

Immigration Court Relief Cheat Sheet

Bond

Client must prove not a flight risk, danger to the community or security risk and that will appear at all future immigration court hearings.

For a green card holder, you CANNOT get a bond IF you are:

- ⇒ Convicted of 2 Crimes of Moral Turpitude
- ⇒ Convicted of an Aggravated Felony
- ⇒ Convicted of a controlled substance offense.
- ⇒ Convicted of a firearms offense.

If you do not have a green card, you CANNOT get bond if you have been convicted of:

A Crime of Moral Turpitude (Subject to Petty Offense Exception – crime was not punishable by more than 1 year, and person was not sentenced to more than 6 months confinement).

- ⇒ Drug Trafficking Offense
- ⇒ Controlled Substance Offense
- ⇒ 2 or more offenses with aggregate of 5 years.
- ⇒ Prostitution

Bond can range from \$1,500 to \$10,000 (or more).

Cancellation of Removal for Non-Permanent Residents (Immigrants who do not have a "Green Card")

INA 240A(b)

Required:

- ⇒ 10 years in the US (To calculate the 10 years, the clock stops when a disqualifying crime is committed)
- ⇒ Not absent by single absence of 90 days, or absences totaling more than 180 days.
- ⇒ Good Moral Character
- ⇒ Not convicted of Removable or Deportable Offense

Withholding of Removal INA 241(b)(3)

- ⇒ Where alien would be threatened because of race, religion, nationality, political opinion or membership in a social group.
- ⇒ Cannot have Aggravated Felonies with aggregate sentence of five years or more.
- ⇒ No 1-year filing requirement

Voluntary Departure

INA 240B(a), INA240B(b)

Voluntary Departure allows the immigrant to leave the US without a removal order.

If request is made prior to initiation of proceedings or prior to completion of the proceedings:

- ⇒ No Aggravated Felony Convictions
- ⇒ No Security Concerns
- ⇒ No Prior Removal Orders
- ⇒ Granted up to 120 days if before the end of proceedings

If request is made at the end of proceedings:

- ⇒ Must be physically present in the US for one year before filing the NTA.
- ⇒ Must have good moral character for at least five years before application.
- ⇒ Allowed for up to 60 days.

Adjustment of Status

INA 245(a), INA 245(i)

Available to immigrants if someone can file a petition that will give them an immediate visa number, or if someone has already filed a petition for them that will allow them to adjust now. Usually US Citizen Spouse, or petition by LPR Spouse that is now current.

- ⇒ If EWI, then must be 245i eligible (IE Someone filed a petition for the client before 4/30/2001 and you may have to prove physical presence on 12/2000 depending on when the petition was filed)
- ⇒ If entered legally last time, then have a visa petition that is filed, or can be filed by an immediate relative (US Citizen Son or Daughter at least 21 years old, or US Spouse)
- ⇒ Alien is otherwise admissible, or can file any needed waivers for criminal activity etc.

Convention Against Torture (CAT)

8 CFR 1208.16 et. seq.

This allows a person to stay in the US, with a work permit.

Must prove that:

- ⇒ Would suffer severe pain and suffering
- ⇒ Intentionally inflicted
- ⇒ For an illicit purpose
- ⇒ By or at the instigation of or with acquiescence of a public official who has custody and control of victim
- ⇒ Not arising from lawful sanction

212(c) Waiver

INA 212(c) Allows a Green Card Holder who pled guilty before 4/24/96 to a deportable or inadmissible or excludable offense.

- ⇒ Pleas in different years have different qualifications
- ⇒ LPR maintained domicile for 7 years, before applying for relief.
- ⇒ Has not served a term of imprisonment of 5 or more years for one or more aggravated felony convictions.
- ⇒ Positive Factors Outweigh Negative Factors (prove you are a good person).
- ⇒ This is an area of law that has recently been changed by the courts – See Matter of Abdelghany

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Cancellation of Removal for Legal Permanent Resident (LPR)

INA 240A(a)

- ⇒ Continuously Reside in the US for 7 Years.
- ⇒ Clock Stops when deportable crime is committed or is served with a Notice to Appear.
- ⇒ 5 years as an LPR
- ⇒ Not convicted of an Aggravated Felony (*Ask Attorney)
- ⇒ Never received 212(c) relief from deportation.
- ⇒ Not a Terrorist, Crewman or Exchange Visitor
- ⇒ Positive Factors Outweigh Negative Factors (prove you are a good person).

