

Self-Help Manual
For People Detained by the Immigration Service

Prepared by

Political Asylum/Immigration Representation Project

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Acknowledgments

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TABLE OF CONTENTS

Getting Started on Your Immigration Case	4
Going to the First Immigration Court Hearing	6
Getting Immigration Records through a Freedom of Information Act Request	8
Getting Out of Detention and Bonds	9
Grounds of Deportation for Criminal Convictions	12
Preventing Immigration from Deporting You from the U.S.	15
Immigration Addresses	21
Making a Certificate of Service	22
Applying For Cancellation of Removal or a 212(c) or 212(h) Waiver	23
Preparing For the Full Immigration Court Hearing	27
Appealing the Immigration Judge’s Decision	31
Missing a Hearing and What to Do	32
Getting a Judge to Reopen or Reconsider Your Case	32
Requesting an International Transfer to Another Country	33
Appendix	35

GETTING STARTED ON YOUR IMMIGRATION CASE

How soon will I go to Immigration Court?

You will not go to Immigration Court for at least 10 days after you receive a **Notice to Appear** from the government. 8 U.S.C. §1229(b).

The library in each prison should have volume 8 of the United States Code, known as 8 U.S.C. This is where you will find the law on immigration.

Who will decide my case?

An **Immigration Judge** will decide your case. The judge is supposed to be fair. The Immigration Judge will probably learn about your criminal record; telling the Immigration Judge that you are innocent will not help.

Do I have the right to a lawyer?

Yes. You have the right to a lawyer, but the government will not pay for that lawyer. 8 U.S.C. §1362. This means that you cannot get a public defender for Immigration Court. The Political Asylum Immigration Representation Project (PAIR) assists people for free whom Immigration is detaining.

Can Immigration deport me if I am still serving time in prison?

No, but some people can request an international transfer. See page 34. Otherwise, if you are still in prison, several things may happen to you:

(1) **Detainer.** The government may put a detainer on you to keep you in prison until you have finished serving your time. 8 U.S.C. §1357(d). At the end of your sentence you will likely be moved to another jail for your immigration case.

(2) **Immigration Hearing in Prison.** The government may start a case against you while you are still in prison. You have the same rights at that hearing as you have in Immigration Court. The hearing may happen in prison or through a video screen where the judge is in the court and you are still in prison. You and the judge will be able to see and hear each other through the screen. It is also possible that Immigration will try to have the hearing over the telephone without the screen. You would only be able to hear, but not see, the judge. You can ask for a hearing in Immigration Court that is not over the telephone. You can also ask for a hearing in court that is not over the video screen, but you have to explain how that causes problems for you in presenting your case.

(3) **No Immigration Hearing At All.** The government may try to deport you from the U.S. without any hearing at all. This can happen to people who are not lawful permanent residents (who never had a green card) with an aggravated felony conviction. 8 U.S.C. §1228(b). An aggravated felony includes many crimes, such as drug trafficking, some crimes of violence, some theft crimes, and murder. See page 12.



To do this, the government must give you a special notice showing that your criminal conviction is an aggravated felony and that you are not a lawful permanent resident. Answer a notice in writing from Immigration and let Immigration know if:

- you have your green card (send proof, such as a copy); or
- your conviction is **not** an aggravated felony; or
- your conviction is on appeal; or
- you fear harm if forced to go back to your country. If you fear harm, check the box to apply for withholding of removal or protection under the Torture Convention.

Can I be deported from the U.S. if I have a "green card" ?

Yes. For certain crimes and other reasons the government can deport anyone except a U.S. citizen. This manual explains defenses to deportation. See pages 15-21.

Can I be deported if I am afraid to go back to my country?

If you are afraid to go back, you may ask the Immigration Judge for asylum and withholding of removal. The harm must be because of your political opinion, race, religion, nationality or membership in a particular group. If you fear torture by the government for any reason, you can ask for protection under the Torture Convention, and you do not need to show that the harm is because of one of these five reasons. If you win your case, the Immigration Judge will not deport you to the country where you fear harm. See pages 17-18.

Can I be deported if I have lived in the U.S. a long time and have a child here?

Yes. The government can deport you for certain reasons even if you are married to a U.S. citizen or have children born here. However, you may have some defenses to deportation, and your relationship to these citizens will help in your case. See pages 15-21 for possible defenses to deportation.

Is it possible that I am a U.S. citizen but don't know it?

Yes. You may be a citizen if your parent or grandparent was a U.S. citizen. You also may be a citizen if you were born in another country but one parent naturalized when you were under 18, and were living in the U.S. as a lawful permanent resident. A citizen is also a person whose parents are unknown and who was found in the U.S. while under age 5. If you think you might be a citizen, tell the Immigration Judge. See page 15.

GOING TO THE FIRST IMMIGRATION COURT HEARING

What will happen the first time I go to Immigration Court?

Your first hearing is the **Master Calendar Hearing**. An Immigration Judge will be there and so will a government lawyer who is trying to deport you. If you do not speak English well, the Immigration Court must have an interpreter for you. If there is no interpreter, ask for another hearing with an interpreter. If you have a lawyer, your lawyer should go too. To find out when your next hearing is, call the Immigration Court (EOIR) hotline at 1-800-898-7180. The government is required to have a special phone in your unit with a code to call this hotline free.

Can I ask for more time to find a lawyer?

Yes. You can ask the Immigration Judge for more time to find a lawyer. Usually the Judge will give you at least one or two weeks to look for a lawyer.

For what reasons can I be deported from the U.S.?

A person can be deported for several reasons. For example, the government may try to deport you if you entered the U.S. illegally, or you stayed after your visa expired, or you have a criminal conviction. 8 U.S.C. §1227(a). Even if these things are true, you may still have a defense and be able to stay here. See pages 15 to 21.

How will the government prove that I can be deported?

The government starts case by giving you a **Notice to Appear**, which lists the charges against you. If the government is trying to deport you for a crime, that crime will be listed on the Notice to Appear along with the section of the immigration law. The government can add other criminal charges later.

If you do not have a Notice to Appear, tell the Immigration Judge. Everyone with an immigration court case should receive a Notice to Appear. If you do not have one, it may be that you were ordered deported in the past, but never left.

If you have a Notice to Appear, the Immigration Judge will ask you if it contains correct information. If you tell the Judge the information is correct, the Judge will order you deported unless you have a defense to deportation. See pages 15 to 21. Check your Notice to Appear carefully. If information on the Notice to Appear is incorrect, tell the Judge.

Do I have to agree that the government can deport me from the U.S.?

No. You have the right to remain silent and not answer any questions about your immigration situation. The government will have to prove that you are not a U.S. citizen. If the government proves that, you have to show that you are lawfully present in the U.S. See 8 U.S.C. §1229a(c)(2). If you show that, then the government has to prove that you are deportable. 8 U.S.C. §1229a(c)(3). For example, the government lawyer will have to

have a certified copy of your criminal conviction or other official record of it. If the government has this evidence at the first hearing, the Judge may order you deported. Other times, the government may ask for more time to get the evidence.

Can I ask the Immigration Judge for permission to stay in the U.S.?

Yes. If the Judge finds you can be deported from the U.S., you may have a defense to deportation and may be able to remain. See pages 15 to 21. If you do not have a defense, the Judge may order you deported at that first hearing.

The Immigration Judge should tell you about the defenses to deportation and give you a date to file application forms and other papers with the court. The Judge will also give you a date for a hearing where you can bring witnesses and prove the reasons you should be allowed to stay in the U.S. See page 27. You must file your application by the date that the Judge gives you. If you do not, the Judge will say you have abandoned your case and will order you deported.

Can I name the country that I want to be deported to?

Yes. The Judge will ask what country you want to be deported to. If you are afraid to be deported to your own country, do not name that country. Tell the Judge you are afraid and want to apply for asylum. You can name another country, but that country must agree to accept you. If you have the right to live in more than one country, name the country where you want to live.

Can I be deported to a country where I am not a citizen?

