



HOW TO APPLY FOR THREE OR TEN YEAR CANCELLATION OF REMOVAL

WARNING: This booklet provides general information about immigration law and does not cover individual cases. Immigration law changes often, and you should try to consult with an immigration attorney or legal agency to get the most recent information. Also, you can represent yourself in immigration proceedings, but it is always better to get help from a lawyer or legal agency if possible.

NOTE: As of March 1, 2003, the Immigration and Naturalization Service (INS) is now part of the **Department of Homeland Security (DHS)**. Immigration enforcement functions, including immigration detention and removal cases, are handled by **U.S. Immigration and Customs Enforcement (ICE)**. **U.S. Citizenship and Immigration Services (USCIS)** will handle other immigration matters, including citizenship, asylum and refugee services.

• GENERAL INFORMATION

• **Who wrote this booklet?**

This booklet was prepared by the Florence Immigrant and Refugee Rights Project, a non-profit law office that supports human and civil rights. The money to pay for this booklet came from the Ford Foundation. This booklet was updated in November, 2007 with money from the Executive Office for Immigration Review.

This booklet was not prepared by DHS, or by any other part of the United States government. The booklet contains information and advice based on the Florence Project's many years of experience assisting people in immigration detention. Immigration law, unfortunately, is not always clear, and our understanding of the law may not always be the same as DHS's viewpoint. We believe that the information is correct and helpful, but the fact that this booklet is made available in the libraries of detention centers for the use of detainees does not mean that DHS or any other branch of the U.S. government agrees with what it says.

• **Who was this booklet written for?**

This booklet is for individuals who are in the custody of DHS and who have been placed in removal proceedings. "Removal" is what used to be called "deportation." This booklet is not applicable to persons who are in deportation or exclusion proceedings. If you were placed in immigration proceedings after April 1, 1997, you are probably in "removal" proceedings. You can tell what type of proceedings you are in by the document you should

have received from DHS or the former INS that has the charges against you (or reasons you are removable from the U.S.).

- If the document is labeled “**Notice to Appear,**” (Form I-862) you are in removal proceedings.
- If the document is labeled “**Order to Show Cause,**” (Form I-221) you are in deportation proceedings.
- If the document is numbered at the bottom, “**Form I-110**” and “**Form I-122**” you are in **exclusion** proceedings.

If you are in deportation or exclusion proceedings, the requirements for qualifying for voluntary departure may be different, and you should consult with an attorney or a legal agency or ask the judge if you qualify for voluntary departure.

If you are in “deportation” or “exclusion” proceedings,
 **this booklet does not apply to you and you should consult with an attorney if possible.**

- **What are Three and Ten Year Cancellation?**

There are two types of Cancellation of Removal for people who are not legal permanent residents. They are both a way of avoiding removal and getting permanent residence (a "green card" or "mica") in the United States. The first type of Cancellation of Removal is for certain people who have been in the United States for at least ten years, even illegally. We will call this type of Cancellation of Removal "Ten Year Cancellation."

The other type of Cancellation of Removal is for certain people who have lived in the United States at least three years, even illegally. We will call this type of Cancellation of Removal "Three Year Cancellation." We will explain both types of Cancellation in more detail below.

- **How do I use this booklet?**

First, read the whole booklet through to make sure you can apply for either type of Cancellation, and to learn what you need to do to get ready for your hearing. It is up to YOU to get together the papers that you need and to prepare yourself and others (if possible) to talk to the judge at your hearing. If you do not prepare for your hearing, you will probably lose.

This booklet has sample legal forms you will need to give the Court and a worksheet to help you identify evidence you can get to win your case. Once you have turned in the forms, you should collect all the evidence you can (using the worksheet), talk with others about what they will say to the judge at your hearing (if you can get others to come), and decide what you will say. Prepare carefully, and you will be ready for your hearing.

• What if I can't stand being in detention any more? Can't I just accept removal and apply for cancellation when I am out?

Being locked up for a long time is difficult and frustrating. If you do not have a bond or cannot afford to pay your bond, you may be tempted just to give up and accept removal or ask for voluntary departure so you can get out of custody.

But if you leave the U.S. under an order of removal or voluntary departure, you lose your time here in the U.S. and you give up your chance to apply for Cancellation. **So, if you qualify for Cancellation, you must fight your case now!** You cannot apply for Cancellation after leaving the country.

Also, there may be other ways for you to avoid being removed from the U.S. besides Three or Ten Year Cancellation. If you are a legal permanent resident, you should read the booklet entitled "How to Apply for Cancellation for Certain Legal Permanent Residents." If you are afraid to return to your country, you should read the booklet entitled, "How to Apply for Asylum and Withholding of Removal." There is also a law called the Nicaraguan Adjustment and Central American Relief Act of 1997, which is often referred to as "NACARA," and another law for Haitians, called the Haitian Refugee Immigration Fairness Act of 1998 which is also known as "HRIFA." Before we discuss Three and Ten Year Cancellation in detail, we want to give you a brief explanation of who might possibly qualify to stay in the United States legally under these laws.

• If you are from Nicaragua, Cuba, Guatemala, El Salvador, certain countries in Eastern Europe, or Haiti, there may be a way for you to avoid removal from the U.S.

Toward the end of 1997, Congress passed two laws. Under these laws, certain people from the above countries could get lawful permanent resident status and stay in the United States. The requirements are different depending on what country you are from. If you fall into any of the following categories, you should ask the Immigration Judge or DHS to determine whether you can stay in the United States legally under NACARA or the Haitian Refugee Immigration Fairness Act. If you are the spouse or son or daughter of someone who qualified for relief under these new laws, you might qualify to stay in the United States. You should ask the judge or DHS.

NACARA § 202 Relief for Cubans and Nicaraguans

The deadline for applying for this type of NACARA relief for Cubans and Nicaraguans was March 31, 2000. However, under a law called the Violence Against Women Act (VAWA) 2005, Nicaraguan and Cuban spouses (husband or wife) and children who were abused (battered or suffered extreme cruelty) by a spouse or parent who either was eligible for NACARA § 202 or actually became a lawful permanent resident under NACARA § 202 may apply for lawful permanent resident status under NACARA § 202. However you must submit your application by July 2007 to be eligible.

For an abused spouse or child (including son or daughter) to apply under this law, the abusive spouse or parent must have been eligible under NACARA § 202 and met the following requirements:

1. Native or citizen of Nicaragua or Cuba;
2. Present in the United States since December 1, 1995; and
3. Admissible to the United States (did not have certain types of crimes that kept them from becoming a lawful permanent resident).

Absences from the United States for a total of 180 days in a row after December 1, 1995, would disqualify a person from NACARA § 202 relief. If you are not sure if you might qualify for NACARA § 202 under VAWA 2005 you should ask the judge or DHS.

NACARA § 203 Relief for Guatemalans, El Salvadorans & Eastern Europeans

Under NACARA § 203, you may qualify to apply for a defense to removal from the United States called Cancellation of Removal if you meet the following requirements. If you qualify and win this type of defense, you will become a lawful permanent resident of the United States. In other words, you will get a green card.

◇ **For Guatemalans:**

1. You are from Guatemala;
2. You applied for asylum on or **before April 1, 1990**; or
3. You **came to the United States on or before October 1, 1990**; and
4. You registered for **ABC** class benefits **on or before December 31, 1991** (ABC registrants are not eligible if they were apprehended upon entry after Dec. 19, 1990);

AND

5. **You have been in the United States continuously for at least 7 years**;
6. You have **good moral character** (this means you have not been convicted of certain crimes or spent 6 months or more in jail); **and**
7. You have not been convicted of an aggravated felony (if you have certain other crimes or immigration offenses that make you deportable or inadmissible to the United States you may still be eligible if you meet additional requirements); **and**
8. You would suffer **extreme hardship** if you were removed from the U.S. or your spouse, parent or children who are lawful permanent residents or U.S. citizens would suffer such hardship if you were removed from the U.S.

If you meet the above requirements but have criminal convictions, you should still bring up NACARA with the judge to see if you are eligible. Also, if you are not sure whether you

applied for asylum by the deadline or whether you are an ABC class member, you should ask the judge if you qualify to apply to stay in the United States under NACARA.

◇ **For El Salvadorans:**

1. You are from El Salvador;
2. You applied for asylum on or before April 1, 1990; or
3. You **came to the United States on or before September 19, 1990**; and you registered for ABC class benefits on or before October 31, 1991; or you registered for temporary protected status (“TPS”) on or before October 31, 1991; and
4. You have been **in the U.S.** continuously for at least seven years; and
5. You have **good moral character** (this means you have not been convicted of certain crimes or spent 6 months or more in jail); and
6. You have not been convicted of an aggravated felony (if you have certain other crimes or immigration offenses that make you deportable or inadmissible to the United States, you may still be eligible if you meet additional requirements); **and**
7. You would suffer **extreme hardship** if you were removed from the U.S. or your spouse, parent or children who are lawful permanent residents or U.S. citizens would suffer such hardship if you were removed from the U.S.

If you meet the above requirements but have criminal convictions, you should still bring up NACARA with the judge to see if you are eligible. If you are not sure whether you applied for asylum by the deadline, or whether you are an ABC class member or have TPS status, you should ask the judge if you qualify to apply to stay in the United States under NACARA.

◇ **For Eastern Europeans:**

1. You are a national of the Soviet Union, Russia, any Republic of the former Soviet Union, Estonia, Latvia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia or any state of the former Yugoslavia;
2. You **entered the United States on or before December 31, 1990**;
3. You applied for asylum on or before December 31, 1991;
4. You have been **in the U.S.** continuously for at least seven years; and
5. You have **good moral character** (this means you have not been convicted of certain crimes or spent 6 months or more in jail).
6. You have not been convicted of an aggravated felony (if you have certain other crimes or immigration offenses that make you deportable or inadmissible to the United States, you may still be eligible if you meet additional requirements); and
7. You would suffer **extreme hardship** if you were removed from the U.S. or your spouse, parent or children who are lawful permanent residents or U.S. citizens

would suffer such hardship if you were removed from the U.S.

If you meet the above requirements but have criminal convictions, you should still bring up NACARA with the judge to see if you are eligible. Also, if you are not sure whether you applied for asylum by the deadline, you should ask the judge if you qualify to apply to stay in the United States under NACARA.

If you were the spouse or child of a Salvadoran, Guatemalan or Eastern European who received suspension of deportation or cancellation of removal under NACARA at the time the person received NACARA relief, you may be eligible to apply for NACARA relief as a beneficiary as long as the spousal or parent relationship still exists. You may also be eligible for NACARA if you are the unmarried son or daughter of a parent who received NACARA relief and you entered the U.S. on or before October 1, 1990.

The continuous physical presence requirements under NACARA do not apply if you enlisted in the U.S. armed forces while in the U.S., served 24 months in active duty status and were discharged honorably.

Relief for Haitians

In October 1998, Congress passed the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) that gave certain Haitians a way for to stay in the U.S. and become lawful permanent residents. The deadline for applying for this type of relief for Haitians was March 31, 2000. However, under VAWA 2005, spouses (husband or wife) and children (including sons or daughters) who were abused (battered or suffered extreme cruelty) by a spouse or parent who either was eligible for HRIFA or actually became a lawful permanent resident under HRIFA still may apply for lawful permanent resident status under HRIFA.

