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# **Introduction and Overview of Selected Criminal- Immigration Issues**

December 11, 2024  
6:30 pm - 8:00 pm

Presenters: Carmelia Taylor, Esq.  
George A. Terezakis, Esq.



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# INTRODUCTION & OVERVIEW OF SELECTED CRIMINAL-IMMIGRATION ISSUES

Presented by WBASNY, Immigration Committee

2024

# About the Presenter



**George Terezakis, Esq.**  
**PRESENTER**

## BIO

Mr. Terezakis grew up in Commack, New York. In 1982 he graduated Phi Beta Kappa, magna cum laude, from the State University of New York at Buffalo, with a B.A. in Political Science. Thereafter, he attended the University at Buffalo School of Law, from which he graduated with honors, in 1985, and was the recipient of the annual “Law Faculty Award.”

Mr. Terezakis’ study of international relations while in college led him to become involved in the Central American human rights movement during the 1980’s and 1990’s. He traveled to Nicaragua and El Salvador with human rights delegations and worked with the Non-Governmental Human Rights Commission of El Salvador during the fall of 1989.

For more than 35 years, Mr. Terezakis has proudly served as an advocate for members of Long Island’s immigrant community and has earned a reputation as a tireless and effective litigator. His practice is concentrated in the areas of: criminal and deportation defense, family based immigration, asylum, and the interplay between criminal and immigration law.

Mr. Terezakis is the former Chair of the Immigration Law Committee of the Nassau County Bar Association, and served as the Co-Chair of the Association of Deportation Defense Attorneys. He is a past President of the Nassau County Criminal Courts Bar Association, and has served on the Board of Directors of the N.Y.S. Association of Criminal Defense Lawyers, as well as on the Board of Directors of the Immigration Law Section of the Federal Bar Association. He received the Nassau County Criminal Courts Bar Association’s “Practitioner of the Year” award in 2013; the Long Island Hispanic Chamber of Commerce’s 2011 “Community Advocate of the Year” award; and has been recognized by the Central American Refugee Center for his pro bono work on behalf of Long Island’s immigrant community. He is currently a member of the American Immigration Lawyers Association (AILA). Mr. Terezakis frequently lectures before national and local bar associations on issues relating to the intersection of criminal and immigration law, and on defense counsel’s duties pursuant Padilla v. Kentucky. Mr. Terezakis is fluent in Spanish and enjoys traveling throughout Latin America.



# About the Moderator



**Carmelia Taylor, Esq.**  
Moderator

## Education & Practice Area

Carmelia Taylor grew up in Long Island, New York, but was raised in Barbados during her primary years. She is a graduate of the State University of Binghamton and Vanderbilt University School of Law. Since graduation, she has handled immigration matters working at Deloitte & Touche and Liz & Botshon, Catholic Charities, and now has been in private practice for 20 plus years. Her area of focus is asylum law and removal defense. She served as an Adjunct Professor at Lehman College.


## Memberships & Leadership Experience

She served on several boards and held numerous positions therein. Most notably, she served in numerous roles within Jack & Jill of America, Inc., including chapter president, vice president, program director, and recording secretary; Parliamentarian and Bylaws chair in the Links, Incorporated; and as the National representative and United Nations NGO representative for the Links, Incorporated. She is a member of Delta Sigma Theta Sorority, Incorporated and the American Immigration Lawyers Association (AILA). And currently serves as co-chair of WBASNY's Immigration Committee. Appeared on 90 Day Fiance reality TV show.





## INTRODUCTION & OVERVIEW

A close-up photograph of a wooden gavel and a magnifying glass resting on a rustic wooden surface. In the background, an open book with aged, yellowed pages is visible. The lighting is warm and focused on the objects.

**SECTION  
ONE:  
GENERAL  
ADVICE TO  
CLIENT**

## AVOID NOTARIOS

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Unlicensed Practice:  
"Notarios" or workers at  
"Multi-service" Often  
victimize, steal from, or file  
frivolous or false applications.  
Counsel to only seek  
assistance from an  
immigration attorney



## AVOID SCAMMERS

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Immigrants desperate to gain legal status easily fall victim to unscrupulous attorneys: beware "10-year green card scam," bogus asylum applications.





## **NO FAKE MARRIAGES**

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No matter how desperate, never served by entering into a fraudulent marriage. Any of the above may cost the ability to lawfully obtain legal status, and result in deportation.




