the case has not yet been published in the United States Reports ("U.S.").

*Unpublished cases.* Citation to unpublished state and federal court cases is discouraged. When citation to an unpublished decision is necessary, a copy of the decision should be provided, and the citation should include the docket number, court, and precise date. Parties are also encouraged to provide the LexisNexis or Westlaw number. For example:

> *Bratco v. Mukasey*, No. 04-726367, 2007 WL 4201263 (9th Cir. Nov. 29, 2007) (unpublished)

*Precedent cases not yet published.* When citing to recent precedent cases that have not yet been published in the Federal Reporter or other print format, parties should provide the docket number, court, and year. Parties are also encouraged to provide the LexisNexis or Westlaw number. For example:

> *Grullon v. Mukasey*, __ F.3d __, No. 05-4622, 2007 U.S. App. LEXIS 27325 (2d Cir. 2007)

**Briefs and Exhibits:**

*Text from briefs.* If referring to text from a brief, the brief should be cited. The citation should state the filing party's identity, the nature of proceedings, the page number, and the date. For example:

> Respondent's Bond Appeal Brief at 5 (Dec. 12, 2008)

*Exhibits.* Exhibits designated during a hearing should be cited as they were designated by the Immigration Judge. For example:

> Exh. 3

Exhibits accompanying a brief should be cited by alphabetic tab or page number. For example:

Respondent's Pre-Hearing Brief, Tab A

□ □ □ □ □

# II. *Regulations*

**General guidance:** *Regulations generally.* There are two kinds of postings in the Federal Register: those that are simply informative in nature (such as "notices" of public meetings) and those that are regulatory in nature (referred to as "rules"). There are different types of "rules," including "proposed," "interim," and "final." The type of rule will determine whether or not (and for how long) the regulatory language contained in that rule will be in effect. Generally speaking, proposed rules are not law and do not have any effect on any case, while interim and final rules do have the force of law and, depending on timing, may affect a given case.

*Federal Register and Code of Federal Regulations.* Regulations appear first in the Federal Register (Fed. Reg.) and then in the Code of Federal Regulations (C.F.R.). Once regulations appear in a volume of the C.F.R., do not cite to the Federal Register *unless* there is a specific reason to do so (discussed below).

**C.F.R.:** For the Code of Federal Regulations, always identify the volume, the section number, and the year. The year need not be given after the first citation, unless a subsequent citation refers to a regulation published in a different year. Always use periods in the abbreviation "C.F.R." For example:

full: 8 C.F.R. § 1003.1 (2002)

short: 8 C.F.R. § 1003.1

**Fed. Reg.:** Citations to regulatory material in the Federal Register should be used only when:

- the citation is to information that will never appear in the C.F.R., such as a public notice or announcement
- the rule contains regulatory language that will be, but is not yet, in the C.F.R.
- the citation is to information associated with the rule, but which will not appear in the C.F.R. (e.g., a preamble or introduction to a rule)
- the rule contains proposed or past language of a regulation that is pertinent in some way to the filing or argument

The first citation to the Federal Register should always include (i) the volume, (ii) the abbreviated form "Fed. Reg.", (iii) the page number, (iv)

the date, and (v) important identifying information such as "proposed rule," "interim rule," "supplementary information," or the citation where the rule will appear. For example:

full: 67 Fed. Reg. 52627 (Aug. 13, 2002) (proposed rule)

full: 67 Fed. Reg. 38341 (June 4, 2002) (to be codified at 8 C.F.R. §§ 100, 103, 236, 245a, 274a, and 299)

short: 67 Fed. Reg. at 52627-28; 67 Fed. Reg. at 38343

Since the Federal Register does not use commas in its page numbers, do not use a comma in page numbers. Use abbreviations for the month.

When citing the preamble to a rule, identify it exactly as it is titled in the Federal Register, e.g., 67 Fed. Reg. 54878 (Aug. 26, 2002) (supplementary information).

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# III. *Statutes / Laws*

**General guidance:**

*Full citations.* Whenever citing a statute for the first time, be certain to include all the pertinent information, including the name of the statute, its public law number, statutory cite, and a parenthetical identifying where the statute was codified (if applicable). The only exception is the Immigration and Nationality Act, which is illustrated below.

*Short citations.* The use of short citations is encouraged, but only after the full citation has been used.

*Special rule for U.S.C. and C.F.R.* There are two abbreviations that never need to be spelled out: "U.S.C." for the U.S. Code and the "C.F.R." for the Code of Federal Regulations. Always use periods with these abbreviations.

*Special rule for the INA.* Given the regularity with which the Immigration and Nationality Act is cited before the Immigration Court, there is generally no need to provide the Public Law Number, the Stat. citation, or U.S.C. citation. The Immigration Court will presume INA citations refer to the current language of the Act unless the year is provided.

*State statutes.* State statutes should be cited as provided in *A Uniform System of Citation* (also known as the "Blue Book").

*Sections of law.* Full citations are often lengthy, and filing parties are sometimes uncertain where to put the section number in the citation. For the sake of simplicity, use the word "section" and give the section number in front of the full citation to the statute. Once a full citation has been given, use the short citation form with a section symbol "§." This practice applies whether the citation is used in a sentence or after it. For example:

> The definition of the term "alien" in section 101(a)(3) of the Immigration and Nationality Act applies to persons who are not citizens or nationals of the United States. The term "national of the United States" is expressly defined in INA § 101(a)(22), but the term "citizen" is more complex. *See* INA §§ 301-309, 316, 320.

**USC:** For cites to the United States Code, always identify the volume, the section number, and the year. The year need not be given after the first citation, unless a subsequent citation refers to a section published in a different year. Always use periods in the abbreviation "U.S.C." For example:

full: 18 U.S.C. § 16 (2006)

short: 18 U.S.C. § 16

**INA:**

full: section xxx of Immigration and Nationality Act

short: INA § xxx

**USA PATRIOT:**

full: section xxx of Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272

short: USA PATRIOT Act § xxx

**LIFE:**

full: section xxx of Legal Immigration and Family Equity Act, Pub. L. No. 106-553, 114 Stat. 2762 (2000), *amended by* Pub. L. No. 106-554, 114 Stat. 2763 (2000)

short: LIFE Act § xxx

**CCA:**

full: section xxx of Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631

short: CCA § xxx

**NACARA:**

full: section xxx of Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2193 (1997), *amended by* Pub. L. No. 105-139, 111 Stat. 2644 (1997)

short: NACARA § xxx

**IIRIRA:**

full: section xxx of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546

short: IIRIRA § xxx

| | | |
|---|---|---|
| **AEDPA:** | full: | section xxx of Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 |
| | short: | AEDPA § xxx |
| **INTCA:** | full: | section xxx of Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305, *amended by* Pub. L. No. 105-38, 111 Stat. 1115 (1997) |
| | short: | INTCA § xxx |
| **MTINA:** | full: | section xxx of Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733 |
| | short: | MTINA § xxx |
| **IMMACT90:** | full: | section xxx of Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 |
| | short: | IMMACT90 § xxx |
| **ADAA:** | full: | section xxx of Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 |
| | short: | ADAA § xxx |
| **IMFA:** | full: | section xxx of Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537 |
| | short: | IMFA § xxx |

| | | |
|---|---|---|
| **IRCA:** | full: | section xxx of Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 |
| | short: | IRCA § xxx |
| **IRFA:** | full: | section xxx of International Religious Freedom Act of 1988, Pub. L. No. 105-292, 112 Stat. 2787. |
| | short: | IRFA § xxx |

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# IV. *Legislative History*

**General guidance:** *Difficult to locate.* Because sources of legislative history are often difficult to locate, err on the side of providing more information, rather than less. If a source is difficult to locate, include a copy of the source with your filing (or an Internet address for it) and make clear reference to that source in your filing.

*Sources.* To locate legislative history, try the Library of Congress website (www.thomas.loc.gov) or commercial services. Citation to common electronic sources is encouraged.

**Bills:** Provide the following information the first time a bill is cited: (i) the bill number, (ii) the number of the Congress, (iii) the session of that Congress, (iv) the section number of the bill, if you are referring to a specific section, (v) the Congressional Record volume, (vi) the Congressional Record page or pages, (vii) the date of that Congressional Record, and (viii) the edition of the Congressional Record, if known. For example:

full: S. 2104, 100th Cong., 2d Sess. § 102, 134 Cong. Rec. 2216 (daily ed. Mar. 15, 1988)

short: 134 Cong. Rec. at 2218

**Reports:** Provide the following information the first time a report is cited: (i) whether it is a Senate or House report, (ii) the report number, (iii) the year, and (iv) where it is reprinted (a reference to where the document is available electronically is acceptable). The short form may refer either to the page numbers of the report or the page numbers where the report is reprinted. For example:

full: H.R. Conf. Rep. No. 104-828 (1996), *available in* 1996 WL 563320

short: H.R. Conf. Rep. No. 104-828, at 5

full: S. Rep. No. 98-225 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182

short: 1984 U.S.C.C.A.N. at 3183

Many committee reports are available on-line through the Library of Congress web site (www.thomas.loc.gov) or commercial services. Copies of the U.S. Code Congressional & Administrative News (U.S.C.C.A.N.), which compiles many legislative documents, are available in some public libraries.

**Hearings:** Provide the following information the first time a hearing is cited: (i) name of the hearing, (ii) the committee or subcommittee that held it, (iii) the number of the Congress, (iv) the session of that Congress, (v) the page or pages of the hearing, (vi) the date or year of the hearing, and (vii) information about what is being cited (such as the identity of the person testifying and context for the testimony). For example:

> Operations of the Executive Office for Immigration Review (EOIR): Hearing before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary, 107th Cong., 2d Sess. 19 (2002) (testimony of EOIR Director)

□ □ □ □ □

# V. *Treaties and International Materials*

| | | |
|---|---|---|
| **CAT:** | full: | Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988) |
| | short: | Convention Against Torture, art. 3 |
| **UNHCR Handbook:** | full: | Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Geneva 1992) |
| | short: | UNHCR Handbook ¶ xxx<br>[use paragraph symbol "¶" or abbreviation "para."] |
| **U.N. Protocol on Refugees:** | full: | Article xxx of the United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, [1968] 19 U.S.T. 6223 |
| | short: | U.N. Refugee Protocol, art. xxx |

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# VI. *Publications and Communications by Governmental Agencies*

**General guidance:**

*No universal citation form.* In immigration proceedings, parties cite to a wide variety of administrative agency publications and communications, and there is no one format that fits all such documents. For that reason, use common sense when citing agency documents, and err on the side of more information, rather than less.

*Difficult to locate material.* If the document may be difficult for the Immigration Court to locate, include a copy of the document with your filing.

*Internet material.* If a document is posted on the Internet, identify the website where the document can be found or include a copy of the document with a legible Internet address.

**Practice Manual:**

The Immigration Court Practice Manual is not legal authority. However, if there is reason to cite it, the preferred form is to identify the specific provision by chapter and section along with the date at the bottom of the page on which the cited section appears. For example:

full: Immigration Court Practice Manual, Chapter 8.5(a)(iii) (January xx, xxxx)

short: Practice Manual, Chap. 8.5(a)(iii)

**Forms:**

Forms should first be cited according to their full name and number. A short citation form may be used thereafter. See Appendix E (Forms) for a list of common immigration forms. For example:

full: Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26)

short: Notice of Appeal *or* Form EOIR-26

If a form does not have a name, use the form number as the citation.

**Country reports:**

State Department country reports appear both as compilations in Congressional committee prints and as separate reports and profiles. Citations to country reports should always contain the publication date and the specific page numbers (if available). Provide an Internet address when available. The first citation to any country report should contain all

identifying information, and a short citation form may be used thereafter. For example:

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Nigeria Country Reports on Human Rights Practices – 2001* (Mar. 2002), *available at* http://www.state.gov/g/drl/rls/hrrpt/2001/af/8397.htm

short: *2001 Nigeria Country Reports*

full: Committees on Foreign Relations and International Relations, 104th Cong., 1st Sess., *Country Reports on Human Rights Practices for 1994* xxx (Joint Comm Print 1995)

short: *1994 Country Reports* at page xxx

full: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *The Philippines – Profile of Asylum Claims and Country Conditions* xxx (June 1995)

short: *1995 Philippines Profile* at page xxx

**Visa Bulletin:** Citations to the State Department's Visa Bulletin should include the volume, number, month, and year of the specific issue being cited. For example:

full: U.S. Dep't of State Visa Bulletin, Vol. VIII, No. 55 (March 2003)

short: Visa Bulletin (March 2003)

**Internal documents:** A citation to an internal government document, such as a memo or cable, should contain as much identifying information as possible. Be sure to include any identifying heading (e.g., the "re" line in a memo) and the precise date of the document being cited. Include a copy of the document with the filing or indicate where it has been reprinted publicly. For example:

Dep't of State cable (no. 97-State-174342) (Sept. 17, 1997) (copy attached)

Office of the General Counsel, INS, U.S. Dep't of Justice, Compliance with Article 3 of the Convention Against Torture in cases of removable aliens (May 14, 1997), *reprinted in 75 Interpreter Releases* 375 (Mar. 16, 1998)

**Religious Freedom** The International Religious Freedom Act of 1998 (IRFA) mandates

**Reports:**

that the Department of State issue an Annual Report on International Religious Freedom (State Department Report). IRFA further authorizes Immigration Judges to use the State Department Report as a resource in asylum adjudications. The State Department Report should be cited as follows:

full: Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *Annual Report on International Religious Freedom* (Sept. 2007)

short: 2007 *Religious Freedom Report* at page XXX

IRFA also mandates the issuance of an Annual Report by the United States Commission on International Religious Freedom (USCIRF Report). The USCIRF is a government body that is independent of the executive branch. Citations to the USCIRF Report should be distinguishable from citations to the Department of State report:

full: United States Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom* (May 2007)

short: 2007 USCIRF Annual Report at page XXX

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# VII. *Commonly Cited Commercial Publications*

**General guidance:**

*No universal citation form.* In immigration proceedings, parties cite to a wide variety of commercial texts and publications. Use common sense when citing these documents. If a document is difficult to locate, include a copy of the document with your filing (or an Internet address for it) and make clear reference to that document in your filing.

