

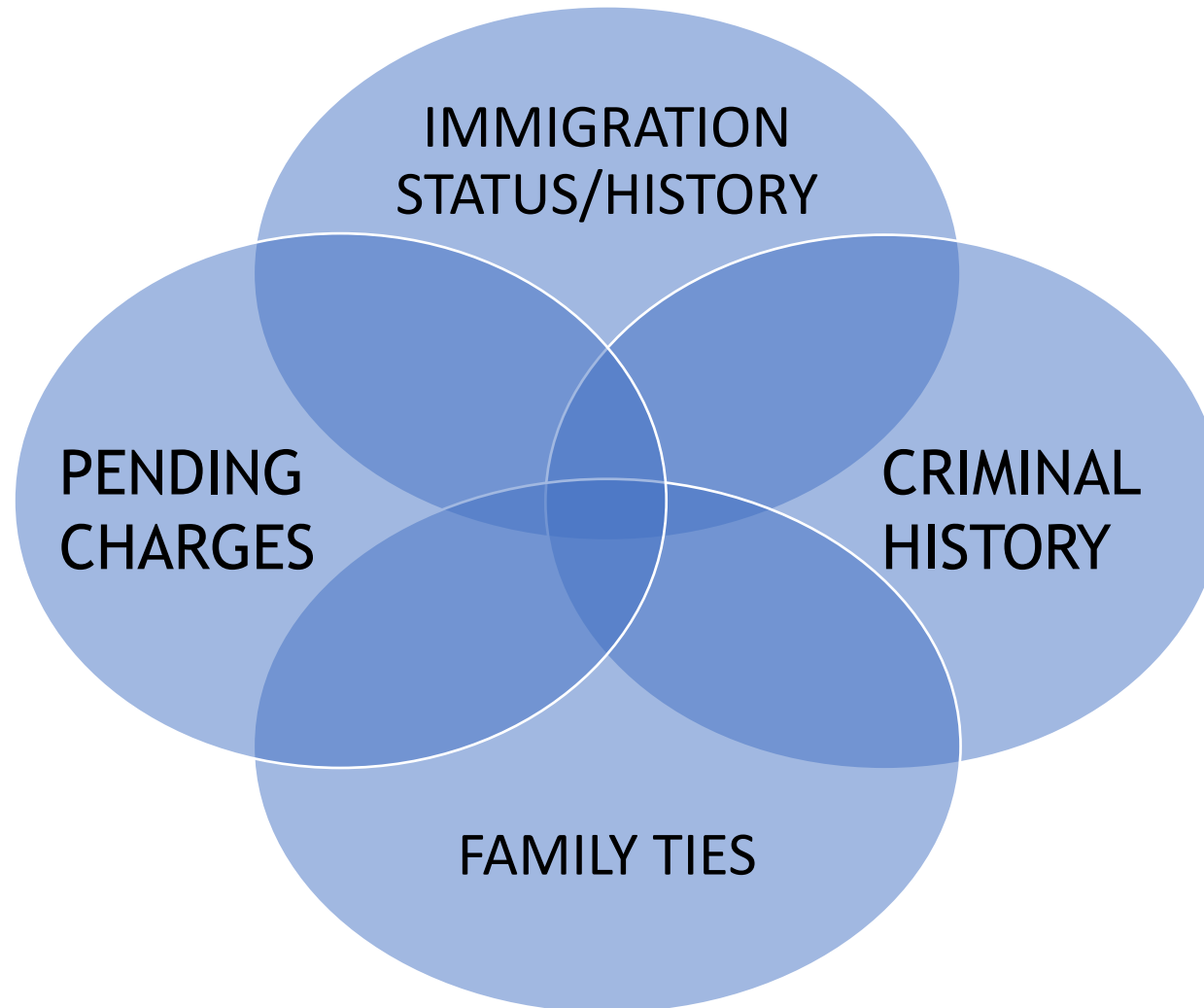
EFFECTIVE REPRESENTATION OF NON- CITIZEN CLIENTS

Part III: Immigration Relief

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To Advise Your Client, You Must Know:



So, you have gathered the information about your client, tried negotiating for a safe plea, but cannot avoid making your client removable.

