

# **Analysis of Forms of Relief Available in Executive Office for Immigration Review Removal Proceedings**

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## **FINDINGS**

# **COMPREHENSIVE ANALYSIS OF FORMS OF RELIEF AVAILABLE IN EXECUTIVE OFFICE FOR IMMIGRATION REVIEW REMOVAL PROCEEDINGS**

### **Executive Summary**

The Executive Office for Immigration Review (EOIR) provides multiple avenues of relief for individuals facing removal proceedings in the United States, ranging from discretionary forms that allow deportable aliens to remain in the country as lawful permanent residents to protective measures that prevent removal to specified countries of origin without providing immigration status. These forms of relief present fundamentally different consequences for individuals in removal proceedings, with some offering pathways to lawful permanent resident status, some providing only temporary protection from deportation, and others allowing departure with minimal immigration penalties. Understanding the complete landscape of available relief options requires detailed knowledge of statutory eligibility requirements, discretionary factors considered by immigration judges, procedural deadlines that may preclude eligibility, and complex interactions between criminal history, family relationships, and persecution-based claims. This analysis comprehensively addresses discretionary relief available during removal proceedings (cancellation of removal, asylum, adjustment of status, voluntary departure), fear-based protection mechanisms (withholding of removal, Convention Against Torture), specialized relief for abuse and crime victims (VAWA cancellation, U and T visas), administrative mechanisms to challenge prior decisions (motions to reopen and reconsider), and post-decision procedures available through the Board of Immigration Appeals and federal courts. The strategic selection among these relief options depends significantly on the individual's immigration history, length of presence in the United States, criminal record, family ties, and the specific grounds of removability alleged by the Department of Homeland Security.

### **Legal Framework Governing EOIR Forms of Relief**

The statutory foundation for all forms of relief from removal derives from the Immigration and Nationality Act (INA), as codified at 8 U.S.C. § 1229b and related provisions addressing asylum, withholding of removal, and adjustment of status.<sup>[1][4][16]</sup> The INA establishes both the availability of specific relief categories and the procedure by which removal proceedings are conducted before immigration judges within EOIR. The procedural framework governing removal proceedings is established primarily through 8 U.S.C. § 1240, which prescribes the general framework for immigration court proceedings, while the regulatory structure implementing these provisions is contained in 8 CFR Part 1240 (General Provisions Relating to Removal Proceedings) and related parts addressing specific forms of relief.<sup>[20][34]</sup> The Board of Immigration Appeals, the highest administrative appellate body in immigration matters, has the authority to interpret federal immigration law and issues binding precedent decisions published in the official reports of Board decisions known as the Immigration and Nationality Decisions (I&N Dec.).<sup>[4][9][12]</sup>

The fundamental burden of proof in removal proceedings rests with the Department of Homeland Security to establish that an individual is removable or deportable from the United States; however, once removability is established, the burden shifts to the respondent to demonstrate eligibility for discretionary forms of relief.<sup>[1][4]</sup> This distinction creates an important strategic consideration in removal defense strategy, as certain forms of relief may require the respondent to meet stringent eligibility standards including continuous physical presence requirements, good moral character determinations, and extreme hardship showings that

must be proven by the preponderance of the evidence.[4][36][37] The regulations governing filing procedures, including fee requirements and deadlines for submitting applications and motions, are set forth in 8 CFR § 1003.24, and practitioners must ensure strict compliance with these requirements to preserve clients' rights to seek available relief.[45]

## **Forms of Relief Available During EOIR Removal Proceedings: Comprehensive Classification**

Relief available in EOIR removal proceedings can be categorized into several distinct classifications based on the nature of protection provided, the status conferred, and the eligibility requirements imposed.[1][4][6] The primary classification divides relief into those forms that provide a pathway to lawful permanent resident status—including cancellation of removal, asylum, adjustment of status, and certain VAWA-based relief—versus those that provide only protection from removal to a specified country without conferring immigration status, such as withholding of removal and Convention Against Torture protection.[3][5][8] A second important distinction separates discretionary relief, which requires immigration judges to exercise judgment in determining whether to grant relief based on humanitarian factors, family relationships, and community ties, from mandatory relief categories where eligibility to apply for relief is established but the granting of relief involves discretionary judgment by the adjudicator.[1][4] Understanding these distinctions proves critical in developing removal defense strategy, as they determine both the likelihood of obtaining relief and the long-term consequences for the individual's immigration status and future eligibility for other forms of relief or benefits.

The concept of "relief from removal" itself encompasses a broad range of outcomes beyond formal immigration benefits. Some forms of relief result in cancellation of removal proceedings and dismissal of the Notice to Appear, while others result in the entry of a removal order that is then subject to administrative closure or stay of execution pending appellate review.[1][15][44] For individuals in removal proceedings but who lack eligibility for substantive relief, voluntary departure represents an alternative outcome that allows self-initiated departure within a specified timeframe in exchange for avoidance of a formal removal order and associated bars to future entry and relief applications.[3][4][6] Each of these outcomes carries distinct long-term consequences regarding future immigration options, eligibility for family sponsorship, and bars to re-entry or re-application for status, making the strategic selection among available forms of relief a decision of significant long-term importance.

### **Cancellation of Removal: Relief for Permanent Residents and Long-Term Residents**

Cancellation of removal represents one of the most consequential and complex forms of relief available in EOIR proceedings, as it provides both protection from removal and adjustment of status to lawful permanent resident (LPR) status for eligible individuals, yet carries stringent eligibility requirements that vary significantly depending on whether the applicant is an LPR facing removal or a non-permanent resident seeking relief.[1][4][10][16][39] The statutory framework for cancellation of removal distinguishes between two categories of applicants with fundamentally different eligibility standards, and practitioners must clearly identify which category their client falls within to assess eligibility and develop appropriate litigation strategy.

