

# RIAC2



## CRIMINAL LAW

## FAMILY LAW



## IMMIGRATION LAW

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*The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.*

*\*RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

### **DWI AND OTHER ALCOHOL-RELATED OFFENSES**

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#### **In This Issue: DWI AND OTHER ALCOHOL-RELATED OFFENSES**

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One of the most common questions we receive, and for which we get numerous referrals, concerns an arrest for DWI. Our discussion this month will involve the increasingly negative immigration consequences for noncitizens who are arrested and/or convicted of alcohol-related offenses.

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#### **UPCOMING EVENTS**

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**VISIT US AT THE ANNUAL NYSDA  
CONFERENCE IN JULY 2018 IN  
SARATOGA SPRINGS, NY! GET YOUR  
QUESTIONS ANSWERED!**

As you may recall from reading our previous newsletter from May of 2017, there are two sets of rules pertaining to most noncitizen clients: deportability and inadmissibility. Deportability applies to those who have been lawfully admitted to the U.S., whether permanently (green card holders); or temporarily (non-immigrants admitted for a limited period of time). Inadmissibility applies to all others: those who entered the country illegally; "arriving aliens" (a term of art that does not refer to space invaders); and those applying for certain immigration benefits such as a green card.

#### **CONTACT US!**

Tel. (315)356-5794

Fax (315)356-5795

Sharon Ames, Esq.  
sames@ocgov.net  
CELL: (315)272-0505

Tina Hartwell, Esq.  
thartwel@ocgov.net  
CELL: (315)264-9217

#### **DWI and Deportability**

Driving While Ability Impaired, Driving While Intoxicated (either misdemeanor or felony) and Aggravated DWI, if solely based on the statutory BAC level, are NOT deportable offenses under the criminal grounds for removal set forth in INA §237(a)(2). This means that a person with numerous DWI convictions, even felonies, or an Aggravated DWI based on a high BAC alone, is not deportable for those convictions. There may be other consequences, however, based on the person's immigration status in the U.S, necessitating a thorough and proper intake with your client.

## DWI and Inadmissibility



### Chief Defenders & Assigned Counsel Administrators:

Contact the RIAC2 to schedule a training, lunch hour or other session in your office/county. We will provide CLE credit!

Although your client will not be deported solely because of a DWI conviction, if he or she travels outside the U.S., he or she could be inadmissible on ***medical*** grounds upon return, *even for just a DWI arrest*. In addition, if your client is in the U.S. on a nonimmigrant (temporary) visa and has an ***arrest*** (no conviction necessary!) within the past five years, the visa will be revoked by the Department of State. See, 9 FAM 403.11-3(A)(U), “When Consular Officers May Revoke Visas.” (FAM stands for “Foreign Affairs Manual” which sets forth the rules to be followed by consular officers and other immigration officials determining eligibility for admission to the U.S.). This means that your client will not be allowed back into the U.S. after any departure without a new, nonimmigrant visa. The new visa will not be granted unless your client is examined by a panel physician to determine whether your client has a physical or mental condition that poses a danger to him/herself or the public. See INA §212(a)(1). Driving while under the influence of alcohol is now considered, as a matter of policy, to be a danger to the public. Because the laws of inadmissibility also apply to those applying for a green card, a DWI arrest could prevent your client from becoming a LPR, which is often necessary to legalize his/her status in the U.S. Finally, if your client is otherwise removable from the U.S. and is placed in removal proceedings (Immigration Court), the Immigration Judge (IJ) will deny bond based on an arrest for DWI.

### Other DWI Offenses

A conviction under **Leandra’s Law (1192(2-a)(b))** makes your client deportable on *criminal* grounds for a Crime Against a Child (INA §§237(a)(2)(E)) and possibly for a Crime Involving Moral Turpitude (CIMT), depending on the circumstances.

A conviction for **Driving While Ability Impaired by Drugs (1192.4)** is a Controlled Substance Offense, making your client both deportable ***and*** inadmissible unless the record shows the “drug” was 30 grams or less of marijuana and your client has no prior drug convictions (including prior UPMs).

**Aggravated Unlicensed Operation 2d and 3d** convictions are not deportable offenses, but AUO 1<sup>st</sup> is probably a CIMT, making your client deportable and/or inadmissible depending on your client’s immigration and criminal history.

**This is a very brief overview of the consequences of DWI arrests and convictions. Regardless of your client’s immigration status, it is imperative that he or she get the proper advice regarding the consequences of alcohol related arrests. CALL THE RIAC!**