



Removal Defense

Online Course

American Immigration Lawyers Association

Module 5: Waivers and Relief: Technical Aspects Impacting Eligibility

Hypotheticals

Faculty Response

Hypothetical A

Eric came to the United States on a F-1 visa in 1992. In 1994, he adjusted status through his marriage to a U.S. citizen. Eric and his wife welcomed a daughter in January 1995 – the child was born in Los Angeles. By the end of the year, Eric and his wife divorced. In June of 1997, Eric was convicted in the Superior Court of California of twelve criminal counts in relation to an insurance fraud scheme. These counts included: perjury, insurance fraud, making false financial statements, grand theft, preparing false evidence, and presenting a false claim. For these offenses Eric was sentenced to a total of three years of prison and ordered to pay restitution in excess of \$400,000. On September 29, 2018, after his pro se N-400 was denied, DHS initiated removal proceedings. The NTA alleged that Eric is removable under INA § 237(a)(2)(A)(iii) as an alien who has been convicted of aggravated felony theft and fraud offenses. The IJ sustained the charges and found Eric removable.

Is Eric eligible for cancellation of removal for permanent residents? Can he apply for a 212(h) waiver? Discuss the statutory standards and any technical issues impacting Eric's eligibility for relief.

Faculty Response:

Eric is not eligible for cancellation of removal for permanent residents. His conviction for an aggravated felony will bar eligibility for relief. (Also, his 1997 conviction stopped his time towards the required 7 years of continuous residence, which began with his 1992 entry on an F-1 visa).

Eric is eligible for a 212(h) waiver. He is not subject to the aggravated felony bar for LPRs because he adjusted his status in the United States. His U.S. citizen daughter can file an I-130 petition on his behalf, and as an immediate relative he may concurrently seek to re-adjust his status with a 212(h) waiver. It has been more than 15 years since Eric's conviction, thus he can seek the "rehabilitation waiver" of 212(h)(1)(A) which requires a showing of rehabilitation and



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that admission would not be contrary to the safety or welfare of the U.S. His conviction should not be considered violent or dangerous and as such he should not be subject to the heightened standard for discretion at 8 C.F.R. 212.7(d).

Hypothetical B

Betty came to the United States on a B-2 visa in 1986. She adjusted her status in 1987, based on the petition of her employer. In 1993, Betty was charged with fraud in connection with possession of access devices in violation of 18 U.S.C. § 1029(a)(3). Betty entered a plea of guilty. Although the maximum sentence possible is ten years, the Judge imposed a sentence of ten months in a halfway house, ordered Betty to pay restitution in the amount of \$7,500, and placed her under probation for a period of three years. Betty has no other record of arrests or convictions. In 2005, Betty was returning from a two week visit to her ailing mother in Scotland when CBP officers at the airport charged her as an arriving alien under INA § 101(a)(13)(C)(v). This charge was based on Betty's 1993 conviction, which CBP alleged is a crime involving moral turpitude under INA § 212(a)(2). Betty hires you to represent her in removal proceedings. What arguments can be made on Betty's behalf? What relief from removal would you seek?

Faculty Response

You should file a motion to terminate proceedings based on the Supreme Court's decision in *Vartelas v. Holder*, 566 U.S. 257 (2012). Under the holding of *Vartelas*, Betty cannot be treated as an arriving alien based on a conviction that occurred before April 1, 1997. At the time of Betty's guilty plea and conviction in 1994, she could travel outside the United States without risking her status as a permanent resident. She would not be treated as seeking admission or entry as long as her departure was "innocent, causal and brief." A two-week trip to visit her mother would satisfy this pre-IIRIRA standard known as the Fleuti doctrine. Betty's conviction cannot support a deportability charge because even if it is a crime involving moral turpitude, it occurred more than 5 years after her admission. Thus, it doesn't trigger removability under INA § 237(a)(2)(A)(i) and proceedings should be terminated.