No. 11-104

In the Supreme Court of the United States

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
PETITIONER

v.

HUMBERTO BECERRA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
TONY WEST
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
PRATIK A. SHAH
Assistant to the Solicitor General
DONALD E. KEENER
CAROL FEDERIGHI
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a parent's years of residence after admission can be imputed to an alien who has resided with that parent as an unemancipated minor, for the purpose of satisfying the cancellation-of-removal statute's requirement (8 U.S.C. 1229b(a)(2)) that the alien have "resided in the United States continuously for 7 years after having been admitted in any status."

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and regulations:

In the Supreme Court of the United States

No. 11-104

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
PETITIONER

v.

HUMBERTO BECERRA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of Attorney General Eric H. Holder, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-2a) is unreported. The decisions of the Board of Immigration Appeals (App. 4a-10a) and the immigration judge (App. 11a-20a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 20, 2011. A petition for rehearing was denied on April 27, 2011 (App. 3a). This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in the appendix to this petition. App. 21a-223a.

STATEMENT

1. Under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, the Attorney General, in his discretion, may cancel the removal of an alien who is found to be removable. 8 U.S.C. 1229b (2006 & Supp. II 2008). The statute sets forth the eligibility criteria for cancellation of removal of a lawful permanent resident as follows:

> **(a) Cancellation of removal for certain permanent residents**
>
> 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 any aggravated felony.

8 U.S.C. 1229b(a).

The INA defines the phrase "lawfully admitted for permanent residence," as used in Subsection (a)(1), as "the status of 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." 8 U.S.C. 1101(a)(20). The INA defines "residence," as used in Subsection (a)(2) ("resided"), as the alien's "principal, actual dwelling place in fact, without regard to intent." 8 U.S.C. 1101(a)(33). The INA defines "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). An alien may be "admitted" to the United States either at a port of entry or by adjusting to a lawful status while already in the country. See, *e.g.*, *In re Alyazji*, 25 I. & N. Dec. 397, 399-400 (B.I.A. 2011).

The cancellation-of-removal statute further provides that an alien's period of continuous residence is deemed to end

> when the alien is served a notice to appear under section 1229(a) of this title, or * * * when the alien has committed an offense referred to in section 1182(a)(2) of this title that renders the alien inadmissible to the United States under section 1182(a)(2) of this title or removable from the United States under section 1227(a)(2) or 1227(a)(4) of this title, whichever is earliest.

8 U.S.C. 1229b(d)(1)(A)-(B).

To obtain cancellation of removal, the alien must demonstrate both that he is statutorily eligible for such relief and that he warrants a favorable exercise of discretion. *In re C-V-T-*, 22 I. & N. Dec. 7, 10 (B.I.A. 1998). The alien bears the burden of proof on those issues. 8 U.S.C. 1229a(c)(4)(A)(i); 8 C.F.R. 1240.8(d). The ultimate discretion of the Attorney General to grant such relief is akin to "a judge's power to suspend the execution of a sentence, or the President's to pardon a

convict." *INS* v. *Yueh-Shaio Yang*, 519 U.S. 26, 30 (1996) (citation omitted).

2. a. In 1983, at the age of one, respondent, a native and citizen of Mexico, first entered the United States illegally. App. 13a; Administrative Record (A.R.) 123. Respondent returned to Mexico a few years later, then reentered illegally in 1991, when he was nine years old. *Ibid.*; App. 5a. At that time, respondent's mother was a legal permanent resident (LPR) of the United States, having been granted that status in 1987. App. 14a; A.R. 127. Respondent thereafter resided with his parents in the United States. A.R. 130. In September 2001, at the age of 19, respondent obtained LPR status. App. 12a, 14a.

b. On September 24, 2002, respondent pleaded guilty to possession of cocaine and driving under the influence of alcohol and another drug. App. 8a, 13a. (On an earlier occasion, respondent had been convicted of being under the influence of methamphetamine, but that offense had been expunged after he had undergone a rehabilitation program. App. 12a-13a, 18a.) In 2005, when respondent attempted to re-enter the United States from Mexico after having lost his legal resident card, routine checks revealed outstanding arrest warrants relating to his failure to pay the fines associated with his convictions. A.R. 241-243. Immigration officials then served and filed a Notice to Appear charging him with being inadmissible under 8 U.S.C. 1182(a)(2)(A)(i)(II) for having been convicted of, or having admitted committing, a controlled-substance offense. App. 11a-12a. Respondent admitted to the facts establishing his removability for this charge but sought cancellation of removal pursuant to 8 U.S.C. 1229b(a). App. 12a-14a.

