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Weighing Rehabilitation in the Exercise of Discretion

by Andrea A. Saenz

Many forms of relief from removal under the Immigration and Nationality Act ("INA") require not only that a noncitizen show eligibility requirements like a certain length of residence or the existence of qualifying relatives, but also that the applicant merits a favorable exercise of discretion. This is the case in applications such as adjustment of status, cancellation of removal for permanent and for non-permanent residents, and most waivers of inadmissibility. *See, e.g.*, INA §§ 245(a), 240A(a), 240A(b), 212(h). The Board has long outlined non-exclusive lists of factors that are relevant to an Immigration Judge's exercise of discretion, which often include, for example, family ties and hardship to family upon removal, length of residence in the United States, employment history, community service, evidence of good or poor character, and the nature of immigration law violations. *See Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978) (listing possible factors in assessing an application for a waiver of inadmissibility under former INA § 212(c).

In cases where a noncitizen has past criminal history, the nature, recency, and seriousness of that criminal history and any evidence of rehabilitation may be highly relevant to the overall balancing of positive and negative factors that is the hallmark of discretionary analysis. *Id.* at 585 ("Upon review of the record as a whole, the immigration judge is required to balance the positive and adverse matters to determine whether discretion should be favorably exercised.").

This article discusses how the Board and federal courts have treated the assessment of rehabilitation within the context of discretionary forms of relief from removal, including examples of types of evidence courts have considered persuasive or relevant.[1] These examples are meant to be illustrative of the broad categories of evidence Immigration Judges may consider

Recent Decisions from Each Federal Circuit

The following are significant Federal court decisions, one from each Circuit, that shaped the field of immigration law in the past quarter.

Barnica-Lopez v. Garland, 59 F.4th 520 (1st Cir. 2023). Upholding the denial of asylum, the **First Circuit** determined **no family-based nexus** was shown where the assailants were motivated by a desire to rob and subsequently by revenge, rather than by animosity toward the family. The fact that the applicants received threats as a family unit did not establish kinship-centered animus.

Debique v. Garland, 58 F.4th 676 (2d Cir. 2023). The **Second Circuit** held that **second-degree sexual abuse** under N.Y. Penal Law § 130.60(2) **constitutes aggravated felony sexual abuse of a minor**. The court held that neither the labeling of the offense as a misdemeanor nor the New York definition of "sexual contact" renders the crime broader than the generic federal definition of sexual abuse of a minor. The court gave continued deference to the Board's definition of sexual abuse of a minor in *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999).

Saban-Cach v. Att'y Gen., 58 F.4th 716 (3d Cir. 2023). In remanding a withholding of removal claim for reassessment of past persecution, the **Third Circuit cautioned against ethnocentric assumptions about available medical care** when evaluating the severity of past harm and the impact of not seeking professional medical treatment. The court also emphasized the need to cumulatively consider an applicant's past experiences.

in discretionary analysis, but are not meant to represent the only kinds of evidence parties may offer or an Immigration Judge may reasonably find necessary. This article also notes the Supreme Court's recent decision in *Patel v. Garland,* 142 S. Ct. 1614 (2022), which limits federal judicial review of discretionary decisions like those discussed here.

Is Rehabilitation Required?

The Board has long emphasized that deciding whether a noncitizen merits a favorable exercise of discretion requires a holistic view of the facts of the case – a "balancing of the social and humane considerations presented in an [applicant's] favor against the adverse factors" why he or she may not warrant relief or permanent status. *Matter of Edwards*, 20 I&N Dec. 191, 195 (BIA 1990). While the Board reviews an Immigration Judge's exercise of discretion de novo, it must review an Immigration Judge's fact-finding for clear error and may not conduct its own fact-finding. 8 C.F.R. § 1003.1(d)(3)(i), (iv)(A). This includes predictive fact-finding, which may be relevant not just in asylum and related relief, but in discretionary determinations. *Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015) (an Immigration Judge's findings of "what may or may not occur in the future" are findings of fact); *see, e.g.*, *Vasquez Chavez v. Barr*, 804 F. App'x 633, 635 (9th Cir. 2020) (finding that the Board had erred in not applying clear error review to the Immigration Judge's predictive finding that the respondent would take the necessary steps to ensure he would never drink and drive again).