*No endorsements or disparagements.* The following list contains citations to specific publications that are frequently cited in filings before the Immigration Court. Their inclusion in the list is not an endorsement of the publication, nor is omission from this list a disparagement of any other publication.

*Use of quotation marks, italics or underlining, and first initials.* For all filings, parties should use a single format for all publications – quotation marks around any article title (whether in a book, law review, or periodical), italics or underlining for the name of any publication (whether a book, treatise, or periodical), and reference to authors' last names only (although use of first initials is appropriate where there are multiple authors with the same last name).

*Shortened names.* Many publications have long titles. It is acceptable to use a shortened form of the title *after* the full title has been used. Be certain to use a short form that clearly refers back to the full citation. Page and/or section numbers should always be used, whether the publication is cited in full or in shortened form.

**Articles in Books:**

Articles in books should identify the author (by last name only), title of the article, and the publication that contains that article (including the editor and year). For example:

full: Massimino, "Relief from Deportation Under Article 3 of the United Nations Convention Against Torture," *in* 2 *1997-98 Immigration & Nationality Law Handbook* 467 (American Immigration Lawyers Association, ed., 1997)

short: Massimino at 469

**Bender's:**

Bender's Immigration Bulletin should be cited by author (last name only), article, volume, publication, month, and year. For example:

full: Sullivan, "When Representations Cross the Line," 1 *Bender's Immigration Bulletin* (Oct. 1996)

short: Sullivan at 3

**Immigration Briefings:**

This publication should be cited by author (last name only), article, volume, publication, month, and year. For example:

full: Elliot, "Relief From Deportation: Part I," 88-8 *Immigration Briefings* (Aug. 1988)

short: Elliot at 18

**Immigration Law and Procedure:**

Citations to treatises require particular attention because their pagination is often complex. The first citation to this treatise must be in full and contain the volume number, the section number, the page number, the edition, and year. For example:

full: 2 Gordon, Mailman & Yale-Loehr, *Immigration Law and Procedure* § 51.01(1)(a), at 51-3 (rev. ed. 1997)

short: 2 *Immigration Law and Procedure* § 51.01(1)(a), at 51-3

**Interpreter Releases:**

Citations should state the volume, title, page number(s), and precise date. Provide a parenthetical explanation for the citation when appropriate. For example:

full: 75 *Interpreter Releases* 275-76 (Feb. 23, 1998) (regarding INS guidelines on when to consent to reopening of proceedings)

short: 75 *Interpreter Releases* at 276

If an article has a title and named author, provide that information. For example:

full: Wettstein, "Lawful Domicile for Purposes of INA § 212(c): Can It Begin with Temporary Residence," in 71 *Interpreter Releases* 1273 (Sept. 26, 1994)

short: Wettstein at 1274

**Law Reviews:** Law review articles should identify the author (by last name) and the title of the article, followed by the volume, name, page number(s), and year of the publication. For example:

full: Hurwitz, "Motions Practice Before the Board of Immigration Appeals," 20 San Diego L. Rev. 79 (1982)

short: Hurwitz, 20 San Diego L. Rev. at 80

**Sutherland:** Citations to this treatise should include the volume number, author, name of the publication, section number, page number(s), and edition. For example:

full: 2A Singer, *Sutherland Statutory Construction* § 47.11, at 144 (4th ed. 1984)

short: 2A *Sutherland* § 47.11, at 144

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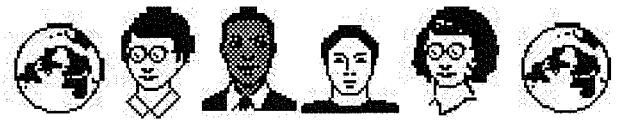
# XI. APPENDIX – PRO SE PACKETS

The following pro se materials are available through the Florence Immigrant and Refugee Rights Project[1]:

- How to Apply for "Cancellation of Removal for Certain Legal Permanent Residents"
- Cancellation of Removal Document Check List
- Supporting Documentation for Cancellation of Removal
- Cancellation of Removal "Thinking About My Case"
- Cancellation of Removal "Preparing Your Testimony"

[1] The Florence Immigrant and Refugee Rights Project *available at* http://www.firrp.org (follow "Publications" hyperlink; then follow "Pro Se Materials" hyperlink), (last visited Dec. 1, 2009).



# HOW TO APPLY FOR "CANCELLATION OF REMOVAL FOR CERTAIN LEGAL PERMANENT RESIDENTS"

**WARNING:** This booklet provides general information about immigration law and does not cover individual cases. Immigration law changes often, and you should try to consult with an immigration attorney or legal agency to get the most recent information. Also, you can represent yourself in immigration proceedings, but it is always better to get help from a lawyer or legal agency if possible.

**NOTE:** As of March 1, 2003, the Immigration and Naturalization Service ("INS") is now part of the Department of Homeland Security (DHS). Immigration enforcement functions, including immigration detention and removal cases, are handled by **U.S. Immigration and Customs Enforcement (ICE)**. **U.S. Citizenship and Immigration Services (USCIS)** will handle other immigration matters, including citizenship, asylum and refugee services.

## GENERAL INFORMATION

### Who wrote this booklet?

This booklet was prepared by the Florence Immigrant and Refugee Rights Project, a non-profit law office that supports human and civil rights. The money to pay for the most recent version of this booklet came from the Ford Foundation. This booklet was updated in November, 2007, with money from the Executive Office for Immigration Review.

This booklet was not prepared by DHS, nor by any other part of the United States government. The booklet contains information and advice based on the Florence Project's many years of experience assisting people in immigration detention. Immigration law, unfortunately, is not always clear, and our understanding of the law may not always be the same as the DHS's viewpoint. We believe that the information is correct and helpful, but the fact that this booklet is made available in the libraries of detention centers for the use of detainees does not mean that the DHS or any other branch of the U.S. government agrees with what it says.

- **Who was this booklet written for?**

This booklet is for lawful permanent residents who are in the custody of DHS and who have been placed in **immigration** proceedings. This booklet mainly discusses how to apply for a form of relief from being removed from the United States that is called **"Cancellation of Removal for Certain Legal Permanent Residents."** To apply for this form of relief you must be in "removal" proceedings. Removal proceedings are what used to be called "deportation" or "exclusion" proceedings. If you were placed in immigration proceedings on or after April 1, 1997, you are probably in "removal" proceedings.

For individuals who were placed in exclusion proceedings or in deportation proceedings **before April 1, 1997,** the booklet provides some guidance regarding a form of relief called a 212(c) waiver. This waiver may also be available to you if you pled guilty to the offense that makes you removable from the United States prior to September 30, 1996. Please see below a further explanation of who qualifies for this waiver.

You can tell what type of proceedings you are in by the document you should have received from DHS that has the charges against you (or reasons you are removable from the U.S.).

- If the document is labeled **"Notice to Appear, (Form I-862)"** you are in **removal** proceedings.
- If the document is labeled **"Order to Show Cause," (Form I-221)** you are in **deportation** proceedings.
- If the document is numbered at the bottom, **"(Form I-122 or Form I-110)"** you are in **exclusion** proceedings.

**This booklet describes in detail how to apply for Cancellation of Removal. It can offer you general guidance about how to apply for 212(c) relief. However, specific information about how to fill out the 212(c) application and fees is not included.**

212(c) and Cancellation of Removal are very similar forms of relief from removal or deportation from the United States. Both are like a pardon or waiver and allow the person who is granted the waiver to stay in the United States as a lawful permanent resident. In other words, if you win, you keep your green card.

Each form of relief has very specific eligibility requirements.

The requirements to apply for a 212(c) waiver depend on whether you pled guilty to the offense making you deportable from the United States before April 24, 1996 or between April 24, 1996 and September 30, 1996. If you pled guilty after September 30, 1996, you must look at the eligibility requirements for Cancellation of Removal.

**For those who pled guilty to their deportability offense prior to April 24, 1996, to apply for a 212(c) waiver you must show that:**

1. You are a **lawful permanent resident**;
2. You have resided in the U.S. for **at least 7 years** either as a lawful permanent resident or a lawful temporary resident under the amnesty or Special Agricultural Workers program;
3. You have **not** been convicted of one or more aggravated felonies and as a result of that felony or felonies served **5 years or more in jail or prison** (in total).

**AND**

4. **You have not been convicted of a crime related to firearms or destructive devices; and**
5. **You are not charged with making an illegal entry into the United States.**

**Please note that in at least one jurisdiction, you may be eligible for 212(c) relief even if you were found guilty after trial (as opposed to accepting a plea agreement). You should check the law that applies to the area where your removal proceeding is taking place, or, if possible, consult with an immigration lawyer.**

**For those who pled guilty to their deportable offense between April 24, 1996 and September 30, 1996, to apply for a 212(c) waiver you must show that:**

1. You are a **lawful permanent resident**;
2. You have resided in the U.S. for **at least 7 years** either as a lawful permanent resident or a lawful temporary resident under the amnesty or Special Agricultural Workers program;
3. You have **not** been convicted of one or more **aggravated felonies**. See page 8 that follows for a description of some aggravated felonies.

**AND**

4. You have **not** been convicted of a crime related to **firearms or destructive devices; an offense related to a controlled substance; an aggravated felony; espionage or treason; or two crimes of moral turpitude for which the possible sentence was a year or more; and you are not charged with making an illegal entry into the United States.**

If you think you may qualify to apply for a 212(c) waiver, you can use this booklet for general advice on how to prepare for your hearing. This booklet does not contain specific information about the how to fill out the application or what the fees are for a 212(c) waiver, but the information on what to prove at your hearing and what documents you need applies both to Cancellation of Removal and 212(c) cases. If possible, we recommend that you consult with an attorney specifically about how to apply for a 212(c) waiver.

**• What is "Cancellation of Removal?"**

Under United States immigration law, anyone who is not a U.S. citizen can be removed if he or she commits certain crimes or acts. For example, a person can be removed for just about any crime having to do with drugs. However, depending on the crime or act, some people who have lived in the U.S. legally for a certain number of years qualify to apply for pardons. This kind of pardon is called "Cancellation of Removal for Certain Permanent Residents." To see the exact words of the law, you can find it at volume 8 of the United States Code (U.S.C.), Section 1229b(a) or at Section 240A(a) of the Immigration and Nationality Act.

If you have a criminal conviction for an "aggravated felony," you do not qualify for "Cancellation." We explain later what an "aggravated felony" is.

There are two other kinds of pardons also called "Cancellation of Removal" that do not require a person to be a legal permanent resident and are explained in another booklet. They are for people who have not been convicted of drug or certain other crimes, who have "good moral character" (many types of crimes would disqualify you), and who have been in the U.S. a certain number of years. One is for a person who has been physically or emotionally abused by a U.S. citizen or permanent resident husband, wife, or parent. The other requires 10 years in the U.S., whether legally or not, and a U.S.

citizen or legal permanent resident parent, husband, wife, or child.

It is rare that a legal permanent resident would qualify for one of those kinds of Cancellation, which are actually called "Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents." However, it could happen, so if you think you might qualify for that instead of or in addition to "Cancellation of Removal for Certain Permanent Residents," read the other booklet.

One other thing about Cancellation: it only applies in immigration cases that started April 1, 1997 or after. These cases are called "removal" proceedings. If the paper with the immigration charges against you has a date that is before that time, you may be in "deportation" or "exclusion" proceedings. If so, a different law applies to you and you should talk to a lawyer about it.

**• If I apply for Cancellation, can I (and should I) apply for anything else?**

It is usually a good idea to apply for everything for which you qualify. You may think you have a great case for Cancellation, but you could be wrong, or the law could change after your case starts so that you no longer qualify. So try to find out what else you may qualify for.

