

## **WASHINGTON DEFENDER ASSOCIATION IMMIGRATION PROJECT**

**If your client is a legal permanent resident (LPR) (i.e.: has a “green-card”), then this may help you find out if your client would be eligible for “Cancellation of Removal for Certain Permanent Residents.”**

Despite being deportable under the criminal grounds, qualifying permanent residents who are put into removal proceedings are eligible for the general “LPR- cancellation of removal” waiver, and if it is granted they retain their legal resident status. However, conviction of any aggravated felony is a statutory bar to LPR cancellation.

This waiver is only available from an Immigration Judge. It must be applied for while in removal proceedings. This means there is a good chance the person will be detained during the proceeding.<sup>1</sup> The waiver is discretionary, and can be denied even though the person was eligible to apply.

There are three main statutory requirements: The legal permanent resident must

- (1)—have been a non-citizen lawfully admitted for permanent residence for not less than 5 years<sup>2</sup>;**
- (2)—have resided in the United States continuously for 7 years after having been admitted in any status<sup>3</sup>; and**
- (3)—have not [ever] been convicted of any aggravated felony.<sup>4</sup>**

Insufficient residence time in the US, or a conviction for an aggravated felony at any time are the most common bars to this waiver, but there are some others.<sup>5</sup> (If your client originally got her papers through “suspension of deportation,” or has previously received cancellation<sup>6</sup> or the pre- 4-1-1997 LPR waiver known as “212(c),” she is ineligible for cancellation now.)

Be aware that the 7-year continuous residence requirement is subject to a peculiar additional requirement—the “stop-time rule.”<sup>7</sup> The seven years begin to run from the date of

---

<sup>1</sup> Most—but not all—immigrants charged as removable under the criminal grounds will also be subject to mandatory detention. INA 236(c)(1); 8 USC 1226(c)(1). Deportability under the DV ground is not a mandatory detention category. People in proceedings not subject to mandatory detention can still be detained, but can ask for an immigration bond to be set.

<sup>2</sup> INA 240A(a)(1), 8 U.S.C. 1229b(a)(1)

<sup>3</sup> INA 240A(a)(2), 8 U.S.C. 1229b(a)(2)

<sup>4</sup> INA 240A(a)(1), 8 U.S.C. 1229b(a)(3). Aggravated felonies are listed at 8 USC 1101(a)(43).

<sup>5</sup> INA 240A(c), 8 U.S.C. 1229b(c)

<sup>6</sup> That includes the waiver discussed here, and two other forms of cancellation mainly designed to provide relief to non-citizens without criminal convictions. INA 240A(b)(1&2), 8 U.S.C. 1229b(b)(1&2))

<sup>7</sup> INA §240A(d), 8 USC §1229b(d). The continuous residence requirement is also waived for an LPR who served 24 months on active duty in the armed forces and was honorably separated INA §240A(d)(3), 8 USC §1229b(d)(3). The 5 years of LPR status keeps accumulating. *Matter of Perez* 22 I. & N. Dec. 689, n2. (BIA 1999)

lawful admission “in any status.” (Your client could have come in as a student or visitor and then gotten her residency, and that original admission may count if they never left<sup>8</sup>).

The continuous residence ends “when the alien is served a notice to appear” that begins removal proceedings, or when the non-citizen has **committed** a criminal offense **referred to in the criminal grounds of inadmissibility**, that makes her removable. This means that commission of some crimes will stop the 7-year continuous residence clock (e.g.: CIMTs) but others (e.g.: firearms; DV offenses) will not.<sup>9</sup>

For example: an offense that causes deportability only under the firearms or DV ground does not “stop the clock” for purposes of acquiring the seven years residence required for cancellation. (However, a firearms or DV offense that also is a crime involving moral turpitude, such as assault with a firearm, would stop the clock if the person became inadmissible or deportable under the moral turpitude ground.)

If you are a WDA member and are trying to preserve eligibility for cancellation for an LPR client whom you think either is, or is going to become deportable, please feel free to contact the WDA Immigration Project to help figure this out.

Finally, aside from needing to be statutorily eligible, the cancellation of removal eligibility is a discretionary waiver. The seriousness of the offense is weighed against the immigrant ‘respondent’s’ positive factors, or equities. As the offense becomes more serious, greater countervailing equities may be needed to balance the seriousness of the adverse factors. Rehabilitation, including expression of remorse for criminal conduct, is among the most important of these equities. Other equities include long-term residence in the US, family and community ties, payment of child support, recentness of the offense and other criminal history, health problems, evidence of psychological or economic hardship, and many others. Your client will have to testify and can expect to be put under a microscope. Documents that can not be used to establish deportability, such as police reports, maybe still be examined in the discretionary or ‘relief’ phase.

If you know for sure that your client will have to seek and will be eligible for LPR cancellation, there may be material that you can develop at sentencing, such as proof of substance abuse treatment, remorse, family ties, or professional evaluations, that will help her in obtaining the positive exercise of discretion.

\*\*\*\*\*

## **INA 240A, 8 U.S.C. 1229b** Cancellation Of Removal; Adjustment of Status

### **(a)--Cancellation of Removal for Certain Permanent Residents The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien--**

---

<sup>8</sup> Compare *Shivaraman v. Ashcroft* 360 F.3d 1142 (9<sup>th</sup> Cir 2004) (earlier non-immigrant admission counts, in case where person was always in lawful status) and *Aremu v. Department Of Homeland Security* 450 F.3d 578, 583 (4<sup>th</sup> Circuit 2006) *Matter of Shanu*, overruled (first non-immigrant admission counts if person never left, even if person overstayed before becoming LPR), with *Matter of Shanu* 23 I. & N. Dec. 754 (BIA 2005)(BIA’s published rule that “admission” dates from acquisition of LPR status)

<sup>9</sup> See INA §240A(d), 8 USC §1229b(d). That section provides that a clock-stopping offense must be one that is referred to in INA §212(a)(2), 8 USC §1182(a)(2). Because that section does not refer to a firearms offense, such an offense does not stop the clock. *Matter of Campos-Torres*, Int. Dec. 3428 (BIA 2000).

**(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.**

**(c)--Aliens Ineligible for Relief**

....

(6)-- An alien whose removal has previously been cancelled 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.

**(d)--Special Rules Relating to Continuous Residence or Physical Presence**

**(1)--Termination of Continuous Period**

For purposes of this section, **any period of continuous residence** or continuous physical presence in the United States **shall be deemed to end** (A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2), **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.**

**(3)--Continuity Not Required Because of Honorable Service in Armed Forces and Presence upon Entry into Service**

The requirements of **continuous residence** or continuous physical presence in the United States under subsections (a) and (b) shall not apply to an alien who--

(A)-- has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(B)-- at the time of the alien's enlistment or induction was in the United States.