

HOW TO APPLY FOR “CANCELLATION OF REMOVAL FOR CERTAIN LAWFUL PERMANENT RESIDENTS”

WARNING

This booklet provides general information about immigration law and does not cover individual cases. Immigration law changes often, and you should try to consult with an immigration attorney or legal agency to get the most recent information. Also, you can represent yourself in immigration proceedings, but it is always better to get help from a lawyer or legal agency if possible.

This booklet is presented by the Vera Institute of Justice, an independent non-profit organization, which assists in the coordination of the Legal Orientation Program (LOP). It is adapted from materials originally prepared by the Florence Immigrant and Refugee Rights Project (Florence Project), a non-profit law office that supports human and civil rights. It was not prepared by the Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE) or the Department of Justice (DOJ)/Executive Office for Immigration Review (EOIR), but these agencies have reviewed its content.

Immigration law, unfortunately, is not always clear, and everyone's understanding of the law may not always be the same as DHS' or the DOJ's interpretation of the law. It is believed that the information in this booklet is correct and helpful, but the fact the booklet is available in the libraries of detention centers for the use of detainees does not mean that DHS' or the DOJ's interpretation of the law is the same as that expressed in the booklet.

Who was this booklet written for?

This booklet is for lawful permanent residents who are in the custody of DHS and who have been placed in **immigration** proceedings. This booklet mainly discusses how to apply for a form of relief from being removed from the United States that is called **“Cancellation of Removal for Certain Lawful Permanent Residents.”** To apply for this form of relief you must be in “removal” proceedings. Removal proceedings are what used to be called “deportation” or “exclusion” proceedings. If you were placed in immigration proceedings on or after April 1, 1997, you are probably in “removal” proceedings.

For individuals who were placed in exclusion proceedings or in deportation proceedings **before April 1, 1997**, the booklet provides some guidance regarding a form of relief called a **“212(c) waiver.”** This waiver may also be available to you if you pled guilty to the offense that makes you removable from the United States prior to September 30, 1996. Please see below a further explanation of who qualifies for this waiver.

You can tell what type of proceedings you are in by the document you should have

received from DHS that has the charges against you (or reasons you are removable from the U.S.).

- If the document is labeled “**Notice to Appear, (Form I-862)**” you are in **removal** proceedings.
- If the document is labeled “**Order to Show Cause,**” (Form I-221) you are in **deportation** proceedings.
- If the document is numbered at the bottom, “**(Form I-122 or Form I-110)**” you are in **exclusion** proceedings.

This booklet describes in detail how to apply for Cancellation of Removal. It can offer you general guidance about how to apply for 212(c) relief. However, specific information about how to fill out the 212(c) application and fees is not included.

212(c) and Cancellation of Removal are very similar forms of relief from removal or deportation from the United States. Both are like a pardon or waiver and allow the person who is granted the waiver to stay in the United States as a lawful permanent resident. In other words, if you win, you keep your green card.

Each form of relief has very specific eligibility requirements.

What are the requirements for a 212(c) waiver?

The requirements to apply for a 212(c) waiver depend on whether you reached a plea agreement to the offense making you deportable from the United States before April 24, 1996 or between April 24, 1996 and April 1, 1997,. If you reached a plea agreement to the offense for which you need a waiver on or after April 1, 1997, you must look at the eligibility requirements for Cancellation of Removal, unless you have been in proceedings since April 23, 1996, in which case the 212(c) rules can still apply.

For those who **pled guilty to their deportability offense prior to April 24, 1996**, to apply for a 212(c) waiver you must show that:

1. You are a **lawful permanent resident**;
2. You have resided in the U.S. for **at least 7 years** either as a lawful permanent resident or a lawful temporary resident under the amnesty or Special Agricultural Workers program;
3. You have **not** been convicted of one or more aggravated felonies and as a result of that felony or felonies served **5 years or more in jail or prison** (in total). See page 8 that follows for a description of some aggravated felonies.

AND

4. **You have not been convicted of a crime related to firearms or destructive devices; and**
5. **You are not charged with making an illegal entry into the United States.**

Please note that in at least one jurisdiction, you may be eligible for 212(c) relief even if you were found guilty after trial (as opposed to accepting a plea agreement). You should check the law that applies to the area where your removal proceeding is taking place, or, if possible, consult with an immigration lawyer.

For those who **pled guilty to their deportable offense between April 24, 1996 and April 1, 1997**, to apply for a 212(c) waiver you must show that:

1. You are a **lawful permanent resident**;
2. You have resided in the U.S. for **at least 7 years** either as a lawful permanent resident or a lawful temporary resident under the amnesty or Special Agricultural Workers program;
3. You have **not** been convicted of one or more **aggravated felonies**. See page 8 that follows for a description of some aggravated felonies.

AND

4. You have **not** been convicted of a crime related to **firearms or destructive devices; an offense related to a controlled substance; an aggravated felony; espionage or treason; or two crimes of moral turpitude for which the possible sentence was a year or more; and you are not charged with making an illegal entry into the United States.**

If you think you may qualify to apply for a 212(c) waiver, you can use this booklet for general advice on how to prepare for your hearing. **This booklet does not contain specific information about the how to fill out the application or what the fees are for a 212(c) waiver, but the information on what to prove at your hearing and what documents you need applies both to Cancellation of Removal and 212(c) cases.** If possible, we recommend that you consult with an attorney specifically about how to apply for a 212(c) waiver.

What is "Cancellation of Removal?"

Under United States immigration law, anyone who is not a U.S. citizen can be removed if he or she commits certain crimes or acts. For example, a person can be removed for just about any crime having to do with drugs. However, depending on the crime or act, some people who have lived in the U.S. as lawful permanent residents for a certain number of years qualify to apply for pardons. This kind of pardon is called "Cancellation of Removal for Certain Permanent Residents" (sometimes called simply Cancellation of Removal or just Cancellation). To see the exact words of the law, you can find it at volume 8 of the United States Code (U.S.C.), Section 1229b(a) or at Section 240A(a) of the Immigration and Nationality Act.

If you have a criminal conviction for an "aggravated felony," you do not qualify for Cancellation. We explain later what an aggravated felony is.

There are two other kinds of pardons also called Cancellation of Removal that do not require a person to be a lawful permanent resident and are explained in another booklet called "How to Apply for 3 or 10 Year Cancellation of Removal." They are for people who

have not been convicted of drug or certain other crimes, who have “good moral character” (many types of crimes would disqualify you), and who have been in the U.S. a certain number of years. One is for a person who has been physically or emotionally abused by a U.S. citizen or permanent resident husband, wife, or parent. The other requires 10 years in the U.S., whether legally or not, and a U.S. citizen or lawful permanent resident parent, husband, wife, or child.

It is rare that a lawful permanent resident would qualify for one of those kinds of Cancellation, which are actually called “Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.” However, it could happen, so if you think you might qualify for that instead of or in addition to Cancellation of Removal for Certain Permanent Residents, read the other booklet.

One other thing about Cancellation: it only applies in immigration cases that started on or after April 1, 1997. These cases are called “removal” proceedings. If the paper with the immigration charges against you has a date that is before that time, you may be in “deportation” or “exclusion” proceedings. If so, a different law applies to you and you should talk to a lawyer about it.

If I apply for Cancellation, can I (and should I) apply for anything else?

It is usually a good idea to apply for everything for which you qualify. You may think you have a great case for Cancellation, but you could be wrong, or the law could change after your case starts so that you no longer qualify. So try to find out what else you may qualify for.

For example, if you suffered persecution because of certain beliefs or characteristics or torture in your country (persecution can include different kinds of abuse or mistreatment) or are afraid you will be persecuted or tortured if you return, you may qualify for asylum, withholding of removal, or protection under the Convention Against Torture and should read the booklet called, “How to Apply for Asylum And Withholding of Removal.” If you qualify for one or more of those and also for Cancellation, you should consider applying for all of them!

How does the judge decide whether I get Cancellation?

First, the judge has to decide if you meet the requirements to apply for Cancellation (explained later). Then, the judge has to decide whether you deserve to be granted Cancellation. To do that, the judge has to look at two things. On the one hand, the judge considers all the good things about you and the advantages to you, your family, and others of allowing you to stay in the United States. On the other hand, the judge considers all the bad things you have done and the disadvantages to U.S. society of allowing you to stay here. The judge weighs all these things in order to decide whether to give you another chance in this country.

How do I use this booklet?

First, read through the whole thing to make sure you qualify to apply for a waiver, and to learn what you need to do to get ready for your hearing. It is important to understand that it is up to YOU to get together the papers that you need and to prepare yourself and others (if possible) to talk to the judge at your hearing. **If you don't prepare for your hearing, you will probably lose.**

This booklet gives general information about how to fill out the forms you will need to give the Immigration Judge. At the end of this booklet is a worksheet to help you figure out what proof you can get to help you with your case. Once you have turned in the forms, collected all the proof you can (using the worksheet), talked with others about what they will say to the judge at your hearing (if you can get others to come), and decided what you will say, you will be ready for your hearing.

