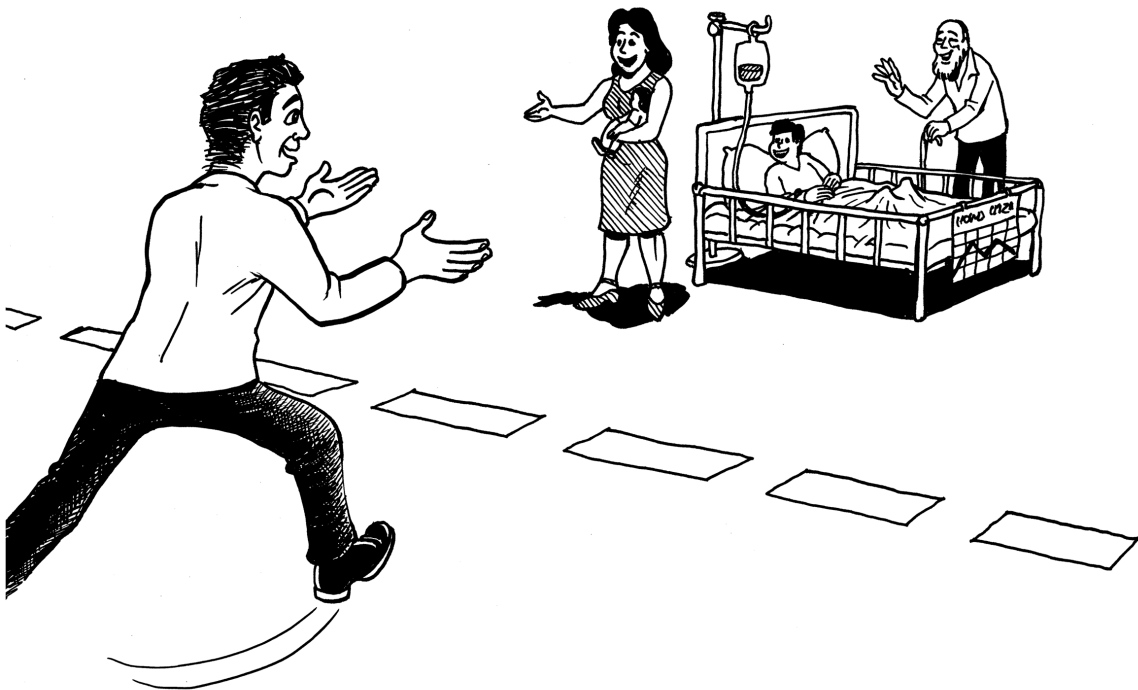


# Would Your Deportation Cause Your Family Extraordinary Hardship?

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## A Guide to 10-Year Cancellation of Removal

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**The Florence Immigrant & Refugee Rights Project** is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepared and updated this guide for immigrant detainees who represent themselves in their removal proceedings. We do not charge for our services. To see our guides, go to: [www.firrp.org](http://www.firrp.org).

This guide is not intended to provide legal advice. It is not a substitute for legal counsel.

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## Important Words to Know

Immigration law has a lot of technical words. Here is a list of some words you will see in this guide and a short explanation of what they mean.

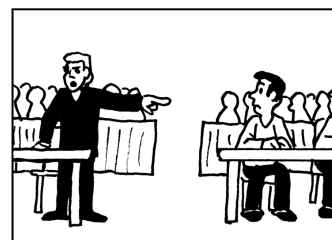
- **Deportation:** ICE has put you in *deportation proceedings*, which are also called *removal proceedings*. If the judge orders you deported or “removed” from the United States, officials will send you back to the country where you are a citizen. You will not be able to legally return to the U.S. for at least 10 years.



- **Florence Project:** A group of lawyers and legal assistants who provide free legal help to people who do not have lawyers. The Florence Project wrote this guide to help you understand your case.



- **Government Attorney:** The lawyer who represents ICE when you go to your court hearings. This lawyer sits at the table next to you and also talks to the judge. Government attorneys should see that justice is done. Usually they ask the judge to order to deport you.



- **Hardship:** A situation that causes suffering, difficulty, or pain.



- **Immigration and Customs Enforcement (ICE):** The agency that has put you in deportation proceedings and detained you. ICE is part of the Department of Homeland Security, or *DHS*.



