




CANCELLATION OF REMOVAL FOR NON PERMANENT RESIDENTS

Removal Bootcamp 2020

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Cancellation of Removal for Non Permanent Residents

- Procedure that leads to permanent residence
- May be granted only in removal
- INA § 240A(b), 8 U.S.C. § 1229b(b)

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Basic eligibility

- Physical Presence for continuous ten year period immediately before application
- Good moral character for such period
- Exceptional and extremely unusual hardship to U.S. citizen or LPR spouse, parent or child
- Favorable exercise of discretion

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Defective NTA's and Stop Time Rule

- *Pereira v. Sessions*, 138 S. Ct. 2105 (2018)
- *Niz-Chavez v. Garland*, 141 S.Ct. 1474 (2021)
- For now, only clearly applies to the stop-time rule
- An NTA that does not state the date, time and place of the Respondent's hearing is not an "NTA" under the INA and does not stop time

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Statutory Ineligibility for Cancellation

- Ineligible for cancellation if *convicted* of an offense under § 212(a)(2) (crimes), § 237(a)(2) (crimes) or § 237(a)(3) (security).
- Contrast with permanent resident cancellation if which LPR can be convicted of criminal offenses, except for aggravated felonies.
- Broader than § 101(f) good moral character bar because grounds of deportation are included.

Physical presence- § 240A(d)

- Must actually be in U.S. lawfully or unlawfully.
- Stricter than continuous residence.
- Physical presence not required for persons with 24 months active military duty and honorable discharge who at time of enlistment were in the U.S.

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