# PAY TAXES

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Whether undocumented or no work authorization, if work, obtain tax I.D. and pay taxes. Reflect all income, no unlawful deductions: important to show GMC. Amount income shown critical for showing hardship.





**SECTION TWO:  
DEFENDING  
NON-CITIZENS  
IN CRIMINAL  
PROCEEDINGS**

## ASCERTAIN CLIENT'S LEGAL STATUS:

Immigration  
Consequences may  
vary based on  
client's  
immigration status



**Undocumented**

**T.P.S.** (Temporary Protected Status)

**D.A.C.A.** (Deferred Action for Childhood Arrivals)

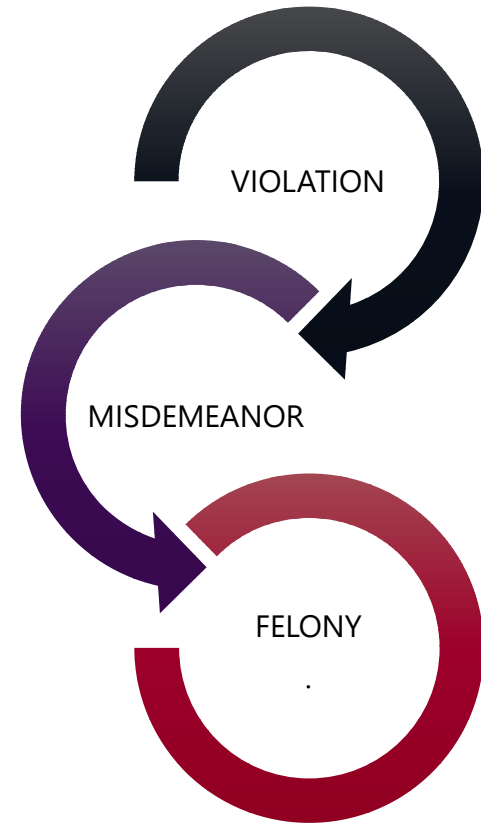
**LPR** (Lawful Permanent Resident)

Length of LPR status critical when evaluating immigration consequences

**Visa Holder**

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Depending on client's immigration status, and type of offense, one misdemeanor or one felony conviction may mean deportation, while another may not.



**General Use of “Categorical Approach” for determining whether a given conviction triggers deportability: it examines the elements of the crime of conviction, not conduct charged.**



## **Deportability can be Triggered by Different elements of Crime of Conviction:**

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A. Category of Offense: "Rape or sexual abuse of a minor;" conviction for a federally defined, "controlled substance offense;" "aggravated felony," "violation of order of protection."

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B. Sentence imposed: E.g., Burglary, theft offense, including poss. stolen property, crime of violence, with imposed sentence incarceration of one year or more.

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C. Amount of Loss: crime of fraud or deceit – loss of more than \$10,000.00

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# Criminal Grounds of Removal:

## Must Understand Padilla Purposes:



Criminal Grounds of Inadmissibility: INA §212(a)(2);

B. Criminal Grounds of Deportability: INA §237(a)(2); 5

C. Definition of a Conviction: INA §101(a)(48)(A);

D. "Stop Time Rule:" INA §240A (d)(1);

E. Aggravated Felony Offenses: INA §101(a)(43)(A) – (a)(43)(U)

(Includes conviction for conspiracy, or attempt, to commit listed offense.)



# Traps for the Unwary:

**A. Diversion-Treatment Programs:** with upfront plea, even if vacate or reduce upon satisfactory completion - do treatment without upfront plea of guilty! Will increase likelihood will not be considered "conviction", but if plead guilty, immigration will not recognize subsequent, "rehabilitative" vacatur. .

**B. Sentence to Interim Probation** – where P/G upfront, then vacate and reduce or dismiss upon successful completion = conviction remains for immigration.

## A. Offenses Involving: Drugs, Alcohol or Domestic Violence:



1. Advise client to enroll in counseling – therapy. Try to complete before sentencing, especially if sentence will involve incarceration, which increases risk of ICE detention.
2. For alcohol or drug treatment: ensure random toxicology testing.
3. Save treatment evaluations and submit certificates completion to Immigration Court.
4. Continue with AA or NA, where appropriate, especially if more than 1 arrest/conviction.
5. Have client maintain, submit, log of attendance at A.A./N.A
6. Ensure client understands – repeat offenses, including 511 violations – increase likelihood will lead to discretionary denial of relief.

