Cancellation of Removal for Lawful Permanent Residents: Analysis of Form EOIR 42-A and INA § 240A(a)

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FINDINGS

CANCELLATION OF REMOVAL FOR LAWFUL PERMANENT RESIDENTS: COMPREHENSIVE ANALYSIS OF FORM EOIR 42-A AND INA § 240A(A)

The Application for Cancellation of Removal for Certain Permanent Residents, commonly known as Form EOIR 42-A, represents one of the most significant forms of relief available to lawful permanent residents (LPRs) facing removal proceedings under the Immigration and Nationality Act (INA).[1] This form enables immigration judges to exercise discretionary authority to cancel removal proceedings and allow an otherwise deportable LPR to retain permanent resident status, provided the applicant satisfies both mandatory statutory eligibility requirements and demonstrates entitlement to such relief as a matter of discretion.[2] The relief is particularly valuable for LPRs because it operates as a one-time-only remedy that, if granted, results in the cancellation of all removal charges and permits the applicant to maintain lawful permanent resident status despite the underlying ground of removability.[3] However, the path to obtaining this relief is complex and laden with technical legal requirements, procedural pitfalls, and evidentiary burdens that demand careful analysis and thorough preparation. This report provides a comprehensive examination of Form EOIR 42-A, its statutory foundation, eligibility requirements, procedural requirements, and the discretionary factors that immigration judges consider in determining whether an applicant merits this extraordinary form of relief.

Statutory Framework and Governing Authority

The authority for cancellation of removal for lawful permanent residents derives from Section 240A(a) of the INA, codified at 8 U.S.C. § 1229b(a).[4] The statute, which became effective on April 1, 1997, as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), provides that "the Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien" meets four specific conditions.[5] These conditions, established in the statutory language, create both mandatory eligibility requirements and discretionary considerations that form the foundation of all cancellation claims for LPRs. The regulatory framework implementing this statutory authority appears in 8 C.F.R. § 1240.20, which establishes the procedures for filing applications and the evidentiary standards applicable to cancellation proceedings.[6]

Complementing the statutory and regulatory framework, the Executive Office for Immigration Review (EOIR) has issued detailed instructions accompanying Form EOIR 42-A, revised most recently in February 2025.[7] These instructions contain binding procedural and substantive guidance that carries "the force of law" and must be strictly followed by applicants seeking cancellation relief.[8] The form itself, along with its instructions, details the eligibility requirements, the burden of proof applicable to cancellation proceedings, the supporting documents that must accompany an application, and the filing procedures that must be observed. Additionally, the Board of Immigration Appeals (BIA) has issued numerous precedent decisions interpreting the statutory requirements and establishing the legal standards applicable to cancellation claims, including the landmark decision in Barton v. Barr, 140 S.Ct. 1442 (2020), which resolved critical questions about the application of the "stop-time rule" that determines when the seven-year continuous residence requirement ceases to accrue.[9]

Eligibility Requirements for LPR Cancellation of Removal

The statutory eligibility requirements for cancellation of removal under INA § 240A(a) establish a four-part

test that an applicant must satisfy to qualify for this form of relief. Each requirement is distinct, operates independently, and must be affirmatively proven by the applicant before an immigration judge can even consider the discretionary component of the decision. The failure to satisfy any single requirement renders the applicant ineligible for cancellation regardless of other favorable factors, and consequently the immigration judge must deny the application without reaching the discretionary analysis.

Lawful Permanent Resident Status for Five Years

The first eligibility requirement mandates that the applicant "has been an alien lawfully admitted for permanent residence for not less than 5 years."[10] This requirement is relatively straightforward in application but requires careful scrutiny in cases involving potential abandonment of LPR status or fraud in the original acquisition of permanent resident status. An applicant demonstrates satisfaction of this requirement by producing documentary evidence of lawful admission to permanent resident status, such as a copy of the immigrant visa stamp in the applicant's passport or the permanent resident card (green card) itself.[11] The five-year period is calculated from the date the applicant was first admitted as a lawful permanent resident and continues to accrue even after the applicant has been placed in removal proceedings by service of a Notice to Appear, meaning that unlike the seven-year continuous residence requirement discussed below, the five-year requirement is not subject to the "stop-time rule."[12]

However, applicants must not have obtained their LPR status through fraud or misrepresentation. If DHS alleges that the applicant obtained LPR status through fraud, the applicant bears the burden of proving by clear and convincing evidence that the status was obtained lawfully.[13] Additionally, if the applicant abandoned permanent resident status by failing to maintain a residence in the United States-such as by remaining outside the United States for an extended period exceeding one year-the applicant may face charges that the LPR status has been forfeited through abandonment, even if the formal status has not been revoked.[14] In such cases, the applicant must affirmatively prove that the LPR status was not abandoned through a showing of continuous intent to maintain a United States residence and evidence that any extended absences were temporary in nature.

