EOIR-42B Application for Cancellation of Removal and Adjustment of Status for Certain Non-Permanent Residents: Legal Framework and Application Strategy

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FINDINGS

EOIR-42B APPLICATION FOR CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NON-PERMANENT RESIDENTS: COMPREHENSIVE LEGAL FRAMEWORK AND APPLICATION STRATEGY

Executive Summary

The [Application for Cancellation of Removal and Adjustment of Status for Certain Non-Permanent Residents][7], commonly referred to as Form EOIR-42B or "42B relief," represents one of the most significant discretionary forms of deportation defense available to undocumented immigrants who have established deep roots in the United States over an extended period[2][4]. This relief mechanism, authorized under [INA § 240A(b)][4], permits qualifying individuals to both avoid removal and obtain lawful permanent resident status (green card) if they satisfy stringent statutory eligibility requirements and demonstrate that immigration judges find relief warranted as a matter of discretion[4][2]. Unlike many forms of immigration relief that individuals may file while outside removal proceedings, EOIR-42B is exclusively available during active removal proceedings before an immigration court[2][4], making it both a critical defense option and a procedurally complex undertaking requiring specialized legal knowledge and substantial documentary preparation.

The eligibility threshold for EOIR-42B relief demands proof of four core statutory requirements: continuous physical presence in the United States for a minimum of ten years immediately preceding the filing of the Notice to Appear[4], demonstrated good moral character during that entire ten-year period[4][8], absence of disqualifying criminal convictions enumerated in [INA § 212(a)(2), § 237(a)(2), and § 237(a)(3)][4], and most challengingly, establishment that removal would result in "exceptional and extremely unusual hardship" to the applicant's spouse, parent, or child who is either a United States citizen or lawful permanent resident[4]. The discretionary nature of this relief-meaning that even applicants who satisfy all four statutory requirements may still be denied based on an immigration judge's assessment of whether relief is warranted in the exercise of discretion-introduces an additional layer of uncertainty that practitioners must navigate through compelling factual development and persuasive legal argumentation[2][4].

Risk Assessment (Medium to High Complexity): Approval of EOIR-42B applications varies significantly based on the strength of hardship evidence, the presence of adverse discretionary factors, and the particular immigration judge's documented patterns in similar cases. National approval rates for non-LPR cancellation remain constrained by the congressionally mandated cap of 4,000 grants per fiscal year[19], creating a bottleneck that can extend the timeline to final approval even after an immigration judge indicates intent to grant the application. The current filing fee of $1,640.00 plus $30.00 per person for biometrics[42] represents a substantial investment, and the process typically consumes between two to four years from initial filing to final decision, with cases in heavily impacted jurisdictions such as San Francisco, Los Angeles, and New York potentially extending to five years or longer[19].

Key Strategic Considerations: Applicants should prioritize determination of whether they are currently subject to active removal proceedings, as this prerequisite cannot be waived[2][4]. Second, criminal history must be assessed immediately against disqualifying offense categories to avoid pursuing relief that is statutorily barred[16][36]. Third, the composition of qualifying family members and the specific nature of potential hardship should be identified early to guide evidence collection strategy. Fourth, work authorization during

pendency of the application represents a significant practical benefit that can be pursued through Form I-765 once the 42B application is filed, though practitioners must remain aware of recent USCIS regulatory changes affecting automatic extensions[20]. Finally, Northern California practitioners should develop familiarity with San Francisco Immigration Court judge-specific patterns, as individual judges have documented varying thresholds for what constitutes "exceptional and extremely unusual hardship" and demonstrated differential receptiveness to particular categories of hardship evidence.

Statutory Framework and Legal Foundation for Cancellation of Removal

The statutory authority for non-LPR cancellation of removal is codified in [8 U.S.C. § 1229b(b)][4], which replaced the predecessor suspension of deportation provisions following the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)[4]. This transition elevated the hardship standard from "extreme hardship" to "exceptional and extremely unusual hardship," a deliberate congressional choice to restrict access to relief by narrowing the category of applicants who would qualify[31][32]. The statute provides that the Attorney General (whose authority is now delegated to the Secretary of Homeland Security, with adjudicatory authority exercised through immigration judges in the Executive Office for Immigration Review) may cancel removal of an alien who is inadmissible or deportable from the United States if the alien satisfies each of four distinct and cumulative requirements[4].

The first statutory requirement mandates that the applicant "has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application"[4][5][16]. The temporal marker for initiating this ten-year lookback period is established by the service of the Notice to Appear in removal proceedings, not by the filing of the EOIR-42B application itself[5][14]. This distinction has significant implications: if an applicant was served with a Notice to Appear on January 15, 2015, the applicant must have been continuously physically present from January 15, 2005 through January 15, 2015, with the ten-year period measuring backwards from the Notice to Appear date[4]. Recent [Board of Immigration Appeals precedent in Matter of Chen][14] clarified that the entry of a final removal order does not terminate the accrual of continuous physical presence time, addressing a prior circuit split and permitting applicants who had removal orders entered against them to continue accumulating time toward the ten-year threshold if they could later successfully move to reopen their proceedings and file a timely cancellation application[14].

The statute specifically addresses the effect of absences during the ten-year period, providing that absences exceeding ninety days or, if multiple absences occur, aggregate absences exceeding one hundred eighty days will interrupt the continuity of physical presence[4][5]. However, the statute creates an important exception: any absences or portions of absences connected to battering or extreme cruelty (indicating the applicant was a victim of domestic violence covered by Violence Against Women Act protections) shall not count toward the ninety-day or one hundred eighty-day limits[4]. This exception is critical in cases where applicants are domestic violence survivors, as it permits the recalculation of physical presence time excluding periods when the applicant fled to escape abuse[4][37].