#### **Cancellation of Removal for Lawful Permanent Residents**

For lawful permanent residents facing removal proceedings, cancellation of removal is available under 8 U.S.C. § 1229b(a) and requires the individual to demonstrate three statutory eligibility requirements: the individual must have been an alien lawfully admitted for permanent residence for not less than five years; the

individual must have resided in the United States continuously for not less than seven years after having been lawfully admitted for permanent residence in any status; and the individual must not have been convicted of any aggravated felony.[1][16] This form of relief has no discretionary component once statutory eligibility is established-an LPR meeting these requirements cannot be removed and automatically qualifies for cancellation of removal as a matter of right, though the immigration judge still has authority to cancel or deny the relief if the applicant has been convicted of an aggravated felony.[4][39] The practical effect is that long-term permanent residents convicted of crimes that do not rise to the level of aggravated felonies retain the protective benefit of LPR cancellation, preventing their removal despite criminal convictions that would render them deportable.[39]

The definition of "aggravated felony" is critically important for both LPR and non-LPR cancellation purposes, as conviction of any aggravated felony creates an absolute bar to cancellation of removal regardless of family ties or humanitarian factors.[21][24] The term "aggravated felony" is statutorily defined in 8 U.S.C. § 1101(a)(43) and includes numerous offenses such as murder, rape, sexual abuse of a minor, crimes of violence, drug trafficking, firearm offenses, and various other criminal convictions, with the term bearing a much broader meaning in immigration law than its meaning in non-immigration contexts.[21][24] Importantly, an individual convicted of an aggravated felony not only becomes ineligible for cancellation of removal but also faces administrative removal without a hearing before an immigration judge, mandatory detention following release from criminal custody, permanent ineligibility to return to the United States even after deportation and completion of criminal sentences, and substantial federal felony penalties for illegal re-entry.[21][24]

### **Cancellation of Removal for Non-Permanent Residents**

The cancellation of removal provisions applicable to non-permanent residents, codified at 8 U.S.C. § 1229b(b), establish a significantly more restrictive and discretionary form of relief than that available to LPRs, requiring the individual to satisfy four substantial eligibility requirements and then demonstrate exceptional and extremely unusual hardship to qualifying relatives to obtain discretionary approval.[1][4][10][16][36][37] The first eligibility requirement for non-LPR cancellation mandates that the applicant demonstrate physical presence in the United States for a continuous, uninterrupted period of not less than ten years immediately preceding the date of application for relief.[1][16] This ten-year period is calculated backward from the time of filing the cancellation application with the immigration court, and the applicant bears the burden of proving every day of this period through documentary evidence such as employment records, utility bills, school enrollment documents, rental history, tax records, and affidavits from individuals with knowledge of the applicant's presence in the United States.[1][40]

The continuous physical presence requirement under cancellation of removal involves a complex analysis of what constitutes a "break" in presence that terminates the accrual of continuous residence, as distinguished from what constitutes a temporary absence that does not break continuity. 8 U.S.C. § 1229b(d)(1) establishes that the running of continuous physical presence terminates when an individual is served a Notice to Appear (NTA) compliant with statutory requirements, or when the individual is convicted of specified criminal offenses.[16][42] However, subsequent BIA case law, particularly *Matter of Chen*, 28 I&N Dec. 676 (BIA 2023), clarified that the entry of a final order of removal does not stop the accrual of time for cancellation of removal purposes, meaning that continuous physical presence continues to accrue even after an immigration judge issues a removal order while the case is pending on appeal to the Board of Immigration Appeals.[13] This holding provides significant strategic opportunity for individuals whose removal orders are on appeal, as they may eventually become eligible for cancellation of removal by successfully reopening their removal cases if they later accrue sufficient continuous physical presence to meet the ten-year requirement.

8 U.S.C. § 1229b(d)(2) addresses treatment of breaks in physical presence, establishing that an individual fails to maintain continuous physical presence if the individual has departed from the United States for any single period exceeding ninety days or for aggregate periods exceeding one hundred eighty days.[16][42] However, this calculation involves important exceptions: if an individual is battered or subjected to extreme cruelty by a spouse or parent in circumstances qualifying them for VAWA relief, departures directly connected to such battering or extreme cruelty do not count toward the ninety-day or one hundred eighty-day limits and may be excluded entirely from the calculation of physical presence periods.[16][42] Additionally, individuals who have served honorably in the United States Armed Forces for a minimum of twenty-four months are exempt from continuous physical presence and continuous residence requirements entirely.[16]

The second eligibility requirement for non-LPR cancellation mandates that the applicant demonstrate good moral character during the entire ten-year period of continuous physical presence, calculated backward from the immigration judge's decision on the cancellation application (or, if appealed, calculated to the Board of Immigration Appeals' final decision).[1][36][37] Good moral character is a highly discretionary determination involving the immigration judge's subjective assessment of the individual's character and conduct, evaluated through a combination of statutory bars that create automatic ineligibility and discretionary factors that inform the judge's overall assessment.[36][37] Statutory bars to good moral character determinations are established in 8 U.S.C. § 101(f) and include conviction for crimes involving moral turpitude, crimes involving drug use or distribution, prostitution, alien smuggling, crimes of violence, terrorism-related offenses, and numerous other conduct that courts have determined demonstrates lack of moral character.[36][37]

