

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

**FILED**

AUG 15 2005

MAGISTRATE JUDGE ARLANDER KEYS  
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA	)
	)
Plaintiff,	)
	)
	)
Vs.	)
	)
PRAFUL CHHEDA	)
JASVANT B. ZAVERI.	)
VANSANT K. PATEL	)
	)
	)
Defendants.	)

No. 05 CR 0669 -

**MEMORANDUM OF LAW IN SUPPORT OF THE FACT THAT  
MR. ZAVARI IS ENTITLED TO APPLY FOR THE RELIEF OF  
CANCELLATION OF REMOVAL**

Reza Baniassadi  
Law Office of Reza Baniassadi  
Attorney for Defendant, Zaveri  
180 N. LaSalle Street  
Suite 1921  
Chicago, IL 60601

312/ 201-1210

## Question

Whether an illegal alien who has been residing in the United States for more than ten years, has no criminal conviction and has a United States citizen child who is mentally ill is entitled to apply for Cancellation of Removal in a deportation proceeding before an immigration Judge ?

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FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA	)	
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Plaintiff,	)	
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Vs.	)	No. 05 CR 0669
	)	
PRAFUL CHHEDA	)	
JASVANT B. ZAVERI.	)	
VANSANT K. PATEL	)	
	)	
	)	
Defendant.	)	

**A. STATEMENT OF FACTS**

The Defendant, Mr. Jaswant Zaveri is a native and citizen of India. He entered the United States as a non immigrant visitor for pleasure in or about May 1993. He is married and has three children. Two of his children were born in India and one was born in the United states. His United States child is ill and suffering from Down Syndrome. Mr. Zaveri has never departed from and been continuously residing in the United States since May 1993.

The defendant, Mr. Jaswant Zaveri is eligible for the relief of cancellation of removal because he meets all the Statutory Requirements for such relief under §240A(b) of the Immigration And Nationality Act, (INA). He has been physically present in the United States for a continuous period of not less than ten years. He has been a person of good moral character during that period and has not been convicted of any offence and his deportation would result in extreme and exceptional hardship to his United States citizen child.

## ARGUMENT

### A. AUTHORITY

Immigration and Nationality Act, (INA) §240A(b) provides for cancellation of removal and adjustment of status to that of lawful permanent resident for those aliens who can establish the following:

- 1. Physical presence in the United States for a continuous period of not less than 10 years preceding the date of such applications;
- 2. Good moral character during the 10-year period, plus: no conviction for any offense designated under INA §212(a)(2) (criminal and related grounds), §237(a)(2) (criminal offenses), or §237(a)(3) (failure to register and falsification of documents); not inadmissible under INA §212(a)(3) (security grounds); and not deportable under INA §237(a)(4) (security and related grounds); and
- 3. Removal from the United States would result in exceptional and extremely unusual hardship to the alien's U.S. citizen or Lawful Permanent Residence spouse, parent, or child.

#### I. Continuous Residence or Physical Presence

**a. Requirements-** To meet the requirement of continuous presence an alien must not have:

- Departed the United States for any one period in excess of 90 days; or
- Departed the United States for any one period in the aggregate exceeding 180 days.

**b. Termination-**Continuous presence is terminated upon

- The service of an NTA (replacing the old "Order to Show Cause" (OSC)) under INA §239(a);

**c. Armed Forces Personnel -**Aliens who have served for a minimum period of 24

months on active duty status in the U.S. Armed Forces, and if separated from service were separated under honorable conditions, and at the time of the alien's enlistment or induction were physically in the United States, are exempted from the continuous physical presence provisions.

The Defendant, Mr. Zaveri, meets the statutory requirement of residency because he has been residing in the United States for more than ten years and never departed this Country since he arrived in 1993 and none of the above exception is applicable to him.

## **II Good Moral Character**

To establish a showing of good moral character:

The alien must demonstrate that he or she has been a person of good moral character during the qualifying 10-year period of presence in the United States, which includes showing that he or she is not barred under INA §101(f).

### **a. No Convictions for Certain Crimes**

As previously noted, an applicant is barred by a conviction for any non-petty offense designated under INA §212(a)(2) (criminal and related grounds), §237(a)(2)(A)(multiple moral turpitude offenses, aggravated felonies, controlled substance offenses, firearm offenses, domestic violence convictions after September 30, 1996) or §237(a)(3) (failure to register and falsification of documents).