## A. Offenses Involving: Drugs, Alcohol or Domestic Violence: cont'd



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7. Two or more convictions for driving under the influence, within 10 years, results in presumption person lacks good moral character. Also, for purposes of determining bond eligibility, two or more such convictions results in presumption person is a danger to the community. See: Matter of Castillo-Perez, 27 I&N Dec. 664 (A.G. 2019)(lack of GMC); Matter of Siniauskas, 27 I&N Dec. 207 (BIA 2018)(Bond).

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8. Showing of Good Moral Character – requirement for many forms of relief, including non-LPR C.O.R.

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## A. Offenses Involving: Drugs, Alcohol or Domestic Violence: cont'd



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1. G.E.D.

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2. Counseling – Alcohol, substance, D.V., anger management, parenting, etc.

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3. Bible Study

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4. Volunteer for work programs – use time productively, read.

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5. Avoid Disciplinary Infractions: certificate no infraction for Immigration Court

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6. Complete Prob. – Parole – w/out violations. Try for early discharge.  
**START TREATMENT IMMEDIATELY FOLLOWING ARRAIGNMENT!**

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# OTHER ISSUES DURING CRIMINAL REPRESENTATION

## A. The Retainer



1. State conviction may result in loss of legal status, deportation, and/or inability to naturalize for a given period.
2. Client may have to choose between plea which may render deportable, but which substantially reduces or eliminates risk of incarceration, and a trial, if necessary, to avoid deport. if acquitted, but likely harsher consequences if convicted.
3. If charged with potential aggravated felony, should mention consequence of conviction for an aggravated felony

# OTHER ISSUES DURING CRIMINAL REPRESENTATION

## B. Visit at Jail, Meet in Office: Advise of Immig. Consequences in Advance



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1. Research, or retain crim-imm counsel, to ascertain & advise of Immigration consequences: charged offense & proposed dispos.

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  2. Client must consider immig. consequences from outset of rep., not just immediately prior to being brought up to P/G.

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  3. Ascertain, Advise: i. Will disposition render deportable? ii. Will client be eligible for discretionary relief? iii. Consequences of conviction for aggravated felony? iv. If results in removal, permanent bar or eligible for waiver? v. Will conviction result in "mandatory detention" by DHS? vi. Advise of "Institutional Removal Program." vii. "Shock" Program – completion helps show rehabilitation.

## OTHER ISSUES DURING CRIMINAL REPRESENTATION

### C. Provide Client Written Advisal of Immigration Consequences Prior to Plea/Trial



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Protects attorney & client.

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Written assessment prevents "confusion" as to whether attorney advised client plea would render deportable, or that conviction would be considered an "aggravated felony".

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Also, advise if conviction will subject to mandatory detention.



**Judge's general warning – No substitute for  
counsel's specific assessment.**



## XI. PLEA CONSIDERATIONS

### 25 A. Nolo/Alford Plea



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Still constitutes a "conviction" for immigration purposes.

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Try to limit plea allocution to the elements of offense pleading guilty to.

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If investigation shows not as serious as initially charged: have DA acknowledge on record.

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Prepare client for Judge's warning, plea may result in deportation, loss of Immigration status

## XII. Vacatur of a Conviction, or Reduction in Sentence

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Must be due to Legal Defect in Proceedings – Not due to “Sympathy” or Rehabilitation – or Will Not be Recognized for Immig. Purposes A. Post-Conviction Relief can Avoid Adverse Immigration Consequences But.....!!!

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Must be due to substantive legal or procedural defect in proceedings; violation of Constitutional right. Judge’s ruling or decision should state legal basis; citing immigration hardship or rehabilitation alone is problematic, won’t be recognized unless tied to Padilla type violation, or other legal defect.

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Key Immigration Decisions Governing When Vacatur will be Recognized for Immigration Purposes: 1. Matter of Pickering: 23 I&N Dec. 621 (BIA 2003) 2. Matter of Azrag, 28 I&N Dec. 784 (BIA 2024)

# XIII. Sentencing Considerations

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A. Review, have Judge correct, inaccuracies in presentence report.

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B. Be aware how sentence imposed can impact immigration status.

