

UNDOCUMENTED NON-CITIZENS

WHAT YOU NEED TO KNOW

Most people in Immigration Court that have been in the US for more than ten years will apply for NON-Cancellation of Removal. To apply a person must:

1. Have ten years in the US
2. Have good moral character
3. Show an exceptional and extremely unusual hardship to a US citizen or LPR spouse, child or parent

If granted the person receives a green card.

For Non-LPR Cancellation the applicant must provide evidence of **physical presence**. This evidence is the most common requirement among all forms of immigration relief (212(h) waivers, LPR Cancellation of Removal, DACA, Naturalization, 245(i), TPS, NACARA, etc.).

If there is a change in the immigration law that includes Amnesty or some other form of relief there will be *a physical presence requirement* placed on applicants. Building a package to present to an immigration attorney in the event you are arrested and/or placed in removal proceedings, and in anticipation of the law changing, is the most impactful action a non-citizen can do to protect their future and exercise their right to stay in the U.S.

The U.S. Census has estimated that there are eleven million undocumented people in the US. If history is any indication of the future, when a change in the law allows for relief it will take USCIS years to adjudicate the applications. Any person applying through this process will want to file immediately to be at the front of the line.

WHAT YOU SHOULD DO NOW

When there is a change in law allowing for amnesty a showing of physical presence will support a Motion for Bond, an Application for Cancellation of Removal and any future forms of relief with USCIS and or the Immigration Court.

1. Build a package of evidence for physical presence. The most common forms of evidence for physical presence are:

- Federal income tax returns
- School records
- Medical records
- Lease agreements
- Bank records
- Billing statements

Evidence of a person's presence can take almost any form including affidavits from family and friends, pictures and anything else placing them in the US.

2. File your federal income taxes in the years that you earned more than the IRS threshold requiring an individual to file. Get the help of a qualified CPA. Unqualified tax service providers filing on behalf of their clients frequently bring greater scrutiny from USCIS and Immigration Judges.

A failure to file federal incomes taxes when required or taking erroneous deductions can prevent a granting of an immigration benefit.

3. If a non-citizen has a criminal record they need to determine if it is going to have an immigration consequence. The consequences may differ depending on the type of benefit the non-citizen applies for. If you have been convicted of a misdemeanor in the State of Georgia you have a statute of limitation of one year from the date of the plea to challenge the conviction. You have a statute of limitation of four years in the case of a felony in a Petition for Habeas Corpus.

4. If a non-citizen is not absolutely sure about their criminal record from all prior arrests they will need to get a copy of their criminal rap sheet from the FBI. It is very common for non-citizens to go to court and enter a guilty plea but not be aware that they now have a criminal record. The individual may know they paid a fine or were on probation but was not aware of the criminal record or the collateral consequences of their plea.

5. If a non-citizen has previously filed an application, had a petition filed on their behalf, has previously been in immigration court, or been caught by ICE, CBP or the US Border Patrol they should get a copy of their immigration files from:

- all prior attorneys
- USCIS
- Immigration Court File
- CBP/US Border Patrol (if applicable)

Dates and facts become more difficult to accurately recall over time. USCIS & Immigration Judges can draw a negative inference about the credibility of an applicant from inadvertent inconsistencies in the facts provided on different applications.

Call all prior attorneys who have represented you with USCIS, INS, Immigration Court or other government agency to get a copy of your file. You are entitled to it but expect to pay a reasonable fee for copies.

You can get a copy the government's files by submitting a FOIA request to each appropriate agency. A FOIA request should be done immediately as some agencies take many months to produce a copy of requested files.