WHAT NOW?



If your client is LPR

1. Seek help from an attorney who practices criminal and immigration law!
2. Determine which form of relief this client is eligible for.
3. Secure a plea that ensures the client remains eligible for one or more forms of relief.

COMMON FORMS OF RELIEF FOR LPR CLIENTS

- **Naturalization (citizenship)**
 - If inadmissible but not deportable and NO travel abroad
- **Waivers of criminal convictions**
 - Former 212(c)
 - Cancellation of Removal for LPRs
 - 212(h) waiver
- **Fear of returning to home country**
 - Asylum
 - Withholding of removal under INA
 - Deferral of removal under CAT



CANCELLATION OF REMOVAL FOR LPRs

Eligibility Requirements (INA § 240A(a))

- ➡ 7 years of residence after being admitted to US
- ➡ 5 years as LPR at time become removable
- ➡ No aggravated felony convictions
- ➡ Merits maintaining LPR status

***Only available if in removal proceedings, not as an affirmative application**

Stop-Time Rule, INA § 240A(d)

- If your LPR client is convicted of a removable offense, the *date of commission* of that removable offense “stops clock” on the amount of time they’re in LPR status for the purpose of LPR cancellation.

Example

Viktor entered US on visitor visa in Jan. 2014 and became LPR in Jan. 2015. He was arrested for drug possession in Nov. 2019 and convicted in Jun. 2020.

Is Viktor eligible for LPR cancellation?

IS VIKTOR STATUTORILY ELIGIBLE?

1. Residence in US for 7 years?

- No, only 6 years, but he may get another year while in removal proceedings.
- Yes, if his merits hearing is on or after Jan. 2021

2. LPR status for 5 years?

- No, the date of commission of the offense was in Nov. of 2019 and the “stop-time” rule goes into effect when the offense was committed, not when there is a conviction.
- Yes, if the date of commission was anytime after Jan. 2020

3. Aggravated felony convictions?

- NO!



212(h) Waiver of Inadmissibility

STATUTORY REQUIREMENTS

- Are an LPR or are applying to become an LPR
- Convicted of an inadmissible crimes:
 - CIMT(s)
 - Engaging in prostitution
 - 2+ convictions with total sentence of 5+ years' imprisonment
 - One conviction for possession of $\leq 30g$ of marijuana or certain marijuana-related offenses
- Meet one of the following:
 - USC/LPR parent, spouse, or child would **suffer extreme hardship** if client removed
 - Inadmissible incident(s) occurred 15+ years ago and client is rehabilitated
 - Inadmissible only under prostitution ground + client is rehabilitated
 - VAWA self-petitioner
- Merits discretion

WATCH OUT!

- There is a heightened standard for “dangerous or violent” convictions, ex: Denial will result in **“exceptional and extremely unusual”** hardship (to themselves or qualifying relatives) or harm to national interest.
- Drug Convictions disqualify ALL applicants

Pro's of 212(h):

- ▶ Can apply multiple times for 212(h) waiver
- ▶ Once waived, convictions cannot be used to charge as removable (ie: return from abroad)
- ▶ EXCEPT where client has new removable offenses

EXAMPLE

- ▶ Client has been LPR since 2000. In 2009, they were convicted of possession of cocaine. In 2012, they were granted cancellation of removal for LPRs.
- ▶ In 2020, client is convicted of felony grand theft, PC 487 (a CIMT).

IS CLIENT ELIGIBLE FOR IMMIGRATION RELIEF?