Continuous Residence in the United States for Seven Years

The second requirement imposes a substantially more complicated obligation on applicants: the applicant must have "resided in the United States continuously for 7 years after having been admitted in any status."[15] This requirement does not mandate that the entire seven years be spent as a lawful permanent resident. Rather, the statute permits the seven-year period to commence from the date of any lawful admission to the United States, meaning that time spent as a nonimmigrant visa holder, refugee, asylee, or other lawful status may be counted toward the seven-year requirement, provided the admission itself was lawful.[16] This feature of the statute significantly expands the pool of applicants who may potentially qualify for cancellation relief, particularly for individuals who transitioned from temporary visa status to permanent resident status and have now accumulated sufficient years of lawful residence.

The seven-year continuous residence requirement is subject to the critical "stop-time rule," which operates to halt the accrual of time under specific circumstances. Under INA § 240A(d)(1), the continuous period of residence is deemed to end, meaning the clock stops running and no additional time accrues, when either of two events occurs: (1) when the alien is served a Notice to Appear under Section 239(a) of the INA, or (2) when the alien has committed an offense referred to in Section 212(a)(2) of the INA that renders the alien inadmissible or deportable.[17] The Supreme Court's decision in Barton v. Barr, 140 S.Ct. 1442 (2020), represents the definitive interpretation of this stop-time rule and merits detailed examination.

In Barton, the Supreme Court addressed whether the stop-time rule applies only when the offense that stops the clock is also the offense forming the basis for removal charges against the noncitizen. The respondent in Barton had committed aggravated assault offenses that fell within the category of crimes of violence under Section 212(a)(2) during his initial seven years of residence as an LPR. However, the charges against him in removal proceedings were based on separate firearms and drug offenses, not the aggravated assaults.[18] The respondent argued that because the offenses that stopped the clock were not the same offenses for which he was charged with removability, the stop-time rule should not apply and his seven-year clock should continue running. The Supreme Court rejected this argument, holding that the stop-time rule operates based on whether the applicant committed a Section 212(a)(2) offense during the seven-year period, not whether the offense is the same offense for which the applicant is being charged as removable.[19] This holding significantly narrowed the window of opportunity for many LPRs seeking cancellation relief, as it means that any criminal conduct falling within Section 212(a)(2), even if not charged or even if charged in a separate proceeding, will stop the continuous residence clock.

The critical element in applying Barton is that the stop-time rule requires a conviction or qualifying admission of guilt. The government's mere suspicion, allegation, or evidence of criminal conduct is insufficient to trigger the stop-time rule without a conviction or an admission by the alien that constitutes a qualifying admission of the conduct.[20] Additionally, the offense must be one that "renders the alien inadmissible" or "removable," which raises complex questions about the categorical approach to analyzing criminal convictions and whether an offense has the necessary culpability elements to qualify as a crime within a particular statutory category. In applying the stop-time rule analysis in Northern California immigration courts, practitioners should be particularly attentive to distinguishing between offenses that are merely deportable under Section 237(a)(2) of the INA versus those that fall within the inadmissibility grounds of Section 212(a)(2), as the Supreme Court's holding in Barton makes clear that only crimes "referred to" in Section 212(a)(2) trigger the stop-time rule, not crimes that are deportable under Section 237(a)(2) alone.[21]

One nuance in the Barton analysis involves the timing of the conviction versus the timing of the offense itself. Barton held that the relevant date for stop-time purposes is the date the crime was committed, not the date of the conviction.[22] This distinction is consequential because an applicant may commit a crime within the seven-year period but not be convicted until after the seven years have passed. In such a scenario, the clock stops on the date the crime was committed, even though the conviction occurs later. Practitioners must therefore conduct thorough investigations into the dates of criminal conduct, not merely the dates of conviction, when analyzing whether an applicant meets the continuous residence requirement.

