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**Relief from Removal:
LPR and Non-LPR Cancellation of Removal**

Amelia Ruiz Fischer

Author Contact Information:

Amelia Ruiz Fischer

Fischer & Fischer, Attorneys at Law
Nacogdoches, TX

a.fischerlaw@gmail.com

936-564-2222

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Amelia Ruiz Fischer, Fischer & Fischer, Attorneys at Law

In 1996, Congress enacted an awful piece of immigration legislation called the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which, among other things, eliminated INA § 212(c) relief and suspension of deportation and replaced them with Cancellation of Removal for LPRs [INA § 240A(a)] and Cancellation of Removal for Non-LPRs [INA § 240A(b)]. IIRIRA also significantly expanded the “aggravated felony” category of crimes, greatly limiting these forms of relief for people who would otherwise be eligible.

In this paper, I will discuss LPR Cancellation of Removal and Non-LPR Cancellation of Removal, those two IIRIRA defenses you can present in removal proceedings to save your client from deportation. I have divided this paper into two sections by form of relief, and within those sections, I recite the statute, explain who qualifies, who doesn’t, and how you prove up your case.

That may seem like a basic approach, but it is intentionally so. Given page and time constraints, I cannot possibly cover every single issue, detail, or nuance of these forms of relief, nor can I go into great depth about each topic. If you represent people in removal proceedings, that is up to you. It is your ethical duty as an attorney and your moral obligation as a human to do the best you can to make sure your client doesn’t suffer the tragic consequence of deportation. And there are plenty of resources out there for you. There is, of course, our bible, Kurzban’s Immigration Law Sourcebook, for starters (I promise you it is worth every single penny). There are also plenty of topic-specific practice advisories that wonderful organizations like the Immigrant Legal Resource Center, the Immigrant Defense Project, the National Immigration Project of the National Lawyers Guild, and the National Immigration Law Center, among others, publish and put online, free of charge. Google them. My hope is that this paper will be of use to you as a resource for a quick overview of these types of removal defenses, and that it will highlight some particularities of each form of relief you need to explore further to provide your client with the representation she deserves.

LPR Cancellation of Removal under INA § 240a(A)

The Law

INA § 240a(A) reads as follows:

“The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

- (1) Has been an alien lawfully admitted for permanent residence for not less than 5 years,

- (2) Has resided in the United States continuously for 7 years after having been admitted in any status, and
- (3) Has not been convicted of an aggravated felony.”

It applies to eligible legal permanent residents who are placed in removal proceedings on or after April 1, 1997, and it is discretionary, meaning that the Immigration Judge may deny your client the relief, even if she is statutorily eligible, if the IJ decides that the negative discretionary factors outweigh the positive.

The Burden of Proof

Because the person in removal proceedings is a legal permanent resident, under INA § 240(c)(3)(A) the Government has the burden of proving by clear and convincing evidence that the person is deportable. However, it is the respondent’s burden to prove that she qualifies for cancellation of removal because she is statutorily eligible and because she warrants a favorable exercise of discretion. *See* INA § 240(c)(4)(A). What that means is that, while the Government has to prove, for example, that a conviction is an aggravated felony, making the respondent deportable, the respondent still has the burden of showing the conviction is *not* an aggravated felony, because she still has to establish eligibility for relief. *For a practice advisory about the burden of proof for aggravated felonies, see the National Immigration Project’s Practice Advisory: The Burden of Proof to Overcome the Aggravated Felony Bar to Cancellation of Removal* (Mar. 22, 2007), https://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/crim/2007_22Mar_proof-burden-agfel.pdf.

Persons Eligible

Under the first provision of § 240A(a), a person has to have been lawfully admitted for permanent residence for at least five years to be eligible for cancellation, which the INA defines as “having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.” *See* INA § 101(a)(20).

- Obtaining LPR status by fraud or mistake doesn’t count. *Matter of Koloamatangi*, 23 I&N Dec. 548 (BIA 2003).
- But conditional residency years do. *Gallimore v. Att’y Gen. of the U.S.*, 619 F.3d 216 (3d Cir. 2010).
- If your client was an LPR before, but is no longer one at the time she is placed in removal proceedings, she does not qualify for LPR cancellation. *Padilla-Romero v. Holder*, 611 F.3d 1011 (9th Cir. 2010).

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