

Issues relating to Expungement for non-US citizens

Many criminal convictions, even for misdemeanors, can result in drastic consequences for individuals who are not citizens of the United States. In some cases, the individual may be deported from the U.S., even if they hold a “green card” (lawful permanent resident status). On other cases, a conviction may prevent the individual from becoming a permanent resident, being granted asylum, or becoming a citizen of the U.S. For a summary guide to the likely immigration consequences of specific criminal convictions under Maryland law, see:

<http://www.law.umaryland.edu/faculty/msweeney/AbbreviatedImmigrationConsequencesChart.pdf>

Any finding or admission of guilt combined with a restraint on a defendant’s liberty constitutes a conviction for immigration purposes. *8 U.S.C. §1101(a)(48)(A)*. **In Maryland, convictions (for immigration purposes) include guilty verdicts, guilty and *nolo contendere* pleas, probation before judgment, and pleas of not criminally responsible.** In each of these cases, a conviction exists for immigration purposes as long as any sentence, period of probation or restraint on the individual’s liberty (e.g., commitment to a psychiatric facility) is imposed. It is important to note that the sentence taken into account is the sentence *imposed* by the court, even if that sentence is partially or completely suspended. *8 U.S.C. §1101(a)(48)(B)*.

Expungement of a conviction does not eliminate the conviction for immigration purposes. *Matter of Marroquin*, 23 I&N Dec. 705 (AG 2005); *In re Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002). If a conviction, prior to expungement, renders a non-citizen deportable or ineligible for an immigration benefit, expungement will have no effect for immigration: the individual remains deportable or ineligible despite the expungement.

Expungement can make it more difficult for non-citizens to prove their eligibility for immigration relief. Individuals who are seeking an immigration benefit (such as a green card or citizenship) or seeking relief from deportation often must demonstrate that they have been a “person of good moral character” for a certain period of time or that they have not been convicted of certain types of offenses. They must account for any arrest to which they have been subjected, even if it is simply to prove that no conviction resulted or that the conviction is not one that carries immigration consequences. In most cases, the Department of Homeland Security or an immigration judge will require a certified copy of the disposition as proof of the outcome of a criminal proceeding. Expungement of the record of conviction renders this proof unavailable.

In representing or advising non-citizens regarding expungement:

- Consider whether an expungement is in the client’s interest, given immigration factors.
- If you do advise obtaining an expungement, have the client **obtain and safeguard five (5) certified copies of the disposition** prior to expungement.
- Keep certified proof of the disposition in the attorney’s file.