No Conviction for an Aggravated Felony

The third eligibility requirement mandates that the applicant "has not been convicted of an aggravated felony."[23] An "aggravated felony" is a term of art in immigration law that encompasses a far broader range of offenses than the term suggests and is defined by statute at INA § 101(a)(43), which contains a list of more than thirty categories of crimes.[24] These categories include crimes of violence, theft offenses, drug trafficking, firearms offenses, fraud offenses involving loss exceeding $10,000, and numerous other offenses that Congress has determined carry such severe consequences that they warrant permanent bars to most forms of immigration relief. Importantly, an offense is considered an aggravated felony based on the conviction at the time of the cancellation proceeding, regardless of whether the crime was classified as an aggravated felony at the time of the conviction.[25] This means that if Congress adds a new offense to the aggravated felony list after a noncitizen's conviction, that conviction retroactively becomes an aggravated felony for immigration purposes.

The aggravated felony bar to cancellation relief is absolute and admits no exceptions, waivers, or discretionary relief. Unlike some other criminal bars to immigration benefits that may be subject to waivers or may permit discretionary relief based on equitable factors, the aggravated felony conviction is a complete bar to cancellation regardless of how long the applicant has lived in the United States, how strong the applicant's family ties are, or what humanitarian considerations might otherwise favor the applicant's case.[26] This absolute bar reflects Congress's determination that individuals convicted of aggravated felonies should not be permitted to remain in the United States in any circumstance.

Determining whether a particular conviction constitutes an aggravated felony requires application of either the "categorical approach" or the "modified categorical approach," both of which are complex methodologies for analyzing whether the specific conduct and elements of a conviction align with the statutory definition of an aggravated felony.[27] Under the categorical approach, courts examine the minimum conduct necessarily involved in the conviction by looking solely to the statutory definition of the offense of conviction, without regard to the specific facts of the case.[28] Under the modified categorical approach, when the statute of conviction is "divisible" (meaning it contains multiple alternative means of committing the crime), the court may look to limited documents such as the indictment, guilty plea colloquy, or sentencing documents to determine which alternative form of the crime the applicant was convicted of committing.[29] For offenses that carry sentences of varying lengths, the sentence imposed is often critical to determining whether the conviction qualifies as an aggravated felony, as many offenses only constitute aggravated felonies if the term of imprisonment imposed is at least one year.[30]

In Northern California practice, the interplay between California's sentencing laws and the categorical approach to analyzing aggravated felonies warrants particular attention. California Penal Code § 18.5(a), which was amended effective January 1, 2022, permits defendants to be punished for certain crimes as though they were misdemeanors rather than felonies, including crimes involving moral turpitude with a maximum sentence of 364 days.[31] However, the BIA has held that the potential sentence under federal law for a crime, not California state law, determines whether a conviction constitutes an aggravated felony.[32] This means that even if a California state court reduces a felony to a misdemeanor under Penal Code § 18.5, the conviction may still constitute an aggravated felony for immigration purposes if the federal law counterpart carries a maximum sentence of one year or more.[33]

No Prior Grants of Relief

The fourth requirement provides that the applicant shall not be eligible for cancellation of removal if the applicant "has been granted relief under section 212(c) of the INA, or section 244(a) of the INA as such sections were in effect prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, or whose removal has previously been cancelled under section 240A of the INA."[34] This requirement operates as a one-time-only bar, meaning that if an applicant has received cancellation of removal at any point in the past, the applicant is forever ineligible for this relief again, regardless of changed circumstances or the severity of the current removal charges. This reflects Congress's intent that cancellation of removal constitute a one-time opportunity for relief, not a renewable benefit.

Additionally, certain categories of aliens are explicitly barred from seeking cancellation relief under INA § 240A(c), which enumerates aliens who are ineligible regardless of whether they satisfy the requirements in subsection (a). These ineligible categories include individuals who entered the United States as crewmen after June 30, 1964; certain nonimmigrant exchange aliens subject to the two-year foreign residence requirement; individuals inadmissible under terrorism or security grounds; and individuals described in Section 1231(b)(3)(B)(i) of the INA.[35] Additionally, individuals who have been persecutors of others or who have

engaged in terrorist activities are categorically barred from cancellation relief.[36]

The Stop-Time Rule in Northern California Practice

Given the centrality of the stop-time rule to eligibility determinations in cancellation cases, and given the recent developments in the legal landscape surrounding the requirement that a Notice to Appear comply with all statutory provisions to trigger the stop-time rule, practitioners in Northern California should develop specialized expertise in this area. The stop-time rule contains two distinct triggering events: service of a Notice to Appear and commission of a qualifying offense.

Service of a Notice to Appear

The first mechanism by which the continuous residence clock stops involves service of a Notice to Appear. However, recent Supreme Court and BIA precedent has clarified that not every document styled as a "Notice to Appear" will actually stop the clock. In Pereira v. Sessions, 585 U.S. 198 (2018), the Supreme Court held that a Notice to Appear must contain the time and place of the hearing in order to trigger the stop-time rule and to constitute an effective notice to appear within the meaning of INA § 239(a).[37] A defective Notice to Appear that fails to include these critical elements does not stop time, meaning the applicant continues to accrue years of continuous residence for cancellation purposes.