Yes. You need to have permission from that other country to enter. Usually, you need to apply to the Embassy or Consulate of that country for permission to enter. It is difficult to be accepted by another country.

Can I appeal the Immigration Judge's decision to deport me?

Yes. If the Immigration Judge orders you deported, he or she will ask if you want to appeal. If you appeal, you must send a Notice of Appeal to the Board of Immigration Appeals within 30 days of the Judge's decision. See page 31. Do this right away. If you miss the deadline, you lose your appeal.

Do I have to fill out forms before my first Immigration Court hearing?

No. If the Immigration Judge finds that you might have a defense to deportation, he or she will give you forms at one of the first hearings and give you a week or two to fill out the forms. You have to fill out forms in English.

Can I just ask to be deported immediately?

Yes. You can tell the Immigration Judge that you want to return to your country immediately. If you do this, you will be giving up your legal rights. If you have your

green card and get deported for an aggravated felony, you are giving up your right to live here legally and will never be able to return to the U.S. to live here permanently. You probably could not return even for a visit. So think carefully about the life you are leaving behind before deciding to be deported.

If the Immigration Judge ordered me deported, when do I leave?

If you tell the Immigration Judge you want to appeal, Immigration cannot deport you for at least 30 days to give you time to file your Notice of Appeal. If you tell the Judge you do not want to appeal, the government can deport you after only 3 days. Before deporting someone, the government has to get travel documents, which usually takes a month or more. Friends and relatives who have legal status can help you. They can bring your identity papers to Immigration Detention and Removal:

**ICE Detention and Removal Office (DRO)
10 New England Executive Park
Burlington, MA 01803**

DRO's phone number is 781-359-7500, and it is open from 8 a.m. - 4:30 p.m., Monday through Friday. Your friends or relatives should make copies first before giving documents to DRO. Someone without legal status should not go to Immigration for you. He or she could be arrested.

What if I do not speak English and the Immigration Court did not have a good interpreter?

You can ask for a new hearing with a good interpreter if you do not understand what happened in Immigration Court. You need to tell the Immigration Judge that you do not understand English or that the interpreter was not doing a good job. You should tell the judge this at the hearing. After the hearing you can write the judge explaining this, but it is better to tell the judge at the hearing if you do not understand.

GETTING IMMIGRATION RECORDS THROUGH A FREEDOM OF INFORMATION ACT REQUEST

How do I find out what information the government has about me?

You can file a **Freedom of Information Act (FOIA)** request to get a copy of information Immigration has about you. It takes a long time, so send a letter as soon as possible requesting information Immigration has in your "A" file – the file with your "A" number. For copies of applications you filed with Immigration in the past, write: USCIS, National Record Center (FOIA/PA Office), P.O. Box 648010, Lee's Summit, MO 64064-8010, and include a copy of your Notice to Appear. If you were ever arrested by the Border Patrol, ask for records from: USCIS, National Record Center (FOIA/PA Office), P.O. Box 648010, Lee's Summit, MO 64064-5570. (This is the same address but with a different zip code). To find information about you at the Immigration Court, write: USDOJ/Executive Office for Immigration Review, Office of General Counsel-FOIA, Service Center-FOIA Request, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041.

GETTING OUT OF DETENTION AND BONDS



How do I get released from detention during my immigration case?

Some people in Immigration detention have a right to be released on bond while others do not.

What is a bond?

A bond is an amount set by Immigration or the Immigration Judge that you must pay before being released from Immigration detention. It helps guarantee that you will show up for your court hearings and leave the U.S. at the end of your case if you do not win. If the bond is paid, you will be released from detention during your case. At the end of your case, the person who paid the bond will get the money back if you win or if you leave the U.S. when you are ordered to do so. If you miss a hearing or if you do not leave the U.S. by the date ordered, the person who paid the bond will lose the money. Bonds can be set as low as \$1,500; although many are \$3,000, or \$5,000 or more.

Does everyone have a right to ask for bond?

No. Many people do not have a right to ask for bond. For example, if you were ordered deported in the past but never left, in most cases you will not have a hearing before an Immigration Judge and cannot ask for a bond. If you have been convicted of certain crimes, you do not have a right to ask for bond. This is called mandatory detention. These crimes include an aggravated felony (see page 12) or a crime of moral turpitude (see page 13) where you received a sentence of at least one year, or any drug conviction other than simple possession of 30 grams or less of marijuana. 8 U.S.C. 1226(c). However, if you have been convicted of these types of crimes but you finished serving your criminal sentence before October 9, 1998, you can still seek a bond.

Who has a right to ask for bond?

You have a right to ask for bond if you do not have a criminal conviction or a final order of removal. Even if you have been convicted of certain types of crimes, you can still ask for bond. These crimes include only one crime of moral turpitude (see page 13) with a sentence under one year; domestic violence crimes with a sentence under one year; smuggling; false claims to U.S. citizenship; document fraud; and certain other crimes. 8 U.S.C. §1226(c).

If you have a right to ask for bond, you must show the Immigration Judge that: (1) you are not a danger to the community; (2) you are not a threat to national security; and (3) you are not a flight risk.

When can I ask for bond or for a lower bond?

Usually you only get one bond hearing, so it is important to gather the evidence before going through with the bond hearing. At your first Immigration Court hearing, you can ask the Immigration Judge to lower the bond or set a bond if the government did not. You need to have evidence that you are not a danger to the community, or a flight risk or a threat to national security. It is usually better to tell the Judge that you do not want a bond hearing right away and need more time to collect evidence and prepare witnesses to come to court.

What happens at the bond hearing?

The Immigration Judge will first decide whether you have a right to ask for bond or whether you are required to stay in detention without bond due to certain criminal convictions described above. If you have a right to seek bond, the Judge will usually ask you questions about your background. The lawyer for the government will present evidence to the Judge about any arrests and criminal convictions, and your past immigration history. The Judge will ask you questions about this and about drug or alcohol addiction. The Judge will consider the same kind of evidence used for bail in a criminal case, to decide whether you are a danger to the community, a flight risk, or a threat to security, including:

- (1) your ties to the community
- (2) your length of residence in the U.S.
- (3) your family members in the U.S. and their immigration status
- (4) your employment history and job offer in writing
- (5) your history of appearance in other court cases
- (6) whether you are a danger to the community or a security threat
- (7) your criminal record and rehabilitation
- (8) your likelihood of winning your immigration case

If you have a criminal conviction, it does not help to tell the Immigration Judge that you did not commit the crime. The Immigration Judge cannot change your criminal record. You want to focus on your ties to your family and community and tell the Judge how long you have lived in the U.S., where your family is, whether you have a job offer, how you have changed if you have been in prison, what type of relief you are seeking in Immigration Court (like asylum, or cancellation of removal), and how much money you have to pay a bond.

Try to gather as much written evidence as you can about these eight points, and to have at least one or two witnesses in court. Witnesses could include your spouse or children or other family members who have legal status, or the victim of the crime, or your employer or someone offering you a job, or your pastor or other religious leader, or a probation officer, or a social worker. If it is not possible for witnesses to come to Immigration Court, they should write letters of support that you can give to the Immigration Judge. Other helpful evidence to give the Judge could be:

If you are married to a U.S. citizen or lawful permanent resident, a copy of the marriage certificate, the birth certificate or certificate of naturalization or green card of your spouse.

If your children have legal status, a copy of their birth certificates and green cards.

If you have a medical condition, a letter from your doctor.

If you have professional training or education in the U.S., a copy of your GED, or diploma or other certificates.

Proof of the length of time you have lived in the U.S.

How does someone post a bond?

The person who pays the bond needs to have legal status. He or she is called the “obligor” and is the only person who can ask for the bond money back at the end of the case. The obligor should first call the Office of Detention and Removal and ask for the Bond Officer. If the Bond Officer is not there, the obligor should leave a message with your name and A number. Then the obligor must bring a bank check or money order in the amount of the bond to:

Office of Detention and Removal
10 New England Executive Park
Burlington, MA 01083

Phone: 781-359-7500
Open for bond Monday to Friday 9 a.m. to 3 p.m.