- **Immigration Judge (*judge*):** The person who will decide your case. Judges hold hearings in the courtroom and wear black robes. They should look at the facts of your case and apply the law fairly. Judges do not work for ICE.



## Who Should Read this Guide?

This guide from the Florence Project will help you if you:

- do not have legal status,
- have lived in the U.S. for at least 10 years, AND
- can show that one of your close family members who has legal status in the U.S. would suffer terribly if you were deported.

This guide explains one way that you might be able to obtain permanent residency and stop your deportation. A *10-Year Cancellation of Removal* could be a way for you to become a permanent resident (a green card holder).

## Can You Apply for a 10-Year Cancellation of Removal?

Not everyone can apply for a 10-Year Cancellation of Removal. The requirements deal with both you and the family member. To be able to apply, you must have a family member who will suffer an extreme hardship if you were deported.

### Requirements about you

You have been in the U.S. for more than 10 years and have not taken long trips to your home country. Long trips are anything more than 3 months.



- You have been a good member of the community — you have what is called good moral character.

For example, if you have been arrested for drinking and driving during the 10-year period, the judge may assume that you do not have good moral character. In that case, you will have to show the judge that you have worked to get better and are a good member of the community.



- You do not have any criminal convictions that make you unable to get a green card. You cannot apply if you have been convicted for:

- an *aggravated felony* (examples include murder, rape, or sexual abuse of a minor),
- a *moral turpitude* crime (examples include rape, forgery, robbery, or violent crime),
- a drug offense,
- certain gun offenses,
- certain domestic violence offenses,
- child abuse,
- child neglect or abandonment, or
- violations of a restraining order.



This rule does have some exceptions. For instance, you can apply if:

- you were convicted of a crime of moral turpitude,
- the most jail time someone could get for the crime was less than a year, AND
- you were sentenced to 6 months or less.

## Requirements about your family member

Remember, the person who will experience the hardship must be your parent, your husband or wife, or your child **AND** that person must be a permanent resident or a U.S. citizen. We call those people *qualifying relatives*. You may see that term in court paperwork.

- Your stepchildren are *qualifying relatives* if you married their parent before your stepchildren turned 18.

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Here's a sample question that some people ask:

My wife is really sick and I pay for all her medicine. But she's not a permanent resident or a citizen of the U.S.

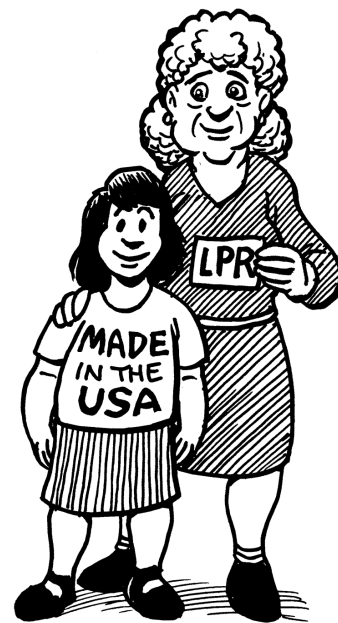
**Can I use say that her illness allows me to apply for "10-Year Cancellation of Removal?"**

**NO.**

Remember, your relative **MUST** be a U.S. citizen or permanent resident.

Because your wife is not a U.S. citizen or permanent resident, a judge will not consider the difficulties that she will experience if you were deported with your application.

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## **What Does *Extreme Hardship* Mean?**

We know that every family suffers a lot when someone is detained or deported.

For many reasons, some families might suffer extremely when a family member is deported. You must list your own reasons, but here are some examples of what reasons that may work:

- Someone in your family is very sick and depends on you to help pay the medical bills.
- Someone in your family has to stay in the United States for medical treatment and couldn't come back to your country with you.
- Your children have special needs or disabilities that they receive help for in school or at the doctor. They cannot get that help in your country.
- Your elderly parents completely depend on you for financial support.
- You are a single. Your children depend only on you for finances, you rely on your family in the U.S. for help, you have no family in your home country, and your children would have difficulty adjusting to the conditions in your home country.



**Remember**, these are just some examples of why your family would suffer a lot of hardship.



### **Reasons that do not show extreme hardship**

Judges may think that your case is not extreme enough to give you a green card. For instance, the following reasons are not severe enough for this type of Cancellation of Removal:

- It has been a long time since you were in your country.
- You have a job and a house here.
- Your kids do not want to go back to your country.
- Your family member has an illness that can be treated in your country, like asthma.

