

## **Deportation Defense / Removal Defense**

Many immigrants today find themselves in immigration court facing charges of deportability or inadmissibility in Removal Proceedings (formerly called Deportation or Exclusion Proceedings). Deportation Defense is the process where an immigrant challenges the U.S. Department of Homeland Security's attempt to have the court order the immigrant removed from the United States.

Removal Proceedings and Deportation Defense can be extremely complicated procedures. The difference between winning and losing often depends on understanding your rights and understanding the process. A knowledgeable immigration attorney at your side can make a huge difference.

Removal Proceedings are generally divided into two phases. In the first phase the Department of Homeland Security is required to prove that the individual charged is in fact inadmissible or deportable from the United States. If the government fails to prove that the individual is deportable or inadmissible as charged, the Immigration Judge should terminate removal proceedings. However, in many cases the immigrant unknowingly or through the misadvice of their attorney will admit their removability from the United States. In some cases this could be a wise decision, while in many others it can be a huge mistake (because the government could not otherwise prove that the person is removable or because in fact the person may not even be removable as charged).

The second phase is known as the relief phase and should only commence after the individual has already been found to be deportable or inadmissible to the United States. In the relief phase the individual can apply for different applications for relief from removal for which they may be eligible. It is the applicant's burden to prove that they are eligible for the form of relief for which they are applying and as with many applications that they deserve to have the application granted. Again, knowledge of the requirements of the various types of applications and what evidence is needed to prove the various different requirements is essential to be successful. It is important that the applicant be well prepared.

**Relief From Removal** (below are some of the most common types of relief from removal):

### **Asylum**

An applicant may be eligible for asylum if they have endured past persecution or have a well-founded fear of future persecution on account of certain protected grounds.

### **Withholding From Removal**

Applicant's who are ineligible for Asylum generally because of certain convictions or because their Asylum application was found to have been filed late, the applicant may still be eligible for Withholding from Removal if they fear that they will be persecuted in their home country on account of certain protected grounds.

### **Convention Against Torture**

An applicant who fears that they will be tortured if they return to their home country may be eligible to apply for relief from removal pursuant to the Convention Against Torture.

### **Cancellation of Removal for Lawful Permanent Residents**

Certain lawful permanent residents may be eligible to apply to have their removal canceled generally based on strong ties to the United States and lengthy presence in the United States.

### **Cancellation of Removal for Non-Lawful Residents**

Certain individuals unlawfully residing in the U.S. for a long duration may also be able to apply to have their removal cancelled and to adjust their status to that of a Lawful Permanent Resident. The requirements include that the applicant to have lived in the United States for at least ten years, to have a good moral character, to have a Qualifying Relative (such as a U.S. citizen or Lawful Permanent Resident spouse, parent or child), and to establish extreme and unusual hardship to that Qualifying Relative if the applicant is not permitted to remain in the U.S. In addition many criminal offenses, prior removal or deportation orders or other bad conduct could disqualify the applicant. The applicant must also convince the Immigration Judge that they deserve to have this benefit granted in the court's discretion.

### **Waivers (former INA section 212(c) waiver, 212(h) waiver, and 212(i) waiver)**

These waivers are sometimes available to waive certain criminal or immigration violations.

### **Adjustment of Status**

An individual with an immigrant visa (through work, family or investment) may sometimes apply to adjust their status to that of a Lawful Permanent Resident as a defense to removal.

### **VAWA (Violence Against Women Act – Self Petitions or VAWA Cancellation of Removal)**

Certain victims of domestic violence may be able to apply for a VAWA Self-Petition and Adjustment of Status or VAWA Cancellation of Removal as a defense to removability. These applications generally require among other things, that the applicant be a person of good moral character, that they be victims of domestic violence (including physical violence and/or extreme mental cruelty) and that the perpetrators of the violence be U.S. citizens or Lawful Permanent Residents.

### **U Visa or T Visa (for Victims of Certain Crimes or Victims of Trafficking)**

U Visa or T Visa applications are for Victims of Certain Crimes or Victims of Trafficking. Eligible applicants can request that the Immigration Judge terminate removal proceedings against them or can request the Department of Homeland Security to join in a motion to terminate removal proceedings.

### **Voluntary Departure**

Certain applicants can apply to voluntarily depart the United States in lieu of being deported.

### **Prosecutorial Discretion / Deferred Action**

Some applicants may be able to request that the Department of Homeland Security consider the strong equities in their case and even if they are not eligible for any relief from removal at all, request that the Department of Homeland Security exercise Prosecutorial Discretion in either terminating removal proceeding against that individual or at least administratively close the case until such future time. Individuals with final orders of removal may also be able to apply for Deferred Action to defer their removal from the United States. In these cases the Department of Homeland Security will generally weigh all negative factors and all positive factors and make a determination on the requested relief.

### **Other Relief**

Depending on the factors present in each individual situation there may be other forms of relief available. In some cases where an applicant does not qualify for any relief in Immigration Court due to criminal issues, they may want to consider Post Conviction Relief.