ANALYSIS OF ELIGIBILITY

- LPR cancellation?
 - NO – A person can only be granted this form of relief once in their lifetime.
- 212(h) waiver?
 - Yes, a Felony CIMT can be waived
 - BUT, prior drug conviction bars client from 212(h) waiver

A large, dark, irregular ink blot with the word "Asylum" written in white in the center. The blot has a textured, splattered appearance with some lighter areas and small droplets around its edges.

Asylum

STATUTORY REQUIREMENTS

- Must have a reasonable fear that if returned to country of origin they will be persecuted based on race, religion, national origin, political views or membership in a particular social group.
- Cannot have any of the following:
 1. Conviction of a “particularly serious crime”
 2. Commission of a serious non-political crime outside the U.S.
 3. Reasons to believe that you are a danger to the security of the U.S.
 4. Participation in terrorist activities, or
 5. Persecution of others.


EXAMPLE

- ▶ Client arrived in the US in 1999 and has been LPR since 2000. In 2003, they were convicted of simple possession of a controlled substance in violation of Health and Safety Code 11377. Client accepted Prop 36 probation, pleaded guilty, completed probation successfully, and the case was dismissed pursuant to Penal Code 1210.1(a).
- ▶ During client interview they expressed significant fear of returning to their country of origin because they are homosexual and fled to the US because they were severely beaten during a rally in support of gay rights. One of the many times they suffered abuse in front of police at the hands of anti-gay mobs.

IS CLIENT ELIGIBLE FOR IMMIGRATION RELIEF?

