



Removal Defense

Online Course

American Immigration Lawyers Association

Module 5: Waivers and Relief: Technical Aspects Impacting Eligibility

Exercise: Drafting Questions for Direct Exam

Faculty Response

The list of questions from our faculty member is below, with annotations throughout and general considerations at the bottom. As a reminder, the factual background is included as well:

Roger Smith Factual Background:

Roger Smith was born in Moldova in 1987. He first entered the United States on a B-2 Visa in 1991 with his mother. He was four years old. After his mother married a U.S. citizen, Roger applied for adjustment of status as the stepchild of a U.S. citizen. He became a lawful permanent resident in 2004, when he was 17. Unfortunately, Roger had a series of run-ins with the law. At the age of 17, he was arrested for shoplifting. Several months later he was arrested again for battery after getting into a fight at school. Both times he was released to his mother. In 2007, Roger was arrested two more times – both for petty theft. He was sentenced to two years of probation, community service, and a fine. That same year, Roger was arrested after getting into a fight with his girlfriend who had a history of abusive conduct toward him. No charges were filed. Roger has no other arrests or convictions since 2007. In the years since, he has worked fairly steadily although he has had periods of unemployment. He has filed income taxes when employed. He's engaged to be married to a U.S. citizen; his fiancée is expecting their first child. His mother and younger stepbrother are U.S. citizens, and so is his grandmother. He is close to all of them and helps his mother take care of his brother, who is autistic. He has no remaining family in his native Moldova.

In 2018, Roger is returning from vacation when he is sent to secondary inspections. The CBP officer issues a Notice to Appear, charging Roger as an arriving alien inadmissible under INA § 212(a)(2) (crime involving moral turpitude) based on his 2007 convictions for petty theft.



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Faculty Response:

Your direct exam would begin with basic foundational questions as to Roger's immigration history:

Immigration History

Q: Where were you born?

Q: What is your date of birth?

Q: When did you start living in the United States?

Q: Did you have a visa when you entered the United States in 1991?

Q: What kind of visa did you use to enter the United States?

Q: How old were you when you started living in the United States?

Q. What is your current immigration status?

Q: How long have you been a permanent resident?

Q: How did you get your green card?

You could then move on to discussing Roger's record of arrests and convictions. It's good to have the negative information early on in the testimony. Then you can move to a discussion of all the positive and/or sympathetic factors in Roger's case and end on a positive note.

Criminal History

Q: Have you ever been arrested?

Q: How many times?

Q: When was the first time you were arrested?

Q: What were you arrested for?



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Q: Did you go to court?

Q: Did the Judge impose any punishment?

Q: Did you ever serve any time in jail?

Q: Did you comply with the terms of your probation?

Q: Did you pay any required fines?

Q: Has your probation been terminated?

[repeat questions as to each incident – don't just discuss the conviction that is the basis of the charge of removal. If the client has other arrests or convictions, discuss those on direct exam. Don't wait for the DHS to raise them on cross. And do your own background checks prior to the individual hearing so there aren't any surprises in court].

Q: Have you committed any other crimes that you were not arrested for? *[DHS often asks this question, so beat them to the punch. Make sure you carefully prepare your client for testimony].*

Q: How do you feel about incidents cases now?

Q: What changes have you made in your life since these incidents?

Q: How can the immigration judge be assured that you won't commit any crimes in the future if she allows you to stay in the United States?

Employment / Good Moral Character

Q: What is your highest level of education?

Q: Are you currently employed?

Q: What do you do?

Q: Do you file taxes?

Q: Have you ever not filed taxes? If so, why?



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Q: What are your career goals?

Family Ties

Q: What family do you have here in the United States?

Q: What is their immigration status?

Q: How would you describe your relationship with your mom/brother/grandmother?

Q: How often do you see each other?

Q: What kinds of things do you enjoy doing together? *[Discuss for each USC/LPR family member]*

Q: What is your marital status?

Q: What is your fiancée's immigration status?

Q: When do you plan to marry?

Q: Do you have any children?

Hardship

Q: What are your plans for the future if you are allowed to remain in the United States?

Q: How would it impact you if you were not allowed to remain in the United States?

Q: Do you have family outside the United States that you could live with if you had to leave?

Q: What kind of work could you get outside the U.S.?

Q: Do you have any professional connections outside the U.S.?

Q: Do you have any concerns for your safety outside the U.S.?

Q: Has your fiancée ever been to Moldova?



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Q: Can you fiancée speak Romanian or any other language spoken in Moldova?

Q: Does your fiancée have a job in the U.S.? Will she get paid maternity leave? Does she have health insurance in the U.S.?

Q: Will you be able to send money to help support your fiancée and your child if you had to leave the United States?

Q: How do you think it would impact your US citizen mother if you had to leave?

Q: Does your brother have any health issues?

Q: How does his autism impact his ability to care for himself?

Q: What kinds of services does he receive or require due to his autism?

Q: Do you provide any kind of help for your brother?

Q: How do you help?

Q: Who could take over these things if you had to leave the U.S.?

Q: Do you have anything else you'd like to tell the Judge? *[If you're going to ask this question, prepare your client in advance. Let him know he'll have the opportunity at the end of the questioning to tell the judge what it would mean to him to be given another chance in the US. It's not mandatory, but some clients appreciate being able to do this].*

General Considerations:

The goal is for your questioning to tell a story while establishing the following key points:

1. Roger meets the statutory requirements for cancellation. He's been an LPR for 5 years. Because of his 1991 admission as a B-2 nonimmigrant, the stop time rule does not prevent him from establishing the 7 years of continuous residence in the United States, despite the fact that his two petty theft convictions took place only 3 years after he became an LPR. His theft offenses aren't aggravated felonies because he did not receive a one year sentence.



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2. Rehabilitation is shown by no history of any criminal charges or convictions in over ten years. Your goal is to have Roger's testimony show that he has accepted responsibility for his actions and regrets any poor choices he made in the past.
3. His rehabilitation is also shown by his history of steady employment, tax payment, and educational pursuits.
4. Roger has a close relationship with his mother, brother, and grandmother who are all U.S. citizens; he is also engaged to be married to a US citizen who is expecting their first child.
5. Roger poses no risk to the community. He would face hardship if he had to leave, as would his family. He would be forced from the country he has known since early childhood, and his close and consistent contact with his family would be severed.

Help the Judge see that your client has turned his life around, put his tumultuous past behind him and has a bright future in the United States. He is aware that cancellation of removal can only be granted once, and if he commits further crimes he may once again face removal but this time cancellation would be off the table.