

RIAC2



CRIMINAL LAW LAW

FAMILY



IMMIGRATION LAW

March 2019

Volume 3, Number 3



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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.*

ANATOMY OF AN ADVISAL:

FUTURE APPLICATIONS: CITIZENSHIP

Often a criminal conviction will not result in your client being placed in removal proceedings because he or she is an LPR (e.g. lawfully here in the United States) and the conviction itself is not a deportable offense. That does not mean, however, that the plea does not render adverse immigration consequences.

Your client may be eligible to apply for U.S. citizenship either at the time of your representation of the client, or in the future. What does U.S. citizenship mean for your client? **Most importantly, a U.S. citizen cannot be removed from the United States!** There are numerous other benefits, but for criminal defense counsel, this is the main consideration.

Eligibility requirements for naturalization as a U.S. citizen include:

1. Over the age of 18;
2. LPR for at least 5 years prior to the date of application;
3. "Physically present" in the U.S. for the past 2.5 years out of the 5 years prior to the date of the application;
4. Resided in the U.S. from the date of the application through the time of admission to citizenship;
5. Person of "good moral character" during the 5 years preceding the date of the application;
6. Understanding of the English language, including the ability to read, write and speak in "ordinary usage";
7. Knowledge and fundamental understanding of the history, principles and form of U.S. government; and,
8. Attached to the principles of the Constitution of the U.S.

Criminal convictions can prevent an applicant from demonstrating "good moral character" (GMC). Certain convictions, by statute, *permanently* prevent an applicant from establishing GMC. These include Murder and any Aggravated Felony conviction on or after 11/29/1990.



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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!

Other convictions constitute “conditional bars” to establishing GMC, meaning the conviction occurred within the 5-year period prior to the application for naturalization. These include one or more CIMTs; a conviction for 2 or more offenses with a combined sentence of 5 years imprisonment or more; any CSO violation (except for a SINGLE conviction for possession of 30g or less of marijuana); incarceration for a total period of 180 days imprisonment or more; prostitution offenses; smuggling of a person; polygamy; gambling offenses; “habitual drunkard” (e.g. multiple DWI convictions); willful failure to support dependents; adultery; and, the “catch all” phrase, Unlawful Acts.

Although the statutory period for examination (e.g. the “look back” period) is five years, USCIS can look at *any conviction for any time* if there is evidence that shows a lack of GMC and the person has not been “rehabilitated.” This means that even convictions that occurred more than five years ago can be examined to determine whether your client possesses the requisite GMC.

If your client was previously placed in removal proceedings and was granted Cancellation of Removal (COR) for LPRs, the conviction(s) are still relevant for naturalization purposes and will affect your client’s eligibility for citizenship. COR only removes deportability for that/those conviction(s); it does not eliminate the conviction itself.

Strategies for preserving eligibility for naturalization include:

1. Avoid any AF, CIMT and CSO conviction;
2. Obtain a sentence of less than 180 days of jail;
3. Avoid any prostitution offense;
4. If the client has any alcohol-related arrest and/or conviction, obtain evidence of rehabilitation.

Of course, these are many if not most of the same considerations for deportability.

Often, your client’s goal is to avoid being subject to removal proceedings which likely takes precedence over eligibility for naturalization. Thus, if you cannot avoid a conviction that renders your client ineligible for naturalization, but avoids removal, your client has to wait at least five years and have a clean record during that time before considering applying for citizenship. Waiting those years may still be insufficient, depending on the circumstances.

If your client is eligible to apply for naturalization, but has current and/or prior arrests that were resolved favorably (i.e. that show your client is not subject to one of the bars for GMC), always obtain a **certified disposition** from the court where the case was pending. Your client has the burden of proof to demonstrate GMC and USCIS will require certified court documents setting forth the disposition of any arrest. Failure to produce the necessary records can result in a denial of your client’s application.

One final note: We always advise that a client consult with an immigration attorney prior to applying for naturalization if there are any criminal arrests and/or convictions in his or her background!