

Case Studies: Immigration Consequences of Crimes
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Since 9/11, more local, state and foreign criminal record information is appearing in FBI and US Department of Homeland Security (DHS) databases. As a result, we are seeing more current and prospective immigrants being denied entry or other immigration benefits, often due to very old or "minor" offenses, or worse - inaccurate or specious information in government databases. Some clients have spent years in the US in otherwise lawful status and are just now experiencing these problems. This article highlights how certain types of problems involving our clients' perceived or actual brushes with crime were resolved.

In several cases, records were first obtained from the airports that turned the client away pursuant to the Freedom of Information Act (FOIA). The Customs and Border Patrol (CBP), a division of the Department of Homeland Security (DHS), conducts airport inspections of individuals and goods. We then compared this information to the actual criminal court records, if any. By doing this, in several cases, it was determined that the CBP database had inaccurate information either as to the crime the client was actually convicted of or the status of the conviction, if any. In another benefits application situation, we discovered that the DHS (or FBI) had nothing more than hearsay or rumor information about a client.

In immigration law, some crimes, but not all, can form the basis of exclusion or removal, so each needs to be researched individually because of frequent changes in case law. In addition, a "conviction" is specifically defined for immigration law purposes and is often at odds with criminal law. For example, many defendants eventually seek to have their records expunged or sealed, but this has no effect in immigration law. In addition, some grounds of exclusion or removal can be based on the client's mere admission to the essential elements of an offense rather than on a conviction. In the case of narcotics offenses, for example, CBP/DHS need only have a suspicion of trafficking. No conviction is required for trafficking offenses. Despite there being an admission or conviction for an offense, some are waivable, meaning they can be excused based upon the filing of an additional application with proof of rehabilitation and/or extreme hardship to US citizen or permanent resident relatives.

Accordingly, we work closely with criminal defense counsel locally, in other states and in other countries as needed to evaluate the nature and status of all offenses. For foreign convictions, we need to determine whether there are US equivalent offenses. In concert with criminal defense counsel, we obtain and review all criminal records and review applicable statutes and code sections in detail and we investigate whether there is some post-conviction relief available that might negate a finding of conviction. We also work closely with criminal defense counsel to assist in fashioning a plea agreement that will not result in immigration consequences, or at least not the harshest consequences.

As a result, some clients were successful in receiving lengthier than normal first time waivers of inadmissibility available for non-immigrants with certain kinds of convictions. In other cases, the clients were successful in avoiding a finding of excludability altogether simply because the federal government's database information was wrong to begin with.

However, we are in an age now where the government is less willing to turn over investigative information through FOIA, and in many cases, it can take a year or more to get information from one's files. Therefore, it is important for clients to disclose to counsel ALL brushes with the law worldwide, obtain certified copies of ALL court records, and to review with counsel this information BEFORE seeking admission or applying for an immigration benefit. This is especially important because completing US government forms with false information and/or providing false testimony to an officer can result in exclusion or removal based upon misrepresentation.

A future article will focus on the feasibility and procedure for correcting information in the government's databases.

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