

Immigration Court: BIA

Case: *Matter of Ortega Cabrera, 23 I&N Dec. 793 (BIA 2005)*

Date: July 21, 2005

Adjudicated by: Osuna, Hurwitz, Pauley

Opinion: Pauley

Tags: Cancellation of Removal, good moral character

Question Presented: When does the measurement period end for GMC in a cancellation of removal case?**Holdings:** “the period during which good moral character must be established ends with the entry of a final administrative decision by the [IJ] or the [BIA].” 793

- “. . . commission of a disqualifying act beyond the 10-year period looking backward from the date of the final administrative decision will not render an alien ineligible for relief on grounds of moral character.” 798

Rationale: Cancellation of removal applications are continuing applications for purposes of GMC, so we calculate this backwards from the date of the IJ’s decision. (If we didn’t do this, then some bad act in between the NTA/application and the final administrative decision would *not* render a person ineligible – e.g., false testimony or alien smuggling!) 793**Facts:** 793-94: Mexico. Wife & baby entered after husband paid a coyote. IJ denied 42B application on the grounds that his violation of the rule against aiding another to enter the US precluded a finding of GMC “because it occurred within the 10-year period preceding service of the NTA.” 794**Procedural History:**

- **12/1991:** Wife & baby entered with help of coyote
- **8/13/2001:** NTA served on respondents
- **4/8/2003:** IJ denied 42B application

Appeals to Statute & Precedent:

- **INA § 240A(b)(1); 8 U.S.C. § 1229b(b)(1) (2000):** Non-LPR cancellation of removal
- **INA § 212(a)(6)(E)(i); 8 U.S.C. § 1182(a)(6)(E)(i) (2000):** “any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.”
- **INA § 101(f)(3); 8 U.S.C. § 1101(f)(3) (2000):** good moral character definition; includes as bars false testimony & alien smuggling.
- **IIRIRA (1996):** enacted stop-time rule for continuous physical presence at issuance of NTA (**INA § 240A(d)(1)**)

Relevant U.S. History:

- BIA used to consider the physical presence requirement as continuing to accrue through BIA adjudication of appeal. IIRIRA in 1996 changed this with the “stop-time rule.” BIA construed the application as a continuous one.
 - “This approach allowed physical presence, as well as good moral character, to accrue up to and including the date that the application was resolved on appeal.” 795

Discussion:

- “. . . consistent with our long-established practice, the application would be treated as continuing beyond the date it is filed until a resolution by an Immigration Judge or the Board of Immigration Appeals is completed.” 795
- “We must therefore determine whether equating the good moral character period with the continuous physical presence period for purposes of eligibility for cancellation relief under section 240A of the Act is consonant with the good moral character definition in section 101(f).” 796
- Notes that the good moral character statute (§101(f)(6)) anticipates the possibility of denying relief to anyone “who has given false testimony for the purpose of obtaining any benefits under this Act.” If the GMC period ends with either the NTA or the filing of the application, then that “would mean that an alien who testified falsely at his or her hearing would not be ineligible for relief as lacking good moral character.” 796
- “Although the alien’s false testimony could be taken into account in the exercise of discretion, we think it highly likely that Congress intended such false testimony to act as a legal bar to relief as well.” 796
- “. . . there is no indication that Congress, in creating the “stop-time” rule, intended to alter the well-established practice of treating the application as a continuing one for purposes of assessing an alien’s good moral character.” 797
- “Accordingly, we conclude that when the provisions of sections 240A and 101(f) of the Act are read together, the relevant period for determining good moral character for purposes establishing eligibility for cancellation of removal must include the time during which the respondent is in proceedings, i.e., until the issuance of an administratively final decision on the application.” 797
- “The concept of a fixed 10-year period for determining good moral character, calculated backward from the date on which the application is finally resolved by an Immigration Judge or the Board, is also consonant with the manner in which a person’s character or the impact of his or her misconduct is typically judged, because with the passage of time, an individual’s bad act may fade in significance.” 797

Commentary:

- “In the wake of the IIRIRA, there are three possible interpretations of the applicable good moral character period, assuming that it encompasses a maximum of 10 years.” 795
 - 10-year period coterminous with physical presence period (ends with NTA)
 - 10-year period ending on date cancellation application is filed
 - 10-year period ending on date when final administrative decision is rendered.