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## Quick Guide to "10-Year Cancellation of Removal" for Undocumented Persons August 2015

### SUMMARY PRACTICE POINTS

- **Waiver of Deportation for Undocumented Persons** - Cancellation of Removal (COR) for Non-Permanent Residents (10-Year Cancellation) provides a waiver of deportation and a route to permanent resident status for eligible undocumented persons who have already been placed in removal (deportation) proceedings.
- **10 Years of Continuous Physical Presence** - An applicant must demonstrate that he has been continuously physically present in the U.S. for at least 10 years at the time of application, and that he has been a person of "good moral character" during that time.
- **No Disqualifying Criminal Convictions** - A conviction that is described in any conviction-related ground of deportation or inadmissibility will pose a legal bar to 10-Year Cancellation.
- **Qualifying Relative** - An applicant must demonstrate that she has a qualifying relative (U.S. citizen (USC) or lawful permanent resident (LPR) spouse, parent, or child) who would suffer "exceptional and extremely unusual hardship" if she were deported. This is a high bar and must be met with evidence of hardship well beyond what a family member would normally face if a loved-one were deported.

## I. What is 10-Year Cancellation?

10-Year Cancellation is a discretionary waiver that can be granted to qualifying undocumented noncitizens who are placed in removal proceedings before the immigration judge. If granted the applicant becomes a Lawful Permanent Resident (LPR), or green-card holder.<sup>1</sup>

## II. What are the Eligibility Requirements for 10-Year Cancellation?

To be statutorily eligible for 10-Year Cancellation, an applicant must demonstrate the following.

- **10 Years Physical Presence:** Applicant must demonstrate that she has been continuously physically present in the U.S. for at least 10 years prior to being placed in removal proceedings. A previous deportation/removal or voluntary departure disqualifies an applicant. (If it was more than 10 years since the person departed and re-entered, they may be able to apply for COR in a new proceeding.<sup>2</sup>)

<sup>1</sup> INA § 240A(b); 8 USC § 1229b(b).

<sup>2</sup> *Matter of Cisneros-Gonzalez*, 23 I&N Dec. 668 (BIA 2004). (NB: requires that INA 241(a)(5) "reinstatement" of a prior deportation order be avoided.)

- **Qualifying Relative Who Will Face Hardship:** The applicant must prove that she has an LPR or USC spouse, parent, or child who would suffer “exceptional and extremely unusual hardship” if she were deported. This hardship has to be substantially worse than what a family would normally suffer if a loved-one were deported. Consideration can be given to medical conditions, age and other circumstances of qualifying relatives, conditions in country of return, their long-term ties to the U.S., and other individual facts, considered cumulatively. Equities are aggregated and there could be other scenarios that lead to a grant. Note that hardship to the applicant himself is not considered.
- **Good Moral Character:** Applicant must prove that she has been a person of good moral character (GMC) for at least 10 years. Certain criminal convictions and having served more than 180 days in jail within the 10-year period *as a result of convictions*, preclude a finding of GMC.
- **Favorable Exercise of Discretion:** Even after showing statutory eligibility, the applicant must also show that he warrants a favorable exercise of discretion by the immigration judge.
- **No Disqualifying Criminal Convictions:** The applicant must prove that he does not have a conviction that is described in any of the crime-related grounds of deportation or inadmissibility. It is critical that defense attorneys carefully craft plea language to ensure that the conviction does not implicate these grounds and disqualify clients who are otherwise eligible for 10-year cancellation.

### III. What Are Defense Counsel’s Goals to Preserve a Client’s Eligibility for 10-Year Cancellation?

- **Identify Eligible Clients ASAP** using the criteria above. It is critical to identify clients who are undocumented, have lived in the U.S. for over 10 years, and who have significant ties to the community, so that preserving eligibility informs defense strategy for resolving the criminal charges.
- **Negotiate Plea To A Non-Removable Offense** – Any criminal conviction that is described in a conviction-related ground of deportation or inadmissibility will pose a flat legal bar to 10-Year Cancellation. If an LPR client is going to plead guilty, try to plead to an offense that is not described in a ground of deportation or inadmissibility. Be sure to consult and strategize with WDAIP staff.
- **Obtain a Sentence Imposed of 180 Days or Less** (including any suspended time) for gross misdemeanor convictions. While a conviction may still be classed as a crime involving moral turpitude (CIMT), there is an exception for single CIMT convictions. Thus, a sentence under 180 days will preserve eligibility for 10-Year Cancellation for otherwise qualifying applicants.

### IV. Who Can Help Clients Apply for 10-Year Cancellation?

Clients in immigration detention at ICE’s Northwest Detention Center in Tacoma should consult advocates from the Northwest Immigrant Rights Project (NWIRP) who run a legal orientation program there and can represent some people in their LPR Cancellation cases or assist them in filing *pro se* applications. Other clients who are interested in finding an immigration attorney can consult the immigration attorney referral list on the WDA website – [www.defensenet.org](http://www.defensenet.org). A noncitizen defendant who is not in jail and who appears eligible for this or any other form of relief from removal should consult with competent immigration counsel experienced in removal defense as soon as possible.