The Defendant, Mr. Zaveri, meets the good moral character requirement of §240A(b) of the ACT because he has never been convicted of any crime. The Defendant has only been charged with committing a criminal act which is the subject of this proceeding.

### **III. Exceptional and Extremely Unusual Hardship**

a. The alien must establish that his or her removal from the United States would result in exceptional and extremely unusual hardship to the alien's U.S. citizen or Lawful Permanent Residence spouse, parent, or child.

In assessing hardship, relevant factors are assessed both individually and collectively. *See Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001); *Matter of O-J-O-*, 21 I&N Dec. 381 (BIA 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). This standard is substantially more restrictive than the standard imposed under former INA §244(a)(1), which allowed an alien who had been in the United States for at least seven years and was of good moral character to qualify for suspension of deportation upon a showing of extreme hardship personally or to a qualifying family member. The current law not only increases the threshold level hardships, but also bars consideration of hardship to the applicant himself or herself. The only hardships that are considered are those to a U.S. citizen or Lawful Permanent Residence spouse, parent or child (under the age of 21).

The Defendant, Mr. Zaveri meets the statutory requirements of hardship because his United States citizen child is mentally ill and is suffering from Down Syndrome. His child has been receiving proper medical treatment and special education. If Mr. Zaveri is deported to India, he will be unable to provide the same standard of living, medical treatment and special educational for his citizen child in India.

There is extreme difference in educational opportunities between the United States and India which should be properly evaluated. In *Plyer v. Doe*, 457 U.S. 202, 221-22 (1982), the United States Supreme Court, in refusing to deny public education to undocumented alien

children, underscored the fundamental importance of "education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child." *Id.* at 221. The court reiterated that education, in a sense, was not a public benefit, but an essential tool and means for the preservation of the very "freedom and independence" that this great country enjoys. *Id.* The court summed up by stating that "education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." *Id.* "It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." *Id.* at 223. Thus, depriving United States children of a sound and fundamental education is not without repercussion.

The Board, in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978), in laying down the factors that constitute "exceptional and extremely unusual hardship," among others, took into account the health of the qualifying child, or compelling special needs at school, a lower standard of living or adverse country conditions in the country of return as factors to consider. *Id.* at 597. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship. *Matter of Kao and Lin, Supra.*

The Defendant's child was borne and reared in the United States. This is the only place he has called home and never set foot outside of this country, let alone India. He is unable to write in Hindi. In addition, he is mentally retarded and needs Special Education. The Education that would not be available for Defendant's child in India.

**b. Aliens Ineligible to Seek Cancellation of Removal**

**c. Crewmembers-**An alien who entered the United States as a crewmember subsequent to June 30, 1964;

**d. Exchange Visitors (i.e. admitted in J status)**

**Medical-**An alien who entered as a J-1 non-immigrant exchange visitor or acquired this status in order to receive graduate medical education or training, regardless of whether the alien is subject to the two-year foreign residence requirement of INA §212(e) or whether the alien has fulfilled the two-year requirement;

**Non-medical-**an alien (non-medical) who entered the United States on a J visa or acquired J status and is subject to the two-year foreign residence requirement, and either has not fulfilled the foreign residence requirement or has not received a waiver of the requirement;

**e. Security-** An alien inadmissible under INA §212(a)(3) (security and related grounds) or deportable under INA §237(a)(4) (security and related grounds);

**f. Persecutors-**An alien described in INA §241(b)(3)(B)(I) (ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion); or


**g. Prior Relief** An alien whose removal has been canceled previously under this section or whose deportation was suspended under former INA §244(a), or who has been granted relief under former INA §212(c).



**B. CONCLUSION**

Based on the above argument, Mr. Zaveri meets all the statutory requirements for cancellation of removal under INA §240(b), and he is entitled to apply for said relief before an Immigration Court.

Respectfully Submitted  
Jasvant Zaveri

BY:   
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Reza Baniassadi

Reza Baniassadi  
Law Office of Reza Baniassadi  
Attorney for Defendant, Zaveri  
180 N. LaSalle Street  
Suite 1921  
Chicago, IL 60601

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