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C. If Judge favorably disposed to client, ask Judge to state on record, at time of sentence, understands only recommendation, but hopes Immigration Judge would not deport. Ask Judge to speak of favorable or mitigating factors, i.e. not initial aggressor, or rehabilitation. (Can provide cover for IJ to grant relief in a tight case.)

A wooden gavel with a silver metal head and a dark wood handle lies on a rustic wooden surface. Next to it are a pair of silver metal handcuffs. In the background, an open book with many pages is visible, slightly out of focus. The lighting is warm and dramatic, highlighting the textures of the wood and metal.

**SECTION  
THREE: ISSUES  
BEFORE THE  
IMMIGRATION  
COURT:**

# XIII. COMMON FORMS OF RELIEF FROM DEPORTATION- REMOVAL

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A. Is client even deportable? Has your client derived or acquired citizenship through parents? If so, client is not subject to removal.

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B. **Motions to terminate:** Use categorical approach. Compare elements of crime of conviction to elements charged grounds of removal. Overbroad?

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C. Do not accept, simply because charged, actually subject to deportation.

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D. **Prosecutorial Discretion:** If unlikely will prevail, or has relief through USCIS, may wish to apply for joint motion to dismiss, in exercise of discretion.

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E. Former INA § 212(c) **waiver.**



# XIII. COMMON FORMS OF RELIEF FROM DEPORTATION- REMOVAL

cont'd

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F. **Cancellation of Removal for Non-Lawful Permanent Residents.** If granted – avoid deportation & become lawful permanent resident.

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G. **Lawful Permanent Resident Cancellation of Removal**

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H. **Adjustment of status, or readjustment of status.**

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I. **212(h) Waiver of Inadmissibility**

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J. **Asylum, withholding of removal or relief under Convention Against Torture (“CAT”)**

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K. **TPS** – de novo review.

## II. CONVICTIONS CAN DISQUALIFY FROM DISCRETIONARY RELIEF: TRY TO CRAFT DISPOSITION WHICH WILL NOT DISQUALIFY FROM ELIGIBILITY FOR RELIEF.



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A. "Stop-time" rule – LPR cancellation of removal;

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B. Any conviction triggering criminal grounds of inadmissibility or deportability will disqualify from Non-LPR COR

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C. Being sentenced to, and serving, in aggregate, 180 days of actual incarceration, renders ineligible from showing GMC during statutorily required period, i.e., 10 year period for Non-LPR COR.

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D. Conviction for aggravated felony renders deportable and bars eligibility for LPR and Non-LPR COR; HOWEVER, not a ground of inadmissibility. Depending on conviction, may be eligible to adjust status, despite conviction for ag. felony. Need to check, not always eligible, and not likely to be granted – depends on circumstances and severity of offense. Only eligible to adjust in limited circumstances. If also a CIMT, will most likely need a waiver of inadmissibility.

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E. Conviction for "particularly serious crime" disqualifies from eligibility for asylum/withholding of removal.

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F. INA § 212(h) waiver – available for one conviction for simple possession of 30 grams or less of marijuana. Establish amount, weight, on record during plea allocution to ensure eligibility for waiver of inadmissibility relating to conviction for simple poss. marijuana. Although legal in some states, marijuana conviction still renders inadmissible, and can render deportable as well.

# RELIEF APPLICATIONS RELIEF APPLICATIONS

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. Obtain and submit conviction chart with conviction records. Remind client to disclose all contacts with law enforcement, including sealed records;

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B. Document rehabilitation: 1. Certificates of Completion; 2. Letters of recommendation – explain how know, how long, why believes rehabilitated, and attest to GMC; 3. Letters showing discharge from probation – parole; 4. Proof paid all fines, performed community service, etc.

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C. IRS transcripts showing payment of taxes

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D. Document hardship to Respondent and family if deported – know who qualifying relatives are, and understand hardship standard.

