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REMOVAL PROCEEDINGS

Defending respondents in immigration removal proceedings.

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Applications for Relief from Removal

ASYLUM (defensive)

REGULATIONS

8 CFR §1208.4 Filing the application

8 CFR § 1208.4(a)(4) Changed Circumstances

(i) The term “changed circumstances” in section 208(a)(2)(D) of the Act shall refer to circumstances materially affecting the applicant's eligibility for asylum. They may include, but are not limited to:

(A) Changes in conditions in the applicant's country of nationality or, if the applicant is stateless, country of last habitual residence;

(B) Changes in the applicant's circumstances that materially affect the applicant's eligibility for asylum, including changes in applicable U.S. law and activities the applicant becomes involved in outside the country of feared persecution that place the applicant at risk; or

(C) In the case of an alien who had previously been included as a dependent in another alien's pending asylum application, the loss of the spousal or parent-child relationship to the principal applicant through marriage, divorce, death, or attainment of age 21.

(ii) The applicant shall file an asylum application within a reasonable period given those “changed circumstances.” If the applicant can establish that he or she did not become aware of the changed circumstances until after they occurred, such delayed awareness shall be taken into

account in determining what constitutes a “reasonable period.”

8 CFR § 1208.13 Establishing asylum eligibility.

8 CFR §1208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

8 CFR §1208.17 Deferral of removal under the Convention Against Torture.

ASYLUM GENERALLY

1. **Asylum Generally**
    1. Eligibility
        1. Persecution
        2. Particular Social Group
    2. Bars to Asylum
        1. One-Year Rule
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SEE ALSO

ASYLUM

Asylum can be either and affirmative application or a form of defensive relief in removal proceedings so it sort of a hybrid category.

What Is Asylum?

Asylum is a protection grantable to foreign nationals already in the United States or arriving at the border who meet the international law definition of a “refugee.” The United Nations 1951 Convention and 1967 Protocol define a refugee as a person who is unable or unwilling to return to their home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the future “on account of race, religion, nationality, membership in a particular social group, or political opinion.” Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980. Asylum is technically a “discretionary” status, meaning that some individuals can be denied asylum even if they meet the definition of a refugee. For those individuals, a backstop form of protection known as “withholding of removal” may be available to protect them from harm if necessary.
As a signatory to the 1967 Protocol, and through U.S. immigration law, the United States has legal obligations to provide protection to those who qualify as refugees. The Refugee Act established two paths to obtain refugee status—either from abroad as a resettled refugee or in the United States as

an asylum seeker.

Affirmative Asylum

When a noncitizen applies for asylum *before* they are in removal proceedings

Defensive Asylum

When a non-citizen is already in removal proceedings when they apply for asylum.

ASYLUM PROCESSING RULE

Since May 31, 2022, some individuals entering the United States are being processed under an interim final rule. These individuals are first put in expedited removal and if they express fear of persecution or torture, are given a credible fear interview, a process that initiates a defensive asylum claim. However, rather than having their case sent directly to an immigration judge, people processed under this rule are referred to an asylum officer for a non-adversarial Asylum Merits Interview between 21-45 days after the credible fear determination. This interview mirrors that of an affirmative asylum claim. An asylum officer can then either grant asylum or deny asylum. If denied, the case is referred to an immigration judge. Additionally, a person who is denied asylum by an asylum officer is also assessed at the time for eligibility for withholding of removal and protection under the Convention Against Torture—another feature of defensive asylum processes. Since May 31, 2022, certain individuals entering the United States undergo processing based on an interim final rule. Initially, they are placed in expedited removal. If they express fear of persecution or torture, they receive a credible fear interview, which initiates a defensive asylum claim. Instead of directly sending their case to an immigration judge, individuals processed under this rule are referred to an asylum officer for a non-adversarial Asylum Merits Interview within 21-45 days after the credible fear determination. This interview resembles an affirmative asylum claim. The asylum officer can either grant or deny asylum. If denied, the case proceeds to an immigration judge.

Additionally, a person denied asylum by an asylum officer is also evaluated for eligibility for withholding of removal and protection under the Convention Against Torture—a key aspect of defensive asylum procedures.

