

Cancellation of Removal for Non-Permanent Residents

What is Cancellation of Removal?

This is a way of avoiding removal and getting permanent residence (a "green card") in the United States.

There are two types of Cancellation of Removal for people who are not already legal permanent residents:

1. Cancellation of Removal is for certain people who have been in the United States for at least ten years, even illegally ("**10-Year Cancellation**")
2. Cancellation of Removal for certain people who have lived in the United States at least three years, even illegally ("**3-Year Cancellation**" or "**VAWA Cancellation**").

Do I qualify for Cancellation of Removal?

There are two ways in which non-permanent residents can qualify for cancellation of removal:

1. 10-Year Cancellation. You may qualify for 10-Year Cancellation if:

- Before you received your Notice to Appear, you lived in the United States for 10 years or more **AND**
- During the past 10 years, you have not been out of the United States for more than 90 days in a row, or more than 180 days total **AND**
- Your removal from the United States would cause your spouse, child, or parent, who is a U.S. Citizen or Lawful Permanent Resident, to suffer **exceptional and extremely unusual hardship AND**
- You have had "good moral character" in the past 10 years. (See Page 2)

2. 3-Year or VAWA Cancellation. You may qualify for VAWA Cancellation if:

- You or your child have been battered or subjected to extreme cruelty by a spouse or parent who is a U.S. Citizen or Lawful Permanent Resident **AND**
- You have been physically present in the United States for 3 years before filing this application **AND**
- You or your child would suffer **extreme hardship** if removed from the United States **AND**
- You have had "good moral character" in the past 3 years. (See below)

If you can check all the boxes in *either* section 1 or section 2 above, you might qualify for cancellation of removal.

What is "good moral character"?

You do **NOT** have good moral character during the 3 or 10 year period if you have done any of the following:

- You have been a **habitual drunkard**
- Most of your income is from **illegal gambling** activities
- You gave **false testimony** to get immigration benefits or made false immigration documents
- You knowingly helped another person to enter or to try to enter the U.S. illegally
- You have been convicted or **admit committing any** of the following offenses:
 - o **crime of moral turpitude** (there might be an exception for one minor offense)
 - Includes many different types of crimes, both felonies and misdemeanors. Generally, a crime involves "moral turpitude" if it involves an intent to steal or get something by fraud, or if it was done carelessly or on purpose and someone was or could have been greatly harmed. Acts considered "lewd" or "perverted," such as sexual offenses, are often "crimes involving moral turpitude," too.
 - o **drug offense**
 - you might still qualify for Cancellation if your crime is one possession of 30 grams or less of marijuana, you should ask the judge)
 - o two or more offenses with aggregate sentences of confinement actually imposed of **5 years or more;**
 - o **drug trafficking**
 - o **prostitution**
 - o **commercialized vice**
- You have spent a total of **six months or more in jail or prison** for criminal convictions
- You have convictions for **2 or more gambling offenses;**
- You have been convicted of an **aggravated felony** at any time

How do I apply for cancellation of removal?

There are three forms you should fill out. Make sure you have all of them:

- EOIR 42B – Application for Cancellation of Removal
- G-325A – Biographical Information
- EOIR 26A – Fee Waiver

Besides these forms, you should also try to collect documents to support your case.

Suggested Supporting Documents – you don't need all or even most of these, but the more documentation you have, the stronger your case will be.

- **Declaration** – write out your life story, particularly focusing on the hardship your removal would cause your family or the abuse you or your child suffered (for VAWA Cancellation).
- **Letters of support** from friends, family, and employers. If you are applying for 10-Year Cancellation, try to get letters that explain the extraordinary and extremely unusual hardship your U.S. Citizen or Permanent Resident relative would suffer. If you are applying for VAWA Cancellation, try to get letters from people who knew about your abusive relationship and who can explain the extreme hardship your U.S. Citizen or Permanent Resident family would suffer.
- **Identifying documents** (birth certificates, passports, etc.)
- **RECORDS:** employment, School records, Copies of past tax returns, etc.
- **Documentation of membership in a community or religious organization**
- **Proof of rehabilitation efforts**, if you have been convicted of any crimes
- **For VAWA Cancellation:** police reports or hospital records documenting physical abuse

Once you have filled out the forms, written your declaration, and received any supporting documents, make two copies of the entire package. Give the **original** to the court, give a **copy** to the Department of Homeland Security/ICE, and keep a copy for yourself.

