Immigration Court: BIA

Case: ***Matter of Palma Olvera*****, 29 I&N Dec. 355 (BIA 2025)** **Date:** Referred 12/8/25

Adjudicated by: Hunsucker, Goodwin, Gemoets **Opinion:** Gemoets

Tags: Cancellation of removal, Good Moral Character, multiple DUIs, rebuttable presumption against GMC, "unusual case"

Question Presented: Did the IJ err in granting cancellation when Respondent had two DUI convictions, or did he correctly find that the Respondent had rebutted the presumption that he lacked GMC?

Holdings: IJ erred in finding that the Respondent had rebutted the presumption against GMC, when he had two DUIs in the statutory period and insufficient evidence of rehabilitation.

Rationale: "Caring for his son and maintaining gainful employment do not constitute an 'unusual case' sufficient to 'overcome the strong evidence' that the respondent lacked good moral character based on recidivist conduct involving DWI offenses that occurred while in the course of these proceedings." 356

Facts: (355-56) Mexican. Two DUI convictions, 2022 and 2024.

History of the Case:

- **December 9, 2024:** IJ granted cancellation application.
- **December 2024:** DHS appealed.

Appeals to Statute & Precedent:

- **INA § 240A(b)(1), 8 U.S.C. § 1229b(b)(1) (2024):** Cancellation of removal statute
  - **INA § 240A(b)(1)(B), 8 U.S.C. § 1229b(b)(1)(B) (2024):** Applicant must demonstrate GMC during previous 10 years and deserving of relief as a matter of discretion.
- **INA § 240(c)(4)(A), 8 U.S.C. § 1229a(c)(4)(A) (2024):** applicant for discretionary relief bears burden to demonstrate he satisfies eligibility requirements and merits a favorable exercise of discretion.
- ***Matter of Castillo-Perez*****, 27 I&N Dec. 664, 666 (A.G. 2019):** respondent must establish that he warrants relief as a matter of discretion. "[E]vidence of two or more convictions [of DUI] during the relevant period establishes a rebuttable presumption that the alien lacked good moral character during this time." 664

Relevant U.S. History: Trump 2.0.

Discussion:

- BIA already held (in *Castillo Perez*)that two DUIs within the 10-year period before the IJ's decision created a rebuttable presumption against GMC, which could only be overcome by citing exceptional circumstances. 356
- Ordinary things like being a responsible employee and caring for a QR don't overcome the presumption against GMC.
- Also, aggravating circumstances (like the amount of alcohol drunk, continuing to drink heavily after first DUI conviction, high BAC, lack of evidence of any rehabilitation or counseling) can scuttle your chances of overcoming the presumption. 356-57

Commentary:

- This is pretty straightforward: it's mainly a glaring example of failing to rebut the presumption against GMC when the respondent has 2 or more DUI convictions within the 10-year period before the IJ's decision (remember this period is counted backwards from the decision – *Matter of Ortega Cabrera*, 23 I&N Dec 793 (BIA 2005)).

- The decision does not specify what would have counted as an "unusual case" that would have rebutted the presumption, but it suggests some facts that might have helped:
    - Seeking rehabilitation, counseling, or treatment after the first DUI
    - Significantly reducing drinking after the first DUI
    - Wider space of time between the two offenses
    - Lower BAC

- IOW, don't count on character witness statements or even examples of caring for the QR to proffer the "unusual case" that rebuts the presumption—you want to show efforts to directly address the drinking itself.