For an abused spouse or child (including unmarried son or daughter over 21 years of age) to apply under this law, the abusive spouse or parent must have been eligible under HRIFA and met the following requirements. The abusive spouse or parent:

1. Was physically in the United States on December 31, 1995; and
2. Was physically present in the United States continuously since at least December 31, 1995 and had not been absent from the U.S. for more than 180 days total since December 31, 1995; and
3. Filed for asylum and was present in the United States before December 31, 1995; and
4. Was paroled into the United States prior to December 31, 1995 and identified as having a credible fear of returning to Haiti or was paroled for emergency reasons or because it was in the public's interest; OR
5. Upon arrival in the United States:
 - was under 21 years of age and not married AND arrived without parents in the

- U.S. and has remained in the U.S. without parents since arrival; or
- became an orphan after coming to the United States; or
- was abandoned by parents prior to April 1, 1998 and is still abandoned.

Even if you were not abused by your HRIFA eligible spouse or parent, you still may qualify for HRIFA if you are the spouse or child of a person who received HRIFA relief and you meet the following requirements:

1. You are a Haitian national; and
2. You are in the United States at the time the application for lawful permanent residence is filed.

In addition, if you are over 21 years old, unmarried and your parent obtained HRIFA relief, you may be eligible for HRIFA relief if you can show you have been physically present in the U.S. continuously since at least December 31, 1995.

If you have committed a crime, you may or may not qualify to get lawful permanent residency. For some crimes, there may be a waiver possible, such as one called 212(h). If you meet all of the above requirements, you should tell the Immigration Judge or DHS that you think you qualify to get lawful permanent residency under the Haitian Refugee Immigration Fairness Act of 1998. If you have a crime and you are not sure whether you qualify, you should ask the Immigration Judge or DHS.

We do not discuss the process for applying for lawful permanent residency under this law in great detail. Ask the Immigration Judge, DHS, or an attorney/legal advocate how to apply if you think you qualify.

- **What are the consequences if I decide not to apply for Cancellation or another defense?**

If you come back to the U.S. illegally after removal or voluntary departure, it is a crime. You could be prosecuted and placed in jail. Also, if you return illegally after removal or **even after voluntary departure**, you may never be able to attain legal status in the U.S. Before you give up your right to apply for Cancellation or another defense to removal, think about the life you would be leaving behind and what your life would be like after being removed. Make sure your decision is one you will be able to live with forever.

- **WHAT ARE THE BASIC REQUIREMENTS FOR THREE AND TEN YEAR CANCELLATION?**

- **Who can get Ten Year Cancellation?**

To get 10 Year Cancellation, basically, you must show:

1. You have lived in the U.S. for at least **10 years** in a row;

2. You have been a person of "**good moral character**" for at least those 10 years;
3. You have not been convicted of certain types of crimes (explained below);
4. Your removal from the U.S. would be exceptionally and **extremely hard** on your U.S. citizen or legal permanent resident husband, wife, parent, or unmarried child/children under age 21;
5. The sympathetic points in your case outweigh the bad points in your case; and
6. You have not had a previous immigration case and won "Cancellation," a "Section 212(c) waiver," or "Suspension of Deportation."

Each of these requirements is discussed in more detail later in this booklet.

- **Who can get Three Year Cancellation?**

To get 3 Year Cancellation (also referred to as VAWA cancellation), basically, you must show:

1. You or your child (the "child" may be an adult) are the **victim of domestic violence by a U.S. citizen or legal permanent resident spouse or parent**. The spouse or parent need not still be a U.S. citizen or lawful permanent resident at the time you apply for 3 Year Cancellation, nor do you still have to be married to the abuser to apply. This means:
 - You have been abused physically or psychologically by your U.S. citizen or lawful permanent resident spouse or parent either inside or outside the U.S; or
 - The other parent of your child is a U.S. citizen or lawful permanent resident who has abused your child physically or psychologically whether inside or outside the U.S.; and
2. You have maintained continuous physical presence in the U.S. for at least 3 years immediately preceding the filing of the Cancellation application; and
3. You were a person of "**good moral character**" during those **3 years**; and
4. You have not committed **certain types of crimes or immigration offenses**;

AND

5. You or your child would suffer extreme hardship if removed from the United States. In other words:
 - You are a parent whose removal would result in extreme hardship to you or your child; or
 - You are a child whose removal would result in extreme hardship to yourself or your parent.
- **Is there any other way to get a green card from the judge if I meet the above criteria?**

People who are spouses and children of abusive U.S. citizens or legal permanent residents who meet the five factors above may be able to file applications with DHS called “self-petitions.” (“Self-petition” is when someone goes to DHS before ever being arrested by DHS and asks for legal status for spouses and children of abusive citizens or legal permanent residents.) If DHS approves the petition, the judge can give the person a green card without having to consider the Three Year Cancellation application. Ask the judge about this if your spouse or parent is a U.S. citizen or permanent resident.

- **WHAT DO THE ABOVE BASIC REQUIREMENTS MEAN?**

⇒ Three or Ten Years of Continuous Residence

You must prove that you have lived in the U.S. for either three or ten years in a row, depending on which type of Cancellation you are requesting. For Ten Year Cancellation, the ten years have to come before DHS gives you and the Court a **Notice to Appear (“NTA”)** or before commission of the offense that makes you removable or inadmissible. For Three Year Cancellation, you must have three years in the United States at the time you apply for Three Year Cancellation.

An NTA is a form that lists the reasons why you can be removed from the United States. You cannot count the time after the DHS gives you this piece of paper toward the ten year residency requirement. This is true even if you are not in Immigration custody when DHS gives you the NTA. For Three Year Cancellation, however, you can count the time up until you file your Cancellation application.

If you have committed certain crimes, the crime will cut your time in the United States. In other words, you must have the required three or ten years before the date you committed the crime. The crimes that may cut your time also keep you from being eligible even to apply for the relief. Further on in this booklet we will discuss the crimes that make you ineligible to apply for three or ten year cancellation.

- **Do trips outside of the U.S. cut off my time of living in the U.S. continuously?**

Sometimes trips outside the U.S. will cut your time. You will not be able to show that you have lived in the U.S. for three or ten continuous years if during the required time period, you were outside of the U.S. for:

- | |
|---|
| <ol style="list-style-type: none">1. a <u>continuous</u> period of 91 days or more (this means you left and were gone for 91 days or more in a row); or2. an <u>aggregate</u> period of 181 days or more (this means that if you count up all the days, whether all in a row or not, that you have been outside the U.S., including short trips, they would add up to 181 days or more). |
|---|

NOTE: For Three Year Cancellation, if you can show that your absence from the United

States was connected to the abuse you suffered, those absences might not count against you.

- **If I have lived in the U.S. for the required three or ten years but have long absences from the country, is there any way I can still apply for Cancellation?**

The only time someone with long absences can request Cancellation is if all of the following are true:

- you served on active duty in the U.S. Armed Forces for at least 24 months;
- you entered the Service while in the United States; and
- if you left the service, you left honorably.

- **If I meet the three or ten year requirement, what else must I show?**

⇒ **Good Moral Character and Clean Criminal History**

As mentioned above, to qualify for either type of Cancellation, you must

- be a person of "**good moral character**" during the last three or ten years, depending on whether you are applying for Three Year Cancellation or Ten Year Cancellation; **and**
- you cannot have been convicted of certain crimes.
- **What does "good moral character" mean?**

Proving "good moral character" does not mean just proving to the judge that you are a good person. "Good moral character" has its own definition in immigration law. Sometimes a person who has never been arrested still may not have "good moral character." For example, any of the following activities, occurring within the three or ten year time period, will keep you from having good moral character and you will not be able to apply for Three or Ten Year Cancellation:

NOTE: if you are applying for Three Year Cancellation and can show that the offense or habit that normally would mean you do not have good moral character was connected to the abuse you suffered, you might still be eligible for Three Year Cancellation.

If you have done any of the following activities, you do not have good moral character:

1. you have been a **habitual drunkard**;
2. most of your **income is from illegal gambling** activities;
3. you gave **false testimony to get immigration benefits**;
4. you **knowingly helped another alien to enter** or to try to enter the U.S. illegally;

In addition to the above activities, a person who has certain criminal convictions will not

have good moral character. If you have not done any of the above activities and you do not have criminal convictions, you can skip to the section on how to apply for cancellation. For those of you who have been arrested and gone to criminal court for something, check this next box to see if you qualify to apply for Three or Ten Year Cancellation.:

If you have any of the following criminal convictions, you do not have good moral character:

- you have spent a total of **six months or more in jail or prison for criminal convictions;**
- you have **convictions for 2 or more gambling offenses** committed during the three or ten year period;
- you have been **convicted of an aggravated felony** at any time; or
- you have been **convicted or admit committing any of the following offenses during the last three or ten years**, depending on which time requirement you are trying to meet: (NOTE: Admitting commission of an offense means that you admitted to a court that you did the crime, even if you did not get convicted of it)
 - crime of moral turpitude** (there might be an exception for one minor offense, see discussion below)
 - drug offense** (you might still qualify for Cancellation if your crime is one possession of 30 grams or less of marijuana, you should ask the judge);
 - 2 or more offenses with aggregate sentences to confinement actually imposed of 5 years or more;**
 - drug trafficking;**
 - prostitution;** or
 - commercialized vice.**

• **What is a crime of moral turpitude?**

Crimes of "moral turpitude" include many different types of crimes, both felonies and misdemeanors. Generally, a crime involves "moral turpitude" if it involves an intent to steal or get something by fraud, or if it was done carelessly or on purpose and someone was or could have been greatly harmed. Acts considered "lewd" or "perverted," such as sexual offenses, are often "crimes involving moral turpitude," too. Please note that if you have only one crime of moral turpitude and it was a misdemeanor, you might still be able to qualify for Cancellation. Ask the judge whether your crime falls within what is called "the petty offense exception."

• **What is an "aggravated felony?"**

- Many crimes can be aggravated felonies. The crime does not have to be a felony in the state where you were convicted. Often misdemeanors and minor crimes are considered aggravated felonies under immigration law. Immigration law is not the same as criminal law. Under immigration law, **you will not be eligible for Three or Ten Year Cancellation if you have any of the crimes considered to be an aggravated felony in**

the following list (this list includes most but not all aggravated felonies; the complete list can be found in Title 8 section 1101(a)(43) of the U.S. Code or section 101(a)(43) of the Immigration and Nationality Act):

SOME CRIMES THAT ARE AGGRAVATED FELONIES

- **Certain drug crimes or trafficking in firearms, explosive devices or drugs. Drug trafficking includes:**
 - **transportation, distribution, importation;**
 - **sale and possession for sale;**
 - **certain cocaine possession offenses** (depending on what circuit court of appeals jurisdiction your case is in);
 - **certain simple drug possession offenses**
- **Certain crimes for which you received a sentence of one year or more, (whether you served time or not) including any of these:**
 - **theft** (including receipt of stolen property)
 - **burglary**
 - **a crime of violence** (including anything with a risk that force will be used against a person or property, even if no force was used)
 - **document fraud** (including possessing, using, or making false papers – unless it was a first offense and you did it only to help your husband, wife, child, or parent)
 - **obstruction of justice, perjury, bribing a witness**
 - **commercial bribery, counterfeiting, forgery, trafficking in vehicles with altered identification numbers**
- **rape**
- **sexual abuse of a minor**
- **murder**
- **firearms offenses**, including possession of prohibited firearms
- **gambling offenses**, for which a term of imprisonment of one year or longer *may* be imposed
- **felony alien smuggling** (unless it was your first alien smuggling crime and you were helping only your husband, wife, child, or parent)
- **fraud or income tax evasion**, if the victim lost over \$10,000
- **failure to appear** if you were convicted of (1) missing a court date on a felony charge for which you could have been sentenced to at least 2 years (even if you were not sentenced to 2 years) or (2) not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years
- **money laundering** (of over \$10,000)

You are also an aggravated felon if your conviction was for **attempt or conspiracy** to commit one of the crimes listed in the box above.

