

Cancellation of Removal

English Transcript as presented by ICLC Attorney Mauricio Norona on UNIVISION WADO 1280 radio

Q. I've heard that if you're undocumented and lived in the United States for more than ten years, you're eligible to apply for a Green Card, is that true?

A. That's a very important question and one we're often asked by our clients at the Immigrant Community Law Center. Yes, there is a pathway to permanent residency for people who are undocumented and who have lived in the United States for more than ten years. It's called Cancellation of Deportation, though many people know it as the "10 year law." Sounds simple, right? It's not. As the name implies, Cancellation of Deportation is a form of relief that's only available to people who are facing deportation, that is, if you're not approved, you may be expelled from this country.

Q. So, if you're not facing deportation, you can't apply for this?

A. That is correct. Unfortunately, some attorneys - especially in the Latino community - don't make this clear to their clients and, even worse, we've unfortunately seen cases where the attorney put a client in deportation - without the clients' knowledge - solely for the purpose of applying for cancellation. That's a very risky and probably unethical move because, again, if your application is not approved, you could be deported.

Q. How does someone end up in deportation proceedings in the first place?

In different ways; probably the most common is being detained when attempting to cross the border. People also end up before an immigration judge for deportation proceedings if they were detained at a raid in their homes or workplace or if they were convicted of a crime which triggered a referral to ICE. Lastly, if you submitted an immigration application -which was denied, there's a possibility that your case may be then referred to an immigration judge for deportation proceedings. In fact, we've seen a lot of cases where the attorney filed an asylum application that was weak or had no basis in the law just to get the client in deportation.

Q. In addition to being in deportation proceedings, what else does someone have to show to be eligible for Cancellation of deportation?

A. If you are facing deportation and would like to apply, you must show that, 1) you've lived in the United States for at least ten years, 2) your deportation from the U.S. would cause an "exceptional and extremely unusual hardship" to a parent, child, or spouse who is a Permanent Resident or United States citizen, 3) you have "good moral character", and 4) you have not been convicted of certain crimes or violated certain laws.

Q. If I understand correctly, if you don't have a relative who is a Permanent Resident or United States citizen, you are not eligible, is that right?

A. That's right. You must have at least one parent, spouse or child who is a Permanent Resident or United States citizen. Not only that. You also have to show that your deportation will cause an "exceptional and extremely unusual hardship" to that family member. That means you must show that your deportation will cause hardship beyond that which would be normally be expected from your deportation. So, for example, claiming that your relative will experience a lower standard of living or lower salaries is not enough. You have to show something in addition to that. If your child has a serious medical condition or compelling special needs that must be met in the U.S., your deportation may cause her an exceptional and extremely unusual hardship. Or if you are the

only support for your elderly parents in the U.S., your forced departure may rise to this high standard.

Q. What if you don't have a family member but you've paid your taxes for 10 years, are you eligible?

A. That's a good question and there is a lot of misunderstanding in our community about it. Unfortunately no, paying taxes for 10 years does not, by itself, make you eligible for Cancellation of Deportation. The fact that someone has been paying taxes is a good time, it helps prove that the person has good moral character and may also serve as proof that the person has been in the US for 10 years, as is required. But it's not sufficient. You still need to prove the other requirements.

Q. Once you've shown that you've met all the requirements, are you then eligible for a Green Card?

A. You could be. Since this is a discretionary form of relief, even if you show that you meet all the requirements, the Immigration Judge may still deny it.

Q. I've heard of people who don't seem to meet the requirements you've explained but applied for Cancellation of deportation and already have an work permit, how did that happen?

A. Unfortunately, the fact that someone was issued an work permit doesn't mean that his or her case will be approved later. Immigration Courts are pretty busy. It may be years before an Immigration Judge actually considers whether or not a person is eligible for Cancellation of deportation. After applying and while the person waits, he or she is eligible to obtain an work permit.

Q. Lastly, what advice would you have for someone who is considering Cancellation of deportation?

A. Consult your case with attorney and don't be afraid to ask questions. If you are undocumented and are currently facing deportation, Cancellation of deportation can be a saving grace. If you are not facing deportation at the moment and an attorney says you are eligible, discuss why the attorney thinks you could meet the high standards required by Cancellation of deportation, how is it that you will end up in deportation proceedings, and the risks involved in doing this. If you'd like to speak to me or my colleagues at the Immigrant Community Law Center, call for an appointment at [212-222-3882](tel:212-222-3882), find us on Facebook as ICLC or go to our website centrolegaldeinmigrantes.org. There is a \$40 consultation fee.