Subsequently, in Niz-Chavez v. Garland, 593 U.S. 155 (2021), the Supreme Court clarified that the information required by INA § 239(a), including the time and place of the hearing, must be included in a single document-the Notice to Appear itself. A hearing notice subsequently mailed by the immigration court does not cure a defective Notice to Appear, and therefore does not stop the continuous residence clock.[38] The critical implication of Niz-Chavez is that a respondent whose Notice to Appear lacks the required time and place information may continue accruing time toward the seven-year requirement until DHS serves a compliant Notice to Appear containing all required information.

The BIA has further clarified these requirements in Matter of Fernandes, 28 I&N Dec. 605 (BIA 2022), holding that INA § 239(a) is a claim-processing rule rather than a jurisdictional rule.[39] This means that a defective Notice to Appear does not deprive the immigration court of jurisdiction to hear the case, but rather constitutes a procedural defect that must be timely raised by the respondent. The respondent must raise any objection to a noncompliant Notice to Appear before the close of pleadings and need not demonstrate prejudice from the deficiency.[40] However, the immigration judge may permit DHS to remedy the noncompliant Notice to Appear rather than ordering termination of the proceedings.[41]

For practitioners in Northern California representing LPRs seeking cancellation relief, careful scrutiny of the Notice to Appear is essential. Many Notices of Appear issued years ago lack the required time and place information or contain defective information such as vague language like "date and time to be set." In such cases, if the respondent has not already raised the deficiency, a motion to quash or otherwise challenge the Notice to Appear on the grounds that it does not comply with INA § 239(a) may preserve the applicant's claim to additional accrued time beyond the nominal seven-year requirement.

Commission of a Qualifying Criminal Offense

The second mechanism by which the continuous residence clock stops involves commission of an offense referred to in Section 212(a)(2) of the INA that renders the alien inadmissible or removable. As discussed extensively above in the context of Barton v. Barr, this provision requires careful analysis of whether the applicant's conviction constitutes a crime "referred to" in Section 212(a)(2) and whether it "renders" the alien inadmissible or deportable. The determination of whether a crime is "referred to" in Section 212(a)(2) requires

distinguishing between crimes of inadmissibility and crimes of deportability, as the Barton decision and subsequent precedent make clear that the stop-time rule operates differently depending on the procedural posture of the removal proceedings.

In removal proceedings in which the applicant is charged as deportable under Section 237(a)(2), an offense stops the clock only if it is referred to in Section 212(a)(2) and "renders" the alien deportable under Section 237(a)(2) or (3), not merely deportable under Section 237(a)(4).[42] The distinction between Sections 237(a)(2)/(a)(3) and 237(a)(4) is significant because Section 237(a)(4) covers national security and terrorist-related grounds of deportability that were derived from Section 212(a)(3) and (b), not Section 212(a)(2).[43] Therefore, crimes that fall exclusively within the national security or terrorist categories under Section 237(a)(4) may not stop the continuous residence clock even if they are serious crimes.

Crimes involving moral turpitude (CIMTs) present a common scenario in which the stop-time rule analysis becomes complex. A crime must satisfy certain requirements to be considered a crime involving moral turpitude for stop-time purposes. The offense must be "referred to" in Section 212(a)(2), which means it must be an inadmissibility ground rather than merely a deportability ground. Additionally, the petty offense exception applies: a single CIMT with a maximum possible sentence of one year or less and an actual sentence of six months or less is not referred to in Section 212(a)(2) and therefore does not stop the clock.[44] This means that practitioners must analyze not merely whether an offense is a CIMT, but whether it comes within the petty offense exception, which depends on examining the potential sentence under the statute of conviction and the actual sentence imposed.

The Application Process and Procedural Requirements

Cancellation of removal is what immigration law practitioners term a "defensive" application, meaning that it can only be pursued by an applicant who is already in removal proceedings before an immigration judge. Unlike many other forms of immigration relief that can be affirmatively requested from USCIS, an applicant cannot file Form EOIR 42-A directly with USCIS to initiate the cancellation process. Rather, the application must be filed in the context of a pending removal case before an immigration court, with the immigration judge setting a deadline for filing the application.[45] The application must be filed before the close of pleadings, which is typically at or before the individual merits hearing, unless the immigration judge grants an extension.