Asylum is a form of protection granted to foreign nationals already in the United States or arriving at the border. To qualify, they must meet the international law definition of a ‘refugee.’ According to the **United Nations 1951 Convention** and the **1967 Protocol**, a refugee is someone who cannot or will not return to their home country due to past persecution or a well-founded fear of future persecution based on factors such as race, religion, nationality, membership in a particular social group, or political opinion. The U.S. incorporated this definition into its immigration law through the **Refugee Act of 1980**. Asylum status is technically ‘discretionary,’ meaning that even if an individual meets the refugee definition, they may still be denied asylum. In such cases, an alternative form of protection called ‘withholding of removal’ may be available to safeguard them from harm.

The United States, as a signatory to the 1967 Protocol, has legal obligations to protect those who qualify as refugees. The **Refugee Act** provides two paths to obtain refugee status: either from abroad as a resettled refugee or within the United States as an asylum seeker

ONE-YEAR FILING DEADLINE

An individual generally must apply for asylum within one year of their most recent arrival in the United States. In 2018, a federal district court found that DHS is obligated to notify asylum seekers of this deadline in a class-action lawsuit that challenged the government's failure to provide asylum seekers adequate notice of the one-year deadline and a uniform procedure for filing timely applications.

Asylum seekers in the affirmative and defensive processes face many obstacles to meeting the one-year deadline. Some individuals face traumatic repercussions from their time in detention or journeying to the United States and may never know that a deadline exists. Even those who are aware of the deadline encounter systemic barriers, such as lengthy backlogs, that can make it impossible to file their application in a timely manner. In many cases, missing the one-year deadline is the sole reason the government denies an asylum application. Under the expedited

asylum process, a person who passes a credible fear interview is considered to have applied for asylum, which means that the one-year filing deadline is automatically satisfied.

PROVING ASYLUM

For asylum applicants, INA § 208 (b)(1)(B)(ii) specifies, “The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.”

Demeanor and Credibility

The INA directs that an IJ in assessing credibility should consider the “totality of the circumstances” and “all relevant factors,” including:

the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor.

The **REAL ID Act** states for asylum applicants that a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of

record. *See* **INA § 208(b)(1)(B)(iii)**.

INA § 240(c)(4)(C). *See also Matter of J-Y-C-*, 24 I&N Dec. 260, 266 (BIA 2007) (holding that the IJ properly considered the totality of the circumstances in finding that the applicant lacked credibility based on his demeanor, implausible testimony, lack of corroboration, and inconsistent statements).

Respondent Has Burden to Explain Inconsistencies

In ***Matter of Y-I-M-*,** 28 27 I&N Dec. 724, 725 (BIA 2019), the BIA held that "if inconsistencies in the record are obvious or have previously been identified" by DHS or the IJ, the IJ is not required to give the respondent a specific opportunity to explain them.

"Credible" and "Reasonable" Fear Interviews

Fear interviews are part of the expedited removal process. When a person is put into the expedited removal process, if they express a fear of returning to their home country or request to seek asylum, they are first screened to see if they could establish that they have a fear of persecution or torture.

Generally speaking, there are two "levels" of fear interviews, most commonly referred to as "credible fear" and "reasonable fear." A person is said to have a "credible fear" if they can demonstrate a "significant possibility" that they will be able to establish eligibility for asylum or withholding of removal under the Immigration and Nationality Act or withholding of removal or deferral of removal under the Convention Against Torture. A person establishing a "reasonable

fear" of persecution or torture has to demonstrate a higher likelihood that they would be eligible for relief from removal.

The fear screening process has been periodically altered by new rules issued by various presidential administrations. Those rules are also often the subject of litigation, making the exact process an individual is subjected to (including the standard of proof needed to establish a "credible" fear) subject to regular change. Additionally, many of the rules are applied only to a subset of individuals, often seemingly at random, due to changing logistical, diplomatic, or humanitarian factors. Therefore, the credible and reasonable fear interview process may be applied differently to different people depending on things such as when they arrived at the border, where they arrived, what country they arrived from, whether they entered at a port of entry or between ports of entry, and other considerations.

At the credible or reasonable fear interview, if an individual is found by the asylum officer to have met the standard applied to them, they are then referred to proceedings where they can submit an application for asylum or other similar protections. Usually, this is done via a referral to an immigration court, where a person is put in removal proceedings initiated with a Notice to Appear. Some pilot programs such as that created by the Asylum Processing Rule created an alternative venue, where people would have their full asylum cases reviewed by an asylum officer rather than an immigration judge, on a significantly truncated timeline. If the asylum officer determines the person did **not** establish either credible or reasonable fear, their expedited removal order stays in place. Before removal, the individual may request review of the fear determination by an immigration judge. If the immigration judge overturns a negative fear finding, the individual is treated as if they passed their fear interview and is placed in further removal proceedings through which the individual can seek protection from removal, including asylum. If the immigration judge upholds the negative finding by the asylum officer, the individual will be removed from the United States.