The obligor must bring his or her driver’s license, green card, passport or other valid identification. The obligor will pay the bond money and sign some papers stating that he or she will get the money back at the end of the case if you go to all your court hearings and leave if the Judge orders deportation. The obligor must keep these original bond papers since he or she will need them to get the money back at the end of the case. If you flee the area or miss any court hearings, the obligor will lose the bond money and you can be deported if the Judge issued a final order of deportation.

If the Immigration Judge ordered me deported, but my country will not accept me, will I be released from detention?

The government has 90 days after a final order to deport you from the U.S. 8 U.S.C. §1231(a). After that, the government may release you from detention. However, you will remain locked up beyond that time if you are a danger to the community or if you are a flight risk. See 8 U.S.C. §1231(a)(6).

Within 90 days after a deportation order, the government must review your case for possible release. In Boston, the government rarely releases people at 90 days unless it is not possible to deport them.

If you want to be considered for release, you should write the government about where you will be living, if you have a job offer, whether your family and friends will support you, why you are not a danger to the community, and why you are not going to miss any appointments. See the sample letter in Appendix D requesting release under supervision. Send this information to:

ICE Detention and Removal Office
10 New England Executive Park
Burlington, MA 01803

If the government does not deport you after six months, then in most cases the government must release you. The law says that if your deportation is not reasonably foreseeable, the government must release most people after six months. You can write to the address listed above, and request your release. You can also write to Immigration headquarters in Washington, D.C. asking for release after waiting six months from your final deportation order. You write to:

ICE, Office of Detention and Removal
801 I Street N.W., Suite 900
Washington, D.C. 20536

You can contact them by phone or fax:

Phone: 202-514-8663

FAX: 202-353-9435

You must cooperate with Immigration in getting travel documents for Immigration to return you to your home country. You must give Immigration a copy of your birth certificate or your passport, or you must contact your consulate for travel documents so that Immigration can start your deportation. If you do not cooperate with Immigration, this six month time period does not start, and Immigration can detain you even longer. If you appeal your immigration case and have a stay of removal, the six month time period does not run.

If you are not released, you can file a habeas corpus petition in federal court. For sample habeas forms, call or write PAIR.

GROUND OF DEPORTATION FOR CRIMINAL CONVICTIONS

Can Immigration deport me for any criminal conviction?

No. Only certain criminal convictions lead to your deportation. Some of the main ones are:

(1) Aggravated Felonies. The immigration law calls certain crimes aggravated felonies. 8 U.S.C. §1101(a)(43). These are the most serious crimes in immigration law even though they may not be very serious in criminal law. An "aggravated felony" is not the same as aggravated assault. Immigration law has its own definition. For example,

possession with intent to distribute cocaine (or any other drug) is an aggravated felony even if you did not serve any jail time for it. Aggravated felonies include the following crimes:

- Murder
- Drug trafficking (including possession with intent to distribute)
- Money laundering involving over \$10,000
- Trafficking in firearms or explosives
- Crime of violence with a sentence of at least 1 year
- Theft, receipt of stolen property or burglary with a sentence of at least 1 year
- Crimes involving ransom
- Rape or sexual abuse of a minor
- Child pornography
- Gambling where a sentence of at least 1 year may be imposed
- Racketeering where a sentence of at least 1 year may be imposed
- Engaging in the business of prostitution or slavery
- Spying
- Fraud or deceit worth over \$10,000 or tax evasion worth over \$10,000
- Smuggling of undocumented people, except a first offense to assist your spouse, child or parent
- Illegal entry or reentry after a deportation based on an aggravated felony
- Document fraud with a sentence of at least 1 year
- Failure to appear to serve a sentence for a crime if the underlying offense is punishable by imprisonment for a term of 5 years or more
- Commercial bribery, counterfeiting, forgery or trafficking in vehicles with a sentence of at least 1 year
- Obstruction of justice, perjury or bribery of a witness with a sentence of at least 1 year
- Failure to appear in court under a court order for a felony charge for which a sentence of at least 2 years' imprisonment may be imposed
- An attempt or conspiracy to commit any of the offenses described above.

You can be deported for an aggravated felony (see 8 U.S.C. §1227(a)(2)(A)(iii)), and have only a few defenses. See pages 15-21.

(2) Drug Conviction. Immigration can start a deportation case against you for any drug conviction unless the conviction is for simple possession for your own use of 30 grams or less of marijuana. 8 U.S.C. §1227(a)(2)(B)(i). You can also be removed for being a drug abuser or addict even if you do not have a conviction. 8 U.S.C. §1227(a)(2)(B)(ii). For certain drug crimes, you may still have a defense to deportation. See pages 15-21.

(3) Crime of Moral Turpitude. You can be deported for one crime of moral turpitude committed within 5 years of admission into the U.S. if you could have received a sentence of one year or longer. 8 U.S.C. §1227(a)(2)(A)(i). Your actual sentence or your time served does not matter. You can also be removed for 2 crimes of moral

turpitude committed at any time unless they were in a "single scheme of criminal misconduct." 8 U.S.C. §1227(a)(2)(A)(ii).

The immigration law does not define crimes of moral turpitude, but the courts have. Crimes of moral turpitude usually include theft, murder, voluntary manslaughter, and crimes involving vileness, such as rape or certain other sexual crimes. Driving Under the Influence and Simple Assault are usually not crimes of moral turpitude. If Immigration is trying to remove you for a crime of moral turpitude, tell the Immigration Judge that you do not know whether it is a crime of moral turpitude, and ask for time to find a lawyer to help you. You may also have a defense to deportation. See pages 15-21.

(4) Firearms Conviction. You can be deported for a firearms conviction, such as unlawful possession of a gun. 8 U.S.C. §1227(a)(2)(C). You may have a defense to deportation. See pages 15-21.

(5) Crime of Domestic Violence. You can be deported for conviction of domestic violence, stalking, child abuse, child neglect or abandonment, or for violation of a protection order. 8 U.S.C. §1227(a)(2)(E). You may have a defense. See pages 15-21.

(6) Other Criminal Activity. Other criminal convictions may also lead to your deportation, such as espionage, sabotage, or treason, (8 U.S.C. §1227(a)(2)(D)), as well as activities relating to national security and terrorism. 8 U.S.C. §1227(a)(4).

Can I be deported even though I do not have a criminal conviction?

Yes. Immigration law has other grounds of deportation. For example, you can be deported if you overstayed your visa, or committed marriage fraud, or are a threat to the security of the U.S., or voted unlawfully, or falsely claimed to be a U.S. citizen after September 30, 1996. 8 U.S.C. §1227(a).

Can I be deported if my criminal conviction is on appeal?

No. You cannot be deported if you have a criminal conviction on direct appeal since it is not final. **However**, if you filed a habeas corpus petition, or a motion to vacate your criminal conviction, the conviction is final and the government can deport you while you are waiting for the decision on that case.

How do I know if I have a conviction?

Ask for a copy of your criminal record from the state where you have a conviction. In Massachusetts, send a request along with a check or money order made payable to the Commonwealth of Massachusetts in the amount of \$25.00 to Criminal History Systems Board, 200 Arlington Street, Suite 2200, Chelsea, MA 02150, ATTN: CORI Unit. Give your full name, date of birth, address, and social security number and include a stamped, self-addressed envelope. You can also request a certified copy of the docket sheet if you contact each court where you have a criminal conviction.

Can I do anything to change my criminal conviction?

Yes. You can ask the criminal court (not the Immigration Court) to vacate or erase your criminal conviction for certain reasons. One reason is if you pled guilty but the judge did not warn you that pleading guilty could lead to deportation from the U.S. A person in Massachusetts must receive this warning before pleading guilty. Connecticut, Maine and Rhode Island have similar laws, but New Hampshire does not. There may be other ways to vacate a conviction if you pled guilty and did not understand your rights. If the criminal court vacates your conviction, the prosecution can still bring the charges against you again, but sometimes the prosecution does not do so. Try to find a lawyer to help you, perhaps the lawyer who represented you in your criminal case.