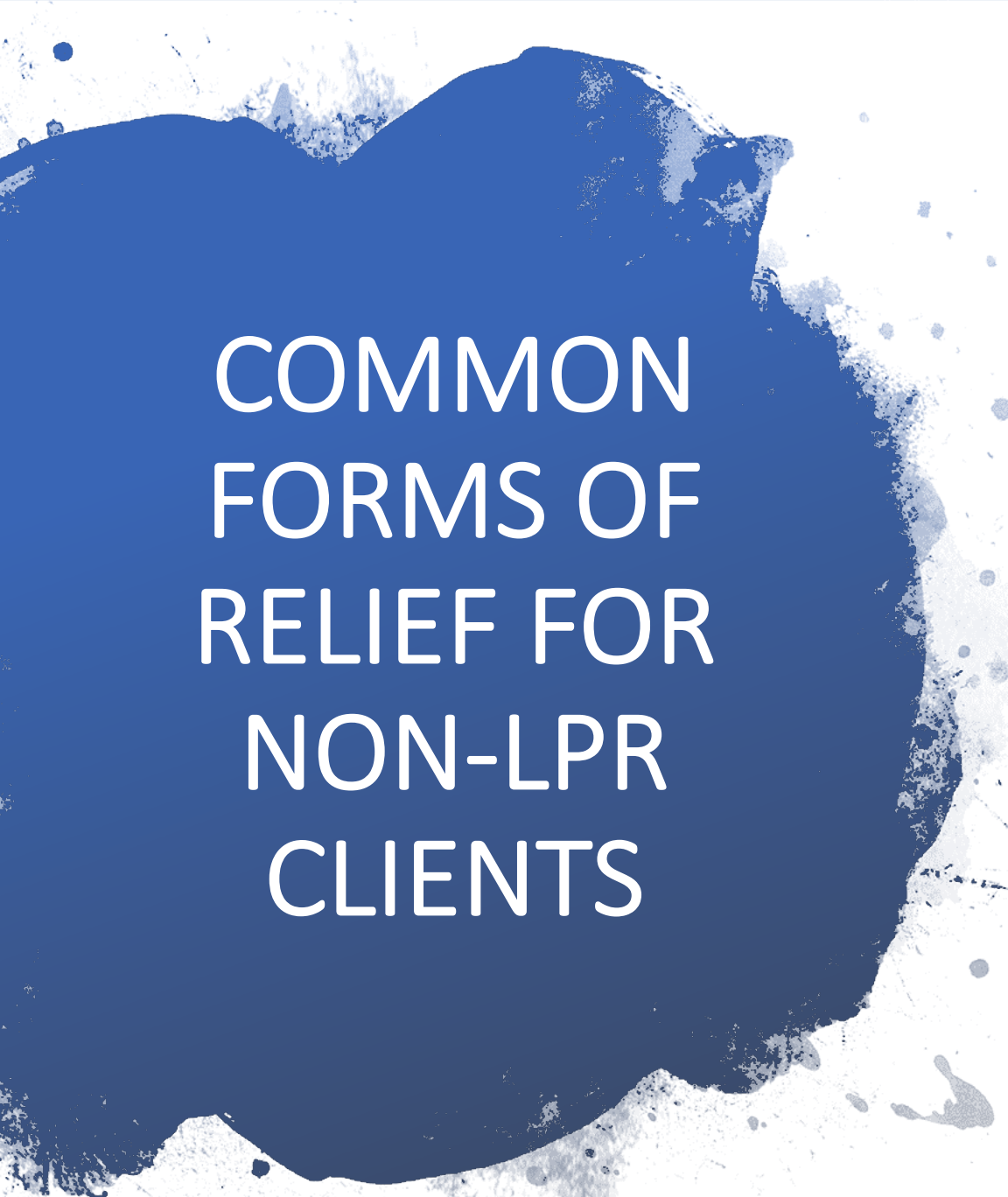
ANALYSIS OF ELIGIBILITY

- LPR cancellation?
 - No, deportable conviction within 5 years of LPR
- 212(h) waiver?
 - No, a drug conviction bars client from 212(h) waiver
- Asylum?
 - Yes, client has a reasonable fear of persecution in country of origin and a misdemeanor drug conviction does not preclude eligibility.
 - Generally, a misdemeanor that is not an aggravated felony is not a PSC. *Matter of Juarez*, 19 I&N Dec. 664 (BIA 1988).



If your client is not LPR

1. Seek help from an attorney who practices criminal and immigration law!
2. Determine which form of relief this client is eligible for.
3. Secure a plea that ensures the client remains eligible for one or more forms of relief.



COMMON FORMS OF RELIEF FOR NON-LPR CLIENTS

- **Non-LPR Cancellation of Removal**
 - INA § 240A(b) application
- **Victims of a Crime**
 - VAWA
 - U-Visa
- **Deferred Action for Childhood Arrivals**
 - DACA
- **Fear of returning to home country**
 - Asylum
 - Withholding of removal under INA
 - Deferral of removal under CAT



CANCELLATION OF REMOVAL FOR NON-LPRs

Eligibility Requirements (INA § 240A(b))

- ➔ 10 years of residence in US
- ➔ US Citizen or LPR parent, spouse, or unmarried child under 21 years of age that will suffer exceptional and unusual hardship if client is deported
- ➔ No aggravated felony, controlled substance, domestic violence, CIMT (≥ 1 year max possible sentence and $>$ six-month actual sentence), or firearms convictions
- ➔ 10 years Good Moral Character
- ➔ Merits Hearing

***Only available if in removal proceedings, not as an affirmative application**

Example

Viki entered US without inspection in 1998 with her mother; she was 12 years old. In 2010, she gave birth to a US citizen child. The child has cerebral palsy. In 2016, she was convicted of petty theft, PC 484, a CIMT, with a 1-day sentence.

Is Viki eligible for non-LPR cancellation?

IS VIKI STATUTORILY ELIGIBLE?

1. Residence in US for 10 years?

- Yes, she has been in the US for twenty-two years.

2. US Citizen or LPR parent, spouse or child under 21 that will suffer hardship if she is deported?

- Yes, her child is 10 years old and has cerebral palsy

3. Good Moral Character for 10 years?

- No statutory bars under INA 101(f)
- **But, judge will balance positive and negative factors to determine GMC**

4. Disqualifying convictions?

- No, AF, C/S, DV, guns
- Yes, CIMT! BUT..., sentence < 6 months and max possible sentence is < 1 year, falls within the exception!