- In Fiscal Year (FY) 2023 (a year in which the Title 42 pandemic border expulsion policy was in effect for eight out of 12 months), USCIS found 53,965 individuals to have credible fear. These individuals, many of whom were detained during this screening process, will be afforded an opportunity to apply for asylum defensively and establish that they meet the refugee definition.
- The number of credible fear cases has skyrocketed since the procedure was implemented—in FY 2009, USCIS completed 5,523 cases. Case completions reached an all-time high in FY 2023 at 148,440.

- In FY 2023, two-thirds of which occurred during Title 42, USCIS found 1,950 individuals to have reasonable fear.

Applications for Relief

Form 42A, Cancellation of Removal for Permanent Residents

42A CANCELLATION OF REMOVAL

Practice Advisory

Helpful practice advisory with information about eligibility requirements.
https://www.ilrc.org/sites/default/files/resources/relief_cancellation_removal_lpr_11.2020.pdf

INA § 240(A)(a)

INA § 240A (8 USC § 1229b)- Cancellation of removal; adjustment of status
(a) Cancellation of removal for certain permanent residents The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien–
(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,
(2) has resided in the United States continuously for 7 years after having been admitted in any status, and
(3) has not been convicted of any aggravated felony.

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents (1) In general

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien–

(A) 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;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5); and

(D) establishes 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.

(2) Special rule for battered spouse or child

(A) Authority

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that–

(i)(I) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);

(II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent); or

(III) the alien has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's or lawful permanent resident's bigamy;

(ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application, and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States;

(iii) the alien has been a person of good moral character during such period, subject to the provisions of subparagraph (C);

(iv) the alien is not inadmissible under paragraph (2) or (3) of section 1182(a) of this title, is not deportable under paragraphs (1)(G) or (2) through (4) of section 1227(a) of this title, subject to paragraph (5), and has not been convicted of an aggravated felony; and

(v) the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent.

(B) Physical presence

Notwithstanding subsection (d)(2) of this section, for purposes of subparagraph (A)(ii) or for purposes of section 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2) of this section. If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of continuous presence. Any such period of time excluded from the 180-day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3-year requirement set forth in this subparagraph, subparagraph (A)(ii), and section 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(C) Good moral character

Notwithstanding section 1101(f) of this title, an act or conviction that does not bar the Attorney General from granting relief under this paragraph by reason of subparagraph (A)(iv) shall not bar the Attorney General from finding the alien to be of good moral character under subparagraph (A)(iii) or section 1254(a)(3) of this title (as in effect before the Title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty and determines that a waiver is otherwise warranted.

(D) Credible evidence considered

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(3) Recordation of date

With respect to aliens who the Attorney General adjusts to the status of an alien lawfully admitted for permanent residence under paragraph (1) or (2), the Attorney General shall record the alien's

lawful admission for permanent residence as of the date of the Attorney General's cancellation of removal under paragraph (1) or (2).

(4) Children of battered aliens and parents of battered alien children

(A) In general

The Attorney General shall grant parole under section 1182(d)(5) of this title to any alien who is a–

(i) child of an alien granted relief under section 1229b(b)(2) or 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996); or

(ii) parent of a child alien granted relief under section 1229b(b)(2) or 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(B) Duration of parole

The grant of parole shall extend from the time of the grant of relief under subsection (b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to the time the application for adjustment of status filed by aliens covered under this paragraph has been finally adjudicated. Applications for adjustment of status filed by aliens covered under this paragraph shall be treated as if the applicants were VAWA self-petitioners. Failure by the alien granted relief under subsection (b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) may result in revocation of parole.

(5) Application of domestic violence waiver authority

The authority provided under section 1227(a)(7) of this title may apply under paragraphs (1)(B), (1)(C), and (2)(A)(iv) in a cancellation of removal and adjustment of status proceeding.