Filing Fees and Current Fee Structure

As of February 1, 2026, the current filing fee for Form EOIR 42-A is $710.00, plus a biometrics fee of $30.00, for a total of $740.00.[46] These fees were established pursuant to the One Big Beautiful Bill (H.R. 1), signed into law on July 4, 2025, which made significant changes to the fee structure for EOIR applications.[47] The fees represent an increase from the previous fee of $100 plus biometrics, and practitioners should be aware that fees are subject to annual adjustment for inflation beginning in fiscal year 2026.[48] The adjustment formula provides that fee amounts are increased by the percentage (if any) by which the Consumer Price Index for All Urban Consumers (CPI-U) for July preceding the fiscal year exceeds the CPI-U for July of the preceding calendar year, rounded to the next lowest multiple of $10 (or, for fees of $100 or less, rounded down to the nearest dollar).[49]

Fee waivers are available for applicants who cannot afford to pay the filing fee.[50] An applicant seeking a fee waiver must file an affidavit with the immigration court requesting that the immigration judge permit the applicant to file the Form EOIR 42-A without payment of the filing fee. The affidavit should establish the applicant's financial inability to pay the fee. Immigration judges have discretion to grant fee waivers based on

the applicant's financial circumstances. However, the biometrics fee of $30.00 must still be paid to DHS even if the filing fee is waived, as these are separate obligations processed through different agencies.[51]

Biometric and Biographical Information Requirements

Before filing Form EOIR 42-A with the immigration court, an applicant must first comply with DHS instructions for providing biometric and biographic information to USCIS.[52] This process involves sending a copy of the application to the appropriate USCIS Service Center along with payment of the biometrics fee. USCIS will then issue an Application Support Center (ASC) notice of fee receipt and biometrics appointment instructions, which will direct the applicant to report to a designated location (typically an Application Support Center or designated law enforcement agency) to provide fingerprints and biographic information. The applicant must attend this biometrics appointment and provide the required information.[53]

The applicant should retain a copy of the USCIS ASC biometrics confirmation document or a copy of the fingerprint card (Form FD-258) as proof that biometrics were taken, as this document must be brought to all subsequent immigration court hearings.[54] Additionally, a copy of the ASC notice of fee receipt and biometrics appointment instructions must accompany the application when it is filed with the immigration court, as proof that the applicant has complied with the biometrics and fee requirements.

Service and Filing with Immigration Court

After complying with the biometrics and fee payment requirements, the applicant must serve and file the application with the immigration court according to specific procedures outlined in the Form EOIR 42-A instructions. The applicant must serve copies of the following documents on the Assistant Chief Counsel for DHS, U.S. Immigration and Customs Enforcement (ICE): (1) a copy of the completed Form EOIR 42-A with all supporting documents and additional sheets; (2) a copy of the USCIS ASC notice of fee receipt and biometrics appointment instructions; and (3) the original Biographical Information Form G-325A.[55]

The applicant must then file the following documents with the appropriate immigration court: (1) the original Form EOIR 42-A with all supporting documents and additional sheets; (2) a copy of the USCIS ASC notice of fee receipt and biometrics appointment instructions; (3) a copy of the Biographical Information Form G-325A; and (4) a completed certificate showing service of these documents on the ICE Assistant Chief Counsel.[56] If the applicant is utilizing ECAS (EOIR Courts & Appeals System) for electronic filing, the applicant is not required to serve the opposing party if the opposing party is participating in ECAS, as the ECAS system will provide an electronic service notification to participating parties.[57]

Currently, EOIR does not have the capability to accept electronic submission of Form EOIR 42-A through the ECAS system, despite ECAS being mandatory for filing most other immigration court documents as of February 11, 2022.[58] Therefore, applicants must file the original Form EOIR 42-A by mail with the immigration court. However, EOIR has indicated that it is developing the capability to accept electronic filing of Forms EOIR 42-A and 42-B through ECAS as part of its long-term electronic filing initiative, though no specific date for implementation has been announced.[59]

The Biographic Information Form G-325A

Form G-325A, the Biographical Information form, must be submitted as part of the cancellation application and must be provided in original form to ICE and as a copy to the immigration court.[60] This form collects demographic information about the applicant, including birth date, country of citizenship, parents' information, and residence history. The form must be completed accurately and in its entirety, as any inconsistencies or omissions may be used to impeach the applicant's credibility during the removal hearing.

Additionally, the applicant's name and Alien Registration Number (A-Number) must be entered on the face of any check used to pay the filing fee, and all checks must be drawn on a bank located in the United States.

