

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.*

In This Issue:
**INADMISSIBILITY: CONTROLLED
SUBSTANCE OFFENSES (CSOs)**

ANATOMY OF A RIAC ADVISAL: Part 12 INADMISSIBILITY Controlled Substance Offenses

UPCOMING EVENTS

October 24, 2018
Hiscock Legal Aid Family Court
Training

November 6, 2018
Oneida County Public Defender,
Civil Division Family Court
Training

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This is a very brief overview of the inadmissibility consequences for Controlled Substance 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!

Inadmissibility: A review

As we have previously explained (see our newsletter from May, 2017), the laws of inadmissibility apply to non-citizens in the following situations:

1. When the person is seeking admission to the U.S. at a port of entry;
2. When the person is applying for permanent residence (he/she must show they are not inadmissible to the U.S.); and,
3. In a removal proceeding, inadmissibility applies if the person entered without inspection (EWI) or is an "arriving alien," i.e. anyone who has not been "admitted" to the U.S.

With respect to controlled substances, INA §212(a)(2)(A)(i)(II) states: "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-... (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible."



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!

What does this mean for your client, who you just allowed to plead to a Criminal Possession of Marijuana 5th or a UPM? This means that while your client may avoid deportation IF the record of conviction establishes possession of less than 30 grams AND your client has no prior CSO convictions, he or she will still be inadmissible to the U.S. The only waiver available is for ONE conviction of 30 grams or less of marijuana possession with proof of hardship to certain relatives. Otherwise, there is no waiver of inadmissibility for controlled substances, so your client will be PERMANENTLY INADMISSIBLE. Thus, if your client travels outside the United States, he or she will be permanently denied re-entry. In addition, your client will be permanently ineligible for a green card (no matter what the circumstances).

Inadmissibility for CSOs also applies to any offense “relating to” a controlled substance. Drug paraphernalia offenses are “related to” a controlled substance and thus have the same inadmissibility consequences as an actual CSO.

An additional ground of inadmissibility exists where there is “reason to believe” the person is involved (including aiding, assisting, conspiring or colluding with others) in “illicit trafficking” of controlled substances. PLEASE NOTE that no conviction is necessary! (INA §212(a)(2)(C)). This inadmissibility ground requires “reasonable, substantial and probative evidence of drug trafficking.”

Strategies to Avoid CSO Inadmissibility

1. Although difficult, try and negotiate for diversion WITHOUT a guilty plea.
2. Offer an alternate plea to a free-standing accessory type offense.
3. Plead to accompanying non-drug charge, even if more serious.
4. Plead to a substance that is not covered under 21 USC 802 (e.g. CGH).
5. Keep the record clean of any mention of the actual controlled substance or any involvement in trafficking (i.e. “intent to sell”).

In addition to the serious deportability consequences for conviction of a CSO, we now see that the inadmissibility consequences can be just as harsh. A CSO conviction forces a non-citizen to avoid forever any travel outside the U.S.; makes them unable to ever return to their home country; and makes them not eligible for a green card. A CSO conviction can also derail a student’s future education in the U.S.

As always, when counsel is assigned to the case, call the RIAC at the earliest moment possible. Remember: if your client is facing felony charges, once the case is indicted, plea bargaining restrictions may force your client into accepting a disposition that will lead to deportation and inadmissibility or may force a trial, risking a conviction with the same consequences plus a lengthy prison sentence. **CALL or EMAIL US!**