You may also be able to lower your sentence by filing a motion to revise and revoke your sentence. Some crimes are aggravated felonies, such as theft or assault, only if you received a sentence of one year or more. If you lower the sentence to less than one year, the crime may not be an aggravated felony. An Immigration Judge, however, will usually not stop a deportation case just because you have asked the criminal court to vacate or dismiss the conviction or lower the sentence. So, it is important to get the conviction vacated or dismissed, or lower the sentence as soon as possible.

If I am deported for a criminal conviction, when can I come back?

After deportation, a person must wait either 5 or 10 years (depending on the case) before returning to the U.S. legally. 8 U.S.C. §1182(a)(9)(A). After a second deportation the wait is 20 years. 8 U.S.C. §1182(a)(9)(A). You can ask Immigration for permission to re-enter sooner but Immigration may not allow it. If you are deported for an aggravated felony, you can probably never return to the U.S. 8 U.S.C. §1182(a)(6)(B).

PREVENTING IMMIGRATION FROM DEPORTING YOU FROM THE U.S.

There are only a few defenses against deportation from the U.S:

(1) Citizenship

Immigration cannot remove a U.S. citizen. You may be a citizen if:

- you were born in the U.S., including Puerto Rico (8 U.S.C. §1401); or
- you were born in another country but one parent was a U.S. citizen and lived in the U.S. for certain periods of time prior to your birth (8 U.S.C. §1401(g)); or
- you were born in another country but one or both of your parents naturalized and became citizens when you were under 18 and living in the U.S. as a lawful permanent resident (8 U.S.C. §1432(a)); or
- you were found in the U.S. while under the age of 5 and your parents are unknown (8 U.S.C. §1401(f)).

The law is complicated and has several other requirements. If your parent or grandparent was a U.S. citizen, you may be a U.S. citizen. It is important to know when you were born, when your citizen parent or grandparent lived in the U.S., when your citizen parent or grandparent was born, whether and when your parents were married and divorced, who had custody of you if your parents were separated, and whether your parents naturalized and became citizens before you turned 18. **If one or both of your parents or grandparents are U.S. citizens, tell the Immigration Judge.** Also, contact PAIR because you may already be a U.S. citizen.

You may be able to apply for your own naturalization even if you have a criminal conviction. You need to show that you have had good moral character for the past five years. 8 U.S.C. §1101(f). Some activities prevent you from showing good moral character:

- * An aggravated felony conviction after November 29, 1990
- * A drug conviction (other than simple possession of 30 grams or less of marijuana)
- * A crime of moral turpitude (unless it had a possible sentence of one year or less and you actually were sentenced to 6 months or less)
- * two convictions where you received a sentence of 5 years or more
- * giving false testimony to receive an immigration benefit
- * serving 180 days or more in jail for any crime
- * habitual drunkards, convicted gamblers, prostitutes, and smugglers.

A person with an Immigration Court case can file an application for naturalization and ask the Immigration Judge to stop the deportation case if he can show “exceptionally appealing or humanitarian factors.” 8 C.F.R. §1239.2(f). This might apply where you have an old conviction (even an aggravated felony conviction before Nov. 29, 1990). You must have exceptionally good behavior and meet other requirements for naturalization, such as having your green card for at least 5 years (or 3 years if you married a U.S. citizen). You will, however, need the government Trial Attorney or US Citizenship & Immigration Services (USCIS) to agree that you are eligible for naturalization, which may be difficult with a criminal conviction. If you served honorably in the U.S. military in active duty during armed conflict, you need have only one year of good moral character. 8 U.S.C. §1440; 8 C.F.R. §329.2

(2) Cancellation of Removal and 212(c) Waiver

Cancellation of Removal

Cancellation of removal is a defense to deportation if you have a criminal conviction that is **not** an aggravated felony. You must:

- (1) have been a lawful permanent resident (had a green card) for at least 5 years;
- (2) have resided in the U.S. continuously for 7 years after having been admitted to the U.S. in any status; and

(3) have not been convicted of an aggravated felony (see page 12).

8 U.S.C. §1229b(a). This law applies to cases started on or after April 1, 1997. So, you cannot apply for cancellation of removal if you have an aggravated felony (see page 12), which includes possession with intent to distribute drugs. Cancellation also waives gun possession or crimes of moral turpitude.

212(c) Waiver

If you have an old conviction, you might be able to use the old immigration law section 212(c), which allowed lawful permanent residents to waive or excuse criminal convictions under different rules. This law still applies to some cases where people pled guilty to a criminal conviction before April 24, 1996. If you pled guilty before then, you may be able to apply for a 212(c) waiver if:

- (1) you are a lawful permanent resident (have a green card);
- (2) you have lived in the U.S. lawfully for at least 7 years, including time as a lawful permanent resident or lawful temporary resident. If you were a minor when your parents had their green cards but you did not have yours yet, you may be able to add the time your parents had green cards to the time you had yours to equal 7 years. Call PAIR to discuss this issue.
- (3) you have not served 5 years or more in prison for an aggravated felony.

If your conviction was after April 24, 1996, up until April 1, 1997, you might be still be able to apply for a 212(c) waiver, but it would not waive aggravated felonies after April 24, 1996.

Applying for Cancellation of Removal or 212(c) Waiver. In seeking cancellation of removal or a 212(c) waiver, you have to convince the Immigration Judge that even though you have a criminal conviction, you have very good parts to your life. These include the length of time you have lived in the U.S., your family ties in the U. S., your job history, your payment of income taxes, your child support payments, rehabilitation, and hardship to you and your family if you were to be removed. You want to convince the Immigration Judge that you are sorry, that you will not commit any other crimes in the future and that you have changed your life. See page 23 for information about this process.

(3) Asylum, Withholding of Removal and the Torture Convention

Asylum

Asylum is for someone who has suffered harm or fears harm in his or her country because of race, religion, nationality, actual or suspected political opinion, or membership in a particular group. 8 U.S.C. §1101(a)(42) & §1158. Groups can be a student or teacher group, the military or the guerrillas, a political party, a human rights

group, a religious group, a union, your clan, your family, women opposed to certain practices, homosexuals, or some other persecuted group. If you oppose coercive family planning policies in your country, such as forced abortions or involuntary sterilization, and have been harmed or fear harm for that reason, you have an asylum case.

You must apply for asylum within one year of arrival in the U.S. unless you show changed circumstances or extraordinary circumstances. Changed circumstances can be changes in your home country or in your own circumstances outside your country. Extraordinary circumstances can be serious illness, or depression resulting from past harm, or changes in your immigration status. If you miss the one-year filing deadline and do not meet one of the exceptions, you can still apply for withholding of removal and relief under the Torture Convention if you would be harmed if you returned to your country.

Asylum is for people who fear harm or persecution, but it is not usually available if you fear prosecution for a crime. However, if the prosecution is to punish you for political activities, religion, nationality, race or group membership, then you do have an asylum case.

Crimes that Bar Asylum: Some crimes prevent you from winning asylum. For example, you cannot win asylum if you were convicted of an aggravated felony (see page 12), or if you were convicted of a particularly serious crime and constitute a danger to the community. 8 U.S.C. §1158(b)(2). These crimes usually include burglary of a dwelling, robbery, shooting with intent to kill and other violent crimes. You also cannot win asylum if you assisted in the persecution of others, or if you committed a serious nonpolitical crime in your country. 8 U.S.C. §1158(b)(2).

Withholding of Removal

If you have an aggravated felony conviction, you can still apply for withholding of removal unless you were sentenced to five years' imprisonment. 8 U.S.C. §1231(b)(3). You must show that your life or freedom would be threatened due to your race, religion, nationality, political opinion or membership in a particular group. 8 U.S.C. §1231(b)(3).

Torture Convention

If you fear you would be tortured by government agents or with the government's acquiescence, ask the Immigration Judge for relief under the Torture Convention. Criminal convictions are not a bar. If you already have a deportation order, try to reopen your case with the Immigration Court and explain why you would be tortured.