Think about your own life and try to list ideas from your own experience. Then, fill out the worksheet on the next pages.

Remember that 10-Year Cancellation of Removal cases are not easy to win. You really must show the judge that you have been a great member of the U.S. community for a long time **AND** that your family would suffer extremely if you were deported.

## How you can explain hardship:

Think about your parents, husband or wife, and children.

<b>Family Member 1</b>	
Which family member is a permanent resident of the U.S. or a U.S. citizen?	<b>If your relative is a child, answer these questions:</b>
Which documents will you gather to prove that person is a citizen or permanent resident?	
Why would this person suffer if you were deported?	Why would it be impossible for your child to go with you to your country?
How is that hardship much more serious than what most people would experience?	Does your child have any special needs in school? <input type="checkbox"/> No <input type="checkbox"/> Yes. What are they?
Does this person have any medical conditions or disabilities?	What services does your child receive here in the U.S.?
Is there any reason this person could not care for himself or herself if you were deported?	Would your child be able to receive similar services in your country? <input type="checkbox"/> No <input type="checkbox"/> Yes

- No
- Yes. What are the reasons?

## Family Member 2

Which family member is a permanent resident of the U.S. or a U.S. citizen?

**If your relative is a child, answer these questions:**

Which documents will you gather to prove that person is a citizen or permanent resident?

Why would it be impossible for your child to go with you to your country?

Why would this person suffer if you were deported?

Does your child have any special needs in school?

- No
- Yes. What are they?

How is that hardship much more serious than what most people would experience?

What services does your child receive here in the U.S.?

Does this person have any medical conditions or disabilities?

Would your child be able to receive similar services in your country?

- No
- Yes. What are they?

- No
- Yes

Is there any reason this person could not care for himself or herself if you were deported?

- No
- Yes. What are the reasons?

**Other Family Members:**

**If you have more family members to discuss, list their names here and answer the questions about them on separate paper.**

## How Can You Apply for 10-Year Cancellation of Removal?

Not everyone can apply for a 10-Year Cancellation of Removal.

To apply, you must go to court, collect proof, show your proof to the court, and testify.

### Learn about your first court hearings

First, learn the basics about immigration court so that you know who will be in court and what will happen in your first hearings.

**The judge will be at the front of the room and will ask you questions.** The judge will be dressed like the person on the left. The judge will decide your case, so it is important to be respectful, polite, and prepared.



**A lawyer representing ICE will be there.** This lawyer is the government attorney who represents ICE. It is this attorney's job to serve justice but most often this attorney will be asking the judge to deport you.

**Do not worry if you do not speak English. An interpreter will be there in person or on the phone.** Just make sure you speak up. Tell the judge that you do not speak or understand English well and need an interpreter.

## Master calendar hearings

The first few hearings that you will go to will be **master calendar hearings**. At master calendar hearings, you will be in court with a group of other detainees. These hearings are not the right time to show the judge all your evidence of the reasons why you should stay in the country. You will do that once the judge sets a final hearing in your case.



The judge will check in with you about your case and tell you what options you may have to fight your deportation.

If you want more time to find an attorney, the judge will give you a few weeks to do so. After you have an attorney, you will return for another master calendar hearing.

When you return to court, the judge will ask you if you want to admit or deny the charges against you. That means that the judge wants to know if you want to force the government attorney to prove the charges against you.

If the government attorney says that you should be deported because you have criminal convictions, asking the attorney to prove the charges against you can be an important step. If you have certain types of criminal convictions, even for minor crimes, you may not be able to apply for a 10-Year Cancellation of Removal. **Be careful about admitting to anything about your criminal record when you answer to your charges in immigration court.**

To learn more about denying charges against you, read the Florence Project's guide on the subject. Go to <https://firrp.org/resources/prose/>



You may also get the form at <http://www.justice.gov/eoir/formslist.htm>.

### Before you begin:

- **You must use a pen or typewriter to fill out the form.**

Do not use a pencil.

- **If you do not know how to answer a question, do not worry.**

- For example, if you cannot remember all of your past addresses, write down as much as you know. Write that you are guessing or that you may have missing or incorrect information. If a question does not apply to you, just put “N/A” for *Not Applicable* in the box.

- **If you do not have not enough room on the form to answer completely, just continue your answer on another piece of paper.** Be sure to attach that paper to the form.

