

## Immigration Court: BIA

Case: *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019)

Date: October 25, 2019

Referred to &amp; Opinion by: Attorney General William Barr

Tags: Cancellation of Removal, Good Moral Character, DUI convictions

**Question Presented:** Whether two convictions for DUI within the relevant GMC period establishes a rebuttable presumption that the noncitizen lacked GMC for cancellation of removal.

**Holdings:**

1. “The Immigration and Nationality Act’s ‘good moral character’ standard requires adherence to the generally accepted moral conventions of the community, and criminal activity is probative of non-adherence to those conventions.” 664
2. “Evidence of two or more convictions for driving under the influence during the relevant period establishes a presumption that an alien lacks good moral character under INA § 101(f), 8 U.S.C. § 1101(f).” 664
3. “Because only aliens who possess good moral character for a 10-year period are eligible for cancellation of removal under section 240A(b) of the INA, 8 U.S.C. § 1229b(b), such evidence also presumptively establishes that the alien’s application for that discretionary relief should be denied.” 664

**Rationale:**

- “This case presents an opportunity to promote the uniform and fair enforcement of the immigration laws by clarifying how an alien’s DUI convictions affect his eligibility for cancellation of removal.” 669

**Facts:** (668) Mexico. EWI 1997. Married, 3 USC children. 2001 and 2006 arrested for assault and battery of his wife. 2004 charged with public drunkenness; 2005 convicted of negligent driving. 2010 and 2012, convicted of DUI. Stopped drinking, attends AA meetings and completed alcohol-safety program.

**Procedural History:**

- NTA’d 2010
- 2016: IJ granted 42B relief despite R’s multiple DUIs and other criminal history, finding good stuff outweighed the bad.
- BIA vacated IJ’s decision and ordered R removed—hardship & GMC issues.
- Acting A.G. Matthew Whitaker directed Board to refer case to him for review.
- A.G. William Barr issued this opinion.

**Appeals to Statute & Precedent:**

- INA § 240A(b)(1), 8 U.S.C. § 1229b(b)(1): cancellation of removal for non-LPR; must establish GMC for 10 years preceding application.
- *Moncrieffe v. Holder*, 569 U.S. 184, 204 (2013): discretionary judgment on cancellation cases
- *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 581 (2010): same

- ***Matter of Gomez-Beltran*, 26 I&N Dec. 765, 766 (BIA 2016)**: applicant bears burden of showing both eligibility requirements and favorable exercise of discretion.
- ***Matter of C-V-T*, 22 I&N Dec. 7, 10 (BIA 1998)**: same
- **Good Moral Character standard:**
  - INA § 316(a), 8 U.S.C. § 1427(a): naturalization statute
  - INA § 240B(b)(B), 8 U.S.C. § 1229c(b)(1)(B): voluntary departure
  - INA § 245(1)(B), 8 U.S.C. § 1255(1)(1)(B): AOS for trafficking victims
- ***United States v. Jean-Baptiste*, 395 F.3d 1190, 1193 (11<sup>th</sup> Cir. 2005)**: stating what GMC *isn't*
- **INA § 101(f), 8 U.S.C. § 1101(f)**: “no person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established is, or was,” a person falling within any of eight listed categories. (e.g., habitual drunkard (1), false testimony for benefits (6), aggravated felony (8)) – or within a catch-all provision.
- ***United States v. Franciosi*, 164 F.2d 163, 163 (2d Cir. 1947)**: GMC under the INA requires “adherence to, as Judge Learned Hand put it, ‘the generally accepted moral conventions’ of the community.” 667
- ***Black's Law Dictionary* 808 (10<sup>th</sup> Ed. 2014)**: defining GMC as “a pattern of behavior that is consistent with the community’s current ethical standards and that shows an absence of deceit or morally reprehensible conduct”
- **8 C.F.R. § 316.10(a)(2)**: GMC for naturalization requires DHS to consider “the standards of the average citizen in the community of residence.
- ***Hawker v. New York*, 170 U.S. 189, 196 (1898)**: “It is not open to doubt that the commission of crime . . . has some relation to the question of character.”
- ***Matter of B-*, 1 I&N Dec. 611, 612 (BIA 1943)**: re. “single lapse” vs. multiple criminal convictions
- ***Matter of Sotelo-Sotelo*, 23 I&N Dec. 201, 203 (BIA 2001) (en banc)**: “More serious misconduct necessarily weighs more heavily against an exercise of discretion than does less serious misconduct. Therefore, an alien must present ‘additional offsetting favorable evidence’ to counterbalance an adverse factor such as serious criminal activity.” (quoting ***Matter of Marin*, 16 I&N Dec. 581, 585 (BIA 1978)**)

