

FORMS OF RELIEF TO PREVENT REMOVAL*

**The chart referenced below is not an exclusive list and does not expressly provide all requirements and bars to the forms of relief discussed above. Further analysis is recommended when seeking to pursue any of the below-listed forms of relief. The original below-referenced chart was originally produced by Bryan Lonagan, Immigration Law Unit of the Legal Aid Society of New York. Revisions of the chart were provided by Paromita Shah of the National Immigration Project and the New York State Defenders Association Immigrant Defense Project.*

<u>SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)</u>	<u>SPECIAL VISAS</u>	<u>ADJUSTMENT OF STATUS</u>
<ul style="list-style-type: none"> · A child is eligible for SIJS if: The child is deemed to require long term foster care (i.e., under age of 18 yrs and a juvenile court has determined that family reunification is no longer viable) or · Child was committed to the custody of a state agency or dep't due to abuse, neglect or abandonment. · The applicant must also be under 21 yrs of age and unmarried at the time of obtaining SIJS. ·If a juvenile is in DHS custody, DHS' consent to the juvenile court's jurisdiction must be obtained before dependency proceedings are initiated. ·Must establish: <ul style="list-style-type: none"> ·juvenile's date and place of birth ·date and manner of entry into US ·current immigration status ·whereabouts and status of parents ·evidence of abuse, neglect or abandonment ·reasons why not in child's best interest to return to native country ·type of proceedings before the juvenile court. 	<p><u>T VISA: TRAFFICKING VICTIMS PROTECTION ACT OF 2000</u></p> <ul style="list-style-type: none"> · Subject to "severe trafficking" · Agree to assist in enforcement or is less than 18 yrs old and · Would suffer "extreme hardship involving unusual and severe harm upon removal" · Limited waiver for crimes <p><u>S VISA: INFORMANT VISA</u></p> <ul style="list-style-type: none"> · For alien who provides important information on a criminal org or terrorist org · Need written agreement with law enforcement <p><u>U VISA: VICTIM OF A CRIME</u></p> <ul style="list-style-type: none"> · Suffered substantial physical or mental abuse as a result of being a crime victim for certain crimes (i.e., trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation) · Possesses information of crime · Helpful in prosecution as certified by gov't official 	<p>If the alien is admitted, paroled and has an approved petition, he/she may adjust if:</p> <ul style="list-style-type: none"> · The alien is eligible to receive an immigrant visa · The alien is admissible, and · An immigrant visa is immediately available <p>*NOTE: If alien entered without inspection, petition must be filed on or before April 30, 2001 pursuant to INA §245(i)</p> <p><u>FAMILY PREFERENCE CATEGORIES:</u></p> <ul style="list-style-type: none"> · Spouse of USC · Parent of USC (USC child +21 yrs) · **Child of USC (child unmarried & -21 yrs) <p>**AGING OUT PROBLEM: **Immediate Relative Child must be -21 yrs of age ONLY at the time petition (i.e., Form I-130 Petition) is filed pursuant to CSPA</p> <p><u>OTHER FAMILY PREFERENCES:</u></p> <ul style="list-style-type: none"> 1st · Unmarried child (+21 yrs) of USC 2A · Spouse of LPR and unmarried child (-21 yrs) of LPR 2B · Unmarried child (+21 yrs) of LPR 3rd · Married child of USC 4th · Siblings (+21 yrs) of USC

**CANCELLATION OF
REMOVAL FOR LPRs**

- LPR for 5 yrs
- 7 years residence in US before:
 - * served Notice to Appear or
 - * commits inadmissible or deportable offense
- No Aggravated Felony conviction
- Positive outweighs negative factors

WAIVERS

INA §212(c) WAIVER FOR LPR

- LPR
- 7 yrs domicile in US
- Pled guilty before 4/24/96 to an inadmissibility or deportable offense referred to in inadmissibility grounds
- Not served 5 yrs or more term of imprisonment
- Positive outweighs negative factors

INA §212(h) WAIVER

- If a crime renders alien inadmissible, waiver is available for certain inadmissible offenses if
 - Not a drug offense (except for one time simple possession of 30 gms of marihuana)
 - not murder or torture
 - * Alien is spouse, parent, son or daughter of USC or LPR and
 - * Denial of alien's admission would be an extreme hardship for relative
 - * AG must consent
- OR-
- Activities of inadmissibility occurred more than 15 years before the date of admission, visa application or adjustment of status and admission is not contrary to the national welfare, safety or security of the US. Applicant must show rehabilitation. (*exception: 15 years not required to waive inadmissibility for prostitution*).
- If LPR, needs 7 yrs. residence + no Agg Fel
- VAWAs don't need to show hardship to relative

**CANCELLATION OF
REMOVAL FOR NON-LPRs**

- 10 years presence required:
- 10-yr presence stops when:
 - * served Notice To Appear or
 - * commits inadmissible or deportable offense
 - * single absence of +90 days or
 - * aggregate absence of +180 days
- Good moral character for 10 yrs
- To depart would cause extreme hardship to LPR/USC spouse, child, parent

VAWA CANCELLATION

- If USC or LPR spouse or parent is abusive, alien can get cancellation
- Continuous presence for 3 years
- Good moral character
- Be admissible and no Aggravated Felony

<p><u>ASYLUM</u></p> <ul style="list-style-type: none"> • Unable or unwilling to return where alien persecuted or has a well founded fear of persecution on account of: <ul style="list-style-type: none"> • race, • religion, • nationality, • membership in a particular social group, or • political opinion • Generally, rule requires that an application be filed within one year of arrival in US (absent certain exceptions such as “changed circumstances”) • Barred if convicted of an Agg Fel • Barred if convicted of “particularly serious crime” (drug trafficking is presumptively a PSC) • Asylees can apply to adjust status after one year and use 209(c) waiver of inadmissibility, if necessary 	<p><u>WITHHOLDING OF REMOVAL</u></p> <ul style="list-style-type: none"> • Prohibits return of alien where life or freedom would be threatened because of: <ul style="list-style-type: none"> • race, • religion, • nationality, • membership in a particular social group, or • political opinion • Barred by PSC • Barred by Agg Fels w/ aggregate sentence of five years 	<p><u>CONVENTION AGAINST TORTURE</u></p> <ul style="list-style-type: none"> • Would suffer severe pain and suffering • Intentionally inflicted • For an illicit purpose • By or at the instigation of or with acquiescence of a public official who has custody and control of victim • Not arising from lawful sanction
<p><u>TEMPORARY PROTECTED STATUS (TPS)</u></p> <ul style="list-style-type: none"> • For designated countries • Must be admissible • Barred by felony or any 2 misdemeanors 	<p><u>VOLUNTARY DEPARTURE</u></p> <ul style="list-style-type: none"> • Not for arriving aliens • No Aggravated Felony conviction • No prior removal order • Granted up to 120 days to depart <p><i>If requested at end of proceedings:</i></p> <ul style="list-style-type: none"> • Physically present for 1 yr+ • Good moral character for 5 yrs+ • Granted up to 60 days to depart 	<p><u>MANDATORY DETENTION</u></p> <ul style="list-style-type: none"> • Applies only to those released from custody after 10/9/98 * Arriving aliens are ineligible for bond * For LPR <ul style="list-style-type: none"> * 2 CIMTs * 1 CIMT w/1yr sentence within 5 years of admission * Agg Fel * Controlled substance offense * Firearms offense * For EWI <ul style="list-style-type: none"> * One CIMT (subject to petty offense exception) * Controlled substance offense * Drug trafficking offense * 2 or + offenses with aggregate of 5 yrs * Prostitution * Domestic violation or violation of protection order