If you have been convicted of an aggravated felony and can get assistance from an immigration lawyer, ask your lawyer to review your conviction carefully. Sometimes an immigration lawyer has an argument that your conviction is not an aggravated felony. Also, in some cases, a criminal defense lawyer might be able to reopen your conviction to change the sentence or the nature of your conviction.

It is difficult to reopen criminal cases once you have been convicted of a crime and only certain ways of changing your conviction in criminal court will change your conviction for immigration purposes. DHS may oppose a change to your conviction or sentence if the change is made only to avoid being removed from the United States. To find out more about this, you will need to talk to an experienced immigration lawyer.

- **Are there any other offenses that will make me ineligible for either type of Cancellation?**

Yes, but the crimes which keep you from applying for Ten Year Cancellation are different than the crimes which keep you from applying for Three Year Cancellation.

You cannot apply for Ten Year Cancellation if you have been convicted of any of the following crimes at any time:

- 1. High speed flight from an immigration checkpoint;**
- 2. Firearm offense;**
- 3. Espionage, sabotage, treason for which sentenced to five years;**
- 4. Document fraud;**
- 5. False claim to U.S. citizenship;**
- 6. Domestic violence;**
- 7. Stalking;**
- 8. Child abuse, neglect, or abandonment;**
- 9. Crime of moral turpitude (discussed above);**
- 10. Two crimes of moral turpitude;**
- 11. Drug offense (except one offense for possession of marijuana less than 30 grams);**
- 12. Drug trafficking;**
- 13. Two or more crimes with aggregate sentences to confinement of 5 years or more;**
- 14. Prostitution or procuring prostitution (hiring prostitutes for someone else); or**
- 15. Serious offense for which you received immunity from criminal prosecution.**

There is a waiver for persons with convictions under 237(a)(2)(E) (domestic violence, stalking) if you were not the main person responsible for the violence, you acted in self defense, the crime did not cause serious injury and there was a connection between the

violation and the abuse.

Also, you cannot apply for Three Year Cancellation if at any time you:

- 1. Have been convicted of a crime of moral turpitude (discussed above.) (If you have only one offense, you might qualify for the “petty offense” exception—ask the Immigration Judge);**
- 2. Have admitted committing or have a conviction for a drug offense (except one offense for possession of marijuana less than 30 grams);**
- 3. Have been convicted of two or more crimes and sentenced in the aggregate to 5 years or more of jail or prison;**
- 4. Have engaged in activities that give the Attorney General reason to believe you are a drug trafficker;**
- 5. Have engaged in certain activities related to prostitution;**
- 6. Have engaged in activities that give the Attorney General reason to believe you have engaged in a severe form of trafficking in persons; or**
- 7. Have engaged in activities that give the Attorney General reason to believe you have engaged in money laundering.**

See INA § 212(a)(2); 212(a)(3)

You also cannot apply for Three Year Cancellation if you entered the U.S. lawfully or have at some point had lawful status in the United States and after that:

(a) you have been a drug abuser or addict,

(b) you violated a protection order by threatening violence, harassing, or injuring the person protected by the order (The same waiver mentioned above is available under Three Year Cancellation if you are deportable under 237(a)(2)(E)(domestic violence, stalking, violation of protective order)), or

(c) you have been convicted of:

1. Crime of moral turpitude within 5 years of date of lawful admission into U.S. or into a lawful status, where a sentence of a year or longer may be imposed;
2. Two crimes of moral turpitude;
3. Drug offense (except one offense for possession of marijuana less than 30 grams);
4. High speed flight from an immigration checkpoint;
5. Firearm offense;
6. Espionage, sabotage, or treason for which a sentence of five years may be imposed;
7. Document fraud;
8. Domestic violence;
9. Stalking;
10. Child abuse, neglect, or abandonment.

You also cannot apply for Three Year Cancellation if you entered the U.S. lawfully or have at some point had lawful status in the United States and after that you:

1. Failed to comply with immigration law requiring you to let the DHS know your change of address within 10 days of moving unless such failure was reasonably excusable or not willful;
 2. Were convicted of certain offenses related to misuse of visas, permits, and other entry documents;
 3. Made a false claim to U.S. citizenship for the purpose of gaining an immigration benefit; or
 4. Engaged in marriage fraud to obtain a visa or other immigration documentation.
- **Are there other reasons I may not qualify for either Three Year or Ten Year Cancellation?**

Yes. You cannot apply for either **Three or Ten Year Cancellation** if the Attorney General has reason to believe you have done **any of the following activities**:

- Activities related to **spying**;
- Other **activity which endangers public safety or national security** or has the purpose of overthrowing the U.S. Government by force or other unlawful means; or
- **Terrorist activities**; or
- **Membership in a Communist or totalitarian party**; or
- **Participated in Nazi persecution, genocide or torture.**

Also, you cannot apply for **Ten Year Cancellation** if:

1. You **participated in the persecution of another** on account of his or her race, religion, nationality or his political opinion or her social group; or
2. You **entered the United States as a crewman** after June 30, 1964;
3. You were admitted to the United States as a **nonimmigrant exchange alien** to receive **graduate medical education or training**; or
4. You were admitted to the U.S. as a **nonimmigrant exchange alien** to receive **other than medical graduate training** and **have not fulfilled the two-year foreign residence** requirement, if applicable.

- **HOW DO I APPLY FOR 3 OR 10 YEAR CANCELLATION?**

Your removal case basically has two parts. First, the Immigration Judge will decide whether the charges against you are true and, if so, whether you can be removed from the United States. You can admit to the charges or make the government prove them. To make the government prove the charges, either deny them or say "I do not admit the charges and I do not deny them."

Be very careful about the date that the government says you entered the U.S. The government may have written down the last time you crossed the border, which might be more recent than when you first came to live in the United States. If you admit to the last date you crossed the border and you really began living in the U.S. before then, the Immigration Judge might think you do not have the three or ten years you need. Be sure to tell the Immigration Judge the date that you arrived in the U.S. and started living here.

When the judge asks if you entered the U.S. on a certain date,



BE CAREFUL!

tell the judge the date that you actually began living in the U.S., even if you have left and reentered since then.

If the Immigration Judge decides that you are not a U.S. citizen and that you can be removed from the United States (for example, because you entered the U.S. illegally), that ends the first part of your case. Then, if you think you may qualify for Three or Ten Year Cancellation, you should tell the Immigration Judge you want to apply.

That starts the second part of your case, when you actually apply for Three or Ten Year Cancellation. To apply, you have to fill out some forms and have an individual hearing with the Immigration Judge. It may be weeks or even months before your individual hearing, depending on the Court's schedule and whether you are detained or not.

• WHAT FORMS DO I FILL OUT, AND HOW?

To apply for Three or Ten Year Cancellation, you will need to:



Fill out, copy, and file forms (before your hearing).

• **What forms are required?**

There are six things you need to file with the Court and DHS:

Forms and Other Items Needed to Apply for Cancellation

1. **Cancellation application form (E-42B):** Original to Court, copy to DHS.
2. **\$100 Fee or Affidavit for a Fee Waiver:** Original Fee Waiver form or proof of payment to Court, copy or fee to DHS.
3. **Two Photos (if detained, ask DHS about getting photos):** One to Court, one to DHS.
4. **Biographic Information Form (G-325A):** Original to DHS, copy to Court.
5. **Biometrics fee receipt (if detained, ask DHS):** Follow DHS Pre-filing instructions to file your application. Provide a copy of the fee receipt to Court and DHS.
6. **Certificate of Service** Original to Court, copy to DHS.

The judge and DHS should give you the forms and filing instructions you need. When filling out the forms, use a typewriter or a pen. DHS is required to make pens or a typewriter available to you so that you can prepare documents for court. Do not use pencil.

If there is not enough room on the forms for you to answer the questions completely, finish your answers on another piece of paper. At the top, put "Continuation of Form .(#).. " and put the form number (for example, EOIR-42B). Put the question number you are answering next to your answer. Also, make sure you print your name and immigration identification number (also called your "A number," because it starts with the letter "A") on every paper you give to the Court. **Also, make sure you sign and date every sheet of paper that is a continuation of your application.** This rule does not apply to letters and other evidence you may submit with your application. Staple securely all attachments.

• Should I make copies of these forms after I fill them out?

Make (or ask an officer to make) three photocopies of everything you turn in to the Court. One copy is for the ICE attorney, one copy is to be sent to the USCIS as directed in the DHS Pre-filing Instructions, and the original copy is for the Immigration Judge, depending on the type of form. The other copy is for you.

Preparing Immigration Forms

- * **Always use a pen or typewriter;**
- * **Only use English;**
- * **Keep a copy of everything for yourself.**

• **Who do I give these forms to?**

For the most part, you give (or mail) the originals to the Immigration Judge, and you give (or mail) a copy to the ICE attorney of everything you give to the judge. A third copy is sent to the USCIS, as directed in the DHS Pre-filing Instructions you received from the ICE attorney. However, the original of the Biographic Information Form G-325A goes to the ICE attorney and a copy to the Immigration Judge. A copy of the USCIS Application Support Center notice of fee receipt and biometrics appointment notice goes to the Court and to the ICE attorney. (Remember you should only provide copies of your identification documents (passport, or birth certificate) or other important personal documents (marriage license or personal photographs) because it can be very difficult to later retrieve the original documents from the Immigration Judge or DHS.)

• **How do I answer the questions on these forms?**

You should answer the questions truthfully. If you are not sure how to answer, **do not guess**. Instead, say that you are not sure. This is important because if you provide the wrong information, the Immigration Judge may decide that you are a dishonest person and deny your application. We discuss each required form in more detail below.

1. The Cancellation Application Form (Form EOIR-42B)

This (the Form EOIR 42B) is the main application form for both Three Year and Ten Year Cancellation. It is an 8-page form with 64 questions. At the top, it says, "Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents." We do not have room to explain all of the questions. But, we explain below how to answer some of them. Make sure not to leave any questions blank. If a question does not apply to you, write "not applicable."

Be very careful about what you put on the form. It is a crime to lie on purpose about facts important to your claim. If you lie on the form, you could be fined up to \$250,000 or put in prison for up to 10 years. Also, the Immigration Judge may deny your application for Cancellation.

IF YOU CAN'T REMEMBER EXACT DATES, WRITE "APPROXIMATE" NEXT TO YOUR ANSWERS.

⇒ **Explanation of some of the specific questions on the Cancellation application form:**

Part 1 – Information About Yourself, Question 2: Your "Alien Registration Number" is also called your "A Number" and is the number assigned to your immigration case.

Question 14: If you are still detained when you file your application, you can put down the address of the detention facility where you are located.

Question 15: Be sure to include any names you have used that are different from the name you list on your application.