<p><u>Preparing an Application.</u> You apply for asylum, withholding of removal and the Torture Convention by filling out Form I-589 that the Immigration Judge will give you. Call or write PAIR or Boston College Immigration and Asylum Project. You need to explain why you left your country and what you think will happen to you if you return. You need to show why you would be in danger and who will harm you. Explain all the details. If you have letters or newspaper articles or other papers, add them to your application or bring them to court at your hearing.</p>

(4) Adjustment of Status

Adjustment of status means becoming a lawful permanent resident and getting your green card. The main way to adjust status in Immigration Court is if you are:

- married to a U.S. citizen or
- have a U.S. citizen child 21 years of age or older, or
- have a U.S. citizen parent.

Your U.S. citizen relative must file a family petition for you (Form I-130) with Immigration. Then you file Form I-485 with the Immigration Judge and show that you are admissible to the U.S. Some of the crimes that cause problems are a crime of moral turpitude (unless it had a possible sentence of one year or less and you actually were sentenced to 6 months or less), drug convictions, or two crimes where you received a sentence of 5 years or more.

Abused spouses, children and parents who have been abused by a U.S. citizen or lawful permanent resident spouse, parent or child can file a self-petition seeking legal status without asking the abuser to file the papers.

(5) 212(h) Waiver

Only certain people described below can apply for a 212(h) waiver, which waives some crimes of moral turpitude. This waiver is difficult to win, and does not excuse murder or torture (or attempted murder or torture), or drug crimes (except simple possession of 30 grams or less of marijuana). 8 U.S.C. §1182(h). If you think you can apply for a 212(h) waiver, tell the Immigration Judge.

Usually, a person applying for a 212(h) waiver must also be seeking adjustment of status to become a lawful permanent resident (adjustment of status is described above). The person must also be married to a U.S. citizen or lawful permanent resident, or have a son, daughter or parent who is a U.S. citizen or lawful permanent resident. You must also show that removing you from the U.S. would cause extreme hardship to your spouse, parent, son or daughter who is a U.S. citizen or lawful permanent resident. If you have been convicted of a violent or dangerous crime, you have to show that your removal would cause exceptional and extremely unusual hardship to one of those relatives listed above. 8 C.F.R. § 212.7(d).

If you are returning from a trip abroad and are already a lawful permanent resident, you can apply for a 212(h) waiver to excuse these crimes without applying for adjustment of status all over again.

Lawful permanent residents applying for a 212(h) waiver have stricter rules than those who are not lawful permanent residents. Lawful permanent residents cannot receive a 212(h) waiver if convicted of an aggravated felony since admission to the U.S., or if not lawfully residing continuously in the U.S. for at least 7 years before removal proceedings.

For extreme hardship, the Immigration Judge will consider your age now, your

age when you entered the U.S., family ties in the U.S. and in other countries, the amount of time you have lived in the U.S., your health and the health of your citizen or lawful permanent resident children, the political and economic conditions in your home country, the economic problems in leaving the U.S., the possibility of other ways of gaining legal status in the U.S., your involvement in the community, and your immigration history. You and your relatives who are U.S. citizens and lawful permanent residents should write declarations about these points. You can also ask teachers, employers, church officials, probation officers, neighbors, and others to write declarations about your good qualities. You should also file any past income taxes. The application form for a 212(h) waiver is Form I-601.

(6) Cancellation of Removal and Suspension of Deportation

Cancellation of Removal

There is another type of cancellation of removal, which allows people to remain legally in the U.S. even if they never had a green card or legal status before. You must meet certain requirements:

- (1) you must have been physically present in the U.S. for 10 years;
- (2) you must have good moral character during that time
- (3) you must show "exceptional and extremely unusual" hardship to your U.S. citizen or lawful permanent resident spouse, parent or child if you were to be deported. Hardship to yourself does not count.

8 U.S.C. §1229b(b). Most criminal convictions bar you from this type of cancellation of removal since you cannot show good moral character. 8 U.S.C. §1101(f). These convictions include: any conviction resulting in imprisonment for 180 days or more; any drug conviction; any aggravated felony; and others.

Cancellation for Battered Immigrant Women and Children

There are special rules if a person has suffered battering or extreme cruelty from a U.S. citizen or lawful permanent resident spouse or parent. For example, a battered spouse can apply for cancellation of removal after being in the U.S. for only 3 years. 8 U.S.C. §1229b(b)(2). In addition, people suffering abuse from a U.S. citizen or lawful permanent resident spouse or parent can also file a self-petition seeking legal status without having to rely on her abuser.

(7) Voluntary Departure

Voluntary departure allows you to leave the U.S. but not be deported. This makes it easier to return legally to the U.S. Most criminal convictions make it difficult to receive voluntary departure, however. You may request voluntary departure in Immigration Court **at the beginning of your case** if you are not removable for terrorist activities or for an aggravated felony (see page 12). 8 U.S.C. §1229c(a)(1). If you

request it at the beginning, you do not need to show good moral character. This means that even if you have a criminal conviction, you may still be able to get voluntary departure.

At the **end** of your case (after you have presented any other defenses to deportation), you may receive voluntary departure if you: (1) show physical presence in the U.S. for at least one year before the Notice to Appear; (2) have good moral character for at least the previous 5 years; (3) are not removable for an aggravated felony or terrorism; (4) can pay your way back to your country; (5) post a voluntary departure bond; and (6) have not received voluntary departure before after being in the U.S. without admission or parole. 8 U.S.C. §1229c(b).

(8) Refugee Waiver

Refugees who have a criminal conviction and never applied for adjustment of status to get a green card may apply for a refugee waiver. You apply for the waiver on Form I-602 and for adjustment of status on Form I-485. You must show humanitarian reasons why you should not be deported. 8 U.S.C. §1159(c). You should include a declaration about why you fled your country and the harm you face if deported, human rights reports that support your declaration, and declarations from family and others who know the situation. This waiver does not apply if the government has a reason to believe you are or have been a drug trafficker, or a security or terrorist threat. Arrests on suspicion of drug distribution can be a problem even if charges were dismissed. If you think you can apply for a refugee waiver, be sure to tell the Immigration Judge.

IMMIGRATION ADDRESSES

To file applications and other papers, send or deliver them to the Immigration Court at the following address unless the Judge tells you to file them at another address:

Immigration Judge
Executive Office for Immigration Review
John F. Kennedy Federal Building, Third Floor
15 New Sudbury Street
Boston, MA 02203
Telephone: 617-565-3080



When you send anything to the Immigration Court, **you must send a copy to the government.** You must also send a Certificate of Service to the Immigration Court showing that you sent a copy to the government's lawyers. See sample Certificate of Service below. You mail the copies to:

District Counsel
Department of Homeland Security
John F. Kennedy Federal Building, Room 425
15 New Sudbury Street
Boston, MA 02203
Telephone: 617-565-3140

MAKING A CERTIFICATE OF SERVICE

To make a Certificate of Service, write on a piece of paper the following information, sign it, date it, and mail it to the following address with copies of what you sent the Immigration Court or the Board of Immigration Appeals:

I certify that I served a copy of the attached materials on the Department of Homeland Security by causing them to be placed in first class mail, postage prepaid, addressed as follows:

District Counsel
Department of Homeland Security
John F. Kennedy Federal Building, Room 425
15 New Sudbury Street
Boston, MA 02203

on this _____ day of _____ month, 2009.

Date: Signature:

CHANGE OF ADDRESS

If you move, you must tell the government and the Immigration Court of your new address. If you do not tell them and the Court sends a notice of a hearing to an old address and you miss the hearing, the Immigration Judge can order you deported. Send your change of address to the Immigration Court and the District Counsel, listed above, for cases heard in the Boston Immigration Court. You are also required to inform the U.S. Citizenship and Immigration Services (USCIS) of a change of address within 10 days of completing your move. You fill out USCIS Form AR-11 and mail it to the address shown on the form. You can find this form at www.uscis.gov.



