

Effects of Criminal Cases on Immigration: A General Overview

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Common Relief in Immigration Court

- Cancellation of Removal for Non-Permanent Residents INA § 240(A)(b)(1)
 - 10 years continuous presence, GMC, exceptional and extremely unusual hardship
 - Cannot be **convicted of 212(a)(2), 237(a)(2), or 237(a)(3)**
- Cancellation of Removal for LPRs § 240(A)(a)
 - Aggravated felonies
- Asylum
 - Particularly serious crimes

Definitions

- Conviction – INA § 101(a)(48)(A)
 - PTDs in Hidalgo County are convictions
 - Deferred is a conviction
 - Expunged, also conviction
- Term of imprisonment or sentence – INA § 101(a)(48)(B)
 - period of incarceration or confinement ordered by a court of law, **regardless of any suspension** of the imposition or execution of that imprisonment in whole or in part
 - Deferred NOT a term of imprisonment

Scary Words

- **Crimes Involving Moral Turpitude**
- **Aggravated Felony – INA § 101(a)(43)**
 - Murder, rape, or sexual abuse of a minor
 - Theft offense (including receipt of stolen property) or burglary offense for which **term of imprisonment** at least one year
 - **Crimes of Violence** - as defined in U.S.C. for which the **term of imprisonment** at least one year

Criminal Grounds/Health Grounds

Inadmissibility/Exclusion	Deportability / Removability
212(a)(2)(A)(i) conviction or admits to a CIMT or attempt or conspiracy to commit a CIMT or (ii) a violation of a law relating to a controlled substance *petty offense and juvenile	237(a)(2)(A)(i) convicted of CIMT within 5 years of admission ... and convicted of a crime for which sentence of one year may be imposed
212(a)(2)(B) convicted of 2 or more offenses – with aggregate sentence of confinement of 5 years or more (regardless of moral turpitude)	237(a)(2)(A)(ii) any time after admission is convicted of two or more CIMTs not arising out of same transaction – regardless of whether confined
	237(a)(2)(A)(iii) convicted of an aggravated felony at any time after admission
212(a)(1)(iv) drug abuser or addict	237(a)(2)(B)(i) any time after admission convicted of a controlled substance other than single offense of possession of MJ of 30g or less

Why does it matter?

- Returning LPRs
 - You have an LPR client who is facing a DWI 3rd (true third), DWI 1st they got 30/180 days, DWI 2nd HCJ and 1/2 HCJ conviction - Rec: 4/4 + SCOP OR 2 TDC
 - You have an LPR client that is charged with Aggravated Assault w/ DW – FV – 1st degree

Reyes-Contreras – 5th Circuit - Ramifications

- No. 16-41218 (5th Cir. 2018)
- LPR
 - Simple Assault => 1 year sentence => COV (maybe) + 365 sentence = AGG FELON?
 - Removable 237(a)(2)(A)(iii) aggravated felon and removable under 237(a)(2)(E) no sentence of one year required
 - AGG FELON = ineligible for 42A
- Non-Resident
 - Simple Assault => even less than a year => COR ineligible as deportable under 237(a)(2)(E) CODV

What you should ask?

- Status – Are you USC and prove it, LPR, undocumented, DACA – again DWI can disqualify them from their DACA
- How long have you been here?
- Do you have USC relatives?
- Previous petitions?
- Refer to an immigration attorney

Take Away

- Always consult with an immigration attorney—sometimes you may not be able to get a dismissal but you can try to strike a deal that would ameliorate consequences for your client