Question 16: List all of your addresses for the last 10 years. (Provide 10 years of addresses even if you are applying for Three Year Cancellation). **Start with your present address and work backwards.** If you are detained, your most recent address would be the DHS detention center you are in. **If you run out of room, attach an additional piece of paper. Be sure to sign and date any additional pieces of paper.**

Part 2 – Information About this Application, Question 17: This question asks about your length of time in the U.S. and about hardship if you were sent back to your country.

If you are applying for **10 Year Cancellation**, you would check the first box and then put an "X" next to the people who would suffer extreme hardship if you were removed from the United States. Only put an "X" next to those members of your family who are legal permanent residents or United States citizens. Then write in the date of when you began living continuously in the U.S.

If you are applying for **3 Year Cancellation**, you should check the second box if you or your child has been beaten or treated with extreme cruelty. Then you should write in the date of when you began living continuously in the United States.

Part 3 – Information About Your Presence in the United States, Questions 18-21: These questions ask about the first time you came to the United States. Write what name you used, the date you first entered, and the city and state in the U.S. where you first entered. In question 21, check which box applies to you. If the first time you came to the U.S., you came illegally and did not go through an immigration checkpoint or see an immigration officer, check the box "entered without inspection."

Question 23: This question asks you to list any and all times you left and came back to the U.S., even if you were out of the country for less than a day. Even a quick shopping trip across the border must be included! If you do not remember the dates of all your trips, write what you do and do not remember. Put "about" for dates and other facts you are unsure of.

Under "Port," you should put the U.S. city or town you left from and the U.S. city or town you came back through. Under "Manner of Return," say whether you came by car,

airplane, train, bus, or on foot. Where it asks whether you were “inspected and admitted,” it means whether you saw an immigration officer upon your return and were allowed to enter by that officer (This includes just being waved at by an officer at a border entry station who allowed you to go through.). If you entered illegally, you should check “No.”

If you have a lot of exits and reentries and they were all in the same way, such as by car or foot, and all at the same location, you may be able to answer the question completely by saying something such as, “left and returned through Nogales, Arizona for approximately 2 weeks every December for the Christmas holidays to visit relatives, traveled by car to Nogales, Sonora, Mexico, and was inspected upon return each time.” If you do this, you will need to do it on a separate page, and make sure you give all information asked for in Question #25.

Part 5 – Information About Your Employment and Financial Status, Question 40:

This question asks about your financial assets and the financial assets of you and your spouse if you are married. Assets include things you own such as a house, trailer, or automobiles. Assets also include cash, such as money in a checking or savings account. Include all the assets you or you and your spouse have, but do not include the value of household furniture or clothing.

Part 6 – Information About Your Family, Question 43: This question asks for information about each of your children. If you have more than three children, you must include the rest on a separate sheet of paper. Be sure to include all the information requested about each child. If the child is over sixteen and has any of his or her own assets or is working, you must include this information. See the explanation for Question 40 for a definition of “assets.”

Question 44: This question asks whether your spouse and/or children would go with you if you were removed from the United States. Your country of birth, nationality, and last residence might all be the same place. If your spouse and/or children would accompany you there, you should check “yes” for all three boxes. The country of your birth, nationality, and last residence could also be different countries. If so, consider each question, and if you check “no” for any of the boxes, explain your answer.

Question 46: This question asks you to list **all of your family members, including your parents, all of your brother and sisters, all of your aunts and uncles, and your grandparents.** You must list everyone whether they are in the U.S. or outside the U.S. and whether they are living or dead. Do not leave people out because you think they are not important or because they are not living in the U.S.! The question also asks for the immigration status of your family members. This means whether they have legal permanent residency or other status. If a family member does not live in the United States and has no permission to live in the United States, put “none.” Again, you will probably run out of room on the form. If you need to attach a sheet of paper with the names of other family members, be sure to include all information that the form asks about each family

member.

Questions 47-50: These are questions about your parents. Answer the questions if you are claiming that your parents would suffer extreme hardship if you were removed from the U.S. Remember if applying for Ten Year Cancellation, to claim your parents would suffer hardship, one or both of them must be either legal permanent residents or U.S. citizens. **If you are claiming hardship to someone other than your parents, it does not appear that you have to answer these questions and you should write “not applicable.”**

Part 7 – Miscellaneous Information, Question 53: Some people are required to report address changes to DHS. This question asks whether you reported your address and any address changes to DHS. If you are not sure what this question means or whether you have met the requirement, state that you are “not sure.”

Question 54: This question asks about any times you have been arrested, have gone to court as a criminal defendant or have been convicted of an offense. If you were arrested for something and the charges were later dismissed, you still must answer “yes.” Describe the reason for the arrest, what you were charged with and the judge’s decision.

If you have ever been fined for anything or broken any law including traffic violations, you must answer “yes” to this question and list such violations. Include everything the question asks, even if it seems minor to you or it is not charged by DHS. DHS will get a list of your offenses from the FBI (federal law enforcement), also known as your FBI “rap sheet,” and will probably know about all of your offenses, even the minor ones, and any probation violations. **It is much better to come clean and admit all of the problems you have had with the law.** If you don’t list all your criminal violations, the judge may decide you are not honest and deny your application. DHS will ask you about your criminal history. If you have not listed everything in response to this question, the judge will think you were trying to hide something.

Question 59: This question asks if you were ever "exempted" from military service. In other words, did you ever register to serve in military forces and then get special permission not to serve.

Question 60: This question asks whether you have ever been a member of any organizations. Such organizations could include your church, if you were a member, or another type of religious/spiritual organization. You could also include membership in a union related to your work or any community organizations to which you belong. Part of the reason for the question is to see how involved you are in American society. Think hard. If you have lived here a long time, you may have been a member of clubs when you were younger, such as athletic programs, Boy Scouts or Girl Scouts.

Question 62: This question asks for a lot of information about your conduct. “Engaged in

prostitution” means whether you ever worked as a prostitute. “Polygamist” means if you ever had more than one spouse at the same time.

“Inadmissible or deportable on security-related grounds under sections 212(a)(3) or 237(a)(4) of the INA” means whether DHS is alleging you are a terrorist or someone who threatens the security of the United States. If you have been charged with this ground, it will be stated on your Notice to Appear, the document the DHS gave you with the charges against you. If it is not written as a charge on your Notice to Appear you should still check to see if DHS is arguing that you are a terrorist or a threat to the security of the United States.

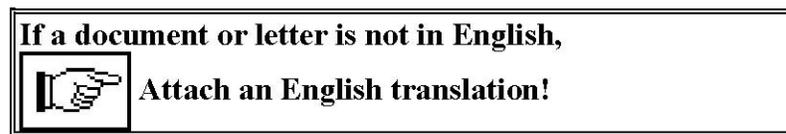
If you were “previously granted relief under sections 212(c) or 244(a) of the INA” means whether you were granted a “212(c) waiver” or Suspension of Deportation in the past. You also must check “yes” to this part of the question if you previously have been granted “Cancellation.”

Question 63: This question first asks whether you are the beneficiary of an approved visa petition. This means has someone in your family, such as your spouse, parent or another family member, filed an I-130 relative petition to the former INS or DHS for you to stay in the U.S. with a green card, and has the former INS or DHS **approved** the petition? Approval of an I-130 petition happens when you get a notice of approval from DHS. If you have gotten an approval notice, check “yes” in the first part of the question. An approval notice is not the same as a receipt notice. Read any letters you have from the INS or DHS carefully.

The second part of the question asks whether you can arrange a trip outside the U.S. to obtain an immigrant visa. Here, if you have an approved I-130 petition, state whether you would be able to travel outside the United States, if required to do so, in order to obtain your visa. If you have the money and can leave the U.S., check “yes.” If you would not be able to leave the U.S., check “no” and explain why not.

Question 64: This question asks you to list all the papers you are including as part of the application. The form's instructions tell you some of the papers you should submit, including proof that you have lived in the U.S. continuously for the required period (3 or 10 years, depending on the type of application). We discuss in more detail below this proof and what other kinds of documents you should submit with your application.

NOTE:



Remember, everything that you give to the judge has to be in English or has to be translated into English. If a letter or other document is not in English, you need to find

someone to translate it. At the end of the translated document or letter, the person who translated it should put the following:

I, (name of translator), certify that I am competent to translate this document and that the translation is true and accurate to the best of my abilities.

_____ (signature of translator) (date)

NOTE: Do not sign the application form yet! You will sign it in front of the judge.

Certificate of Service—this part of the application is to tell the judge that you gave the ICE attorney a copy of your completed application form with all supporting documents that you are giving the court. If you are in custody and you have a court date to turn in your application, you can give a copy to the ICE attorney in person. You would check the box “delivered in person.” If you are out of custody and the court asks you to mail in your application, you will need to mail a copy to the ICE attorney. You must find out the address of the ICE attorney. You can ask the court for the address. If mailed, you would check the box “mailed first class” on the certificate of service.

- **What are the other forms I need to give the Court with my application for Cancellation?**

As we mentioned above, with your application for Cancellation, you must file a fee waiver, a copy of a completed biographical information form and photographs. We discuss each of these items in more detail below.

2. \$100 Fee OR Application for a Fee Waiver

If you are able to pay for the cost of filing your Cancellation application, it costs \$100. (This fee could go up, ask the judge.) If you can pay this fee, use a cashier’s check or money order. **You should follow the DHS Pre-filing Instructions that you were provided by the ICE attorney representing DHS (known as the "trial attorney") to pay the filing fee or submit the judge’s fee waiver order.**

TO PAY THE FEE:

If you are **NOT DETAINED**, you should submit a copy of your Cancellation Application form (Form EOIR- 42B) and the appropriate fee to the USCIS designated Service Center (SC). As of this update, the designated USCIS filing location for fee based applications while in removal proceedings is the Texas Service Center. After you file your application and fee, you will receive a fee receipt and an Application Support Center (ASC) appointment notice. If you are not detained, you must attend your ASC appointment. You will also receive a biometrics confirmation notice from the ASC that you should keep for your records. You should bring the original and a copy of your fee receipt and biometrics confirmation notice to the immigration court hearing to provide to the judge.

If you **ARE DETAINED** and can pay the application fee, you should speak to the detention staff to make arrangements to have the fee paid to DHS. Get a receipt for the money you paid. If you get out of custody before you file the application form and you are paying the fee, follow the instructions above.

TO REQUEST A FEE WAIVER:

If you do not have \$100, you need to ask the judge to let you apply without paying. To do this, you have to file a motion for a “**fee waiver**” or ask the Court if it uses a form to apply for a fee waiver. Different courts may use different forms, but the form you use should be called “Application for a Fee Waiver” or something like that. (Note: Do not use the brown Appeal Fee Waiver form because it is only for appeals.)

The form will require you to fill in dollar amounts for the money you are presently earning, the value of any land or other property or things you own, any savings you have in the bank, your expenses, and any money you owe. If you are detained and not making any money, your earnings should be “0.” The form may also have a space for you to list anyone who is dependent on your income and the person’s relationship to you, such as “child, husband, wife, mother, or father.” The reason all these questions are asked is to see if, after you pay all living expenses for yourself and your dependents, there is still enough money left over to pay the \$100 fee. You must answer honestly. If you do not, you are committing a crime and you could be prosecuted.

If the form includes at the bottom the word "Order" and underneath it a blank space for the judge to sign, leave this part blank. Turn in the original of this form in Court, along with your Cancellation application. Provide a copy to DHS. Keep a copy for yourself.