APPLYING FOR CANCELLATION OF REMOVAL OR 212(c) OR 212(h) WAIVER

What forms are required?

You have to fill out the following forms:

- **Immigration Forms:**
 - EOIR-42A** - Application for Cancellation of Removal
 - I-191** - Application to Return to Unrelinquished Domicile (for 212(c)); or
 - I-601** - Application for 212(h) waiver
- **Form G-325A** - Biographic Information Form
- **Filing fee or Fee waiver** (sample in Appendix A)
- **Copy of both sides of your green card** (if you still have it)
- **Certificate of Service** (sample on page 24)

The Immigration Judge should give you the application forms. You should also be able to get them from the Immigration Officer in detention. You should list all of your criminal convictions on Form EOIR-42A in response to question #50. If you win your case, the Immigration Judge will only excuse the convictions you list. So, if you do not list all of your convictions, you could still be deported for the ones you did not list.

You may also want to include other evidence supporting your case, such as letters of support, school records, job evaluations, or results of drug tests, described below.

Where do I file the application?

To file your application, give the original application form to the Immigration Court and send one copy to District Counsel (the government's attorney). Keep another copy of the application for yourself. See page 21 for addresses of the Immigration Court and District Counsel.

What other documents should I file?

You should include as much evidence as possible for your case. File these with your application or before your full hearing. Do not send original documents to the Immigration Court. Instead include copies of documents with your application and bring the originals to your hearing. Below are examples of documents for each topic:

Family in the U.S.

- marriage certificate if you are married
- birth certificate of your spouse and children
- green card of your spouse and children
- birth certificates or green cards of other relatives

- records of child support payments
- letter or declaration from your spouse and children about their relationship to you, your good qualities, and their feelings and the hardship if Immigration removes you
- letters or declarations from other relatives about your good qualities

Friends and Others Who Know You

- letters or declarations from friends, teachers, employers, probation officers, or neighbors about your good qualities
- letters from people in the community whom you have helped

Rehabilitation

- attendance records at Alcoholics Anonymous, drug treatment programs, or other support groups in or out of prison
- declaration or letter from your parole or probation officer
- declaration or letter from drug counsellors or social workers
- records from classes or rehabilitation programs in prison
- copy of disciplinary record in prison

Employment

- your employment records
- your income tax returns. Call 1-800-829-1040, ask for the Accounts Department, and request an Adjusted Gross Income letter for the last 7 years. (You may need to file a Change of Address to receive it at the Detention Center.). You can also send a form to the IRS asking for tax transcripts on IRS Form 4506-T.
- Social Security Records. To request a record of earnings, call 1-800-772-1213.
- declaration or letter from your supervisor at each job about when you worked, what you did, and how well you did your job
- letter offering you a job

Schooling

- school records
- high school diploma or GED
- declaration or letter from a teacher
- certificates of achievement or any prizes, awards or classes from school or prison
- school records of your spouse and children who are citizens or lawful residents

Military Service

- evidence of registering for the draft in the U.S. If you registered and do not have proof, send your name, social security number, date of birth and return address to: Selective Service System, ATTN: SIL, P.O. Box 94638, Palatine, IL 60094-4638.

Medical Conditions

- medical records and letters from doctors about medical conditions that you or members of your family have

Community or Religious Involvement

- records of your volunteer work or membership in groups or clubs

- letters from church or temple leaders
- letters from other members of the congregation

Problems in Your Home Country

- newspaper articles or reports about political and economic problems in your country, such as civil war or persecution. If you entered the U.S. as a refugee or won asylum, tell the judge.

Hardship to Your Family Members if You Are Deported

- medical information about your health and the health of your citizen or lawful permanent resident children
- Economic problems for your family in the U.S. if you are deported
- Economic problems of relocating your family if you are deported
- Declarations from experts about the difficulty of U.S. citizen children adjusting to life in your country, including their ability to speak the language, the quality of schools, medical care, and location of family members and friends.

What is a declaration or affidavit?

A declaration or affidavit is a **sworn statement** from someone that you can give the Immigration Judge as evidence in your case. An affidavit must be signed and sworn before a notary, but a declaration does not need to be notarized. So a declaration is easier for a person to prepare than an affidavit. A declaration starts with the words: "I [the person's name] hereby declare as follows:" The person should explain if he or she is a U.S. citizen or a lawful permanent resident, and give his or her name, address and telephone number. If the witness is a professional, he or she should include a job title and qualifications. The witness should explain how he or she knows you and why he or she thinks you should not be removed. A declaration ends with the words: "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct." The person signs and dates it. See sample declaration in Appendix B.

You should include as many declarations and other documents as possible with your application. You can add more evidence at your hearing. Attach an English translation of all documents in a foreign language. The Immigration Service may object to your documents, and tell the judge not to look at them. Tell the judge why you think the document is important to your case. To get records from a school, prison, counseling center, hospital, or other institution, send a letter asking for the information.

Who should be a witness?

The best witnesses are close family members, employers, and counselors. They should all be here legally. They might be asked about their criminal records. Your witnesses should talk about the good things in your life:

- Your family ties to the U.S., particularly spouse, children or parents with legal status. Include long-term girlfriend or boyfriend or other lawful family members
- Length of time you have lived in the U.S.
- Ability to speak English

- Lack of knowledge of language and customs in home country
- Schooling in the U.S.
- Hardship on you and your family if you are removed
- Military service for the U.S.
- Good work history in the U.S. and a job offer
- Payment of income tax in the U.S.
- Property or business ties in the U.S.
- Service to your community or volunteer work in the U.S.
- Rehabilitation programs
- Good character

Make sure your witnesses discuss the good things they know about you. They should describe the relationship with you and how hard it would be without you. For example, does your family depend on you to pay the rent or other bills? Do you help a sick or old family member? How often did your family see or write you in prison?

Your witnesses should talk about how you have changed since prison. If they think you will not have any more problems with crime again, they should explain why. If you have a drug or alcohol problem and have received counseling, bring witnesses who know about it. Both the Immigration Judge and the government lawyer will ask them many hard questions about who they are, how they know you, and whether they know about your criminal record. Practice questions with them.



PREPARING FOR THE FULL IMMIGRATION COURT HEARING

What will happen at the hearing?

If you are applying for one of the defenses to deportation described on pages 15-21, the Immigration Judge will give you time to fill out the application. Then the judge will give you another hearing date where you will have several hours to explain your case.

At that full hearing, the Immigration Judge will speak first. The government lawyer will also be there and will argue that the judge should deny your application and remove you from the U.S.

You will go next. The judge will question you about your case and your life. Then the government lawyer will question you. Be sure to tell the truth. You also want to tell the Immigration Judge that you are sorry for what happened and that you will not get into trouble again. It is also important to be polite to the judge and to try to look your best. You want to look the judge in the eye when you are answering his or her questions. Be sure to speak loudly and clearly so that the tape recording of the hearing will be clear. You should ask the Immigration Judge if you can make a statement at the beginning or the end of your testimony. When the judge has finished asking you questions, be sure to tell the judge anything else you think is important about your case and your life.

The government lawyer will have a copy of your full criminal record and will usually want the Immigration Judge to know about it. Usually, you want to tell the Judge about your criminal record yourself. That way the Judge will not be surprised to hear about other convictions from the government lawyer when he or she is questioning you. You can explain what happened for each conviction and why these events will not happen again in the future.

It will not help to tell the judge that you did not commit any crimes and that your lawyer told you to plead guilty. It is important to accept responsibility for your record. Your criminal case is over and the Immigration Judge cannot change it. You should get a copy of your criminal record so that you are prepared to talk about every arrest in your criminal history. Even charges that were dismissed are things the Judge and government lawyer can ask you about.

Your witnesses will come next. You will have to ask your witnesses questions. They cannot just get up and speak. The government lawyer and the Judge will also question them. To prepare, you should write out all of your questions before the hearing. At the hearing you can read or look at your written questions so you will not forget. You can ask each witness if he or she has anything else to tell the Judge about why you deserve a second chance.