What if I can't stand being in detention anymore? Can't I just accept removal and apply for a waiver after I'm out?

Being locked up for a long time is difficult, and if you came straight from prison into immigration detention, it is normal to feel frustrated. If you can't afford to pay your bond, you may be tempted just to give up and accept removal so you can get out of custody. But if you do not apply for Cancellation now, you give up your permanent residence, you give up the chance to apply for Cancellation **forever**, and you will probably not be allowed to immigrate to the United States after that. You may not be able to even **visit** the United States legally for many years, if ever. And if you come back illegally and get caught, you may face many years in prison, depending on your criminal record. So, before giving up your right to apply for Cancellation, you should think about the life you would be leaving behind and what your life would be like after being removed. Make sure your decision is one you will be able to live with forever

Can they really remove me if I have been here most of my life - even if I have a spouse or children who are U.S. citizens?

Yes. Immigration Judges order people removed in these circumstances all the time. It is a mistake to think you cannot be removed. Only U.S. citizens cannot be removed.

WHO CAN APPLY FOR CANCELLATION?

To qualify for Cancellation of Removal for Certain Permanent Residents, you must:

- 1) have been a lawful permanent resident for at least the last 5 years;
- 2) have lived continuously in the U.S. for at least 7 years after having been legally admitted, and without having committed certain crimes;
- 3) not have been convicted of an aggravated felony at any time;
- 4) not be found by the judge to be a spy, terrorist, threat to national security, persecutor, torturer, to have committed genocide or extrajudicial killing, or severe violations of religious freedom; and
- 5) not have been granted "Cancellation," or certain other waivers in immigration

proceedings before.

We will now talk in more detail about each of these requirements.

1. You must have been a lawful permanent for at least the last 5 years.

The first thing you have to show to be allowed to apply for Cancellation is that you have had lawful permanent residence, in other words, a “green card” or “mica,” for the last 5 years. Time spent as a “lawful temporary resident” (the step before permanent residence if you received your papers through the 1986 amnesty law) **does not** count as part of the 5 years.

The date you officially became a permanent resident may be confusing if you were a refugee. If you entered the United States with legal status as a “refugee” and then you became a lawful permanent resident, the date of your permanent residence is the date you entered the United States. If you were granted asylum by the Asylum Office or an Immigration Judge (once you were already in the U.S.) and then became a permanent resident, the date of your lawful permanent residence is one year before your application for lawful permanent residence was granted.

2. You must have lived in the U.S. 7 years continuously after being lawfully admitted and without committing certain crimes, not counting any time after you were given a “Notice to Appear” in your current immigration case.

The second thing you must show to be able to apply for Cancellation is that you have lived in the United States **continuously** for 7 years after having been **lawfully admitted**. This requirement does not apply to you if you served at least 2 years in active-duty status in the U.S. armed forces, as long as: 1) if you were discharged, it was an “honorable discharge,” and 2) you were in the U.S. when you joined the armed forces.

When the 7-year time period starts and stops can be confusing. There are four elements to this requirement which we discuss below:

• **7 years after being “admitted”**

The time you spent in the U.S. counts towards this 7-year requirement as long as it was after you were legally admitted to the United States in any status. For example, if you were admitted on a tourist or a student visa, and later became a legal permanent resident, the time you spent as a tourist or a student can count towards the 7-year requirement. If you got lawful status through the 1986 amnesty law for seasonal agricultural work or for your time in the United States, the date you became a “temporary resident” is the date when you were “admitted.”

• **7 years living “continuously” in the United States**

Just because you left the U.S. at some point does not mean you stop counting your time towards the 7-year requirement while you were out of the country or that you have to start counting all over again from the date of your return. Short trips outside of the U. S. may not be a problem. However, if you spent a long period of time out of the country, you will probably have to show that you always meant to keep the United States as your home. One way to do this is to show that while you were gone, you kept ties to the United States, such as land, other property, a job, or a bank account.

If you have been out of the U.S. a lot during the last 7 years, especially if you lived somewhere else be prepared to prove to the judge that you always intended for the U.S. to remain your permanent home.

•7 years without committing certain crimes

The law says that the time you count towards the 7-year requirement ends when you **commit** certain crimes (not the date you were convicted, but the date you did the crime) or when you are served with a Notice to Appear (whichever occurs first). The types of crimes that may cut off your time include almost any drug crime; two or more convictions where the sentences add up to 5 years or more (note that this offense requires conviction and sentencing, not merely “commission” of the crimes); and certain crimes of “moral turpitude” – which can include theft, fraud, aggravated assault, and other crimes of dishonesty or violence. With some crimes, it is not clear whether it is a crime of “moral turpitude,” and the judge will have to decide by looking at the section of the law under which you were convicted and, in some cases, at other papers from your criminal case. A crime will not count as a moral turpitude crime if the maximum penalty possible for the crime was one year and the sentence imposed was no more than six months.

To cut off your time, the law says that a crime must be listed or described in volume 8, section 1182(a)(2) of the United States Code, which is section 212(a)(2) of the Immigration and Nationality Act. Certain crimes are not found there and therefore cannot cut off your time. Some common crimes that should not cut off your time are: alien smuggling (if it was a misdemeanor), non-aggravated felony firearms offenses, some theft and property crimes, illegal entry, and domestic violence (unless your particular crime is found to be a “crime involving moral turpitude” since “crimes of moral turpitude” is included as a group of crimes under the law).

If there is a question as to whether you meet the 7-year requirement because of a crime you committed, try to get a lawyer to represent you!

•7 years before receiving the papers filed against you in your immigration case

When DHS began the case against you in Immigration Court, DHS should have given or mailed to you a document called a “**Notice to Appear**” or “**Form I-862.**” It lists the charges against you. Charges are the reasons the government thinks you can be removed from the United States. Your time towards the 7-year requirement is cut off the day you receive this paper (unless it was cut off already for another reason, like committing certain crimes).

However, the law is also unclear as to whether you can start counting time again after the Notice to Appear is served on you. Although unlikely, if you have 7 years of continuous residence since the date you were served with the Notice to Appear, again you should try to convince the Immigration Judge that you have the required 7 years of continuous residence and should be allowed to apply for Cancellation.

3. You cannot have an aggravated felony conviction.

You do not qualify for Cancellation if you have a conviction for an aggravated felony at any time. Immigration law is not the same as criminal law. Many crimes can be aggravated felonies under immigration law. The crime does not have to be a felony in the state where you were convicted. Often misdemeanors and minor crimes are considered aggravated felonies under immigration law. **Under immigration law, you will not be eligible for Cancellation if you have any of the crimes considered to be an aggravated felony in the following list, (this list includes most but not all aggravated felonies; the complete list can be found in section 101(a)(43) of the Immigration and Nationality Act):**

SOME CRIMES THAT ARE AGGRAVATED FELONIES

- Rape
- Sexual abuse of a minor
- Murder
- Firearms offenses, including possession of prohibited firearms
- Felony alien smuggling (unless it was your first alien smuggling crime and you were helping only your husband, wife, child, or parent)
- Fraud or income tax evasion, if the victim lost over \$10,000
- Money laundering of over \$10,000

➤ **Certain drug crimes or trafficking in firearms, explosive devices or drugs.**

Drug trafficking includes:

- transportation, distribution, importation;
- sale and possession for sale;
- possession of over 5 grams of cocaine base (not possession of cocaine – “cocaine base” is different from “cocaine”);
- maybe two or more convictions for simple possession of drugs (If you have been convicted of two or more crimes of simple possession, try to get a

lawyer's help. If you were charged and found guilty as a "recidivist offender," that is an aggravated felony. If you were never charged as a recidivist, then you are probably not an aggravated felon.)

- **A certain crime for which you received a sentence of one year or more, (whether you served time or not) including any of these:**
- theft (including receipt of stolen property)
 - burglary
 - a crime of violence (including anything with a risk that force will be used against a person or property, even if no force was used)
 - document fraud (including possessing, using, or making false papers unless it was your first time and you did it only to help your husband, wife, child, or parent)
 - obstruction of justice, perjury, bribing a witness
 - commercial bribery, counterfeiting, forgery, trafficking in stolen vehicles with altered identification numbers
 - certain gambling crimes if you have another gambling conviction
 - failure to appear if you were convicted of (1) missing a court date on a felony charge for which you could have been sentenced to at least 2 years--even if you were not sentenced to 2 years--or (2) not showing up to serve a sentence for a crime for which you could have been sentenced to 5 years
- **You are also an aggravated felon if your conviction was for attempt or conspiracy to commit one of the crimes listed above.**

Also, please keep in mind that just because DHS charges you with a certain type of crime does not mean that your crime is that kind of crime. There are different legal arguments a lawyer or someone like you can make. These arguments are complicated and we advise you to get help from a lawyer or legal agency if you can.

