

Suspension of Deportation and Special Rule Cancellation of Removal under NACARA –Asylum Division Officer Training Course

VI. CONTINUOUS PHYSICAL PRESENCE

At the conclusion of this section, the asylum officer will be able to identify appropriate factors to consider in evaluating whether an applicant has established continuous physical presence.

A. Requisite Number of Years

The applicant must have been continuously physically present in the U.S. for 7 years immediately prior to the date the decision is made on the NACARA application.

NOTE: Though the statutory provisions covering applications for suspension of deportation and special rule cancellation of removal specifically state that the 7-year period is counted back from the “date of such application,” the BIA has counted back 7 years from the date they are reviewing and deciding the case. This is consistent with the statutory language because an application is considered to be a continuing application until the date that it is finally considered. (Compare to the asylum one-year filing rule, which is measured from the date that the “application has been filed.”)

Exceptions in the Eighth and Ninth circuits:

Asylum officers adjudicating special rule cancellation of removal within the jurisdiction of the Courts of Appeals for the Eighth and Ninth Circuits, pursuant to controlling legal precedent, must calculate the 7-years CPP and GMC from the date that the Form I-881 was filed.

By definition, the U.S. includes the continental U.S., Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. INA section 101(a)(38).

Matter of Garcia, 24 I&N Dec. 179 (BIA 2007); *Matter of Castro*, 19 I&N Dec. 692 (BIA 1988); see also *Matter of Ortega-Cabrera*, 23 I&N Dec. 793 (BIA 2005).

Cuadra v. Gonzales, 417 F.3d 947 (8th Cir. 2005); *Aragon-Salazar v. Holder*, 769 F. 3d 699 (9th Cir. 2014).

Lafferty, John, Chief, Asylum Division, “Changes to the ABC/NACARA Procedures Manual and to the Suspension of Deportation and Special Rule Cancellation of Removal under NACARA Lesson Plan affecting the adjudication of special rule cancellation of removal within the jurisdiction of the Eighth and Ninth Circuit Courts of Appeals.”, Memorandum to Asylum Office Directors (Washington, DC March 16, 2015).