Deferred Action
for Childhood
Arrivals
“DACA”

Eligibility Requirements

- Arrived in US before 16th Birthday
- Continuous Residence since June 15, 2007
- Physically present in the US, undocumented and under the age of 31 as of June 15, 2012
- Currently in school or have completed high school, obtained a GED or honorably discharged from the Coast Guard or Armed Forces
- No convictions for felony, significant misdemeanor, 3+ misdemeanors, or pose a national security threat

***Affirmative application ONLY**

Example

Viki entered US without inspection in 1998 with her mother; she was 12 years old. In 2010, she gave birth to a US citizen child. The child has cerebral palsy. In 2016, she was convicted of petty theft, PC 484, a CIMT, with a 1-day sentence.

Is Viki eligible for DACA?

IS VIKI STATUTORILY ELIGIBLE?

1. Arrived in the US before 16th birthday?

- Yes, she arrived when she was 12 years old.

2. Continuous residence since 2007?

- Yes, she has never left the US since arriving in 1998.

3. Physically present, undocumented and under the age of 31 on 06/15 /2012?

- Yes, she was 26, present and undocumented in 2012

4. Disqualifying convictions?

- No, felony, significant misdemeanor or 3+ misdemeanor convictions
- Petty Theft is a CIMT but it is not a “significant misdemeanor” for DACA.



Violence Against Women Act: “VAWA”

Eligibility Requirements

INA § 240A(b)(2)

- ▶ **Victim of abuse by a USC or LPR spouse or USC or LPR adult child and abuse occurred during the marriage**
- ▶ **The abuse amounts to “extreme cruelty” (8 CFR § 204.2(c))**
- ▶ **Physical presence in the US + “good moral character” for three years**
- ▶ **No convictions for deportable or inadmissible crimes**
 - ▶ 8 USC §§ 1227(a), 8 USC §§ 1182(a)(2-3), 8 USC § 1229b(b)(2)(A)(iv).

***Affirmative and defensive application**

Example

Victoria is undocumented and was placed in removal proceedings after an arrest for a DV battery conviction in 2017. She was married to an abusive USC spouse from 2010 to 2018.

Is Victoria eligible for VAWA relief?

IS VICTORIA STATUTORILY ELIGIBLE?

1. Abused by USC spouse?

- Yes, she was abused, reported it to police and eventually fought back in 2017.

2. Abuse amounts to “extreme cruelty”?

- Yes, she reported the abuse to police multiple times.

3. Physically present in US for 3 years?

- Yes, she has been in the US and married to USC husband since 2010.

4. Good Moral Character for 3 years preceding the application?

- **No, DV Battery conviction in 2017**
- Yes, if the court follows the reasoning that the offense was related to the abuse and could be waived under INA § 212(h)

5. Disqualifying convictions?

- **Yes, if the court finds the DV battery conviction to be deportable DV conviction**
- No, if the court follows the reasoning above.

RESOURCES

- ▶ **Keri Nesbitt (she/ella), Law Office of Vanessa Frank, Immigration Attorney**
 - ▶ **Email: Keri@vanessafranklaw.com**
- ▶ **Mx. V. Starrett (they/ellx), Deputy Public Defender, Immigration Specialist**
 - ▶ **Email: V.Starrett@Ventura.org**
- ▶ **Immigrant Legal Resource Center (www.ilrc.org)**
 - ▶ **[ILRC's chart for common CA Offenses](#)**
- ▶ **Defending Immigrants Partnership (www.defendingimmigrants.org)**
- ▶ **Immigrant Defense Project (www.immigrantdefenseproject.org)**
- ▶ **National Immigration Project of NLG (www.nationalimmigrationproject.org)**



QUESTIONS
AND
ANSWERS