This makes it particularly important for Immigration Judges to make factual findings as to what each respondent's positive and negative factors are before balancing them and making a final discretionary decision. *See Matter of Marin*, 16 I&N Dec. at 585 ("The basis for the immigration judge's decision must be enunciated in [the] opinion."); *see also Matter of C-V-T-*, 22 I&N Dec. 7, 12 (BIA 1998) (in discussing applications for cancellation of removal under INA § 240A(a), emphasizing that "it remains incumbent on the Immigration Judge to clearly enunciate the basis" for his or her decision).

Most forms of discretionary relief for removal do not explicitly mention rehabilitation in the statutory text defining the elements of that relief; a notable exception is a waiver of inadmissibility under INA § 212(h)(1)(A), which is available to individuals whose inadmissible conduct is more than 15 years old or relates to prostitution, and who have "been rehabilitated." For other forms of relief, rehabilitation is one of several factors that have developed through case law over time as frequently relevant in cases where noncitizens have criminal history.

Circuit Decisions
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United States v. Williams, No. 20-7131, 2023 WL 2637728 (4th Cir. Mar. 27, 2023). The **Fourth Circuit** expanded on its holding in *United States v. White*, 24 F.4th 378 (4th Cir. 2022), to clarify that, like Virginia common-law robbery, **robbery under Va. Code § 18.2-58 is not a violent felony** because it can be committed by threatening to accuse the victim of having committed sodomy. It, thus, does not have as an element the use, attempted use, or threatened use of physical force.

United States v. Huerta-Rodriguez, No. 21-50875, 2023 WL 2662179 (5th Cir. Mar. 28, 2023). The **Fifth Circuit** held that **a conviction for illegal reentry is an aggravated felony under INA § 101(a)(43)(O)** (illegal reentry after removal for aggravated felony) **even if the conviction on which the previous removal was based is no longer an aggravated felony**. In this case, the noncitizen was previously removed after a burglary conviction which is no longer for an aggravated felony following the Supreme Court's decision in *Mathis v. United States*, 579 U.S. 500 (2016). He then reentered and was convicted of illegal reentry. The court held that his illegal reentry was itself an aggravated felony - under INA § 101(a)(43)(O) - because it occurred before the change in law that undermined the basis for his prior removal.

Earlier decisions of the Board in former § 212(c) waiver cases stated that a noncitizen with criminal history would "ordinarily be required to make a showing of rehabilitation" before being granted discretionary relief. *Matter of Marin*, 16 I&N Dec. at 588; *Matter of Buscemi*, 19 I&N Dec. 628, 638 (BIA 1988). The Board later clarified this standard, concerned that it had implied that rehabilitation was an "absolute prerequisite" to granting relief, when it was not. *Matter of Edwards*, 20 I&N Dec. at 196. In *Matter of Edwards*, the Board explicitly withdrew from the "ordinarily be required" language in *Matter of Marin* and held that rehabilitation was simply one factor among many to be considered in "case-by-case" adjudication. *Id.*

Thus, Immigration Judges may assess the severity and recency of a noncitizen's criminal history in determining the relevance of evidence of rehabilitation or the lack thereof. For example, in *Matter of C-V-T-*, in an application for cancellation of removal under INA § 240A(a), the Board noted that the respondent, who had been detained since a recent drug possession conviction, did not present significant evidence of rehabilitation. 22 I&N Dec. at 14. However, the Board also found that the conviction was the respondent's only criminal offense, he had no disciplinary history while detained, he expressed remorse, and the prosecutor in his case had written a support letter. *Id.* The Board went on to weigh other positive and negative factors, including the respondent's long residence and work history, noted that the facts did not indicate the respondent posed a serious future threat to society, and determined that the respondent warranted a positive exercise of discretion. *Id.*

Possible Evidence Showing Rehabilitation

In cases where evidence of rehabilitation is relevant, the Board and federal courts have recognized a variety of evidence that the parties may present, along with a respondent's testimony, that may show rehabilitation or a lack thereof. This may include evidence that the respondent has participated in formal programs or groups, such as counseling, education, or community involvement that may support the respondent in avoiding re-offense. *See Matter of Arreguin*, 21 I&N Dec. 38, 40 (BIA 1995) (noting that the respondent, who was detained, was "voluntarily pursuing GED studies, for which she received a letter of commendation, has pursued other courses, has had no prison infractions, and has been involved in a church ministry"); *cf. Matter of Roberts*, 20 I&N Dec. 294, 302–03 (BIA 1991) (noting that the respondent "has not submitted any evidence of participation in a drug counselling program nor shown a desire to enroll in one").