If you think you may have been convicted of an aggravated felony, you may want to consider contacting an experienced immigration lawyer. A lawyer will be able to confirm whether or not your conviction is an aggravated felony. Also, in certain circumstances, a criminal defense lawyer may be able to reopen a conviction to change the sentence or nature of the conviction. For example, this may be a possibility if your original criminal defense lawyer never talked to you about the potential consequences of a guilty plea of a conviction.

Please note that it is difficult to reopen criminal cases once you have been convicted of a crime. Also, only certain ways of changing your conviction in criminal court will change your conviction for immigration purposes.

4. You cannot have been found by the Immigration Judge to be a spy, terrorist, threat to national security, persecutor, torturer or have committed extrajudicial killings or severe violations of religious freedom.

You are not eligible for Cancellation if the Immigration Judge finds that you have done

some act related to terrorism (including fundraising for an organization the U.S. government has found to be a terrorist organization), spying, illegally exporting products or sensitive information, or endangering public safety or national security. The same is true if the judge finds that a certain high U.S. official has reason to believe your presence or activities in the U.S. would be very bad for U.S. foreign policy. Additionally, you are not eligible for Cancellation if the Immigration Judge finds that you were a Nazi persecutor or that you were involved in persecuting someone because of his or her race, nationality, religion, political opinion, or membership in a particular social group. Finally, you are also not eligible for Cancellation if the Immigration Judge finds that you committed extrajudicial killings or severe violations of religious freedom.

If you were arrested at an airport or border port of entry while trying to reenter the U.S. and the judge finds that you are what is called an "arriving alien," there is a longer list of things related to terrorism or security that can prevent you from being allowed to apply for Cancellation. For example, if the judge decides that you are a member of an organization that a certain U.S. official has said is a foreign terrorist organization, you will not be allowed to apply. The same is true if you are or have been a member of the Communist party or certain other political parties, although there are some exceptions such as if you were under 16 at the time or if you were forced to join the party by law or in order to survive.

5. You cannot have won Cancellation or another waiver in immigration court before.

If an Immigration Judge gave you a second chance before, because you were in the U.S. illegally or because you committed a crime, you are not eligible for Cancellation. Specifically, if you won Cancellation (either the one for permanent residents or another kind), a waiver under a similar law that no longer exists (called "Section 212(c),") or something that was called "Suspension of Deportation," you are not eligible for Cancellation. However, if you won your case some other way, such as through political asylum or because DHS did not prove the charges against you, you may still be eligible for Cancellation.

HOW DO I APPLY FOR CANCELLATION?

Your case basically has two parts:

- 1) Answering the charges against you and
- 2) Applying for Cancellation.

Part One: Answering the charges

First, the judge decides whether the charges against you are true (for example, that you are not a citizen of the U.S. and that you were convicted of a certain crime or did a certain bad act) and, if so, whether the law says you can be "removed." The judge will decide this

by first asking you (usually the first or second time you go to court) whether the charges are true. You can admit to the charges or you can deny them. If you deny them, the judge will ask the government to prove them. If the judge finds that the charges are not true or that DHS has not proved them, the judge will decide that you are not “removable.” In that case, you do not need to apply for Cancellation because the judge should “terminate” your case. This means you will no longer have immigration proceedings against you. However, DHS might decide to appeal the judge’s decision, so be sure to ask for your release on your own recognizance (without paying bond) if your case is terminated.

If the judge decides that the charges are true and that the immigration laws say you can be removed because of them, the judge then must decide whether you are or may be eligible to apply for Cancellation or any other form of relief from removal that would allow you to remain in the United States. If the judge decides you are not eligible (because, for example, you have a conviction for an aggravated felony), the judge will ordinarily order you removed from the United States. If the judge decides you are or may be eligible, he or she will schedule you to go to court again and you will go on to the second part of your case.

Part Two: Applying for Cancellation

If the judge decides you may qualify for Cancellation, he or she will give you some forms and a date by which to file the forms with the Court. Once you file the forms, you will have an Individual Hearing. It may be weeks or even months before your Individual Hearing, depending on the Court's schedule.

What forms do I have to fill out?

To apply for Cancellation, you need to file 5 forms with the Court (or 4 forms and a fee). The last form listed is only required if you file some of your papers by mail.

Forms and Other Items Needed to Apply for Cancellation

- **Cancellation Application (EOIR-42A)** – *Original with supporting documents to Court, copies to DHS*
- **Biographic Information (G235A)** – *Copy to Court and original to DHS*
- **Affidavit for Fee Waiver or \$100 Fee** – *Original Fee Waiver form to Court (or proof of payment), copy (or fee) to DHS*
- **Biometrics (fingerprints)** – *If detained, ask DHS about getting biometrics done. If released from detention you must pay an \$85 fee to DHS and file a copy of the Application Support Center (ASC) notice of fee receipt and biometric appointment instructions to Court and to DHS (unless fee waiver granted)*
- **Certificate of Service** – *Original to Court, copy to DHS*

Use a typewriter or a pen. The Immigration Service is required to make these available to you so that you can prepare documents for court. Do not use pencil.

The Court will only accept forms filled out in English. If you cannot write in English, get someone to help you. This may seem unfair, but you should do it anyway, because otherwise, you will lose your case.

How many copies do I need?

Make (or ask an officer to make) three photocopies of every document you turn in to the Court. Give the original documents to the Court. The first copy is for USCIS (as directed in the DHS Pre-filing Instructions), the second copy is for the ICE attorney or the Immigration Judge, depending on the type of form. The third copy is for you to keep.

Bring your personal copies of all your papers with you when you go to Court, just in case something you sent to the Court was lost or misplaced.

How do I know which forms to give the judge and which to give DHS?

For the most part, you give (or mail) the originals to the Immigration Judge and you give (or mail) a copy of everything you give to the judge to the ICE attorney. This rule goes for any letters of support, certificates of achievement, or other personal papers you file in your case. However, the Immigration Judge gets a copy of the Biographic Information Form (**G-325**) and the original goes to the ICE attorney. Both the ICE attorney and the Immigration Judge get a copy of the biometric ASC notice of fee receipt and appointment instructions if biometrics are done.

How do I answer the questions on the forms?

You must answer all questions truthfully and completely. **Do not guess!** If you do not know the answer to a question or are not sure of your answer, write that down on the form. For example, if you do not know an exact date, write "approximate," and if you simply do not know an answer at all, write, "I don't know." This is important because **if you provide information that is wrong, the judge may decide that you are a dishonest person and you may lose your case. Also, it is a crime to lie on the immigration forms.**

If there is not enough room on the forms for you to answer a question completely, continue your answer on another piece of paper. **You should not give only part of the information a question asks for just because you do not have enough room.** When you do continue your answer on another piece of paper, make sure that your name and Alien Registration Number (also called your "A number," since it starts with the letter "A") are on every page. Also, sign and date each piece of paper you add to the forms. Finally, write the number of the question you are answering on the page you are adding. Staple securely any additional pages to the EOIR-42A.

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|---|
| 1. The Cancellation Application Form (Form EOIR-42A) |
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There are too many questions on this form for us to talk about all of them, and in many

cases, the answers will be obvious to you. Here, we talk about only some of the questions. If you need to use another piece of paper to answer the questions, remember to include your name, A number, the application section and number of the question that you are answering at the top of each additional piece of paper you attach to your application.

Question 2: Your “Alien Registration Number” is your “A Number” or the number assigned to you for immigration matters.

Question 14: If you are still in custody when you file your application, you can write down the address of the detention center or prison.

Question 15: Be sure to include any names you have ever used that are different from the name you list in your answer to Question 1.

Question 16: List all of your addresses for the last 7 years. **Start with your present address** and end with your address 7 years ago. If you are in custody, you can start with your address in custody. If you have spent time in prison, include that here, too. There is not much space, so you may have to attach another piece of paper. **Question 17:** This question asks you for the date you became a lawful permanent resident and where you were when you received that status. If you were in the United States at the time you became a lawful permanent resident, write in the city and state. If you became a lawful permanent resident at the time you entered the U.S., the “place” is the city and state where you entered.

Questions 18-21: These questions have to do with your first arrival in the United States. You should indicate what name you used, the date you entered, and the city and state in the U.S. where you entered. In question 21, you need to check which box applies to you. If the first time you came to the U.S., you came illegally and did not go through an immigration checkpoint or see an immigration officer, you should check the box “entered without inspection.”