In December 2006, after a merits hearing, an immigration judge (IJ) found respondent statutorily eligible for cancellation of removal, even though he had not resided in the United States for seven years after lawful admission (8 U.S.C. 1229b(a)(2)).[1] App. 14a-17a. Applying *Cuevas-Gaspar* v. *Gonzales*, 430 F.3d 1013, 1021-1029 (2005), in which the Ninth Circuit held that a parent's period of continuous residence after the parent's lawful admission could be imputed to a minor child residing with the parent for the purpose of satisfying Section 1229b(a)(2)'s seven-year residency requirement, the IJ permitted respondent to rely on his mother's years of lawful residence from 1991 forward to satisfy that requirement. App. 14a-17a.

After weighing the equities of respondent's situation, the IJ granted respondent cancellation of removal in the exercise of discretion. App. 17a-20a.

c. The Board of Immigration Appeals (Board) reversed, vacated the grant of cancellation of removal, and ordered respondent removed from the United States. App. 4a-10a.

The Board declined to apply *Cuevas-Gaspar* to allow respondent to satisfy the seven-year residency requirement of Section 1229b(a)(2) by imputing years of residency from his mother. App. 7a. The Board considered itself bound by its more recent precedential decisions in *In re Escobar*, 24 I. & N. Dec. 231 (2007), and *In re Ramirez-Vargas*, 24 I. & N. Dec. 599 (2008). In *Esco-*

---

[1] At the time of the hearing, respondent had been "an alien lawfully admitted for permanent residence" for more than five years and hence satisfied 8 U.S.C. 1229b(a)(1). See 8 C.F.R. 1.1(p); *Sinotes-Cruz* v. *Gonzales*, 468 F.3d 1190, 1197 (9th Cir. 2006). In addition, it was undisputed that respondent had not been convicted of any aggravated felony, so the IJ also found that he satisfied 8 U.S.C. 1229b(a)(3). App. 14a.

bar, the Board had noted its disagreement with *Cuevas-Gaspar* in declining to extend the imputation rule to Section 1229b(a)(1)'s five-year LPR status requirement. App. 7a. And then in *Ramirez-Vargas*, the Board rejected an alien's invocation of imputation in attempting to satisfy Section 1229b(a)(2)'s seven-year continuous residence requirement. App. 7a-8a. Notwithstanding *Cuevas-Gaspar*'s contrary holding, the Board reasoned that the Ninth Circuit would be required to defer to the Board's intervening decisions in *Ramirez-Vargas* and *Escobar* pursuant to *National Cable & Telecommunications Ass'n* v. *Brand X Internet Services*, 545 U.S. 967 (2005). App. 8a; see 24 I. & N. Dec. at 600-601.

3. The Ninth Circuit granted respondent's petition for review and remanded to the Board for reconsideration of his cancellation-of-removal application in light of the Ninth Circuit's intervening decision in *Mercado-Zazueta* v. *Holder*, 580 F.3d 1102 (2009). App. 2a. In *Mercado-Zazueta*, the Ninth Circuit rejected the Board's decisions in *Ramirez-Vargas* and *Escobar* and treated *Cuevas-Gaspar*'s holding as binding with respect to Section 1229b(a)(2). 580 F.3d at 1115. The Ninth Circuit also extended *Cuevas-Gaspar* to Section 1229b(a)(1), holding that "for purposes of satisfying the five years of lawful permanent residence required under [Section 1229b(a)(1)], a parent's status as a lawful permanent resident is imputed to the unemancipated minor children residing with that parent." *Id.* at 1113.

4. The government petitioned for panel rehearing and asked the court of appeals to stay its consideration of the petition pending the Solicitor General's decision on whether to seek certiorari in *Sawyers* v. *Holder*, 399 Fed. Appx. 313 (9th Cir. 2010), reh'g denied (9th Cir. Feb. 1, 2011), petition for cert. pending, No. 10-1543

(filed June 23, 2011), as well as any further review granted in that case. The court of appeals denied the petition. App. 1a-2a.