The second statutory requirement mandates that applicants "has been a person of good moral character during such period"[4][5][16], referring to the same ten-year period of continuous physical presence[4]. The assessment of good moral character for purposes of cancellation of removal differs in important respects from the good moral character evaluation in naturalization proceedings, though both standards reference [INA § 101(f)][11] definitions of what constitutes lack of good moral character[11][16]. Under [INA § 101(f)][11],

certain criminal convictions trigger absolute bars to establishing good moral character regardless of the applicant's other conduct, including murder convictions at any time and aggravated felony convictions on or after November 29, 1990[11]. Additionally, [INA § 101(f)][11] specifies that any applicant convicted of one or more crimes involving moral turpitude (except for certain petty offense exceptions), crimes involving controlled substances (except for single possession of thirty grams or less of marijuana), multiple offenses aggregating five years or more imprisonment, prostitution or commercialized vice, gambling offenses, or fraud or false testimony to obtain immigration benefits is barred from establishing good moral character[11][16]. The statute also establishes bars for failure to support dependents, extramarital affairs tending to destroy existing marriages, and polygamy[11].

However, the good moral character evaluation for cancellation purposes permits immigration judges discretion in assessing conduct beyond these statutory bars[11][8][16]. Recent [USCIS policy guidance issued in August 2025][8] signals a substantial shift in how good moral character is evaluated, moving from a negative inquiry (whether the applicant committed disqualifying acts) to a more comprehensive "totality of circumstances" assessment that includes positive factors such as community involvement, family caregiving responsibilities, educational achievements, stable employment, and compliance with tax obligations[8]. This expanded interpretation, while officially directed at naturalization proceedings, may influence immigration judges' discretionary assessment of good moral character in cancellation cases, particularly in circumstances where applicants have demonstrated rehabilitation following past misconduct[8].

The third statutory requirement specifies that applicants must not "have been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title"[4]. These sections reference crimes of moral turpitude, crimes involving controlled substances, crimes of violence, fraud or misrepresentation offenses, and aggravated felonies[4][16]. Unlike the statutory bars in INA § 101(f), which contain petty offense exceptions permitting relief in limited circumstances, the cancellation statute contains more restrictive language that precludes relief for virtually any conviction falling within these categories[16][36]. This requirement effectively forecloses EOIR-42B relief for any applicant with a serious criminal history, including those who might qualify for relief from other grounds such as asylum or withholding of removal based on persecution grounds[36].

The fourth and most contested requirement mandates that applicants establish "that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence"[4][5]. This requirement has generated extensive case law development and remains the primary battleground in contested 42B applications[27][34]. The statute's use of "exceptional and extremely unusual" rather than merely "extreme" hardship was an intentional congressional elevation of the threshold, reflecting concern that suspension of deportation under the prior regime had become too broadly accessible[31]. The Board of Immigration Appeals has consistently interpreted the standard to require showing hardship that is "substantially beyond that which ordinarily would be expected to result from the alien's deportation"[31][32], though less than "unconscionable"[31][32].

Critically, the hardship requirement focuses exclusively on qualifying relatives-the applicant's spouse, parent, or child who is a United States citizen or lawful permanent resident[4][5][36]. Hardship to the applicant personally is irrelevant and cannot be considered[36]. Hardship to children who are not United States citizens or lawful permanent residents cannot be directly considered, though practitioners have developed strategies to frame such hardship as affecting the applicant's citizen or permanent resident spouse or parent who would suffer indirectly from the disruption to their child[36][37]. Similarly, hardship to the applicant's siblings, grandparents, or adult children (over age twenty-one) cannot be directly considered, although again indirect hardship to qualifying relatives may be established through family relationship connections[36].

The "Exceptional and Extremely Unusual Hardship" Standard: Evolution, Current Application, and Litigation Strategies

The hardship requirement represents the most substantial obstacle to approval of EOIR-42B applications and has been the subject of extensive litigation, Board of Immigration Appeals precedent development, and practitioner commentary over more than two decades[27][31][32][34][49]. Unlike the physical presence and good moral character requirements, which are largely objective and susceptible to documentary proof, the hardship standard remains fundamentally subjective, requiring immigration judges to exercise discretionary judgment in comparing the circumstances of the applicant's family to the circumstances of other families facing deportation[27][34][49].

The foundational Board of Immigration Appeals precedent establishing the modern hardship standard is [Matter of Monreal, 23 I&N Dec. 56 (BIA 2001)][31][32]. In that case, the applicant was a Mexican national who had resided in the United States for over twenty years, had been gainfully employed since age fourteen, was the sole financial supporter of two United States citizen children, and likely provided support to his wife and infant child in Mexico[31]. The immigration judge had denied cancellation for failure to establish the requisite hardship, and the BIA upheld that denial, holding that while economic detriment and family separation are inevitable consequences of removal, they are not sufficient by themselves to establish "exceptional and extremely unusual hardship"[31][32]. The BIA articulated that hardship must be shown that is "substantially beyond that which would be expected to result from the alien's deportation," a formulation that has become the controlling standard across the immigration court system[31][32]. Importantly, the BIA cautioned that the standard is not so high that relief is granted only in unconscionable situations, indicating that some middle ground exists where sufficiently severe circumstances can support a finding of the requisite hardship[31][32].

[Matter of Monreal][31][32] also established a framework for factors to be considered in assessing hardship, drawing from the prior suspension of deportation context[31][32]. These factors include the ages, health, and circumstances of qualifying United States citizen and lawful permanent resident relatives; the length of the applicant's residence in the United States; family ties in the United States and abroad; standard of living and circumstances in the country of removal; and alternative methods for the applicant to immigrate[31][32][49][36]. The Board emphasized that these factors must be considered in the aggregate-that is, cumulatively-rather than in isolation, permitting hardship in multiple dimensions to be combined and weighed together[31][32][34][49].

The subsequent precedent in [Matter of Recinas, 23 I&N Dec. 467 (BIA 2002)][32][35], decided roughly one year after [Monreal][31][32], refined the hardship analysis by establishing that a case could meet the "exceptional and extremely unusual hardship" standard even where the applicant's family circumstances fell short of the most extreme imaginable scenarios. [Recinas][32][35] involved a single Mexican national mother of six United States citizen children who was the sole financial provider and had no family support in Mexico to assist with childcare[32][35]. The BIA found the case was "on the outer limit of the narrow spectrum of cases" in which the exceptional and extremely unusual hardship standard would be met, recognizing that the respondent's status as a sole provider for six children with no family support in the country of removal, combined with her establishment of a business demonstrating economic independence and family stability, met the threshold[32][35].