For example, if you suffered persecution because of certain beliefs or characteristics or torture in your country (persecution can include different kinds of abuse or mistreatment) or are afraid you will be persecuted or tortured if you return, you may qualify for asylum, withholding of removal, or torture convention protection and should read the booklet called, **"How to Apply for Asylum And Withholding of Removal."** If you qualify for one or more of those and also for Cancellation, you should apply for all of them!

**• How does the judge decide whether I get Cancellation?**

First, the judge has to decide if you meet the requirements to apply for Cancellation (explained later). Then, the judge has to decide whether you deserve to win. To do that, the judge has to look at two things. On the one hand, the judge considers all the good things about you and the advantages to you, your family, and others of allowing you to stay in the United States. On the other hand, the judge considers all the bad things you have done and the disadvantages to U.S. society of allowing you to stay here. The judge weighs all these things in order to decide whether to give you another chance in this country.

**• How do I use this booklet?**

First, read the whole thing through to make sure you qualify to apply for a waiver, and to learn what you need to do to get ready for your hearing. It is important to understand that it is up to YOU to get together the papers that you need and to prepare yourself and others (if possible) to talk to the judge at your hearing. If you don't prepare for your hearing, you will probably lose.

This booklet explains how to fill out the forms you will need to give the Immigration Judge. At the end of this booklet is a worksheet to help you figure out what proof you can get to help you win your case. Once you have turned in the forms, collected all the proof you can (using the worksheet), talked with others about what they will say to the judge at your hearing (if you can get others to

come), and decided what you will say, you will be ready for your hearing.

**• What if I can't stand being in detention any more? Can't I just accept removal and apply for a waiver after I'm out?**

Being locked up for a long time is difficult, and if you came straight from prison into immigration detention, it is normal to feel frustrated. If you can't afford to pay your bond, you may be tempted just to give up and accept removal so you can get out of custody.

But if you do not apply for Cancellation now, you give up your permanent residence, you give up the chance to apply for Cancellation forever, and you will probably not be allowed to immigrate to the United States after that. You may not be able to even visit the United States legally for many years, if ever. And if you come back illegally and get caught, you may face many years in prison, depending on your criminal record. So, before giving up your right to apply for Cancellation, you should think about the life you would be leaving behind and what your life would be like after being removed. Make sure your decision is one you will be able to live with forever.

**• Can they really remove me if I have been here most of my life - even if I have a spouse or children who are U.S. citizens?**

Yes. Immigration Judges remove people in these circumstances all the time. It is a mistake to think you cannot be removed. Only U.S. citizens cannot be removed.

## •WHO CAN APPLY FOR CANCELLATION?

To qualify, you must:

1) have been a **legal permanent resident for at least the last 5 years**;
2) have **lived continuously in the U.S. for at least 7 years after having been legally admitted,** and without having committed certain crimes;
3) not have been convicted of **an aggravated felony at any time**;
4) not be found by the judge to be a **spy, terrorist, threat to national security, persecutor, torturer, to have committed genocide or extrajudicial killing, or severe violations of religious freedom**; and
5) not **have won "Cancellation,"** or **certain other waivers** in immigration proceedings before.

We will now talk in more detail about each of these requirements.

**1. You must have been a legal permanent for at least the last 5 years.**

The first thing you have to show to be allowed to apply for Cancellation is that you have had legal permanent residence, in other words, a "green card" or "mica," for the last 5 years. Time spent as a

"legal temporary resident" (the step before permanent residence if you got your papers through the 1986 amnesty law) does not count as part of the 5 years.

The date you officially became a permanent resident may be confusing if you were a refugee. If you entered the United States with legal status as a "refugee" and then you became a legal permanent resident, the date of your permanent residence is the date you entered the United States. If you were granted political asylum by the Asylum Office or an Immigration Judge (once you were already in the U.S.) and then became a permanent resident, the date of your legal permanent residence is one year before your application for legal permanent residence was granted.

**2. You must have lived in the U.S. 7 years continuously after being lawfully admitted and without committing certain crimes, not counting any time after you were given a "Notice to Appear" in your current immigration case.**

The second thing you must show to be able to apply for Cancellation is that you have lived in the United States continuously for 7 years after having been lawfully admitted. This requirement does not apply to you if you served at least 2 years in active-duty status in the U.S. armed forces, as long as, 1) if you were discharged, it was an "honorable discharge," and 2) you were in the U.S. when you joined the armed forces.

When the 7-year time period starts and stops can be confusing. Here are some things you may need to know in order to determine if you meet this requirement:

- **7 years after being "admitted"**

  The time you spent in the U.S. counts towards this 7-year requirement as long as it was after you were legally admitted to the United States in any status. For example, suppose you came in on a tourist visa or a student visa and you overstayed your visa. It should not matter that you were here illegally, as long as it was after you were "admitted." If you got legal status through the 1986 amnesty law for seasonal agricultural work or for your time in the United States, the date you became a "temporary resident" is the date when you were "admitted."

- **7 years living "continuously" in the United States**

  Just because you left the U.S. at some point does not mean you stop counting your time towards the 7-year requirement while you were out of the country or that you have to start counting all over again from the date of your return. Short trips outside of the U. S. should not be a problem. However, if you spent a long period of time out of the country, you will probably have to show that you always meant to keep the United States as your home. One way to do this is to show that while you were gone, you kept ties to the United States, such as land, other property, a job, or a bank account.

**If you have been out of the U.S. a lot during the last 7 years, especially if you lived somewhere else:**

**Be prepared to prove to the judge that you always intended for the U.S. to remain your permanent home.**

**•7 years <u>without committing certain crimes</u>**

The law says that the time you count towards the 7-year requirement ends when you <u>commit</u> certain crimes (not the date you were convicted, but the date you did the crime) or when you are served with a Notice to Appear (whichever occurs first). The types of crimes that may cut off your time include almost any drug crime, two or more convictions where the sentences add up to 5 years or more (note that this offense requires conviction and sentencing, not merely "commission" of the crimes), and certain crimes of "moral turpitude" – which can include theft, fraud, aggravated assault, and other crimes of dishonesty or violence. With some crimes, it is not clear whether it is a crime of "moral turpitude," and the judge will have to decide by looking at the section of the law under which you were convicted and, in some cases, at other papers from your criminal case. A crime will not count as a moral turpitude crime if the maximum penalty possible for the crime was one year and the sentence imposed was no more than six months.

To cut off your time, the law says that a crime must be listed or described in volume 8, section 1182(a)(2) of the United States Code, which is section 212(a)(2) of the Immigration and Nationality Act. Certain crimes are not found there and therefore cannot cut off your time. Some common crimes that should <u>not</u> cut off your time are: alien smuggling (if it was a misdemeanor), non-aggravated felony firearms offenses, some theft and property crimes, domestic violence (unless your particular crime is found to be a "crime involving moral turpitude"), and illegal entry.

It is not clear from the law whether you can start counting a new period of continuous residence after the act is committed. If, for example, you have 7 years of continuous residence since the commission of one of the crimes listed above, you should at least try to convince the Immigration Judge that you have met the continuous residence requirement since the law is not resolved on this issue.

If there is a question as to whether you meet the 7-year requirement because of a crime you committed, try to get a lawyer to represent you!

**•7 years <u>before receiving the papers filed against you</u> in your immigration case**

When DHS began the case against you in Immigration Court, DHS should have given or mailed to you a document called a **"Notice to Appear"** or **"Form I-862."** It lists the charges against you. Charges are the reasons the government thinks you can be removed from the United States. Your time towards the 7-year requirement is cut off the day you receive this paper (unless it was cut off already for another reason, like committing certain crimes).

However, the law is also unclear as to whether you can start counting time again after the Notice to Appear is served on you. Although unlikely, if you have 7 years of continuous residence since the date you were served with the Notice to Appear, again you should try to convince the Immigration Judge that you have the required 7 years of continuous residence and should be allowed to apply for Cancellation.

**3. You cannot have an aggravated felony conviction.**

You do not qualify for Cancellation if you have a conviction for an aggravated felony at any time. Many crimes can be aggravated felonies, whether they are in violation of state or federal law. The crime does not have to be a felony in the state where you were convicted. Often misdemeanors and minor crimes are considered aggravated felonies under immigration law. Immigration law is not the same as criminal law.

In the next box are some of the most common aggravated felonies. For the complete list, see volume 8, section 1101(a)(43) of the United States Code, or section 101(a)(43) of the Immigration and Nationality Act.

**SOME CRIMES THAT ARE AGGRAVATED FELONIES**

- **Certain drug crimes or trafficking in firearms, explosive devices or drugs. Drug trafficking includes:**
  - **Transportation, distribution, importation;**
  - **sale and possession for sale;**
  - **certain cocaine possession offenses** (depending on what circuit court of appeals jurisdiction your case is in);
  - **certain simple possession offenses.**
- **A certain crime for which you received a sentence of one year or more,** whether you served time or not) including any of these:
  - **theft** (including receipt of stolen property)
  - **burglary**
  - **a crime of violence** (including anything with a risk that force will be used against a person or property, even if no force was used)
  - **document fraud** (including possessing, using, or making false papers) unless it was a first offense and you did it only to help your husband, wife, child, or parent)
  - **obstruction of justice, perjury, bribing a witness**
  - **commercial bribery, counterfeiting, forgery, trafficking in vehicles with altered identification numbers**
- **rape**
- **sexual abuse of a minor**
- **murder**
- **firearms offenses,** including possession of prohibited firearms
- **gambling offenses** for which a term of imprisonment of one year or longer *may* be imposed
- **felony alien smuggling** (unless it was your first alien smuggling crime and you were helping only your husband, wife, child, or parent)

- **fraud or income tax evasion**, if the victim lost over $10,000
- **failure to appear** (if you were convicted of 1) missing a court date on a felony charge for which you could have been sentenced to at least 2 years (even if you were not sentenced to 2 years) or 2) not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years)
- **money laundering** (of over $10,000)

You are also an aggravated felon if your conviction was for **attempt or conspiracy** to commit one of the crimes just listed.

If you have been convicted of an aggravated felony and can get assistance from an immigration lawyer, ask your lawyer to review your conviction carefully. Sometimes an immigration lawyer has an argument that your conviction is not an aggravated felony. Also, in some cases, a criminal defense lawyer might be able to reopen your conviction to change the sentence or the nature of your conviction.

It is difficult to reopen criminal cases once you have been convicted of a crime and only certain ways of changing your conviction in criminal court will change your conviction for immigration purposes. DHS may oppose a change to your conviction or sentence if the change is made only to avoid being removed from the United States. To find out more about this, you will need to talk to an experienced immigration lawyer.

4. **You cannot have been found by the Immigration Judge to be a spy, terrorist, threat to national security, persecutor, torturer or have committed extrajudicial killings or severe violations of religious freedom.**

You are not eligible for Cancellation if the Immigration Judge finds that you have done some act related to terrorism (including fundraising for an organization the U.S. government has found to be a terrorist organization), spying, illegally exporting products or sensitive information, or endangering public safety or national security. The same is true if the judge finds that a certain high U.S. official has reason to believe your presence or activities in the U.S. would be very bad for U.S. foreign policy. Additionally, you are not eligible for Cancellation if the Immigration Judge finds that you were a Nazi persecutor or that you were involved in persecuting someone because of his or her race, nationality, religion, political opinion, or membership in a group. Finally, you are also not eligible for cancellation if the Immigration Judge finds that you committed extrajudicial killings or severe violations of religious freedom.

If you were arrested at an airport or border port of entry while trying to reenter the U.S. and the judge finds that you are what is called an "arriving alien," there is a longer list of things related to terrorism or security that can prevent you from being allowed to apply for Cancellation. For example, if the judge decides that you are a member of an organization that a certain U.S. official has said is a foreign terrorist organization, you will not be allowed to apply. The same is true if you are or have been a member of the Communist party or certain other political parties, although there are some exceptions such as if you were under 16 at the time or if you were forced to join the party by law or in order to survive.

**5. You cannot have won Cancellation or another waiver in immigration court before.**

If an Immigration Judge gave you a second chance before, because you were in the U.S. illegally or because you committed a crime, you are not eligible for Cancellation. Specifically, if you won Cancellation (either the one for permanent residents or another kind), a waiver under a similar law that no longer exists (called "Section 212(c),") or something that was called "Suspension of Deportation," you are not eligible for Cancellation. However, if you won your case some other way, such as through political asylum or because DHS did not prove the charges against you, you may still be eligible for Cancellation.

## •HOW DO I APPLY FOR CANCELLATION?

Your case basically has two parts:

1) answering the charges against you and

2) applying for Cancellation.

**Part One: Answering the charges**

First, the judge decides whether the charges against you are true (for example, that you are not a citizen of the U.S. and that you were convicted of a certain crime or did a certain bad act) and, if so, whether the law says you can be "removed." The judge will decide this by first asking you (usually the first or second time you come to court) whether the charges are true. You can admit to the charges or you can deny them. If you deny them, the judge will ask the government to prove them. If the judge finds that the charges are not true or that DHS has not proved them, the judge will decide that you are not "removable." In that case, you do not need to apply for Cancellation because the judge should "terminate" your case. This means you will no longer have immigration proceedings against you. DHS might decide to appeal the judge's decision, so be sure to ask for your release on your own recognizance (without paying bond) if your case is terminated.