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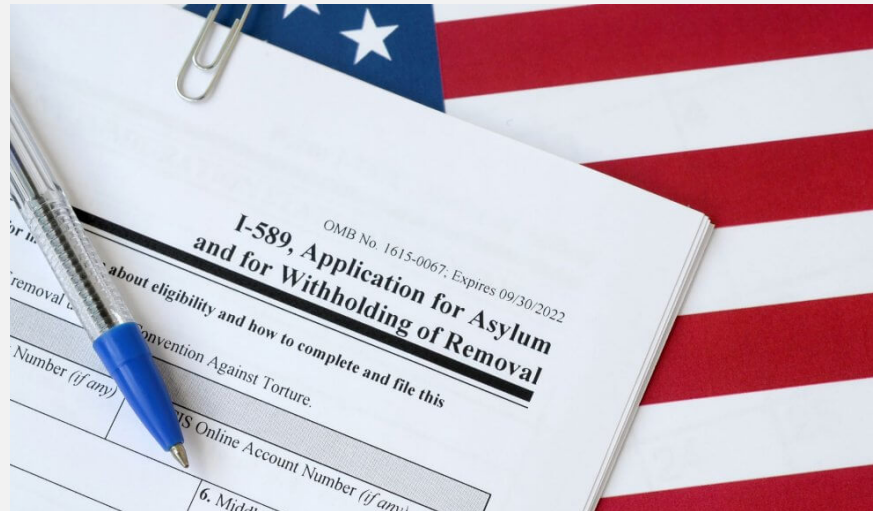
E. Medical records, test reports, Dr., Psychiatrist, Psychologist letters summarizing diagnosis and prognosis – impact of loss of Respondent on family.



# RELIEF APPLICATIONS RELIEF APPLICATIONS

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cont'd



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F. Detailed good moral character reference letters, notarized.

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G. Support claims of hardship, lack medical care, with country condition reports, and expert witness testimony.

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H. Have expert – psychologist – psychiatrist – do forensic examination and report on likely impact of deportation. I

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. Detailed Table of Contents with key excerpts from attached exhibits.

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J. If Special Education Issues: all I.E.P. Reports and assessments. 11

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K. Photos of client with family, at family gatherings, important events, at work – try to humanize the client, show good things client has done. L. Letters, affidavits, documenting community service, good works, GMC. M. Submit proof of proper filing & receipts for payment of filing fees.

# RELIEF APPLICATIONS RELIEF APPLICATIONS

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cont'd



## Application to Register Permanent Residence or Adjust Status

Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
**Form I-485**  
OMB No. 1615-0023  
Expires 03/31/2023

For USCIS Use Only			
<b>Preference Category:</b>	Receipt		Action Block
<b>Country Chargeable:</b>			
<b>Priority Date:</b>			
<b>Date Form I-693 Received:</b>			
<input type="checkbox"/> Applicant Interviewed <input type="checkbox"/> Interview Waived Date of Initial Interview: _____ Lawful Permanent Resident as of: _____	<b>Section of Law</b> <input type="checkbox"/> INA 209(a) <input type="checkbox"/> INA 249 <input type="checkbox"/> INA 209(b) <input type="checkbox"/> Sec. 13, Act of 9/11/57 <input type="checkbox"/> INA 245(a) <input type="checkbox"/> Cuban Adjustment Act <input type="checkbox"/> INA 245(i) <input type="checkbox"/> Other _____ <input type="checkbox"/> INA 245(m)		
To be completed by an attorney or accredited representative (if any).			
<input type="checkbox"/> Select this box if Form G-28 is attached.	<b>Volag Number (if any)</b> <input style="width: 100%;" type="text"/>	<b>Attorney State Bar Number (if applicable)</b> <input style="width: 100%;" type="text"/>	<b>Attorney or Accredited Representative USCIS Online Account Number (if any)</b> <input style="width: 100%;" type="text"/>

.L. Letters, affidavits, documenting community service, good works, GMC.

M. Submit proof of proper filing & receipts for payment of filing fees.

N. DOCUMENTING PSYCHIATRIC – PSYCHOLOGICAL ISSUES: Deportation proceedings are extremely stressful – for adults, and especially for children. Be aware how client and family are handling these pressures. Recommend counseling, therapy, where appropriate. Especially, be aware of how pressures are impacting adolescents and children. It is not uncommon for children to become very depressed, suicidal, as result of these pressures. Refer to providers to ensure they receive the care they need, and obtain & submit records relating to care and treatment. Have expert psychologist or psychiatrist write assessment to summarize diagnosis, treatment and likely impact of deportation.

# IV. WITNESSES

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A. Ensure compliance with requirements for presenting witnesses, esp. experts, and include C.V.

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B. Client, spouse or significant other; therapist, psych.; employer; respected members of the community who truly know the client.

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C. Ensure witness understands purpose of proceedings and why being called – what his or her testimony should show.