What does it mean to be granted Cancellation of Removal?

If the judge grants your request for cancellation of removal, you will be able to stay in the United States. You will also be eligible for permanent residency, and will receive a green card. You cannot apply for cancellation of removal more than once, so if you are granted this relief, you cannot get it again.

Note that there are other types of crimes and activities that could also disqualify you from applying from Cancellation other than those mentioned above.

For **questions** about whether a crime is included in these categories, see the “**Guide for Detained Immigrants**” or talk to someone from the Pennsylvania Immigration Resource Center.

How can I prove that I meet the requirements for Cancellation of Removal?

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In presenting your case, you must prove to the judge that you **qualify** for Cancellation of Removal and that you also **deserve** to win. The best way to do this is to gather documents showing that you meet all the eligibility requirements.

You need to submit documents proving that:

1. you have lived in the United States continuously for at least ten years and that
2. you are a person of good moral character and that
3. your family would suffer exceptional & extremely unusual hardship if you were removed/deported from the U.S.

The documents you submit will confirm to the Judge that what you are saying is true and correct. Remember, if you submit documents related to your case, you will be in a better position to prove your case because, in a sense, the documents will speak for themselves. For example, you can tell the Judge that your daughter misses you. The Judge might or might not believe you. However, if you give the Judge a notarized letter from your daughter describing how much she misses you, her letter will support your statements.

DOCUMENTATION

1. Continuous Presence for 10 years

- To meet the first requirement you need to show the judge that you have been living in the U.S. continuously for at least 10 years. You should gather as much evidence as possible to show that you have been here for that length of time.
- You need to find documents to prove your presence in this country every year. For each year of the ten-year period, try to get as much proof as you can. If you cannot find many documents, you must be prepared to explain to the judge why you do not have much proof of the time you have been in the U.S.

Document Checklist for Ten Years of Continuous Presence

- You can help your case by gathering proof that you were living in the United States.
- For example, proof can include:
 - rent receipts
 - school records
 - utility bills
 - tax records
 - children's immunization records
 - I.D.'s issued during that time
 - bank statements and records
 - payroll records and income tax records.
 - children's birth certificates
 - marriage certificate
 - certificates of achievement/rehabilitation/education
 - proof of child support payments
 - medical or dental records
 - social security records
 - children's school records
 - deeds to property
- Notarized letters from a: landlord employer co-worker neighbor friend or religious leader

2. Good Moral Character

- To meet the second requirement you need to show the judge that you have been a person of good moral character during the last 10 years. Remember, there is no limit as to the amount of information you can submit to prove your good moral character. The more relevant information, the better.

Document Checklist for Good Moral Character

- To document good moral character you should try to get letters from:
 - family members
 - neighbors
 - work or volunteer supervisors
 - teachers
 - co-workers
 - any people who benefit from your activities in your community
 - religious leaders
- **TIPS:** Remember, the more letters, the better. See page on how to write a letter of support
- Also, you should try to get copies of: employment pay stubs tax records photos of you and your family
- In getting documents together you should also include any awards you have received at work or in your community.

3. Exceptional and Extremely Unusual Hardship

- Exceptional and extremely unusual hardship is the most difficult requirement to meet. To win your cancellation case, **you must show** that deportation will cause **exceptional and extremely unusual** hardship to your children, spouse or parents who are legal permanent residents or U.S. citizens. You can prove this severe form of hardship through letters, documents, and testimony by you or your family members. Under the law, hardship to you and to undocumented family members does not count.