Burden of Proof and Evidentiary Standards

The burden of proof in cancellation of removal proceedings differs depending on which element is being contested. For eligibility requirements, the applicant bears the burden of proving by a preponderance of the evidence that the applicant meets all statutory requirements for cancellation relief and that relief should be granted in the exercise of discretion. However, if the government alleges that mandatory grounds for denial apply (such as an aggravated felony conviction), the applicant must prove by clear and convincing evidence that such grounds do not apply. This heightened burden of clear and convincing evidence applies to disproving any ground for mandatory denial, shifting a substantial evidentiary burden to the applicant to overcome government allegations regarding aggravated felonies, persecution, or other categorical bars.

For the discretionary determination of whether the applicant merits cancellation relief (apart from statutory eligibility), the applicant again bears the burden of establishing entitlement to relief, although the standards for discretionary determinations are less clearly defined than the statutory eligibility standards. Immigration judges have broad discretion in assessing discretionary factors and weighing positive factors against negative factors in determining whether the applicant is deserving of relief as a matter of discretion.

Discretionary Factors and Good Moral Character

Beyond the mandatory statutory requirements discussed above, immigration judges must also determine whether the applicant merits a favorable exercise of discretion to grant cancellation relief. This discretionary determination is separate from the eligibility analysis and requires the immigration judge to assess various positive and negative factors related to the applicant's character, ties to the community, family circumstances, and overall suitability for remaining in the United States.

Good Moral Character Requirement

Unlike cancellation of removal for non-LPRs under INA § 240A(b), which explicitly requires a finding of "good moral character" for the relevant statutory period, the statute for LPR cancellation of removal (INA § 240A(a)) does not explicitly include a good moral character requirement. However, the BIA has held that good moral character is an implicit requirement for LPR cancellation relief and must be established even for LPRs. For purposes of LPR cancellation of removal, good moral character is determined for the period from the date the applicant was admitted as a lawful permanent resident through the date of the immigration judge's decision, or the date of the BIA's decision if the case is appealed.

The INA defines the concept of good moral character negatively by identifying specific conduct and convictions that establish a lack of good moral character. These negative definitions are codified at INA § 101(f) and include crimes of moral turpitude, crimes involving controlled substances, prostitution, human trafficking, polygamy, habitual drunkenness, and certain other conduct. Additionally, spending 180 days or more in actual custody for any conviction automatically bars a finding of good moral character. However, an applicant may rebut a presumption of lack of good moral character by presenting evidence of rehabilitation or other mitigating factors, depending on the specific ground alleged by the government.

Recently, in Matter of Castillo-Perez, 27 I&N Dec. 664 (A.G. 2019), the Attorney General established a rebuttable presumption that applicants convicted of two or more driving under the influence (DUI) offenses during the relevant period lack good moral character. This presumption applies to all state and federal DUI

convictions, regardless of whether the convictions occurred before or after the DUI law labeling them as such. To rebut this presumption, the applicant must present "substantial relevant and credible contrary evidence" demonstrating good moral character during the period when the offenses were committed, and mere evidence of rehabilitation after the DUI convictions is insufficient by itself to overcome the presumption.

Discretionary Factors Considered by Immigration Judges

In determining whether to grant cancellation of removal as a matter of discretion, immigration judges consider a range of positive and negative factors. Positive factors supporting a favorable discretion determination include family ties in the United States, long residence in the country, evidence of hardship to the applicant and family if deportation occurs, a history of employment, property or business ties, community service and involvement, genuine rehabilitation if the applicant has a criminal record, and good character evidence such as letters of support from employers and community members.

Negative factors that may weigh against granting relief include a criminal record, immigration violations, lack of community ties, failure to pay taxes, failure to support dependents, and other evidence suggesting the applicant is not the sort of person deserving of remaining in the United States. Immigration judges must carefully weigh and balance all relevant factors presented and exercise discretion based on the totality of the circumstances rather than relying on any single factor to make the determination.

Supporting Documentation and Evidence

Applicants seeking cancellation relief must gather and submit comprehensive documentation supporting their claims of eligibility and meriting discretion. The types of supporting documentation that should accompany a Form EOIR 42-A application include the following.

Proof of Permanent Resident Status and Duration

Applicants must submit evidence demonstrating lawful admission to permanent resident status and at least five years of LPR status. This typically includes a copy of the permanent resident card (green card) showing the date of issuance and validity period, or alternatively an immigrant visa stamp in the applicant's passport showing the date and place of admission. If the original permanent resident card has been lost or damaged, the applicant should submit a copy of any USCIS correspondence confirming the validity of the LPR status, such as a replacement green card approval notice or a travel document issued to an LPR.