If the judge decides that the charges are true and that the immigration laws say you can be removed because of them, the judge then must decide whether you are or may be eligible to apply for Cancellation or anything else that would allow you to remain in the United States. If the judge decides you are not eligible (because, for example, you have a conviction for an aggravated felony), the judge will ordinarily order you removed from the United States. If the judge decides you are or may be eligible, he or she will schedule you to come to court again and you will go on to the second part of your case.

**Part Two: Applying for Cancellation**

If the judge decides you may qualify for Cancellation, he or she will give you some forms and a date by which to file the forms with the Court. Once you file the forms, you will have an individual hearing. It may be weeks or even months before your individual hearing, depending on the Court's schedule.

• **What forms do I have to fill out?**

To apply for Cancellation, you need to file 5 forms with the Court (or 4 forms and a fee). The last form listed is only required if you file some of your papers by mail.

**Forms and Other Items Needed to Apply for Cancellation**

- **Cancellation Application (EOIR-42A)** – *Original with supporting documents to Court, copies to DHS*
- **Biographic Information (G235A)** – *Copy to Court and original to DHS*
- **Affidavit for Fee Waiver or $100 Fee** – Original Fee Waiver form to Court (or proof of payment), copy (or fee) to DHS
- **Biometrics (fingerprints)** – If detained, ask DHS about getting biometrics done. If released from detention you must pay a $80 fee to DHS and file a copy of the ASC notice of fee receipt and biometric appointment instructions to Court and to DHS (unless fee waiver granted)
- **Certificate of Service** – Original to Court, copy to DHS

Use a typewriter or a pen. The Immigration Service is required to make these available to you so that you can prepare documents for court. Do not use pencil.

The Court will only accept forms filled out in English. If you cannot write in English, get someone to help you. This may seem unfair, but you should do it anyway, because otherwise, you will lose your case.

• **How many copies do I need?**

Make (or ask an officer to make) three photocopies of everything you turn in to the Court. One copy is for USCIS, as directed in the DHS Pre-filing Instructions, one copy is for the ICE attorney, or the Immigration Judge, depending on the type of form. The other is for you.

Bring your personal copies of all your papers with you when you go to Court, just in case something you sent to the Court was lost or misplaced.

• **How do I know which forms to give the judge and which to give DHS?**

For the most part, you give (or mail) the originals to the Immigration Judge and you give (or mail) a copy to the ICE attorney of everything you give to the judge. This rule goes for any letters of support, certificates of achievement, or other personal papers you file in your case. However, the Immigration Judge gets a copy of the Biographic Information Form (**G-325**) and the original goes to the ICE attorney. Both the ICE attorney and the Immigration Judge get a copy of the biometric ASC notice of fee receipt and appointment instructions if biometrics are done.

• **How do I answer the questions on the forms?**

You must answer all questions truthfully and completely. **Do not guess!** If you do not know the answer to a question or are not sure of your answer, write that down on the form. For example, if you do not know an exact date, write "approximate," and if you simply do not know an answer at all, write, "I don't know." This is important because **if you provide information that is wrong, the judge may decide that you are a dishonest person and you may lose your case. Also, it is a crime to lie on the immigration forms.**

If there is not enough room on the forms for you to answer a question completely, continue your answer on another piece of paper. **You should not give only part of the information a question asks for just because you do not have enough room.** When you do continue your answer on another piece of paper, make sure that your name and identification number (also called your "A number," since it starts with the letter "A") are on every page. Also, sign and date each piece of paper you add to the forms. Finally, write the number of the question you are answering on the page you are adding. Staple securely any additional pages to the EOIR-42A.

We talk about each of the forms that you must submit to the court to apply for Cancellation in more detail below.

## 1. The Cancellation Application Form (Form EOIR-42A)

There are too many questions on this form for us to talk about all of them, and in many cases, the answers will be obvious to you. Here, we talk about only some of the questions. Remember if you need to use another piece of paper to answer the questions, remember to include your name, Alien registration number, the application section and number of the question that you are answering at the top of each additional piece of paper you attach to your application.

**Question 2:** Your "Alien Registration Number" is your "A Number" or the number assigned to you for immigration matters.

**Question 14:** If you are still in custody when you file your application, you can write down the address of the detention center or prison.

**Question 15:** Be sure to include any names you have ever used that are different from the name you list in your answer to Question 1.

**Question 16:** List all of your addresses for the last 7 years. **Start with your present address** and end with your address 7 years ago. If you are in custody, you can start with your address in custody. If you have spent time in prison, include that here, too. There is not much space, so you may have to attach another piece of paper. **Question 17:** This question asks you for the date you became a legal permanent resident and where you were when you received that status. If you were in the United States at the time you became a legal permanent resident, write in the city and state. If you became a

legal permanent resident at the time you entered the U.S., the "place" is the city and state where you entered.

**Questions 18-21:** These questions have to do with your first arrival in the United States. You should indicate what name you used, the date you entered, and the city and state in the U.S. where you entered. In question 21, you need to check which box applies to you. If the first time you came to the U.S., you came illegally and did not go through an immigration checkpoint or see an immigration officer, you should check the box "entered without inspection."

**Question 23:** This question asks you to list any and all times you left and came back to the U.S., even if you were out of the country for less than a day. Even a quick shopping trip across the border must be included! If you do not remember the dates of all your trips, write "about" for dates and other facts you are unsure of.

Under "Port," you should put the U.S. city or town you left from and the U.S. city or town you came back through. Under "Manner of Return," say whether you came by car, airplane, train, bus or on foot. Where it asks whether you were "inspected and admitted," it means whether you saw an immigration officer upon your return and were allowed to enter by that officer (This includes just being waved at by an officer at a border entry station who allowed you to go through.). If you entered illegally, you should check "No."

If you have a lot of exits and reentries and they were all in the same way, such as by car or foot, and all at the same location, you may be able to answer the question completely by saying something such as, "left and returned through Nogales, Arizona for approximately 2 weeks every December for the Christmas holidays to visit relatives, traveled by car to Nogales, Sonora, Mexico, and was inspected upon return each time." If you do this, you will need to do it on a separate page, and make sure you give all information asked for in Question #23.

**Question 45:** This question asks you to list **all of your family members, including your parents, all of your brother and sisters, all of your aunts and uncles and your grandparents, whether alive or dead.** You must list everyone whether they are in the U.S. or outside the U.S. Do not leave people out because you think they are not important or because they are not living in the U.S.! The question also asks for the immigration status of your family members. This means whether they have legal permanent residency or other status. If a family member does not live in the United States and has no permission to live in the United States, put "none." Again, you will probably run out of room on the form. If you need to attach a sheet of paper with the names of other family members, be sure to include **all information** that the form asks about each family member.

**Question 48:** If you moved since obtaining your status as a legal permanent resident, you were required by law to inform DHS of your new address by filing a form. Many people do not know about this requirement. If you moved and did not file a change of address form with the INS or DHS, check "have not." If you did not move or if you moved and did file a form with INS or DHS when you moved, check "have."

**Question 49:** This question asks about any times you have been arrested, gone to court as a criminal

defendant or been convicted of an offense. Even if the charges against you in a case were dismissed, you still must check the "have" box and explain what the charge was and what happened. Also, if you have ever been fined for anything or broken any law, including a traffic law, you must check "have" and tell what happened. It is important that you include everything the question asks, no matter what. This is true even if the offense seems minor to you. It is also important to give all the information asked for if the offense was a serious one, which DHS has not included in the charges against you. **It is much safer to come clean and admit all problems with the law than to try to hide them.** If you do not list all your criminal violations, you could suffer at the hearing. DHS will almost certainly have a list of your arrests and convictions and will probably know about even the minor offenses and probation violations. The DHS attorney may ask you at your hearing about any of these things. If you have not listed them, the judge may think you were trying to hide something and you could lose the case because of that.

**Question 54:** Only say "yes" if you got special permission not to serve in the armed forces.

**Question 55:** This question asks what groups you have joined or been involved with. This could include your church or another type of religious/spiritual organization. You could also include membership in a work-related union and any community organizations to which you belong. One reason for the question may be to see how involved you are in American society. Think hard. If you have lived here a long time, you may have been a member of clubs when you were younger, such as Boy Scouts. Include any groups of people you have belonged to or been involved with.

**Question 57:** There are a lot of questions here about your conduct. "Engaged in prostitution" means worked as a prostitute. "Polygamist" means someone who has more than one husband or wife at the same time. "Inadmissible or removable on security-related grounds under sections 212(a)(3) or 237(a)(4) of the INA" means that you could have been kept out of the U.S. or "removed" from the U.S. because of certain national security concerns, terrorist activity, spying, torturing or having committed extrajudicial killings or severe violations of religious freedoms, and similar activities. It can mean you raised money for a foreign group considered by the United States to be a terrorist organization or that you were a member of a Communist or "totalitarian" party, but not everyone in that situation has been "inadmissible or removable" because of it. If you do not know the answer, write, "I don't know." The last question in this section asks if you have ever won Cancellation, a waiver under Section 212(c), or "Suspension of Deportation."

**Question 58:** Here, you should list all the papers you are including as part of the application. You should include papers about three things:

1. that you have been a legal permanent resident for at least the last 5 years,
2. that you have lived in the U.S. continuously for 7 years after being lawfully admitted; and
3. that you deserve to remain in the U.S. even though you have done something wrong.

For proof that you have been a legal permanent resident for the last 5 years, your "green card" (permanent residence card) or a copy of it should be enough. As far as proof you have lived in the U.S. continuously for 7 years after any lawful admission, you first have to prove that you were lawfully admitted. Again, if your lawful admission was getting your green card, a copy of it should

be enough. For example, you may have a stamp in your passport or an INS or DHS form showing that you were legally admitted on a certain date, or if not, there may be someone who was with you at the time and can write a letter or declaration telling when it was and what happened. Then, you have to prove at least 7 years of continuous residence in the U.S. after your admission. Proof of this can include letters and bills you received (showing your U.S. address), receipts, licenses (such as a driver's license), tax payment records, school or work records, letters from neighbors or others who can say from their own knowledge that you were here at that time (or whatever part of the time they know about), medical or dental records, church records, proof of your children's birth in the U.S., and many other kinds of papers.

As for proof that you deserve to win your case, we will talk more about that later when we explain what kinds of things the judge will consider.

If possible, you should collect all these papers in time to file them with your application. If you are not able to collect them all in time, many judges will allow you to file them later. Some even allow you to file them at the time of your individual hearing, but it is better to be on the safe side and file them earlier.

**NOTE: Don't sign the application form yet!** You will sign it in front of the judge.

**Proof of Service** – this part of the application is to tell the judge that you gave to the attorney for ICE a copy of your completed application along with copies of all the other papers that you are including with it. If you have a court date to turn in your application, you can give a copy to the attorney for ICE in person. In that case, you check the box that says, "delivered in person." If you are filing your application by mail, you will need to check the other box and mail a copy of the application and all supporting documents to the attorney for ICE. You can ask the judge for the address of the government's attorney.

• **What if a letter or some other document I want to file is not in English?**

Everything that you give to the judge has to be in English or has to be translated into English. If a letter or other document is not in English, you need to find someone to translate it. At the end of the translated document or letter, the person who translated it should put the following:

Certificate of Translation

I, (name of translator), certify that I am competent to translate this document and that the translation is true and accurate to the best of my abilities.

(signature of translator) (date)

You have to include both the original document in the foreign language AND the English translation, with the "Certificate of Translation" attached at the end or the judge cannot accept it.

## 2. The Biographic Information Form (Form G-325A)

Again, answer all questions as best as you can. Just like with the Cancellation application form, you need to list your addresses and employment in reverse order, that is, starting with the present and working backwards. Also, even if you have lived in the U.S. for many years, you should answer the question that asks for the last address you had outside the United States where you lived for more than one year.

Some of the questions on this form and the Cancellation application form are the same. You must answer all questions on both forms and you must make sure your answers on both forms make sense when you look at them together. Otherwise, the judge may think you are not an honest person. For example, if on one form you say you were living in Los Angeles in June of 1997 and in another, you say you were living in San Diego from April to August of 1997, one of your answers has to be wrong.

**Remember to file the original Biographic Information Form G-235A with the ICE attorney. Give the Court a copy and keep a copy for yourself.**

### 3. $100 Fee OR Affidavit for a Fee Waiver

If you are able to pay for the cost of filing your Cancellation application, it costs $100. (This fee could go up, ask the judge). If you can pay this fee, use a cashier's check or money order. **You should follow the DHS Pre-filing Instructions that you were provided by the DHS ICE Trial Attorney to pay the filing fee or submit the judge's fee waiver order.**

**TO PAY THE FEE:**

If you are **NOT DETAINED**, you should submit a copy of your Cancellation Application form (**Form EOIR- 42A**) and the appropriate fee to the USCIS designated Service Center (SC). As of this update the designated USCIS location is the Texas Service Center. After you file your application and pay your fee, you will receive a fee receipt and an Application Support Center (ASC) appointment notice. If you are not detained, you must attend your ASC appointment. You will also receive a biometrics confirmation notice that you should keep for your records. You should bring the original and a copy of your fee receipt and biometrics notice to the immigration court hearing to provide to the judge.

