

Immigration Court: BIA

Case: *Matter of L-L-P-*, 28 I&N Dec. 241 (BIA 2021)

Date: February 24, 2021

Adjudicated by: Greer, Goodwin, Pepper

Opinion: Goodwin

Tags: Special Rule Cancellation of Removal,

Question Presented: Whether an applicant for special rule cancellation of removal must demonstrate that his or her spouse possessed U.S. citizenship or lawful permanent resident status at the time that the applicant was abused by and married to this spouse.

Holdings: Applicants for special rule cancellation of removal “must demonstrate both that the abuser was his or her lawful spouse and possessed either US citizenship or lawful permanent resident status at the time of the abuse.” 241

Rationale: Intent of VAWA legislation to protect noncitizens from spouses who have leverage over them because of their USC or LPR status. 247

Facts: (241-42) Mexico. Entered US EWI. Was married, but spouse became an LPR after they were no longer married.

Procedural History:

- **2001:** IJ denied application for 42B Cancellation of Removal. Granted VD. R reentered EWI.
- **2006:** New NTA, defective.
- **2012:** Tried to apply for VAWA but denied bcz failed to prove spouse’s immigration status
- **9/17/2019:** IJ denied application for special rule cancellation of removal bcz ^^.
- **2021:** BIA is remanding for regular 42B Cancellation because of change in law

Appeals to Statute & Precedent:

- **INA 240A(b)(2)(A)(i)(I) & (II):** Special rule cancellation of removal.
- ***Matter of M-L-M-A-*, 26 I&N Dec. 360 (BIA 2014):** 42B is a continuing application WRT physical presence & GMC, through final administrative order. But the abuse is fixed in time at a period where the applicant was married & spouse had status. (That R had already divorced abusive spouse.)

Discussion:

- Statute’s “provisions plainly state that an abusive spouse must be either a United States Citizen or a lawful permanent resident at some point in time.” 242
- Finds statute ambiguous: requires an alien “to have been battered or subjected to extreme cruelty by a spouse . . . who is or was” either USC or LPR.
 - “is” = either at the time of the abuse & marriage, or at the time the application for cancellation was filed. 243
 - Now they’ll consider Congress’s intent.

- Parenthetical phrases focus on child who “has been battered or subjected to extreme cruelty by such citizen parent” = present perfect tense, harm must have been committed by a “citizen parent.”
- So therefore spouse must also be citizen, and must be married to be “spouse,” so both factors must be present to claim abuse for special rule cancellation.
- Even if spouse later loses citizenship or LPR status, respondent can still apply for special rule cancellation if the abuse occurred during the marriage while spouse held one of these statuses. 245
- Congress’s goals with VAWA:
 - Give noncitizens a way out of an abusive relationship—don’t hang LPR status on remaining in that marriage. 247
 - “This goal clearly contemplates that the abusive US citizen or LPR spouse is actually able to use that status to benefit—or punish—his or her alien spouse.” 247
 - Doesn’t apply to non-LPR noncitizens, because those spouses can’t leverage their status.