(6) Relatives of trafficking victims

(A) In general

Upon written request by a law enforcement official, the Secretary of Homeland Security may parole under section 1182(d)(5) of this title any alien who is a relative of an alien granted continued presence under section 7105(c)(3)(A) of Title 22, if the relative–

(i) was, on the date on which law enforcement applied for such continued presence–

(I) in the case of an alien granted continued presence who is under 21 years of age, the spouse, child, parent, or unmarried sibling under 18 years of age, of the alien; or

(II) in the case of an alien granted continued presence who is 21 years of age or older, the spouse or child of the alien; or

(ii) is a parent or sibling of the alien who the requesting law enforcement official, in consultation with the Secretary of Homeland Security, as appropriate, determines to be in present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement, irrespective of age.

(B) Duration of parole

(i) In general

The Secretary may extend the parole granted under subparagraph (A) until the final adjudication of the application filed by the principal alien under section 1101(a)(15)(T)(ii) of this title.

(ii) Other limits on duration

If an application described in clause (i) is not filed, the parole granted under subparagraph (A) may extend until the later of–

(I) the date on which the principal alien's authority to remain in the United States under section 7105(c)(3)(A) of this title is terminated; or

(II) the date on which a civil action filed by the principal alien under section 1595 of Title 18, is concluded.

(iii) Due diligence

Failure by the principal alien to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) of subparagraph (A), or in pursuing the civil action described in clause (ii)(II) (as determined by the Secretary of Homeland Security in consultation with the Attorney General), may result in revocation of parole.

(C) Other limitations

A relative may not be granted parole under this paragraph if–

(i) the Secretary of Homeland Security or the Attorney General has reason to believe that the relative was knowingly complicit in the trafficking of an alien permitted to remain in the United States under section 7105(c)(3)(A) of Title 22; or

(ii) the relative is an alien described in paragraph (2) or (3) of section 1182(a) of this title or paragraph (2) or (4) of section 1227(a) of this title.

(c) Aliens ineligible for relief The provisions of subsections (a) and (b)(1) of this section shall not apply to any of the following aliens:

(1) An alien who entered the United States as a crewman subsequent to June 30, 1964.

(2) An alien who was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title, or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 1182(e) of this title.

(3) An alien who–

(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title or has acquired the status of such a nonimmigrant exchange alien after admission other than to receive graduate medical education or training,

(B) is subject to the two-year foreign residence requirement of section 1182(e) of this title, and

(C) has not fulfilled that requirement or received a waiver thereof.

(4) An alien who is inadmissible under section 1182(a)(3) of this title or deportable under section 1227(a)(4) of this title.

(5) An alien who is described in section 1231(b)(3)(B)(i) of this title.

(6) An alien whose removal has previously been cancelled under this section or whose deportation was suspended under section 1254(a) of this title or who has been granted relief under section 1182(c) of this title, as such sections were in effect before September 30, 1996.

(d) Special rules relating to continuous residence or physical presence (1) Termination of continuous period

For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end (A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2) of this section, when the alien is served a notice to appear under section 1229(a) of this title, or (B) when the alien has committed an offense referred to in section 1182(a)(2) of this title that renders the alien inadmissible to the United States under section 1182(a)(2) of this title or removable from the United States under section 1227(a)(2) or 1227(a)(4) of this title, whichever is earliest.

(2) Treatment of certain breaks in presence

An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsections (b)(1) and (b)(2) of this section if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(3) Continuity not required because of honorable service in Armed Forces and presence upon entry into service

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

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

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

(e) Annual limitation (1) Aggregate limitation

Subject to paragraphs (2) and (3), the Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 1254(a) of this title (as in effect before September 30, 1996), of a total of more than 4,000 aliens in any fiscal year. The previous sentence shall apply regardless of when an alien applied for such cancellation and adjustment, or such suspension and adjustment, and whether such an alien had previously applied for suspension of deportation under such section 1254(a) of this title. The numerical limitation under this paragraph shall apply to the aggregate number of decisions in any fiscal year to cancel the removal (and adjust the status) of an alien, or suspend the deportation (and adjust the status) of an alien, under this section or such section 1254(a) of this title.

(2) Fiscal year 1997

For fiscal year 1997, paragraph (1) shall only apply to decisions to cancel the removal of an alien, or suspend the deportation of an alien, made after April 1, 1997. Notwithstanding any other provision of law, the Attorney General may cancel the removal or suspend the deportation, in addition to the normal allotment for fiscal year 1998, of a number of aliens equal to 4,000 less the number of such cancellations of removal and suspensions of deportation granted in fiscal year 1997 after April 1, 1997.