If your Court does not use a fee waiver form you should file a motion for a fee waiver. Your motion should explain why you cannot pay the \$100 fee and should include the dollar amounts of all of the money you have and all of your expenses, just as it is explained above for the fee waiver form. Turn in the original motion in Court, along with your Cancellation Application. Provide a copy to DHS. Keep a copy for yourself.

3. Two Photographs

If you are detained at the time you file your application and it is not possible to have photographs taken, you do not need to submit photographs. If you are not detained at the time you file your application for Cancellation, read the instructions carefully that come with the application for Cancellation of Removal. The instructions state the exact size and type of photographs you will need. Submit one photograph to the Court with your application and one photograph to the ICE attorney. Make sure you lightly print your name and alien registration number on the back of each photo.

4. The Biographic Information Form (Form G-325A)

Again, answer all questions as best as you can. Just like with the Cancellation application form, you need to list your addresses and employment in reverse order, that is, starting with the present and working backwards. Also, even if you have lived in the U.S. for many years, you should answer the question that asks for the last address you had outside the United States where you lived for more than one year.

Some of the questions on this form and the Cancellation application form are the same. You must answer all questions on both forms and you must make sure your answers on both forms make sense when you look at them together. Otherwise, the judge may think you are not an honest person. For example, if on one form you say you were living in Los Angeles in June of 1997 and in another, you say you were living in San Diego from April to August of 1997, one of your answers has to be wrong.

Remember to file the original Biographic Information Form G-235A with the ICE attorney. Give the Court a copy and keep a copy for yourself.

5. Biometrics

Biometrics, or fingerprint data, may only be done by authorized offices of DHS. **You should follow the DHS Pre-filing Instructions that you were provided by the ICE trial attorney to get your fingerprints appointment.** It is very important to have your fingerprints taken and the security checks done. If you do not do this you may lose the chance to file your application with the judge!

If you are detained, DHS will arrange for your fingerprints to be taken and the security checks to be done. If you require transportation to another office for your fingerprints to be taken, you must ask DHS to see if they will help you complete the biometrics requirement.

If you are not in custody at the time you file the application, you will receive an appointment notice after you file your application (Form EOIR- 42B) with the USCIS Service Center (SC). As of this update the designated USCIS location is the Texas Service Center. After you file your application and fee you will receive a biometrics appointment notice. You must pay a \$80 fee to DHS for the biometrics and follow DHS's instructions in the appointment notice regarding the time and place of your biometrics appointment. You should bring the original and a copy of your biometrics notice to the immigration court hearing to provide to the judge.

6. Certificate of Service

You should turn in all your forms and other papers at the same time you turn in your application form, if you can. But if you cannot do this (for example, if you receive a letter after filing your application and you want the judge to read it), you need to file the papers by sending them in the mail rather than giving them to the judge and the ICE attorney in

court. If you mail anything to the judge, you will need to mail a copy to the ICE attorney. You also need to attach to the papers you give the judge, a form that shows the judge that you sent the ICE attorney a copy. That paper is called a “Certificate of Service” and you will find a sample at the end of this booklet. To fill it out, put your name, “A number,” and the date you are mailing the documents. Then, put the address of the ICE office that is handling your case (ask an officer if you do not know it). Sign the form and make two copies.

You must mail the original Certificate of Service and the original documents to the judge. Mail a copy to the ICE attorney and keep the last copy for yourself.

- **ARE THERE ANY FORMS THAT ARE NOT REQUIRED BUT COULD BE HELPFUL TO MY CASE?**

The next two forms are not required but may be useful in preparing your case. They are not forms you give or send to the judge. You mail them to other government offices.

Freedom of Information /Privacy Act Request (Form G-639)

You can use this form to get a copy of DHS’s file on you. The file includes papers about your immigration history and, usually, your criminal history. This can be very helpful because it lets you know what DHS may try to prove against you in Court and what papers it may ask the judge to consider. Seeing the papers in your file gives you the chance to get ready to talk about certain things. If you do not see the file, you may get caught off guard in Court and may not know what to say.

The form you file is called a **Freedom of Information /Privacy Act Request (Form G-639)** or a “FOIA Request Form.” If you do not have this form, you will have to ask a detention officer or an immigration officer for one. Once you file it, it may take a long time to get a response, and you may have your hearing before then, but it does not hurt to file the form and it may help you.

If you are detained, your address on the form should be your address at the detention center. If a question does not apply to you, write “not applicable.” You need to sign the form in several places. First, under question number 2 where it says “Signature of Requester,” then under number 7, where it says “Signature of Subject of Record,” and,

last, under number 8, which begins, “If executed within the United States...” By signing, you agree to pay copying costs, but in most cases, there will not be any charge.

Do not send a copy of this form to the Court. Mail the original to DHS and write “FOIA Request” on the envelope. The person who deals with these papers may be at a different address than where you mail your other papers, so ask an officer for the address of the “FOIA officer” for the DHS district where you are. Keep a copy for yourself.

Fingerprint Card, Cover Letter to the FBI, and \$18 Money Order
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If you have criminal convictions, one of the documents DHS has in your file is a “rap sheet” from the FBI that lists your criminal history, including any arrests, even if you were not convicted. You can usually get this faster than you can get a copy of your DHS file, and this is why you should request this even if you have filed a “FOIA request” with the DHS.

The three things you will need in order to get your FBI rap sheet are 1) a completed fingerprint card (Form FD-258), 2) a money order for \$18 made out to the “FBI,” and 3) a short letter asking for your rap sheet. You must sign the letter and indicate the address to which the rap sheet should be mailed. You should also indicate the date by which you need the record as it can take up to eight weeks. To prepare a fingerprint card, ask a detention officer to get the card for you and to fingerprint you. Fill in on the fingerprint card at least the boxes asking for your name, height, weight, date of birth, place of birth, and social security number. Get the money order from a family member or ask an officer to arrange for you to buy one. Put the fingerprint card, the money order, and a short letter asking for your rap sheet in an envelope and write on the envelope the date by which you need to record. Send the packet to:

Federal Bureau of Investigations – CJIS Division
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

Do not send a copy to the Court or DHS.

Now that we have explained how to fill out and file the forms for your case, we will explain what you will need to prove at your individual Cancellation hearing, what you can expect to happen at the hearing, and what you need to do to get ready for it.

• WHAT WILL HAPPEN AT MY CANCELLATION HEARING?

The people at your hearing will be the Immigration Judge, an interpreter (if you are not fluent in English), the ICE attorney representing DHS (known as the “trial attorney”), any witnesses you may have, and you. The ICE attorney may also have witnesses against

you, but that almost never happens.

The judge at your Cancellation hearing will consider "evidence" presented by you and by the ICE attorney. Evidence can be papers, letters, photographs, and anything else that can prove something. "Testimony," which is statements made in Court by people who swear to tell the truth (witnesses) is also evidence. Before the hearing starts, you should give the judge all the letters and other documents you want him or her to consider. You must also have copies to give to the ICE attorney.

Opening Statements

At the start of the hearing, the judge may give you the chance to make a brief "opening statement." That is the time for you to tell the judge what witnesses are going to speak in your favor (that is, what witnesses you are going to "call" to the witness stand), what evidence you will show the judge (or have already filed), and what you are going to prove. Then, the ICE attorney, called the "trial attorney," can make an opening statement, too. Some judges do not allow opening statements and will have you go straight to the next step.

Testimony, Witnesses, and Other Evidence

Next, it will be time for you to call witnesses to testify for you. The witnesses cannot just get up and speak. You have to ask them questions and they answer. You should ask the witness' name, address, occupation, and how he or she knows you. You should ask questions that bring out what you want the judge to know. Ask open questions like "How would you be affected by my getting removed from the U.S.?" and "What kind of parent am I to the children?" That way the story comes out in the person's own words instead of in your words. Give the witness a chance to state his or her own opinion, like "What do you think of my character?" After you ask the witness questions, the trial attorney and the judge may ask the witness questions.

You can call yourself as a witness at any time, and should probably do that at the beginning or at the end of the hearing. You will speak to the judge directly, and both the trial attorney and the judge can ask you questions. The judge may ask you questions based on the forms and other papers you have turned in. The judge will ask questions to make sure that you have lived in the U.S. continuously for three or ten years and have been a person of good moral character. Also, the judge will ask questions to understand what your life in the U.S. has been like and what your life and your family members' lives would be like if you were sent back to your home country. If you are applying for Three Year Cancellation, the judge will ask questions about how you and/or your child have been abused. The judge will also ask for proof that the abuser was a spouse or parent and that the abuser was a legal permanent resident or U.S. citizen.

You should speak clearly so that the judge and interpreter can hear every word you say,

and you should give the interpreter enough time to translate one or two sentences before going on. Otherwise, the judge will only hear part of what you want to tell him or her. Also, you should look at the judge directly when you speak and not look at the ground, so that judge does not think you are lying or that you don't have confidence in what you are saying.

When the trial attorney asks you questions, he or she may try to show the judge that you do not have good moral character, that it would not be so bad for you and your family if you had to leave the U.S., or that you do not deserve to win Cancellation. In the case of Three Year Cancellation applicants, the trial attorney may try to show that the suffering you and/or your child have endured at the hands of your spouse/parent is not severe enough for you to be granted Cancellation. The trial attorney may also try to show that you have not proven that the abuser was a spouse or parent or a U.S. citizen or a legal permanent resident.

If you have had any criminal or immigration problems, the trial attorney will ask you about them, so you should be ready to talk about them. If you have had problems, it is a bad idea to deny them (especially if you pled guilty to a crime), because the judge may think you are refusing to accept responsibility for your own mistakes. Accept responsibility and explain what you have done to change.

As you ask questions of other witnesses, or as you testify, you can call the judge's attention to certain papers you have turned in that you think are important.

After you are done, the trial attorney will have the chance to present witnesses and evidence. Usually, the trial attorney will not call any witnesses, but if he or she does, you will have the chance to ask them questions. As far as evidence, you have the right to see anything the trial attorney gives to the judge and the right to object if there is a reason to object. For example, the trial attorney may give the judge a document regarding your criminal convictions or something else. If the document is signed by someone who certifies that it is an official document, there may be no reason to object, but you can and should object if the attorney starts reading off an FBI "rap sheet" or asks the judge to consider some similar document that does not have a certificate showing it to be an official record.

Closing Statements

After all witnesses have spoken and been questioned, the judge may give both sides the chance to make a "closing statement." If the judge does not do that and you want to make a final statement, ask for the chance. In your closing statement, you should refer to things you and your witnesses have said and to letters and other documents that show that you have lived in the United States for the required number of years, that you are a person of good moral character, and that your family (or you or your child in the Three Year Cancellation cases) would suffer if you were removed. Of course, in the cases of Three Year Cancellation, you should also state in closing how you or your child has been subjected to physical or emotional abuse by your spouse or parent and how this abuse has

affected you or your child.

Judge's Decision

After the trial attorney gives a final statement, the judge will give his or her decision. The judge must make statements about the law relating to Cancellation, talk about the facts in your case (based on your testimony and other evidence), and then say why he or she is deciding for or against you. Sometimes, but not often, the judge will not have enough time at the hearing to explain his or her decision or will want to take some time to think about it. If that happens, the judge will either set another court date to explain the decision or will put the decision in writing and send it to you and to DHS.