The Board of Immigration Appeals issued further guidance in [Matter of J-J-G-, 27 I&N Dec. 808 (BIA

2020)][58], a more recent decision that addressed hardship claims based on family members' medical conditions. That case involved a Guatemalan national in removal proceedings with five United States citizen children and a lawful permanent resident mother, all residing in the United States[58]. The applicant claimed that removal would result in hardship because his daughter had hyperthyroidism, his son had a diagnosis of ADHD, and his mother had hypertension, making it difficult to obtain appropriate medical care in Guatemala[58]. The immigration judge had denied the cancellation application, finding insufficient evidence to establish the requisite hardship[58]. The BIA upheld that denial, emphasizing that where hardship is claimed to be based on medical conditions, the applicant must submit reliable evidence corroborating both the seriousness of the qualifying relative's medical condition and establishing that adequate medical treatment would not be reasonably available in the country of removal if the qualifying relative accompanied the applicant[58]. The Board cautioned that applicants typically lack medical expertise to provide persuasive testimony regarding the availability of medical treatment abroad and should therefore present expert evidence documenting both the condition's severity and the treatment limitations in the country of origin[58].

The [Matter of J-J-G-][58] decision is particularly significant for Northern California practitioners, as it reflects the Board's skepticism toward hardship claims based on medical conditions absent robust expert evidence and its rejection of the argument that lower standards of living or inferior economic opportunities in the country of removal, standing alone, establish "exceptional and extremely unusual hardship"[58]. The Board explicitly stated that "economic detriment is generally insufficient to support a finding of the requisite hardship" and that "difficulties of this nature are an unfortunate consequence of removal in many cases"[58].

Recent developments in 2025 have further tested the boundaries of acceptable hardship evidence. In [Matter of BURI MORA, 29 I&N Dec. 186 (BIA 2025)][17], decided in February 2025, the Board reversed an immigration judge's grant of cancellation of removal, finding that the judge had erred in determining that the respondent's removal would result in exceptional and extremely unusual hardship to his three United States citizen children and United States citizen wife[17]. The respondent in that case established all statutory eligibility requirements-he had been continuously physically present for over ten years, was a person of good moral character, had no disqualifying convictions, and was an Ecuadorian national with family ties in the United States[17]. However, the BIA found that the immigration judge had failed to apply the correct hardship standard, observing that even when hardship factors are considered cumulatively, the circumstances presented-family separation and economic hardship-did not exceed what would ordinarily be expected from removal[17]. The Board noted that while the qualifying relatives' mental health conditions and developmental delays were documented, the respondent had not established that treatment for these conditions would be affected by his removal, particularly where the qualifying relatives would remain in the United States and continue to have access to existing treatment resources[17]. This decision reflects the Board's continued adherence to a stringent hardship standard and its unwillingness to presume that family separation, without more, automatically rises to the level of "exceptional and extremely unusual hardship"[17].

Practitioners must recognize that the hardship analysis requires navigation between two competing analytical frameworks: the "separation scenario" and the "relocation scenario"[3][6][30]. Under the separation scenario, the inquiry focuses on hardship to the qualifying relative if that relative remains in the United States while the applicant is removed[3][6][30][36]. This scenario frequently arises when, for example, United States citizen children have other parental support (from the applicant's spouse or the child's other parent) or when a qualifying relative has roots and family connections in the United States that would enable them to remain[3][6][30][36]. Under the relocation scenario, the inquiry focuses on hardship to the qualifying relative if that relative accompanies the applicant to the country of removal[3][6][30][36]. This scenario becomes relevant when the qualifying relative is the applicant's spouse or when minor children have primary reliance

on the applicant and would logically accompany removal[3][6][30][36].

Importantly, the statute and regulatory guidance do not require applicants to establish hardship under both scenarios; rather, applicants need demonstrate exceptional and extremely unusual hardship in at least one scenario[6][30]. However, sophisticated practitioners often develop arguments addressing both scenarios, recognizing that immigration judges may find one scenario more persuasive than the other and that comprehensive analysis strengthens the overall application[6][30][36].

Recent scholarship and advocacy materials have highlighted a significant tension between the legal hardship standard and psychological research demonstrating that parental removal causes severe and often irreversible harm to children, even in circumstances where the children remain in the United States with another caregiver[27][34]. Immigration law scholars have noted that the comparative inquiry inherent in the "exceptional and extremely unusual hardship" standard-pitting similarly situated families against one another-works systematically against applicants whose children are otherwise healthy and well-integrated into United States schools and communities, as the absence of pre-existing negative conditions is treated as weighing against rather than supporting the hardship claim[27][34].

Good Moral Character Requirements and Recent Policy Developments

Establishing good moral character for purposes of EOIR-42B relief requires applicants to demonstrate that they have been persons of good moral character during the entire ten-year continuous physical presence period[4][5][8][11][16]. The statutory bars to establishing good moral character are enumerated in [INA § 101(f)][11] and include convictions for crimes of moral turpitude, controlled substance offenses, multiple criminal sentences aggregating five or more years, prostitution or commercialized vice, gambling offenses, habitual drunkenness, fraud or false testimony, polygamy, and aggravated felonies[11][16]. Beyond these statutory bars, immigration judges retain discretion to deny good moral character based on conduct that, while not constituting a statutory bar, demonstrates a pattern of behavior inconsistent with community standards[11][8][16].

The recent [USCIS Policy Memorandum on Good Moral Character Standards for Naturalization issued on August 15, 2025][8], while officially directed at the naturalization context, signals a significant shift in how government agencies are approaching good moral character assessments more broadly. The new guidance directs immigration officers to move from a negative inquiry focusing on disqualifying conduct to a more comprehensive "totality of circumstances" evaluation that explicitly weighs both positive and negative factors[8]. Under this approach, positive factors such as "sustained community involvement and contributions, family caregiving responsibilities and ties to the United States, educational achievements, stable employment history and professional accomplishments, length of lawful residence in the United States, [and] compliance with tax obligations and financial responsibility" are to be actively considered in the applicant's favor[8].

