

GUIDE FOR DETAINED IMMIGRANTS

AMERICAN GATEWAYS
(formerly known as PAPA)

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Your First Hearing: Your first hearing will be a “Master Calendar” hearing. The Judge will explain the charges brought against you and will inform you of your rights. The Judge will then ask whether you agree or disagree with each charge in the Notice to Appear. You have the right to a lawyer, but the Government will not provide a lawyer. You may ask the Judge for more time to find a lawyer.

Applying for Relief: If you decide to apply for one of the forms of relief, you will have to submit an application to the Judge who will then set an Individual Hearing to decide your case.

Appeal: If the Judge does not grant your application for relief and orders you removed, you can reserve your right to appeal the Judge’s decision. If you reserve your right to appeal, the Board of Immigration Appeals must receive a “Notice of Appeal” filed by you within 30 days.

Bonds: If you have a bond, it will remain valid until you have a final order from the judge. Bond is money paid to the government in return for your release from detention as a guarantee that you will return for all of your Court hearings and comply with the Judge’s final order. You may ask the Judge to consider reducing the bond. If you have certain criminal convictions, you may be subject to “mandatory detention”.

DEFENSES AGAINST REMOVAL (This is not a complete list)

Citizenship

You may be a citizen if you answer “yes” to one of the following questions:

- Were you born in the United States?
- Do you have a parent or grandparent who was born in the United States or who became a U.S. citizen before you turned 18?

Asylum, Withholding of Removal & Convention Against Torture (CAT)(Form I-589): You may be able to ask for Asylum if you fear you will be harmed if you return to your own country. The threat or harm must come from the government or someone the government cannot or will not control. You must show that the threat or harm is because of your race, religion, nationality, political beliefs, or your membership in a particular group. You are required to apply for asylum within one year of entry in the U.S. You cannot apply for asylum if you have been convicted of an aggravated felony.

To qualify for Withholding of Removal, you have to show that more likely than not your life or freedom would be threatened upon return to your homeland. If you have been convicted of a particularly serious crime, you will not be able to apply.

To qualify for the Convention Against Torture, you must show that a government official or another person or group with the government's consent would torture or kill you.

T & U Visas: If you have been the victim of a crime while in the U.S. or if you were a victim of severe trafficking into the U.S., you may be eligible for temporary permission to live and work in the U.S. You will need to show that you are willing to cooperate, are already cooperating or have in the past cooperated with law enforcement to investigate or prosecute the person who committed the crime against you.

Cancellation of Removal: VAWA (Form EOIR 42B): Special rules apply if you, or your child, have been physically or psychologically abused by a spouse or parent. The abuser must be a U.S. citizen or legal permanent resident. You must also meet the following requirements: (1) you have lived in the U.S. continuously for the last three years, (2) you have to show hardship to your child or yourself if you are removed, and (3) you have not had certain criminal problems.

Self-Petition (Form I-360)

If you, or your child, have been physically or psychologically abused by a spouse or parent who is a US citizen or lawful permanent resident, you may be eligible to receive an immigrant visa without the assistance or sponsorship of your abusive spouse or parent. You may also be eligible if you have recently been widowed by a U.S. citizen. If you have been abused by your parent, you must file a self-petition before you turn 21.

Adjustment of Status: Family Visa (Form I-485)

Some family members can petition the CIS to give you legal permanent residence. One group is for immediate relatives, if you have:

- A U.S. citizen spouse
- A U.S. citizen parent (if you are unmarried, and under 21)
- A U.S. citizen child 21 years or older

If you are an immediate relative of one of these individuals, s/he can file a Form I-130 with the CIS. You may be eligible to finish the adjustment process with the Judge if you originally came to the U.S. legally with a visa or parole. If you came illegally, your family member must have filed a petition on your behalf before April 30, 2001.

Otherwise, you will have to finish the process through the US Consulate in your country.

Adjustment of Status: Registry (Form I-485): You may be eligible to apply for registry if you have resided in the United States continuously since January 1, 1972 and you can show that you are a person of good moral character.

Cancellation of Removal: NACARA (Form I-881): You can apply for NACARA if you are from El Salvador or Guatemala, and you can show that you are an individual who entered the U.S. on or before 12/31/90 and applied for asylum on or before 12/31/91, or registered for the ABC class or TPS status before certain dates in 1991.

You must also show: (1) You have lived in the U.S. for at least seven years, (2) you have not had certain criminal problems and (3) If you are the spouse or unmarried child of a person who is NACARA eligible, you will have to show that you would suffer extreme hardship if removed.

Temporary Protected Status (TPS)(Form I-821)

Certain nationals are eligible to live and work in the U.S. temporarily. If you are eligible for TPS, you can temporarily close your removal proceedings. For most countries, you must already have TPS to be eligible to renew unless you qualify under the exceptions for late registration. Certain convictions make you ineligible.

212(c) Suspension of Deportation for Lawful Permanent Residents (Form I-191): If you are a lawful permanent resident facing removal due to a criminal conviction from before 4/1/97, you may be eligible to apply for 212(c). 212(c) is an application that if approved would forgive you for your conviction and allow you to stay in the United States.

Cancellation of Removal: LPR (Form EOIR 42-A): If you are a legal permanent resident who violated certain immigration laws or committed certain crimes, you could lose your residency status. You may apply for a waiver if you meet three requirements: (1) you have been a legal permanent resident for at least five years, (2), you have lived in the U.S. continuously for at least seven years after being legally admitted, and (3) you have not been convicted of an aggravated felony.

Cancellation of Removal: "10-year" (Form EOIR 42-B): If you are not a legal permanent resident, you may be able to apply for your legal permanent residency if you meet the following four requirements: (1) you have lived in the U.S. continuously for at least the last 10 years, (2) you have a spouse, parent or child who is a U.S. citizen or legal permanent resident, (3) you can show that they would suffer exceptional and extremely unusual hardship if you were removed, and (4) you have not had certain criminal problems.

Voluntary Departure: If you are not eligible for any of the defenses to removal but you want to try to return to the United States legally in the future, you should consider asking for voluntary departure. You will not be eligible for voluntary departure if you have been convicted of certain crimes, if you have been granted voluntary departure in the past, or if you have previous deportations. The Judge may consider other factors in your case and decide that you should not be granted this privilege. If you are granted voluntary departure, you must leave the United States.

"Bars" to returning legally to the United States: If you have lived in the U.S. for one year or longer since 4/1/97 without permission, you cannot return for ten years. If you have a way to return legally before the ten years, you may be able to apply for a waiver.

Re-Entry Charges: It is a crime to re-enter the U.S. without permission after you have been removed from the country. If you are found guilty in federal court, you can be sentenced to prison for up to twenty years.