Question 23: This question asks you to list any and all times you left and came back to the U.S., even if you were out of the country for less than a day. Even a quick shopping trip across the border must be included! If you do not remember the dates of all your trips, write “about” for dates and other facts you are unsure of.

Under "Port," you should put the U.S. city or town you left from and the U.S. city or town you came back through. Under “Manner of Return,” say whether you came by car, airplane, train, bus or on foot. Where it asks whether you were “inspected and admitted,” it means whether you saw an immigration officer upon your return and were allowed to enter by that officer (this includes just being waved at by an officer at a border entry station who allowed you to go through.). If you entered illegally, you should check “No.”

If you have a lot of exits and reentries and they were all in the same way, such as by car or foot, and all at the same location, you may be able to answer the question completely

by saying something such as, “left and returned through Nogales, Arizona for approximately 2 weeks every December for the Christmas holidays to visit relatives, traveled by car to Nogales, Sonora, Mexico, and was inspected upon return each time.” If you do this, you will need to do it on a separate page, and make sure you give all information asked for in Question #23.

Question 45: This question asks you to list **all of your family members, including your parents, all of your brother and sisters, all of your aunts and uncles and your grandparents, whether alive or dead.** You must list everyone whether they are in the U.S. or outside the U.S. Do not leave people out because you think they are not important or because they are not living in the U.S.! The question also asks for the immigration status of your family members. This means whether they have lawful permanent residency or other status. If a family member does not live in the United States and has no permission to live in the United States, put “none.” Again, you will probably run out of room on the form. If you need to attach a sheet of paper with the names of other family members, be sure to include **all information** that the form asks about each family member. If you win your case, and you left out family members on this form, you may not be able to help them get a visa or adjust their status in the future.

Question 48: If you moved since obtaining your status as a lawful permanent resident, you were required by law to inform DHS of your new address by filing a form. Many people do not know about this requirement. If you moved and did not file a change of address form with the INS or DHS, check “have not.” If you did not move or if you moved and did file a form with INS or DHS when you moved, check “have.”

Question 49: This question asks about any times you have been arrested, gone to court as a criminal defendant or been convicted of an offense. Even if the charges against you in a case were dismissed, you still must check the “have” box and explain what the charge was and what happened. Also, if you have ever been fined for anything or broken any law, including a traffic law, you must check “have” and tell what happened. It is important that you include everything the question asks, no matter what. This is true even if the offense seems minor to you. It is also important to give all the information asked for if the offense was a serious one, which DHS has not included in the charges against you. **It is much safer to come clean and admit all problems with the law than to try to hide them.** If you do not list all your criminal violations, you could suffer at the hearing. DHS will almost certainly have a list of your arrests and convictions and will probably know about even the minor offenses and probation violations. The DHS attorney may ask you at your hearing about any of these things. If you have not listed them, the judge may think you were trying to hide something and you could lose the case because of that.

Question 54: Only say “yes” if you got special permission not to serve in the armed forces.

Question 55: This question asks what groups you have joined or been involved with. This could include your church or another type of religious/spiritual organization. You could also include membership in a work-related union and any community organizations

to which you belong. One reason for the question may be to see how involved you are in American society. Think hard. If you have lived here a long time, you may have been a member of clubs when you were younger, such as Boy Scouts. Include any groups of people you have belonged to or been involved with.

Question 57: There are a lot of questions here about your conduct. “Engaged in prostitution” means worked as a prostitute. “Polygamist” means someone who has more than one husband or wife at the same time. “Inadmissible or removable on security-related grounds under sections 212(a)(3) or 237(a)(4) of the INA” means that you could have been kept out of the U.S. or “removed” from the U.S. because of certain national security concerns, terrorist activity, spying, torturing or having committed extrajudicial killings or severe violations of religious freedoms, and similar activities. It can mean you raised money for a foreign group considered by the United States to be a terrorist organization or that you were a member of a Communist or “totalitarian” party, but not everyone in that situation has been “inadmissible or removable” because of it. If you do not know the answer, write, “I don’t know.” The last question in this section asks if you have ever won Cancellation, a waiver under Section 212(c), or “Suspension of Deportation.”

Question 58: Here, you should list all the papers you are including as part of the application. You should include papers that show:

1. that you have been a lawful permanent resident for at least the last 5 years,
2. that you have lived in the U.S. continuously for 7 years after being lawfully admitted; and
3. that you deserve to remain in the U.S. even though you have done something wrong.

For proof that you have been a lawful permanent resident for the last 5 years, your “green card” (permanent residence card) or a copy of it should be enough. As far as proof you have lived in the U.S. continuously for 7 years after any lawful admission, you first have to prove that you were lawfully admitted. Again, if your lawful admission was getting your green card, a copy of it should be enough. For example, you may have a stamp in your passport or an INS or DHS form showing that you were legally admitted on a certain date, or if not, there may be someone who was with you at the time and can write a letter or declaration telling when it was and what happened. Then, you have to prove at least 7 years of continuous residence in the U.S. after your admission. Proof of this can include letters and bills you received (showing your U.S. address), receipts, licenses (such as a driver’s license), tax payment records, school or work records, letters from neighbors or others who can say from their own knowledge that you were here at that time (or whatever part of the time they know about), medical or dental records, church records, proof of your children’s birth in the U.S., and many other kinds of papers.

As for proof that you deserve to win your case, we will talk more about that later when we explain what kinds of things the judge will consider.

If possible, you should collect all these papers in time to file them with your application. If you are not able to collect them all in time, many judges will allow you to file them later. Some even allow you to file them at the time of your individual hearing, but it is better to be on the safe side and file them earlier.

NOTE: Don't sign the application form yet! You will sign it in front of the judge.

Proof of Service – this part of the application is to tell the judge that you gave to the attorney for ICE a copy of your completed application along with copies of all the other papers that you are including with it. If you have a court date to turn in your application, you can give a copy to the attorney for ICE in person. In that case, you check the box that says, “delivered in person.” If you are filing your application by mail, you will need to check the other box and mail a copy of the application and all supporting documents to the attorney for ICE. You can ask the judge for the address of the government’s attorney.

• What if a letter or some other document I want to file is not in English?

Everything that you give to the judge has to be in English or has to be translated into English. If a letter or other document is not in English, you need to find someone to translate it. At the end of the translated document or letter, the person who translated it should put the following:

Certificate of Translation

I, (name of translator), certify that I am competent to translate this document and that the translation is true and accurate to the best of my abilities.

(signature of translator) (date)

You have to include both the original document in the foreign language AND the English translation, with the “Certificate of Translation” attached at the end or the judge cannot accept it.

2. The Biographic Information Form (Form G-325A)

Again, answer all questions as best as you can. Just like with the Cancellation application form, you need to list your addresses and employment in reverse order, that is, starting with the present and working backwards. Also, even if you have lived in the U.S. for many years, you should answer the question that asks for the last address you had outside the United States where you lived for more than one year.

Some of the questions on this form and the Cancellation application form are the same. You must answer all questions on both forms and you must make sure your answers on both forms make sense when you look at them together. For example, if on one form you say you were living in Los Angeles in June of 1997 and in another, you say you were living in San Diego from April to August of 1997, one of your answers has to be wrong.

Remember to file the original Biographic Information Form G-235A with the ICE attorney. Give the Court a copy and keep a copy for yourself.

3. Affidavit for a Fee Waiver OR \$100 Fee

If you are able to pay for the cost of filing your Cancellation application, it costs \$100. (This fee could go up, ask the judge). If you can pay this fee, use a cashier's check or money order. **You should follow the DHS Pre-filing Instructions that you were provided by the DHS ICE Trial Attorney to pay the filing fee or submit the judge's fee waiver order.**

TO REQUEST A FEE WAIVER:

If you do not have \$100, you need to ask the judge to let you apply without paying. To do this, you have to file an application for a "**fee waiver.**" The Court should provide you with a form to apply for this waiver. Different courts may use different forms, but the form you use should be called "Application for a Fee Waiver" or something like that (Note: Make sure you do not use the Appeal Fee Waiver form because it is only for appeals.).

The form will require you to fill in dollar amounts for the money you are presently earning, the value of any land or other property or things you own, any savings you have in the bank, your expenses, and any money you owe. If you are detained and not making any money, your earnings should be "0." The form may also have a space for you to list anyone who is dependent on your income and the person's relationship to you, such as "child, husband, wife, mother, or father." The reason all these questions are asked is to see if, after you pay all living expenses for yourself and your dependents, there is still enough money left over to pay the \$100 fee. You must answer honestly. If you do not, you are committing a crime and you could be prosecuted.