The notes on the next pages will give you some tips for filling out each part of the application.





## 42B Application: *Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents*

### Part 1: Information About Yourself

- If you are detained, use the address for the detention center.

PART 1 - INFORMATION ABOUT YOURSELF	
1) My present true name is: <i>(Last, First, Middle)</i>	
3) My name given at birth was: <i>(Last, First, Middle)</i>	
5) Date of Birth: <i>(Month, Day, Year)</i>	6) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
10) Current Nationality and Citizenship:	11) Social Security Number:
14) I currently reside at:	
<i>Apt. number and/or in case of</i>	
<i>Number and Street</i>	
<i>City or Town</i>	<i>State Zip Code</i>

### Part 2: Information About this Application

- You must show who your *qualifying relatives* are and what their immigration status is. Remember, this person must be your parent, husband or wife, or child who is a U.S. citizen or legal permanent resident.
- You must have at least 10 full years of residence in the U.S. Be sure that the date you enter for the beginning of your residency shows that you have been in the U.S. for 10 years.
- Watch out! The last box states that you or your child has suffered battery or extreme cruelty by a spouse or parent. **Do not mark this box if you are applying for 10-Year Cancellation of Removal.**

<input type="checkbox"/> I, or my child, have been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident spouse or parent.
With the exception of absences described in question #23, I have resided in the United States since:
<i>(Month, Day, Year)</i> _____.

If your lawful permanent resident or citizen spouse or parent has abused you or your child, you may be eligible for another way to fight your case.

To learn more, see the Florence Project’s guide to VAWA Cancellation at: <https://firrp.org/resources/prose/>

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### ■ Part 3: Information About Your Presence in the United States

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- If you used a different name when you entered the U.S. include that information here.
- Question 19 asks for the date that you **first** arrived in the U.S. This may be different from your answer to Question 21 about when you began to live in the U.S. full-time if you came to the U.S. before you moved here.
- List the place where you first arrived in the U.S.
- If you crossed into the U.S. illegally or without documentation, on Question 21 mark “entered without inspection.”
- Question 23 asks you to list every time you entered and departed from the U.S., even if it was for less than 1 day.
  - If you left and came back many times for the same reason (for example, if you went to Mexico several times just for the day to go shopping or to visit family), then you can write something like, “day trip once a month to Mexico for shopping.”
  - If you have traveled outside the U.S. a lot, you may need to use another piece of paper to answer this question.
  - **Watch out!** If you left the U.S. for more than 90 days at a time, that trip will break your “continuous physical presence” in the U.S. so that you must start the 10-year clock over once you returned from that trip.

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**Part 4: Information About Your Marital Status and Spouse**

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- On Question 25, if you have *never* married, mark, “I am not married.” Go to Part 5. You do not need to fill out this part.

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**Part 5: Information About Your Employment and Financial Status**

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- On Question 38, when listing your work history, begin with the job you had just before you came to detention. Work backwards.
- If you cannot remember all of the details of your work history, use your best guess. Try to include as much information as you can, such as the city and state name in the address section.
- On Question 41, fill in if you have received benefits from any government programs in the U.S. Those could include food stamps, unemployment, TANF, etc. Question 41 asks if you have received assistance; Question 45 asks if members of your family have received assistance.

- On Question 43, list all of your children as well as their immigration status. If you have more than 3 children, you can attach additional sheets of paper.

If the child does not have any income because your child is very young or does not have income for another reason, write *N/A* for *Not Applicable* for the questions about average earnings and weekly income.



- Question 44 asks if your spouse and children would return to your country of origin with you if you were deported. If they will not come with you, explain why they need to stay in the United States.
- For example, if your wife needs special medical care that is not available in your home country, mention that here.
- Question 45 asks if anyone else in your family, *not* including yourself, has ever gotten government benefits. This includes things like social security, food stamps, and unemployment.

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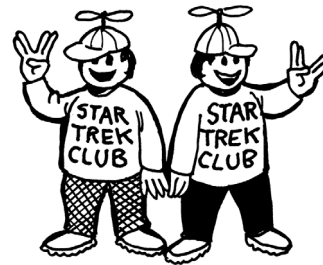
## Part 7: Miscellaneous Information

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- Question 54 asks you to fill in if you have ever been arrested, convicted, fined, imprisoned, or put on probation. It is **very** important to include all arrests, court appearances, convictions, and fines, even if you think that ICE does not know about them or if the charges were dismissed.
  - Even list traffic tickets. ICE *will* find your “rap sheet” and other conviction documents before your hearing. If you do not reveal the charges now and they later come out at the hearing, the judge may think you trying to hide something. It *will* hurt your case.

