NORRIS McLAUGHLIN | P.A.
IMMIGRATION LAW & DEPORTATION DEFENSE

Allentown, Pennsylvania – Bridgewater, New Jersey – New York, New York

HOW TO AVOID DEPORTATION BY ASSERTING CERTAIN FORMS OF RELIEF

If an Immigration Judge in any one of the many Immigration Courts across America finds an alien is illegally in the United States, the alien is not automatically deported. Rather, the Immigration & Nationality Act allows that alien to assert one or more of several types of "relief from deportation." The Immigration Law and Deportation Defense Attorneys at Norris McLaughlin are well versed in all potential forms of relief, the elements that must be proven for each form of relief and the evidence necessary to establish each respective element.

"It is important that all proper forms of relief are asserted at an alien's Master Calendar Hearing," said Deportation Defense Attorney Raymond Lahoud of Norris McLaughlin, "failure to assert a form of relief or all forms of relief that an alien may be eligible for at the first hearing will deem that potential relief waived." It is important that an alien who is in deportation/removal proceedings retain an attorney as soon as the proceedings are commenced, so that all of the alien's rights are protected. "The Deportation Defense Team at Norris McLaughlin must be contacted as soon as an alien or someone's loved one is arrested by Immigration & Customs Enforcement, because Norris' attorneys will immediately step into action and fight for the alien," said Lahoud. Norris McLaughlin can be reached twenty-four hours a day, seven says a week by phone at (888) 440-4872 or through the web at www.nationalimmigrationlawyers.com.

What follows is a brief analysis on the types of relief that a Norris McLaughlin Deportation Attorney may assert at a Master Calendar Hearing (the potential deportee's first hearing before the Immigration Court). Potential forms of deportation relief include: (1) waivers of excludability and deportability; (2) cancellation of removal for permanent residents; (3) cancellation of removal for non-permanent residents; (4) suspension of deportation; (5) adjustment of status to permanent residence; (5) asylum and/or withholding of removal (Convention Against Torture); (6) legalization and registry and, as a last resort, (7) voluntary departure.

This should not be used as a legal guide or as legal advice. Rather, it is informational in purpose, and is meant to exhibit the type of deportation defense work that Norris McLaughlin's Immigration Law and Deportation Defense Group, based out of Allentown, Pennsylvania, Bridgewater, New Jersey, and New York, New Yok, takes on each day for hundreds of individuals across the United States.

Waivers of Excludability and Deportability

The Immigration and Nationality Act provides for various grounds on which an alien may be subject to removal from the United States. The most prevalent ground is if the alien was inadmissible when he or she entered the United States. There are a great number of grounds of removability found in the law. There are also many waivers to those grounds of removability that are available. The Deportation Defense Team at Norris McLaughlin is on-call all day and all night and is always ready to jump into action and use its seventy-five years of combined legal experience to review the charges of removability and determine the appropriate waiver.

One's eligibility for a waiver of removability often depends on the alien's ability to establish hardship to himself or to his close family members if he were to be removed from the United States.

For instance, if a person has committed an innocent or willful fraud or material representation when securing some type of immigration benefit may qualify for a waiver under Section 212(i) of the Immigration and Nationality Act. To have an Immigration Judge grant the waiver, the alien's Norris McLaughlin Deportation Defense Team must show that the government's failure to admit the alien into the U.S. would result in "extreme hardship" to the alien's lawful permanent resident (LPR) or U.S. citizen (USC) spouse or parents.

A person who is inadmissible because he or she has committed certain crimes may qualify for relief under Section 212(h) of the Immigration and Nationality Act. In these types of cases, the alien's Norris McLaughlin Deportation Defense Team must establish that the government's failure to admit the alien into the United States would result in "extreme hardship" to his or her LPR or USC spouse, parent(s), son(s) or daughter(s).

There do exist waivers that do not require the presence of relatives. For example, former section 212(c) of the Immigration and Nationality Act provides that an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who is returned to a lawful unrelinquished domicile of seven consecutive years, may be admitted to the United States in the discretion of the Attorney General despite the applicability of certain grounds of exclusion specified in Immigration and Nationality Act.

This waiver was expanded to also be available to lawful permanent residents who did not proceed abroad, but risked losing their LPR status due to charges of deportability or removability. Section 212(c), however, applies only to charges of deportability or removability for which there are comparable grounds of exclusion or inadmissibility.

In 1990, Section 212(c) was amended to ban aggravated felons from applying for relief under Section 212(c) if they had served a term of imprisonment of at least five years. In 1996, Section 212(c) was again amended and by section 440(d) of the Antiterrorism and further reduced the class of aliens eligible for relief from removal. This amendment made the following classes of aliens ineligible for relief under Section 212(c): (1) aggravated felons; (2) those convicted of controlled substance offenses; (3) those convicted of firearm offenses; (4) those convicted of certain miscellaneous crimes, such as espionage; and (5)

those convicted of multiple CIMTs. Later that year, Section 212(c) was repealed and is now only available to aliens, irrespective of when they were put into proceedings, if their convictions were obtained through plea agreements prior to April 1, 1997 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.

