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Immigrants'
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Informational Document

212c Relief waiver option

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WAIVER UNDER 212(C)

Development of 212(c)

Prior to November 29, 1990, former INA § 212(c) permitted Immigration Judges to grant relief from deportation or exclusion for any criminal offenses analogous to the exclusion grounds at INA § 212, so long as the applicant had been a lawful permanent resident for at least seven years by the time of the application. Between November 29, 1990, and April 24, 1996, this relief continued to be available so long as the applicant had not yet served 5 years cumulatively for any aggravated felony convictions. On April 24, 1996, the Anti-Terrorism and Effective Death Penalty Act crippled § 212(c), and on April 1, 1997, the effective date for much of the Illegal Immigration Reform and Immigrant Responsibility Act, § 212(c) was entirely repealed.

The *St. Cyr* Decision

In 2001, the Supreme Court held that Congress had not fully eliminated access to the powerful relief available under former INA § 212(c). In *INS v. St. Cyr*, 533 U.S. 289, 326 (2001), the Court held that “212(c) relief remains available for aliens . . . whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea under the law then in effect.”

The use of 212(c) waivers today and the requirements:

212(c) relief remains available today for people who were permanent residents at the time of their plea, so long as the offense was within the scope of 212(c) relief at that time. The chief significance today is that because **212(c) has no stop-time rule**, it can be used even when several offenses were committed within the first 7 years; and it is available in some cases even when a person has been convicted of an aggravated felony.

Generally, these aggravated felonies must either involve moral turpitude or controlled substances, in order to be analogous to the § 212(a)(2) grounds of inadmissibility. Under *Matter of Blake*, 23 I&N Dec. 722 (BIA 2005), an aggravated felony provision must be closely analogous to a ground of deportability (such as drug trafficking) in order for 212(c) alone to cure the problem. Returning permanent residents charged with inadmissibility under INA § 212 can still use 212(c).

Nonetheless, 212(c) relief remains a useful tool for many older convictions. The factors considered by the Immigration Judge are the same as for cancellation of removal under § 240A(a). There are three basic statutory requirements to be met in order to qualify for 212(c) relief.

- a) An alien must have been lawfully admitted for permanent residence and must be continuing in that status.

- b) At the time of filing for such relief the alien applicant must have maintained a lawful unrelinquished domicile in the United States for **seven consecutive years**. And,
- c) Has not served 5 years or more in prison for an aggravated felony or combination of aggravated felonies.

212(c) waives most grounds of **inadmissibility or deportability** [*Matter of Silva*, 16 I&N Dec. 26 (BIA 1976)], so long as the individual does not served five years or more in prison for an aggravated felony/felonies. It does NOT WAIVE

- a) National security grounds, including export violations and terrorism.
- b) Firearms convictions because this offense does not have a comparable ground of inadmissibility.

Note that in certain firearms and aggravated felony cases, it may be possible to apply for adjustment of status, either alone (if a deportable offense does not trigger inadmissibility), see *Matter of Rainford*, 20 I&N Dec. 598 (BIA 1992) (adjustment of status available to cure pure firearms ground of deportability); *Matter of Torres-Varela*, 23 I&N Dec. 78, 86 (BIA 2001) (adjustment of status available to cure aggravated felony conviction that does not trigger inadmissibility); or in conjunction with a 212(c) waiver (if the offense does trigger inadmissibility), see *Matter of Azurin*, 23 I&N Dec. 695 (BIA 2005) (reaffirming this practice).

A Technicality about Pleas Taken Between April 24, 1996, and March 31, 1997

Between April 24, 1996 and March 31, 1997 INA § 212(c), as amended by AEDPA § 440(d) and IIRIRA § 306(d), read as follows:

Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of section (a) (other than paragraphs (3) and (9)(C)). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion invested in him under section 211(b). This section shall not apply to an alien who is deportable by reason of having committed any criminal offense covered in section 241(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 241(a)(2)(A)(i).

THE APPLICATION PROCESS FOR 212(C) WAIVER

Form I-191



\$545 fee payable to Department of Homeland Security [Fee is paid at local DHS office]. Documentary evidence must establish continuous residence for 7 years: **Employment related Documents** such as Tax records, check stubs, Social Security records, Union records; **Residential records** such as Rent receipts, Leases, Deeds, Home loan records; **School records** such as transcripts, awards, diplomas; **Medical records** such as vaccination, medical bills, receipts of medical payments, **Insurance records** such as policies, payments, claims, invoices; **Car records** such as license, title, registration, loan payments; **DMV records** such as driver licenses, ID cards, Traffic/parking tickets; **Vital Statistics** such as Birth certificates of children, baptismal/confirmation, marriage/divorce, death, census records; **Sworn Affidavits** from family, friends, religious organizations; **Miscellaneous records**: INS records, Money order receipts, passport with entry info, envelopes with cancelled stamps, Money transfers; photos with dates.

Factors for consideration in a 212(c) case:

Matter of Marin 16 I&N Dec. 581 (BIA 1978)

- **Positive factors:** Family ties in U.S.; length of residency, service in U.S. Armed Forces, property ties, employment history, service to the community; **REHABILITATION**
- **Negative factors:** The nature and underlying circumstances of the exclusion ground at issue; The presence of additional significant violations of this country's immigration laws; The existence of a criminal record and, if so, its nature, recency and seriousness; And, the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country.