The third eligibility requirement prohibits any conviction for crimes listed in 8 U.S.C. § 1182(a)(2), § 1227(a)(2), or § 1227(a)(3) that would render the individual inadmissible or deportable, with specific exceptions established in the statute and relevant case law.[1][16] This requirement involves analysis of both crimes involving moral turpitude and crimes relating to controlled substances, with some technical distinctions from the good moral character requirement that can create situations where an individual meets the good moral character standard but fails the crime eligibility requirement, or vice versa.[36][37] A critical exception applies to certain crimes of moral turpitude: if an individual has been convicted of only one crime involving moral turpitude, the crime carried a maximum possible sentence of less than one year, and the individual received an actual sentence of six months or less, that single conviction does not bar eligibility for non-LPR cancellation.[1][36][37]

The fourth and final eligibility requirement—and the most difficult for applicants to satisfy—mandates that the individual demonstrate that removal would result in exceptional and extremely unusual hardship to a qualifying relative.[1][4][36][37] A "qualifying relative" for purposes of non-LPR cancellation is limited to the applicant's spouse, parent, or child who is either a United States citizen or a lawful permanent resident.[1][16] This means that hardship to other family members such as grandparents, siblings, in-laws, or even children who are undocumented does not qualify for consideration, and hardship to the applicant themselves is explicitly not considered.[36] The phrase "exceptional and extremely unusual hardship" has been interpreted by the Board of Immigration Appeals as requiring a showing substantially beyond the ordinary hardship that accompanies separation of families due to immigration, limited only to truly exceptional situations that go far beyond the expected difficulties when a close family member leaves the country.[33][36][37]

The hardship standard is evaluated through consideration of multiple factors articulated in BIA precedent, including the age and health of qualifying relatives, the economic impact of the applicant's removal on qualifying relatives, the applicant's role as the sole or primary financial provider, educational and developmental needs of U.S. citizen children, and the availability of family connections or support networks in

the applicant's home country.[33][36][37] Importantly, current health or the fact that a qualifying relative is currently doing well in school does not negate a finding of exceptional hardship if the cumulative evidence demonstrates that removal would create severe consequences; moreover, recent advances in child psychology demonstrating that parental removal causes severe and irreversible harm to children have created tension with the legal standard as historically applied, though immigration judges vary in the weight they accord to psychological evidence of parental separation trauma.[33][36]

### **VAWA Cancellation of Removal**

A significant variation on the cancellation of removal framework applies to individuals who are victims of battering or extreme cruelty perpetrated by a spouse or parent who is a United States citizen or lawful permanent resident, or by a USC parent in the case of children. 8 U.S.C. § 1229b(b)(2) establishes distinct eligibility requirements for VAWA cancellation that substantially lower the barriers to relief compared to standard non-LPR cancellation.[1][16][42] Specifically, VAWA cancellation requires only three years of continuous physical presence rather than ten years, eliminates the exceptional and extremely unusual hardship standard in favor of a "extreme hardship" standard (understood to impose a lower burden of proof), does not restrict qualifying relatives to spouse, parent, or child, and eliminates certain criminal conviction bars that would otherwise bar standard cancellation relief.[1][7][16][42] VAWA cancellation has proven particularly valuable for domestic violence survivors who might otherwise lack eligibility for other forms of relief and who face removal despite lengthy periods of residence in the United States, as the statute provides both protection from removal and a pathway to lawful permanent resident status upon approval.

The statutory definition of "battering or extreme cruelty" has been interpreted broadly through BIA precedent to encompass not only physical violence but also psychological abuse, sexual abuse, financial control, isolation, and patterns of coercive behavior that constitute extreme cruelty in the context of intimate relationships.[7] Unlike many other family-based immigration benefits, VAWA cancellation does not require that the abuser consent to or participate in the application process, and the applicant may file an application independently through the immigration court without involving the abuser in any aspect of the proceedings.[7] This confidentiality protection makes VAWA cancellation particularly suitable for individuals in abusive relationships where seeking relief through normal family petition channels would place them at heightened risk of violence or financial harm.

### **Fear-Based Protection: Asylum, Withholding of Removal, and Convention Against Torture**

Fear-based protection in immigration law encompasses three distinct mechanisms through which individuals can obtain relief from removal based on a well-founded fear of persecution or torture: asylum, withholding of removal, and Convention Against Torture protection.[2][3][5][8] These forms of relief share common elements regarding demonstration of persecution or torture and identification of protected grounds, yet differ fundamentally in the standard of proof required, the status conferred upon approval, and the availability of derivative benefits for family members.

#### **Asylum Protection**

Asylum status is available to individuals who can demonstrate that they have suffered persecution in the past or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.[3][31][34] The well-founded fear standard for asylum requires the applicant to demonstrate both a subjective element—a genuine, sincere fear of persecution—and an objective element—that a reasonable person in the applicant's circumstances would fear persecution upon return to the

country of origin.[31] The objective element is satisfied if there is a reasonable possibility that persecution will occur, with courts interpreting this standard as requiring merely a ten percent or greater chance of persecution as sufficient to establish well-founded fear.[31] This represents a relatively low threshold compared to standards in other forms of relief, making asylum accessible to individuals facing serious risks even if persecution is not probable.