(3) Exception for certain aliens

Paragraph (1) shall not apply to the following:

(A) Aliens described in section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as amended by the Nicaraguan Adjustment and Central American Relief Act).

(B) Aliens in deportation proceedings prior to April 1, 1997, who applied for suspension of deportation under section 1254(a)(3) of this title (as in effect before September 30, 1996).

THREE MAIN REQUIREMENTS The Applicant has been a permanent resident for at least five years. The applicant has spent at least seven continuous years living in the U.S. after having been lawfully admitted The applicant has not been convicted of an aggravated felony

You can apply for LPR Cancellation of Removal under INA § 240(A)(a) if…

A. You obtained LPR status lawfully (not through fraud)

You must not have become an LPR through fraud or mistake. You must not come within certain categories, including persecutors and terrorists.

B. You have not been convicted of an aggravated felony.

The immigration statute designates certain types of crimes as “aggravated felonies.” If the person was convicted of an aggravated felony at any time, it is a bar to LPR cancellation of removal.
If the aggravated felony does not involve drugs, check to see if the person might be eligible for relief under INA § 212(h).6 If the aggravated felony conviction occurred in the 1990’s or earlier, check for eligibility for a waiver under INA § 212(c), discussed below. For other options, see the ILRC Relief Toolkit at www.ilrc.org/chart.

C. You have been an LPR for at least five years.

The applicant must have “been an alien lawfully admitted for permanent residence for not less than 5 years.” INA § 240A(a)(1). The five years of LPR status includes time spent as a conditional permanent resident. Children cannot use their parent’s time, for either the five-year LPR or seven-year continuous residence requirement.
The accrual of five years of LPR status is not subject to the “stop-time” rule set out at INA § 240A(d)(1), discussed below.9 The five years as an LPR continue to accrue through the removal proceedings until there is an administrative denial (meaning throughout the BIA appeal, if there is one).
Example: Maritza was admitted on a border crossing card in 2009, fell out of status, and then adjusted to lawful permanent resident status in 2014. She was convicted of an alleged deportable offense and served with a Notice to Appear in 2017. She was not eligible for LPR cancellation because she lacked the five years as an LPR (although she did have the seven years since

admission in any status, discussed below). In removal proceedings, she contested deportability, lost, and appealed her case to the BIA. In 2019, while the appeal was still pending, she reached the five years of LPR status. The BIA agreed to her request to remand the case to the immigration judge to enable her to apply for LPR cancellation.

D. You have accrued seven years of continuous residence in the United States since admission in any status.

The applicant must have “resided in the United States continuously for 7 years after having been admitted in any status.” INA § 240A(a)(2). As discussed below, a complex “stop-time” provision governs when the seven years cease to accrue based on commission of certain offenses, under INA § 240A(d)(1)(B).

The Stop Time Rule

1. Clock Starts With ANY Admission
2. Clock Stops With Issuance of NTA or Commission of Offense Under INA §212(a)(2) or INA §237(a)(2) or §237(a)(4)

Which kinds of offenses stop the clock?

According to Barton, the clock stops as of the day that the person committed an offense that ultimately resulted in them being rendered inadmissible under (described in) INA § 212(a)(2). This includes:

1. A conviction of, or qualifying admission of committing, a single CIMT, unless it comes within the petty offense or youthful offender exceptions. If the first CIMT comes within one of those exceptions, the second CIMT will stop the clock. See subparts d, f below.
2. A conviction of, or qualifying admission of committing, a controlled substance offense. • This includes a conviction or simply an admission of possessing any amount of marijuana, even if this was permitted under state law.22 While the deportation ground has a statutory exception for possessing 30 grams or less of marijuana, the inadmissibility does not.
3. Conviction of two or more offenses of any kind, other than purely political offenses, with a total sentence imposed of at least five years.
4. Being found to have engaged in prostitution in the last ten years, or coming to the United States to engage in prostitution or commercialized vice.
5. Immigration authorities have reason to believe that the person aided or participated in: • Trafficking in controlled substances (plus certain family members who benefitted from this); • Severe trafficking in persons (plus certain family members who benefitted from this); or • Money laundering.
6. Foreign government officials who committed severe violations of religious freedom.

