

Special rules cancellation of removal for battered spouses available to permanent residents.

Matter of A--M--. (BIA 2009)

By Max Nuyen

In this case, the Board of Immigration Appeals considered the question of whether or not a lawful permanent resident is eligible to apply for special rule cancellation of removal for battered spouses. There are some aspects of U.S. immigration law which are purely driven by humanitarian considerations. One of these is the special rule cancellation of removal for persons who are battered, coerced, or abused by their spouses. Often times, an immigrant who must rely on his or her spouse for sponsorship for immigration status can become a virtual indentured servant to the spouse. The immigrant is put in a precarious position where he or she is at the mercy of the spouse. Without the spouse's cooperation in submitting the necessary immigration paperwork, the immigrant would be forced to leave the U.S. More often than not, the spouse can and will take advantage of this state of imbalance in the couple's relationship dynamics. The relationship can turn emotionally or physically abusive, with the threat of removal looming over the immigrant if he or she ever dared to speak up to report or even challenge the abuse. In effect, the immigrant is forced to endure an abusive relationship because he or she would be unable to leave his or her spouse out of fear of removal.

Congress created the special rule cancellation of removal for battered spouses to help correct this situation, and to offer the immigrant a way to obtain immigration papers without having to be sponsored by an abusive spouse. This procedure was first enacted in 1994 and has undergone some minor revisions since. It permits a person who has been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse to apply to adjust status if certain conditions are met. It is also available to the battered children of U.S. citizen or lawful permanent resident parents and persons whose marriages were not lawful because of bigamy on the part of the spouse. Generally, a person may qualify if he or she: (1) has been battered or subjected to extreme cruelty by the spouse (or parent); (2) has been physically present continuously in the U.S. for at least three years prior to the date of application; (3) is a person of good moral character who has not committed a crime of moral turpitude or aggravated felony; and (4) establishes that removal would cause extreme hardship to him or her.

In this case, the immigrant who applied for special rule cancellation of removal was already a lawful permanent resident. The government placed her in removal proceedings because she had been convicted of alien smuggling. Before an immigration judge, she applied for relief under the special rule. The government argued that she was not eligible to apply because the rule only pertained to persons who were not lawful permanent residents. The government based its argument on the title of the statutory provision where the rule is found. The provision is entitled, "Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents."

The BIA ruled against the government for two reasons. First, the body of the text of the rule does not specifically prohibit lawful permanent residents from applying. In fact, the text does not require applicants to show any particular immigration status. Using generally rules of statutory interpretation, the BIA determined that the text of the rule should be determinative

rather than the title itself. The title is restrictive but the text is not. Therefore, the text controls. Second, the BIA examined the legislative history of the special rule. The BIA found that the intent of the rule was to provide an avenue for relief for battered spouses of U.S. citizens or lawful permanent residents. There was nothing in the history to indicate that the rule was only available to non permanent residents. If anything, Congress seemed to have intended to make available this form of relief to all battered spouses who met the enumerated conditions, regardless of his or her immigration status.

Despite finding in the petitioner's favor on this legal issue, the BIA ultimately ruled that as a matter of discretion, she was not deserving of relief. She had previously been granted relief under this provision in 1998, and had been granted lawful permanent residence. She was divorced from the abusive husband and now married to another person (who was not abusive). She may not apply for special rule cancellation of removal based on a past abusive relationship that she is no longer in, because her abusive husband no longer posed a threat to her. Also, her alien smuggling was not something the BIA was willing to set aside. For these reasons, despite finding that the rule applied to both lawful permanent residents and non-residents, the BIA found that the totality of the circumstances warranted a denial of relief for the petitioner.