Evidence of rehabilitation may also include the passage of time without reoffense. This factor is implicit in the Board's longstanding observation that the recency of the offense is relevant to rehabilitation. *Matter of Marin*, 16 I&N Dec. at 588 (noting that

Circuit Decisions
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Hernandez v. Garland, 59 F.4th 762 (6th Cir. 2023). In a cancellation of removal case, the **Sixth Circuit** held that it has **jurisdiction to review the question of whether a noncitizen lacks good moral character under the catch-all provision in INA § 101(f)**. The court upheld the Board's determination that the applicant lacked good moral character based largely on his **two drinking-and-driving convictions** during the relevant period.

Porosh v Garland, 56 F.4th 1120 (7th Cir. 2023). The **Seventh Circuit** held that substantial evidence supported the **adverse credibility finding where the asylum applicant was unfamiliar with recent, high profile events involving the political party he claimed to actively promote**, and where his testimony on some issues was imprecise. The court found that the applicant's "misstep" in reading from a paper during redirect did not impugn his credibility. The court also found that the record in this case did not support the finding that it is implausible a teenager was able to recruit members so successfully.

United States v. Heard, 62 F.4th 1109 (8th Cir. 2023). The **Eighth Circuit** held that the **pre-2011 Minnesota definition of MDMA is overbroad** when compared to the federal definition because it includes all isomers. The court also found the statute to be unambiguous, and therefore the realistic probability test does not apply.

individuals with recent criminal conduct will have "a more difficult task" meriting discretion than those whose offenses are in "the more distant past"); *Matter of C-V-T-*, 22 I&N Dec. at 11 (discretionary factors include the "nature, recency, and seriousness" of a criminal history); *see, e.g.*, *Yepes-Prado v. INS*, 10 F.3d 1363, 1372–73 (9th Cir. 1993), as amended (Nov. 12, 1993) (finding that the agency erred in stating the record was "devoid" of rehabilitation evidence where Yepes-Prado had filed good character evidence, attended a program, completed probation, and had not reoffended since the conviction); *Diaz-Resendez v. INS*, 960 F.2d 493, 497–98 (5th Cir. 1992) (finding the agency did not meaningfully consider rehabilitation evidence including lack of re-offense and a letter from the petitioner's probation officer supporting his progress).

A respondent's credible statements of remorse, or the lack thereof, are often cited in findings regarding rehabilitation, as they may show whether the respondent understands the causes of past conduct, the harm it caused, or how to prevent its reoccurrence. *See Matter of C-V-T-*, 22 I&N Dec. at 14 (noting the respondent expressed remorse); *Matter of Arreguin,* 21 I&N Dec. at 40 (noting that the respondent's acceptance of responsibility and expression of remorse were "favorable indicators" of rehabilitation); *see also Liu v. Waters*, 55 F.3d 421, 426–27 (9th Cir. 1995) (finding the Board appropriately explained its finding of a lack of rehabilitation where Liu had disciplinary violations in prison and attributed his crime to peer pressure and wanting to fit in).

In *Matter of Mendez*, 21 I&N Dec. 296, 304 (BIA 1996), the Board found that the respondent did not show remorse where he argued that he was innocent of the offense for which he had been convicted, which was a sexual assault of a child. The Board noted where there is a formal criminal conviction, Immigration Judges may not "go beyond the judicial record" to re-determine guilt or innocence and must credit the guilty finding. *Id.* (citing *Matter of Edwards*, 20 I&N Dec. at 191).[2] The Board was careful to say that remorse is not the only measure of rehabilitation: "This is not to say that an alien who claims innocence and does not express remorse could never present persuasive evidence of rehabilitation by other means." *Id.* However, no other means were present in *Matter of Mendez*, where the respondent also did not believe he needed treatment. The Board then weighed the respondent's other equities against his serious criminal behavior and lack of rehabilitation and determined he did not warrant a waiver under INA § 212(h) in the exercise of discretion. *Id.* at 302-305.