If the form includes at the bottom the word "Order" and underneath it a blank space for the judge to sign, leave this part blank. **Turn in the original of this form in Court, along with your Cancellation application. Provide a copy to DHS. Keep a copy for yourself.**

TO PAY THE FEE:

If you are **NOT DETAINED**, you should submit a COPY of your Cancellation Application form (**Form EOIR- 42A**) and the appropriate fee to the USCIS designated Service Center (SC). As of this update the designated USCIS location is the Texas Service Center. After you file your application and pay your fee, you will receive a fee receipt and an ACS notice. If you are not detained, you must attend your ASC appointment. You will also receive a biometrics confirmation notice that you should keep for your records. You should bring the ORIGINAL and a copy of your fee receipt and biometrics notice to the immigration court hearing to provide to the judge.

If you **ARE DETAINED** and can pay the application fee, you should speak to the detention staff to make arrangements to have the fee paid to DHS. Get a receipt for the money you paid. If you get out of custody before you file the application form and you are paying the fee, follow the instructions above.

4. Biometrics (fingerprints)

Biometrics, or fingerprint data, may only be done by authorized offices of DHS. **You should follow the DHS Pre-filing Instructions that you were provided by the DHS ICE Trial Attorney to get your fingerprints appointment.** It is very important to have your fingerprints taken and the security checks done. If you do not do this you may lose the chance to file your application with the judge!

If you are detained, DHS will arrange for your fingerprints to be taken and the security checks to be done. You should mention it to the officer assigned to you. If you require transportation to another office for your fingerprints to be taken, you must ask DHS to see if they will help you complete the biometrics requirement.

If you are not in custody at the time you file the application, you will receive an appointment notice from the Application Support Center (ASC) after you file your application (**Form EOIR- 42A**) with the USCIS Service Center (SC). As of this update the designated USCIS location is the Texas Service Center. After you file your application and fee you will receive a biometrics appointment notice. You must pay an \$80 fee to DHS for the biometrics and follow the DHS's instructions in the appointment notice regarding the time and place of your biometrics appointment. You should bring the original and a copy of your biometrics notice to the immigration court hearing to provide to the judge.

5. Certificate of Service

You should turn in all your forms and other papers at the same time you turn in your application form, if you can. If you give documents to the ICE attorney in court, the judge should make a record of this. If you cannot do this (for example, if you receive a letter after filing your application and you want the judge to read it), you need to file the papers by sending them in the mail rather than giving them to the judge and the ICE attorney in court. If you mail anything to the judge, you will need to mail a copy to the ICE attorney.

You also need to attach to the papers you give the judge a form that shows the judge that you sent the ICE attorney a copy. That form is called a "Certificate of Service" and you will find a sample at the end of this booklet. To fill it out, put your name, "A number," and the date you are mailing the documents. Then, put the address of the ICE office that is handling your case (ask an officer if you do not know it). Sign the form and make two copies.

You must mail the original Certificate of Service and the original documents to the judge.

Mail another copy to ICE and keep the last copy for yourself. If you give the documents to the ICE lawyer in person, indicate on the Certificate of Service that the ICE lawyer was “personally served” rather than served by mail.

ARE THERE ANY FORMS THAT ARE NOT REQUIRED BUT COULD BE HELPFUL TO MY CASE?

The next two forms are not required but may be useful in preparing your case. They are not forms you give or send to the judge. You mail them to other government offices.

Freedom of Information /Privacy Act Request (Form G-639)

You can use this form to get a copy of DHS’s file on you. The file includes papers about your immigration history and, usually, your criminal history. This can be very helpful because it lets you know what DHS may try to prove against you in Court and what papers it may ask the judge to consider. Seeing the papers in your file gives you the chance to get ready to talk about certain things. If you do not see the file, you may get caught off guard in Court and may not know what to say.

The form you file is called a **Freedom of Information /Privacy Act Request (Form G-639)** or a “FOIA Request Form.” If you do not have this form, you will have to ask a detention officer or an immigration officer for one. Once you file it, it may take a long time to get a response, and you may have your hearing before then, but it does not hurt to file the form and it may help you.

If you are detained, your address on the form should be your address at the detention center. If a question does not apply to you, write “not applicable.” You need to sign the form in several places. First, under question number 2 where it says “Signature of Requester,” then under number 7, where it says “Signature of Subject of Record, and last, under number 8, where it begins, “If executed within the United States.....” By signing, you agree to pay copying costs, but in most cases, there will not be any charge.

Do not send a copy of this form to the Court. Mail the original to DHS and write “FOIA Request” on the envelope. The person who deals with these papers may be at a different address than where you mail your other papers, so ask an officer for the address of the “FOIA officer” for the DHS district where you are. Keep a copy for yourself.

Fingerprint Card, Cover Letter to the FBI, and \$18 Fee

If you have criminal convictions, one of the documents DHS probably has in your file is a “rap sheet” from the FBI that lists your criminal history, including any arrests, even if you were not convicted. You can usually get this faster than you can get a copy of your DHS file, and this is why you should request this even if you have filed a “FOIA request” with the DHS.

The three things you will need in order to get your FBI rap sheet are 1) a completed fingerprint card (**Form FD-258**), 2) a money order for \$18 made out to the "U.S. Treasury," and 3) a short letter asking for your "rap sheet." You must sign the letter and indicate the address to which the "rap sheet" should be mailed. You should also indicate the date by which you need the record as it can take up to 8 weeks. To prepare a fingerprint card, ask a detention officer to get the card for you and to fingerprint you. Fill in on the fingerprint card at least the boxes asking for your name, height, weight, date of birth, and social security number. Get the money order from a family member or ask an officer to arrange for you to buy one. If a family member assists you in sending in your request, they can also pay the \$18 fee by credit card.

Send the fingerprint card, the money order, and a short letter asking for your rap sheet to:

Federal Bureau of Investigations – CJIS Division
Attn: Record Request
1000 Custer Hollow Rd.
Clarksburg, West Virginia 26306

Do not send a copy to the Court or DHS.

WHAT DO I HAVE TO PROVE AT MY HEARING?

When we explained the requirements for Cancellation, we told you that you have to prove that you have been a permanent resident at least the last 5 years and that you have lived in the U.S. continuously for at least 7 years after a lawful admission. Sometimes, DHS will agree that you have met these requirements and the only thing you will have to prove at your individual hearing is that you deserve to win Cancellation.

The paper called the "Notice to Appear" will usually give the date DHS believes you became a lawful permanent resident. This date is needed to determine if you have been a permanent resident for at least 5 years to meet the first requirement for Cancellation. To determine the second requirement of whether you have lived in the United States for at least 7 years after lawful admission, the judge will look at whether the required 7 years were cut off by any of the crimes we talked about before or if you spent long periods of time outside the U.S. If there are any questions regarding these two requirements, you must submit proof that you meet them to be able to qualify for Cancellation.

You also must get ready to prove that you deserve to win your case. As we said before, in order to prove this, you will have to show the judge that the good things about you and your life weigh more than the bad things. In other words, you have to prove that you deserve another chance.

The following are lists of good and bad things, or "positive and negative factors," that judges usually think about when trying to decide whether you deserve to keep your status as a lawful permanent resident of the United States. We will explain later how to get proof relating to the positive and negative factors in your case.

Positive factors (good points) that can help you win your case:

- *Family ties in the United States
- *You have lived in the U.S. for many years, especially since childhood
- *It will be very hard on you and on your family if you are removed
- *Service in the U.S. armed forces
- *A good work record
- *Property or business ties
- *Service to your community in the U.S.
- *Rehabilitation (from drug addiction or other criminal behavior)
- *Good character

Negative factors (bad points) that can hurt your case:

- *The circumstances of the crime(s) or act(s) that are the basis of your removal proceedings
- *Serious violations of the immigration laws, such as visa fraud or a past order of removal
- *Your criminal record, including how recently and how often you have violated the law, and the types of violations
- *Anything else which shows bad character

WHAT WILL HAPPEN AT MY CANCELLATION HEARING?

The judge at your Cancellation hearing will consider "evidence" presented by you and by DHS. Evidence can be papers, letters, photographs, and anything else that can prove something. "Testimony," which is statements made in Court by people who swear to tell the truth (witnesses) is also evidence. Before the hearing starts, you should give the judge all the letters and other documents you want him or her to consider. You must also have copies to give to the DHS trial attorney. And remember to keep copies for yourself.

Opening statements

At the start of the hearing, the judge may give you the chance to make an "opening statement." That is the time for you to tell the judge what witnesses are going to speak in your favor (that is, what witnesses you are going to "call" to the witness stand), what evidence you will show the judge (or have already filed), and what you are going to prove. Then, the DHS trial attorney can make an opening statement, too. Some judges do not allow opening statements and will have you go straight to the next step.

Testimony (Witnesses) and other Evidence

Next, it will be time for you to call witnesses to testify for you. The witnesses cannot just get up and speak. You have to ask them questions and they answer. After you ask them

questions, the trial attorney may ask questions. Also, the judge may ask the witness questions.

