RIAC2

CRIMINAL LAW

FAMILY LAW

IMMIGRATION LAW

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HAPPY NEW YEAR!

As we start the 2019 new year, we are sitting on a mountain of non-citizen cases, yet we do not have the information needed to provide the advisals. Please review your cases and get us the information we need or give us an update so that your client's case gets the necessary attention. We appreciate your cooperation!

In This Issue:
Relief from Removal

UPCOMING EVENTS

Oswego County, Criminal Law CLE, March 22, 2019

Oswego County, Family Law CLE, September 13, 2019

BOOK YOUR NEXT TRAINING SESSION NOW!

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.*

ANATOMY OF AN ADVISAL:

RELIEF FROM REMOVAL

Although we do our best to avoid any client being placed in removal proceedings, there are often times when your client is "otherwise removable" for reasons unrelated to your criminal or family court case. In those circumstances, if your client's goal is to remain in the U.S. (as opposed to wanting to be deported and obtaining a shorter jail sentence), it is imperative to preserve your client's eligibility for relief in Immigration Court.

There are many types of relief that may be available to someone in removal proceedings: Adjustment of Status (AOS)**;** Cancellation of Removal (COR) for LPRs and, though more difficult, non-LPRs; COR for victims protected under the Violence Against Women Act (VAWA*); eligibility for certain special visas: T Visa (victims of trafficking), U Visa (victims of certain crimes); Special Immigrant Juvenile Status (SIJS); Temporary Protected Status (TPS), Asylum, Withholding of Removal, Application under Convention Against Torture (CAT); waivers of inadmissibility and deportation; and, Voluntary Departure. Depending on the circumstances, one or more criminal convictions will disqualify your client for most, if not all, forms of relief from removal.

What criminal convictions disqualify someone from these types of relief? Here are a few examples:

1. Aggravated Felony (AF): precludes relief in all but CAT claims.
2. CIMT: precludes relief in non-LPR COR applications and AOS (unless petty offense exception applies).
3. Controlled Substance Offense (CSO): precludes COR and AOS.

(*VAWA: if it is re-enacted, as of this writing, it has expired with no action from Congress.)

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Contact the RIAC2 to schedule your 2019 training, lunch hour or other session in your office/county. We will provide CLE credit!

The best way to illustrate this is with a hypothetical that represents a common scenario:

You have been assigned to represent Samuel, who is charged with Attempted Robbery 2d. Based on the thorough intake that you got from your client, you know that he entered the U.S. as a refugee in 2011 and got his green card after he was here for a year. The copy of his green card that you were able to obtain says he has been a resident since July 1, 2011. The date the alleged offense is December 15, 2018. He has never left the U.S. since his arrival. He has two prior convictions for Petit Larceny from June 2013 and September 2018. He was sentenced to a CD for the first PL conviction (2013) and 3 years of probation for the second (2018); a VOP has been filed. On the current charge, the ADA has offered a plea to Petit Larceny with a sentence of one-year in jail in satisfaction of the Attempted Robbery 2d; the VOP sentence is 179 days in jail concurrent. He is not eligible for YO treatment.

Can he accept the offer? Answer: No. Why?

Samuel is "otherwise removable" because he has two CIMT convictions. No matter what he pleads to, he is at risk of being placed in removal proceedings based on those two CIMT convictions. However, because he has been a LPR for five years and has been continuously present in the U.S. for a period of 7 years prior to the commission of the second CIMT, he is eligible for Cancellation of Removal for LPRs *as long as he has not been convicted of an Aggravated Felony* (see, INA §240A(a)). Because the offer to plead to Petit Larceny with a sentence of one-year in jail is an Aggravated Felony ("theft offense" with a sentence of one year or longer; see, INA §101(a)(43)(G)), Samuel will be ineligible for any relief from removal other than a possible claim under the CAT, which is extremely difficult to win.

The advice from the RIAC will be to ask the ADA for a reduction of the sentence by one day to 364 days in jail (i.e. they can have their Petit Larceny conviction), so that Samuel's eligibility for relief from removal will be preserved. This is one possible way to protect his ability to remain in the United States even though he is "otherwise removable."

The lesson here is that just because your client may be subject to removal from the U.S., you should not assume that there is "nothing to be done" to protect your client from being deported. Avoiding the AF, or a CIMT, or a CSO can make all the difference to your client. You will have this information as part of the RIAC's advisal. If you are certain that your client will be placed in removal proceedings, give your client a copy of the advisal to show to an immigration attorney who will be able to investigate the avenues of relief available.

To avoid disastrous consequences of post-indictment plea restrictions, contact the RIAC immediately upon your assignment so that you can take a proactive approach in getting an immigration "friendly" disposition for your client.