### Relevant U.S. History:

- During Trump’s first term, there were three A.G.s:
  - Jeff Sessions 2017-11/2018
  - Acting A.G. Matthew Whitaker (11/2018-2/2019)
  - William Barr (2/2019-2020)
- “The concept of good moral character has been part of the United States’ immigration laws since the earliest days of the Republic.” 666
  - First federal naturalization statute (March 26, 1790, ch. 3, 1 Stat. 103, 103): noncitizen must “make proof to the satisfaction of a court that he is a person of good character”
  - Second naturalization law (Act of Jan. 29, 1795, ch. 20, § 1, 1 Stat. 414, 414): “good moral character”
  - Present naturalization requirement (INA § 316(a), 8 U.S.C. § 1427(a))
- Under INA, since 1997, 42B cancellation of removal is only available to 4,000 people per year.
  - 3500 are filled within a day annually, so IJs started “reserving” decisions until subsequent fiscal years. (500 reserved for during the year.)

**Discussion:**

- “Here, because the evidence of the respondent’s efforts to rehabilitate himself is insufficient to overcome this presumption, the Board correctly vacated the immigration judge’s decision to grant cancellation of removal.” 665
- “Despite the ubiquity of the good moral character standard, the INA ‘does not specifically define what good moral character is’—but it does ‘quite explicitly state[] what it is *not*.’ *United States v. Jean-Baptiste*, 395 F.3d 1190, 1193 (11<sup>th</sup> Cir. 2005).” 666 (internal quotations omitted)
- Re. GMC list: “The provision’s so-called ‘catch-all clause’ then explains: ‘The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.’ . . . In other words, an alien may lack good moral character even if he is not within one of those eight enumerated classes.” 667
- GMC requires adherence to the generally accepted moral conventions of the community 667
- “An alien’s criminal record is highly probative of whether he possesses good moral character.” 667
- “At the same time, a criminal record is not an absolute prerequisite to concluding that an alien lacks good moral character.” 667 (e.g., habitual drunkard, even if no arrests)
- “With demand for cancellation of removal well outstripping supply, immigration judges should grant such relief, in an evenhanded way, only to the most deserving candidates.” 669
- “Multiple DUI convictions during the relevant period are strong evidence that an alien lacked good moral character during that time and is thus not eligible for cancellation of removal.” 669
  - Per catch-all clause of section 101(f)
  - Nationwide consensus that this is BAD BEHAVIOR
  - “Multiple DUI convictions represent a repeated failure to meet the community’s moral standards, rather than a ‘single lapse’ that would be less probative of moral character.” 670
- “Multiple DUI convictions that involve alcohol should also prompt an immigration judge to assess whether the alien is or was a ‘habitual drunkard’ categorically lacking good moral character under section 101(f)(1) of the INA, 8 U.S.C. § 1101(f)(1).” 670n.2 (goes into prevalence of DUIs apart from DUI convictions)
- “Even setting good moral character aside, an alien with multiple DUI convictions would likely be denied cancellation of removal as a purely discretionary matter.” 670
  - Key factor for discretion: “nature, recency, and seriousness” of criminal convictions. 671 (quoting *Matter of Sotelo-Sotelo* quoting *Matter of Marin*)
- “Given the reckless and dangerous nature of the crime of UI and the limited number of aliens who may be granted cancellation of removal each year, aliens with multiple DUI convictions are likely undeserving of such discretionary relief.” 671
- “I do not hold that [multiple DUI convictions within the relevant period] are conclusive evidence [of ineligibility].” 671 (contemplating “an unusual case” that can show the multiple convictions were an aberration)
  - Not enough to just show rehabilitation. 671

**Commentary:**

- 665n.1: “Although DUIs are the offense at issue here, nothing in this opinion prevents immigration judges or the Board of Immigration Appeals from taking into account other convictions, such as negligent driving, in determining whether to grant cancellation of removal.”
- Note *Matter of Ortega Cabrera*, 23 I&N Dec. 793 (BIA 2005) for understanding that GMC is continuing, **so it's counted backwards from the date of the administrative decision.**
  - So this is wrong: “The statute requires that good moral character be shown over the ‘continuous period of not less than 10 years immediately preceding’ the application.” 671
  - GMC period is continuous up to the administrative decision—otherwise you could get a conviction between filing the application and receiving a grant.