REASONS FOR GRANTING THE PETITION

The question whether 8 U.S.C. 1229b(a) permits imputation of a parent's lawful admission date, years of residence after that admission, and period of lawful permanent resident status to an alien for purposes of satisfying the statutory eligibility criteria for cancellation of removal is presented in two petitions for a writ of certiorari currently pending before the Court. See *Gutierrez* v. *Holder*, 411 Fed. Appx. 121 (9th Cir. 2011), petition for cert. pending, No. 10-1542 (filed June 23, 2011); *Sawyers* v. *Holder*, 399 Fed. Appx. 313 (9th Cir. 2010), petition for cert. pending, No. 10-1543 (filed June 23, 2011). If the Court grants those petitions and concludes that imputation is not permitted to satisfy the eligibility requirement of Section 1229b(a)(2), then respondent in this case would not be eligible for cancellation of removal. Accordingly, the Court should hold this petition pending the final disposition of *Gutierrez* and *Sawyers*, including any subsequent proceedings on the merits, and then dispose of the petition as appropriate in light of those decisions.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's final disposition of *Gutierrez* and *Sawyers*, and disposed of as appropriate in light of those decisions.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
TONY WEST
Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
PRATIK A. SHAH
Assistant to the Solicitor General
DONALD E. KEENER
CAROL FEDERIGHI
Attorneys

JULY 2011

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-75112

HUMBERTO BECERRA, PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL, RESPONDENT

On Petition for Review of an Order of the Board of Immigration Appeals

---

MEMORANDUM

[Filed: Jan. 10, 2011]

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Humberto Becerra, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order sustaining the government's appeal from an immigration judge's decision granting his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law, *Mercado-Zazueta v. Holder*, 580 F.3d 1102, 1104 (9th Cir. 2009), and we grant the petition for review.

The BIA rejected Becerra's contention that he was entitled to impute his mother's admission as a lawful permanent resident in order to satisfy the sevenyear period of continuous residence required for cancellation of removal. *See* 8 U.S.C. § 1229b(a)(2). However, the BIA did not have the benefit of our decision in *Mercado-Zazueta*, 580 F.3d at 1113-16, in which we recognized the ongoing validity of *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013 (9th Cir. 2005) (a parent's admission for permanent residence is imputed to unemancipated minor children residing with the parent for the purpose of satisfying the required period of continuous residence under 8 U.S.C. § 1229b(a)(2)). We therefore remand to the BIA to reconsider Becerra's appeal.

PETITION FOR REVIEW GRANTED; REMANDED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-75112

HUMBERTO BECERRA, PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
RESPONDENT

[Filed: Apr. 27, 2011]

ORDER

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Respondent's petition for panel rehearing is denied.

APPENDIX C

[SEAL OMITTED]

U.S. Department of Justice
Executive Office for
Immigration Review

Board of Immigration
Appeals Office of the Clerk

5107 Leesburg Pike,
Suite 2000
Falls Church, Virginia 22041

ARKUSH, David J., Esquire
111 F Street, N.W., Suite 306
Washington, DC 20001

US DHS-District
Counsel/IMP
1115 N. Imperial Ave.
EI Centro, CA 92243

Name: BECERRA, HUMBERTO A075-499-740

Date of this notice: 12/5/2008

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ DONNA CARR
DONNA CARR
Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.
Malphrus, Garry D.
Mullane, Hugh G.

U.S. Department of Justice
Executive Office for
Immigration Review

Decision of the Board of
Immigration Appeals

Falls Church, Virginia 22041

Date: [Dec. 5, 2008]

File: A075 499 740 - Imperial, CA

In re: HUMBERTO BECERRA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David J. Arkush, Esquire

ON BEHALF OF DHS: John J. Yap
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The Department of Homeland Security ("DHS") has appealed from the Immigration Judge's decision dated December 8, 2006, in which the Immigration Judge granted the respondent's application for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). The appeal will be sustained.

The central issue on appeal is whether the respondent met the requirement of having 7 years of continuous residence in the United States after having been admitted in any status. *See* section 240A(a)(2) of the Act. The Immigration Judge determined that even though the respondent entered the United States without inspection in 1991, his mother's status as a lawful

permanent resident could be imputed to him for purposes of satisfying section 240A(a)(1) of the Act. The Immigration Judge also determined that the mother's continuous residence following her admission in any status could be imputed to the respondent for purposes of section 240A(a)(2) of the Act. The Immigration Judge further determined that even though the respondent may have had a period during which he did not benefit from the imputation of his mother's status (after the respondent turned 18 years old), the respondent had work authorization during that period and such authorization could be considered an admission in any status for purposes of cancellation of removal.

