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

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.

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.

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CHRISTOPHER A. KEROSKY of the law firm of KEROSKY PURVES & BOGUE has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last five years by San Francisco Magazine “Super Lawyers” edition (2006-2010). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had an office in San Francisco for 20 years, but recently opened a Santa Rosa office and lives in West Sonoma County.