

RIAC2



CRIMINAL LAW
FAMILY LAW



IMMIGRATION LAW

February 2019

Volume 3, Number 2



In This Issue:

Future Applications: Green Cards

UPCOMING EVENTS

Oswego County, Criminal Law CLE,
March 22, 2019

Oneida County PD : Criminal Law
Academy, March 30, 2019

Oswego County, Family Law CLE,
September 13, 2019

BOOK YOUR NEXT TRAINING SESSION NOW!

Below are examples of “green cards”
that have been issued over the past
30+ years. Any one of these indicates
your client is an LPR regardless of
which version your client has.



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:

FUTURE APPLICATIONS: GREEN CARDS

Although your client’s plea may allow him or her to avoid removal from the United States on criminal deportation grounds, the same conviction may make your client ineligible for a green card (i.e. status as a Lawful Permanent Resident, or LPR). Or, if your client is deportable, applying or re-applying for permanent residence in the context of a removal proceeding may be necessary to allow your client to remain in the U.S.

Whatever the circumstances, the outcome of your criminal case can affect your client’s eligibility to apply for LPR status and thus remain in the U.S. Obtaining LPR status is critical for noncitizens to be able to live and work in the U.S., as well as to travel in and out of the U.S.

How do criminal convictions affect eligibility for a green card? The laws of inadmissibility apply to an application for permanent residence, so your client cannot be “inadmissible” to the United States. (See RIAC newsletter from May 2017.) A criminal conviction that makes your client inadmissible will preclude eligibility for a green card. There are criminal inadmissibility waivers available, under certain circumstances, but those will be discussed at a later time. However, we do include information about waivers in our advisals when applicable.

Criminal Grounds of Inadmissibility:

1. **One** CIMT (except for ONE Class A misdemeanor or lower with a sentence of 179 days or less in jail- i.e. the “petty offense” exception);
2. Two CIMT convictions (any level or sentence);
3. Two or more convictions with aggregate sentences of 5 years in prison or longer;
4. One Controlled Substance Offense (CSO) or any offense



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

Chief Defenders & Assigned Counsel Administrators:

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

- “relating to a controlled substance” (as defined in NY and federal law drug schedules);
- 5. If there is “reason to believe” client is/ has been involved in:
 - Trafficking in a Controlled Substance (defined under federal law) or
 - Money laundering (defined under federal law);
- 6. Prostitution offenses;
- 7. Unlawful commercialized vice offenses; and/or
- 8. Human trafficking offenses.

In addition to criminal grounds of inadmissibility, there are Medical Grounds providing that a person is inadmissible “who has a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or who had a physical or mental disorder and history of behavior associated with the disorder that posed a threat to the property, safety or welfare of that person or others which will likely recur or lead to other harmful behavior.” INA §212(a)(1)(iii). It is this medical ground that can prevent anyone with a DWI (or DWAI) arrest, or conviction, from getting a green card. (See RIAC newsletter from June 2018.)

As you can see from above, avoiding a CIMT conviction is critical to avoiding inadmissibility. Many offenses that evade harsh deportation consequences are often still CIMTs which may negatively affect your client’s eligibility for a green card.

For example, a Petit Larceny with a sentence of 364 days will avoid an aggravated felony (“theft offense” with a sentence of one year or longer). However, Petit Larceny is still a CIMT (where the “petty offense” exception would not apply), making your client inadmissible and therefore ineligible for a green card.

In addition to convictions and criminal history, your client’s eligibility for a green card may depend on the existence of qualifying family members and their status. It is therefore critical to provide us information in the intake process about your client’s family members in the U.S. and their immigration status to help us make an initial determination about your client’s eligibility to apply for permanent residence.

If your client is eligible to apply for LPR status, either independently to USCIS (e.g. entered as a refugee and has been in the U.S. for at least one year) or in Immigration Court in connection with a removal proceeding, our advisal will include information to help your client steer clear of a conviction that will preclude your client from obtaining LPR status.

Having a green card also provides the basis for a future application for U.S. citizenship through the naturalization process. We will discuss this in next month’s newsletter.