To be eligible for section 212(c) relief if placed in proceedings after April 24, 1996, an alien must have entered a plea agreement prior to April 1, 1997, when section 212(c) was effectively repealed by IIRIRA. An alien also must have maintained lawful, unrelinquished domicile in the United States for a period of seven consecutive years. In addition, an alien who has been convicted of an aggravated felony or felonies is ineligible to seek relief under section 212(c).

Norris McLaughlin's Deportation Defense Team must also establish that the alien merits a favorable exercise of discretion. Each case must be judged on its own merits and adverse and positive factors are considered by the Immigration Judge.

Cancellation of Removal for a Lawful Permanent Resident

INA §240A(a) allows the Attorney General (usually an Immigration Judge or the Board of Immigration Appeals) to cancel the removal of a lawful permanent resident from the U.S. if the alien has (1) been an LPR for a minimum of five years; (2) resided continuously in the U.S. for a minimum of seven years after being admitted to the U.S. in any status (prior to the institution of removal proceedings); (3) not been convicted of an aggravated felony; and (4) is not inadmissible from the U.S. on security grounds.

The following classes of persons are ineligible for cancellation of removal: (1) Certain crewmen; (2) Exchange visitors (in "J" status) who received medical training in the U.S.; (3) Persons who have persecuted others; (4) Persons who have previously been granted cancellation of removal, suspension of deportation (See below.) or relief under §212(c); and (5) Persons who committed certain criminal offenses prior to the accrual of the required seven years.

In addition to demonstrating the above elements, the Deportation Defense Team at Norris McLaughlin must show that the alien warrants exercise of discretion. The Immigration Court, when reviewing discretion, considers the record as a whole and balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and humane considerations presented in his favor to determine whether a grant of relief would be in the best interest of this country. There is no threshold requirement that the applicant show unusual or outstanding equities; rather the Court weighs the favorable and adverse factors to balance the "totality of the evidence" before reaching a conclusion as to whether the alien warrants a grant of cancellation of removal in the exercise of discretion. If the alien's misconduct is serious, then there may be given substantial weight to that conduct.

Positive factors that an Immigration Court considers include, but are not limited to, family ties in the United States, residence of long duration in this country, evidence of hardship to the applicant and his family if removal occurs, a history of employment, existence of

property or business ties, proof of genuine rehabilitation if a criminal record exists, and other evidence attesting to the applicant's good moral character.

Negative factors considered include the nature and underlying circumstances of the removal ground at issue and any other evidence that could be indicative of an applicant's bad character or undesirability as a permanent resident of this country.

Cancellation of Removal for Certain Non-Residents

An Immigration Judge or the Board of Immigration Appeals) to cancel the removal of a non-permanent resident from the United States who: (1) has been physically present in the United States for a continuous period of ten years prior to the institution of removal proceedings (this requirement is not applicable to persons who have served a minimum of 24 months in the U.S. Armed Forces, was present in the U.S. during his enlistment or induction, and is either serving honorably or has received an honorable discharge. Also, continuous requires that the alien cannot be out of the United States for more than 90 days at a time, or 180 days in the aggregate, during the ten-year period); (2) has been a person of good moral character for ten years; (3) is not inadmissible under Section 212(a)(2) or (3) (criminal and security grounds) or deportable under Section 237(a)(1)(G) (marriage fraud), Section 237(a)(2) (criminal grounds), Section 237(a)(3) (failure to register and falsification of documents) or Section 237(a)(4) (security and related grounds); and (4) whose removal would result in exceptional and extremely unusual hardship to the applicant's spouse, parent, or child, who is a United States citizen or lawful permanent resident.

Proving exceptional and extremely unusual hardship is a difficult task, requiring the expertise of Norris McLaughlin's Deportation Defense Team, who has handled these types of cases for decades. Norris McLaughlin's Deportation Defense Team will demonstrate that a qualifying relative would suffer hardship that is substantially different from or beyond that which would ordinarily be expected to result from the alien's deportation.

Cancellation of Removal for Battered Spouses and Children

An alien who is inadmissible or deportable from the United States is eligible for cancellation of removal and adjustment of status to that of a lawful permanent resident if he or she: (1) has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen or lawful permanent resident, or has a child who was subjected to such abuse; (2) has been physically present in the United States for a period of not less than three years immediately preceding the date of such application; (3) has been a person of good moral character during such period; (4) is not inadmissible under certain parts of the Immigration and Nationality Act, unless a domestic violence waiver is granted, and has not been convicted of an aggravated felony; and (5) establishes that removal would result in extreme hardship to the alien, the alien's child, or the alien's parent. If statutory eligibility is established, special rule cancellation may be granted in the exercise of discretion.

