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Reply To:
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TO: Interested Attorneys

Re: General Information about DUI/DWI Arrests of Nonimmigrant Aliens

Dear Counsel:

When you are representing aliens charged with crimes, it is always a good idea to have them bring immigration counsel into the case as part of the plea negotiations.

In recent months, nonimmigrant aliens who are arrested for DUI/DWI have been experiencing new problems with their visas as a result of their arrests. Assume that a person has a visa which would allow him or her to be legally in the United States and which will allow future entries to the United States as a nonimmigrant. This could be as a student, a visitor, a temporary worker, etc. These types of visas have alpha/numeric designations: B-2, F-1, H-4, and so on. If such a person is arrested and charged DUI or DWI, what happens? For these people, immigration counsel should be brought in at the very beginning, because:

When the person in the United States is arrested, his/her fingerprints go into the various law enforcement and security systems. For example, if they are arrested here in Anchorage, then every U.S. government agency worldwide receives a notification, whether in Mumbai or Memphis, often within 36 hours of the arrest.

The consuls then use the address they have for the arrestee, taken from their records in the original visa applications. These addresses may be years old and no longer valid, but they are the addresses the consuls use. A letter is sent to the client telling him or her that the nonimmigrant visa has been cancelled and the person is no longer able to use that visa. U.S. Customs and Border Protection (CBP) is also notified, so that if the person tries to use the visa, and come to the United States anyway, CBP will pick up the visa invalidity at the port-of-entry and send the person back. This occurs even if the client did not know of the visa revocation.

If immigration counsel is brought into the case early on, we can advise clients that if they have a DUI/DWI arrest in the United States, they should not leave until the case is completed. Of course, their authorized stay in the U.S. may expire and they may have to leave,

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or apply for extensions. There may be personal reasons for them to go. If they must leave the U.S., their visa will be invalid for any future return and they are not likely to receive a new visa. The only way for them to fight their case (and avoid a bond forfeiture) is to apply to USCIS for an extension of their authorized stay and to work with you to try to expedite disposition of the DWI/DUI case.

If the alien is convicted and returns home to obtain a new visa, the consul will almost always deny the visa. It's "one strike and you're out." People will be referred to medical panels and psychologists to make findings whether there is a medical or psychological condition and associated behavior that makes them inadmissible to the United States as a danger to themselves or others. These evaluations can take more than a year.

If there has been harmful behavior associated with the offense, it is even less likely that a visa will ultimately be issued.

Thus, keep in mind that a DUI or DWI arrest can create a huge problem if the client is a nonimmigrant alien and travels abroad intending to return. The only way to avoid an immigration disaster in such instances is to advise the client not to travel and to fight the case and try to win. Anything else will result in the end of their nonimmigrant status in the United States. They may not necessarily be deportable as a result of the offense, but if they leave, they most likely will not be allowed to return because they will not have a valid visa and are not likely to obtain one.

Keep in mind that DWI or DUI offenses are still not deportable offenses. However, the arrest itself will ensure that these nonimmigrants will not be able to return to the U.S. any time soon if they leave. Only a dismissal or acquittal will allow future access to the U.S., as a general rule. Please note, too, that these problems affect only nonimmigrant visa holders and do not apply to green card holders, immigrants, or those who are otherwise already lawfully admitted for permanent residence. Anyone with something less than a green card will likely have a big problem merely as a result of the arrest.

Very truly yours,

Cascadia Cross Border Law



Margaret D. Stock

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