The Board has acknowledged that detained or incarcerated noncitizens may have more difficulty showing proof of rehabilitation than other applicants for relief, although this does not relieve the noncitizen of his or her overall burden of

Gutierrez-Alm v. Garland, No.17-71012, 2023 WL 2518338 (9th Cir. Mar. 15, 2023). In accord with every circuit to have addressed the issue, the **Ninth Circuit** held that an **Order to Show Cause that lacks initial hearing time and date information is nonetheless sufficient to trigger the stop-time rule**.

Munoz-Morales v. Garland, No. 21-9539, 2023 U.S. App. LEXIS 4057 (10th Cir. Feb. 22, 2023). The **Tenth Circuit** rejected the argument that an applicant for cancellation of removal was denied **due process** because he was **unable to obtain additional evidence of rehabilitation because he was detained**. The court held that the applicant **did not show prejudice** where he did not ask for a continuance and did not specify what additional evidence he could have submitted were he not detained.

Serra v. U.S. Att'y Gen., 60 F.4th 653 (11th Cir. 2023). In an asylum case, the **Eleventh Circuit** held the record did not support the **adverse credibility finding**. The court found immaterial a discrepancy about whether a beating caused the applicant to pass a kidney stone at that moment or a few days later, when all other details of the beating were consistent. Also immaterial was the difference between testimony that he traveled through "about 11 or 12" countries and his asylum application that listed 10 countries.

proof to show eligibility for relief. *See Matter of Roberts*, 20 I&N Dec. at 299. This may be because no such evidence exists where a conviction is quite recent; it may also be because of difficulty producing evidence that does exist while detained. To the extent that Immigration Judges find that specific corroborating evidence is necessary to support a discretionary analysis, including evidence of rehabilitation, judges should follow the standards that govern corroboration findings generally. *See* INA § 240(c)(4)(B). These include finding whether the respondent could or could not "reasonably obtain" missing corroboration and not placing "undue weight" on the absence of certain evidence while overlooking other corroboration in the record. *See Matter of L-A-C-*, 26 I&N Dec. 516, 521-22 (BIA 2015).[3]

The types of evidence mentioned above are meant to be illustrative, but not exclusive. The parties may present a wide variety of evidence that is relevant to whether the respondent has shown rehabilitation for past conduct and whether other factors in a case outweigh this issue.[4] Immigration Judges have significant discretion in determining what evidence is relevant to rehabilitation, provided they "clearly enunciate" the basis for their reasoning, *Matter of C-V-T-*, 22 I&N at 12, and do not cross the line into factors that appear speculative or untethered to eligibility for relief. *See, e.g.*, *Yepes-Prado*, 10 F.3d at 1367–68 (where the Immigration Judge found Yepes-Prado having children out of wedlock and not marrying his partner lowered his showing of rehabilitation, finding this to be an inappropriate and irrelevant discretionary factor).

Federal Court Review of Rehabilitation and Discretion Findings

While the Board reviews an Immigration Judge's overall exercise of discretion de novo, federal circuit courts might not review it at all. Under INA § 242(a)(2)(B), 8 U.S.C. §1252(a)(2)(B), federal courts are precluded from reviewing "any judgment regarding the granting of relief" under specific statutes, including adjustment of status, cancellation of removal, and waivers of inadmissibility under INA §§ 212(i) and (h). This jurisdictional bar was added to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Division C of Pub. L. No. 104-208, 110 Stat. 3009-546. This statutory change is one reason this article cites several circuit court decisions from prior to that year; before then, circuit courts reviewed more agency decisions, including the factors used to grant or deny discretionary relief, for "abuse of discretion," producing a body of decisions that give some insight into what rehabilitation factors noncitizens commonly have raised that might not be reviewed similarly today. *See, e.g.*, *Varela-Blanco v. INS*, 18 F.3d 584 (8th Cir. 1994) (finding the Board did not abuse its discretion in finding that Varela-Blanco did have evidence of rehabilitation, but that it and his other equities did not outweigh the severity of his conviction for sexual abuse of a child).