Battery or extreme cruelty includes, but is not limited to any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation are also considered acts of

violence.

The Deportation Defense Team at Norris McLaughlin will present evidence of abuse in cases of this sort. The evidence includes reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel as well as other forms of credible relevant evidence.

To prove the extreme hardship element, the Deportation Defense Team at Norris McLaughlin will have the Court consider the age of the applicant, both at the time of entry and at the time of his or her application for relief, his or her family ties in the United States and abroad, his or her length of residence in the United States, his or her own health, as well as that of his or her United States citizen children, political and economic conditions in the country of removal, the financial impact of departure from the United States, the possibility of other means of adjustment of status in the United States, his or her involvement and position in her local community, and his or her immigration history. Further, Norris McLaughlin's Attorneys will argue that extreme hardship factors related to the battery or extreme cruelty should be also be considered.

Adjustment of Status

An alien who is deemed deportable and who is the parent, spouse, widow or child of a U.S. citizen may be eligible to apply to the Immigration Judge to adjust his or her status to that of a lawful permanent resident. Also qualified to apply for adjustment of status are many aliens whose priority dates for permanent residence are "current." Important to this form of relief is that the potential deportee entered the United States legally (for example, the alien entered using a valid visitor visa) and did not cross the border (entry without inspection).

Aliens who obtained conditional permanent residence based upon their marriage, or the marriage of their alien parent, to a U.S. citizen may have their legal status terminated by the INS if they fail to meet certain requirements. However, once INS places them under deportation proceedings, they may renew their applications for permanent residence before an Immigration Judge.

If a potential deportee who is otherwise admissible (no criminal convictions, does not have certain types of medical issues, is not a drug trafficker and entered the country using a legal non-immigrant visa) marries an American Citizen prior to the commencement of removal proceedings, then, often times, a Norris McLaughlin Deportation Defense Attorney will move that the Immigration Court terminate removal proceedings to allow USCIS to adjudicate the adjustment of status application. If, however, the alien married after removal proceedings commenced, then the adjustment of status application must be decided by the Immigration Judge and Norris McLaughlin's Deportation Attorneys must prove to the Immigration Judge that the alien and the American Citizen married for love, by clear and convicing evidence.

Asylum

Asylum is a legal protection that an alien can assert, if the alien fears persecution if the

alien is returned to his or her native country. Asylum is based on many international treaties and the United States of America recognizes and grants asylum through an immigration judge after a hearing. If the judge does not find that an asylum seeker is in danger of persecution, the asylum seeker will be deported (removed) and sent back to his native country. Of course, the Immigration Judge's decision could be appealed to the Board of Immigration Appeals.

An alien must have well-founded fear of persecution if the alien is deported to his or her home country. To successfully assert asylum relief, the fear the alien faces must be based on at least one of the following five grounds: (1) Religious Belief(s); (2) Political Opinion(s); (3) Race; (4) Membership in a Particular Social Group (homosexuals, people with certain diseases that cannot be treated in the alien's home country, etc.); and Nationality.

Permanent residency can be applied for if an alien is granted asylum. That application is made one year after the grant of asylum.

The Deportation Defense Attorneys at Norris McLaughlin have handled hundreds of asylum claims based on everything from HIV/AIDS, homosexuality to gender issues with respect to countries across the globe.

Withholding of Removal

Withholding of removal is very similar to asylum. There are a few differences, however. For example, if an alien is granted withholding of removal, he or she cant not apply for permanent residency and prevents the Department of Homeland Security from deporting the alien to the one country in which he or she fears returning to. If granted withholding of removal, the alien does qualify for an employment authorization card.

Legalization

If an illegal alien is deemed qualified for legalization or "amnesty" by the Department of Homeland Security, the deportation/removal proceedings will be terminated, since the alien will have attained the legal right to remain in the United States.

Registry

Registry is another means of attaining lawful permanent residence in the United States. It is available to aliens who have resided continuously in the U.S. since prior to January 1, 1972, who are persons of good moral character, who are not deportable on certain aggravated grounds, and who are not ineligible to citizenship.

The Last Resort: Voluntary Departure

If there is no other relief from deportation, most aliens are eligible for voluntary departure from the United States. This avoids both the stigma and the legal impediments to return to the United States imposed by deportation.

Voluntary departure is available to aliens who are not deportable on aggravated grounds, who have the means to pay for their departure from the U.S., who agree to depart within a

period of time granted by the Immigration Judge, and who can establish good moral character during the previous five-year period.

Call Norris McLaughlin Today at (888) 440-4872 or visit
www.nationalimmigrationlawyers.com.