- **HOW DO I GET READY FOR MY HEARING?**

Getting ready for your hearing takes a lot of work. Here are the steps:

To get ready for your hearing,

- 1. Make a list of all the letters, articles, photographs, and other papers you need or want to get for your case.**
- 2. Make a list of the people who may be able to come speak at your hearing. (Your close family members, including children, should come if they can.) Make calls and write letters to get all the papers together and to talk to people about coming to your hearing.**
- 3. Write down the main things you want to say to the judge at your hearing. Practice saying them. Make a list of questions that you think the judge or the trial attorney may ask you at the hearing. Practice answering these questions out loud. If you have a friend who can help you, ask him or her to look over your papers and ask you questions as if you were at the hearing.**
- 4. Talk to the people who will come to your hearing. Write down the questions you will ask them in Court. Go over the questions and their answers with them. Also talk to them about questions the trial attorney might ask.**

We'll go through the steps one by one.

STEP ONE: MAKE A LIST OF ALL THE LETTERS AND OTHER PAPERS TO GET FOR YOUR HEARING.

Here are examples of things you want to get proof about and the kinds of proof you should find.

1. Your continuous physical presence in the U.S. for the required 3 or 10 years.

This type of proof could include records such as bank statements, leases, deeds, licenses,

receipts, letters, birth records, medical/dental records, church records, school records, employment records, tax returns, witness statements, letters postmarked and addressed to you, or anything that shows how long you have been in the United States. If you are having a hard time getting these types of proof, explain this to the judge and ask for more time to get them.

2. Good moral character during the entire period of continuous physical presence.

You should try to get police records from each jurisdiction where you have lived during the required period of physical presence. This may be in the form of a police department letter stating that you have no criminal record in their files. You should also get affidavits from witnesses (preferably U.S. citizens) stating how they know you and why they believe you are a person of good moral character. If possible, get affidavits from past employers describing how they know you and why they believe you are a person of good moral character. Your employer's affidavit should state how long you worked for the employer, your job responsibilities and your salary.

3. Extreme hardship to you and your family members.

For 10 Year Cancellation, you have to show that your legal permanent resident or U.S. citizen husband/wife, mother, father and/or child (“qualifying relative”) would suffer exceptional and extremely unusual hardship if you were removed from the U.S. Showing that these family members would miss you is not enough. To show exceptional and unusual hardship, you must show the person will suffer more than a normal person would when a family member is taken from the U.S. This is not easy to prove. The more proof you can turn in, the better.

You also must submit official certification that the person is a U.S. citizen or lawful permanent resident, such as a “green card” or U.S. birth certificate. In addition, you must submit proof of the person's relationship to you, such as a birth certificate or marriage certificate and, if applicable, proof of termination of prior marriages.

For Three Year Cancellation, you must show that you and/or your child (“qualifying relative”) would suffer extreme hardship if you were removed. This standard is not quite as hard to meet as the one for Ten Year Cancellation, but you must still show a great deal of hardship to win. There are various types of hardship such as emotional, financial or medical. For Three Year Cancellation cases, the hardship can be related to the domestic violence. We give suggestions for proof of each type of hardship below.

• To show emotional hardship:

Try to get –

- Letters (notarized, if possible) or affidavits from every qualifying relative old enough to write who would be affected by your removal, especially if the person cannot come to the hearing. Those who would be separated from you should talk

about what kind of relationship they have with you and what it would mean to them if you were removed from the U.S. If they would go with you, they should talk about their life in the U.S. and what it would mean to them to have to leave it and how difficult life in the new country would be.

- Letters from people who can talk about the bad effect your removal would have on your qualifying relative child (or children). If your child would go with you if you were removed from the United States, get letters about how that would affect your child. For example, your child's teacher might be able to write a letter.

If your qualifying relative child would go with you if you were removed, showing that he or she is used to U.S. culture and society, is involved in church, school or after-school activities, and does not speak the language in your home country will help prove that the move would be hard on the child.

- If any qualifying relative in the family has had emotional problems, and if your removal (or their moving to your home country) might make things harder for them, those things should be discussed in the letters. If any counselors were involved, get letters from them, too.
- Family photographs, especially ones including you, that show how close your family is.

- **To show financial hardship to you and your family members:**

Show how your removal would affect your ability to support yourself and your family. Get proof of how much you earn and who you support with that money. If possible, get proof that you would earn less in your home country, that you cannot get a job in your homeland like the one you have here, or that you might not be able to find a job there at all. If you know anyone who lives in the part of your country to which you would return, get a notarized (if possible) letter from them.

- **To show medical hardship:**

If a doctor or other person is treating you or a qualifying relative family member for a medical problem, get medical records and/or a letter from the doctor. If the person with the problem is you or someone who would go with you, try to show that the interruption of medical treatment or the trauma of moving may be harmful. Also, get proof that the person would not be able to get the medical treatment he or she needs in your home country.

If the person with the condition is someone who would stay behind, he or she may need your help with household chores, or with taking him or her to the doctor, etc. In Three Year Cancellation cases, medical hardship may be very important. See the “special proof” section on hardship for Three Year Cancellation cases below.

4. Your community ties:

Show any and all ties you and your qualifying relatives have to your community in the U.S. Community ties include anything that shows you are involved in U.S. society. If you are a homeowner, this is a tie to the United States. If you are involved in your church, help your neighbors, have strong ties to friends and neighbors, help out at your child's school, or belong to any organizations, get letters or other proof of this. These letters also will help to show you have good moral character. Any groups or clubs you participate in or anything you have done to help others outside of your family may help your case. Do you go to church or temple regularly? Get a letter from the church or temple leader. Do you help the neighbors with repairs on their houses? Get letters from your neighbors. Have you volunteered for an organization? Get a letter from a representative of the organization.

The stronger your ties to the United States, the better for your case. If you own land, a home, a business or other property in the U.S., get proof of it.

5. Conditions in your home country:

If conditions are bad in your home country (for example, a bad human rights situation, high unemployment, low wages, poor schools, poor medical care), try to get proof such as letters or newspaper articles. If you have relatives in your home country, they may be able to write about the problems they have and the problems you would have living there.

6. Rehabilitation (if you have any criminal problems):

If you have had any criminal problems but still are eligible for Cancellation, you should show that you have changed your life and will not make mistakes again. Admitting that you made mistakes is a first step toward showing rehabilitation. If your problems with the law had anything to do with drugs or alcohol, it is extremely important that you get involved in a support group or treatment program and that you stick with it. If you just go to one or two Alcoholics Anonymous meetings, the judge will not be impressed.

Get proof of your participation in courses or programs while in custody. If possible, get a letter from a guard, counselor, or anyone else who can say good things about your behavior and attitude while you were in custody. Also, if possible, get a job while you are in Immigration custody, and get a letter from your supervisor showing that you are a hard worker.

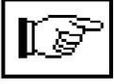
7. Three Year Cancellation--Special Proof

First, in Three Year Cancellation cases, you must show that the abuser is a legal permanent resident or U.S. citizen spouse or parent. To do this, you can use the following types of proof:

- Copy of your marriage certificate if the abuser is your spouse.

- Copy of a birth certificate that shows the abuser is your parent or your child's parent. If the abuser's name is not on the birth certificate, you might need to find other evidence that the abuser is the parent. For example, you could give the judge the results of a blood test that shows the abuser is the father of the victim of abuse or evidence that the abuser has recognized the child as his or her own in some other way. Also notarized letters from someone who knows that the abuser is the parent could help but it is good to get more than just letters.

Second, in addition to this proof, you must show that you or your child has been "battered or subjected to extreme cruelty."

If you are applying for Three Year Cancellation,
 **you must show that you or your child has been**
"battered or subjected to extreme cruelty."

You or your child has been the victim of "battering or extreme cruelty" if your spouse or the child's parent has abused you physically or mentally or has threatened to abuse you or your child.

Acts of abuse could include: psychological abuse, sexual abuse or exploitation, including rape, molestation, incest or forced prostitution. Such acts may also include other abusive actions, which might not appear abusive, but are part of an overall pattern of abuse. If the abuser did not let you get a job or kept you in poverty, this could be evidence of abuse. Even acts against a person or persons other than you or your child might be acts of abuse towards you if these acts were used to cause you or your child mental abuse.

These are examples of evidence that you can use to show that you or your child has been the victim of physical or psychological abuse:

- **Your testimony.** You can testify about what you or your child has suffered at the hands of your spouse or the child's parent. Give as many details as possible about any physical or emotional abuse. Although these types of experiences can be difficult to talk about, the more detail you can give, the better chance you have of winning Cancellation.
- **Testimony or letters from friends, neighbors or relatives.** Anyone who has witnessed the domestic violence and abuse that you and/or your child has suffered could write a letter explaining what they saw or heard. If the person can come to your hearing and testify, that would be even better.
- **Police records and reports.** If you ever called the police regarding the person who abused you or your child, include a copy of the police report.

- **Court documents.** If you have testified or there has been evidence filed in a family or criminal court about the abuse you suffered, include a copy of any court documents you have. Order a transcript of the hearing. For instance, perhaps you asked a court for a temporary restraining order against your husband. If so, include a copy of the order and a transcript of that hearing. Also, arrest records or criminal records of the abuser can be submitted to show violent acts.
- **Medical reports and letters from counselors, priests, or other religious staff.** If a doctor treated you or your child for physical abuse, include records from the doctor. If you fled the abusive household and went to a shelter, get a letter from your counselor there. If you or your child has seen a counselor, psychologist, psychiatrist, priest, religious leader, or another professional to talk about the domestic violence, ask that professional to write a letter for you. The letter should include the type of counseling or treatment received and the reason for the treatment. Ask the person to provide details about the kind of emotional pain and experiences you discussed and the harm you suffered.
- **School records.** If your child has suffered abuse, the child’s school records may show days missed because of physical problems resulting from the abuse. Also, teachers, school counselors, or nurses might have noticed signs of abuse such as emotional, behavioral or physical problems. You should include these records if they exist.
- **Physical evidence--torn clothing, broken furniture, photographs of injuries.** If the abuser has destroyed property in your home, if possible, show the judge photographs of the destruction or bring in actual items that have been destroyed. Also, show the judge any photographs of injuries you or your child has suffered.

In Three Year Cancellation cases, you should argue that you should be able to use certain evidence, which we will list in a minute, to prove that it would cause you or your child hardship if you were removed from the U.S.

<p>If you are applying for Three Year Cancellation,</p>  <p>there are special types of evidence of hardship</p> <p>that you might be able to use to help win your case.</p>

The law says that people can use this evidence if they are not in removal proceedings but have “self-petitioned” for relief similar to Three Year Cancellation with DHS rather than a judge. “Self-petitioned” is when someone goes to DHS before ever being arrested by DHS and asks for legal status for spouses and children of abusive citizens or legal permanent residents.

As we mentioned earlier, if your spouse or parent is a U.S. citizen or legal permanent resident, you could ask the judge to let you file an application with DHS and see if your application is approved. If the application is approved, the judge can then give you a green card. You should present the following kinds of evidence if possible and tell the judge that he or she should consider the evidence because “self-petitioners” can use this kind of

evidence.