The DHS argues on appeal that the respondent's period of continuous residence for purposes of section 240A(a)(2) of the Act was interrupted when he turned age 18, without having acquired permanent resident status, and that the issuance of work authorization was not tantamount to "admission in any status." The DHS also contends that the respondent can "borrow" only 2 years of his mother's residence for purposes of establishing his own continuous residence after admission. The DHS does not contest the Immigration Judge's conclusion that the lawful permanent resident status of the respondent's mother can be imputed to the respondent for purposes of satisfying section 240A(a)(1) of the Act.

The respondent contends on appeal that he was not required to maintain legal "status" during the 7-year residence period required in section 240A(a)(2), and that since his mother's admission as a lawful permanent resident can be imputed to him, he has thus satisfied the residency requirement.

The respondent is correct that section 240A(a)(2) of the Act does not require that an alien maintain status for the entire 7-year continuous residence period. *See Matter of Blancas,* 23 I&N Dec. 458 (BIA 2002) ("Congress could easily have written section 240A(a)(2) to include maintenance of status as a prerequisite for relief, but it chose only to require 7 years of continuous residence after admission to the United States."). However, in light of precedents issued after the respondent filed his well-reasoned appeal brief in this case, we conclude that the respondent has not satisfied the residency requirement.

In *Matter of Escobar,* 24 I&N Dec. 231 (BIA 2007), we addressed the case of *Cuevas-Gaspar v. Gonzales,* 430 F.3d 1013 (9th Cir. 2005), which held that the lawful admission and residence of a parent can be imputed to an unemancipated minor to satisfy the continuous residence requirement of section 240A(a)(2) of the Act. In *Matter of Escobar, supra,* we declined the alien's request to extend the reasoning of *Cuevas-Gaspar* v. *Gonzales, supra,* to section 240A(a)(1) of the Act (lawful admission for permanent residence for not less than 5 years). We also rejected the holding of *Cuevas-Gaspar* v. *Gonzales, supra,* and determined not to follow it in cases arising outside of the Ninth Circuit. Thereafter, in *Matter of Ramirez- Vargas,* 24 I&N Dec. 599 (BIA 2008), we determined that we were bound by *Matter of Escobar, supra,* even in the Ninth Circuit. We observed that when the Ninth Circuit decided *Cuevas-Gaspar* v. *Gonzales, supra,* the court did not then have before it the Board's full explanation of the reasons for not imputing the lawful admission of a parent to a child who was later admitted as a lawful permanent resident. We ob-

served that the Ninth Circuit recently held that it must give *"Chevron"* deference to an agency's statutory interpretation that conflicts with its own earlier interpretation. *See Gonzales v. Department of Homeland Security,* 508 F.3d 1227, 1242 (9th Cir. 2007); *see also Chevron US.A .. Inc. v. Natural Resources Defense Council. Inc.,* 467 U.S.837 (1984); *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.,* 545 U.S. 967 (2005).

In the matter before us, the respondent entered the United States without inspection (Tr. at 35). He adjusted his status to that of a lawful permanent resident on September 6, 2001 (Tr. at 36; Exh. 1). On September 24, 2002, the respondent was convicted of possession of cocaine based upon a September 14, 2002, incident (Exh. 5). The offense cut off the respondent's period of continuous residence for purposes of his application for cancellation of removal. *See* section 240A(d)(1) of the Act (providing that continuous residence is deemed to end upon commission of an offense referred to in section 212(a)(2) that renders the alien inadmissible under section 212(a)(2) or removable under section 237(2)(2) or 237(a)(4)). Thus, the respondent had only 1 year and a few days of continuous residence in the United States after his September 6, 2001, admission. Furthermore, under *Matter of Ramirez-Vargas, supra,* his mother's lawful admission and continuous residence are not imputed to him.[1]

We also disagree with the Immigration Judge's finding that the grant of a work permit was an admission in

[1] We note that the respondent currently meets the section 240A(a)(1) requirement because it has been more than 5 years since he was admitted as a lawful permanent resident.