The Petty Offense and Youthful Offender Exceptions

The petty offense exception to the CIMT inadmissibility ground applies if the person committed just one CIMT, the potential sentence was one year or less, and any sentence imposed was six months or less. A CIMT that comes within the petty offense exception is not “referred to” in § 212(a)(2) and does not stop the clock on the seven years. Matter of Garcia, 25 I&N Dec. 332 (BIA 2010). This is true even if the conviction made the person deportable.

The youthful offender exception to the CIMT inadmissibility ground applies if the person committed just one CIMT; they did this while under the age of 18 but they were convicted as an adult; and the conviction or release from resulting imprisonment occurred at least five years before the current application.

This has the same immigration benefits as the petty offense exception. If a person comes within one of these exceptions, but later is convicted of or admits committing a second CIMT, the clock stops on the date of commission of the second CIMT. *Matter of Deando-Roma,* 23 I&N Dec. 597 (BIA 2003). Example: Fiona was admitted to the United States as a permanent resident in 2009.
In 2013 she was convicted of a CIMT that has a potential sentence of one year. She was sentenced to 10 days in jail. This conviction makes Fiona deportable, because she was convicted of a CIMT with a potential sentence of one year that she committed within 5 years of her admission. It comes within the petty offense exception to the inadmissibility ground.
In 2018, Fiona committed and was convicted of a second CIMT. Did Fiona accrue the seven years residence since admission required for LPR cancellation? Yes. The seven years started with her admission in 2009. The 2013 conviction did not stop the clock because it came within the petty offense exception and thus was not "referred to" in INA § 212(a)(2). *See Matter of Garcia*. Her second CIMT conviction did stop the clock, as of the date she committed that offense in 2018. See Matter of Deando-Roma. But by 2018, she had accrued more than the seven years of residence she needed since 2009.

Conviction for Possessing Any Amount of Marijuana

One or more convictions that arise from a single incident involving possession of 30 grams or less of marijuana for personal use is not a deportable offense, but it is an offense described in § 212(a)(2). A conviction or a qualifying admission of conduct will stop the clock.
Example: LPR Laura was admitted to the United States in 2009, and was convicted of possessing 20 grams of marijuana in 2013. She was convicted of a deportable crime of child abuse in 2019 and placed in removal proceedings. She is applying for LPR cancellation. Does she have the required seven years?
No. The 2013 conviction did not make her deportable, because the deportation ground has an exception for a single incident involving possession of 30 grams or less of marijuana for personal use. However, the inadmissibility grounds at § 212(a)(2) do not have that exception, so the conviction rendered her inadmissible and her clock stopped as of the day she committed the offense. She needs to consider post-conviction relief.

Admitting a CIMT or Drug Offense – Including “Legal” Marijuana – on the Stand or Elsewhere

Even if there is no conviction, a qualifying admission that one committed certain controlled substance offenses (including possession of marijuana) can render the person “admissible” under § 212(a)(2) and stop the clock. In Barton, the Supreme Court abrogated Nguyen v. Sessions, 901 F.3d 1093 (9th Cir. 2018) and held that simply admitting commission of an inadmissible drug offense stopped the seven-year clock.

ICE may try to elicit this admission from your client at the hearing or before. A qualifying admission of a CIMT also will stop the clock, unless it comes within the petty offense exception. Example: Leon was admitted to the United States as an LPR in 2009. He committed and was convicted of CIMT offenses in 2018 and 2019. He was placed in removal proceedings and applied for LPR cancellation. At his cancellation hearing, the ICE attorney asked if he ever had tried marijuana. Leon admitted that he had used it a few times in Colorado in 2015, after it became legal. Does Leon have the required seven years?

ICE will assert that he does not. Although using marijuana was permitted under Colorado law, possessing marijuana is a federal offense. ICE will assert that because Leon has admitted committing a federal drug crime, he is rendered inadmissible under INA § 212(a)(2), and his seven-year clock has stopped as of the date of the admitted conduct in 2014. Because at that time he had only accrued five years since admission, Leon is no longer eligible to apply for cancellation.

Convictions from Before September 30, 1996 (or April

1, 1997) May Not Stop the Clock

In the Ninth Circuit, conviction of an offense before September 30, 1996 (the enactment date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 or IIRIRA34) does not stop the seven-year clock if the person was eligible for relief under INA § 212(c) as of April 1, 1997 (the enactment date of IIRIRA). See Sinotes-Cruz v. Gonzalez, 468 F.3d 1190, 1203 (9th Cir. 2006).35

The Sinotes-Cruz requirement of being “eligible” for relief as of April 1, 1997 should mean that the person had a conviction that qualified for INA § 212(c) relief, not that the person already had accrued the seven years required for INA § 212(c). See also Valencia-Alvarez v. Gonzales, 469 F.3d 1319, 1329 (9th Cir. 2006) (the clock did stop because the person never was eligible for relief under INA § 212(c)).

