

Immigration Court: BIA

Case: *In re. Cristobal Perez*, 22 I&N 689 (BIA 1999) **Date:** May 12, 1999

Opinion: Filppu

Tags: Continuous residence/physical presence, cancellation of removal, qualifying offense, admission, stop time rule

Question Presented: When does continuous residence begin and end?

Holdings:

- Continuous residence begins with admission in any status;
- “stop-time rule” kicks in on the date that a qualifying offense is committed.
- Appeal dismissed.

Rationale: “Natural and straightforward reading” of the statute. (693)

Facts: Appeal of removal decision in case where there was a controlled substance violation: argues that IJ was wrong to say that the required period of permanent residence ended with the commission of the offense. Argues from retroactivity: offense was committed in 1992, prior to new INA statute.

History of the Case:

- **1989:** admitted as temporary resident
- **1990:** AOS to LPR
- **1992:** drug offense committed (therefore “stop-time” rule kicks in)
- **1997:** convicted of offense
- **1997: Removal proceedings:**

Appeals to Statute & Precedent:

- **INA 240A:** Prerequisites for cancellation of removal relief:
 - Lawfully admitted for permanent residence for not less than 5 years
 - Has resided continuously in US for 7 years after admission *in any status*
 - Has not been convicted of an aggravated felony
- **INA 240A(d)(1):** “stop-time rule”: continuous residence ends when qualifying crime is committed.
- **INA 237(a)(2) (B)(i):** controlled substance violation & removal

Quotes:

- “The respondent *committed* his criminal offense before he accrued 7 years of residence. However, he was *convicted* of that offense nearly 8 years after his admission as a temporary resident.” (692)
- “It is significant that Congress did not use the word ‘convicted’ in section 240A(d)(1) of the Act. Rather, it chose the word ‘*committed*’ for the rule governing the calculation of continuous residence and physical presence.” (694)

Commentary:

- **Admission** =
- **Time stops** = on date when offense is committed (physical presence ENDS)
- **Continuous physical presence** = begins with admission
- **Re. retroactivity:** Not relevant here; the new rules apply even to offense committed prior to the enactment of the statute.