

Respondent's mother, Maria Rodriguez is also a legal permanent resident. Respondent is not married and does not have any children. Respondent lives with his family (mother, father and brothers and sisters 41461 Mandra Street, Temecula, CA 92562. Prior to his detention, Respondent was gainfully employed at Jif Pak Manufacturing in San Diego, California as a factory worker. Respondent is a major source of financial support to his family.

Aside from the financial support he provides for his family, Respondent cares for his mother and father.

In 2009, Respondent was convicted in California Superior Court for transportation of marijuana. He served 3 months in jail for this offense and is now in Removal Proceedings before this Immigration Court.

II. ARGUMENT

A. RESPONDENT IS ELIGIBLE FOR CANCELLATION OF REMOVAL BECAUSE HIS FATHER'S TIME IN THE UNITED STATES IS IMPUTED TO THE RESPONDENT'S TIME TO QUALIFY FOR CANCELLATION OF REMOVAL.

Respondent's father obtained lawful permanent residency on 12/01/1990 when Respondent was 4 years old. Respondent entered the United States sometime in July 2008. Since, then Respondent has continuously resided in the United States.

On, Respondent was served with a Notice to Appear in October 2010 for his conviction under California Health and Safety Code 11360, thereby "stopping time" for Respondent to establish residency in the United States. Therefore, the issue is whether Respondent has satisfied the 5 years residency of LPR status and the 7 years continuous residency under "any status" requirements of Section 240A(a) of the INA – Cancellation of Removal for Lawful Permanent Residents. Respondent hereby argues, that he does.

In *Cuevas-Gaspar v. Gonzales*, the 9th Circuit Court of Appeals held that a parent's admission for permanent resident status is imputed to the parent's unemancipated minor children residing with the parent. (Please see *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013 at 1021-29). The decision in *Cuevas- Gaspar* was most recently upheld and clarified in *Mercado-Zazueta v. Holder*, in which the 9th Circuit Court extended the holding of *Cuevas-Gaspar* to the 5 year lawful permanent resident status requirement of Section 240A(a)(1) as well. (Please see *Mercado-Zazueta v. Holder - No. 07-71428*). Following the 9th Circuit's interpretation then, in this case, Respondent's father obtained lawful permanent residency in 1990, when the Respondent was 4 years old. Respondent resided with his mother and family in Mexico at the time and awaited family petitions filed by his father to be approved.

On 11/27/2007 Respondent turned 21, however was still eligible to immigrate to the United States a year later pursuant to the Child Status Protection Act ("CSPA"). The CSPA allows certain beneficiary's who age out of their preference category to maintain their age under 21 for the purpose of immigrating on a visa petition that was approved before their turned 21. Therefore Respondent's father's long period residency in the United States is imputed to Respondent.

B. RESPONDENT DESERVES RELIEF AS A MATTER OF DISCRETION

An application for discretionary relief under this Section requires that the Immigration Judge "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented in his behalf to determine whether the granting of relief appears in the best interests of this country." *Matter of Marin*, 16 I.&N. Dec. 581, 584 (BIA 1978). According to *Matter of Marin*, these factors include: family ties in the United States, residence since being a youngster in the United States, evidence of hardship to the

applicant and her family if he is deported, evidence of employment, evidence of value and service to the community, and any other evidence showing the applicant's good character. Id. at 584-85.

Respondent's conviction under California Health and Safety Code 11360, although serious, is the lone negative factor in this case. This was the only time Respondent attempted anything derogatory against the United States Government. Although, this violation was serious, Respondent has respect for the laws of the United States and is remorseful for his actions. That being said, his possible removal from the United States will have serious negative impacts to his family (Please see Letters from Family).

Respondent is the son of lawful permanent residents of the United States. His employment at Jif Pak Manufacturing as a factory worker helps to provide food, shelter and medical attention for his parents. Without his support, his family would suffer tremendously.

The Court should also consider Respondent's positive employment history in the United States as evidenced by the letters prepared by his employers (Please see Employment Letters). He has established his life here with his family and has set out to provide for his family to live an honest and respectful life in the United States.

III. CONCLUSION

In light of the facts and argument above, this Court should find that the Respondent is (1) eligible to apply for Cancellation of Removal and (2) is deserving of a favorable exercise of discretion. Respondent is remorseful for his actions and is a hardworking supportive son to US legal resident parents.

By: _____

Christopher R. Macaraeg
Attorney for Respondent

PROOF OF SERVICE

I, Christopher R. Macaraeg, hereby certify that the attached PRE-HEARING
STATEMENT was personally served on:

USCIS/ ICE Assistant Chief Counsel
1545 Hawkins Blvd., Suite 275
El Paso, TX 79925

Date: 11/26/2010

By: _____
Christopher R. Macaraeg, Esq.