If you **ARE DETAINED** and can pay the application fee, you should speak to the detention staff to make arrangements to have the fee paid to DHS. Get a receipt for the money you paid. If you get out of custody before you file the application form and you are paying the fee, follow the instructions above.

**TO REQUEST A FEE WAIVER:**

If you do not have $100, you need to ask the judge to let you apply without paying. To do this, you have to file an application for a **"fee waiver."** The Court should provide you with a form to apply for this waiver. Different courts may use different forms, but the form you use should

be called "Application for a Fee Waiver" or something like that (Note: Do not use the brown Appeal Fee Waiver form because it is only for appeals.).

The form will require you to fill in dollar amounts for the money you are presently earning, the value of any land or other property or things you own, any savings you have in the bank, your expenses, and any money you owe. If you are detained and not making any money, your earnings should be "0." The form may also have a space for you to list anyone who is dependent on your income and the person's relationship to you, such as "child, husband, wife, mother, or father." The reason all these questions are asked is to see if, after you pay all living expenses for yourself and your dependents, there is still enough money left over to pay the $100 fee. You must answer honestly. If you do not, you are committing a crime and you could be prosecuted.

If the form includes at the bottom the word "Order" and underneath it a blank space for the judge to sign, leave this part blank. **Turn in the original of this form in Court, along with your Cancellation application. Provide a copy to DHS. Keep a copy for yourself.**

## 4. Biometrics (fingerprints)

Biometrics, or fingerprint data, may only be done by authorized offices of DHS. **You should follow the DHS Pre-filing Instructions that you were provided by the DHS ICE Trial Attorney to get your fingerprints appointment.** It is very important to have your fingerprints taken and the security checks done. If you do not do this you may lose the chance to file your application with the judge!

If you are detained, DHS will arrange for your fingerprints to be taken and the security checks to be done. If you require transportation to another office for your fingerprints to be taken, you must ask DHS to see if they will help you complete the biometrics requirement.

If you are not in custody at the time you file the application, you will receive an ASC appointment notice after you file your application (**Form EOIR- 42A**) with the USCIS Service Center (SC). As of this update the designated USCIS location is the Texas Service Center. After you file your application and fee you will receive a biometrics appointment notice. You must pay a $80 fee to DHS for the biometrics and follow the DHS's instructions in the appointment notice regarding the time and place of your biometrics appointment. You should bring the original and a copy of your biometrics notice to the immigration court hearing to provide to the judge.

## 5. Certificate of Service

You should turn in all your forms and other papers at the same time you turn in your application form, if you can. If you give documents to the ICE attorney in court, the judge should make a record of this. If you cannot do this (for example, if you receive a letter after filing your application and you want the judge to read it), you need to file the papers by sending them in the mail rather than giving them to the judge and the ICE attorney in court. If you mail anything to the judge, you will need to mail a copy to the ICE attorney.

You also need to attach to the papers you give the judge a form that shows the judge that you sent the

ICE attorney a copy. That form is called a "Certificate of Service" and you will find a sample at the end of this booklet. To fill it out, put your name, "A number," and the date you are mailing the documents. Then, put the address of the ICE office that is handling your case (ask an officer if you do not know it). Sign the form and make two copies.

You must mail the original Certificate of Service and the original documents to the judge. Mail another copy to ICE and keep the last copy for yourself. If you give the documents to the ICE lawyer in person, indicate on the Certificate of Service that the ICE lawyer was "personally served" rather than served by mail.

- **ARE THERE ANY FORMS THAT ARE NOT REQUIRED BUT COULD BE HELPFUL TO MY CASE?**

The next two forms are not required but may be useful in preparing your case. They are not forms you give or send to the judge. You mail them to other government offices.

**Freedom of Information /Privacy Act Request (Form G-639)**

You can use this form to get a copy of DHS's file on you. The file includes papers about your immigration history and, usually, your criminal history. This can be very helpful because it lets you know what DHS may try to prove against you in Court and what papers it may ask the judge to consider. Seeing the papers in your file gives you the chance to get ready to talk about certain things. If you do not see the file, you may get caught off guard in Court and may not know what to say. The form you file is called a **Freedom of Information /Privacy Act Request (Form G-639)** or a "FOIA Request Form." If you do not have this form, you will have to ask a detention officer or an immigration officer for one. Once you file it, it may take a long time to get a response, and you may have your hearing before then, but it does not hurt to file the form and it may help you.

If you are detained, your address on the form should be your address at the detention center. If a question does not apply to you, write "not applicable." You need to sign the form in several places. First, under question number 2 where it says "Signature of Requester," then under number 7, where it says "Signature of Subject of Record, and last, under number 8, where it begins, "If executed within the United States….." By signing, you agree to pay copying costs, but in most cases, there will not be any charge.

Do not send a copy of this form to the Court. Mail the original to DHS and write "FOIA Request" on the envelope. The person who deals with these papers may be at a different address than where you mail your other papers, so ask an officer for the address of the "FOIA officer" for the DHS district where you are. Keep a copy for yourself.

**Fingerprint Card, Cover Letter to the FBI, and $18 Money Order**

If you have criminal convictions, one of the documents DHS probably has in your file is a "rap sheet" from the FBI that lists your criminal history, including any arrests, even if you were not convicted.

You can usually get this faster than you can get a copy of your DHS file, and this is why you should request this even if you have filed a "FOIA request" with the DHS.

The three things you will need in order to get your FBI rap sheet are 1) a completed fingerprint card (**Form FD-258**), 2) a money order for $18 made out to the "FBI," and 3) a short letter asking for your "rap sheet." You must sign the letter and indicate the address to which the "rap sheet" should be mailed. You should also indicate the date by which you need the record as it can take up to 8 weeks. To prepare a fingerprint card, ask a detention officer to get the card for you and to fingerprint you. Fill in on the fingerprint card at least the boxes asking for your name, height, weight, date of birth, and social security number. Get the money order from a family member or ask an officer to arrange for you to buy one.

Send the fingerprint card, the money order, and a short letter asking for your rap sheet to:

Federal Bureau of Investigations – CJIS Division
1000 Custer Hollow Rd.
Clarksburg, West Virginia 26306

Do not send a copy to the Court or DHS.

Now that we have explained how to fill out and file the forms for your case, we will explain what you will need to prove at your individual Cancellation hearing, what you can expect to happen at the hearing, and what you need to do to get ready for it.

## •WHAT DO I HAVE TO PROVE AT MY HEARING?

When we explained the requirements for Cancellation, we told you that you have to prove that you have been a permanent resident at least the last 5 years and that you have lived in the U.S. continuously for at least 7 years after a lawful admission. Sometimes, DHS will agree that you have met these requirements and the only thing you will have to prove at your individual hearing is that you deserve to win Cancellation.

You can often tell whether DHS agrees that you have met the first two requirements by looking at the "charging document," against you, which is the one that says at the top "Notice to Appear." It will usually give the date DHS believes you became a permanent resident, and if this is at least 5 years ago, you do not have to prove that. Also, if the Notice to Appear says that you became a legal permanent or legal temporary resident more than 7 years ago and there is no reason to think that those 7 years will be cut by one of the crimes we talked about before, and as long as you have not spent long periods of time outside the U.S., you should not spend much time getting together proof that you have met the 7-year requirement.

On the other hand, if there is any reason to think DHS may say that you do not meet the basic time requirements, you should be ready to prove that you do.

You also must get ready to prove that you deserve to win your case. As we said before, in order to prove this, you will have to show the judge that the good things about you and your life weigh more

than the bad things. In other words, you have to prove that you deserve another chance.

The following are lists of good and bad things, or "positive and negative factors," that judges usually think about when trying to decide whether you deserve to keep your status as a legal permanent resident of the United States. We will explain later how to get proof relating to the positive and negative factors in your case.

- ***Positive factors (good points) that can help you win your case:***
  - * Family ties in the United States
  - * You have lived in the U.S. for many years, especially since childhood
  - * It will be very hard on you and on your family if you are removed
  - * Service in the U.S. armed forces
  - * A good work record
  - * Property or business ties
  - * Service to your community in the U.S.
  - * Rehabilitation (from drug addiction or other criminal behavior)
  - * Good character

- ***Negative factors (bad points) that can hurt your case:***
  - * The circumstances of the crime(s) or act(s) that are the basis of your removal proceedings
  - * Serious violations of the immigration laws, such as visa fraud or a past order of removal
  - * Your criminal record, including how recently and how often you have violated the law, and the types of violations
  - * Anything else which shows bad character

## • WHAT WILL HAPPEN AT MY CANCELLATION HEARING?

The judge at your Cancellation hearing will consider "evidence" presented by you and by DHS. Evidence can be papers, letters, photographs, and anything else that can prove something. "Testimony," which is statements made in Court by people who swear to tell the truth (witnesses) is also evidence. Before the hearing starts, you should give the judge all the letters and other documents you want him or her to consider. You must also have copies to give to the DHS trial attorney.

### Opening statements

At the start of the hearing, the judge may give you the chance to make an "opening statement." That is the time for you to tell the judge what witnesses are going to speak in your favor (that is, what witnesses you are going to "call" to the witness stand), what evidence you will show the judge (or have already filed), and what you are going to prove. Then, the DHS trial attorney can make an opening statement, too. Some judges do not allow opening statements and will have you go straight to the next step.

### Testimony (Witnesses) and other Evidence

Next, it will be time for you to call witnesses to testify for you. The witnesses cannot just get up and

speak. You have to ask them questions and they answer. After you ask them questions, the trial attorney may ask questions. Also, the judge may ask the witness questions.

You can call yourself as a witness at any time, and should probably do that at the beginning or at the end of the hearing. That is when you will speak to the judge directly, and when both the trial attorney and the judge can ask you questions.

As you ask questions of other witnesses, or as you testify, you can also call the judge's attention to certain papers you have turned in that you think are important.

After you are done, the trial attorney will have the chance to present any witnesses or evidence he or she wants to. Usually, the trial attorney will not call any witnesses, but if he or she does, you will have the chance to ask them questions. As far as evidence, you have the right to see anything the DHS trial attorney gives to the judge and to object if there is a reason to object. The attorney will give the judge proof of your criminal convictions. If the document is signed by someone who certifies that it is an official document, there may be no reason to object, but you can and should object if the attorney starts reading off an FBI "rap sheet" or asks the judge to consider some similar document that does not have a certificate showing it to be an official record.

**Closing Statements**

After all witnesses have spoken and been questioned, the judge may give both sides the chance to make a "closing statement." If the judge does not do that and you want to make a final statement, ask the judge for the chance. In your closing statement, you should refer to things you and your witnesses have said and to letters and other documents that show that you have changed and deserve another chance. You should refer to the "positive factors" you have shown and explain why they outweigh the "negative factors."

**Judge's Decision**

After the trial attorney gives a final statement, the judge will give his or her decision. The judge must make statements about the law relating to Cancellation, talk about the facts in your case (based on your testimony and other evidence), and then say why he or she is deciding for or against you. Sometimes, but not often, the judge will not have enough time to explain his or her decision or will want to take some time to think about it. If that happens, the judge will either set another court date to explain the decision or will put the decision in writing and send it to you and to DHS.

## •HOW DO I GET READY FOR MY CANCELLATION HEARING?

Getting ready for your hearing takes a lot of work. We'll go through each of the steps one by one.

**To get ready for your hearing,** 

**1. Using the "LPR CANCELLATION WORKSHEET," make a list of all the letters and other papers you need to get for your hearing.**

**2. Write letters and make telephone calls to get all the papers you need for the hearing and to get people to come speak as witnesses for you at your hearing (if possible).**

**3. Prepare your witnesses to testify in Court.**

**4. Write out what you are going to say in Court.**

## STEP ONE: MAKE A LIST OF ALL THE LETTERS AND OTHER PAPERS TO GET FOR YOUR HEARING.

At the back of this booklet is a worksheet (called "LPR Cancellation worksheet") we made to give you some ideas about the kinds of proof that may help you win your case. The following discussion should also give you some ideas.

### *POSITIVE FACTORS*

***Family ties and hardship on you and your family***

One of the things the judge will consider is how it will affect your family members if you are removed from the United States, so you will want to make sure the judge knows about all your family members in the United States. If you are especially close emotionally to certain family members, or if certain family members depend on you for financial support or other things, this will be in your favor. For example, if your wife and children are United States citizens but you are separated from your wife, do not see your children, and do not pay child support, the judge will get the idea that it will not make much difference to your family if you are removed. On the other hand, if you can show that your mother lives with you and depends on you to help her do chores, to take her to the doctor, and to help pay the rent, the judge will realize that it will be hard on your mother if you are removed.

