

## **CAN I GET A GREEN CARD IF I'VE BEEN MORE THAN 10 YEARS IN THE U.S.?**

**By Christopher A. Kerosky**

**Q:** My husband and I have been here in the United States eleven years. We are from Mexico originally, but we have one son born here who is a U.S citizen. We ourselves have never had any legal status here. Unfortunately, my husband was just caught and the government started deportation proceedings against him. Is there anything we can do? I heard there is a way to apply to get a green card based upon the fact I've been here so long. Is this a good idea for him? Or should he just hide and ignore the immigration court proceeding?

**A:** There is something called Cancellation of removal which applies to people who have been in the country for more than 10 years. A person like you can apply for this status, even while not in custody, but I don't usually recommend it. Most people are denied and the result is the person gets an order of deportation. If you are not known to the immigration service, I usually advise my clients not to apply for this.

On the other hand, persons *who have been arrested and are in custody of the immigration service* or those *who are already in deportation proceedings* should consider this as a possibility of staying here. Your husband should certainly go to the court and participate in the process; to ignore it will only make things worse. With the possibility of a legalization program in the near future, there may be many things an immigration lawyer can do to help him stay long enough to qualify for such legalization.

One of those things may be applying for "cancellation of removal". Those who have been here more than 10 years with a U.S. citizen or permanent resident relative can apply for this status and this would at least keep them here legally while their case goes forward. With appeals, one can often stay here legally up to 5 years while an application is considered by the courts. If the relative (in this case, your son) who has citizenship has special needs or problems, the chances of success may be greater. If your husband ignores his deportation case and an order for his deportation is issued, then he will lose all his rights for the future and will probably never get legal status.

The eligibility for Cancellation of Removal is as follows:

First, a person must prove "continuous presence in the United States for 10 years"; this means that you must prove that your husband came to the U.S. over 10 years ago and never left. This can be done with various documents from your past which show your entry to the U.S. and your life here. For example, you need to gather things like medical records of you and your children, wage and employment records, pay stubs, tax records, school records for your children, rent receipts or leases, cancelled checks, other banking records, even traffic violations. These are then presented to an immigration judge to show you have been here more than 10 years.

The 10 year period must be without break and must start before the immigration proceedings started.

Second, a person must prove that they have “good moral character”. What this means is that, according to the standards of the government, the person would make a good citizen. Most importantly, a person needs to show that he has not committed any crimes or if so, they were of a minor nature. If he does volunteer work or other community service, you need to tell the judge about this. You also can submit statements from your priest or minister, friends and family members about his character.

The third and most difficult thing is that you need to prove that he has a parent, spouse or child who is a U.S. citizen or a permanent resident and that being removed would cause your U.S. citizen or permanent resident relative “exceptional and extremely unusual hardship”. In your case, you need to show that your son would suffer such hardship if your husband is returned to Mexico.

This is not easy to do because the immigration law requires you to show very unusual circumstances to qualify for this. The normal problems that would be caused to a young child or elderly parent by your deportation is not enough. For example, it’s not enough to simply show that your son doesn’t speak Spanish and will have to return to a Spanish-speaking country, probably resulting in difficulties in school, development, socialization. It is also usually not enough to show that your elderly parent needs your help or financial support. The government considers this “usual” and therefore not “extremely unusual” hardship. Most of the cases like this are simply denied.

Certainly, the best arguments are that your relative has “special needs” – for example, their physical problems or diseases would not receive adequate medical treatment in the home country. In this case, if you can show that your son has special medical or psychological needs that will increase your chances of winning this status and staying in the U.S.

Other factors such as your relative’s age, language skills, acculturation, and the conditions in your home country can also be used to strengthen your arguments.

As I mentioned above, the government’s rules governing “cancellation of removal” are very strict and it is very difficult to win these cases. I generally don’t recommend that you voluntarily identify yourself to the government and apply for this status – even if you have been here 10 years and have a qualifying relative. There are many unscrupulous lawyers and notaries who have been taking people’s money on the promise that they qualify for a green card on this basis and then the person ends up being deported. (I will write about this in the next issue.) However, if your husband has been arrested, I would certainly apply for this status to prevent his deportation, or at least delay a deportation order until such time as there is legalization passed by Congress that may also allow him to stay.

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