You can call yourself as a witness at any time, and should probably do that at the beginning or at the end of the hearing. That is when you will speak to the judge directly, and when both the trial attorney and the judge can ask you questions.

As you ask questions of other witnesses, or as you testify, you can also call the judge's attention to certain papers you have turned in that you think are important.

After you are done, the trial attorney will have the chance to present any witnesses or evidence he or she wants to. Although it does not usually happen, the trial attorney may also call witnesses against you. You have the right to see anything the DHS trial attorney gives to the judge and to object if there is a reason to object. The attorney may give the judge proof of your criminal convictions. If the document is signed by someone who certifies that it is an official document, there may be no reason to object, but you can object if the attorney starts reading a document that does not have a certificate showing it to be an official record.

Closing Statements

After all witnesses have spoken and been questioned, the judge may give both sides the chance to make a "closing statement." If the judge does not do that and you want to make a final statement, ask the judge for the chance. In your closing statement, you should refer to things you and your witnesses have said and to letters and other documents that show that you have changed and deserve another chance. You should refer to the "positive factors" you have shown and explain why they outweigh the "negative factors."

Judge's Decision

After the trial attorney gives a final statement, the judge will give his or her decision. The judge must make statements about the law relating to Cancellation, talk about the facts in your case (based on your testimony and other evidence), and then say why he or she is deciding for or against you. Sometimes, but not often, the judge will not have enough time to explain his or her decision or will want to take some time to think about it. If that happens, the judge will either set another court date to explain the decision or will put the decision in writing and send it to you and to DHS.

HOW DO I GET READY FOR MY CANCELLATION HEARING?

Getting ready for your hearing takes a lot of work. We'll go through each of the steps one by one.

To get ready for your hearing,



1. Using the “LPR CANCELLATION WORKSHEET,” make a list of all the letters and other papers you need to get for your hearing.
2. Write letters and make telephone calls to get all the papers you need for the hearing and to get people to come speak as witnesses for you at your hearing (if possible).
3. Prepare your witnesses to testify in Court.
4. Write out what you are going to say in Court.

STEP ONE: MAKE A LIST OF ALL THE LETTERS AND OTHER PAPERS TO GET FOR YOUR HEARING.

At the back of this booklet is a worksheet (called “LPR Cancellation worksheet”) we made to give you some ideas about the kinds of proof that may help you win your case. The following discussion should also give you some ideas about the type of proof that will help you show the positive factors in your case and also help you explain the negative factors.

POSITIVE FACTORS

Family ties and hardship on you and your family

One of the things the judge will consider is how it will affect your family members if you are removed from the United States, so you will want to make sure the judge knows about all your family members in the United States and if you are especially close to certain family members or certain family members depend on you for financial support or other things. The judge may consider whether you: a) see your children, b) pay child support, c) help a relative go to the doctor or do chores, or d) help pay the rent. The judge will also consider what it will be like for you if you are removed. Do you have relatives in the country to which you would be removed? Do you speak the language of that country? If not, it will clearly be harder on you than if you do. You should be ready to explain to the judge the problems you will have if you are removed and to give the judge proof of those problems, if you can get it.

It is very important that you get your family involved in your case. Some people feel ashamed or embarrassed because of the trouble they have gotten involved in or the problems they have caused their families. They do not want their families to get involved in their immigration cases. This is a **big mistake**, because family support is one of the things you need the most in order to win your case. All your family members should write letters to the judge, including your children, if they can write. **Any family member who can come to your hearing should come.** This will show the judge that they need you and care about you. If work or the cost of traveling to the hearing makes them unable to

come, they should explain this to the judge in a letter.

Work History

It helps if you can show the judge that you have a steady work history and have not spent long periods of time unemployed. If there were long periods when you did not work, you should be ready to explain them at the hearing. You should try to get letters from as many employers you worked for as possible, and if there are employers or supervisors who would say good things about you, ask them to include that in the letters.

You will also want to show the judge that you will be able to get a job after you win your case. If possible, get a letter from an employer promising to give you a job.

Community Service

Any groups or clubs you participate in or anything you have done to help others outside of your family may help your case. Do you go to church or temple regularly? Get a letter from the church or temple leader. Do you help the neighbors with repairs on their houses? Get a letter from your neighbor. Have you volunteered for an organization? Get a letter from a representative of the organization.

U.S. Military Service

If you have served in any branch of the U.S. military and received an honorable discharge, this will be in your favor. Get proof of your honorable discharge and any special honors you received or services you performed in the military.

Property or Business Ties to the U.S.

The stronger your ties to the United States, the better for your case. If you own land, a home or other property in the U.S., or if you do business in the U.S., get proof.

Rehabilitation

Showing rehabilitation -- that you have changed your life and will not get in trouble again -- is one of the most important things you can do to win your case. This is hard to show if you have been in custody ever since you got in trouble, but it is not impossible.

For many people who apply for Cancellation, the hardest part about showing rehabilitation is admitting they did something wrong. They blame their lawyer for not being on their side and for telling them to plead guilty or they say they pled guilty because they were trying to protect someone else, or that they got convicted because they were just at the wrong place at the wrong time.

If you cannot admit you did something wrong, it does not help your case.

Every day, Immigration Judges see people with criminal convictions who say they were innocent. However, whether you were convicted after you went to trial or whether you pled guilty, the law says that there is nothing the Immigration Judge can do about your criminal record. Under the law, you are considered guilty. You will be "under oath" in Court, which means you swear to tell the truth, and it is a felony to lie under oath. If you plan to tell the judge that you were not guilty, you should be prepared to explain why you pled guilty.

Other proof of good character

Admitting to mistakes is just one part of showing rehabilitation. You may also want to show that you have improved yourself (for example, that you found a job if you are not detained or that you sought treatment for an addiction if you have one).

Anything else that shows that you have helped other people, volunteered in the community, or been a responsible member of society may help your case.

One thing the judge will usually want to know is whether you have paid taxes regularly. It may be helpful to get copies of your tax returns.

NOTE: It is easier to gather proof of any of the above factors for Cancellation if you are outside of detention before your Cancellation hearing.

NEGATIVE FACTORS

You also need to have evidence to deal with the negative factors the judge will consider. At the very least, you should know what you are going to say about them.

The circumstances of the crime(s) or acts(s)

You should be ready to talk about exactly what you did when you committed the crime(s) or act(s) and why you did it. Be honest about what you did and how you came to be involved in the situation. Accept responsibility for what you did and be prepared to answer questions about your criminal record..

Your criminal record and other violations of the law

Even though the government may be trying to remove you because of one or two particular crimes, the judge will want to know about other crimes you were convicted of and other times you broke the law. If there is anything in your record that gives the idea that you have used drugs or been a drug dealer, you will be asked questions about using and selling drugs.

If you have had problems with drugs or alcohol, you should be ready to discuss when your problems started, why, how often you used drugs, what kinds, and when the last time was that you used drugs or alcohol. You can refuse to answer questions that you are asked. However, you will be "under oath" in Court, which means you swear to tell the truth, and it is a felony to lie under oath.

It will be helpful for you to see what is in your immigration file and FBI "rap sheet" before your hearing. Another document you should be sure to get and read before your hearing, if you have a criminal record, is the "**pre-sentence report.**" This is a report that is often prepared before a person is sentenced for a crime. Later, we will explain how to get a copy of your pre-sentence report.

Make a list of all the evidence you are going to get together.

Now that you know what the judge will consider, it is time to make a list of all the evidence you can get for your case. Turn to the "LPR Cancellation Worksheet" at the end of this booklet. This worksheet is just for you. Don't give it to the judge. The worksheet lists some kinds of evidence you may be able to get. There is also space for you to list other ideas. Think of as many things as you can try to get to give to the judge. Make a list of everything that you need to get, and check it off when you get it.

- **To start getting ready for your hearing, fill out the "LPR Cancellation Worksheet."**

STEP TWO: WRITE LETTERS AND MAKE PHONE CALLS TO GET THE EVIDENCE YOU NEED FOR YOUR CASE.

You should write letters and/or make phone calls immediately to get documents you need -- such as your marriage license, children's birth certificates, tax returns, rent receipts, certificates of completion (of classes), and any records from prison that show good behavior. You should also contact everyone who can write a letter to the judge for you.

What should people say in their letters to the judge?