The judge will also consider what it will be like for you if you are removed. Do you have relatives in the country to which you would be removed? Do you speak the language of that country? If not, it will clearly be harder on you than if you do. You should be ready to explain to the judge the problems you will have if you are removed and to give the judge proof of those problems, if you can get it.

**It is very important that you get your family involved in your case.** Some people feel ashamed or embarrassed because of the trouble they have gotten involved in or the problems they have caused their families. They do not want their families to get involved in their immigration cases. This is a **big mistake**, because family support is one of the things you need the most in order to win your case. All

your family members should write letters to the judge, including your children, if they can write. **Any family member who can come to your hearing should come.** This will show the judge that they need you and care about you. If work or the cost of traveling to the hearing makes them unable to come, they should explain this to the judge in a letter.

***Work History***

It helps if you can show the judge that you have a steady work history and have not spent long periods of time unemployed. If there were long periods when you did not work, you should be ready to explain them at the hearing. You should try to get letters from as many employers you worked for as possible, and if there are employers or supervisors who would say good things about you, ask them to include that in the letters.

You will also want to show the judge that you will be able to get a job after you win your case. If possible, get a letter from an employer promising to give you a job.

***Community Service***

Any groups or clubs you participate in or anything you have done to help others outside of your family may help your case. Do you go to church or temple regularly? Get a letter from the church or temple leader. Do you help the neighbors with repairs on their houses? Get a letter from your neighbor. Have you volunteered for an organization? Get a letter from a representative of the organization.

***U.S. Military Service***

If you have served in any branch of the U.S. military and received an honorable discharge, this will be in your favor. Get proof of your honorable discharge and any special honors you received or services you performed in the military.

***Property or Business Ties to the U.S.***

The stronger your ties to the United States, the better for your case. If you own land, a home or other property in the U.S., or if you do business in the U.S., get proof.

***Rehabilitation***

**Showing rehabilitation -- that you have changed your life and will not get in trouble again -- is one of the most important things you can do to win your case.** This is hard to show if you have been in custody ever since you got in trouble, but it is not impossible.

For many people who apply for Cancellation, the hardest part about showing rehabilitation is admitting they did something wrong. They blame their lawyer for not being on their side and for telling them to plead guilty or they say they pled guilty because they were trying to protect someone else, or that they got convicted because they were just at the wrong place at the wrong time. **These**

**people usually lose their cases.**

**If you cannot admit you did something wrong, you will probably lose your case.**

Every day, Immigration Judges see people with criminal convictions who say they were innocent. The judges find this very frustrating. For one thing, if you were convicted, whether you went to trial or whether you pled guilty, the law says that there is nothing the Immigration Judge can do about your criminal record. Under the law, you are considered guilty. For another thing, if you pled guilty, you told the judge in another Court that you were guilty and now, if you tell the Immigration Judge you were innocent, the Immigration Judge may think you either lied to the first judge or are lying now. That is why denying that you were guilty means you will probably lose your case. The judge will think you are dishonest and irresponsible.

That is not to say that you should lie to the judge by saying you did something you didn't do. You will be "under oath" in Court, which means you swear to tell the truth, and it is a felony to lie under oath. But if you plan to tell the judge that you were not guilty, you had better be prepared to explain why you pled guilty when you were not. If at all possible, you should admit that you made serious mistakes, that you did something, which got you into trouble, even if you did not do what you were convicted of. In other words, take some responsibility for the things that you did do wrong.

**Admitting that you made mistakes is just one part of showing rehabilitation. You also have to show that you have improved yourself and are not going to make the same mistakes again.** This is easiest to do if you can get out on bond before your individual Cancellation hearing. If you are able to do that, you should try to get a job as soon as possible. Before the hearing, you should get a letter of recommendation from your boss. You should also do some kind of volunteer work in the community. And overall, you should try to live a model life. This will help you prove to the judge that you have changed and will not get into trouble again.

If your problems with the law had anything to do with drugs or alcohol, it is extremely important that you get involved in a support group or treatment program and that you stick with it. If you just go to one or two Alcoholics Anonymous meetings, the judge will not be impressed.

If you cannot get out on bond, you should try to show that you have been trying to improve yourself while in custody. If there are no treatment programs available, get a copy of the "Twelve Steps" or other literature from Alcoholics Anonymous or Narcotics Anonymous. Write to treatment programs for information. Start you own support group with your fellow detainees.

Get proof of your participation in courses or programs while in custody. If possible, get a letter from a guard, counselor, or anyone else who can say good things about your behavior and attitude while you were in custody. Also, if possible, get a job while you are in Immigration custody and get a letter from your supervisor showing that you are a hard worker.

***Other proof of good character***

Anything else that shows that you have helped other people or been a responsible member of society can help your case.

One thing the judge will usually want to know is whether you have paid taxes regularly. You should get copies of your tax returns. If you have not filed tax returns, or if you put false information on your tax returns, this will hurt your case, but if you have paid taxes regularly and honestly, this will be in your favor.

## *NEGATIVE FACTORS*

You also need to have evidence to deal with the negative factors the judge will consider. At the very least, you should know what you are going to say about them.

### *The circumstances of the crime(s) or acts(s)*

You should be ready to talk about exactly what you did when you committed the crime(s) or act(s) and why you did it. Again, do not try to make it seem like it was not that bad. Be honest about what you did and how you came to be involved in the situation. Accept responsibility for what you did. One thing is for sure: if you do not bring it up and talk about it, you will get questions about it from the ICE trial attorney, the judge, or both.

### *Your criminal record and other violations of the law*

Even though the government may be trying to remove you because of one or two particular crimes, the judge will want to know about other crimes you were convicted of and other times you broke the law. If there is anything in your record that gives the idea that you have used drugs or been a drug dealer, you will be asked questions about using and selling drugs.

If you have had problems with drugs or alcohol, you should be ready to discuss when your problems started, why, how often you used drugs, what kinds, and when the last time was that you used drugs or alcohol.

You can refuse to answer these kinds of questions, but the judge will probably hold this against you. You have the right to refuse if it is possible that you could open yourself to more criminal charges based on what you admit in Court. If you decide you are not going to answer questions about past violations of the law, you should say that you are "taking the Fifth," that is, refusing to say things against yourself based on the Fifth Amendment to the Constitution. The problem with this is that the judge may get angry with you and decide you are hiding things, especially if you refuse to talk about using drugs since the time of your last conviction. You should decide before your hearing whether you are going to refuse to answer certain questions and, if not, what you are going to say about your past drug use and problems with drugs.

You can see why it will be helpful for you to see what is in your immigration file and FBI "rap sheet" before your hearing. Another document you should be sure to get and read before your hearing, if you have a criminal record, is the **"pre-sentence report."** This is a report that is often prepared before a

person is sentenced for a crime. Later, we will explain how to get a copy of your pre-sentence report.

**• Make a list of all the evidence you are going to get together.**

Now that you know what the judge will consider, it is time to make a list of all the evidence you can get for your case. Turn to the "LPR Cancellation Worksheet" at the end of this booklet. This worksheet is just for you. Don't give it to the judge. The worksheet lists some kinds of evidence you may be able to get. There is also space for you to list other ideas. Think of as many things as you can try to get to give to the judge. Make a list of everything that you need to get, and check it off when you get it.

> • **To start getting ready for your hearing, fill out the "LPR Cancellation Worksheet."**

**STEP TWO: WRITE LETTERS AND MAKE PHONE CALLS TO GET THE EVIDENCE YOU NEED FOR YOUR CASE.**

You should write letters and/or make phone calls immediately to get documents you need -- such as your marriage license, children's birth certificates, tax returns, rent receipts, certificates of completion (of classes), and any records from prison that show good behavior. You should also contact everyone who can write a letter to the judge for you.

**• What should people say in their letters to the judge?** 

You cannot simply tell your friends, family members, and past employers to write letters and hope that they will know what to say. Instead, you should write down for them what kinds of things they should talk about in their letters. Write to each person you want to get a letter from. In your letters, you should:

1. Explain that you are facing removal from the U.S. and explain why. If you served time in prison, say so, and explain that you need to show the judge that you are now ready and able to become a productive member of society.
2. Explain that the purpose of the letter is to show the judge why you deserve to be allowed to remain in the U.S. The letter should be addressed "Dear Immigration Judge," or "Honorable Immigration Judge." Ask the person to include:

   - His or her name, age (if a family member), address, occupation, and immigration status (for example, U.S. citizen or permanent resident).

   - How he or she knows you (for example, she is your sister, your neighbor, or your boss) and for how long he or she has known you or your family.

- Other information about you that the judge will want to know in deciding whether you should be removed, such as –

- How are you important to this person? Is this a family member who depends on you in some way? How? For money to pay the rent, buy food, and pay other bills? If so, how much money do you usually pay every month? Is this a sick or old person who needs you to help them and, if so, how do you help this person? Is this person close to you emotionally? What will it mean to this person (or others in the family) if you are removed?
- What good things does this person know about you? What are your strongest points? What good things have you done for others that this person knows about?
- How hard will it be for you if you are removed? If this person is from the country you immigrated from or knows what things are like in that country now, he or she should write about what kind of a life you can expect to return to there.
- What kind of a work record do you have? Your employer or former employer should state how long you worked for him or her, what your job and responsibilities were, how well you performed your job. If the person is willing to hire you again, he or she should say so.

3. Tell the person to write the letter in his or her own words. **The judge will not be convinced if the letters from all your family members sound the same.**

4. Ask the person to sign the letter before a Notary Public, if possible.

**• Should I ask people to talk about my problems in the letters to the judge?**

Those who know you well and know about the problems you got into should talk about them. Your former teachers or employers do not necessarily have to talk about your problems, but at least some of your family members should. Otherwise, the judge will think that the person is not telling the whole truth about you, or that the person must not know you very well if he or she doesn't even know about your problems. **If your family members and those who say they know you well do not mention your problems, or if they say that you have no problems and are a "law-abiding citizen," you may lose your case.** In talking about your problems, the person should explain how you got into problems in the first place and how you have changed since then. The person should explain why he or she thinks you will be able to keep out of trouble if you are allowed to remain in the U.S.

Tell your family and friends to speak from their hearts about you and to speak the truth. If they cannot express themselves well in English, tell them to write the letter in their own language. Just make sure that, if they do that, you **get someone to translate the letter and to sign a "Certificate of Translation,"** as we explained before! And make sure you include the original letter (in the foreign language) with the translation when you file it.

**• How do I get a copy of my pre-sentence report?**

If you were convicted of a crime, before you were sentenced, a "pre-sentence report" may have been prepared about you. This report usually discusses your personal history and the circumstances of the crime, among other things. It may say things that are helpful to you, and in that case, you may want to use it for your hearing. On the other hand, it may say bad things about you, and in that case, you will also want to know what it says, in case DHS has a copy and wants to use it against you.

You can get a copy of the pre-sentence report by calling or writing the lawyer (or the office of the lawyer) who represented you in criminal court. If you do not remember who that was, you can find out by asking an immigration officer to look it up in your file. (The lawyer's name will be on the document that shows you were convicted.) If the attorney was a public defender (not someone you hired), you can call or have someone else call the public defender's office in the area where you were convicted to get the address. When you call or write to ask for a copy of the report, the office may need your social security number and date of birth in order to find your records.

**• When should I give (or mail) my letters and other papers to the judge?**

As we said before, you may be required to give the judge all your letters and other documents at the time you file your application. It is also possible that the judge will give you a certain date by which you must mail any papers to the Court. But even if some papers arrive after that date (and if there is not enough time to mail them), bring them to the hearing anyway. Maybe the judge will allow you to file them. **Again, remember to givethe ICE trial attorney copies of all papers you give the judge.**

**• Can my friends and family send letters or other papers directly to the judge?**

No. Only you or your lawyer, if you have one, can file papers in your case. Have people send papers directly to you.

**• Do I need to give the judge originals of my papers, or can I give the judge copies?**

As far as important original documents, such as birth certificates and your marriage license, it is a good idea to turn in copies and bring the originals with you to show the judge at the hearing. Otherwise, there is always a chance that these will be lost. You can also give the judge originals of letters friends and family have written on your behalf but you should keep copies for yourself.

**• Making an "Index"**

Question #58 on the Cancellation application form asks you to list the papers you are filing with the application. If you file other papers later, it is a good idea to make a new list and turn that in with the papers. This helps the judge know what documents you have given him or her and also gives the judge a chance to see if any documents are missing. At the top of your list, write your name and A number and the word, "Index." If you have a lot of pages, it is a good idea to number the pages and to write on the index the number of the page. That will make it easier for the judge to find a document quickly in court when you talk about it.

## STEP THREE: PREPARE YOUR WITNESSES

If at all possible, you will want other people, especially family members, to come and speak to the judge at your hearing. The more people who can come to the hearing, the better, because this will show the judge that there are many people who care about you. Of course, not everyone who comes has to speak, and not everyone who speaks should talk about the same things. You do not want the judge to get bored or impatient. You should choose a few people to speak at the hearing, and should talk with them about what they will say.