Applicants for asylum bear the burden of proving that they are refugees, defined as individuals outside the country of nationality or last habitual residence who are unable or unwilling to return due to persecution or a well-founded fear thereof.[3][31] An asylum applicant may establish well-founded fear based on past persecution alone, which creates a presumption of well-founded fear unless the government establishes either that circumstances have fundamentally changed in the country of origin or that the applicant can safely relocate to another part of the country of origin.[31] Past persecution therefore represents the strongest form of asylum claim, as it shifts the burden to the government to rebut the presumption through evidence of changed conditions or internal relocation possibilities.[31]

Asylum protection includes certain mandatory bars that render an otherwise eligible applicant ineligible for the benefit. 8 U.S.C. § 1158(b)(2)(B) establishes that individuals convicted of an "aggravated felony" or a "particularly serious crime" are barred from asylum, along with individuals found to have persecuted others, been convicted of serious nonpolitical crimes outside the United States, or posed a danger to national security.[3][23][49] The "particularly serious crime" definition for asylum purposes encompasses all aggravated felonies plus any offense of violence for which an individual was sentenced to at least five years imprisonment.[49] Importantly, asylum applicants also face time-based restrictions: with limited exceptions, applicants must apply for asylum within one year of arriving in the United States, and any failure to file within that one-year period renders the applicant statutorily ineligible for asylum regardless of the merits of the persecution claim.[3]

Approval of an asylum application results in refugee status, which confers work authorization, travel documents, eligibility for certain government benefits, and a path to lawful permanent resident status after one year of maintaining refugee status.[3] Asylum status also permits derivative protection for immediate family members (spouse and unmarried children) who may apply for asylum based on the principal applicant's approval, creating family reunification opportunities unavailable through most other immigration benefits.[3]

### **Withholding of Removal**

Withholding of removal, established by 8 U.S.C. § 1231(b)(3), provides protection from removal to individuals who establish a significantly higher standard of proof than required for asylum but who might not qualify for asylum itself due to criminal convictions or other bars.[3][5][8] Specifically, withholding of removal requires the applicant to establish by clear and convincing evidence that it is "more likely than not"-meaning a probability exceeding fifty percent-that their life or freedom will be threatened in the country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion.[3][5][8] This higher standard compared to asylum reflects the fact that withholding provides only protection from removal to a specific country without conferring immigration status or work authorization.

The withholding of removal standard can be satisfied by evidence that establishes at least a fifty-one percent probability of persecution or threat to life or freedom, and applicants may establish this standard through country conditions evidence showing patterns or practices of persecution of similarly situated individuals, even without specific evidence of individualized targeting.[5][8] Withholding of removal differs from asylum in several important respects: there is no one-year filing deadline applicable to withholding applications, individuals with prior deportation orders may still apply for withholding of removal, and certain criminal

convictions that bar asylum may not bar withholding of removal, particularly where individuals meet stringent requirements demonstrating rehabilitation or exceptional circumstances.[3][5][8]

The critical limitation of withholding of removal as a form of relief is that it does not confer immigration status, work authorization, or a path to lawful permanent resident status; it provides only protection from removal to the specified country of origin.[3][5][8] However, if another country is willing to accept the individual or if country conditions change to the point where withholding is no longer applicable, the individual may subsequently be removed to a third country or may become removable through a motion to reopen proceedings.[5] Additionally, withholding of removal does not extend to derivative family members, meaning each family member must independently establish their own withholding claim if they seek protection.[5] Withholding therefore represents a form of protection from removal suitable for individuals otherwise ineligible for asylum due to criminal history or timing requirements but who face serious threats in their country of origin.

### **Convention Against Torture (CAT) Protection**

Convention Against Torture protection, established by 8 U.S.C. § 1231(b)(3)(A) and implemented through 8 CFR Part 208, provides protection from removal to individuals who establish that it is "more likely than not" that they will be tortured by a government official or with government acquiescence or indifference if returned to their country of origin.[2][3][5][8] Unlike asylum and withholding of removal, CAT protection does not require the torture to be motivated by any protected ground (race, religion, nationality, political opinion, or membership in a particular social group); the applicant must show only that torture is likely and that government involvement or acquiescence exists, regardless of the motivation for such torture.[2][5][8]

CAT protection includes categories of applicants who might otherwise be ineligible for other fear-based relief. Individuals with serious criminal convictions who would be barred from asylum or withholding of removal may be eligible for "deferral of removal" under CAT, which provides temporary protection from removal while the individual remains in the United States pending potential changes in country conditions.[2][5][8] However, unlike an approved withholding of removal application, a CAT deferral order does not preclude future removal if circumstances change and the conditions justifying CAT protection no longer exist.[2] CAT protection, similar to withholding of removal, does not extend to derivative family members, and approved applicants do not receive work authorization or a pathway to lawful permanent resident status.[2][3][5]

### **Adjustment of Status: Pathway to Permanent Residency**

Adjustment of status, governed by 8 U.S.C. § 245 and implemented through 8 CFR Part 245, provides a mechanism through which individuals physically present in the United States may change their status to lawful permanent resident without returning to their home country for consular processing, provided they meet statutory eligibility requirements.[8][11][22] While adjustment of status is typically initiated with the United States Citizenship and Immigration Services (USCIS) as an affirmative benefit application, individuals in EOIR removal proceedings may also apply for adjustment of status before an immigration judge as a form of relief from removal if they can demonstrate that they are eligible to receive an immigrant visa and are admissible to the United States for permanent residence.[1][4][8]

To be eligible for adjustment of status under 8 U.S.C. § 245(a), the applicant must establish that they were admitted or paroled into the United States, which excludes individuals who entered the country without inspection unless they fall within a specific statutory exception.[8] The applicant must also demonstrate that they are eligible to receive an immigrant visa, meaning they have an approved family-based or employment-based petition or qualify as a refugee or asylee, and must establish admissibility to the United

States for permanent residence.[8] Importantly, individuals who are deportable but not inadmissible under immigration law may adjust status, meaning that certain bases of removability do not preclude adjustment eligibility.[8]

