# 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.

# *Anatomy of a RIAC Advisal: Part 3*

## DEPORTABILITY v. INADMISSIBILITY: WHICH RULES APPLY?

The immigration consequences of any proposed criminal or family court disposition depend on which rules apply to any given case. There are two main categories, with various exceptions: deportability and inadmissibility. Because of this, we include in our opinion letters both deportability and inadmissibility consequences as they relate to a particular client/disposition.

The applicable rule in any given situation depends on whether the individual has been lawfully "admitted" to the United States. An "admission" is defined as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." INA §101(a)(13)(A). Generally, when a person has been lawfully admitted to the United States in any status, whether it be permanent (with an "immigrant" visa), or temporary (with a "non-immigrant" visa), the rules of deportability will apply with respect to any proposed plea or disposition. The rules of deportability are found in Section 237 of the INA. So, for example, if your client is a Lawful Permanent Resident (LPR) of the U.S., the rules of deportability apply in his or her case. Likewise, if your client is here on a temporary working or student visa, the rules of deportability will apply.

All others are subject to the laws of inadmissibility, as if they are at the border and are seeking entry to the U.S. This includes those who are already in the U.S. but who entered without inspection (EWI) by an immigration officer (e.g. they crossed the border over the Rio Grande or the St. Lawrence into the U.S.). The rules of inadmissibility are set forth in Section 212 of the INA. If your client came here illegally, the rules of inadmissibility will apply to his or her case.

## UPCOMING EVENTS:

May 11, 2017:
7:00 pm – 8:00 pm
Lewis County Magistrates training, Lowville, NY

June 16, 2017:
2:00 pm – 4:00 pm
Oneida Co. Public Defender training, Utica, NY
(limited to members of the Oneida Co. Public Defender, Criminal Division)

Ongoing: Sharon will be in the Onondaga County Assigned Counsel Program offices every other Friday to discuss cases with ACP attorneys. If possible, please contact her in advance to schedule a time slot so that no one has to wait should two attorneys wish to meet with her at the same time.

In May she will be there May 12 and May 26.

**Chief Defenders and Assigned Counsel Administrators:**

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

There are exceptions, of course. One example is where a non-citizen has been admitted in a temporary work status, such as H-1B, and the employer goes through the lengthy and complex process to hire the employee permanently (employment-based green card). Although the employee has been lawfully admitted to the U.S. in H-1B status, the rules of inadmissibility apply to the employee's application for a green card. The same rules apply for an individual admitted in non-immigrant status who applies for a green card based on a family relationship (family-based green card). Therefore, if your client, based on your thorough and accurate intake complete with copies of immigration documents, is applying for a green card, it is important to address any inadmissibility issues relating to a proposed disposition in addition to the deportation consequences.

The rules of inadmissibility also apply to any non-citizen client returning to the U.S. from travel abroad, including Canada. So again, based on your thorough intake and understanding of your client's circumstances, you will need to discuss and be able to advise him or her whether or not to leave the U.S., as they could be denied re-entry when they want to return. This is particularly important for foreign students who travel abroad frequently.

Sometimes both sets apply! If a non-citizen has overstayed a nonimmigrant visitor visa, for example, and is placed in removal proceedings, the deportation provisions apply to the allegation that the individual overstayed the visa. However, if that person marries a U.S. citizen and becomes eligible to apply for a green card, the laws of inadmissibility apply to the family-based application for permanent residence. The Immigration Court will therefore be concerned with both.

Why is it so important to distinguish between these two sets of rules? In fact, they appear very similar when given a general look-over. However, there are critical differences that can pose a trap for the unwary. For example, we know that a non-citizen is not *deportable* for a single conviction of possession of 30 grams or less of marijuana. However, unless the person meets the requirements of INA §212(h), he or she will be deemed *inadmissible* for the same conviction, meaning he or she will be denied entry to the U.S. after travel abroad, or denied a green card if they are eligible to apply or have a pending application.

It is important to address both deportability and inadmissibility with your client when advising about the immigration consequences of any plea or family court disposition. Determining which set of rules may apply to your client can be confusing. The RIACs are here to sort that out and give your client the best options available according to the facts and circumstances of his or her case.