

### Cancellation of Removal, U & T Visas, Voluntary Departure

A selection of some forms of relief from removal but NOT including waivers of removal

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### What is Removal? Relief from Removal?

**Removal** is the term for deportation from the United States after the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Removal proceedings are legal actions commenced in Immigration Court to remove (deport) an alien from the USA.

**Relief from Removal** is the collective term for a variety of legally permissible applications which are filed with the Immigration Court. Asylum and Waivers are also forms of relief but are not covered in this presentation.

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### What is Cancellation of Removal?

It is a form of relief that arose out of the IIRIRA of 1996 (Illegal Immigration Reform and Immigrant Responsibility Act); It basically replaced suspension of deportation with this new form of relief – Cancellation of Removal.

Cancellation of Removal is NOT a stand-alone application; it cannot be filed independently with the USCIS or any other government agency; it can be filed ONLY with the immigration court in removal proceedings. In other words, unless an alien is in removal proceedings, the alien cannot apply for Cancellation of Removal.

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### Cancellation of Removal

Two types of cancellation of removal under the Immigration and Nationality Act; § 240A

One for aliens who have already adjusted to Permanent Resident status (ie, have "green cards")- this is called "LPR cancellation"; INA § 240A(a);

The other is for aliens who are either non-immigrants who entered with a visa but violated the terms of the alien's stay, or aliens who entered without inspection – in either case, they have no authorized status in the USA – this is called "Non-LPR cancellation"; INA § 240A(b)

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### LPR Cancellation of Removal – 240A(a)

Requirements:

1. LPR for at least 5 years
2. Continuous residence in the USA after admission of at least 7 years after admission in any status
3. Not convicted of any aggravated felony (as defined under the INA §101 (a)(43)) or presumptively under state or federal law as well

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### Non-LPR cancellation of Removal- 240A(b)

1. Continuous physical presence in the USA of at least 10 years before the application is filed (ie, time after the application is filed and pending does not count)
2. Been a person of good moral character during that time
3. Not convicted of any offense under INA § 212(a)(2) [Criminal and related grounds of EXCLUSION], INA § 237(a)(2) [Criminal grounds of REMOVAL], or INA § 237 (a)(3) [Failure to register and falsification of documents]
4. Exceptional and extremely unusual hardship to alien's spouse, parent or child, who is a USC or LPR

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**Annual Limitation on grants of Cancellation of Removal**

The Attorney General (pursuant to authority over the EOIR, that is, immigration court) can grant NON-LPR cancellation annually to only 4,000 aliens. There is no limit on grants of LPR-Cancellation.

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**(1) Continuous Physical Presence and (2) The "Stop-Time" rule**

How does the alien accrue the requisite 10-years or 7-years of physical presence? Two elements factor into this analysis –

(1) Has the alien been continuously present in the USA?  
If the alien has departed the USA for any period in excess of 90 days, or any periods in the aggregate of 180 days during the 10-or-7 year period, the alien has FAILED to accrue continuous physical presence and is not eligible for Cancellation of Removal. INA § 240A(d)(2); AND....

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**(2) The "Stop Time" rule**

INA § 240A (d)(1):

The accrual of continuous physical presence is broken by either of:

- 1. The service of the NTA (charging document) on the alien
- OR
- 2. Commission of an offence that makes the alien excludable (INA § 212) or removable (INA § 237)

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**Breaking news....Supreme Court Decision in Pereira v. Sessions; (No. 17-459, June 21, 2018)**

Briefly, Pereira argued that his NTA was issued without a date and time for his Master Calendar hearing and therefore was legally deficient to stop the 10-year clock for non-LPR cancellation of removal. When he made the argument, he had already accrued 10 years of time in the USA, even though part of that time had been AFTER he was served with the (no date, no time) NTA. The Supreme Court agreed, and remanded the case for Pereira to be able to apply for Cancellation of Removal for Non-LPR's.

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**Some exceptions/ items to be aware of for Cancellation of Removal applicants**

1. Special rule for battered spouses and children – only 3 years physical presence; waiver of certain criminal grounds of ineligibility
2. Waiver for members of the military due to posting overseas
3. Aliens not subject to annual quota if seeking NACARA relief; or aliens who had applied for Suspension of Deportation prior to enactment of IIRIRA (1996)

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**Voluntary Departure – INA § 240B**

What is voluntary departure?

Simply put, as the name suggests – an alien who has been in the USA for more than one year before being served with the NTA agrees to leave the USA voluntarily, at his or her own expense, before or after the conclusion of removal proceedings.

The alien must seek voluntary departure before an immigration judge and the IJ must grant that relief; if the alien departs on his own volition, without the IJ order, the alien is considered to have "self-deported" and the bars to re-entry still remain.

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### Why seek Voluntary Departure?

- No meritorious case or application for relief
- Unable to make bond
- Avoid unnecessary prolonged detention
- Able to return to the USA since not “removed”, thus avoiding one of the bars (“previously removed”) to reentry to the USA
- Have a valid travel document and able to purchase own ticket
- Eligible for Voluntary Departure (can seek in the alternative)

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### Types of Voluntary Departure

There are two types of Voluntary Departure

1. Pre-conclusion Voluntary Departure – max 120 days to depart USA following entry of VD order
2. Post-conclusion Voluntary Departure – max 60 days to depart USA following entry of VD order [this is sought prior to the conclusion of the individual hearing, so in a sense it is not really “post-completion”]

Now let’s look at the requirements for seeking VD.