The applicant bears the burden of establishing both statutory eligibility for adjustment and that adjustment should be granted as a matter of discretion and administrative grace.[8] Certain grounds of inadmissibility can be waived in conjunction with adjustment of status applications, including visa overstays, unauthorized employment, and certain fraud-related grounds, depending on the applicant's relationship to a U.S. citizen or the applicant's status as a refugee or asylee.[8][56] However, if an applicant is inadmissible under 8 U.S.C. § 212(a)(9)(C)(i)(I)-the permanent bar triggered by departure and unlawful re-entry after certain periods of unlawful presence-adjustment is not available regardless of waiver eligibility.[8]

Recent policy changes have affected how adjustment of status applications are processed, particularly for immediate relatives of U.S. citizens, who enjoy broad exemptions from certain grounds of inadmissibility that would otherwise bar adjustment.[56] As of August 1, 2025, the USCIS Policy Manual reflects that if an immediate relative adjustment application is denied, USCIS may simultaneously issue a Notice to Appear initiating removal proceedings before an immigration judge, creating heightened procedural risks for applicants filing defective applications or failing to respond to USCIS requests within prescribed deadlines.[56]

## **Voluntary Departure: Alternative to Formal Removal**

Voluntary departure, established by 8 U.S.C. § 1229c and extensively regulated through 8 CFR §§ 1240.26-1240.28, represents the most commonly used form of relief in immigration proceedings, allowing individuals to depart the United States at their own expense within a specified timeframe in order to avoid a formal removal order.[3][4][6] Voluntary departure provides significant advantages compared to formal removal orders, including avoidance of deportation bars that would otherwise render an individual permanently inadmissible and ineligible for future immigration benefits, potential for future legal re-entry through visa applications or family sponsorship, and avoidance of the stigma and collateral consequences associated with a removal order.[3][4][6][59]

The regulations distinguish between "pre-conclusion" voluntary departure requested before the completion of removal proceedings (i.e., before the final hearing on the merits) and "post-conclusion" voluntary departure requested after the immigration judge has made a final decision on removability and eligibility for relief.[3][4][6] Pre-conclusion voluntary departure is substantially easier to obtain, requiring only that the applicant not be subject to certain bars (including aggravated felony convictions, crimes of terrorism, designation as an arriving alien, or prior voluntary departure with subsequent re-entry and finding of inadmissibility), request voluntary departure before the master calendar hearing on the case, waive all applications for relief and all rights to appeal, concede removability, and demonstrate good moral character and the intent and means to depart the United States.[3][4][6] Upon grant of pre-conclusion voluntary departure, the immigration judge may allow up to one hundred twenty days for departure.[4][6][59]

Post-conclusion voluntary departure is substantially more restrictive, available only to individuals who have been in the United States for at least one year before service of the Notice to Appear, who post a bond of at least five hundred dollars, who demonstrate clear and convincing evidence of the means to depart at their own expense, who meet good moral character requirements during a five-year preceding period, and who demonstrate that the immigration judge should exercise favorable discretion by granting the relief.[3][4][6] Even if all statutory requirements are met, immigration judges have discretion to deny post-conclusion

voluntary departure, and the judge must find that the applicant merits a favorable exercise of discretion based on factors including criminal history, ties to the community, family relationships, employment history, and humanitarian factors.[6]

Voluntary departure carries significant negative consequences if the individual fails to depart within the specified timeframe or if the grant is made contingent on posting a bond that is subsequently forfeited. If an individual granted voluntary departure fails to leave the United States by the deadline, the grant of voluntary departure automatically converts to a removal order, and the individual becomes subject to a ten-year period of ineligibility for various forms of relief including adjustment of status, cancellation of removal, change of nonimmigrant status, and future voluntary departure.[3][6] Additionally, failure to depart results in civil penalties ranging from one thousand to five thousand dollars and an additional penalty of three thousand dollars, rendering future immigration relief substantially more difficult to obtain.[3] Critically, if an individual is granted post-conclusion voluntary departure while in Department of Homeland Security custody, the individual will not be released from custody during the voluntary departure period, meaning that while the applicant has the opportunity to arrange departure, they remain detained and cannot work or engage in normal activities during this period.[3]

### **Specialized Relief Categories: VAWA, U Visas, and T Visas**

Beyond the primary forms of relief discussed above, EOIR removal proceedings provide access to specialized relief categories designed for specific populations including domestic violence survivors, crime victims, and human trafficking survivors, though these specialized relief forms often require coordination between USCIS adjudication of benefits and EOIR removal proceedings adjudication.

#### **U Nonimmigrant Visa Status**

U nonimmigrant visa status, established by 8 U.S.C. § 1101(a)(15)(U) and implemented through 8 CFR § 1214.14, provides relief to individuals who are victims of certain qualifying crimes, have suffered substantial abuse, and have been or are willing to be helpful to law enforcement authorities in investigating or prosecuting the crime.[14][17] Unlike family-based immigration benefits, U visa status requires no family relationship to the person committing the crime and is available to crime victims regardless of immigration status or manner of entry into the United States.[14][17] U visa applicants must establish that they have suffered substantial physical or mental abuse resulting from the qualifying criminal activity, that they have knowledge of or information about the crime, and that they are willing to assist law enforcement in investigating or prosecuting the crime if requested.[14]

A critical advantage of U visa status is that it is available to individuals in removal proceedings who file a prima facie showing of potential eligibility for U nonimmigrant status, as the regulations establishing procedure for U visa applicants in removal proceedings or with final removal orders provide that such individuals may seek a stay of removal to permit adjudication of the U visa petition.[14] Upon approval of the U visa petition, the individual obtains temporary nonimmigrant status with work authorization and may adjust to lawful permanent resident status after three years of U status and continued cooperation with law enforcement, subject to certain exceptions.[14][17] This provides substantial relief for crime victims who might otherwise be removable but who have no other basis for immigration relief.

