Cancellation of Removal for Lawful Permanent Residents

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I. Introduction and Basic Eligibility

Cancellation of removal is a form of discretionary relief which prevents the removal of a lawful permanent resident (LPR). If granted, the LPR maintains her residence status and the grounds of either inadmissibility under INA § 212, 8 U.S.C. § 1182 or deportability under INA § 237, 8 U.S.C. § 1227 are waived except for terrorism and the persecution of others.[1] Unlike the former § 212(c) waiver of inadmissibility, there is no requirement of a "comparable ground of inadmissibility."[2]

The basic requirements for cancellation of removal are:[3]

- Lawful admission for permanent residence for at least five years;
- Continuous residence for seven years after any admission;
- No conviction of an aggravated felony; and
- Favorable exercise of discretion

II. Lawful admission for permanent residence

An applicant must have been a permanent resident for at least five years at the time of the application for cancellation of removal. Permanent residency that has been obtained by fraud is not acceptable, as it is not considered "lawful" admission.[4] Generally, permanent

[1] INA § 240A(c)(4) and (5), 8 U.S.C. § 1229b(c)(4) and (5). There are other grounds of ineligibility but they apply primarily to non-permanent resident cancellation.
[2] See, for example, *Matter of Blake*, 23 I. & N. Dec. 722 (BIA 2005).
[3] INA § 240A(a), 8 U.S.C. § 1229b(a).
[4] *Matter of Kolontangi*, 23 I. & N. Dec. 548 (BIA 2003). However, it is possible that the underlying fraud could be cured by an INA § 237(a)(1)(H), 8 U.S.C. § 1227(a)(1)(H) waiver. In such instance, an applicant could apply for cancellation of removal to waiver additional grounds of removability. *See* discussion *infra* regarding multiple waivers.

residence begins at the date the non-citizen is admitted as an LPR. A conditional lawful permanent resident accrues time retroactively as to the original adjustment date, provided that the condition is removed.[5] However, persons who adjust under the Cuban Refugee Adjustment Act of 1966 receive 30 months retroactive residency (or the date of their last arrival into the U.S) and their permanent residence begins retroactively.[6]

III. Continuous residence for seven years after any admission

In addition to five years of lawful permanent residence, the applicant must have continuously resided in the U.S. for seven years after any admission. The five years of permanent residence can form all or part of seven years' continuous residence.

It is important to note that the statutory language of continuous residence differs from that of former § 212(c), 8 U.S.C. § 1182(c). Under § 212(c), there were conflicting administrative and judicial opinions regarding when residence began and if unlawful residence or temporary residence could be counted.[7] In contrast, the cancellation statute only requires continuous residence "*after having been admitted in any status."*

Thus, if a person is lawfully admitted in any status whatsoever, he begins to accrue continuous residence, even if he subsequently falls out of status. In *Matter of Blancas-Lara*,[8] the Board of Immigration Appeals (BIA) held that a person who had been admitted to the U.S. on a border crossing card, who remained in the U.S. after the expiration of his authorized stay and subsequently adjusted his status to permanent resident, began to accrue continuous residence from the date of his admission on the border crossing card. The BIA

[5] INA §216, 8 U.S.C.§ 1886a. A conditional resident is a spouse (or stepchildren) who immigrates based on a marriage of less than two years' duration at the time of the adjustment of status or grant of permanent residence. Certain steps must be taken to "remove the conditions."
[6] *Matter of Rivera-Rioseco*, 19 I. & N. Dec. 833 (BIA 1988).
[7] *See, e.g.*, *Pritchard-Ciriza v. INS*, 978 F.2d 219 (5th Cir. 1992).
[8] 23 I.& N. Dec. 458 (BIA 2002).

reached this decision because the statute requires an "admission," but does not require that the continued residence after such admission be lawful.[9] The Ninth Circuit has held that "family unity" is a lawful admission for purposes of cancellation,[10] while the Fifth Circuit has disagreed in an unpublished opinion. [11]

The statute requires "continuous" residence. Thus issues of abandonment of residence may arise in cancellation cases which may affect both lawful permanent residence and continuous residence. However, "continuous" residence in other statutory contexts does not require physical presence during the entire required period of residence.[12]

A. Examples of Seven Year Continuous Residence

- Permanent resident for 7 years
- Temporary resident for 2 years and permanent resident for 5 years
- F-1 student for 2 years and permanent resident for 5 years
- B-2 tourist for 1 day, resides in U.S. illegally for 2 years and permanent resident for 5 years.

B. Imputing Residence to Parents

Arguments that a minor can use the residence of his parents to establish continuous residency have not been addressed by a precedent decision. This issue has arisen in situations in which the cancellation applicant does not have the seven years continuous residence. Because the statute requires seven years residence "after having been admitted in any category," an indexed and an unreported BIA cases have both held that a minor who enters without being inspected cannot count his parents' residence because the statute

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[9] INA § 240A(a)(2), 8 U.S.C. § 1229b(a)(2) "has resided in the United States continuously for 7 years having been admitted in any status."

[10] *Garcia-Quintero v. Gonzales,* 455 F.3d 1006 (9th Cir. 2006). Family unity allows certain children and spouses of permanent residents who obtained status through the legalization and agricultural programs of the eighties to remain in the U.S. with employment authorization. IMMACT 90, Pub.. L. No. 101-649, §301; 8 C.F.R. 236.15.

[11] *Diaz v. Ashcroft,* 2004 WL 2091482 (C.A.5).

[12] Compare INA § 240A(a)(2) with INA § 240A(b)(1)(A), 8 U.S.C. § 1229b(b)(1)(A) and § 240A(d)(2), 8 U.S.C. § 1229b(d)(2).

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