Non Lawful Permanent Resident Cancellation of Removal

Sample Analysis

Facts:

An illegal alien who has been in the U.S. for over 10 years and is married to a U.S. citizen has been picked up by immigration. He has two convictions – one for a domestic battery and another for a simple battery. He wants to apply for cancellation of removal. Is this possible?

Analysis:

An illegal alien (who does not have a Green Card) who wants to apply for a cancellation of removal (i.e., like a “pardon” of your deportation) is required to have 10 years physical presence prior to submission of Cancellation of Removal application.  The 10 year clock stops under the stop time rules INA 240A(d)(1):

* Clock stops upon issuance of an Order to Show Cause or Notice To Appear (NTA\_)gv09
* Clock stops upon commission of an offense “referred to” in INA 212(a)(2) rendering him inadmissible:  [\*237(a)(2) does not apply to aliens who crossed the border illegally]
  + Except for a single crime involving moral turpitude (CIMT) committed under 18 and more than 5 years ago INA 212(a)(2)(A)(ii)(I)
  + Except for a single CIMT if it was a gross misdemeanor (up to one year possible) and actual sentence 6 months or less INA 212(a)(2)(A)(ii)(II)

Therefore, the first inquiry would be is the domestic battery a “crime of domestic violence” under 18 USC 16 and therefore a CIMT?  If yes, do either of the above two exceptions apply?  If not, then did the clock stop and as a result the 10 years is not met?

The second inquiry would be the same with the battery.

If he doesn’t have the 10 years, he will not be eligible to even submit a non-LPR COR application.