#### **T Nonimmigrant Visa Status**

T nonimmigrant visa status is available to individuals who are victims of severe form of human trafficking (either sex trafficking or labor trafficking), cooperate with law enforcement in investigating and prosecuting

trafficking crimes, and would suffer extreme hardship involving unusual and severe harm if deported to their home country.[14][17] Like U visa status, T visa protection is available to individuals in removal proceedings through motions for stay of removal, and T visa beneficiaries may adjust to lawful permanent resident status after three years of T status.[14][17]

## **Motions to Reopen and Motions to Reconsider: Administrative Recourse After Adverse Decisions**

For individuals who have received final decisions in removal proceedings, including removal orders or denials of applications for relief, motions to reopen and motions to reconsider provide administrative mechanisms to challenge those decisions and seek reversal or modification of unfavorable determinations.[9][12][15]

### **Motions to Reopen Removal Proceedings**

A motion to reopen removal proceedings, governed by 8 CFR § 1003.2(c) and 8 CFR § 1003.23, seeks to revive removal, deportation, or exclusion proceedings that have concluded through entry of a final removal order by presenting new facts and new evidence that was not previously available and could not have been discovered with the exercise of reasonable diligence.[9][12][15] Unlike a motion to reconsider, which challenges legal or factual errors in a prior decision without introducing new evidence, a motion to reopen provides an opportunity to present previously unavailable evidence supporting a new or modified theory of relief, such as a recent marriage to a United States citizen, changed country conditions that support a newly filed asylum claim, or a subsequent criminal conviction in the applicant's case.[12] The central requirement for a successful motion to reopen is that the evidence sought to be offered must be material and must not have been available and could not have been discovered at the time of the original hearing despite the exercise of reasonable diligence on the part of the applicant.[9][12]

Critically, motions to reopen are subject to stringent time and numerical limitations: an alien may file only one motion to reopen removal proceedings, and that motion must be filed no later than ninety days after the final administrative decision was rendered in the removal proceeding sought to be reopened.[9][12][15][42] These limitations are highly restrictive and create significant consequences if the applicant fails to preserve or pursue reopening opportunities within the specified timeframe. However, there are narrow exceptions to these limitations, including the changed circumstances exception, which permits reopening based on circumstances arising after the final decision even if the ninety-day period has expired, and the equitable tolling exception, which may toll the deadline if the applicant can demonstrate extraordinary circumstances and diligence in pursuing reopening.[12] Recent case law has also created an exception for applicants who can demonstrate that there has been a fundamental change in law that affects their eligibility for relief, permitting reopening even outside the normal timeframe if the applicant can establish prima facie eligibility for the newly available relief.[13]

When an immigration judge's motion to reopen is pending before the Board of Immigration Appeals, the motion may be deemed a motion to remand, requiring the Board to send the case back to the immigration judge for further proceedings rather than deciding the remand motion itself.[9][12] This distinction is critically important for appellate strategy, as a motion to remand avoids consuming the single motion to reopen permitted to an applicant and preserves opportunities for future motions to reopen if the remanded proceedings do not result in relief.[12]

The filing of a motion to reopen before the immigration judge does not automatically stay the execution of a removal order, except in limited circumstances including in absentia removal proceedings conducted without the respondent's notice and appearance.[4][15] To prevent execution of a removal order pending adjudication

of a motion to reopen, the applicant must separately request and obtain a stay of removal from the immigration judge, the Board of Immigration Appeals, a federal court of appeals, or the Department of Homeland Security.[4][15][59] Recent BIA guidance has clarified that once a motion to reopen is granted and proceedings are remanded to the immigration court for further consideration, the applicant is not limited to presenting only the basis alleged in the motion to reopen but may pursue all available relief and present all defenses.[12]

### **Motions to Reconsider**

A motion to reconsider, regulated by 8 CFR § 1003.2(b), challenges a prior decision by asserting that the immigration judge or Board of Immigration Appeals made a factual or legal error in reaching their conclusion, or that a change in law has occurred since the decision such that reconsideration would alter the result.[9][12] Unlike a motion to reopen, a motion to reconsider may not be accompanied by new evidence or new facts, as the motion is limited to asserting errors in the prior adjudication or changes in applicable law.[9][12] For an applicant in removal proceedings, a motion to reconsider must be filed within thirty days of the immigration judge's decision, and an applicant may file only one motion to reconsider any given decision, with no exceptions to this numerical limitation.[9][42]

The timing and procedural requirements for motions to reconsider create significant practical limitations on their utility, as the thirty-day window within which they must be filed is substantially shorter than the ninety-day window for motions to reopen, and the limitation to one motion to reconsider without exceptions means that if the motion is denied, the applicant has no further opportunity to challenge the same decision through motion practice.[9][12] However, motions to reconsider can prove valuable in circumstances where recent BIA precedent or circuit court decisions have changed controlling law in ways that would affect the adjudication of the case, or where the applicant identifies clear factual errors in the immigration judge's decision that would likely result in reversal if those errors were corrected.[12]

### **Termination and Administrative Closure of Removal Proceedings**

Beyond formal relief categories, immigration judges also possess authority to terminate removal proceedings on certain grounds or to administratively close proceedings pending resolution of other matters, providing alternative mechanisms through which individuals may avoid removal orders.