any status. The respondent was granted permission to work in conjunction with his application for adjustment of status. Filing an application for adjustment of status, and thereby receiving work authorization, does not constitute a lawful admission. *See generally Matter of Rotimi*, 24 I&N Dec. 567, 578 (BIA 2008) (concluding that period during which alien was an applicant for asylum or adjustment of status was not lawful residence for purposes of a section 212(h) waiver and stating, "[a]n alien who is merely provided employment authorization, and who is allowed to remain here while awaiting a ruling on his applications for relief, is not in the same position as an alien who has been granted a valid immigration status or some other specific authorization to be here, such as Family Unity benefits (regardless of whether it amounts to a recognized 'status')."); *see also* section 101(a)(13) of the Act, 8 U.S.C. § 1101(a)(13) (providing that "[t]he terms admission and admitted mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer"). Moreover, even assuming work authorization were an admission, the respondent received that authorization on June 30, 1999, and he does not have 7 years of continuous residence between that date and September of 2002, when his continuous residence is deemed to have ended.

Because the respondent does not meet the residence requirement of section 240A(a)(2) of the Act, he is not eligible for cancellation of removal. The appeal of the DHS will be sustained, and the respondent will be ordered removed to Mexico.[2]

---

[2] The Immigration Judge found that the respondent admitted the charges in the Notice to Appear (I.J. at 2).

ORDER: The appeal of the DHS is sustained and the Immigration Judge's decision dated December 8, 2006, is vacated insofar as it grants the respondent cancellation of removal.

FURTHER ORDER: The respondent is ordered removed to Mexico.

/s/ ILLEGIBLE
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Imperial, California

File No. A 75 499 740

IN THE MATTER OF HUMBERTO BECERRA,
RESPONDENT

[Filed: Dec. 8, 2006]

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(2)(A)(i)(II) (controlled substance) Immigration and Nationality Act (INA).

APPLICATION: Termination; cancellation of removal under Section240A(a) INA.

ON BEHALF OF RESPONDENT:

Pro se

ON BEHALF OF DHS:

Deborah Robertson, Esquire
1115 North Imperial Avenue
El Sentro, California 92243

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 24-year-old young man who is a native and citizen of Mexico. He has been a legal resident in the United States since September 2001. The Immigration Authorities began removal proceedings by alleging that Mr. Becerra had admitted the elements of a controlled substance offense, Exhibit 1. The Notice to Appear was properly served.

On January 18, 2006, the matter came on for hearing. Becerra was not represented. I explained to him the rights in which he is entitled and the charge against him. He asked for a continuance so he might speak to the consul of his native country. The matter was continued then to February 22, 2006.

On February 22, 2006, Becerra again appeared without counsel. He elected to waive his right to counsel and chose instead to represent himself. I asked him then to admit or deny the allegations, after I was certain he understood all the allegations and the charges against him, as well as to the rights he was entitled. He admitted all the allegations. He testified he was convicted of a controlled substance offense, under the influence of methamphetamine. He explained that he had been placed on diversion which he successfully completed. He also testified he was convicted prior to that offense for possession of a controlled substance in 2002. The Government corroborated his admissions with a copy of his sworn statement that Mr. Becerra gave at the Calexico port of entry on November 2, 2005. See Exhibit 2.

At a subsequent hearing the Government also presented evidence to show that the respondent was also

indeed convicted of being under the influence. See Exhibit 4. The exhibit does not list the controlled substance however. The same Exhibit 4 also shows that Becerra was placed on diversion with a dismissal hearing set for October 30, 2006. Becerra testified that in fact his diversion was completed and he had his certificate of completion.

The Government also offered Exhibit 5 as corroboration of Becerra's admission and testimony. Exhibit 5 shows that Becerra had a felony conviction for violation of California Health and Safety Code 11350 which related to cocaine, according to the felony complaint, Count 1. For this offense he was granted probation, including 90 days of incarceration.

The documentary evidence is at some odds with the details of Mr. Becerra's testimony. Contrary to his recollection the Government granted him diversion on his first offense, under the influence, not for possession. See Exhibit 5.

I considered Becerra's case to determine if he was eligible for any relief. He is a young man who has lived in the United States since he was a mere child. Although he arrived in the U.S. at about the age of 2, he returned to Mexico for a time and eventually returned permanently to the United States in about 1991. Despite his long presence in the United States his 2002 conviction for possession of cocaine means he lacks good moral character. See Section 101(a)(3) INA. Lacking good moral character he is therefore ineligible for cancellation of removal as a non-permanent resident Section 240A(b)(1)(B) INA, and ineligible for voluntary departure 240B(b)(1)(B) INA.