You should write down all the questions you are going to ask the witness. You should start by asking the witness his or her name, age, address, immigration status (for example, whether he or she is a U.S. citizen or legal permanent resident), and occupation. Then, you should ask the person how he or she knows you, and for how long. After that, you should ask questions that give the witness a chance to tell the judge what he or she knows about you and what kind of person you are. For instance, the witness might be able to talk about what kind of a father/ mother/ daughter/ son/ husband/ wife you are, the ways in which the family depends on you, and what it would be like for the witness or others if you are removed. It is a good idea to practice a few times with each witness.

Make sure that the witness knows about your problems or criminal convictions. If you do not bring them up in your questions, ICE's lawyer will be sure to ask about them, and you do not want your witness to be surprised.

Tell the witness to call the judge "Your honor." He or she should call the DHS trial attorney "Sir" or "Ma'am." The witness should look at the judge when speaking. These rules go for you, too, of course.

## STEP FOUR: WRITE OUT WHAT YOU ARE GOING TO SAY TO THE JUDGE

To get ready for your hearing, you have to think about and practice what you are going to say to the judge. The best way to figure out what to say is to write it down.

Think of your case as a story. Like every story, it has a beginning, a middle, and an end. You need to tell the judge about your life in the past, what you have learned from your problems with the law, what you have done are doing or will do to change your life for the better.

- **Your past**

Tell the judge about your background. Explain what your life was like before you got involved in drugs, crime, or other problems. Explain the reasons that you got involved in problems.

- **Your feelings about what you did wrong**

Explain to the judge your feelings about what you did wrong and the mistakes that you made. Some people with drug problems come to realize, because of the problems they caused their families and their difficulty in having a normal life, that drugs are bad for them and bad for society. Prison often

gives people time to think about how they have hurt themselves and others. Facing the possibility of being removed also gives people a chance to think about all they have to lose. You have to decide what is true in your case, and how you feel about the things you did.

It is very important to think hard about your life and to speak from your heart about how you have changed or plan to change. Saying easy things such as "I have changed so please give me another chance," will not impress the judge. You have to explain how you have changed and why in a very specific way.

**• Your new life**

Explain to the judge what your life has been like since you got in trouble and what you are doing and plan to do to change it. Also, explain what support you have from your family or others in trying to change. Talk about your goals for the future and what you have done so far or plan to do to achieve them. Again, be as specific as you can about your plans for the future.

**• Practice talking to the judge and answering questions you may be asked**

The ICE attorney will ask you questions at your hearing, and the judge probably will, too. Here are some of the questions you should be ready to answer:

-- Have you used drugs before this incident (that got you in trouble)? What kind of drugs, and how often? Have you used drugs since your conviction? When was the last time you used drugs?

-- How do you feel about what you did (your crime or bad act)?

-- Why should the judge believe you are not going to make the same mistakes again?

-- What will you do if you are removed?

**• Prepare your opening and closing statements**

We have already mentioned what you should say in your opening and closing statements. You should prepare them once you have all or most of your case ready. You can also change what you say in your closing statement depending on what the judge or trial attorney has brought up at the hearing. Do not make the opening and closing statements too long. Just make a few important points.

## •WHAT HAPPENS WHEN THE JUDGE DECIDES MY CASE?

If you or the DHS trial attorney disagree with the judge's decision, you both have the right to keep fighting the case by appealing the decision to a higher court called the Board of Immigration Appeals ("the Board"). This court is a group of judges in Virginia who look at all the papers filed in

the case and everything that was said in court, and decide if the judge was right. In most cases, unless the judge made a mistake about the law or the facts in your case, the Board will not change the decision.

As soon as the judge tells you the decision (unless you get it later, in writing), he or she will ask both you and the trial attorney whether you want to "reserve appeal," that is, whether you want to hold on to your right to appeal. You can also "waive appeal," which means to give up your right to appeal. If both sides "waive appeal," that is the end of the case.

If someone "reserves appeal," he or she has 30 days to file a paper called a "Notice of Appeal" with the Board in Virginia. If DHS appeals, it has to send you a copy of this Notice and if you appeal, you have to send DHS a copy.

**·What if DHS appeals my case?**

The ICE attorney may say he or she wants to "reserve appeal," but that does not mean DHS will actually appeal. You may not know for sure until 30 days from the judge's decision, and if DHS has not filed a Notice of Appeal by then, it cannot appeal. You should know if DHS has filed a Notice of Appeal or not because you should get a copy of the Notice if it is filed. If DHS does file a Notice of Appeal and, on the form, says that it will file a "brief" or written statement later, the Board of Immigration Appeals will send you and DHS a paper saying when DHS must file its brief or statement and when you should mail to the Board any response you want to write to DHS's arguments. Try to get a lawyer to help you with this if you can. In addition,

**If you win and DHS reserves its right to appeal,**

☞ **Ask the judge or DHS to order you released on your own recognizance (without having to pay bond)!**

Some people qualify to ask the judge for their release, but some people do not and must ask DHS for their release. Other booklets explain this in detail. If you qualify to ask the judge for a bond and you win your case, ask the judge to release you right then and there! If you do not get the chance, write the judge a letter asking for a bond hearing (even if you had one before).

· **If I lose, how do I appeal?**

If you lose and you "reserve appeal," the Board of Immigration Appeals must receive your papers by the 30th day after the judge's decision in your case or the Board of Immigration Appeals will not read them.

The forms you must fill out in order to appeal the judge's decision are

1) a white "Notice of Appeal" form (**EOIR-26**), and

2) a brown "Appeal Fee Waiver Request" form (**EOIR-26A**) (unless you can pay a $110 fee, in which case, follow the instructions on the "Notice of Appeal" and pay the fee)

The forms explain how to fill them out and where to send them. You may also wish to review the rules for filing appeals in the Board of Immigration Appeals Practice Manual and Question and Answers. The manual is available online at:
http://www.usdoj.gov/eoir/vll/qapracmanual/apptmtn4.htm

This manual should also be available at the DHS detention facilities immigration library.

If, after 30 days, the appeal papers have not been received in Virginia, you will not be allowed to appeal and the judge's decision will become final. For this reason, we recommend mailing the papers as soon as possible and mailing them by express mail or "certified mail" (with proof of receipt).

If the Board has received your forms, it will give the DHS a chance to file some papers also. DHS will give you a copy of whatever papers it files.

If you are detained during the appeal process, it usually takes from four to six months for the Board to decide the appeal. If you are out of custody during the appeal process, it may take much longer. There is no set time frame, and it is impossible to determine how long the appeal will take.

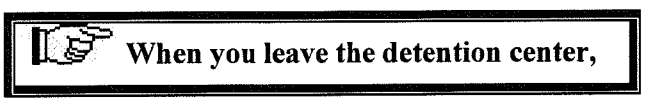
- **What if the Board of Immigration Appeals decides against me?**

You may be able to appeal the Board's decision to a federal court, but for only limited reasons. Also, unless you get a special order called a "stay of removal" from a federal court, DHS may remove you from the country while the federal court considers your case! This can happen fast, so if your case is appealed to the Board, you should try to get a lawyer's help before the Board makes its decision. Appealing a case to federal court is very complicated, so this booklet does not explain how to do that.

- **WHAT HAPPENS IF I GET OUT OF DETENTION BEFORE MY HEARING?**

If you are allowed to leave the detention center before your case is over, your case continues. Even though it is the DHS's responsibility to notify the court of your address if you are released, you should file a change of address form EOIR-33/IC to notify them of your address. The court will send you a letter at the address they have on record for you telling you the date, time, and place of your next hearing.

For this reason, it is extremely important that you try to find legal help as soon as possible. Don't delay.



**look for legal help for your case!**

It is also very important that you or your lawyer ask the court to transfer your case to a different court, unless you want to go to court where your case is now. You do this by filling out a form called a **"Motion for Change of Venue"** on which you write the address where you plan to live when you leave the detention center (This has to be a street address, not a post office box!). At the back of this booklet is a form that you may use but some courts may want you to use a different form, so find out. At some detention centers, an immigration officer will give you the form and will give it to the court after you complete it. Find out how things are done at your detention center and make sure to file the right form with the court (with a copy to DHS's attorney). When the court gets this paper, it will send your file to the Immigration Court closest to the address you wrote down. That court will then send you a letter telling you where and when to go for your next hearing. After receiving this letter, you should then only send things to the Court and DHS in your new location.

**When you leave the detention center, if you do not want your next court hearing to be where you are now, file a "Motion for Change of Venue!"**

Some courts require a more complete explanation of why you want to change court locations. At the time of your bond hearing, ask the judge if you will need to do that.

**Remember, if you miss a hearing, the judge can order you removed from the U.S., and you will lose the right to apply for Cancellation and other forms of relief from removal!**

**·What should I do if I move?**

**Every time you move, it is your responsibility to tell both the Immigration Court and DHS!** You have **5 days** after you move to tell the immigration courts and the Board of Immigration Appeals and **10 days** to tell DHS. There are special forms to do this and you can get one from the Court and a different one from DHS. The forms you should use to change your address are:

- EOIR 33/IC for the Immigration Court,
- EOIR 33/BIA for the Board of Immigration Appeals and
- DHS AR-11 for the Department of Homeland Security.

Letting the Court and DHS know your new address will not change where you will have your hearing. Instead, the special forms used for changes of address let the Court and DHS know where to send you papers about your case. When the Immigration Court and DHS send you papers, they will send them to the address you gave them. **If the Court only has an old address for you, it will send the paper telling you when your next hearing is to the old address, and when you do not show**

**up to court on that date, you can receive an order of removal. This means that the next time DHS arrests you, you can be sent back to your country without a hearing.**

It is important to remember that the Court and DHS are two different things. If you let DHS know your new address but you do not send the right form (a blue **EOIR-33/IC, "Change of Address"** form) to the Immigration Court, the Court will keep sending papers to you at your old address, and you can miss your court date. If that happens, you can get a removal order without seeing a judge.

**If you move, send the Immigration Court and the DHS your new address!**

**•DON'T BE AFRAID**

Immigration Judges do grant Cancellation of Removal to permanent residents. Getting ready for your hearing is a lot of work, but the more you prepare, the less afraid you will be when you go to Court, and the better your chances of winning your case.



This booklet was updated by Elizabeth Dallam, former Director of the Florence Project, and edited by Lynn Marcus, an assistant adjunct professor at the University of Arizona College of Law. Funding was provided by the Ford Foundation. The original booklet was written by Ms. Marcus in November 1993 with support from the Marshall Fund of Arizona.

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Certificate of Service

Name: _____

A#: ____ -- ____ -- ____

I certify that on _____, _____, I served
(date) (year)
Assistant Chief Counsel of the Department of Homeland Security -U.S. Immigration & Customs Enforcement (ICE) with a copy of:

(description of documents being served)

by placing a true and complete copy in an envelope, postage prepaid, and mailing it, addressed as follows:

Assistant Chief Counsel
Department of Homeland Security
U.S. Immigration & Customs Enforcement (ICE)
(address of DHS office that handled your case when you were in DHS custody)

_____
(Sign your name here)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

City and state where court is

| | | |
|---|---|---|
| In the Matter of: | ) | IN REMOVAL PROCEEDINGS |
| | ) | |
| (Your name) | ) | |
| Respondent | ) | |
| File No. A_____ | ) | |
| _____ | ) | |

MOTION FOR CHANGE OF VENUE

The Respondent has bonded out and will be residing at:
(your address outside of detention)

The Respondent requests that his case be transferred to the Immigration Court that covers the area of his residence.

