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What Every Maryland Criminal Defense Attorney Should Know About Immigration

September - October 2007

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University of Maryland School of Law Small Firm Practice: Immigration Clinic

Maryland Office of the Public Defender Training Division

Maryland Criminal Defense Attorneys Association

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5 September 19, 2007

Introduction and Overview of Immigration Law

First, a few numbers from Maryland: based on 2005 US census data from Migration Policy Institute

- 641,373 = foreign-born individuals in Md
- 11.7% = % of Md's population that is foreign born
- 44.6% = % of Md's foreign born who are US citizens
- 6.5% = % of Md's pop. that are non-US citizens

• 25.3% = percentage increase in foreign-born

population in Maryland 2000-2005

• 67.9% = percentage increase in foreign-born population in Maryland 1990-2000 8 Top 3 countries of origin among Md's foreign born · El Salvador India • China 9 Nationally, only 3.5% of foreign-born individuals are from Africa, but in Maryland, 15% of the foreign-born are from Africa 10 Authorities for Immigration Law • Title 8 of United States Code = Immigration and Nationality Act = The Act • Title 8 of Code of Federal Regulations Memorandums • Case Law – Board of Immigration Appeals, Federal Circuits and Supreme Court 11 • The term "alien" means any person not a citizen or national of the United States. 101(a)(3) of the Immigration and Nationality Act (The ACT) 12 Homeland Security Act of 2002 Abolished the Immigration and Naturalization Service (INS) **Department of Homeland Security** • United States Citizenship and Immigration Services. (USCIS) • United States Customs and Border Protection. (USCBP) • United States Immigration and Customs Enforcement (USICE) 14 Department of Health and Human Services • Office of Refugee Resettlement (unaccompanied minors) 15 Department of Justice • Immigration Judges · Board of Immigration Appeals Attorney General 16 Department of Labor Employment Based Applications · Board of Alien Labor Certification Appeals • Title 20 Code of Federal Regulations 17 Department of State • Asylum Applications - 8 C.F.R. § 208.11 - may comment

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	U.S. Consulates -	
	Foreign Affairs Manuals	
	•	
18	•	
19	 212(a)(4)(B) of the ACT list factors to be taken into account by consular officer to determin whether alien is inadmissible 	
20	 101(a)(13)(A) of The ACT defines "admission", the alien into the United States after inspection 	
21		
22	Visa Waiver § 217(a) of the Act	
	• 90 day entry	
23	 Green card Categories of Aliens Non-Immigrants 	
24	 Immigrant Common Type of Visas Temporary visitors for business or pleasure § 1 Academic students [F-visa] - Exchange students - [J-visa] § 	.01(a)(15)(B) [B-1/B-2 visa] § 101(a)(15) (F) of the ACT § 101(a)(15)(J) of the ACT
25 Common type of Visas		
	 Specialty Occupations - H-1B visa § 214 (i) of the ACT. 	§ 101(a)(15)(H)(i)(b) of the ACT and
	Key Employees – Foreign Business	L-1 Visa § 101(a)(15)(L) of the ACT
26	Common type of visas • Fiancee – K-1 visa	§ 101(a)(15)(K)(i) of the ACT
	Spouse of USC – K-3 visa	§ 101(a)(15)(K)(ii) of the ACT
	• •	
27	Snitch – S visa	§ 101(a)(15)(S) of the ACT
	• § 101(a)(15) of the ACT - Definitions •	

28 Immigrant Visas · Immediate relatives of USC § 201(b)(2)(A)(i) of the Act · Widow(er) of USC § 201(b)(2)(A)(i) of the Act · Battered Spouse -Violence Against Women Act § 204(a)(1)(A)(iii)–(vii) of the Act § 204(a)(1)(B)(ii)-(iii) of the Act 29 Immigrant visas · Spouse and Children of LPR § 203 (a)(2) of the ACT · Special Immigrant Juvenile § 101(a)(27)(J) of the ACT Employment based § 203(b) of the ACT 30 Naturalization • § 316 of the ACT Eligibility 3 & 5 years Derivative 31 Status • L egal Permanent Residents - LPR Asylees · Refugees • Temporary Protective Status – TPS 32 Review - Litigation · Asylum Office • Immigration Judge · Board of Immigration Appeals • Federal Circuit Court of Appeals Supreme Court 33 Review USCIS Naturalization • Immigration Officer • 2nd Immigration Officer INA § 336(a) De Novo Review – U.S. District Court INA § 310(c) 34 Removal Proceedings · Administrative Proceedings No Right to Counsel 35 36 37 Detainers • INA § 236 (c)(1) • The Attorney General shall take into custody any alien who: • (B) is deportable by reason having committed any offense covered in section 237(a)(2)(A)(iii)

38 Detainers

• 8 C.F.R. § 287.7(d) Aliens with detainers shall be maintained in custody for a period not to exceed 48 hours.

39 Admissibility

- Does this individual fall into a category of person who should by denied entrance to the U.S.?
- INA §212(a)
 - Health grounds
 - Criminal grounds convictions or admissions
 - Security
 - Likely to become a public charge
 - Without proper documents EWIs and others
 - Previously deported

40 Who is subject to grounds of inadmissibility?

- First time entrants outside the US
 - Applicants for immigrant and non-immigrant status
- Returning LPRs (lawful permanent residents) outside US
 - Gone longer than 180 days
 - Engaged in illegal activity outside US, or
 - Has committed an offense listed in §212(a) (criminal grounds of inadmissibility) at any time
- -(In US) Applicants for change of status from one non-immigrant category to another
- (In US) Applicants for adjustment of status (AOS, "green card" application)
- (In US) Applicants for NACARA, Nicaraguan and Central American Relief Act

41 Removability/ Deportability

- Has this individual committed a violation or offense for which s/he should be removed from the U.S.?
- INA §237(a)
 - EWI/PWI entered/present without inspection
 - Visa violators overstays and others
 - Inadmissible at time of entry
 - Alien smuggler
 - Immigration fraud
 - Security
 - Criminal convictions

42 The grounds of inadmissibility and removability are different.

> The status of your client

-- and his/her *potential* status -- determines their relative importance.

For example,

A client may not be deportable for an offense, but may be unable to get a green card for which s/he otherwise qualifies.