To show hardship to yourself or your child, get evidence of the following if they apply in your case:

- 1) You have a case in family or criminal court. If you were removed from the United States, you would not be able to continue the case, which might mean you would lose custody of your child or would not be able to testify against your abuser.
- 2) In your home country, you and your child could not find the social, medical, mental health care or other types of support that you are receiving in the United States because of the abuse you have suffered.
- 3) If you were removed to your home country, the abuser could follow you and you would have less protection from abuse there. For example, perhaps in your home country, you would not be able to find police or court protection from the abuser. Perhaps in your country, the police will not issue a temporary restraining order against an abusive spouse or parent. Or, perhaps in your country, if you left your spouse you could not get child support or would lose custody of your children.
- 4) In your home country, society would treat you as an outcast if you are the victim of abuse, if you leave an abusive situation, or if you try to protect yourself from abuse by involving the police or court systems.
- 5) If removed to your home country, you would suffer abuse not only from the abuser but from his or her family as well.

If you have a case in family or criminal court, get copies of documents showing that you have such a case. If you or your child is in counseling or getting other kinds of help for the domestic violence, get letters from the people helping you. The letters should describe what kind of help you and/or your child is getting and why it is important that you and/or your child keep getting this help. Also, you might be able to find reports or newspaper articles about how hard it is to find protection from domestic abuse in your country or regarding the social practices of your country. You might also try to get letters from people from your country who can write about what might happen to you if you were returned there.

Make a list of all the evidence you are going to get together.

Now that you know what the judge will consider, it is time to make a list of all the evidence you can get for your case. Turn to the "Three and Ten Year Cancellation Worksheet" at the end of this booklet. This worksheet is just for you. Don't give it to the judge. The worksheet lists some kinds of evidence you may be able to get. There is also space for you to list other ideas. Think of as many things as you can try to get to give to the judge. Make a list of everything that you need to get, and check it off when you get it.

 To start getting ready for your hearing, fill out the “Three and Ten Year Cancellation Worksheet.”

STEP TWO: WRITE LETTERS AND MAKE PHONE CALLS TO GET THE EVIDENCE YOU NEED FOR YOUR CASE.

You should write letters and/or make phone calls immediately to get documents you need, as it will take time to get responses. You should also contact everyone who can write a letter to the judge for you.



Letters to the Judge

Letters should be addressed "Dear Immigration Judge." The person should include:

- His or her name, age (if a family member), address, occupation, and that s/he is a U.S. citizen, permanent resident, or has other permission to be in the United States, if true.
- How he or she knows you (for example, she is your sister, your neighbor, your boss, your priest, your counselor, or your doctor) and for how long he or she has known you or your family. Also, if your priest, counselor or doctor writes a letter, what they know about the abuse you or your child has suffered (for Three Year Cancellation cases).
- Why he or she thinks you are a person of good moral character, including specific examples of good things you have done.
- The domestic violence he or she has witnessed or heard about (for Three Year Cancellation cases).
- All of the things talked about above in our discussion of proof that apply.
- Your boss or former boss should say when and for how long you worked for him or her, what your job was, how much you earned, how well you did your job and if they are willing to have you return to work for them.

Letters must be signed and should be notarized if possible. Don't forget to attach a translation to letters not written in English!

• When should I give (or mail) my letters and other papers to the judge?

As we said before, you may be required to give the judge all your letters and other documents at the time you file your application. It is also possible that the judge will give

you a certain date by which you must mail any papers to the Court, and, depending on the Court's local rules, this date may be almost two weeks ahead of your individual hearing date. But even if some papers arrive after that date (and if there is not enough time to mail them), bring them to the hearing anyway. Maybe the judge will allow you to file them. **Again, remember to give ICE's attorney copies of all papers you give the judge.**

• **Can my friends and family send letters or other papers directly to the judge?**

No. Only you (or your lawyer, if you have one) can file papers in your case. Have people send papers directly to you.

• **Do I need to give the judge originals of my papers, or can I give the judge copies?**

As far as important original documents, such as birth certificates and your marriage license, it is a good idea to turn in copies and bring the originals with you to show the judge at the hearing. Otherwise, there is always a chance that these will be lost.

• **Making an "Index"**

The Cancellation application form asks you to list the papers you are filing with the application. If you file other papers later, it is a good idea to make a new list and turn that in with the papers. This helps the judge know what documents you have given him or her and also gives the judge a chance to see if any are missing. At the top of your list, write your name, A number and the word, "Index." Organize the documents into groups. For example, one group could be all the documents, which prove you have good moral character. Another group could be evidence of domestic violence for Three Year Cancellation cases, and another group could be about hardship. If you have a lot of pages, it is a good idea to number the pages and to write on the index the number of the page. That will make it easier for the judge to find a document quickly in court when you talk about it.

STEP THREE: PREPARE YOUR WITNESSES

If at all possible, you will want other people, especially family members, to come and speak to the judge at your hearing. The more people who can come to the hearing, the better, because this will show the judge that there are many people who care about you. Of course, not everyone who comes has to speak, and witnesses who speak should not talk about the same things. You do not want the judge to get bored or impatient. You should choose a few people to speak at the hearing, and you should talk with them about what they will say.

You should write down all the questions you are going to ask the witness. You should start by asking the witness his or her name, age, address, immigration status (for example,

whether he or she is a U.S. citizen or legal permanent resident), and occupation. Then, you should ask the person how he or she knows you, and for how long. After that, you should ask questions that give the witness a chance to tell the judge what he or she knows about you and what kind of person you are. For instance, the witness might be able to talk about what kind of a father/ mother/ daughter/ son/ husband/ wife you are, the ways in which the family depends on you, and what it would be like for the witness or others if you are removed. It is a good idea to practice a few times with each witness.

If you are applying for Three Year Cancellation, it is important to have witnesses who have observed you or your child being beaten or abused, have observed you or your child's physical injuries or are aware of the emotional trauma you or your child have suffered.

Tell the witness to call the judge "Your honor." He or she should call the ICE trial attorney "Sir" or "Ma'am." The witness should look at the judge when speaking. These rules are for you, too, of course.

STEP FOUR: WRITE OUT WHAT YOU ARE GOING TO SAY TO THE JUDGE

To get ready for your hearing, you have to think about and practice what you are going to say to the judge. The best way to figure out what to say is to write it down.

• Practice talking to the judge and answering questions you may be asked

The trial attorney will ask you questions at your hearing, and the judge probably will, too. Be prepared to answer questions about how long you have lived in the United States and about the proof that you have turned in. Be prepared to answer questions about your character, including any criminal history. Also, in Three Year Cancellation cases, be prepared to talk in detail about the abuse you and/or your child have suffered. This is hard to do but very important to winning your case.

• Prepare your opening and closing statements

We have already mentioned what you should say in your opening and closing statements. You should prepare them once you have all or most of your case ready. You can also change what you say in your closing statement depending on what the judge or trial attorney has brought up at the hearing. Do not make the opening and closing statements too long. Just make a few important points.

• IF THE JUDGE RULES IN MY FAVOR, WHAT HAPPENS?

If you win your case, you should be granted legal permanent residency status, in other words, a green card. However, immigration law only allows 4,000 people a year to win Cancellation cases, so if 4,000 people before you already have won their cases, you might

have to wait some time to get your green card. But, if you have to wait for your green card, you should be able to get work authorization right away, and you can stay in the United States legally. See the discussion regarding work authorization below. You should ask the judge at the end of your hearing whether you have a green card right away or if you have to wait awhile.

- **IF THE JUDGE RULES AGAINST ME, WHAT SHOULD I DO?**

If the judge rules against you, you have three possible options:

1. you can accept the judge's decision and accept an order of removal;
2. you can accept the judge's decision but ask for voluntary departure; or
3. you can decide not to accept the judge's decision and “reserve” your right to file an appeal.

- **What is the difference between getting voluntary departure and getting ordered removed?**

Generally, if you qualify, getting voluntary departure is better than getting ordered removed. But, there are consequences regarding your ability to return to the U.S. in the future whether you leave through voluntary departure or removal. It is important that you understand all of the possible consequences, which differ depending on your criminal history and length of time in the U.S.

If you were eligible for Three or Ten Year Cancellation, you are probably eligible for voluntary departure. If you are interested in asking for voluntary departure in the event you do not win your case, please read our booklet entitled "How to Apply for Voluntary Departure." This booklet explains who qualifies for voluntary departure, what conditions you must satisfy in order to be granted voluntary departure, and the consequences of leaving the country under an order of voluntary departure instead of an order of removal.

- **WHAT DOES IT MEAN TO APPEAL THE JUDGE’S DECISION?**

If you or the trial attorney disagrees with the judge’s decision, you both have the right to keep fighting the case by appealing the decision to a higher court called the Board of Immigration Appeals. This court is a group of judges in Virginia who look at all the papers filed in the case and everything that was said in court, and decide if the judge was right. In most cases, unless the judge made a mistake about the law or the facts in your case, the Board will not change the decision.

As soon as the judge tells you the decision (unless you get it later, in writing), he or she will ask both you and the trial attorney whether you want to “reserve appeal,” that is, whether you want to hold on to your right to appeal. You can also “waive appeal,” which means to give up your right to appeal. If both sides “waive appeal,” that is the end of the

case.

If someone “reserves appeal,” he or she has 30 days to file a paper called a “Notice of Appeal” with the Board of Immigration Appeals in Virginia. If the DHS appeals, it has to send you a copy of this Notice and if you appeal, you have to send the DHS a copy.

- **What if DHS appeals my case?**

The trial attorney may say he or she wants to “reserve appeal,” but that does not mean DHS will actually appeal. You may not know for sure until 30 days from the judge’s decision, and if the DHS has not filed a Notice of Appeal by then, it cannot appeal. You should know if DHS has filed a Notice of Appeal or not because you should get a copy of the Notice if it is filed. If DHS does file a Notice of Appeal and, on the form says that it will file a “brief” or written statement later, the Board of Immigration Appeals will send you and DHS a paper saying when DHS must file its brief or statement and when you should mail to the Board of Immigration Appeals any response you want to write to DHS’s arguments. Try to get a lawyer to help you with this if you can.

In addition,

If you win and DHS reserves its right to appeal,



Ask the judge or DHS to order you released on your own recognizance (without having to pay bond)!

As we mentioned at the beginning of the booklet, some people qualify to ask the judge for their release, but some people do not and must ask DHS for their release. Other booklets explain this in detail. If you qualify to ask the judge for a bond and you win your case, ask the judge to release you right then and there! If you do not get the chance, write the judge a letter asking for a bond hearing (even if you had one before).

- **If I lose, how do I appeal?**

If you lose and you “reserve appeal,” the Board of Immigration Appeals must receive your papers by the 30th day following the decision of the Immigration Judge or the appeals judges there will not read them.

The forms you must fill out in order to appeal the judge's decision are:

- 1) a white "Notice of Appeal" form (EOIR-26), and
- 2) a brown "Appeal Fee Waiver Request" form (EOIR-26A) (unless you can pay a \$110 fee, in which case, follow the instructions on the “Notice of Appeal and pay the fee)

The forms explain how to fill them out and where to send them. You may also wish to review the rules for filing appeals in the Board of Immigration Appeals Practice Manual and Question and Answers. The manual is available online at:

<http://www.usdoj.gov/eoir/vll/qapracmanual/apptmtn4.htm>

This manual should also be available at the immigration library in DHS detention facilities.

If, after 30 days, the appeal papers have not been received in Virginia, you will not be allowed to appeal and the judge's decision will become final. For this reason, we recommend mailing the papers as soon as possible and mailing them by express mail or "certified mail" (with proof of receipt). If the Board has received your forms, it will give the DHS a chance to file some papers also. DHS will give you a copy of whatever papers it files.