At my urging, Becerra filed an application for cancellation of removal as a permanent resident under Section 240A(a). He clearly met two statutory requirements: he has been a legal resident for five years, and he has never been convicted of an aggravated felony. However, he was unable to show that he as resided continuously in the United States for seven years after having been admitted under any status. He testified that he initially came to the United States with a passport or other document. He later explained he departed the U.S. as a very small child, and next returned to the United States without any inspection in about 1991. At the time of his entry in 1991, his mother already was a permanent resident in the United States. She naturalized in 2000. He then remained permanently in the United States after his own entry in 1991.

On June 30, 1999, Becerra was granted a work permit; he was about 17 years old at the time. He was granted legal permanent residence on September 6, 2001, exactly three months shy of his 20th birthday. The work permit that he had earlier received in 1999 was related to his parent's application and petition to adjust him to legal permanent resident.

Under *Cuevas-Gespar v. Gonzalez*, 435 F. 3d 1013 (9th Cir. 2005), lawful admission of legal permanent resident status of a parent can be inputted to a minor dependent child to satisfy the continuous resident requirement for cancellation of removal. Some language in *Cuevas* seems to hint that only two years of a parent's residence can be imputed to a child. *Id.* at 1029, ("here Congress's adoption of a two step residency requirement in place of a former one step "unrelinquished domicile" requirement clearly was intended as a generous provi-

sion allowing legal permanent residents to count two years of residence in the United States in non-permanent status towards requirement, and therefore should be interpreted to at least allow for "imputation to be held in the Lape Guitron was required under former Section 212(c) INA".) That same quoted language also makes clear that interpretation of the cancellation statute should at least allow for imputation . . . held in Lape Guitron.

In Becerra's case, it seems he fell out of the category of a minor dependent child because he did not obtain legal residence until he turned 19 years and 9 months old. Hence a hiatus occurred. However, the hiatus was not such that he had no benefit. When he was only 17 years old, he was granted work authorization. Consequently the hiatus was not interruptive of the benefits conferred by his having a derivative "admission in any status" from his mother. Just as a non-immigrant who has fallen out of status can nevertheless count this time out of status in reaching the requisite seven years, so should Becerra. This is particularly apt since Becerra had a work permit. Thus, the hiatus between his having arrived and his subsequent acquisition of his own legal residence does not cut off the accrual of the necessary seven years of continuous residence.

A work permit is certainly no true document of admission, and it does not bestow a true privilege of remaining in the United States. However, it is at first an acknowledgment of the alien's presence in the United States. Secondly, it bestows a status reserved to only certain aliens: the right to work. It is reserved only to legal immigrants and certain authorized others. See 8 C.F.R. 274a.12. While work authorization is not a doc-

ument for admission to the United states, it is the crucial attribute of legal residence. It is a kind of welcome mat, a very special and sought after privilege that is valued and guarded by both the Government and the recipient. Permission to work must then be seen as a kind admission into the society of the United States. Cf: *Garcia-Quintero v. Gonzalez*, 455 F. 3d 1006 (9th Cir. 2006) (holding the alien's acceptance into the Family Energy Program constitutes being "admitted in any status" for purposes of cancellation of removal).

More importantly, however, Becerra remained a minor under the Lape Guitron analysis until he was 21 years old. A child is "a person under 21 years of age . . . " see section 101(b)(1) and Section 101(c)(1) INA. Even though the respondent reached majority for most purposes at the age of 18, he was still a child under the applicable sections of the Immigration and Nationality Act until he turned 21 years of age. (Indiscernible). (Indiscernible). Sections 110 (b)(1) and Sections 101(c)(1) INA. Consequently, he continued to derive status and residence through his mother until he received his own independent grant of legal residence at the age of 19.

Even if at age 18 he aged out of the protection of the rule of *Cuevas-Gespar, supra*, in its own extension of Lape Guitron, he would nevertheless still had status in the meaning of a cancellation statute because he was extended a work permit. Like the status the Circuit Court found within the family unity program, *Garcia-Quintero v. Gonzalez*, 455 F. 3d 1006 (9th Cir. 2006), the grant of permission to work, no doubt given to him because of his pending adjustment of status, was an admission for purposes of cancellation of removal. "Admitted

in any status" in the cancellation statute (Section 240A(a)(2) INA) is limited by the liberal terms of the definition. *See Garcia-Quintero*, 455 F. 3d at 1015, note 6. The grant of the work permit would give Becerra a standing of legal relationship to the community which permitted him to work and was a forbearance from removing him from the United States. *Id.* at 1017. Moreover, unlike voluntary departure discussed in *Garcia-Quintero* which is in effect simply an extended period of time which to part, the grant of work authorization while an adjustment application is pending is done so with a view that no departure be required, but that full incorporation in the community of the United States as a legal residence will shortly follow.

