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Quick Guide to "LPR Cancellation"

The Primary Avenue to Relief from Removal for Longtime Legal Residents

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SUMMARY PRACTICE POINTS

- **"Second-Chance Waiver"** - Cancellation of Removal for Lawful Permanent Residents (LPR Cancellation) is a one-time discretionary waiver that permits the immigration judge to allow qualifying LPRs to remain in the U.S. and keep their greencards despite having obtained a removable criminal conviction.
- **Aggravated Felony Convictions Bar Eligibility** - Any conviction classified as an aggravated felony under immigration law will render a noncitizen ineligible to request LPR Cancellation.
- **Noncitizen Must Prove She Is Deserving** - An applicant must demonstrate to the immigration judge that her positive equities outweigh her criminal history and that she is not likely to reoffend.

I. What is LPR Cancellation?

Lawful permanent residents (LPRs) who are placed in removal proceedings can apply for "LPR Cancellation." It is a one-time discretionary waiver that permits the immigration judge (IJ) to "cancel" the removal of a qualifying LPR and allow him to keep his greencard and remain lawfully in the U.S., despite his criminal conviction.¹ Many LPRs face a significant risk that they will not be released from immigration detention while they pursue their claim for LPR cancellation of removal, a process that can take months, and, if appeals are necessary, sometimes years.

II. What are the Eligibility Requirements for LPR Cancellation?

To be eligible for LPR Cancellation an applicant must demonstrate the following.

- **Seven Years of Lawful Presence in the U.S.** - The applicant must demonstrate that she has been lawfully present in the U.S. for at least 7 years. She must prove that she has been an LPR for at least 5 of these. The commission of an offense that makes the client removable will "stop the clock" on accruing the requisite 7 years.

¹ INA 240A(a); USC 1229b(a).

- **No Convictions that Qualify as Aggravated Felonies:** The applicant must prove that his criminal conviction(s) does not constitute an aggravated felony under immigration law.²
- **Favorable Exercise of Discretion:** The applicant must demonstrate to the immigration judge that he is not likely to reoffend and that he warrants a favorable exercise of discretion. Favorable discretionary factors include: long-term residence in the U.S., family and community ties, evidence of hardship to the applicant or her family if deportation occurred, service in the U.S. military, history of employment, service to the community, property and business ties, evidence of rehabilitation after a criminal conviction, and other evidence of good character.³ Applicants with long or more severe criminal records will be required to provide more evidence of positive equities and rehabilitation. This can be particularly difficult for people whose criminal convictions are more recent. LPR Cancellation-eligible clients who are in criminal custody after recent convictions should take advantage of any programs that are available to demonstrate rehabilitation or recovery from addiction.

III. What Are Defense Counsel’s Goals to Preserve a Client’s Eligibility for LPR Cancellation?

- **Identify Eligible Clients ASAP** – It is critical to identify clients who are LPRs and may be eligible for LPR Cancellation ASAP so that preserving eligibility can inform defense strategies for resolving the criminal charges. LPRs generally have the significant family and community ties and they have legal status to live and work in the U.S. indefinitely. Removal will result in permanent banishment.
- **Negotiate Plea To A Non-Removable Offense** – If your LPR client is going to plead guilty, it is always preferable to negotiate a plea that does not trigger any grounds of deportation or inadmissibility, or to plead specifically only to the part of the statute or conduct that does not trigger deportation or inadmissibility, and to include that goal in plea bargaining.⁴ This will ensure that LPR clients with no priors do not end up in removal proceedings at all and, thus, avoid the necessity of pursuing LPR cancellation of removal.
- **Ensure That Conviction Is Not An Aggravated Felony** – This is, fundamentally, the most critical factor to preserving eligibility for LPR Cancellation. Consult and strategize with WDAIP staff ASAP.
- **Trial vs. Plea?** – While acquittal is the best outcome to avoid immigration consequences, where conviction at trial would result in a conviction that eliminates eligibility for LPR cancellation (and thus ensures removal (deportation)), it may be “safer” to negotiate to a plea that preserves eligibility to pursue LPR Cancellation.

IV. Who Can Help My Client Apply for LPR Cancellation?

Clients who end up in immigration detention at ICE’s Northwest Detention Center in Tacoma should consult advocates from the Northwest Immigrant Rights Project (NWIRP). NWIRP runs a legal orientation program at the detention center and can represent some people in their LPR Cancellation cases or assist them

² The definition of aggravated felony for immigration purposes is provided at 8 USC § 1101(a)(43) and includes, among other things: any rape, murder, or sexual abuse of a minor offense; theft, possession of stolen property, or burglary with a sentence of a year or more; any crime of violence with a sentence of a year or more; child pornography; bribery, forgery, or counterfeiting with a sentence of a year or more; fraud or money laundering with a loss to the alleged victim of \$10,000 or more; trafficking, sale, or possession with intent to deliver of a controlled substance; trafficking in firearms; alien or felon in possession of a firearm; failure to appear (bail jump) on any felony charge or to serve a sentence of 5 years or more; and offenses relating to “obstruction of justice.”

³ *Xiao Fei Zheng v. Holder*, 644 F.3d 829 (9th Cir. 2011).

⁴ See <http://www.defensenet.org/immigration-project/immigration-resources> for a list of the grounds of deportation and ground of inadmissibility.

in filing *pro se* applications. Other clients who are interested in finding an immigration attorney can consult the immigration attorney referral list on the WDA website – www.defensenet.org. A noncitizen defendant who is not in jail and who appears eligible for this or any other form of relief from removal should also consult with competent immigration counsel experienced in removal defense as soon as possible.