Make sure that your witnesses know the dates that important things happened in your life. For example, your employer should know the dates of your employment, and

your spouse should know dates of important events in your life together.

The Immigration Service may have witnesses. Usually the Immigration Service does not have any witnesses. If he or she does, you have the right to question them.

You have the right to object to any documents that the Immigration Service lawyer may try to give the judge if it would be unfair or untrue. Ask to see the document and take time to review it. Ask the Judge for your own copy of the document. If you do not understand the document or what it means, tell this to the judge.

The Judge will decide the case. After you and all the witnesses have spoken, the Immigration Judge will usually decide the case. The Judge may, however, postpone the decision for another date.

What questions will Immigration ask?

The Immigration Judge may ask you many questions. You must tell the truth and answer the question asked. It is important to accept responsibility for your mistakes and show that you have changed. If you do not understand a question, tell the Immigration Judge. If the Judge does not ask you these questions, be prepared to tell the Judge the following information anyway:

1. What is your full name?
2. How old are you?
3. When did you first come to the U.S.?
4. How old were you when you first came?
5. How many years have you lived in the U.S.?
6. How did you enter the U.S.? (for example, did you have a visa or enter illegally).
7. Have you ever left the U.S. since you first came?
8. If so, what are the dates of all the times you left and returned? Where did you go each time and what was the purpose of each trip? The judge may ask for your passport to see the entry and departure stamps in it.
9. How is your health?
10. Do you receive medical treatment?
11. Describe any health problems and treatment.
12. Are you married?
13. When did you get married? Where?

14. Do you live with your spouse? Describe the relationship.
15. Is your spouse a U.S. citizen?
16. How is your spouse's health? Describe any health problems or treatment.
17. Have you had any periods of separation from your spouse?
18. Does your spouse work? If so, where? If not, do you support your spouse?
19. Do you have any children? State their names and ages. Explain who they live with, where they live and whether they are U.S. citizens or have their green cards.
20. How would your removal hurt your spouse, children, and other family?
21. Where do your children go to school?
22. Describe your relationship with your children.
23. How often do you see your children? Do you write them?
24. Did they visit you in prison?
25. Where are your parents? Are they citizens or residents of the U.S.? Do you care for them in the U.S.?
26. How many brothers and sisters do you have? State how old they are, where they live and whether they are U.S. citizens or have their green cards.
27. Do you have any relatives in your own country?
28. When were you last there? Do you still speak the language?
29. What jobs have you had in the U.S.? Describe each place you worked in the U.S. and the dates you worked there. Explain what you did at each job, what you were paid, and whether the work was full time or part-time.
30. Have you filed income tax returns each year? Name the years and explain why you did not file in certain years.
31. How many years of education have you completed?
32. Have you gone to school or taken any courses in the U.S.? What courses? Name the school and dates you studied or graduated.
33. What is your criminal record? State the dates of your arrests, your convictions and the sentences you received.

34. Describe the circumstances of each of your criminal convictions.
35. Have you used or sold drugs? How many times have you done this? What type of drugs? Have you used drugs recently? When was the last time?
36. Describe any counseling or drug rehabilitation programs you have attended. What are the names and locations of the programs and the dates you attended?
37. Describe your activities or classes in prison (for example, a GED course).
38. Did you have any disciplinary actions or problems in prison?
39. What do you think now about the criminal offenses you committed?
40. Have you done any community or volunteer work?
41. Have you served in the U.S. military? When? Where? Do you have an honorable discharge?
42. Do you own any property in the U.S.?
43. If deported, what problems would you have in your country? Would you be able to find a job? Do you have family there? Can you speak the language?
44. If deported, what problems would your family have in your country? Would they be able to work, go to school, speak the language, receive adequate medical care? Do they have any family there?
45. Are you afraid to go back to your country? Why?
46. Why should the judge believe that you are a different person now and that you are rehabilitated?



APPEALING THE IMMIGRATION JUDGE'S DECISION

Board of Immigration Appeals

If the Immigration Judge denies your case, you can appeal to the Board of Immigration Appeals. The judge will give you a Notice of Appeal and a Fee Waiver if you cannot pay the fee. **The Board of Immigration Appeals must receive your Notice of Appeal and \$110 fee or Fee Waiver Request within 30 days of the Immigration Judge's decision** (see sample fee waiver in Appendix). You must send in your Notice of Appeal on time or you will lose your right to appeal. Send your Notice of Appeal and Fee Waiver Request to:

Board of Immigration Appeals
Office of the Clerk
P.O. Box 8530
Falls Church, VA 22041
Telephone: 703-305-1007

On the Notice of Appeal, list the reasons why the decision of the Immigration Judge was incorrect. List the mistakes in the law and the mistakes in the facts that the Judge made. Also state that you will file a brief in support of your appeal. Send a copy of the Notice of Appeal and Fee Waiver to District Counsel. The address is on page 21.

If you appeal your case, the Immigration Service cannot remove you from the U.S. Appeals are complicated, and require written explanations. Having a lawyer helps. After filing your Notice of Appeal, you will receive a written record of the hearing and will have time to write out reasons why the Immigration Judge's decision was incorrect and why you should not be deported.

Federal Court Appeal

If you lose your appeal to the Board of Immigration Appeals, you may be able to appeal to the First Circuit Court of Appeals but the rules are complicated. It is a good idea to hire a lawyer. File a Petition for Review with the First Circuit within 30 days of the Board of Immigration Appeals decision. You must ask for a Stay to stop your deportation during the appeal. Send the original Petition (and 3 copies), the Board of Immigration Appeals decision, a stay request and filing fee of \$250 (or Fee Waiver Request) to: First Circuit Court of Appeals, One Court House Way, Suite 2500, Boston, MA 02210. Call: 617-748-9057.

MISSING A HEARING AND WHAT TO DO

What will happen to me if I miss my Immigration Court hearing?

If you miss your Immigration Court hearing, the Immigration Judge will order you deported without you being there. After that, Immigration can pick you up at home or at work and arrest you. After 3 days, Immigration can deport you without giving you another court hearing. Immigration must, however, have travel documents ready for your deportation, which usually takes at least a few weeks.

If Immigration has arrested you but not given you a notice to appear, you may have been ordered deported sometime in the past for missing a court hearing. Immigration will deport you as soon as it gets the papers from your country. So you must act quickly to stop your deportation.

If you missed your hearing, you need to file a motion to reopen with the Immigration Judge and request a stay of deportation. You must explain why you missed your hearing. For example, if you can prove that you never got notice of your hearing, the Immigration Judge will reopen your case. If you were in jail at the time of your Immigration Court hearing, the Immigration Judge will reopen your case. If there were exceptional circumstances for missing your hearing, the judge will reopen your case. You must act quickly. For sample forms, call PAIR at 617-742-9296.

GETTING A JUDGE TO REOPEN OR RECONSIDER YOUR CASE

Can I reopen my case after the Immigration Judge orders my removal?

Yes. You can ask the Immigration Court to reopen your case if you missed your hearing for the reasons explained above, or if your situation has changed and you have new evidence about your case. You can also ask to reopen your case if the Immigration Judge did not explain to you your rights or tell you that you had the defenses to deportation, listed on pages 15-21, if any of them apply to you. You can also reopen your case if the law has changed in a way that helps you. This process is complicated, and it is a good idea to have a lawyer help you.



REQUESTING AN INTERNATIONAL TRANSFER TO ANOTHER COUNTRY

Can I be deported before I have finished serving my time in prison?

Yes, under certain circumstances. Some people may be able to finish serving time in a prison in their home country. To do this, the U.S. must have an international transfer treaty with that country. See list of countries in Appendix C. The state department of corrections, the U.S. government, and authorities in your home country must approve the transfer. Additional specific conditions of eligibility are delineated in the various treaties. Much of the practice and procedure for prisoner transfers is governed by 18 U.S.C. § 4100 et seq.

You can request a transfer by filling out a Transfer Request Application Form with your case worker in prison. A consular official from your home country might also be able to advise and assist you with this process. A federal magistrate will hold a hearing on your request and ask you if you agree to the transfer and agree to give up all rights to appeal or attack your conviction. You cannot get a transfer if you are attacking your conviction.