Having determined that Becerra is statutorily eligible for relief, I must nevertheless still determine if he deserves the relief he requests. To determine whether to grant relief as a matter of discretion, the Court weighs the positive social and human factors in the respondent's favor against the negative factors in the case. The respondent has many positive factors in his favor.

He has lived in the United States since 1991 and had a presence and residence, albeit unlawful, even prior to that. He is as much socialized as a member of America's society. He has been educated in schools in the United States. He speaks English. He has all his immediate family in this country. His work history is entirely in this country. He is much "Americanized".

For the Government to remove him from the United States and return him to Mexico would be a hardship upon his family. He would return to a country with which he had effective severed his ties more than 14 years earlier. Since he merely 24 years old, that obvi-

ously means that the vast majority of his life has been spent in the United States and all his formative years as a teenager and the socialization that occurred during that time occurred here in the United States. He would likely suffer not only the emotional pain of separation from things familiar to him and his family, he would likely suffer some diminution in his economic well-being.

Similarly, his family will suffer the emotional strain and upset of his absence. They will no doubt be saddened by his departure, to the degree he has from time to time contributed to his family. They may suffer some diminution in their own way and economic well-being.

The respondent has certainly been involved with illicit drugs. It appears that twice he was arrested. He was initially treated leniently and granted diversion. While he successfully completed that program, that treatment in the criminal justice system did not dissuade him from further use. He was subsequently convicted of a more serious offense. That is indeed a negative factor. That negative factors weight is increased by the fact that his first involvement was not his last; that his first foray into the criminal justice system was not enough to dissuade him from further involvement.

However, the respondent has since then become clean and sober. He has rehabilitated and given up his association with drugs. It appears that this was essentially a small episode in the life of a young man. While not every young person involves himself with drugs, it is not surprising people experiment in a society which is flooded with drugs. Surely it would be far better testament to his character had he had only one involvement. However, I am in the end persuaded that the respondent

has seen the error of his ways and has been able to conquer the association he had with these drugs.

Apart from this involvement, it does not seem that he has any significant other involvement with the law. He has been arrested for having no license, being suspended for drunk driving. Again, this drunk driving relates to his association with alcohol. Not surprisingly a person associated with alcohol, especially if it rises to the level of addiction, can feel trapped by drugs. Certainly this is a negative factor.

However, the respondent has apparently been able to overcome these attractions to addictive substances. I was, however, distressed to learn that he still occasionally drinks beer. I am convinced that persons who have associations with drugs are in effect afflicted with a brain which likes addictive substances. Consequently if one has drug association, one must avoid all drugs including alcohol. The respondent and I discussed that. He was receptive to my view. Of course, my view is simply my view and it is not a rule or law or psychology as far as I know. It is my advice to a person who has had problems with substance abuse.

The respondent testified that he had been working as a handyman with a friend, he hopes someday to go back to school and he wants to be a pilot.

The respondent's own testimony (indiscernible) to stay in the United States, he has testified that he is not a bad person. I accept that. I do not think the respondent is a bad person. I think he is a young man who has made some erroneous choices. I hesitate to simply call it erroneous though because he knew his options and he knew the wrong associated with his choices. He nevertheless proceeded.

Despite that, I am persuaded that the positive factors ultimately overcome the negative. The respondent has shown that he is deserving of the relief he requests. Therefore I will grant the relief he requested.

having considered all the evidence (indiscernible) I make the following order:

ORDER

It is therefore that the respondent's request for cancellation of removal under Section 240A(a) of the Immigration and Nationality Act, as amended, be granted.

/s/ JACK STATON
JACK STATON
Immigration Judge

APPENDIX D

1. 8 U.S.C. 1101 provides in pertinent part:

Definitions

(a) As used in this chapter—

* * * * *

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 1182(d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

(v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the

alien has been granted relief under section 1182(h) or 1229b(a) of this title, or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

* * * * *

(20) The term "lawfully admitted for permanent residence" means the status of 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.

* * * * *

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

* * * * *

2. 8 U.S.C. 1229b provides in pertinent part:

Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

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 any aggravated felony.

* * * * *