CERTIFICATE OF SERVICE

This original document is being sent by mail to:

Executive Office for Immigration Review
Office of the Immigration Judge
(address of court that handled your case while you were in DHS custody)

I hereby certify that I have served a copy of this motion by mailing a copy to:

Assistant Chief Counsel
Department of Homeland Security
U.S. Immigration & Customs Enforcement (ICE)
(address of DHS office that handled your case when you were in DHS custody)

Date:_____ Signed:_____
(sign your name here)
Respondent

## LPR CANCELLATION WORKSHEET

FOR _____, A# _____
(your name) (your A#)

**NOTE: THIS WORKSHEET IS FOR YOU ONLY. DO NOT FILE IT WITH THE COURT!**

**Required Forms (Check when filed)**

**File with Court:**

____ Original Cancellation Application Form (EOIR-42A)
____ Original Application for Fee Waiver (unless payment of $100 made to DHS)
____ Copy of Biographic Information Form (G-325A)
____ Copy of ASC notice of fee receipt and biometric appointment instructions
ABOVE FILED ON _____
(date)

**File with DHS:**

____ Copy of Cancellation Application Form (EOIR 42A)
____ $100 or Copy of Application for Fee Waiver
____ Original of Biographic Information Form (G-325A)
____ Copy of ASC notice of fee receipt and biometric appointment instructions
ABOVE FILED ON _____
(date)

**Optional (not required) Forms**
**(check when mailed)**

**File with DHS (FOIA Office):**____ Freedom of Information/Privacy Act (G-639)
**File with FBI:** ____ FBI records request (fingerprint card, short letter, and $18 money order
ABOVE MAILED ON _____
(date)

**Proof that you have been a legal permanent resident 5 years and that you have resided in the U.S. for 7 years after being lawfully admitted:**
**(Check when filed)**

___ Copy of green card, temporary legal residence card, non-immigrant visa or other immigration forms showing lawful admission to the U.S.
___ Rent receipts
___ Tax returns
___ Pay stubs from work
___ Children's birth certificates
___ Letter from : _____(your employer(s), family members, neighbors, landlord, or someone else who has lived with you or seen you a lot in all or part of the 7-year time period)
___ Letter from : _____ (same)
___ Letter from : _____ (same)
___ Letter from : _____ (same)

ABOVE FILED ON: _____
(date)
___ Witness (name): _____(who can testify about knowing you for 7 years)
___ Witness (name): _____(who can testify about knowing you for 7 years)

**Proof of positive factors: (check when filed)**

**Length of residence in U.S., family ties in U.S., hardship on you and family if removed:**

___ Children's birth certificates
___ Marriage license
___ Medical records/Doctor's letter (if you or someone you care for has a medical problem)
___ Letter from: _____
___ Letter from: _____
___ Other: _____

**Service in U.S. armed forces:**

___ Honorable discharge
___ Other: _____

**Work history:**

___Tax returns
___ Pay stubs or social security records
___ Letter from employer: _____
___ Letter from employer: _____
___ Letter from employer: _____

**Rehabilitation:**

___ Certificate of completion; proof of participation in _____(course)
___ Letter from (probation officer? prison counselor? guard? chaplain?)_____
___ Letter from: _____
___ Letter from: _____

**Community Service, Property or Business ties, Evidence of good character:**

____ Letter or certificate from: _____
____ Letter or certificate from: _____

**Proof to lessen impact of negative factors**

**(check when filed)**

___ Pre-sentence report (Helpful? ___ Harmful ___?) (If harmful, do not file but be ready to explain)
___ Letter from: _____ (describing how and why you got involved in problems and how you have changed)
___ Letter from : _____ (same)
___ Letter from : _____ (same)
___ Letter from : _____ (same)
ABOVE FILED ON (date) _____
___ Prison writeups? (if so, be ready to explain if asked)

# Cancellation of Removal
# Document Check List

FIRRP, or the Florence Immigrant & Refugee Rights Project, is a non-profit organization and it is not part of the government. This pamphlet provides general information and should not be considered as legal advice specific to your case. Please contact us for more information.

## Letters for the judge showing hardship to myself or others if I am deported:

| | Received |
|---|---|
| Letters of support from as many family members as possible (including drawings from children) | |
| Letters of support from friends | |
| Letters from people who know me well (neighbors, co-workers, landlord) | |
| Letters showing participation in my community. For example: any help that you have given to neighbors, such as yard work, rides, etc. | |
| Letters or documents showing financial contributions to my family. For example: Proof of my paying rent, child support, paying for groceries, etc. | |
| Letters from past employers | |
| Letters from religious organizations I belong to | |
| Photos of family (birthday parties, holidays, pets, babies, etc.) | |

## Proof of Rehabilitation Efforts

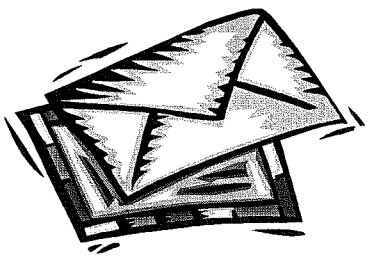
| | Received |
|---|---|
| Certificates from Rehabilitation Programs (AA, NA, Life Skills, etc.) | |
| Informational Pamphlets on rehabilitation centers/programs in my area (I should contact a rehabilitation center if I have any domestic violence, driving under the influence, or controlled substance convictions.) | |
| Letter to my probation/parole officer explaining that I am in ICE custody (This might help me avoid further trouble with the law when I am released.) This letter is VERY IMPORTANT!!! | |

## Proof of my work and education history:

| | Received |
|---|---|
| Tax Records | |
| Pay Stubs | |
| Social Security Records | |
| Letter showing that I have a job when I get out of detention | |
| Proof of English Language Training, GED, college, etc. | |
| Certificates from courses taken while in custody here and elsewhere | |
| Proof of vocational training (i.e. Certificates of Achievement, Commercial Driver's license, Machine Operator, etc.) | |

## Documents to prove residency in the United States and ties to the community:

| | Received |
|---|---|
| Copies of children's school records, including letters from teachers about my children's classroom performance. | |
| Copies of medical records (It is very important to document any medical condition that I or a family member may have.) | |
| Copies of my children's birth certificates | |
| A copy of my green card | |
| Copy of my marriage certificate | |
| Proof of any debt that I have (mortgage, car loans, medical, etc.) | |
| Proof of insurance (car, medical, etc.) | |
| Proof of Property that I own in the U.S. | |



Nombre / **Name:**
Número de Registración / **A#**

# Supporting Documentation For Cancellation of Removal

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## Index

**Copies of Hospital Records**
Copias de documentos medicos, recibos de prescripciones médicas y de tratamiento si usted o su familiar sufren de caulquier tipo de enfermedad o mal (usted también puede pedirle a su medico que le escriba una carta explicando sus males de salud o el de sus familiares)

**Exhibit B** **EVIDENCE OF RESIDENCE OF LONG DURATION IN THE UNITED STATES** (Evidencia de residencia de larga duración en los Estados Unidos)

**Rent Receipts**
Comprobantes de pago de la renta

**Exhibit C** **HISTORY OF EMPLOYMENT** (Historial de trabajo)

**Salary check stubs**
Talones de cheques de trabajo

**Offer of employment from (Name of person), Manager of (Name of company)**
Oferta de trabajo de (nombre de la persona), Gerente/Jefe de (nombre de la compañía)

**Exhibit D** **PROOF OF GENUINE REHABILITATION** (Pruebas de rehabilitación)

**Copies of Diplomas for completing rehabilitation courses (AA, anger management, life skills, etc.)**
Copias de Diplomas por completar clases de rehabilitación (AA, controlamiento de conducta, habilidades para la vida cotidiana, etc.)

**Exhibit E** **EVIDENCE OF GOOD MORAL CHARACTER** (Pruebas de buen comportamiento moral)

**Copies of Tax Forms to document filing of taxes**
Copias de formularios de impuestos para comprobar que usted hacía los impuestos

**Copies of School Diplomas**
Copias de diplomas de estudios escolares o cualquier tipo de estudio (mecánica, clases de ingles, etc.)

**Copies of letters of support from friends, priest, boss, etc.**
Copias de cartas de apoyo o recomendación de sus amigos, pastor, jefe, etc.

## CANCELLATION OF REMOVAL

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# THINKING ABOUT MY CASE.....

1. How many years have I lived in the United States?

2. What are my family ties to the United States? Who lives in the U.S. that I am close to?

3. What would the hardship be to my family and me if I were deported?
   - What does my family depend on me for? What kind of financial and/or emotional support?
   - What support do I get from my family?
   - What has happened to my family since I have been detained?
   - What would happen to my family if I were deported?
   - What would happen to me if I were deported?

4. What is my work history in the United States?
   - Where have I worked?
   - What kind of skills do I have?

5. What property or businesses do I own in the United States?

6. What kind of ties do I have to my community?

- What groups do I belong to?
- Are there friends or neighbors that I have helped out?
- Do I attend religious services in my community?
- How else have I participated in my community?

7. What rehabilitation groups or classes have I gone to?
   - Do I have letters or certificates to show this?

8. What do I want to make sure that I tell the judge about my crimes in the past?
   - How do I feel about my past crimes?
   - How have my crimes affected my family and friends?
   - Have I learned from my mistakes? What have I learned?

9. What do I want to tell the judge about my plans for the future?
   - Do I have a job if I stay in the U.S.?
   - What rehabilitation have I gone through?
   - What specific goals do I have for the future? How do I plan to accomplish them if I stay in the U.S.?
   - How is my life going to be different if I stay in the U.S.?
   - Why do I deserve this second chance?

# CANCELLATION OF REMOVAL

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## PREPARING YOUR TESTIMONY

Your testimony is the key to winning your case. Documentation is important to help support your claim, but telling the judge your story will be the focus of the hearing. In this hearing the judge will decide whether or not you deserve a second chance to remain in the U.S. You need to think about what you are going to say about yourself that will show the judge that you NEED this opportunity to stay and that you will not make the same mistakes again. We know that talking to the judge can seem scary and confusing, but by working on your case yourself you can prepare just how you want to present your story.

We also understand that you may be frustrated or angry about the process, but keep in mind that the Immigration Judge is there to listen to your case and can help you. Try not to get angry, especially when you have to talk about your criminal record again. You need to be prepared to discuss your record with him because your convictions are the reason why you are in immigration court. The Immigration Judge cannot change your criminal record. His job is to review your record to see if you can have another opportunity to live in the U.S. If you plan on telling the judge that you were not guilty of something that you pled guilty to, you had better be prepared to explain why you pled this way. Admitting that you made mistakes is just one part of showing rehabilitation. You also have to show that you have improved yourself and are not going to make the same mistakes again.

This is not a traditional courtroom, and in your testimony you should speak from the heart about yourself. This is an opportunity for the judge to get to know you and your role is to introduce yourself. You need to try and stay calm and focused when speaking to the Judge.

You should think about and practice what you are going to say to the judge. The best way to do this is to write it down. Think of your case as a story, with a beginning, middle and an end. Try making an outline of the different parts of your story and what you are going to say about each one. After you do this use the outline and try practicing with a friend. You can have him pretend that he is the judge and ask you questions.

## What the Judge is Going to Consider

The judge is going to consider all the **positive** and **negative** factors in your life when he decides whether you deserve to stay in the U.S.

The **positive factors** that will be considered include:

- Your family ties in the U.S.
- How long you have lived in the U.S.
- How hard it will be on your family if you are removed.
- If you have served in the U.S. armed forces.
- Your work history in the U.S.
- Any property or business ties that you have in the U.S.
- What rehabilitation you have gone through in the U.S.
- If you are a person of good character.

The **negative** factors that will be considered include:

- The circumstances of the crimes or acts that the government is trying to remove you for.
- Serious violations of the immigration laws, such as a past order of removal or visa fraud.
- Your criminal record, including how recently and how often you have violated the law, and the types of violations.
- Other evidence of bad character.

## What you need to tell the judge about yourself

***Your past**. Explain what life was like before you got involved in drugs, crime or other problems. Explain the reasons why you got involved in these problems. You should try not to give excuses for what you did, but explain them so that the Immigration Judge can see that you understand why and how you have changed. Discuss each crime, what happened, the result, and its effect on you and your loved ones.

***Your feelings about what you did wrong**. Explain your feelings about the mistakes you made and how you feel now about what you did. It is important to show the Judge that you take responsibility for what you did as well as any remorse that you may have. You need to speak from your heart about how you have changed or plan to change. Explain this in a very specific way. For example, tell the judge what has made you change and how your life will be different.

***Your new life**. Explain what your life has been like since you got in trouble, what you have done to change, and what are your plans in the future to change. Also, explain what support you have from your family or others in trying to change. Tell the judge about your goals for the future and what you have done so far to achieve them. Be specific. You should tell the judge about any job that you may have when you get out. Even if you have not had any formal rehabilitation, it is important to show the judge that

you have a clear plan for your future. You need to show that any factors that influenced your criminal behavior in the past no longer have control over your life.

You should prepare a closing statement. Your **closing statement** should include:

- Why you are eligible for this form of relief.
- Referrals to what you and your witnesses have said and what your letters and other documents have said that show you have changed and deserve another chance.
- How your positive factors (support of family or friends, hardship to you and your family if you are deported, work history, rehabilitation) outweigh the negative factors (your criminal convictions and any other problems you have had in the past).
- Your plans for the future. This should include what you are going to do with your life now, and how your life will be different if the Judge lets you have this chance.

## If You Have Witnesses

You should ask a few people to speak at the hearing. Any family member who can come to your hearing should come. If work or the cost of traveling to the hearing makes it impossible for them to come, they should explain this to the judge in a letter. If they agree to speak, you can help them prepare what they want to say. The Judge will ask them questions about themselves and about you. He will probably begin by asking them their name, age, address, immigration status, and occupation. He will also ask the person how they know you and for how long. Then they should be given a chance to tell the judge what he or she knows about you and what kind of person you are. For example, they may be able to talk about the ways in which the family depends on you, and what it would be like for them or you if you were removed from the U.S.

If possible, try to practice a few times with the witness. It is also important that the witness knows about your problems or criminal convictions, since the Immigration Service's lawyer will be sure to ask about them even if you do not bring it up. Tell your witness to call the judge "your honor", and the Immigration Service's lawyer "sir" or "ma'am".

**Remember, you know your story best and you are your own best advocate. Practice in advance to help yourself prepare. You can do it!**

# XII. TABLE OF AUTHORITIES CITED

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| | |
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