

## Court: Illegal children can't rely on parents' status to avoid removal

by Todd Etshman

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On Monday, the U.S. Supreme Court unanimously ruled that illegal immigrant children convicted of a crime can't utilize the lawful permanent resident status of their parents to obtain cancellation of removal.

The ruling in the consolidated cases of *Holder v. Gutierrez* and *Holder v. Sawyers* overturned a 9th Circuit decision that said residency requirements pursuant to 8 USC section 1229b(a) of the Immigration and Naturalization Act should be considered by the Board of Immigration and could be imputed on children of lawful residents and upheld a Board of Immigration Appeals decision that said it could not.

Gutierrez was a lawful permanent resident charged with illegal immigrant smuggling and Sawyers was a lawful permanent resident convicted of drug possession offenses.

Immigrants with lawful permanent resident status are still subject to removal for criminal offenses.

The law was changed in 1996 to make the availability of relief from removal more difficult, said Rochester immigration attorney Stephen M. Brent of Brent & Powell.

"Congress was saying too many criminals are getting relief from deportation as it was called then and wanted to make it harder to qualify for cancellation of removal and they made the burden higher," Brent explained.

The court held that an illegal immigrant seeking cancellation of removal must meet the residency time provisions of section 1229b(a) on their own without relying on their parent's status.

In her opinion, Justice Elena Kagan said the BIA "argues that allowing imputation under section 1229b(a) would create anomalies in administration of the statutory scheme by permitting even those who had not obtained [lawful permanent resident] status-or could not do so because of a criminal history-to become eligible for cancellation of removal."

Her opinion supported the government's position.

"It's a case of statutory interpretation. What the court did is literally look at the language of the statute," said Walter Ruehle, director of the Immigration Program at the Legal Aid Society of Rochester. "Courts grant some deference to administrative agencies and as long as it's deemed to be a reasonable one, the court will go with what the agency determined."

As Ruehle explained, applying for cancellation of removal is the primary form of relief for lawful permanent residents who are in danger of losing their status and are trying to preserve it.

Ruehle said the decision should only affect a relatively small number of people that are deportable due to criminal activity.

Brent said he was disappointed with the decision and felt it was a significant case that departed from precedent allowing imputation of a parent's lawful residency in the U.S. to their children.

"The statute is rather strict now. Nobody applies for cancellation of removal unless they are removable in the first place," he said. "This decision makes it harder to get."

Syracuse immigration attorney Craig Nichols, of Nichols Law Offices PLLC, said the problem with the ruling is what could happen to someone caught in a removal proceeding — not because of a crime they committed but due to a technicality — who is no longer able to rely on their parent's continuous residence or lawful permanent status to avoid removal.

"The court said it was a reasonable interpretation of a statute and did not want to get into micromanaging an agency's interpretation of a statute passed by Congress," he said.

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