Proof of Continuous Residence

Establishing seven years of continuous residence is one of the most heavily documented requirements, as immigration judges are skeptical of applicants lacking abundant evidence of physical presence in the United States. Applicants should submit copies of multiple categories of documents demonstrating continuous presence in the United States throughout the relevant seven-year period. These documents should include rental leases or mortgage documents showing the applicant's residence at different addresses throughout the period; utility bills (electricity, water, gas, telephone) addressed to the applicant; driver's licenses or state identification cards showing continuity of residence; tax returns filed with the Internal Revenue Service; W-2 forms or other employment documents; school enrollment records for the applicant or children; medical or dental records showing treatment in the United States; church records or letters from religious institutions documenting attendance; birth certificates for children born in the United States; insurance documents; bank statements; and any other documents that establish the applicant's presence at a specific United States address during specific time periods.

The standard for satisfying the continuous residence requirement is not absolute perfection but rather a showing of sufficient documentation that a reasonable immigration judge would conclude that the applicant has indeed resided continuously in the United States for the seven-year period. The applicant need not provide documentation for every single day of the period but should demonstrate residence in the United States during each significant portion of the seven-year period without extended gaps for which no explanation is provided.

Proof of Good Moral Character

To establish good moral character, applicants should submit letters of support from employers, community leaders, church officials, and other reputable individuals who can attest to the applicant's character and conduct. These letters should be written on letterhead, dated, and should specifically address the writer's knowledge of the applicant's character and conduct over an extended period. Additionally, applicants should submit evidence of tax compliance, such as copies of filed income tax returns and evidence of payment of taxes; certificates or documentation of community service and volunteer work; proof of child support payments if applicable; educational certificates or diplomas; and any other evidence demonstrating that the applicant has conducted himself or herself in conformity with generally accepted moral and legal standards.

Criminal History Documentation

All documents related to the applicant's criminal history must be submitted, including court disposition documents, judgment and sentencing documents, and any other records available from the court of conviction. If the applicant has no criminal history, a written statement to that effect should be included. If the applicant has been arrested but charges were dismissed, copies of the disposition documents showing the dismissal should be submitted, along with an explanation of the circumstances. For any conviction, detailed documentation of the charge, the guilty plea or trial verdict, the sentence imposed, and the actual time served (if any) must be provided, as this information is essential to the categorical analysis of whether the conviction constitutes a bar to relief.

San Francisco Immigration Court Context

The San Francisco Immigration Court, with hearing locations at 100 Montgomery Street (Suite 800) and 630 Sansome Street (4th Floor, Room 475) in San Francisco, and a Concord hearing location at 1855 Gateway Blvd. (Suite 850) in Concord, processes a substantial volume of cancellation of removal cases, particularly involving respondents from Mexico, Central America (Guatemala, El Salvador, Honduras, Nicaragua), and other Latin American countries. Practitioners appearing in the San Francisco Immigration Court should be aware of certain procedural practices and judicial preferences specific to that court.

The San Francisco Immigration Court generally permits master calendar continuances for evidence gathering purposes, though judges differ in their receptiveness to multiple continuances and in their expectations regarding the completeness of the application at the time of the first individual hearing. Some judges prefer that applicants file a preliminary application before the first individual hearing with a commitment to file supplemental evidence on a specified date. Other judges expect complete applications to be filed before the individual hearing begins. Practitioners should inquire about the specific judge's practices regarding continuances and evidence submission deadlines.

Additionally, the San Francisco Asylum Office, which processes asylum applications for Northern California, has developed certain interview practices and officer tendencies that may impact collateral applications, such as whether an applicant pursuing cancellation relief should simultaneously pursue asylum as a protective filing. The Ninth Circuit's precedent regarding credibility determinations in asylum cases has established

protections for applicants making asylum claims, and practitioners should consider whether filing for asylum simultaneously with cancellation relief provides strategic advantages.

The Northern California ICE Enforcement and Removal Operations Field Office 1 has developed patterns and practices regarding prosecutorial discretion and detention policies that may impact case prioritization and timing. Additionally, California state law protections such as Penal Code § 1473.7, which permits post-conviction relief based on legal defects in criminal proceedings that render convictions legally invalid for immigration purposes, may provide opportunities to vacate convictions that would otherwise bar cancellation relief. Practitioners should explore whether any of the applicant's convictions might be subject to vacation under this statute, as a successful vacation may restore eligibility for cancellation.