#### **Termination of Proceedings**

Termination of removal proceedings, addressed by 8 CFR § 1003.1(m) and § 1003.18(d), results in dismissal of the charging document (Notice to Appear) and termination of all removal proceedings, typically on the ground that the charges against the individual cannot be sustained or that the individual's circumstances have changed such that they are no longer removable as charged.[44][47] Mandatory termination is required when the immigration judge determines that no charge of deportability, inadmissibility, or excludability can be sustained, when both parties affirmatively indicate agreement to termination, or in certain other limited circumstances specified in the regulations.[44] Unlike discretionary termination, where the immigration judge must find that termination is necessary or appropriate for disposition of the case, mandatory termination provisions require the immigration judge to terminate proceedings regardless of DHS opposition if the statutory predicate for mandatory termination exists.[44]

A critical strategic advantage of termination is that it results in complete dismissal of the removal proceedings and termination of any pending applications for relief, whereas administrative closure preserves the proceedings and any pending applications while the court temporarily removes the case from active

adjudication.[44] For individuals with prior removal orders who file a motion to reopen and achieve a grant of reopening, a subsequent grant of termination may result in cancellation of the prior removal order itself, which would eliminate deportation bars affecting future immigration options and permit the individual to seek relief in new proceedings if eligible.[47]

### **Administrative Closure of Proceedings**

Administrative closure of removal proceedings, regulated by 8 CFR § 1003.1(m)(1)(iv), involves removal of a case from the immigration court's active docket while preserving the underlying proceedings and any pending applications for relief, pending resolution of related matters outside the immigration court such as a pending marriage, a pending family-based petition with USCIS, or a criminal conviction modification proceeding.[44] Administrative closure differs from termination in that it suspends court action without ending the proceedings, meaning that upon completion of the pending collateral matter, the case may be recalendared for further proceedings before the immigration judge.[44]

Administrative closure is mandatory if both parties affirmatively indicate non-opposition to administrative closure, unless the immigration judge articulates unusual, clearly identified, and supported reasons for denying the motion.[44] Administrative closure is discretionary when only one party seeks it and the other party opposes, provided the immigration judge determines that administrative closure is appropriate for the disposition or alternative resolution of the case.[44] For applicants strategically seeking to preserve pending relief applications or to permit completion of related proceedings that might affect immigration eligibility (such as vacating a criminal conviction under California Penal Code § 1473.7), administrative closure provides substantial advantages over dismissal or termination.

### **Filing Procedures, Deadlines, and Evidentiary Requirements**

All applications for relief in EOIR removal proceedings must comply with strict filing and evidentiary requirements that vary depending on the form of relief sought, and practitioners must ensure compliance with these requirements to preserve the applicant's right to pursue relief.

#### **Application Filing Requirements and Fee Obligations**

Most forms of relief available in EOIR removal proceedings require submission of formal applications with accompanying supporting documentation and payment of filing fees to the Department of Homeland Security prior to or contemporaneously with submission to the immigration court.[1][45][48] Specific forms have been designated for various relief categories: the Form EOIR-42B for cancellation of removal for non-permanent residents, the Form I-485 for adjustment of status, the Form I-589 for asylum and withholding of removal, and other forms as specified in the EOIR Practice Manual and regulations.[1][4][20][34]

Filing fees for these applications range substantially, with cancellation of removal for non-permanent residents requiring a fee of sixteen hundred dollars (Form EOIR-42B), adjustment of status requiring a fee of twenty-nine hundred forty dollars (Form I-485), and asylum applications requiring only one hundred dollars but imposing an annual one hundred dollar asylum fee.[48] Fee waivers are available for most forms of relief if the applicant can demonstrate inability to pay the required fee through submission of a Form EOIR-26A and supporting documentation establishing financial hardship.[45][48] The immigration judge has discretion to grant fee waivers when the applicant establishes inability to pay, except where specific DHS regulations prohibit fee waiver for particular application forms (such as asylum applications, for which no fee waiver is available).[45][48]

#### **Evidentiary Requirements and Documentary Standards**

Applications must be accompanied by supporting documentation demonstrating eligibility for the relief sought. For cancellation of removal, applicants must submit documentary evidence of continuous physical presence during the required period, including employment records, tax filings, utility bills, school enrollment documents, rental agreements, bank statements, affidavits from individuals with knowledge of the applicant's presence, and any other evidence reflecting physical presence in the United States.[1][40] For asylum and withholding of removal applications, applicants must submit country conditions evidence demonstrating patterns or practices of persecution, evidence of the applicant's personal experiences of persecution or fear thereof, medical evidence documenting torture or persecution-related injuries, affidavits from individuals with knowledge of country conditions or the applicant's circumstances, and any available documentary evidence supporting the applicant's claim of persecution.[31][50]

All documentary evidence in foreign languages must be accompanied by certified English-language translations, with a translator's certificate stating that the translator is competent to translate and that the translation is true and accurate, in compliance with 8 CFR § 1003.24(e)(2), under penalty of perjury.[1][45] Failure to provide proper translations may result in rejection of evidence or defective filings that could prejudice the applicant's case.[1][45]

### **Timeline and Deadline Considerations**

Timing considerations are critical throughout removal proceedings and the pursuit of relief. The asylum one-year filing deadline established by 8 U.S.C. § 1158(a)(2)(B) has been interpreted to require asylum applications to be filed within one year of the applicant's arrival in the United States, calculated as one year from the date of entry or the date of a change in immigration status if the applicant entered on a valid visa and subsequently became subject to deportation grounds.[3][23] The issuance of an NTA does not extend the asylum filing deadline, meaning applicants must file asylum applications before the one-year deadline even if they have not yet appeared in immigration court, though applicants may also assert asylum claims in immigration court proceedings after the one-year deadline if they have been issued an NTA and appear in court (subject to potential bars for untimely filing).[3]