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D. Be familiar with how to qualify your expert witness, ask for “best professional opinion” as to impact deportation will have on QR’s.

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E. Ascertain who QR’s are, as well as hardship they will suffer, and document it with medical records, testimony, expert testimony.

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F. Be sure to set forth estimated time for testimony of each witness, and whether witness will need an interpreter.

# V. TRIAL

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DO NOT ALLOW JUDGE TO UNREASONABLY RESTRICT PRESENTATION OF TESTIMONY – BE ORGANIZED & DIRECT! (Ask TA prior to trial if will stipulate to grant; sound out Judge if trying to limit – is it because willing to grant, or trying to cut off access to record?)

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B. Ensure witnesses are prepped. They must understand the issues and their role in the proceedings. What is their testimony intended to establish?

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C. Make sure client is truthful, does not minimize prior conduct and accepts responsibility for his prior misconduct. Should be able to explain to judge what client has learned, and why Judge should believe client has changed and will not repeat the misconduct. Especially critical with multiple convictions. Showing rehabilitation extremely important.

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D. The client should be familiar with all of his prior arrests; what the charges were and the dispositions. Client should not blame others for his misconduct; should not minimize or claim his lawyer forced him to plead guilty. (If necessary, bring post-conviction relief prior to trial.)

# V. TRIAL cont'd

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E. Learn about assigned Judge and T.A. – how do they handle trials; what can you expect; can they be trusted?

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F. Speak to TA in advance of trial – try to narrow, stipulate to, issues. Speak with trial attorney: how do they feel about client, convictions, evidence of rehabilitation. Will they stipulate to a grant, or to certain issues?

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G. IF IJ SEEKS TO "STREAMLINE" PROCEEDINGS, BUT YOU FEEL IJ IS TRYING TO PREVENT YOU FROM MAKING ADEQUATE RECORD OF FAVORABLE OR NECESSARY FACTORS, OBJECT, AND IF IJ CONTINUES TO INTERFERE WITH ABILITY TO PRESENT CASE; AND IF FEEL JUDGE INTENDS TO DENY RELIEF, MOVE TO RECUSE. A GOOD RECORD CAN SAVE CLIENT ON APPEAL OR IN PFR!!!

# V. TRIAL cont'd

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1. Need to be able to show client's good moral character and why, despite conviction, the client merits a favorable exercise of discretion. Have him speak about his employment; payment of taxes; relationship with his family; hardship he and they will suffer if denied relief; his arrests, rehabilitation, and why he merits a favorable exercise of discretion. For review of factors to be considered by IJ in determining whether to grant relief, where client has convictions, see: Matter of Marin, 16 I&N Dec. 581 (1978); Matter of C-V-T-, 22 I&N Dec. 7 (BIA 1998). 2. Do not let Judge intimidate, pressure, or prevent you from presenting case. If Judge seeks to prevent introducing testimony, ask if TA will stipulate to that issue.

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H. Prepare witnesses for cross-examination. Anticipate and prepare for issues, especially where client has multiple arrests, and concern regarding continued misconduct. Client, should explain context, for mitigation purposes, but not to deny responsibility. For example, assault conviction, but client entered fight to defend younger brother; or, unlawful possession of a firearm, but client's employment in a high crime area, never charged with assault, robbery, or menacing – mere possession.

# V. TRIAL cont'd

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I. Humanize your client and her family. She should be honest, open and sincere. If she lies or minimizes – shifts blame, unlikely to be granted. Testimony of client and witnesses should, together, show client is basically a good and decent person, and that either isolated arrest and out of character; or if extensive history of arrests and convictions, client has rehabilitated self.

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J. Judge has right to ask questions to clarify record, but be careful if Judge assumes the role of a prosecutor; takes over questioning; seeks to impeach client; interrupts and cuts off client's answers – object when Judge assumes prosecutorial role, and if appears to have abandoned role of neutral fact finder.

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K. Keep organized, and make a checklist – bullet outline, to help stay on point. L. Run your case – in general terms – by a friend or colleague – what do they think about the case, what do they find troubling? Do they feel client deserves a second chance? If not, why not?

## V. TRIAL cont'd

**Remember the outcome of client's case will impact that person and their family for the rest of their lives!  
Ensure Judge allows you opportunity to adequately present your case and to make an adequate record for appeal.**



# Thank You & Good Luck!!!



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