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SJS (Special Immigrant Juvenile Status)

INA 203(b)(4)

Available to UAC's (Unaccompanied Alien Children) who enter the US without their parents and are then detained or paroled in.

Requirements: Obtain state court (family court or probate court) order demonstrating jurisdiction of the court over the minor and obtain (typically) a guardianship or custody order.

Obtain state court order called a "Special Findings of Fact" stating:

1. That the court has jurisdiction over the child.
2. The minor is under 21 years old.
3. The minor is unmarried.
4. The minor is dependent on the court
5. Reunification with at least one parent is not viable due to abuse, neglect, abandonment or a similar basis under state law.
6. That it is not in the minor's best interest to be returned to his country of origin.

Then file concurrent I-360 and Adjustment.

Request continuances or administrative closure.
Request termination upon grant of adjustment.

Removal of Conditions (I-751 in proceedings)

If denied by USCIS, or if referred to EOIR for proceedings due to lack of filing, EOIR will review an I-751 and make an independent determination.

Requirements:

- ⇒ "Good Faith" entry into marriage
- ⇒ Evidence of legitimate marriage
- ⇒ Waiver may be necessary in case of divorce or abuse.

NACARA Suspension/Withholding

- ⇒ Salvadoran Nationals
- ⇒ Guatemalan Nationals
- ⇒ Former Soviet Bloc Nationals

Specific requirements and timelines for each group.

Refer to: INA 244(a)

Generally: If entered on or before 1990 or 1991 and filed for asylum or registered for "ABC" benefits, they may apply for special form of cancellation of removal.

U- Visa

INA 101(a)(15)(U)

Requires a Certification, from law enforcement, and then an application filed with USCIS. Currently a 10-year or more wait for applications filed now.

For previously filed applications, you can request a continuance with the immigration court if the Priority Date is near. Recent Sessions AG memo overruled the Matter of Sanchez-Sosa which would previously have helped.

When client obtains a *prima facie* determination, they can obtain an EAD. After a visa is obtained, the client may adjust 3 years later.

With a visa approved, you may be able to obtain termination or admin closure.

With adjustment, termination would be appropriate.



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Best Practices

- ⇒ File lots of FOIAs to all relevant agencies (USCIS, EOIR, CBP)
- ⇒ Get criminal record information (FBI Fingerprint, OBIM)
- ⇒ Concede nothing in Master Hearings
- ⇒ Appeal all poor decisions to the BIA (use the interlocutory appeal whenever possible)
- ⇒ Enter reminders in your calendar so you never file late with EOIR. Hearings can be months or years in the future.
- ⇒ Maintain contact with clients.
- ⇒ Give clients specific deadlines to fulfill for bringing information and documents.
- ⇒ Removal cases should be billed hourly with a retainer.

Asylum

INA 101(a)(42), INA 208

Enter the US within last year or show changed circumstances to excuse the requirement.

Show no previous deportation/removal orders or other inadmissibility or ask only for CAT and/or "withholding of removal" only.

If detained at the border, must pass credible fear interview to qualify for parole and apply with immigration court.

If in the US, and not in proceedings, file with USCIS.

Must show:

- ⇒ Past persecution, or reasonable fear of future persecution.
- ⇒ Persecution on account of Race, Religion, Nationality, Political Opinion or member of Particular Social Group (PSG)
- ⇒ Must be persecuted by government or with acquiescence of government (unable or unwilling to control)
- ⇒ For PSG, must be cognizable under the law and see requirements of social distinction and visibility.
- ⇒ Must not be able to internally relocate.

VAWA Cancellation of Removal

INA 240A(b)(2)

- ⇒ Battered or extreme cruelty by spouse/parent/fiancée (bigamous marriage) who is LPR/USC. Or parent of child of such an abused child.
- ⇒ Physically present in US not less than 3 years.
- ⇒ Good Moral Character
- ⇒ Not inadmissible for crime/security/marriage fraud
- ⇒ No Aggravated Felonies
- ⇒ Show extreme hardship to self or children or children of parent.
- ⇒ No 2-year limit after divorce as per standard VAWA petition.

Notes: