What Every Maryland Criminal Defense Attorney Should Know About Immigration

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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)

13 • 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
• U.S. Consulates
• Foreign Affairs Manuals

212(a)(4)(B) of the ACT list factors to be taken into account by consular officer to determine whether alien is inadmissible

101(a)(13)(A) of The ACT defines "admission", with respect to an alien, as lawful entry of the alien into the United States after inspection and authorization by an immigration officer

Visa Waiver § 217(a) of the Act
• 90 day entry
• Green card

Categories of Aliens
• Non-Immigrants
• Immigrant

Common Type of Visas
• Temporary visitors for business or pleasure § 101(a)(15)(B) [B-1/B-2 visa]
• Academic students [F-visa] - § 101(a)(15) (F) of the ACT
• Exchange students - [J-visa] § 101(a)(15)(J) of the ACT

Common type of Visas
• Specialty Occupations - H-1B visa $ 101(a)(15)(H)(i)(b) of the ACT and § 214 (i) of the ACT.
• Key Employees – Foreign Business L-1 Visa § 101(a)(15)(L) of the ACT

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

Law Enforcement
• Snitch – S visa § 101(a)(15)(S) of the ACT
• § 101(a)(15) of the ACT - Definitions
Immigrant Visas

- Immediate relatives of USC
- Widow(er) of USC
- Battered Spouse – § 204(a)(1)(A)(iii)–(vii) of the Act
- Violence Against Women Act
- § 204(a)(1)(B)(ii)-(iii) of the Act

Immigrant Visas

- Spouse and Children of LPR
- Special Immigrant Juvenile
- Employment based
- § 203(b) of the ACT

Naturalization

- § 316 of the ACT
- Eligibility 3 & 5 years
- Derivative

Status

- Legal Permanent Residents - LPR
- Asylees
- Refugees
- Temporary Protective Status – TPS

Review - Litigation

- Asylum Office
- Immigration Judge
- Board of Immigration Appeals
- Federal Circuit Court of Appeals
- Supreme Court

Review USCIS

Naturalization
- Immigration Officer
- 2nd Immigration Officer
- De Novo Review – U.S. District Court

Removal Proceedings

- Administrative Proceedings
- No Right to Counsel

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)
Detainers

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

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

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

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

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.