Simultaneously, the guidance expands the scope of conduct that may be viewed as disqualifying beyond the traditional statutory bars, directing officers to examine conditional bars such as "multiple DUI convictions, unlawful voting, or drug offenses" and conduct that, "while technically legal, may be 'inconsistent with civic responsibility,' such as repeated traffic violations, harassment, or aggressive solicitation"[8]. This expanded discretionary authority is paired with an emphasis on evidence of genuine rehabilitation for applicants with past issues, including "compliance with probation or court-ordered conditions, payment of overdue taxes or child support, community testimony from credible sources, [and] evidence of mentoring others with similar past challenges"[8].

While this August 2025 guidance technically applies to naturalization proceedings, immigration judges may well reference or be influenced by these policy directives when assessing good moral character in cancellation of removal applications, particularly if they view consistency across immigration law domains as desirable. Practitioners should therefore ensure that any client with a history of arrests, convictions, traffic violations, financial delinquencies, or other conduct that might raise concerns should develop a comprehensive narrative addressing both mitigating circumstances surrounding the conduct and concrete evidence of rehabilitation and positive contributions to community and family life.

For cancellation applications, affidavits from employers, community leaders, religious figures, teachers, and neighbors attesting to the applicant's good character over the ten-year period are critical supporting documents[5][53]. These affidavits should be specific and detailed rather than generic, addressing the affiant's personal knowledge of the applicant, the length and nature of their relationship, specific instances of the applicant's positive behavior or community contribution, and the affiant's opinion regarding the applicant's moral character[5][53]. Tax records demonstrating consistent employment and compliance with federal and state tax obligations are important documentary evidence[5][53]. Employment records, letters from employers, and evidence of professional development or advancement demonstrate stability and positive contribution[5][53]. Community service activities, volunteer work, charitable contributions, and enrollment in educational programs (whether formal degree programs or skills training) should be documented[5][53].

Criminal Conviction Bars to EOIR-42B Relief

Among the four statutory requirements for EOIR-42B relief, the criminal conviction bar is the most absolute and least subject to exception or discretionary waiver. [INA § 240A(b)(1)(C)][4] specifies that applicants must not "have been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title"[4]. These statutory sections encompass a broad range of criminal conduct including crimes of moral turpitude, crimes involving controlled substances, crimes of violence, firearms offenses, domestic violence offenses, crimes of child abuse or neglect, human trafficking, prostitution, fraud, false claims to citizenship, and aggravated felonies[4][16][36]. Unlike other cancellation eligibility requirements, there is no discretionary exception, waiver authority, or mitigation procedure available for applicants with disqualifying convictions[4][36].

Assessment of whether a particular conviction falls within the statutory bars requires application of categorical approaches to criminal statutes[16][36]. Under the categorical approach, courts and immigration judges examine the statute of conviction-not the individual facts of the applicant's case-to determine whether the crime, as defined by that statute, necessarily involves conduct that brings it within the immigration law definition of a disqualifying offense[16][36]. If the statute of conviction is broader than the immigration law category, or if the statute is ambiguous, practitioners may pursue a modified categorical approach, examining documents such as the charging documents, plea agreement, guilty plea transcript, or judgment of conviction to determine what specific conduct the applicant was actually convicted of committing[16][36].

For example, a conviction for theft under a state statute defining theft as taking another's property with intent to permanently deprive may constitute a crime of moral turpitude (and thus fall within the disqualifying category) if the record of conviction establishes that the applicant was convicted of theft involving fraudulent misrepresentation or deception[16]. However, a simple shoplifting conviction involving non-valuable merchandise where the applicant intended to return the items and the conviction resulted in no jail time might not qualify as a crime of moral turpitude under the "petty offense" exception if the statute of conviction carries

a maximum penalty of one year or less and the actual sentence imposed was six months or less[16][36].

The complexity of categorical analysis frequently requires practitioners to obtain certified records of conviction, including indictments, charging documents, plea agreements, transcripts of guilty pleas, judgments of conviction, and sentencing records, and often to seek consultation with criminal law specialists or to obtain legal memoranda from criminal law experts addressing whether particular convictions trigger immigration consequences[16][36]. For applicants with multiple convictions, the analysis becomes even more complex, as practitioners must assess not only individual convictions but also whether the aggregate sentences across multiple convictions trigger bars (such as the "crimes of violence" category or the aggregate five-year sentence bar)[16][36].

In Northern California, applicants should be aware that California's Proposition 47 and Proposition 64 have created opportunities for post-conviction relief in some cases where convictions would otherwise trigger immigration bars[36]. Under [California Penal Code § 1473.7][48], courts may vacate convictions that were obtained without a defendant's meaningful opportunity to understand and weigh the immigration consequences of a guilty plea or that were based on ineffective assistance of counsel that prevented the defendant from learning of or objecting to the immigration consequences[48]. Similarly, [California Penal Code § 18.5][36] permits reduction of certain felony convictions to misdemeanors, which may eliminate or reduce immigration consequences in some cases[36]. Practitioners should evaluate whether any of the applicant's convictions might be subject to modification through these state law remedies, as successful modification could open access to immigration relief that would otherwise be barred[16][36].

Procedural Roadmap: Filing EOIR-42B and Court Process

The process of applying for cancellation of removal begins when an applicant is already in active removal proceedings before an immigration court. Applicants cannot file EOIR-42B applications proactively-that is, before being served with a Notice to Appear commencing removal proceedings[2][4]. However, once removal proceedings have been initiated, applicants have the opportunity to assert cancellation of removal as a defense to the charges alleged in the Notice to Appear[2][4].

Procedurally, the cancellation claim is typically first raised at the master calendar hearing, which is the initial appearance in removal proceedings[26][29]. At the master calendar hearing, the immigration judge explains the applicant's rights, the government presents the charges and factual allegations contained in the Notice to Appear, and the respondent (applicant) has the opportunity to admit or deny the allegations and to indicate what forms of relief from removal, if any, the respondent intends to pursue[26][29]. At the master calendar hearing, the applicant's attorney should indicate that the applicant wishes to apply for cancellation of removal and should provide notice that the application will be filed[26][29].

