

**HOW CRIMINAL CHARGES AFFECT IMMIGRATION CASES – WHAT YOU MAY
NOT KNOW CAN HURT YOU!!**



by

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I frequently meet with immigration clients and provide legal advice on how their past criminal record can impact their right to future immigration benefits. Almost every application for an immigration benefit (such as an immigrant visa, nonimmigrant visa, adjustment of status, change of status, naturalization, etc.) requires an immigrant to disclose any criminal record, including any arrests, citations, charges, and convictions. In applying for many types of immigration benefits, immigrants are required to be fingerprinted in order to determine any criminal history.

Certain criminal convictions can lead to a denial of an application for an immigrant visa or a nonimmigrant visa, can make you inadmissible to the United States, and can cause an application for adjustment of status, change of status or naturalization to be denied. Worse yet, certain criminal convictions can lead to an immigrant being deported or denied admission to the United States, even if he or she already has a green card. To say the least, criminal convictions are treated very seriously in immigration law. Unfortunately, many immigrants mistakenly believe that the seriousness of the criminal offense depends on the amount of time he or she spends in jail. That is not correct when it comes to immigration cases. Every immigrant should be aware of the seriousness with which criminal charges are dealt with in immigration law.

Immigration law defines what is a criminal conviction much broader than traditional criminal law. Often times, I meet with immigrants who say that their criminal lawyer told them they had taken care of the case and that there was no need to worry about it or tell anybody about it. That is not exactly true when it comes to immigration law. Some common misconceptions when it comes to criminal issues are:

- If I didn't spend any time in jail, then it's not a problem for immigration law.
- If I wasn't convicted in criminal court, then I don't need to disclose the arrest to immigration officials.
- If it happened long ago, then there is no need to worry about it.

An immigrant who has been arrested or charged with a criminal offense should:

1. **Understand what a "conviction" is for immigration law purposes.** Section 101(a)(48)(A) defines "conviction" as "a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where (i) a judge

or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.”

Generally, there are two things that must happen before a criminal charge will be considered a conviction for immigration purposes. First, the alien must either be found guilty, or plead guilty, or plead no contest, or admits the facts of the crime. Second, the judge must order some form of punishment or penalty on the alien. Both of these elements must for there to be a conviction for immigration law purposes. This definition of “conviction” is much broader than what most people typically think of for a conviction.

2. **Consider the immigration consequences of the criminal charge before going to court.** Many immigrants go to court without knowing how the outcome of the case could affect their immigration status. I often encourage immigrants to have their criminal defense attorney speak with one of our firm's attorneys before going to court and entering a plea. That way, the immigrant and his criminal defense attorney are aware of the consequences of pleading guilty to a certain crime.
3. **Understand what he may plead to in criminal court.** Unfortunately, many immigrants agree to plead guilty on the advice of a criminal defense attorney. Often times, the immigrant will come to our office after the conclusion of the case and indicate that they pleaded guilty to the charge because they just wanted it to “go away” and get the case over with. Pleading guilty, even if the guilty plea does not require the person to go jail and only requires the payment of a fine or the performance of community service, is a conviction. Certain convictions can cause an immigrant to be deportable, even if no jail time was served. For example, I recently had a client want to file for naturalization (U.S. citizenship). Several years ago, he got into a minor fight with his wife. In court, he entered into a “deferred prosecution” agreement. In this agreement, he avoided going to jail. The only thing he had to do was to pay a small fine and perform 40 hours of community service. What he didn't realize was that in entering into the “deferred prosecution agreement” he had to plead guilty. As a result, he was “convicted” of a domestic violence charge. An immigrant, even a green card holder, can be deported for a domestic violence conviction that occurs on or after September 30, 1996.
4. **Obtain a complete copy of his criminal record and any criminal charges before applying for an immigration benefit.** Before applying for an immigration benefit, all immigrants should get a certified copy of any criminal charges. This is true even if you were found not guilty of the criminal charge. We advise our clients to get a certified criminal record check from the County where the criminal charge was handled. On that criminal record check, there typically is a Case Number. With the Case Number, the immigrant can request

from the Court a certified copy of the file. The most important thing to obtain is evidence of the outcome of the case (Guilty? Not guilty?). If the Court indicates that the case no longer exists because of the amount of time that has passed, you should get the Court to provide a written statement explaining that so that you can then present this information to USCIS, if necessary. I have seen many cases get denied for immigrants who filed on their own or with an inexperienced immigration attorney and who simply did not provide evidence of the criminal charge and its outcome.

5. **Disclose this information to his immigration attorney before applying for an immigration benefit.** Your immigration attorney needs to know about any criminal history before filing any applications. That way, your attorney can advise you of whether or not it is advisable to file the application at that time or if you should wait. In addition, the immigration attorney can determine before filing if you were “convicted” of the crime and whether you can be deported based on that crime.

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This article should not be taken as legal advice for any individual case or situation. This information is intended to be general and should not be relied upon for any specific situation. For legal advice, consult an attorney experienced in immigration law.