Alternative Strategic Considerations

When cancellation of removal appears unavailable or unlikely to succeed, practitioners should consider alternative forms of relief that might achieve similar results. If the applicant does not meet the seven-year continuous residence requirement but meets the ten-year continuous physical presence requirement, the applicant may be eligible for cancellation of removal as a non-LPR under INA § 240A(b), which requires proof of exceptional and extremely unusual hardship to a qualifying relative rather than requiring the applicant to prove discretionary factors. While the exceptional and extremely unusual hardship standard is extremely demanding, this form of relief is sometimes more promising than LPR cancellation for applicants who meet the stricter time requirement.

Additionally, if the applicant has a qualifying family member who is a U.S. citizen, the applicant might pursue an application for adjustment of status based on an immediate relative petition, which could provide a pathway to legal permanent resident status without requiring the applicant to prove eligibility for cancellation of removal. For applicants convicted of certain crimes, such as controlled substance offenses that do not rise to the level of aggravated felonies, the applicant might be eligible for a discretionary waiver of inadmissibility under INA § 212(h), which could permit adjustment of status.

Conclusion

Form EOIR 42-A represents a critical form of relief for lawful permanent residents facing removal proceedings, offering the opportunity to cancel removal and retain permanent resident status despite the underlying ground of removability. However, the path to obtaining this relief requires careful navigation of complex statutory requirements, application of sophisticated legal doctrines such as the stop-time rule and the categorical approach to analyzing criminal convictions, and thorough preparation of compelling evidence supporting both eligibility and discretionary factors.

The statutory framework for cancellation of removal, rooted in INA § 240A(a) and implemented through detailed regulatory procedures and EOIR guidance, establishes a four-part eligibility test that must be strictly satisfied. The applicant must demonstrate lawful permanent resident status for five years, continuous residence in the United States for seven years after lawful admission (subject to the stop-time rule), absence of conviction for an aggravated felony, and absence of prior grants of cancellation relief. Each of these requirements is independent and mandatory, and failure to satisfy any single requirement renders the applicant ineligible for relief.

The Supreme Court's landmark decision in Barton v. Barr, 140 S.Ct. 1442 (2020), and the subsequent Supreme Court decisions in Pereira v. Sessions, 585 U.S. 198 (2018) and Niz-Chavez v. Garland, 593 U.S. 155 (2021), have refined the application of the stop-time rule and established that defective Notices to Appear

do not trigger the stop-time rule. Practitioners must therefore conduct careful analysis of whether a Notice to Appear complies with all statutory requirements and whether any criminal conduct would trigger the stop-time rule. In many cases, careful scrutiny of the Notice to Appear may reveal defects that preserve additional accrued time for cancellation purposes.

Criminal convictions present substantial obstacles to cancellation relief, not only because aggravated felony convictions create an absolute bar to relief, but also because convictions for crimes referred to in Section 212(a)(2) may stop the continuous residence clock, and convictions involving moral turpitude or other criminal conduct may impact the discretionary determination regarding whether the applicant merits relief as a matter of discretion. Practitioners must therefore investigate the applicant's criminal history thoroughly and consider whether any convictions might be subject to vacation or reduction under California's post-conviction relief procedures, particularly under Penal Code § 1473.7, which may permit vacation of convictions based on legal defects in the underlying criminal proceedings.

The application process for Form EOIR 42-A requires careful adherence to procedural requirements, including payment of current fees ($710 plus $30 biometrics), provision of biometric and biographic information to USCIS, service of the application on ICE, and timely filing with the immigration court. The application must be accompanied by comprehensive supporting documentation establishing both eligibility and meriting of discretionary relief, including proof of permanent resident status and duration, extensive evidence of continuous residence, evidence of good moral character, and criminal history documentation.

The discretionary component of the cancellation analysis requires immigration judges to weigh positive and negative factors regarding the applicant's character, family ties, community involvement, and overall suitability for remaining in the United States. While immigration judges have broad discretion in this determination, practitioners can maximize the likelihood of a favorable discretionary decision by presenting compelling evidence of positive factors, such as strong family ties, long-term employment, community involvement, and family hardship, while mitigating negative factors through evidence of rehabilitation or changed circumstances.

For practitioners in Northern California serving immigrants facing removal proceedings, Form EOIR 42-A should be carefully evaluated for every lawful permanent resident client who is in removal proceedings and who has satisfied or potentially satisfied the statutory eligibility requirements. While the requirements are stringent and the analysis is complex, successful cases result in the client retaining permanent resident status and avoiding removal, making the time and effort invested in thorough preparation well worthwhile.

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