Document Checklist for Extreme Hardship

- To prove hardship based on the length of time your family has lived in the U.S., use the following proof:
 - bills or letters showing your address
 - school or work records
 - birth certificates
 - marriage certificate
- To prove hardship because of your family's dependence on you for financial and emotional support, use the following proof:
 - bills for your family's expenses (water, electricity, medical care, etc.)
 - letters from family members
 - proof of child support payments
 - proof of family insurance
- If any of your family members are currently sick (physically or mentally) or have been sick in the past, it is important for the Judge to learn about it. If someone in your family is or has been sick, it is very helpful to submit evidence of their medical history. For example, you can demonstrate hardship to your United States citizen wife if she needs medical attention in the US. Also, the fact that some forms of medical treatment are only available in the U.S. would be helpful to show to the Judge that your wife needs to stay here and that you need to stay here with her.
- To establish hardship based on medical problems:
 - letter from a doctor, psychologist, social worker, etc
 - copies of medical records
 - copies of treatment records
 - copies of prescriptions
- You can also show hardship by telling the judge what has happened to your family since you have been in detention. [They have not been able to pay the rent, buy groceries, or get medical care because you are not there to support them] Tell the judge and they should write a letter telling the judge this.
- Also, your family's employment history and evidence of ownership of property would be helpful in establishing hardship to them
- Another way to show hardship would be through your inability to support your family in your home country. [Living conditions in your home country or political situation in your country, especially if it is dangerous. It would be helpful for you to submit articles on conditions in your country of origin]
- An effective way to prove hardship is to prove that your family's everyday life would change for the worse if you were not around. To prove this, it is helpful to get very detailed statements and specific examples from your family members about how exactly you make positive contributions in their lives.
- If your family is planning to go with you to your country of origin, it is important for them to describe the anticipated hardship they would suffer. Evidence showing the judge that your children would suffer includes: proof that your children do not speak the language of your home country, that they are good students in the U.S., that they are enrolled in special programs in school, that they are active in school activities, and have friends and other family in the U.S.
- You can also show hardship to your family by showing the judge that your family members have close ties to their community in the U.S. Show that you and your family are valuable and productive members of the community in which you live. Example-if you or your family members are active in a religious organization, volunteer work or active in a sports team in your community, you should get proof of this and present it to the judge.
- To prove hardship based on your children's ties to the U.S., you should gather the following:
 - evidence that they are attending school (letter from a teacher, principal, school attendance certificates)
 - evidence that they have ties here (pictures of your children with friends, cousins, etc.)
 - evidence of their school performance (grades, proof of special need classes for learning disabilities, etc.)
 - evidence of extra curricular activities
 - evidence that they only speak English if this is the case
 - letters from teachers, counselors, school principal

HOW TO WRITE LETTERS OF SUPPORT

Cancellation of Removal for Non-Permanent Residents

The letters that family members and friends write are important to support a request for Cancellation of Removal for Certain Non-permanent Residents. These letters can help prove to the Judge that the spouse, children and parents of the person detained would suffer very severe hardship if their loved one in detention were to be deported. The more detailed the letters, the better. When writing them, remember that there are some specific things that letters of support should include.