If you are detained during the appeal process, it usually takes from four to six months for the Board to decide the appeal. If you are out of custody during the appeal process, it may take much longer. There is no set time frame, and it is impossible to determine how long the appeal will take.

- **What if the Board of Immigration Appeals decides against me?**

You may be able to appeal the Board's decision to a federal court, but the federal court may only review certain types of issues. Also, unless you get a special order called an "order for a stay of removal" from a federal court, DHS may remove you from the country while the federal court considers your case! This can happen fast, so if your case is appealed to the Board, you should try to get a lawyer before the Board makes its decision so that a request for a stay of removal may be filed in federal court as soon as the Board denies the appeal. Appealing a case to federal court is very complicated, so this booklet does not explain how to do that.

- WHAT HAPPENS IF I GET OUT OF DETENTION BEFORE MY HEARING?

If you are allowed to leave the detention center before your case is over, your case continues. It is extremely important for you to provide your new address to the court so you receive notice of your next hearing date. (See "What should I do if I move?" below.) The court will send you a letter telling you the date, time, and place of your next hearing.

For this reason, it is extremely important that you try to find legal help as soon as possible. Don't delay.



When you leave the detention center, look for legal help for your case!

Upon your release from detention, it is also very important that you or your lawyer ask the court to transfer your case to a different court near your home address, unless you want to

go to court where your case is now. You do this by filling out a form called a "**Motion for Change of Venue**" on which you write the address where you plan to live when you leave the detention center (This has to be a street address, not a post office box!)(NOTE: This motion is separate from filing a change of address notice with the court and DHS.). At the back of this booklet is a form that you may use but some courts may want you to use a different form, so find out. At some detention centers, an Immigration officer will give you the form and will give it to the court after you complete it. Find out how things are done at your detention center and make sure to file the right form with the court (with a copy to ICE's attorney). When the court gets this motion to change venue, it will decide whether to transfer your case to the Immigration Court closest to the address you wrote down. If the court grants your motion it will then send you a letter telling you where and when to go for your next hearing. After receiving this letter, you should then only send things to this new Court and DHS in your new location. If you do not receive this letter you should assume your motion was not granted and be prepared to go to the Court where your case is now on the date and hearing time you have already been given..



When you leave the detention center, if you do not want your next court hearing to be where you are now, file a "Motion for Change of Venue!"

Some courts require a more complete explanation of why you want to change court locations. At the time of your bond hearing, ask the judge if you will need to do that.

Remember, if you miss a hearing, the judge can order you removed from the U.S. without giving you another chance to apply for Cancellation!

• **What should I do if I move?**



Every time you move, it is your responsibility to tell both the Immigration Court and DHS! You have **5 days** after you move to tell the immigration courts and the Board of Immigration Appeals and **10 days** to tell DHS.

There are special forms to do this and you can get one from the Court and a different one from DHS. The forms you should use to change your address are: EOIR 33/IC for the Immigration Court, EOIR 33/BIA for the Board of Immigration Appeals, and DHS AR-11 for the Department of Homeland Security.

Letting the Court and DHS know your new address will not change where you will have your hearing. Instead, the special forms used for changes of address let the Court and DHS know where to send you papers about your case. When the Immigration Court and DHS send you papers, they will send them to the address you gave them. **If the Court only has an old address for you, it will send the paper telling you when your next hearing is to the old address, and when you do not show up to court on that date, you will receive an order of removal. This means that the next time DHS arrests you, you can be sent back to your country without a hearing.**

If you move,



send the Immigration Court your new address!

It is important to remember that the Court and DHS are two different things. If you let DHS know your new address but you do not send the right form (a blue "Change of Address" form (EOIR-33/IC)) to the Immigration Court, the Court will keep sending papers to you at your old address, and you can miss your court date. If that happens, you can get a removal order without seeing a judge.

• Can I get a work permit after I file for Three or Ten Year Cancellation?

You can get a work permit if you have filed an application for Three or Ten Year Cancellation with the Immigration Court or if you win Three or Ten Year Cancellation and a green card is not immediately available to you. If you get a green card as soon as you win Cancellation, you do not need separate employment authorization. We will address each type of situation.

Application for Employment Authorization (I-765)

You might be able to get work authorization if you have applied for Three or Ten Year Cancellation and have not had your final hearing yet. You also should be able to get work authorization if you win your Cancellation case, but do not have a green card yet. To apply for work authorization, we suggest that you find an organization close to where you live that helps immigrants. You can obtain a work authorization application from them and they can help you fill it out.

To apply for work authorization, you must fill out an Application for Employment Authorization (Form I-765) and mail it to the appropriate address identified in the instructions. If your case is not over yet, you must include a copy of your Form EOIR-42B (cancellation application) and proof that you have filed Form EOIR-42B with the court. Or, if you get a notice from the court stating the date and time of your individual hearing, you could use this notice along with a copy of your Cancellation application as proof that you have applied for Cancellation.

If you have won your Cancellation case, send proof that you won your case. Proof that you won your case could be a copy of the judge's order granting you Cancellation of Removal.

You should also follow the "DHS Post Order Instructions to Individuals Granted Relief or Protection from Removal by the Immigration Court" that are provided by the ICE trial attorney. You can also review this information on the USCIS website at: <http://www.uscis.gov/graphics/services/residency/IJBenefit.htm>

Before filling out the work authorization application, read the instructions portion of the application booklet carefully. Answer all of the questions.

For **Question #14**, if you entered the U.S. without being inspected (illegally), write in

“without inspection.”

For **Question #15**, if you do not have legal status here, write “undocumented.”

For **Question #16**, applicants for Cancellation of Removal (not including NACARA applicants) should indicate “(c)(10)” as the category under which to apply for work authorization. If you think this category does not describe you, read the instruction page of the application to determine your category. It is best to get help completing this form from a local organization that helps immigrants.

Once you have filled out the work authorization application, mail it and the proof that you filed the Cancellation application or won your case to the appropriate location indicated on the instruction page of the application. Include a copy of your Form I-94 Departure Record, if available, two standard passport-style photos (with name and A-number printed lightly on backs), a copy of your last Employment Authorization, if applicable, a \$80 biometrics fee (if biometrics were not done previously for the Cancellation application), and the \$180 application fee (or fee waiver application).

• **DON'T BE AFRAID**

Immigration judges do grant Cancellation of Removal cases. Getting ready for your hearing is a lot of work, but the more you prepare, the less afraid you will be when you go to Court, and the better your chances of winning your case.

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Certificate of Service

Name: _____

A#: ____ -- ____ -- ____

I certify that on _____, _____, I served
(date) (year)

Assistant Chief Counsel of the Department of Homeland Security -U.S. Immigration & Customs Enforcement (ICE) with a copy of:

(description of documents being served)

by placing a true and complete copy in an envelope, postage prepaid, and mailing it, addressed as follows:

Assistant Chief Counsel
Department of Homeland Security
U.S. Immigration & Customs Enforcement (ICE)
(address of DHS office that handled your case when you were in DHS custody)

(Sign your name here)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

City and state where court is

In the Matter of:) IN REMOVAL PROCEEDINGS
)
(Your name))
Respondent)
File No. A _____)
_____)

MOTION FOR CHANGE OF VENUE

The Respondent has bonded out and will be residing at:
(your address outside of detention)

The Respondent requests that his case be transferred to the Immigration Court that covers the area of his residence.

CERTIFICATE OF SERVICE

This original document is being sent by mail to:

Executive Office of Immigration Review
Office of the Immigration Judge
(address of court that handled your case while you were in DHS custody)

I hereby certify that I have served a copy of this motion by mailing a copy to:

Assistant Chief Counsel
Department of Homeland Security
U.S. Immigration & Customs Enforcement (ICE)
(address of DHS office that handled your case when you were in DHS custody)

Date: _____ Signed: _____
(sign your name here)

Respondent

THREE AND TEN YEAR CANCELLATION WORKSHEET

FOR _____, A# _____
(your name) (your A#)

NOTE: THIS WORKSHEET IS FOR YOU ONLY. DO NOT FILE IT WITH THE COURT!

Required Forms
(Check when filed)

File with Court: _____ Original Cancellation Application Form (EOIR-42B)
_____ Original Application for Fee Waiver (unless payment of \$100 made to DHS)
_____ Copy of Biographic Information Form (G-325A)
_____ Copy of biometrics fee receipt and appointment instructions (if
detained, ask DHS)
_____ One original passport-style photo (if detained, ask DHS)
ABOVE FILED ON _____
(date)

File with DHS: _____ Copy of Cancellation Application Form (EOIR-42B)
_____ \$100 or Copy of Application for Fee Waiver
_____ Original of Biographic Information Form (G-325A)
_____ Copy of biometrics fee receipt and appointment instructions
_____ One original passport-style photo
ABOVE FILED ON _____
(date)

Optional (not required) Forms
(check when mailed)

File with DHS (FOIA Office): _____ Freedom of Information/Privacy Act (G-639)
File with FBI: _____ FBI records request (fingerprint card, short letter, and \$18 money order)
ABOVE MAILED ON _____ (date)

Proof that you have lived in the U.S. continuously for three or ten years
(Check when filed)

Rent receipts

Tax returns

Pay stubs from work

Children's birth certificates

Deed to house

Medical records

School records

Baptism certificate

Bank statements

Driver's license

School Records

Letter from : _____ (your employer(s), family members, neighbors, landlord, or someone else who has lived with you or seen you a lot in all or part of the 3 or 10 years)

Letter from : _____ (name)

Letter from : _____ (name)

Letter from : _____ (name)

ABOVE FILED ON _____

(date)

Witness (name): _____ (who can testify about knowing you for 3 or 10 years)

Proof of Good Moral Character: (check when filed)

Letters from friends, coworkers, priest or other religious leader, proof of community service or other volunteer activities to help others:

- Letter/certificate from: _____

Service in U.S. armed forces:

- Honorable discharge
- Other: _____

Work history (if have worked legally):

- Tax returns
- Pay stubs or social security records
- Letter from employer: _____
- Letter from employer _____

Rehabilitation (if any criminal problems):

- Certificate of completion; proof of participation in _____ (class/program)
- Letter from (probation officer? guard? chaplain?) _____
- Letter from: _____
- Letter from: _____

Police Records Letter:

- Letters from police departments where you have lived confirming no criminal record

Family ties in U.S., hardship on you and family if removed from the U.S.:

- Children's birth certificates Marriage license
- Medical records/Doctor's letter (if you or someone you care for has a medical problem)
- Letter from: _____
- Letter from: _____
- Letter from: _____
- Letter from: _____

For Three Year Cancellation, proof of abuse and special hardship:

- Proof that abuser is spouse or parent (birth certificate, marriage certificate or other)
- Proof that abuser is legal permanent resident or U.S. citizen (copy of green card, birth certificate, certificate of naturalization)
- Medical records/Doctor's letter (if you or someone you care for has a medical problem, if you or your child got medical treatment because of abuse)
- Photos showing abuse
- Records of custody hearing
- Police records or reports
- Copy of temporary restraining order against abuser
- Torn clothing, broken furniture because of domestic violence (Photos or actual items if possible)
- Records of court hearings regarding domestic violence
- Letter from school counselor, psychologist, doctor, nurse (who knows of domestic violence)

- Letter from neighbors, friends, family members who have witnessed abuse
- Letter from anyone who knows how hard it will be on you and/or your child to return to your home country
- Newspaper articles or other reports about lack of protection for you from abuser in your home country

ABOVE FILED ON _____
(date)