The continuous physical presence calculation for cancellation of removal counts backward from the date of the applicant's filing of the cancellation application with the immigration court, or from the date of the BIA's final decision if the case is appealed.[1][36] This means that the applicant must carefully time the filing of the cancellation application to ensure that all continuous physical presence time accrued as of the filing date is preserved, and any delay in filing means that additional time to the accrual period may be lost if the applicant subsequently becomes ineligible due to criminal convictions or other events.[1][36]

### **Northern California Implementation and San Francisco Immigration Court Considerations**

Immigration proceedings in Northern California, particularly before the San Francisco Immigration Court located at 100 Montgomery Street, Suite 800, San Francisco, California 94104, with satellite locations at 630 Sansome Street, 4th Floor, Room 475, San Francisco, California 94111 and 1855 Gateway Boulevard, Suite 850, Concord, California 94520, must account for specific procedural practices and judicial tendencies within the Northern District of California and the Ninth Circuit Court of Appeals, which exercises appellate jurisdiction over EOIR decisions in this region.[1][4]

The San Francisco Immigration Court processes removal proceedings involving a demographically diverse immigrant population, with substantial caseloads involving Central American asylum seekers (particularly from Guatemala, El Salvador, Honduras, and Nicaragua), Mexican and Mexican-American respondents, H-1B

visa holders facing employment-based deportation proceedings, DACA-eligible individuals, and Temporary Protected Status holders from various countries.[1] Practitioners before this court should be aware that local immigration judges may have distinct preferences regarding motion practice, evidentiary submissions, continuances for evidence gathering, and approaches to discretionary relief determinations such as cancellation of removal and voluntary departure decisions.[1]

The San Francisco Asylum Office, located within the jurisdiction of EOIR, processes asylum interviews and credible fear determinations for applicants entering or present in Northern California.[1][38][41] Asylum officers and immigration judges in the Northern California region have been observed to apply country conditions standards with particular rigor regarding documentation of gang violence, cartel persecution, and domestic violence persecution claims originating from Central American countries, requiring detailed country conditions evidence, specific personal circumstances evidence, and often corroborating witness testimony to establish persecution-based claims.[1][50]

Criminal convictions in California state court have specific immigration consequences that practitioners must consider when advising clients regarding relief eligibility. California Penal Code § 1473.7 provides a post-conviction relief procedure allowing defendants to vacate convictions based on ineffective assistance of counsel regarding immigration consequences or on grounds that the conviction was procured through misrepresentation, duress, or coercion regarding immigration consequences.[1] If a conviction is successfully vacated under PC § 1473.7, the applicant may then file a motion to reopen in immigration court to present a new relief claim not previously available due to the conviction, such as reopening based on removal of a crime involving moral turpitude bar to cancellation of removal or a change in the legal definition of particular criminal offenses affecting deportability grounds.[1]

## **Conclusion: Integration of Available Relief Forms and Strategic Selection**

The comprehensive framework of relief available in EOIR removal proceedings provides multiple pathways through which removable aliens may obtain protection from deportation, ranging from those providing only temporary protection without immigration status (withholding of removal, CAT) to those conferring lawful permanent resident status (cancellation of removal, adjustment of status, asylum). Strategic selection among these available forms of relief requires careful analysis of the individual's eligibility under each category, assessment of the strength of available evidence supporting each claim, evaluation of the consequences of pursuing particular relief options, and consideration of backup and alternative strategies should primary relief applications be denied.

For individuals with substantial periods of U.S. residence, family ties to U.S. citizens or permanent residents, and without serious criminal convictions, cancellation of removal represents the most valuable and durable form of relief, conferring permanent resident status with a pathway to citizenship.[1][4][36][37] For individuals facing persecution or torture in their countries of origin, fear-based protection through asylum, withholding of removal, or CAT serves as an essential safeguard, though each mechanism carries distinct procedural requirements and status consequences that require careful evaluation.[3][5][8] For domestic violence survivors and crime victims, specialized relief categories including VAWA cancellation, U visas, and T visas provide tailored protection unavailable through mainstream relief categories.[7][14][17]

Practitioners must maintain awareness of evolving standards and recent changes to law affecting relief eligibility. Recent BIA decisions have clarified the continuous physical presence requirement for cancellation of removal to permit continued accrual after entry of removal orders, expanded reopening opportunities based on changed legal circumstances, and established clearer standards for establishing prima facie eligibility for

reopening.[13][12] Regulatory changes affecting asylum processing, credible fear determination procedures, and adjustment of status eligibility for immediate relatives continue to evolve, requiring updated legal knowledge to advise clients effectively.[56]

For Northern California clients, practitioners should leverage Ninth Circuit precedent where it provides more favorable legal standards compared to other circuits, pursue aggressive litigation strategies regarding country conditions evidence for Central American asylum seekers, coordinate with California state courts regarding post-conviction relief procedures affecting immigration eligibility, and develop relationships with San Francisco Immigration Court judges to understand individual judicial preferences regarding motion practice and discretionary relief determinations. The strategic combination of multiple relief theories, careful timeline management to preserve eligibility requirements, and thorough evidentiary preparation significantly enhance the likelihood of successful relief outcomes for individuals navigating removal proceedings in EOIR.

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This research brief is based on sources current as of the date above. Immigration law and EOIR procedures continue to evolve; practitioners should verify all citations and review the most current legal authorities before relying on this material for case strategy or client advice.