■ If you think that you may not remember your criminal history perfectly, then you can note that the answers provided are “to the best of your recollection,” and that you, “might be missing or forgetting an incident.”

■ Question 60 asks about all groups you have been involved with since you were 16 years old. This includes things like church groups, sports programs, and school groups.



## Fill Out a Request for a Fee Waiver

You must also fill out a fee waiver request so that you do not need to pay to apply for the 10-Year Cancellation of Removal. The fee waiver is included on the next page. You can fill it out, rip it out of this guide, and give it to the judge.

You can find the fee waiver online here:

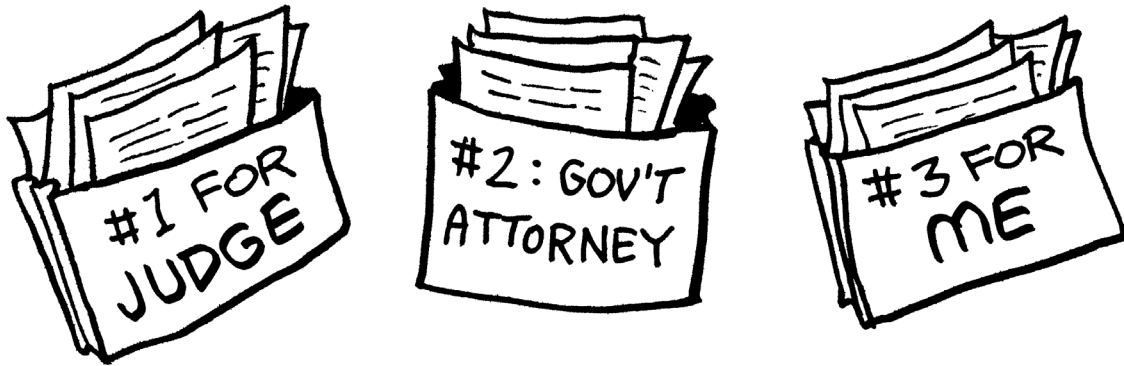
<https://www.justice.gov/sites/default/files/pages/attachments/2015/07/24/eoir26a.pdf>

If you are currently detained and are not paying any bills, you can put 0's when asked about your monthly expenses and income.

When you have completed the application, make 2 extra copies. Bring them to court with you. The original will go to the judge. Another copy will go to the government attorney. You will keep a copy for yourself. **This is important, so do not forget!**

Once you turn in your application, the judge will give you a date for a final hearing. This hearing will be your opportunity to present your case to the

judge. At your final hearing, you will appear by yourself. The hearing will last a few hours.



## What Proof Should You Gather?

**Start gathering your proof** as soon as you decide that you want to apply for 10-Year Cancellation of Removal.

Many documents will take time for your family to find and to mail to you. We know it is not easy to gather all of them while you are detained. Ask a trusted family member or friend to help you gather these documents. Make sure that this person mails you **copies of these documents, not originals**.

The type of evidence that you will gather depends on the type of hardship you are trying to prove.

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Here are some examples:

- If your daughter has cancer and needs treatment here in the U.S., you will need a letter from her doctor that explains her condition. You will also need copies of her medical records and pictures of her.
  - If you are a single mother whose children have never been to your country, you must get letters from their teachers about how they are doing in school and whether they have any special needs. You will need copies of their birth certificates to show that they are U.S. citizens. You will need to list all of the opportunities that they have here that they will not have in your country.
- 



You will also need to **get as many letters of reference as possible**. These letters should be from friends, family, and employers. The letters should talk about all the good contributions that you have made to the United States.



**Remember, all the documents you submit must be in English.** If you receive documents in another language, you can translate them. Just put your translation in with the original letter and attach a signed copy of the *Certificate of Translation* follows.

On the next page are some ideas of the types of proof you can gather. Remember, these are examples. You do not need to gather all of them to win your case. But try to gather as many as you can.

## Evidence Checklist

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### Family Ties

- Letters of support from as many family members as possible (including drawings from children). These letters should explain how your permanent resident or U.S. citizen wife, parent, or child will suffer if you are deported.