Courts are split on this issue: the BIA and some courts rule against any limit to stopping the clock based on IIRIRA, while the Fourth and Seventh Circuit provide a limit but under somewhat different standards

Motions

Motions in EOIR, Immigration Court.

Motion to Continue

Regulations

Two regulations authorize continuances in removal cases: 8 C.F.R. § 1003.29, which permits IJs to continue a hearing for good cause shown, and 8 C.F.R. § 1240.6, which permits IJs to grant a "reasonable adjournment at his or her own instance" or for good cause shown by a requesting party. Though the regulations do not provide guidance as to what factors constitute "good cause" for a continuance, the BIA has laid out specific factors that an IJ must consider in evaluating whether "good cause" exists where the respondent is pursuing collateral relief.

Motion for Continuance Practice Advisory

Matter of L-A-B-R- and continuances to pursue collateral matters On August 16, 2018, Attorney General Sessions issued a decision in Matter of L-A-B-R-, a case addressing when "good cause" exists to grant a continuance for a respondent to pursue a collateral proceeding.15 The decision does not overturn previous case law establishing a multifactor test for determining "good cause," 16 but cautions against "unjustified continuances," describing them as a "significant and recurring problem" and the L-A-B-R- decision as necessary guidance to protect against "abuse" of continuances.17 L-A-B-R emphasizes the holding in Matter of Hashmi, that an immigration judge should rely primarily on two factors in making a good cause determination:1) the likelihood the respondent will receive the collateral relief sought, and 2) whether the relief will materially affect the outcome of the removal proceedings."18 Other factors to be considered in a decision to grant or deny a motion for continuance include:1) the respondent's diligence in seeking collateral relief; 2) DHS's position on the motion; 3) administrative efficiency; 4) the length of continuance requested; 5) the number of hearings held and continuances granted previously; and 6) the timing

of the continuance motion. 19 Though the immigration judge must use discretion in balancing the relevant factors supporting a continuance grant, L-A-B-R states that due diligence may be absent when the respondent intends to pursue collateral relief at a future date or “appears to have unreasonably delayed filing for collateral relief” until just prior to a hearing.20 If there was a diligent good faith effort to proceed, however, the respondent will meet this prong.21 In addition, under L-A-B-R- DHS’ decision to consent, oppose or fail to take a position on a continuance motion should not be dispositive.22 Citing the 2017 EOIR memo, L-A-B-R emphasizes efficiency in the good cause analysis. Immigration judges’ interpretation of this part of the decision will be critical in how L-A-B-R

8 CFR 1003.18

DHS' Burden to Prove Alienage

The full text of *Rosa v. Bondi* can be found here:

https://www.ca1.uscourts.gov/sites/ca1/files/opnfiles/24-1240P-01A.pdf

PROCEDURAL

Notice to Appear

Pleadings

Motion Practice

Objections

Timely Objections

Time-Barred Relief or Motions

Claim-Processing Rule

PROCEDURAL

Objection to a Noncompliant NTA

The Board has held in *Matter of Fernandes*, 28 I&N Dec. 605, 610–11 (BIA 2022), that an objection to a noncompliant notice to appear will generally be considered timely if raised *prior to the close of pleadings.* That decision was not a change in law, and thus Matter of Fernandes applies retroactively.

Our guidance in Matter of Fernandes as to the timeliness of the claim-processing rule objection to a noncompliant notice to appear applies retroactively. The respondents did not object to the missing information in their notices to appear before the close of pleadings and have not otherwise demonstrated that their objection should be considered timely. Thus,

> they have forfeited their objection. We will sustain DHS’ appeal, vacate the Immigration Judge’s decision, and remand for further proceedings

Claim-Processing Rule

PROCEDURAL

Remedy for Putative NTA

The Board of Immigration Appeals has determined that Homeland Security can “cure” a defective Notice to Appear (NTA) by moving the Immigration Judge to make written amendments to the NTA by adding the date and time of a future hearing.

The full text of *Matter of R-T-P-* can be found here:

https://www.justice.gov/d9/2024-09/4079.pdf