You cannot simply tell your friends, family members, and past employers to write letters and hope that they will know what to say. Instead, you should write down for them what kinds of things they should talk about in their letters. Write to each person you want to get a letter from. In your letters, you should:

1. Explain that you are facing removal from the U.S. and explain why. If you served time in prison, say so, and explain that you need to show the judge that you are now ready and able to become a productive member of society.
2. Explain that the purpose of the letter is to show the judge why you deserve to be allowed to remain in the U.S. The letter should be addressed "Dear Immigration Judge," or "Honorable Immigration Judge." Ask the person to include:

- His or her name, age (if a family member), address, occupation, and immigration status (for example, U.S. citizen or permanent resident).
- How he or she knows you (for example, she is your sister, your neighbor, or your boss) and for how long he or she has known you or your family.
- Other information about you that the judge will want to know in deciding whether you should be removed, such as:

How are you important to this person? Is this a family member who depends on you in some way? How? For money to pay the rent, buy food, and pay other bills? If so, how much money do you usually pay every month? Is this a sick or old person who needs you to help them and, if so, how do you help this person? Is this person close to you emotionally? What will it mean to this person (or others in the family) if you are removed?

What good things does this person know about you? What are your strongest points? What good things have you done for others that this person knows about?

How hard will it be for you if you are removed? If this person is from the country you immigrated from or knows what things are like in that country now, he or she should write about what kind of a life you can expect to return to there.

What kind of a work record do you have? Your employer or former employer should state how long you worked for him or her, what your job and responsibilities were, how well you performed your job. If the person is willing to hire you again, he or she should say so.

3. Tell the person to write the letter in his or her own words
4. Ask the person to sign the letter before a Notary Public, if possible.

Should I ask people to talk about my problems in the letters to the judge?

Those who know you well and know about the problems you got into should talk about them. Your former teachers or employers do not necessarily have to talk about your problems, but at least some of your family members should.. In talking about your problems, the person should explain how you got into problems in the first place and how you have changed since then. The person should explain why he or she thinks you will be able to keep out of trouble if you are allowed to remain in the U.S.

Tell your family and friends to speak from their hearts about you and to speak the truth. If they cannot express themselves well in English, tell them to write the letter in their own language. Just make sure that, if they do that, you **get someone to translate the letter and to sign a "Certificate of Translation,"** as we explained before! And make sure you include the original letter (in the foreign language) with the translation when you file it.

How do I get a copy of my pre-sentence report?

If you were convicted of a crime, before you were sentenced, a "pre-sentence report" may have been prepared about you. This report usually discusses your personal history

and the circumstances of the crime, among other things. It may say things that are helpful to you that you may want to use for your hearing. On the other hand, it may say bad things about you, and in that case, you will also want to know what it says. You can get a copy of the pre-sentence report by calling or writing the lawyer (or the office of the lawyer) who represented you in criminal court. If you do not remember who that was, you can find out by asking an immigration officer to look it up in your file. (The lawyer's name will be on the document that shows you were convicted.) If the attorney was a public defender (not someone you hired), you can call or have someone else call the public defender's office in the area where you were convicted to get the address. When you call or write to ask for a copy of the report, the office may need your social security number and date of birth in order to find your records.

When should I give (or mail) my letters and other papers to the judge?

As we said before, you may be required to give the judge all your letters and other documents at the time you file your application. It is also possible that the judge will give you a certain date by which you must mail any papers to the Court. But even if some papers arrive after that date (and if there is not enough time to mail them), bring them to the hearing anyway. Maybe the judge will allow you to file them. **Again, remember to give the ICE trial attorney copies of all papers you give the judge.**

Can my friends and family send letters or other papers directly to the judge?

No. Only you or your lawyer, if you have one, can file papers in your case. Have people send papers directly to you.

Do I need to give the judge originals of my papers, or can I give the judge copies?

As far as important original documents, such as birth certificates and your marriage license, it is a good idea to turn in copies and bring the originals with you to show the judge at the hearing. Otherwise, there is always a chance that these will be lost. You can also give the judge originals of letters friends and family have written on your behalf but you should keep copies for yourself.

Making an "Index"

Question #58 on the Cancellation application form asks you to list the papers you are filing with the application. If you file other papers later, it is a good idea to make a new list and turn that in with the papers. This helps the judge know what documents you have given him or her and also gives the judge a chance to see if any documents are missing. At the top of your list, write your name and A number and the word, "Index." Generally, if you have a lot of pages, it is a good idea to number the pages and to write on the index the number of the page. That will make it easier for the judge to find a document quickly in court when you talk about it.

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| STEP THREE: PREPARE YOUR WITNESSES |
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If at all possible, you will want other people, especially family members, to come and speak to the judge at your hearing. The more people who can come to the hearing, the better, because this will show the judge that there are many people who care about you. Of course, not everyone who comes has to speak, and not everyone who speaks should talk about the same things. You should choose a few people to speak at the hearing, and should talk with them about what they will say.

You should write down all the questions you are going to ask the witness. You should start by asking the witness his or her name, age, address, immigration status (for example, whether he or she is a U.S. citizen or lawful permanent resident), and occupation. Then, you should ask the person how he or she knows you, and for how long. After that, you should ask questions that give the witness a chance to tell the judge what he or she knows about you and what kind of person you are. For instance, the witness might be able to talk about what kind of a father/ mother/ daughter/ son/ husband/ wife you are, the ways in which the family depends on you, and what it would be like for the witness or others if you are removed. It is a good idea to practice a few times with each witness.

Make sure that the witness knows about your problems or criminal convictions. If you do not bring them up in your questions, ICE's lawyer will be sure to ask about them, and you do not want your witness to be surprised.

Tell the witness to call the judge "Your honor." He or she should call the DHS trial attorney "Sir" or "Ma'am." The witness should look at the judge when speaking. These rules go for you, too, of course.

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| STEP FOUR: WRITE OUT WHAT YOU ARE GOING TO SAY TO THE JUDGE |
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To get ready for your hearing, you have to think about and practice what you are going to say to the judge. The best way to figure out what to say is to write it down.

Think of your case as a story. Like every story, it has a beginning, a middle, and an end. You need to tell the judge about your life in the past, what you have learned from your problems with the law, what you have done are doing or will do to change your life for the better.

Your past

Tell the judge about your background. Explain what your life was like before you got involved in drugs, crime, or other problems. Explain the reasons that you got involved in problems.

Your feelings about what you did wrong

Explain to the judge your feelings about what you did wrong and the mistakes that you made. Some people with drug problems come to realize, because of the problems they

caused their families and their difficulty in having a normal life, that drugs are bad for them and bad for society. Prison often gives people time to think about how they have hurt themselves and others. Facing the possibility of being removed also gives people a chance to think about all they have to lose. You have to decide what is true in your case, and how you feel about the things you did.

It is very important to think hard about your life and to speak from your heart about how you have changed or plan to change. You have to explain how you have changed and why in a very specific way.

Your new life

Explain to the judge what your life has been like since you got in trouble and what you are doing and plan to do to change it. Also, explain what support you have from your family or others in trying to change. Talk about your goals for the future and what you have done so far or plan to do to achieve them. Again, be as specific as you can about your plans for the future.

Practice talking to the judge and answering questions you may be asked

- The ICE attorney will ask you questions at your hearing, and the judge probably will, too. Here are some of the questions that may be asked:
- Have you used drugs before the incident that got you in trouble? What kind of drugs and how often? Have you used drugs since your convictions? When was the last time you used drugs?
- How do you feel about what you did (your crime or bad act)?
- Why should the judge believe you are not going to make the same mistakes again?
- What will you do if you are removed?

Prepare your opening and closing statements

We have already mentioned what you should say in your opening and closing statements. You should prepare them once you have all or most of your case ready. You can also change what you say in your closing statement depending on what the judge or trial attorney has brought up at the hearing. Do not make the opening and closing statements too long. Just make a few important points.

WHAT HAPPENS WHEN THE JUDGE DECIDES MY CASE?

If you or the DHS trial attorney disagrees with the judge's decision, you both have the right to keep fighting the case by appealing the decision to a higher court called the Board of Immigration Appeals ("the Board"). This court is a group of judges in Virginia who look at all the papers filed in the case and everything that was said in court, and decide if the judge was right. In most cases, unless the judge made a mistake about the

law or the facts in your case, the Board will not change the decision.

As soon as the judge tells you the decision (unless you get it later, in writing), he or she will ask both you and the trial attorney whether you want to “reserve appeal,” that is, whether you want to hold on to your right to appeal. You can also “waive appeal,” which means to give up your right to appeal. If both sides “waive appeal,” that is the end of the case.

If someone “reserves appeal,” he or she has 30 days to file a paper called a “Notice of Appeal” with the Board in Virginia. If DHS appeals, it has to send you a copy of this Notice and if you appeal, you have to send DHS a copy.

What if DHS appeals my case?