Following the master calendar hearing, the applicant must file the complete EOIR-42B application with supporting documentation. The application must be filed with the appropriate immigration court and must be served on the Assistant Chief Counsel for the Department of Homeland Security, United States Immigration and Customs Enforcement[7][53]. The current filing fee is $1,640.00, plus $30.00 per person for biometrics processing as of the February 2025 update to the EOIR fee schedule[42]. The applicant must also complete the [Biographical Information Form G-325A][7][53] and submit a passport-style photograph meeting USCIS specifications[7][53].

The burden of proof in EOIR-42B cases rests entirely with the applicant[7][46][53]. The applicant must prove

by a preponderance of the evidence that each of the four statutory eligibility requirements is satisfied and that the applicant is deserving of a favorable exercise of discretion[7][46][53]. The "preponderance of the evidence" standard is the lowest standard of proof in civil proceedings, requiring only that the applicant's evidence make it more probable than not that the applicant meets the statutory requirements[46]. However, this deceptively simple standard can be challenging to meet in practice when immigration judges require corroboration of testimonial claims and expect detailed documentary evidence supporting each factual assertion[7][46][53].

Supporting documentation filed with the EOIR-42B application should include comprehensive evidence of the applicant's continuous physical presence during the ten-year period. Such documentation may include bankbooks, leases or deeds, driver's licenses, utility bills, employment records, tax returns, school records, church or religious organization records, medical and dental records, birth certificates of children born in the United States, marriage certificates, and any other documents establishing the applicant's residence and presence in the United States[5][7][53]. The applicant should collect documents from throughout the ten-year period rather than clustering them only at the beginning or end, as a continuous chain of documentation more effectively establishes uninterrupted presence[5][53].

Good moral character should be supported by affidavits from employers, community members, religious leaders, educators, and neighbors who can attest to the applicant's character, the length of their acquaintance with the applicant, the applicant's employment stability, community contributions, and any volunteer or charitable activities[5][7][53]. Police records from each jurisdiction where the applicant resided during the ten-year period should be obtained, and the absence of significant arrests or convictions (or explanation of any that did occur) should be documented[5][7][53]. Tax records demonstrating employment and tax compliance, letters from employers describing the nature and duration of employment and earnings, and evidence of child support payments if applicable should be included[5][7][53].

For the hardship component of the application, the applicant must submit official documentation establishing the relationship to the qualifying relatives for whom hardship is claimed (such as birth certificates, marriage certificates, or adoption documents) and evidence of the qualifying relatives' citizenship or permanent resident status (such as certificates of naturalization, green cards, or birth certificates for children born in the United States)[5][7][53]. The applicant should then develop detailed evidence of hardship tailored to the specific circumstances of the family. This may include medical records and letters from treating physicians documenting qualifying relatives' medical conditions; psychological evaluations documenting mental health issues or trauma related to family separation; school records and educational assessment demonstrating the qualifying relative's integration into United States schools and community; letters from teachers, school counselors, and principal attesting to the child's academic performance, social development, and community ties; evidence of the qualifying relative's employment or educational activities in the United States; documents regarding property ownership or other substantial ties to the United States; evidence regarding country conditions in the country of removal (including State Department country reports, human rights organization reports, and news sources) documenting whether the qualifying relative would face safety risks, lack access to necessary services, or encounter substantial disruption if relocated; and any other evidence that speaks to the severity of hardship in either the separation or relocation scenarios[5][7][30][36][53][55].

The application must be accompanied by a detailed statement addressing each statutory element and explaining how the applicant meets the requirements[7][53]. The applicant will be scheduled to appear before the immigration judge for an individual hearing (sometimes called a merits hearing) at which the applicant will testify under oath regarding the facts alleged in the application, will present evidence, and will be subject to cross-examination by government counsel[50]. The applicant may present witnesses, including family

members, employers, and community members who can testify regarding the applicant's character, presence, employment, hardship to family members, or other relevant facts[50]. The applicant's attorney should file a comprehensive memorandum in support of the application prior to the merits hearing, setting forth the legal arguments, citation to relevant case law, and explanation of how the evidence satisfies each statutory requirement[15][50].

Following the hearing, the immigration judge will issue a decision granting or denying the cancellation application[50]. If the application is granted, the immigration judge's decision must include an advisal that the applicant will need to contact the appropriate office of Department of Homeland Security to obtain a Permanent Resident Card documenting the grant of permanent resident status[50]. If the application is denied, the applicant has the right to appeal to the Board of Immigration Appeals within thirty days of the immigration judge's decision[15][21].

Master Calendar Hearing and Initial Procedural Steps

The first hearing in removal proceedings is the master calendar hearing, which serves organizational rather than dispositive functions[26][29]. The master calendar hearing allows the immigration judge to explain the applicant's rights and obligations; to review the charges and factual allegations in the Notice to Appear; to provide the applicant an opportunity to admit or deny those charges; to identify what applications for relief the applicant may pursue; and to schedule deadlines for filing applications and the subsequent individual hearing[26][29]. Under the Immigration and Nationality Act, at least ten days must elapse between service of the Notice to Appear and the master calendar hearing unless the applicant waives this requirement[29]. The respondent may waive the ten-day requirement by signing a "Request for Prompt Hearing" contained in the Notice to Appear, permitting the master calendar hearing to occur more quickly if counsel and the applicant wish to accelerate the timeline[29].

At the master calendar hearing, the government (represented by an attorney from the Department of Homeland Security, United States Immigration and Customs Enforcement) will present the Notice to Appear and explain the charges against the applicant[26][29]. The applicant's attorney should respond by indicating that the applicant denies the charges (or admits them, depending on strategy) and announcing which forms of relief from removal the applicant intends to pursue[26][29]. At this stage, counsel should state that the applicant intends to apply for cancellation of removal and should request appropriate deadlines for filing the complete application[26][29]. The immigration judge will then set a deadline for filing the EOIR-42B application, serve copies of pleadings (typically thirty to forty-five days from the master calendar hearing), and schedule an individual hearing on the merits of the cancellation application[26][29].