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  - Letters of support from friends

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  - Letters from people who know you (for example, neighbors, landlord, boss)

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  - Letters showing that you are involved in the community and have good character (church, volunteering)

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  - Proof of financial support your family (rent receipt, child support) and proof of financial hardship since your detention (past due notices for bills or rent)

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  - Copies of your children’s school records, including letters from teachers or counselors about how your kids are doing in school. Ask the writer to
-



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include how moving to your home country would cause problems for your kids.

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Copies of medical records for your parent, spouse, or child if they are sick or suffer from any kind of disability

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Copies of your children's birth certificates

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Copies of proof of legal status for your parents, husband, or wife (birth certificate, naturalization certificate, permanent resident card (also called a green card))

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Copy of your marriage certificate

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Proof of any debt that your family has that you were helping to pay off (mortgage, car loans, school, medical, etc.)

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### **Your Education and Character**

Certificates from any rehabilitation classes you have taken, like anger management, domestic violence, AA, substance abuse, parenting

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Proof of English Language Training, GED, college, etc.

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### **Financial Ties**

Tax records

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Pay stubs

---

Social Security records

---

Letters showing your employment history

---

Certificates and diplomas from school and training courses

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## **Organize your documents**

Once you have all your documents together, organize them.

Make a list of everything you have and then put that list on top. You can divide your documents into categories like these:

1. Family Ties in the U.S. (birth certificates, marriage certificates)
2. Evidence of Hardship if I Am Deported
3. Evidence that I Have Been in the U.S. for 10 Years or More
4. Evidence that I Have Good Moral Character (volunteering, going to church, helping the community, etc.)
5. Evidence of Employment History and Property in the U.S.
6. Evidence of Rehabilitation (if you have criminal history)

To the last page of all your evidence, attach a signed and dated copy of the *Certificate of Service* (found on the next page). Then make 2 copies of all your evidence. The original will go to the judge, a copy will go to the government attorney. Keep a copy for yourself.

**Use the following certificate if you will turn in the documents to the government attorney and judge at the next hearing.**

**Certificate of Service: Delivered in Person**

I, \_\_\_\_\_

(Write your name)

certify that I hand-delivered a copy of this document to a representative of ICE Litigation on the date below.

Signed:	
---------	--

Date:	/	/
-------	---	---

Month / Day / Year

**Use the following certificate if you will mail the documents to the government attorney and judge before the hearing.**

**Certificate of Service: Delivered by Mail**

I, \_\_\_\_\_

(Write your name)

certify that on the date below I placed a copy of this document in the mail to ICE Litigation at:

\_\_\_\_\_  
\_\_\_\_\_

(Write the address for the ICE office at the detention center where you are staying)

Signed:	
---------	--

Date:	/	/
-------	---	---

Month / Day / Year

**Use the following certificate if you someone translates your documents.**

### **Certificate of Translation**

I, \_\_\_\_\_

(Write your name)

certify that I am competent to translate this document from its original language into English and that the translation is true and accurate to the best of my abilities.

Signed by translator:	
-----------------------	--

Date:	/	/
-------	---	---

Month / Day / Year

## How to Prepare for Your Testimony

Preparing your testimony for the final hearing will help make your case even stronger. At your final hearing, you will have an opportunity to tell the judge why you think you should be able to stay in the United States.

Keep these tips in mind when you practice your testimony:

### Be prepared

- Think of the specific reasons your family would suffer if you were deported. Do not just say things like, “They will miss me.” or “They need me to pay the bills.” That will not help very much — all families go through that. **Think about the reasons your family will suffer much more than normal if you are deported. Explain those reasons to the judge.**

- **Write your reasons on a piece of paper.** For example, you will need to explain how much your daughter’s cancer treatment costs, how you take care of her when she is sick, how she cannot get this treatment in your home country, and how you pay all the family’s medical bills. Practice explaining your reasons to a friend or a family member.



### Be honest

- **Your job is to tell the judge about your life.** If you have criminal convictions and the judge asks you about them, tell the judge what happened. Do not lie. Lying will just make things worse. The judge and government attorney often have ways to figure out if you are lying.

## Turn negatives into positives

- **If you had a problem with drugs and alcohol in the past, explain how you have overcome those problems.** For example, did you go to AA meetings? Did you complete a rehabilitation program? Tell the judge about all of those things.