TIPS FOR THOSE WRITING LETTERS

ALL letters should be date, notarized, and signed

- Use your own words.** Please write the letter from your heart and be honest. Details are important since the letter gives the Judge another chance to get to know the person detained beyond their application and testimony.
- The purpose of the letter is to show the judge why the person detained deserves to be allowed to remain in the U.S. and what the **hardship** would be to the spouse, children or parents if that person were removed from the U.S.
- The letters should be addressed "Dear Immigration Judge" or "Honorable Immigration Judge."
- You should include the following information in your letter: your name, age, relationship to person detained (if family member, friend, etc.), address, occupation and immigration status (U.S. citizen or legal permanent resident).
- Please explain how and for how long you have known the person detained and their family.
- Mention how important the person detained is to you and what exactly the **hardship** would be to you or to the family if that person were removed from the U.S. This could include how the family depends on the person detained (for money to pay the rent, buy the food, or pay other bills and how much money he usually pays every month, even how he helps with child care or household chores, and any other support he provides). If you have close emotional ties with the detainee, you should describe what it will mean to you if the person detained is removed. You should also discuss what it would be like for you if you had to leave the U.S. to return to the detainee's home country, if this is the case.
- If you are from the country that the detainee is from and you know what things are like now in your home country, then you should write about what kind of life you and/or the detainee could expect to return to.
- If you know the detainee well and know about his problems, you should talk about them. Please explain how he got himself into problems in the first place and how he has changed since then. You should explain why you think he will be able to keep out of trouble if he is allowed to remain in the U.S.
- If you cannot express yourself well in English, you should write in your own language. Be sure that either you or the person detained get someone to translate the letter into English and sign a "certificate of translation." The original letter (in the foreign language) and the translation will have to be submitted to the court by the person detained.
- A typed or handwritten "certificate of translation" should be attached to the English translation of the letter [ask for a certificate of translation sheet]
- After you complete your letter, you should make **3 copies** of the original and the translations (if translated) and mail them all to the person detained. Please use the following format to ensure proper delivery:

The person's first name and last name
Their correct 8 digit A# (alien registration # or immigration file #)
The name of the housing unit and the cell # (if you know it)
York County Prison
3400 Concord Road
York, PA 17404

Waivers

TALKING ABOUT YOUR CRIMES

Below are examples of ways to show remorse and take responsibility for your actions.

- I was irresponsible.
- I was immature.
- I was greedy.
- It was a very stupid thing to do.
- I did not stop to think what the consequences of my actions would be.
- I did not know that I would be hurting my family when I did it.
- I hurt myself and my family and other people with my behavior and my crimes.
- I was selfish.
- I was only thinking of myself.
- I was hanging out with people that were not good for me.
- I was very young and ignorant.
- I was afraid, but that is no excuse.
- I chose to do it, it was a stupid thing to do.
- I now take complete responsibility for my actions.
- Back then I did not listen to my parents/ teachers/ spouse, etc.
- I did not know what I know now.
- I've grown up since then.
- I now understand what makes me act that way, so I can choose a better response next time.

TALKING ABOUT DOMESTIC VIOLENCE

Below are examples of ways to show remorse and take responsibility for your actions.

- I am ashamed of my behavior.
- There us no excuse for what I did.
- I realize now that I have a problem with anger and I plan to get help.
- I will be going to a counselor for help with my problem.
- I have been reading books about anger and I have been learning about myself.
- I chose to do it; it was a stupid thing to do.
- I now take complete responsibility for my actions.
- I've grown up since then.
- I have matured.
- I am not the same person I was before.
- I now understand what made me act that way, so I can choose a better response next time.

PLANS FOR THE FUTURE

- If you have problems with alcohol ...
 - Find the number of AA in your area. Call information. Have a family member call. Find the days and times when meetings are held.
- If you have a drug problem ...
 - Find the number of Narcotics Anonymous in your area. Call. Find the days and times when meetings are held.
- If you have a problem with domestic violence ...
 - Find the number where domestic violence classes are held in your area. Call information. Call the community center in your area. Call. Find the days and times when meetings are held.
- Also:
 - Plan to find places where rehab is offered.
 - Get a list of self-help books and read them. Find out where the library is in your town.
 - Plan to go meet your children's teacher and visit the classroom.
 - Plan to get involved with your church.
 - Plan to visit the community center in your town to see what services are offered.
 - Plan to get family counseling. Many community centers offer family counseling.
 - Plan to find out about training or going to school.
 - Plan to contact the Boys and Girls Club in your area to volunteer.

HOMEWORK

- **Exercise: The Balance of My Life**
 - Make a list of "the good things in my life" and "the bad things in my life".
 - Think about what you should tell the judge to make the balance work out in your favor.
- **Exercise: The Past and the Future**
 - What happened in the past that led you to detention?
 - I used drugs.
 - I hit my wife.
 - I shoplifted.
 - What would you like to do in the future?
 - Watch my children graduate.
 - Buy a house.
 - Take my family to the park.
 - How will your deportation affect your family members?