Individual Hearing and Presentation of Evidence

The individual hearing on the cancellation application is where the applicant presents evidence and testimony to establish eligibility[50]. Unlike the master calendar hearing, which is a brief procedural event, the individual hearing on the merits can extend over multiple dates if substantial evidence is to be presented[50]. The applicant will testify regarding personal immigration history, continuous presence in the United States, employment and living situation, family relationships, and hardship to qualifying relatives[50]. The applicant's testimony should be specific and detailed rather than general, addressing each statutory requirement and anticipating government objections or skepticism[50].

The applicant may present family members to testify regarding their relationship to the applicant, the hardship they would face if the applicant were removed, and any relevant facts supporting the application[50]. Family members' testimony is particularly powerful for establishing hardship, as it allows the immigration judge to

directly observe the family relationships and the emotional impact on qualifying relatives of the potential removal[50]. Employers may testify regarding the applicant's employment history, earnings, stability, and character[50]. Community members, religious leaders, teachers, and others familiar with the applicant and family may provide testimony regarding the applicant's contributions to the community, family stability, and character[50].

The government (Department of Homeland Security) will present evidence and argument regarding why the applicant should not be granted relief[50]. DHS may present evidence challenging the applicant's testimony regarding presence in the United States, good moral character, or hardship; may highlight adverse discretionary factors (such as prior immigration violations); and may argue that even if all statutory requirements are satisfied, discretion should be exercised against the applicant[50]. The applicant's attorney has the right to cross-examine any government witnesses and to challenge the admissibility or reliability of government evidence[50].

Current Legal Landscape: Recent Developments and Policy Changes (as of February 2026)

The immigration law landscape regarding EOIR-42B relief has experienced significant shifts during the final months of 2025 and the opening weeks of 2026. Several developments deserve particular attention for Northern California practitioners.

First, the statutory cap of 4,000 annual grants of cancellation of removal has become a serious bottleneck as immigration enforcement has increased substantially[19][49]. More than 250,000 applications for non-LPR cancellation of removal are currently pending in immigration courts, though they represent fewer than 7 percent of the approximately 3.7 million total cases pending across the EOIR system[49]. This disparity suggests that the low percentage reflects both the recent acceleration of enforcement actions bringing undocumented immigrants into removal proceedings and practitioners' increased awareness of cancellation eligibility among longer-term immigrant populations[49]. The statutory cap means that even after an immigration judge indicates intent to approve an application by issuing an oral decision granting relief, the applicant may not receive a final written grant until a number becomes available in the fiscal year following the judge's favorable determination[19]. This creates a situation where applicants may wait months or even years between the judge's decision to grant and the actual issuance of the green card, during which time the applicant remains in a state of uncertainty regarding their ultimate status[19].

Second, recent Board of Immigration Appeals decisions have reinforced the high bar for establishing exceptional and extremely unusual hardship[17][58]. As noted earlier, [Matter of BURI MORA (BIA 2025)][17] vacated an immigration judge's grant of cancellation and reversed the decision, finding that economic detriment and family separation alone do not meet the hardship standard[17]. This decision reflects the Board's continued insistence on evidence of hardship that is qualitatively distinct from the typical consequences of deportation and signals that immigration judges granting cancellation based on generalized economic or emotional hardship claims should expect appellate reversal[17][58].

Third, significant changes have occurred regarding employment authorization during pendency of EOIR-42B applications. Applicants may apply for work authorization via [Form I-765][20] once their EOIR-42B application is filed, which previously provided substantial practical benefit during the years-long pendency of cases. However, [effective October 30, 2025, USCIS eliminated the automatic extension of employment authorization documents for certain categories, including those based on pending cancellation of removal

applications][20]. This means that applicants must now have their EAD renewal applications approved before their current EAD expires, with no automatic extension coverage during the pendency of the renewal application[20]. This change creates practical challenges for applicants relying on work authorization during the cancellation proceedings, as they must now carefully track EAD expiration dates and ensure renewal applications are filed and approved well in advance of expiration[20]. The loss of automatic extension protection means that applicants who face delays in EAD renewal processing may experience gaps in work authorization, which could jeopardize employment and create complications for cases that already require five to six years for resolution[19][20].

Fourth, the federal fee structure for EOIR-42B applications increased to $1,600.00 (plus $30.00 per person for biometrics) as of Fiscal Year 2026, reflecting inflation adjustments to filing fees across the EOIR system[42]. This increase represents a modest but cumulative burden on applicants, many of whom already face substantial costs related to document translation, obtaining certified records, and legal representation[42][39].

Fifth, the current federal administration has signaled an intent to expand interior immigration enforcement and to accelerate removal proceedings. While specific policy changes have not yet been formally implemented as of February 2026, practitioners should be aware that the immigration court backlog may be exacerbated by increased enforcement activity, potentially extending the timeline for case resolution even further beyond the current two to four year estimate[19][49]. Additionally, the reported elimination or significant limitation of prosecutorial discretion (as reflected in the stage 1 research notes indicating that "There is rarely any Prosecutorial Discretion anymore as of January 2026") means that applicants can no longer rely on discretionary immigration enforcement policies to remain in the country while pursuing relief if they do not meet the specific statutory requirements of EOIR-42B[49].

Sixth, practitioners should be aware that [recent USCIS policy on good moral character issued in August 2025][8] may influence immigration judges' assessments of this requirement in cancellation cases. The policy's emphasis on comprehensive, totality-of-circumstances evaluation including positive community contributions and evidence of rehabilitation could provide additional leverage in cases where applicants have some aspects of their conduct that require explanation[8].

San Francisco Immigration Court Context and Local Considerations

Immigration practitioners in Northern California must develop familiarity with the specific procedures, judge preferences, and decision patterns of the San Francisco Immigration Court, which has jurisdiction over applications filed by residents of the Bay Area and surrounding regions. The San Francisco court is located at multiple facilities: the primary location at 630 Sansome Street, 4th Floor, Room 475, San Francisco, California 94111; a secondary location at 100 Montgomery Street, Suite 800, San Francisco, California 94104; and a satellite hearing location in Concord at 1855 Gateway Blvd., Suite 850, Concord, California 94520[]. Cases may be assigned to any of these locations, and practitioners should confirm the specific location when filing documents and preparing for hearings[].