The ICE attorney may say he or she wants to “reserve appeal,” but that does not mean DHS will actually appeal. You may not know for sure until 30 days from the judge’s decision, and if DHS has not filed a Notice of Appeal by then, it cannot appeal. You should know if DHS has filed a Notice of Appeal or not because you should get a copy of the Notice if it is filed. If DHS does file a Notice of Appeal and, on the form, says that it will file a “brief” or written statement later, the Board of Immigration Appeals will send you and DHS a paper saying when DHS must file its brief or statement and when you should mail to the Board any response you want to write to DHS’s arguments. Try to get a lawyer to help you with this if you can. In addition,

If you win and DHS reserves its right to appeal, ask the judge or DHS to order you released on your own recognizance (without having to pay bond)!

Some people qualify to ask the judge for their release, but some people do not and must ask DHS for their release. Other booklets explain this in detail. If you qualify to ask the judge for a bond and you win your case, ask the judge to release you right then and there! If you do not get the chance, write the judge a letter asking for a bond hearing (even if you had one before).

If I lose, how do I appeal?

If you lose and you “reserve appeal,” the Board of Immigration Appeals must receive your papers by the 30th day after the judge’s decision in your case or the Board of Immigration Appeals will not read them.

The forms you must fill out in order to appeal the judge's decision are

- 1) a "Notice of Appeal" form (**EOIR-26**), and
- 2) an "Appeal Fee Waiver Request" form (**EOIR-26A**) (unless you can pay a \$110 fee, in which case, follow the instructions on the “Notice of Appeal” and pay the

fee)

The forms explain how to fill them out and where to send them. You may also wish to review the rules for filing appeals in the Board of Immigration Appeals Practice Manual and Question and Answers. The manual is available online at: <http://www.usdoj.gov/eoir/vll/qapracmanual/apptmnt4.htm>.

This manual should also be available at the DHS detention facilities immigration library.

If, after 30 days, the appeal papers have not been received in Virginia, you will not be allowed to appeal and the judge's decision will become final. For this reason, we recommend mailing the papers as soon as possible and mailing them by express mail or "certified mail" (with proof of receipt).

If the Board has received your forms, it will give the DHS a chance to file some papers also. DHS will give you a copy of whatever papers it files.

If you are detained during the appeal process, it may take from three to six months for the Board to decide the appeal, although some can take longer. If you are out of custody during the appeal process, it may take much longer. There is no set time frame, and it is impossible to determine how long the appeal will take.

What if the Board of Immigration Appeals decides against me?

You may be able to appeal the Board's decision to a federal court, but for only limited reasons. Also, unless you get a special order called a "stay of removal" from a federal court, DHS may remove you from the country while the federal court considers your case! This can happen fast, so if your case is appealed to the Board, you should try to get a lawyer's help before the Board makes its decision. Appealing a case to federal court is very complicated, so this booklet does not explain how to do that.

WHAT HAPPENS IF I GET OUT OF DETENTION BEFORE MY HEARING?

If you are allowed to leave the detention center before your case is over, your case continues. You must notify the Immigration Court of your new address within five days of any change using a Form EOIR 33/IC. The court will send you a letter telling you the date, time, and place of your next hearing.

For this reason, it is extremely important that you try to find legal help as soon as possible. Don't delay.

When you leave the detention center, look for legal help for your case!

If you live far away from where you were in detention, you may ask the judge to move your case to an Immigration Court closer to where you live or will be staying. You do this by filling out a form called a "Motion for Change of Venue" on which you write the address

where you plan to live when you leave the detention center. (**This has to be a street address, not a post office box!**). At the back of this booklet is a form that you may use but some courts may want you to use a different form, so find out. At some detention centers, a DHS officer will give you the form and will give it to the court after you complete it. Find out how things are done at your detention center and make sure to file the right form with the court (with a copy to DHS's attorney). When the court gets this paper, it will send your file to the Immigration Court closest to the address you wrote down. That court will then send you a letter telling you where and when to go for your next hearing. After receiving this letter, you should then only send things to the new Court and DHS in your new location.

When you leave the detention center, if you do not want your next court hearing to be where you are now, file a "Motion for Change of Venue!"

Some courts require a more complete explanation of why you want to change court locations. At the time of your bond hearing, ask the judge if you will need to do that.

Remember, if you miss a hearing, the judge can order you removed without giving you another chance to apply for asylum or withholding of removal!

What should I do if I move?

Every time you move, it is your responsibility to tell both the Immigration Court and DHS! You must tell the Immigration Court within five days of your move and you must tell DHS within 10 days of your move. There are special forms to do this and you can get one from the Immigration Court (EOIR Form 33/IC) and a different one from DHS (Form AR-11) (The officers may give you the forms when you leave.). **Letting the Immigration Court and DHS know your new address will not change where you will have your hearing.** Instead, the special forms used for changes of address let the Immigration Court and DHS know where to send you papers about your case.

When the Immigration Court and DHS send you papers, they will send them to the address you gave them. If the Immigration Court only has an old address for you, it will send the paper telling you when your next hearing is to the old address, and when you don't show up to court on that date, you will receive an order of removal. This means that the next time DHS arrests you, you can be sent back to your country without a hearing.

If you move, send the Immigration Court your new address using the EOIR 33/IC form within 5 days of your move! Also you must send the DHS your new address using the AR-11 form within 10 days of your move!

It is important to remember that the Immigration Court and DHS are two different government agencies and that the forms required for each agency are different. If

you let DHS know your new address but you don't send the right form (a blue EOIR 33/IC, "Change of Address" form) to the Immigration Court, the Immigration Court will keep sending papers to you at your old address, and you can miss your court date. If that happens, you can get a removal order without seeing a judge. This is also true if you case is on appeal to the Board of Immigration Appeals. You must also notify the Board of Immigration Appeals within 5 days if you move using the Form EOIR 33/BIA.

DON'T BE AFRAID

Immigration Judges do grant Cancellation of Removal to permanent residents. Getting ready for your hearing is a lot of work, but the more you prepare, the less afraid you will be when you go to Court, and the better your chances of winning your case.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

City and state where court is

In the Matter of:) IN REMOVAL PROCEEDINGS
)
(Your name))
Respondent)
File No. A _____)
_____)

MOTION FOR CHANGE OF VENUE

The Respondent has bonded out and will be residing at:
(your address outside of detention)

The Respondent requests that his case be transferred to the Immigration Court that covers the area of his residence.

CERTIFICATE OF SERVICE

This original document is being sent by mail to:

Executive Office for Immigration Review
Office of the Immigration Judge
(address of court that handled your case while you were in DHS custody)

I hereby certify that I have served a copy of this motion by mailing a copy to:

Assistant Chief Counsel
Department of Homeland Security
U.S. Immigration & Customs Enforcement (ICE)
(address of DHS office that handled your case when you were in DHS custody)

Date: _____ Signed: _____
(sign your name here)

Respondent

Proof that you have been a lawful permanent resident 5 years and that you have resided in the U.S. for 7 years after being lawfully admitted:

(Check when filed)

- ___ Copy of green card, temporary lawful residence card, non-immigrant visa or other immigration forms showing lawful admission to the U.S.
- ___ Rent receipts
- ___ Tax returns
- ___ Pay stubs from work
- ___ Children's birth certificates
- ___ Letter from : _____ (your employer(s), family members, neighbors, landlord, or someone else who has lived with you or seen you a lot in all or part of the 7-year time period)
- ___ Letter from : _____ (same)
- ___ Letter from : _____ (same)
- ___ Letter from : _____ (same)

ABOVE FILED ON: _____
(date)

___ Witness (name): _____ (who can testify about knowing you for 7 years)

___ Witness (name): _____ (who can testify about knowing you for 7 years)

Proof of positive factors: (check when filed)

Length of residence in U.S., family ties in U.S., hardship on you and family if removed:

- Children's birth certificates
 - Marriage license
 - Medical records/Doctor's letter (if you or someone you care for has a medical problem)
 - Letter from: _____
 - Letter from: _____
 - Other: _____
-

Service in U.S. armed forces:

- Honorable discharge
- Other: _____

Work history:

- Tax returns
- Pay stubs or social security records
- Letter from employer: _____
- Letter from employer: _____
- Letter from employer: _____

Rehabilitation:

- Certificate of completion; proof of participation in _____(course)
- Letter from (probation officer? prison counselor? guard? chaplain?) _____
- Letter from: _____
- Letter from: _____

Community Service, Property or Business ties, Evidence of good character:

- Letter or certificate from: _____
- Letter or certificate from: _____

Proof to lessen impact of negative factors

(check when filed)

- Pre-sentence report (Helpful? Harmful ?) (If harmful, do not file but be ready to explain)
- Letter from: _____ (describing how and why you got involved in problems and how you have changed)
- Letter from : _____ (same)
- Letter from : _____ (same)
- Letter from : _____ (same)
- ABOVE FILED ON (date) _____
- Prison write-ups? (if so, be ready to explain if asked)