

Immigration Options in Removal Proceedings for Permanent Residents, (other than through asylum related relief) by Jon Eric Garde, Esq.

Permanent residents are placed in immigration court when charged for being subject to removal once it is discovered that they immigrated through fraud or mistake, if convicted of a deportable crime, or who pose a security threat after immigrating. Many, but not all of these violations of immigration law, can be waived (pardoned). Common waivers are described below.

Cancellation of Removal for Certain Permanent Residents is most commonly used by immigrants of five years, who have resided in the United States at least seven years after any lawful admission. Qualifying time stops in the accrual of both permanent resident status and general residence upon commission of a crime leading to a deportable conviction. These waivers are discretionary, balancing family, business, employment and property ties to this country and other commendable characteristics against the applicant's criminal record. Immigrants convicted of an aggravated felony are ineligible for cancellation, but if convicted prior to April 1, 1997, they can instead apply for a waiver under Section 212(c), unless imprisoned for at least five years after their aggravated felony conviction. Both 212(c) and cancellation cannot be granted after either one is granted.

Immigrants who are ineligible for cancellation or 212(c) may be able to apply for a 212(h) waiver to pardon criminal convictions, (except certain aggravated felons), by immigrating again through an immediate family member of a US citizen or another qualifying relationship, who benefit from an approved immigrant petition with a current priority date. A 212(k) waiver is available to persons who immigrated through an innocent error. A 237(a)(1)(H) is available to immigrants who immigrated through fraud and are the parent, spouse or son/daughter of a US citizen or permanent resident.