In 2005, through the REAL ID Act, Division B of Pub. L. No. 109-13, 119 Stat. 231, 310, Congress added language to the jurisdictional bars in INA § 242(a)(2)(B) and (C) to clarify that circuit courts can still review "constitutional claims and questions of law" – a phrase that has sparked significant litigation not within the scope of this article. INA § 242(a)(2)(D), 8 U.S.C. § 1252(a)(2)(D). Under the current statutory scheme, circuit courts do sometimes reach the agency's denials of discretionary relief, but only if they find that the case raises a reviewable legal or constitutional issue. This task is not a clear-cut one, and circuit courts sometimes reach divergent results on jurisdiction in similar-sounding cases. *Compare Guillen-Martinez v. Att'y Gen.*, 840 F. App'x 691, 694 (3d Cir. 2021) (finding that whether the Board considered the proper factors, including Guillen-Martinez's proof of rehabilitation and hardship to his family, raised a reviewable question of law, but finding the agency did not err); *with Santiago v. Barr*, 832 F. App'x 74, 77 (2d Cir. 2020) (finding that Santiago's argument that the Immigration Judge did not consider his evidence of rehabilitation was really a dispute "with the agency's weighing of equities in the exercise of discretion, which is not reviewable.").

Most recently, the Supreme Court strictly interpreted the scope of the bar on review of discretionary decisions in *Patel v. Garland*. In *Patel*, the Supreme Court held that most fact-finding underlying a denial of discretionary relief will be barred from judicial review, including factual findings that a respondent lacks a statutory eligibility requirement for discretionary relief. 142 S. Ct. at 1622–23. Thus, Patel could not seek review of the agency's determination that he was not credible regarding his misrepresentation of U.S. citizenship on a driver's license application, and thus its finding that he was ineligible for adjustment of status, a discretionary form of relief. *Id.* at 1620.

It is too early to know how *Patel* will impact circuit court review in practice. It may mean that a larger universe of factual findings will be found to be part of a discretionary agency decision and thus barred from further review. *See, e.g.*, *Moreno v. Garland*, 51 F.4th 40, 45 (1st Cir. 2022) (holding that to the extent Moreno challenged the "sufficiency of record support for the facts" the agency relied on to find a lack of rehabilitation and deny relief, such challenge was barred, citing *Patel*). However, it is not possible to predict whether any individual case will present an issue that a circuit court will consider to be a reviewable "question of law." Circuit courts may continue to reach a range of opinions on these jurisdictional questions post-*Patel*.

For this reason, Immigration Judges and the Board should continue to be aware that any individual case involving discretionary relief might reach a circuit court. *See Cruz-Velasco v. Garland*, 58 F.4th 900, 903–04 (7th Cir. 2023) (finding that even post-*Patel*, it had jurisdiction to review whether the Board applied the correct legal standard to factual findings, including that Cruz-Velasco had not shown enough rehabilitation to warrant reopening, but finding the Board had not erred). Immigration Judges should continue to make clear factual findings on the positive and negative factors in any discretionary analysis, including as to any showing of rehabilitation, and to explicitly balance those factors in the final decision to grant or deny relief. *See Matter of Edwards*, 20 I&N Dec. at 195; *Matter of S-H-*, 23 I&N Dec. 462, 465 (BIA 2002) (noting the "need for Immigration Judges to include clear and complete findings of fact in their decisions," including to facilitate appellate review). Agency decisions that do so will have the best chance of being affirmed on review under any view of jurisdiction.

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1. This article does not discuss how standards for the exercise of discretion may differ between forms of relief, such as the extent to which a discretionary analysis is different in an asylum case versus applications for cancellation of removal or waivers. *See Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987) (in an asylum case, suggesting non-exclusive discretionary factors different than those in *Marin* and other § 212(c) and cancellation of removal cases); *see also Matter of Kasinga*, 21 I&N Dec. 357, 367 (BIA 1996) (where applicant had established a well-founded fear of persecution, noting that "[t]he danger of persecution will outweigh all but the most egregious adverse factors"). This article also does not discuss time-bound findings of good moral character under INA § 101(f), which apply to certain forms of relief, although rehabilitation issues are often relevant under similar circumstances as those discussed here.

