

Immigration Matters

By Evan George



Assessing the potential immigration consequences of criminal convictions is often a difficult and complex task. If you represent a non-citizen in a criminal matter, the answers to the following six questions will be pivotal in negotiating a

plea agreement sensitive to your client's immigration status or their eligibility for relief from deportation:

1. At the time of entry into the United States, was your client lawfully admitted on an immigrant visa (green card), a nonimmigrant visa (visitor, student, temporary worker, etc.), or did they enter without inspection?
2. Does your client have any prior criminal convictions? (Findings of juvenile delinquency proceedings are not convictions for immigration purposes)
3. Is the potential sentence of the criminal offense at issue greater than one-year imprisonment?
4. What was the date of your client's last entry into the United States?
5. Does your client have a spouse, child or parent who is a U.S. citizen or lawful permanent resident?
6. Does your client have a fear of persecution on account of their race, religion, political opinion, nationality, or membership in a particular social group (including sexual orientation) in their homeland?

The answer to the first question above will determine whether your client faces potential removal proceedings as a non-citizen who is "inadmissible" (entry without inspection) or "deportable" (lawful admission in any status). Under the U.S. immigration laws, the statutory grounds for removal vary significantly depending on whether the non-citizen was lawfully admitted upon entry. The commission of a single crime involving moral turpitude (CIMT), with a potential sentence of at least one-year imprisonment, would render a non-citizen inadmissible, yet not deportable, unless the crime was committed more than five years after admission. Similarly, under the grounds of inadmissibility, a non-citizen can be removable from the United States simply for admitting to the essential elements of a CIMT, while under the grounds of deportability, a conviction is

required. Multiple criminal convictions (question #2) can constitute grounds for removal; however, here too, the distinction between inadmissibility and deportability can be crucial.

Both the potential sentence and actual sentence of a criminal offense (question #3) are critical to the assessment. Regardless of the underlying conduct, the potential sentence of an offense, if greater than a year, can be the difference in whether your client will be placed in removal proceedings. Similarly, the actual sentence, whether or not the non-citizen is required to serve time, can be determinative of whether the offense will be classified as an aggravated felony. Several offenses, including crimes of violence or theft offenses, only constitute aggravated felonies if the actual sentence is greater than one-year imprisonment. As a notable example, the law firm of Kinsell, Zadel & Whitaker handled a recent case where a long-term lawful permanent resident was charged with aggravated battery. Criminal defense attorney John Whitaker negotiated a plea agreement resulting in a 364-day sentence, enabling his client to avoid classification as an aggravated felon, and thereby averted deportation.

The remaining questions above relate to a non-citizen's eligibility for humanitarian relief from removal. These forms of relief include political asylum (domestic refugee status), withholding of removal under the Convention against Torture, cancellation of removal, etc., and will be discussed in future columns. The next column will address recent developments in legal relief for unaccompanied and undocumented children whose parents or guardians have abandoned, abused or neglected them. If you have an immigration-related issue or question, feel free to contact me at 352-378-5603 or evan@evangeorge-law.com.

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