The San Francisco Immigration Court, like all immigration courts nationwide, operates under the procedural rules established by the Executive Office for Immigration Review (EOIR) and as set forth in the EOIR Practice Manual[]. Local rules specific to the San Francisco court should be obtained from the court clerk and reviewed carefully, as procedural requirements vary by jurisdiction[]. Practitioners should also be aware that the San Francisco Asylum Office, which conducts credible fear interviews for applicants in expedited removal, has particular patterns and expectations regarding testimony and corroboration requirements[]-although these

are somewhat distinct from the cancellation context, the same asylum office may conduct background interviews or other collateral proceedings that could impact removal cases[].

The Northern California ICE ERO Field Office 1 exercises enforcement jurisdiction over the region and may have particular priorities or enforcement patterns that affect the likelihood of certain clients being placed in removal proceedings[]. Additionally, applicants in the Northern California region should be aware that California state law protections-particularly [Penal Code § 1473.7 permitting vacatur of convictions with immigration consequences][48], [Penal Code § 18.5 permitting felony reduction][36], and [AB 1352 providing discovery of immigration consequences before conviction][36]-may provide additional avenues for addressing criminal conviction issues before or during federal immigration proceedings[].

Work Authorization and Economic Support During Pending Proceedings

One practical benefit of filing an EOIR-42B application is the availability of work authorization during the pendency of removal proceedings. Upon filing the cancellation application, applicants become eligible to apply for [Form I-765 (Application for Employment Authorization Document)][20]. The Form I-765 should be filed concurrently with the EOIR-42B application or as soon thereafter as possible. The processing of Form I-765 applications has experienced delays, with USCIS reporting approximately 1,698,599 Forms I-765 pending as of September 2025, more than 53 percent of which had been pending for more than six months[20].

However, as noted above, the recent elimination of automatic extensions of employment authorization documents means that applicants must now carefully manage their EAD renewal process[20]. Previously, applicants could rely on a 540-day automatic extension to remain work-authorized while their EAD renewal applications were pending. This automatic extension has been eliminated, effective October 30, 2025[20]. Applicants whose EADs are expiring should file renewal applications significantly in advance of expiration and should monitor the status of their renewal applications carefully to ensure that work authorization is continuous[20]. Gap periods without work authorization may create complications for the cancellation case and should be avoided[20].

The grant of work authorization, while not automatic upon filing of the EOIR-42B application, provides substantial practical value during the years-long pendency of removal proceedings. Work authorization permits applicants to seek and maintain employment, to support themselves and their families, to comply with child support obligations, and to continue building a record of economic self-sufficiency and good moral character that can strengthen the cancellation application[18]. Applicants should ensure that they comply with all work authorization requirements, including completing Form I-9 verification and maintaining evidence of their work authorization status[20].

Evidence Collection and Documentation Strategy

Successfully pursuing EOIR-42B relief requires meticulous collection and organization of documentary evidence. The burden of proof rests entirely with the applicant, and immigration judges typically require corroboration of testimonial claims with concrete documentary evidence[7][46][53].

Physical Presence Evidence: The applicant must establish ten years of continuous physical presence immediately preceding the Notice to Appear. Documents demonstrating physical presence should span the

entire ten-year period and should establish consistent residence in the United States. These documents may include:

Lease agreements or deeds demonstrating residence at specific addresses[5][53]. Multiple leases showing progression of residences demonstrate ongoing presence throughout the period[5][53]. Utility bills (electric, gas, water) consistently showing the applicant's name and address[5][53]. Mortgage documents or property tax records for owned property[5][53]. Driver's licenses or state identification cards issued at different times during the ten-year period[5][53]. Birth certificates of children born in the United States during the ten-year period[5][53]. School records (enrollment documents, report cards, transcripts) for the applicant or children[5][53]. Medical and dental records documenting visits over time[5][53]. Employment records, including W-2 forms, pay stubs, and employment letters from multiple employers[5][53]. Tax returns filed during the ten-year period[5][53]. Bank statements and financial records[5][53]. Church or religious organization records[5][53]. Evidence of participation in community organizations or activities[5][53]. Insurance documents (auto, homeowner's, health)[5][53]. Government correspondence or official documents (such as jury duty notices, voter registration documentation, or government agency correspondence)[5][53].

The applicant should organize this documentation chronologically, grouping documents by year and by residence address, to clearly demonstrate continuous presence. Gaps in documentation should be anticipated and explanation provided for any period lacking documentary evidence[5][53].

Good Moral Character Evidence: Establishing good moral character requires both negative evidence (absence of certain conduct) and positive evidence (positive contributions and reputation)[5][7][53]. Documentation should include:

Police records from all jurisdictions where the applicant resided during the ten-year period[5][7][53]. These records should be certified and current. The absence of arrests or convictions is important, but if the applicant has had any arrests or convictions, documents explaining the disposition and context should be obtained[5][7][53]. Affidavits from employers describing the applicant's work history, reliability, earnings, and character[5][7][53]. These affidavits should be specific and detailed rather than formulaic[5][7][53]. Tax returns demonstrating employment and compliance with federal and state tax obligations[5][7][53]. Letters from employers and supervisors attesting to the applicant's work ethic, character, and contributions[5][7][53]. Affidavits from community members, religious leaders, teachers, neighbors, and others familiar with the applicant[5][7][53]. These affidavits should address the affiant's relationship to the applicant, the period of acquaintance, specific instances of the applicant's character or conduct, and the affiant's opinion regarding moral character[5][7][53]. Community service records and volunteer work documentation[5][7][53]. Educational records demonstrating completion of educational programs or enrollment in ongoing education[5][7][53]. Evidence of child support payments if applicable[5][7][53]. Documentation of any charitable contributions or community contributions[5][7][53].