2. This analysis may differ in cases where there are allegations of criminal conduct that fall short of conviction. While Immigration Judges may consider these in discretionary analysis, doing so usually requires additional fact-finding regarding what evidence in the record reliably shows that criminal conduct occurred, and thus why the Immigration Judge finds any lack of acceptance of responsibility relevant in the exercise of discretion. *See Matter of Thomas*, 21 I&N Dec. 20, 24 (BIA 1995) (Immigration Judges should weigh the "probative value of and corresponding weight, if any" of evidence of criminality, including the stage to which charges had progressed); *Matter of Arreguin*, 21 I&N Dec. at 42 (in assessing a charge where prosecution was declined, declining to "give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein"). Immigration Judges may need to address a respondent's objections to such evidence before discussing its effect on a remorse or rehabilitation finding.

3. While *Matter of L-A-C-* discusses corroboration in the context of the statutory language of INA § 208(b)(1)(B)(ii), governing asylum applications, the Board notes that similar language regarding corroboration is contained in INA § 240(c)(4)(B), which applies to all applications for relief from removal. *Matter of L-A-C-*, 26 I&N Dec. at 520 n.2. This includes the requirement that applicants for relief corroborate their claims where determined appropriate by the Immigration Judge, unless the noncitizen cannot "reasonably obtain" that evidence. INA § 240(c)(4)(B).

4. Special considerations may apply to cases involving convictions for driving under the influence ("DUI"). In *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019), the Attorney General held that individuals with two or more DUI convictions during the period of "good moral character" required for an application for cancellation of removal under INA § 240A(b)(1) will presumptively lack good moral character. The Attorney General noted that rehabilitation efforts, including overcoming substance abuse, may not overcome that presumption, and that "substantial relevant and credible contrary evidence" regarding the applicant's character is required. *Id.* at 671. The Attorney General indicated that two or more DUIs would also generally render a noncitizen undeserving of a favorable exercise of discretion. *Id.* at 670. *Matter of Castillo-Perez* does not specifically state whether this heightened presumption applies to discretionary analyses in other applications for relief, other than stating a "careful analysis" is required in an adjustment of status application involving multiple DUIs. *Id.* at 673 n.3.

BIA Precedent Decisions - First Quarter 2023

In ***Matter of Chen***, 28 I&N Dec. 676 (BIA 2023), the Board held the **stop-time rule under INA § 240A(d)(1) is not triggered by the entry of a final removal order**, but rather only by service of a statutorily compliant notice to appear or the commission of specified criminal offenses. The Board reiterated that breaks in continuous physical presence (under INA § 240A(d)(2)) are distinct from termination of physical presence under the stop-time rule. The decision also emphasizes that a **respondent claiming a fundamental change in law as the basis for sua sponte reopening must establish prima facie eligibility for the relief sought**, in addition to showing a change in law.

In ***Matter of J-L-L-***, 28 I&N Dec. 684 (BIA 2023), the Board held that **the holdings in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), are inapplicable to proceedings initiated by pre-IIRIRA charging documents**. In this case, the applicant was placed in exclusion proceedings by the filing of a Form I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge; thus, the fact that the Form I-122 did not specify the time and date of the applicant's initial hearing did not impact his eligibility for any relief. The Board held that, as *Pereira* and *Niz-Chavez* do not apply, they did not constitute a relevant change in law applicable to the applicant's motion to reopen exclusion proceedings.

In ***Matter of Duarte-Gonzalez***, 28 I&N Dec. 688 (BIA 2023), the Board held that **a noncitizen who is subject to either the 3- or 10-year bar provided in INA § 212(a)(9)(B)(i)** for being unlawfully present after a previous departure following a prior period of unlawful presence **does not need to remain outside the United States during the relevant 3- or 10-year period** in order to overcome this ground of inadmissibility. Thus, the Board determined the respondent was not prohibited from seeking adjustment of status.

In *Matter of Garcia*, 28 I&N Dec. 693 (BIA 2023), the Board held that, **for choice of law purposes, the controlling circuit law in Immigration Court proceedings is the law governing the geographic location of the Immigration Court where venue lies**, namely where jurisdiction vests and proceedings commence upon the filing of a charging document, **and will only change if an Immigration Judge subsequently grants a change of venue** to another Immigration Court.

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