



Long, Chang & Associates, L.L.P.

Immigration Attorneys

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IMMIGRATION ALERT

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Featured Article

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

October 23, 2007 - 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.

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How Criminal Charges Affect Immigration Cases (Continued from Page 1)

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:

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

An immigrant who as 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

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**How Criminal Charges Affect Immigration Cases
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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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Korea & the Visa Waiver Program

Imagine you are a citizen of South Korea who would like to visit the United States for a short period of time. Not to work, not to stay, not to go to school, just to visit for a short period of time.

You hear about the process of applying for a non-immigrant visa (NIV) and you become discouraged. It is a time-consuming process, often difficult to understand and the decision on whether or not to grant you a visa to travel to the United States often times depends not so much on your application but rather the mood of a Department of State consular officer reviewing your application.

For many Korean citizens, the process of applying for a visitor's visa seems too daunting and many Koreans simply don't apply for fear of being rejected. In the summer of 2003, my wife (Attorney Kristen Aekyung Chang) and I traveled to South Korea where I taught an immigration law class at Handong International Law School. In speaking to a number of students, they mentioned to me how hard it was to get a visa. Many of them assumed they would never qualify for a visa to the United States.

Now, imagine if Korea were admitted into the U.S. Visa Waiver Program. The Visa Waiver Program was formed by the United States government in 1986 as a means to facilitate international travel to the United States from citizens of certain countries who met certain criteria. Citizens of these select countries can travel to the United States without obtaining a B-1/B-2 nonimmigrant visa and can be admitted for up to 90 days in order to visit for pleasure or for business purposes (typical B-1/B-2 purposes). Admission to the United States under the Visa Waiver Program (VWP) is very limited – it is only to visit for pleasure (vacation, visit family members, etc.) or to visit for limited business purposes. As part of the U.S. Visa Waiver Program you do not need to apply for a visa in order to visit the U.S.. You simply need to have the required passport from your country of citizenship and you need to be coming to the United States for the limited purpose of a short visit for business or pleasure purposes.

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Currently, there are 27 countries which are a part of the U.S. Visa Waiver Program. These countries are: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. South Korea is not included in the list of Visa Waiver Program countries.

So, how can South Korea become a part of the Visa Waiver Program? Many people believe that the President or the Department of State can simply designate South Korea (or any other country) for inclusion in the Visa Waiver Program. That is not true. In order to be eligible for the Visa Waiver Program, South Korea (and all other countries) must meet the following legal requirements set forth at Section 217 of the Immigration and Nationality Act:

1. **Similar travel privileges for U.S. citizens:** The country must waive visa requirements for U.S. citizens traveling to the visa waiver program country.
2. **Machine Readable Passport:** Citizens of Visa Waiver countries traveling to the U.S. must have valid, unexpired machine-readable passport with certain biometric features.
3. **Low Nonimmigrant Visa Refusal Rate:** The average number of refusals of nonimmigrant visas to nationals of the visa waiver program country during the previous fiscal year must be less than 3 percent (3%).
4. **Law Enforcement and Security Interests:** U.S. government officials must evaluate the effect that designating the country for Visa Waiver Program status would have on U.S. law enforcement and security purposes.
5. **Reporting Lost and Stolen Passports:** The country must enter into an agreement with the United States for promptly reporting lost or stolen passports.
6. **Repatriation of Aliens:** The country must accept the return of its citizens with final orders of removal.

By far, the single, major hurdle holding up South Korea's inclusion in the Visa Waiver Program is the requirement of having a low visa refusal rate. As noted above, the visa refusal rate must be less than 3%. According to a report published by The Heritage Foundation in year 2005, the nonimmigrant visa refusal rate was approximately 4% (a whole percentage point higher than the acceptable limit). Despite the obvious incentives to have South Korea in the Visa Waiver Program (for example, increased tourism revenue for the United States, better relations between the U.S. and South Korea, etc.), South Korea must get its visa refusal rate below 3% before it can be considered.

Let's imagine for a minute that the visa refusal rate can be lowered to below 3% and that South Korea is designated for inclusion in the Visa Waiver Program. Assuming that happens, South Korean citizens who otherwise would be required to obtain a B-1/B-2 visa to visit the United States could come to the United States for up to 90 days to visit. Essentially, the Korean passport would take the place of the B-1/B-2 visa.

While it would be easier to come to the United States if South Korea were included in the Visa Waiver Program, the Visa Waiver Program places several limits on foreign national using it to enter the United States. Generally speaking, VW entrants cannot extend their status beyond the 90 days (except in limited cases of medical emergency), cannot change their status to another nonimmigrant status while in the

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United States, and cannot file for a green card while in the United States (unless they are the spouse, parent or unmarried minor child under age 21 of a U.S. citizen).

Finally, the countries which are selected for the Visa Waiver Program must continue to meet certain requirements, including continuing to have low visa refusal rates. If a country has an increase in visa refusals above a certain level or citizens of the country overstay their admission period, that country can be removed from the Visa Waiver Program. Argentina found this out when it was removed from the Visa Waiver Program in 2002.

In conclusion, for several years there has been talk of South Korea joining the Visa Waiver Program. In order to be eligible, the visa refusal rate for South Koreans must fall below 3%. Nobody knows when or if that will ever happen. If it does and South Korea is invited to the Visa Waiver Program, South Korean citizens will enjoy greater travel flexibility to the United States.

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DREAM Act Dies Again!