Hardship Evidence: Hardship evidence is highly case-specific and depends on the particular family circumstances and the specific family members for whom hardship is claimed. General categories of evidence that strengthen hardship claims include:

Medical records and letters from treating physicians documenting serious medical conditions of qualifying relatives, the prognosis, required treatment, and the availability (or lack thereof) of comparable treatment in the country of removal[5][30][53][55]. Psychological evaluations documenting mental health conditions, trauma, or other psychological impacts of family separation, conducted by licensed mental health professionals with expertise in trauma or family separation[5][30][53][55]. School records, report cards, and standardized test scores demonstrating that qualifying relatives (particularly children) are well-integrated into

United States schools, performing well academically, and developing meaningful relationships with peers and educators[5][30][53][55]. Letters from teachers, school counselors, principals, and other school personnel attesting to the child's academic performance, social development, and integration into the school community[5][30][53][55]. Evidence of the child's extracurricular activities, sports participation, or community involvement[5][30][53][55]. Employment and earning records for qualifying relatives, particularly if work authorization or continued work would be jeopardized by relocation[5][30][53][55]. Real property documents or lease agreements demonstrating the family's investment in housing in the United States[5][30][53][55]. Financial documents (bank statements, investment accounts) demonstrating economic ties to the United States[5][30][53][55]. State Department Country Reports on Human Rights Practices for the country of removal, documenting social, economic, health, educational, or security conditions[5][30][53][55]. Human Rights Watch and Amnesty International reports on country conditions[5][30][53][55]. United Nations High Commissioner for Refugees reports on conditions in the country of removal[5][30][53][55]. Travel advisories from the State Department[5][30][53][55]. News media reports documenting gang violence, gang activity, or persecution in the country of removal if relevant[5][30][53][55]. Evidence that qualifying relatives lack family ties or support network in the country of removal[5][30][53][55]. Documentation of the applicant's role as primary financial provider, primary caregiver, or provider of emotional or psychological support to qualifying relatives[5][30][53][55].

Appeal Strategy and Preservation of the Record

If an immigration judge denies an EOIR-42B application, the applicant has the right to appeal to the Board of Immigration Appeals within thirty days of the immigration judge's decision[15][21]. The appeal process requires careful identification of errors committed by the immigration judge, whether those errors are factual, legal, or procedural[15][21]. Different standards of review apply depending on the type of error. Factual findings (including credibility determinations) are reviewed for "clear error," a deferential standard under which the Board will overturn a factual finding only if it is "clearly erroneous"-that is, only if the Board has a "definite and firm conviction that a mistake has been committed"[15][21]. Legal findings, including the proper interpretation of statutes and regulations, are reviewed de novo, meaning the Board applies the law anew without deference to the immigration judge's legal conclusions[15][21].

For EOIR-42B cases, the most likely bases for appellate challenge are:

Legal Errors: Improper application of the hardship standard; misinterpretation of what constitutes "exceptional and extremely unusual hardship"; failure to consider factors cumulatively; misapplication of the good moral character standard; incorrect assessment of whether criminal convictions are disqualifying; and misinterpretation of the continuous physical presence requirement[15][21][48]. Factual Errors: Misapplication of the "clear error" standard to findings regarding the applicant's presence, good moral character, or hardship[15][21]. Factual errors are harder to overtake on appeal, as the Board affords deference to the immigration judge's credibility determinations and fact findings[15][21]. Discretionary Errors: Failure to properly exercise discretion or unreasonable exercise of discretion in denying relief to an otherwise eligible applicant; failure to consider or weigh positive discretionary factors[15][21]. Procedural Errors: Denial of due process rights; failure to permit adequate presentation of evidence or cross-examination; failure to permit the applicant to fully develop arguments[15][21][45].

Practitioners should ensure that the record is fully developed at the immigration court level by filing detailed memoranda in support of the cancellation application, presenting comprehensive evidence and testimony, and

preserving arguments for appeal by objecting to problematic rulings and raising legal issues explicitly in the presence of the immigration judge[15][21][45]. Additionally, practitioners should consider whether the case presents opportunities for motions to reopen based on newly discovered evidence or changed circumstances, though motions to reopen face strict timing and procedural requirements[45][48].

Conclusion: Strategic Pathways and Future Considerations

The EOIR-42B application process represents a complex, high-stakes immigration law matter that requires integration of statutory analysis, case law research, evidence development, and persuasive advocacy. The four statutory requirements-continuous physical presence, good moral character, absence of disqualifying convictions, and exceptional and extremely unusual hardship-collectively establish a demanding threshold that has been deliberately calibrated to restrict access to relief while leaving open the possibility of approval in truly compelling circumstances. The discretionary nature of the relief, even for applicants meeting all statutory requirements, adds an additional layer of uncertainty and requires attorneys to develop sensitivity to individual immigration judges' decision-making patterns and to frame hardship evidence in ways that resonate with particular adjudicators.

For Northern California practitioners, the San Francisco Immigration Court context, California state law protections regarding conviction modification, and the particular enforcement patterns of ICE ERO Field Office 1 create additional considerations that should be integrated into case strategy. The practical availability of work authorization during pendency, while valuable, must now be carefully managed in light of the elimination of automatic extensions.

Clients pursuing EOIR-42B relief should understand that approval timelines typically span two to four years from filing, with potentially longer periods in jurisdictions with heavy court backlogs. The national backlog of approximately 250,000 pending cancellation applications combined with the statutory annual cap of 4,000 grants creates a bottleneck that can extend the period from an immigration judge's favorable decision to actual receipt of permanent resident status. Legal representation by experienced counsel substantially improves approval likelihood and ensures that evidence is comprehensively developed, that procedural requirements are satisfied, and that arguments are persuasively presented.

The current legal landscape, shaped by recent Board of Immigration Appeals decisions reinforcing a stringent hardship standard and federal administration policies prioritizing enforcement, suggests that applicants must develop particularly robust evidence of hardship and must be prepared to distinguish their family circumstances from the ordinary consequences of deportation that all families experience. As immigration law continues to evolve and as the federal administration implements enforcement policies, practitioners should remain alert to changes in prosecutorial discretion, fee structures, processing times, and policy guidance that could affect case strategy and outcomes.

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