## Do not be defensive

- **Admitting that you made mistakes can show the judge that you are sorry,** even if that mistake was just coming to the U.S. without the proper documentation. It can also show the judge that you will not repeat those mistakes in the future.



## Speak from the heart

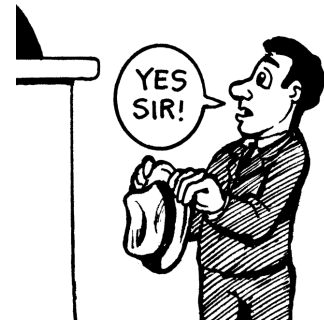
- Judges see a lot of people every day. You can make your testimony stand out if you **speak sincerely.**
- **Think of a funny story about your family to share.** Think about a story that will show the judge how much your family needs you. Explain to the judge why your deportation would hurt your family very much. Tell the judge about your plans for the future. Remember to write all of these reasons on a piece of paper so you will not forget.
- **Do not worry if you become nervous or emotional in court.**

## Ask your family members to testify in court

- **Your family can come and tell the judge about the reasons you should stay in the United States.** Help your family members prepare. Ask them to list all the reasons they would suffer if you were in another country.
- **Make sure your family members practice and write the reasons down to have with them in court.** Your family members with legal status in the U.S. can also watch your final hearing to show the judge that they support you. Remember, some detention centers will not let small children come to court, so have your family members call the detention center and ask about the rules before they come.

## Answer the judge's questions

- **The judge may want to ask you some specific questions.** Remember, be respectful when the judge speaks. Refer to the judge as, “Your Honor,” “Ma’am,” or “Sir.”





## How Will the Judge Weigh the Evidence?

In most cases, the judge will decide your case at the end of your final hearing. The judge will tell you if your application for 10-Year Cancellation of Removal is approved.



Here are some things the judge might do:

- If the judge approves your application and the government attorney does not appeal that decision, you will likely be released the same day. But, only a certain number of visas are available for this type of relief. If the judge grants your case and no visa is available, you must wait.
- The judge may also wait to give a decision in writing later on.
- If the judge approves your application and the government attorney appeals that decision, you will likely have to wait until the Board of Immigration Appeals gives you a final decision.
- If the judge denies your application, you may appeal that decision and saying that the judge was wrong. You must tell the judge at your final hearing that you want to appeal. The judge will give you some paperwork that you must give to the Board of Immigration Appeals within 30 days of the decision. See the Florence Project's guide to appealing your case at: <https://firrp.org/resources/prose/>, or schedule an appointment to talk with an attorney about your appeal.

## **Final Thoughts**

As you have seen, winning a case for 10-Year Cancellation of Removal is not easy. You must show that your family would suffer extremely if you were deported.

It takes planning, lots of work gathering proof, and really practicing your testimony.

We wish you the best of luck with your case!

## **Frequently Asked Questions**

**Can I apply for a 10-Year Cancellation of Removal from my home country if I get a voluntary departure or a deportation?**

**No.** If you decide not to fight your case, you cannot change your mind and try to fight for 10-Year Cancellation of Removal from outside of the United States after you are deported.

If you are deported, then you probably will not be able to apply for another chance to live in the United States lawfully for at least 10 years.

In fact, depending on your conviction, you might never be able to apply for a visa.

Also, if you come back without permission and get caught, you may go to prison for several years.

Finally, if you have already lived in the U.S. for more than 1 year without legal permission before you are deported and you re-enter the U.S. without permission after your deportation, you will not be able to get legal status in the U.S. through your family members who are citizens or lawful permanent

residents until you have stayed outside the U.S. for 10 years and have asked permission to re-enter at the end of that 10-year period.



**Can I get a bond and fight my case for a 10-Year Cancellation of Removal from outside of detention?**

**Possibly!** One good thing to know is that if you are eligible for a 10-Year Cancellation of Removal, you may be able to apply for a bond. A bond is a certain amount of money that you pay as a promise that you will go to all your immigration court hearings in the future.

Usually, the lowest bond possible is \$1,500. But bonds have no limit. The judge may decide to ask for a bond that is much higher.

The judge could also grant “conditional parole” in certain circumstances where no bond would be required.

Tell the judge that you are interested in a bond hearing and look for the guide below at: <https://firrp.org/resources/prose/>.

## How to Get a Bond