The Development, Relief and Education for Alien Minors Act of 200 (commonly referred to as the DREAM Act has failed in the Senate once again. The Senate bill (S. 2205) was re-introduced in the Senate last week as a separate bill after it failed as an amendment to a Department of Defense authorization bill.

The DREAM act would have provided a path to permanent resident status for certain undocumented individuals who came to the United States prior to the age of 16, have resided in the U.S. for at least five years, pass security and criminal background checks and have graduated from a U.S. high school or obtained a GED certificate and who go to college or enter the U.S. military. Unfortunately, the Senate vote to invoke "cloture" (which have allowed debate on the DREAM Act to proceed) failed to receive the 60 necessary votes. As a result, the DREAM Act has died yet again.

The DREAM Act would have provided hope to many young undocumented immigrants who entered the United States at a very young age (often at a time when their parents brought them and they themselves had not choice on whether to come to the United States in the first place) and have gone to school and graduated from high school. These young men and women face obstacles in going to college (lack of federal financial aid, out-of-state tuition rates and inability to be admitted to many schools due to their undocumented status). The DREAM Act would have given these students an incentive to continue their education by going to college or to enter the U.S. military. If they did, they would have been eligible for a green card.

Both of North Carolina's Senators (Elizabeth Dole and Richard Burr) failed to see the merits of the DREAM Act and voted against it. For a listing of how the Senators voted on the "cloture" motion for the DREAM Act, click here. Keep these votes in mind when choosing your next Senator!

The U.S. Senate failed at passing comprehensive immigration reform earlier this summer and has failed once again in passing a limited provision (the DREAM Act) which makes such good sense!

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About Us

Long, Chang & Associates, L.L.P. is a full-service immigration law firm concentrating in the areas of employment-based and family-based immigration law. Our law firm has successfully represented individuals and employers through the immigration process with the Immigration and Naturalization Service (INS), Bureau of Citizenship and Immigration Services (BCIS), United States Citizenship and Immigration Service (USCIS) and at U.S. consulates and embassies in order to obtain both non-immigrant (temporary) visas and immigrant (permanent) visas on behalf of individuals or employees.

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Kristen Aekyung Chang is a founding partner of Long, Chang & Associates, L.L.P. She practices exclusively in immigration law and is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar.

Born in Seoul, South Korea, Ms. Chang attended the University of North Carolina at Chapel Hill where she received a Bachelor of Arts degree in Psychology. While achieving academic success at the undergraduate level, Ms. Chang devoted much of her time to volunteerism. She served as the Chairperson on the Planning Committee for the University's Bicentennial Class celebration and served as a Research Assistant in the University's Psychology Department where she performed valuable research in the area of cognitive memory. Ms. Chang also volunteered in the school's International Department as an English language assistant for international students and faculty members and at a local psychiatric hospital. In addition to her numerous public-service efforts during her undergraduate career at the University of North Carolina at Chapel Hill, Ms. Chang studied abroad at the prestigious London School of Economics where she achieved the top academic ranking in International Business Strategy and Human Resource Management.

Ms. Chang received her J.D. (law) degree from the Wake Forest University School of Law. During law school, Ms. Chang was selected as a member of the Law School's Moot Court Board based on her performance in the school's trial court competition. She was one of three members on the school's nationally-recognized and award-winning National Moot Court Evidence Team. During law school, Ms. Chang studied Labor and Employment Law at the law school's summer program in Italy.

Following law school, Ms. Chang opened her own immigration law practice in Greensboro, North Carolina, and subsequently joined Mr. Long in founding Long, Chang & Associates. As a naturalized citizen of the United States, Ms. Chang understands the immigration practice not just as an immigration lawyer but as an immigrant herself who has gone through the immigration process. Based on her personal experiences, Ms. Chang has a remarkable way of relating with her clients and perceiving their anxieties and concerns.



David J. Long founded Long, Chang & Associates, L.L.P. in 1998. He has been recognized by the North Carolina State Bar as a Board-Certified Specialist in Immigration Law. Mr. Long is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar. Mr. Long serves as a Mentor for other immigration attorneys through AILA.

Prior to founding Long, Chang & Associates, L.L.P., Mr. Long worked as an attorney with the law firm of Kilpatrick Stockton in Winston-Salem, North Carolina. Mr. Long practices in the areas of immigration law, corporate law and real estate.



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Born in Philadelphia, Pennsylvania, Mr. Long attended the University of North Carolina at Chapel Hill where he studied in the Honors Program and received a Bachelor of Arts degree in Political Science. In addition, Mr. Long studied the Korean Language at Duke University for a semester while attending UNC-CH. Mr. Long graduated magna cum laude and in the top 1% of his class.

Mr. Long graduated with highest honors and received his J.D. (law) degree from the Wake Forest University School of Law. During law school, Mr. Long was selected as a member of the Law Review based on his academic standing. He was one of three members on the school's nationally-recognized Gabrielli Family Law Moot Court Team. Mr. Long also studied Labor and Employment Law at the law school's summer program in Italy. Following law school, Mr. Long worked as an attorney in the commercial real estate department of Kilpatrick Stockton LLP in Winston-Salem, NC, one of largest law firms in the United States. After two years of working at a large law firm, Mr. Long desired the opportunity to assist clients on a more personal basis. As a result, he joined Ms. Chang in forming Long, Chang & Associates, L.L.P. Most recently, Mr. Long served as an adjunct faculty member at Handong International Law School in Pohang, South Korea where he taught U.S. Immigration and Naturalization Law.

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