

Grounds of Inadmissibility & Removal; Waivers

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PBI Immigration Law Forum 2018

New Cases

- *Matter of Castro-Tum*, 27 I&N Dec. 271 (AG 2018)
- *Matter of SOG- & FDB-*, 27 I&N Dec. 462 (AG 2018)
- *Pereira v. Sessions*, ___ U.S. ___, 138 S. Ct. 2105 (2018)

Time to Lawyer Up!

- Good lawyering now more essential than ever for immigrants in removal proceedings
- Alienage
- Suppression
- Admit & concede?
- Burdens
- Preserving the record

Grounds of Inadmissibility

- They keep a'knockin but they can't come in!
- Health
- Criminal
- Security
- Public Charge
- EWI
- Previously removed

Inadmissibility Pro Tip

- Nothing about gun crimes! Can your client adjust or re-adjust?
- Was your client seeking to be readmission or not?

But we have a problem...

- When your client is inadmissible or removable because of something they did, think:
 - Can we beat it?
 - Can we plead it?
 - Can we change it?
 - Can we waive it?
 - Can we outlive it?

Waivers – The Biggies

- Health – 212(g)
- Crimes – 212(h)
 - Stand-alone H – *Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015)
- Fraud – 212(i)
- Unlawful Presence – 212(a)(9)(B)
 - I-601A Provisional Waiver. Maybe?
- Cancellation of Removal

What is Extreme Hardship?

- “Deportation would result in a degree of hardship beyond that typically associated with deportation.”
- Factors to take into account in totality, not exclusive:
 - Age of alien at time of entry and application
 - Spouse and children; ability to speak native language
 - Health conditions, and medical treatments overseas
 - Length of residence in USA
 - Financial impact
 - Impact on Education
 - Psychological impact
 - Worthy of Discretion?

Exceptionally Unusual Hardship?

- Extreme Hardship – plus some oomph.
- Kids under 12 – usually need something physical or mental
- Kids over 12 – ability to continue education becomes a strong factor
- Use the positives! Kids doing especially well can make a strong case

Forms

- I-601: the workhorse waiver form.
 - Health-related grounds
 - Crim
 - Fraud
 - Alien smuggler (limited)
 - Unlawful Presence

Forms

- I-601A: Unlawful Presence
- EOIR-42A
- EOIR-42B
- I-212
- I-191

Rabbit Tricks

- Keep an eye out for NACARA applicants!
- 245(i) – the gift that keeps giving!
- VAWA and VAWA Cancellation
- Victim of Trafficking or Crime?
- SIJ?
- TPS?
- Voluntary Departure – yes, VD is usually bad
- Asylum, Withholding of Removal, and Protection under Convention Against Torture

Questions?

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