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### Pre-conclusion VD – 8 CFR § 1240.26

1. The alien must seek VD at the master hearing at which a date is set for the individual hearing
2. The alien concedes removability (that is, the alien must admit to the grounds of removal)
3. The alien makes no other requests for relief (example, asylum, cancellation, etc.)
4. Waives appeal of all issues
5. Has NOT been convicted of an aggravated felony [INA § 101(a)(43)] or national security or related grounds (espionage, terrorism, etc.) [INA § 237(a)(4)]

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### Immigration Judge can also grant Pre-conclusion Voluntary Departure

If sought within 30 days of the master hearing at which an individual hearing date was set; all other requirements as set forth above will apply

If the alien seeks pre-conclusion VD MORE than 30 days after the master hearing setting the Individual hearing date, the government must concur (8 CFR § 1240.26(b)(2))

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### Post-Conclusion Voluntary Departure

As noted above, must be sought prior at the time the Immigration Judge asks the alien to present any and all forms of relief; If not sought at that time, the government may object and the court may not grant VD.

Number of requirements for Post-Conclusion VD:

1. Alien must be present in the USA for at least 1 year prior to service of the NTA on the alien
2. Alien must have been a person with GMC for at least the prior 5 years

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### Post-Conclusion VD (continued)

Requirements (Continued)

3. Alien has NOT been convicted of an agg. felony or national security related offense; and
4. Alien must demonstrate by clear and convincing evidence that the alien has the means to depart the USA and has the intent to do so

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**Voluntary Departure – other items for discussion**

- Passport or travel document – must be valid and in ICE possession
- Ticket – alien purchases – ICE will escort to airport
- Baggage- ICE generally allows one bag, upto 40 pounds – contact each ICE office, ERO section for specific instructions on weight, where to drop off, etc.
- NOTE – the alien will still be detained while waiting to be removed

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**“U” visas for Victims of Crime**

Statute: INA § 101(a)(15)(U)  
Regulations: 8 C.F.R. § 214.14

- It is a nonimmigrant status which is granted to non-citizen, non-LPR victims of certain crimes, provided the victim cooperates with law enforcement in the investigation or prosecution of such criminal activity
- The crime (in most cases) must have occurred in U.S. and the victim must have suffered substantial physical or mental abuse as a result of having been a victim of the crime

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**Crimes qualifying the victim for possible “U” visa status**

Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, hostage taking, peonage, involuntary servitude, slave trade, kidnapping, abduction, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury ...

This May Also Include:.....

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**“U” visa eligible crimes (continued)**

Attempt, conspiracy, or solicitation to commit the above  
Any similar activity in violation of federal, state or local  
criminal law  
The qualifying crime can also be the underlying charge, it  
does not have to be the charge on which the perpetrator  
was convicted.  
NOTE: annual 10,000 limit on U visa issuance

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**“U” visa process**

- File on form I-918
- Add Supplement “A” for qualifying family member
- Add Supplement “B” for Law Enforcement certification
- File form I-192 if illegal reentry (can seek fee waiver)
- Any supporting docs – police / hospital records,  
affidavits, record of criminal conviction, transcript,  
evidence logs, etc.

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**“U” visa - general information**

The “U” visa is not a green card  
A key part of the application is the “certification” by law  
enforcement or the judge that the alien was a victim of the  
crime and has cooperated or is cooperating with law  
enforcement in the prosecution of the perpetrator.  
It takes years for USCIS to review and approve U visa  
applications  
Since only 10,000 U visas can be granted each year, the  
line is getting longer and longer

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**“U” visa - general information  
(continued)**

Having a U visa pending is NOT a bar to removal; only “prima facie” approval of a pending application by USCIS will stay an alien’s removal by USICE  
Upon “prima facie” determination by USCIS, the alien may apply for work authorization  
The alien may apply for “derivative” U-visa status for dependent children

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**“U” visa - general information  
(continued)**

After 3 years in U-visa status, the alien can apply for LPR status and thereafter, after 5 years in LPR status, the alien can apply for US Citizenship!  
Dependents overseas under age 21 can also be granted derivative U visa status (under the INA, a person does not reach adulthood until age 21. Therefore, under most circumstances, a “child” continues to benefit from a parent’s status until the child reaches age 21)

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**The “T” visa for  
Victims of Human Trafficking**

Statute: INA § 101(a)(15)(T)  
Regulations: 8 CFR § 214.11  
Who is a “victim of human trafficking”?  
A victim of sex trafficking, or use of a person for labor or services through the use of force, fraud or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery [8 CFR § 214.11(a)]

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### Eligibility for "T" visa status

- Victim of a severe form of trafficking in persons
- Physically present in the USA or American Samoa, or the Mariana Islands, or at a Port-of-Entry because of such trafficking
- Is less than 15 years old, or if not, has assisted prosecutors in the investigation or prosecution of the acts of trafficking; and
- Would suffer extreme hardship involving unusual and severe harm upon removal

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### "T" visa quota

The "T" victim of human trafficking visa is limited to a grant of just 5,000 per year.

**Other items to know and consider:**

- The application is filed on form I-914
- Requires a Certification from Law Enforcement that the alien is cooperating in the prosecution of the perpetrators
- T visa status is granted for 3 years
- An alien receiving T visa status can and should apply for LPR status (ie, a "green card") 2 years and 9 months after the grant of T status.

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### Questions Answered / Presenter

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Your feedback will improve the quality of subsequent presentations! Please send your honest comments to: [fsethna@immigration-america.com](mailto:fsethna@immigration-america.com)

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