Will this affect my criminal sentence?

No. Your home country must follow the sentence you already received. Therefore, you will remain in prison after being sent back to your country.

How will a transfer affect my immigration rights?

Think carefully before asking for a transfer. If you are transferred to your country before you have an Immigration Court hearing, you will lose the chance to go before an Immigration Judge and ask the judge to excuse your criminal conviction and remain in the U.S. See pages 15 to 21 for defenses to removal. If you accept an international transfer, you will lose that right. This means that if you have a conviction for certain crimes, such as an aggravated felony, you will forever lose the right to live permanently in the U.S. You will never be allowed to return to the U.S. (except maybe for short visits) even if you are married to a U.S. citizen and have children in the U.S. People who need to be particularly careful about giving up their rights are:

- lawful permanent residents (someone with a green card)
- someone with a spouse, parent, son or daughter who is a lawful permanent resident or a U.S. citizen
- someone who is afraid to go back to his or her country

What if my conviction is for a non-violent offense?

You may also be deported before finishing your sentence if you have been

convicted of a non-violent offense, and deportation is appropriate and in the best interest of the U.S. or the state where you are imprisoned. 8 U.S.C. §1231(a)(4). There are some additional requirements. Contact PAIR if you are interested.

How is the decision to approve or deny my transfer request made?

The Department of Justice makes the decision to approve or deny a proposed transfer based on your entire record. The Department of Justice considers the seriousness of the offense and your role in it, the existence of outstanding fines or restitution orders, your prior criminal record (if any), the strength of your ties to each country, and the likelihood that the transfer will promote your rehabilitation. Sometimes the government also considers special humanitarian concerns - - such as terminal illness of you or a close family member. Before making a decision, the Department of Justice collects information from many places about each person seeking a transfer. The process usually takes at least three months.

For more information, visit the website of the Department of Justice, Criminal Division, Office of Enforcement Operations, International Prisoner Transfer Program at <http://www.justice.gov/criminal/oeo/links/intlprisoner/intlprisoner.html>.

APPENDIX

Application for Waiver of Filing Fee in Immigration Court	A
Sample Declaration for Cancellation of Removal	B
U.S. Prisoner Transfer Treaties	C
Sample Letter for Release under Supervision	D
Sample Certificate of Translation	E

If the answer is YES, describe the property and state its approximate value:

5. List the persons who are dependent upon you for support; state your relationship to these persons; and indicate how much you contribute toward their support at the present time.

6. State any special financial circumstances which this Court should consider in this application.

I understand that a false statement or answer to any questions in this declaration will subject me to penalties for perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this _____ day of _____, 20_____.

(signature)

ORDER:

The application is hereby GRANTED

)
)
)
)
)
)

The application to waive the filing fee is hereby GRANTED. Let the Respondent/Applicant proceed without repayment of the filing fee.

Judge Date

Judge Date

Appendix B

SAMPLE DECLARATION FOR CANCELLATION OF REMOVAL FOR [APPLICANT'S NAME]

I, _____, hereby declare as follows:

My name is _____. I am writing this declaration on behalf of Mr./Ms. _____.

I am a **(U.S. citizen/lawful permanent resident of the United States. If you are a permanent resident or naturalized citizen, state how long you have been a resident/citizen)**. I reside at **(address)**. My telephone number is _____. **(If you have a nice job or graduated from college, state that here too)**.

I have known _____ since **(date)**. I met **him/her** _____ **(explain how you met and where you met. For example through a friend, relative, school or church.)** We have remained **close/good** friends since that time.

Since knowing _____ we have **(for example visited each other at our houses/volunteered at church/worked together (date) to (date) at (place of work), etc. Add as much detail about your relationship here as possible. Explain how often you saw each other. If s/he helped you in any way when you felt sad or needed held, describe this. Add as much as you can about his/her character. Talk about the kind of person s/he has been since you've known him/her and describe how s/he interacted with other people if you saw that.)**

I can say without a doubt that I know _____ to be a person of good character. S/he has **(for example: integrity, honesty, patience, strength of character)**. **(If s/he is a mother/father explain if s/he has always been an excellent parent to his/her children and write the children's names and ages. Add more specific details about how s/he is a good parent. Does s/he live with the children? Pay their bills? Give child support? Visit often? How often?)**

(If this is true, say:) I also know _____ is sad for what s/he did. S/he has told me this. **(If this is true, say:)** I also know that _____ is trying very hard to change his/her life. For instance, **(explain here in a lot of detail what your friend has to done to change around his/her life. For instance, s/he is going to school. Going to church, going to alcoholics Anonymous or Narcotics Anonymous meetings, volunteering in the community, going to counseling, getting urine tests for drug use, helping out a sick parent, seeing his/her children, getting a full time or part time job.)**

(If true, say:) I know that s/he wants more than anything to change his/her life.

The important people to _____ are his/her children. I know that s/he wants more than anything to continue raising them in the United States, the country of their birth and the place they call home.

If you have any questions about this declaration, please feel free to contact me at any time.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: _____

(signature of person writing letter)

Write name of person signing letter too.

Appendix C

Countries with Which Prisoner Transfer Treaties Are in Effect

Source: <http://www.justice.gov/criminal/oeo/links/intlprisoner/intlprisoner.html>

Albania	Georgia	Nicaragua
Andorra	Germany	Norway
Azerbaij�n	Greece	Palau
Armenia	Guatemala	Panama
Australia	Honduras	Paraguay
Austria	Hong Kong	Peru
Bahamas	Hungary	Poland
Belgium	Iceland	Portugal
Belize	Ireland	Romania
Bermuda	Israel	Russia
Bolivia	Italy	San Marino
Brazil	Japan	Serbia
Bosnia & Herzegovina	Korea, Republic of	Slovakia
Brazil	Latvia	Slovenia
Bulgaria	Liechtenstein	Spain
Canada	Lithuania	Sweden
Chile	Luxembourg	Switzerland
Costa Rica	The former Yugoslav	Thailand
Croatia	Rep. of Macedonia	Tonga
Cyprus	Malta	Trinidad/Tobago
Czech Republic	Marshall Islands	Turkey
Denmark	Mauritius	Ukraine
Ecuador	Mexico	United Kingdom
El Saslvador	Micronesia	Venezuela
Estonia	Moldova	
Finland	Montenegro	
France	Netherlands (incl.	
	Netherlands Antilles	
	and Aruba)	

Appendix D

Sample Letter to Petition for Release

U.S. Immigration and Customs Enforcement/DRO
10 New England Executive Park
Burlington, MA 01803

DATE: _____

To Whom It May Concern:

I am currently being detained at the _____ Jail in _____.

I have been detained by the Department of Homeland Security for _____ months, since ____/____/____ (*mm/dd/yy*). As I have been detained for more than 90 days, I respectfully request that I be released subject to _____ supervision pursuant to section 241 (a) of the Immigration and Nationality Act.

I was ordered deported _____ years/months ago however, _____ (*fill in country*) has refused to issue traveling papers. Consequently, I have been incarcerated in this facility for over _____ months/years. I believe that should not be forced to remain in detention forever solely because the government of _____ (*name of country*) refuses to take action I my case.

I am not a flight risk. I have extensive ties to the community. When I am released I will be living at _____ (*address*) with my _____ (*wife, children, mother*). I will be employed at the _____ by my _____ (*relative or friend*). I will attend the _____ church along with my family. I will be participating in the _____ (*drug/alcohol rehabilitation*) program. My _____ (*mother, wife and children*) have suffered greatly due to my extended incarceration. For the above reasons, I ask that I be given freedom until there is a resolution in my case.

Sincerely,

[Name]

A#

Appendix E

CERTIFICATE OF TRANSLATION

I, _____, certify that I am fluent in the English and _____ languages, that I am competent to translate between the _____ and English languages, and that I have accurately and completely translated the attached document from _____ into English to the best of my ability.

Signed _____

Dated _____