

Immigration Law for the Criminal Defense Attorney

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General Overview: Types of Immigration Status

- A person not in the U.S. lawfully
- The person entered lawfully on a temporary visa but did not leave
- The person entered unlawfully

General Overview: Types of Immigration Status

A person lawfully in the U.S. temporarily

- Tourists

General Overview: Types of Immigration Status

Tourist visas

- Tourist visa applied for at consulate
- Visa Waiver countries: <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>
- Canadians



General Overview: Types of Immigration Status

Other types of temporary status:

- Students
- Temporary work visas
- Asylees, victims of crime, and others

General Overview: Example #1

- His status? He is a lawful permanent resident. John is not a U.S. citizen.
- Federal entities? ICE, EOIR
- Possible consequences: Lawful permanent residents can be deported

General Overview: Example #2

- Mary is a student at U.S.C. in the United States on a student visa.
- She wants to marry U.S. citizen Pat but she's been arrested on a DUI.

General Overview: Example #2

- What is Mary's status? Temporary student.
- What might she want? Citizenship? Lawful permanent resident status?
- Does LPR status come automatically upon marriage?
- Federal agencies: USCIS, ICE

Why Does this Matter to You?

Padilla v. Kentucky, 130 S. Ct. 1473 (2010): "When the [immigration] law is not succinct and straightforward . . . a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear."

Padilla v. Kentucky

Defendant was a Lawful Permanent Resident

He was driving a tractor trailer with a large amount of marijuana

Attorney told him that he "did not have to worry about immigration status since he had been in the country so long"

General Recommendations for Defense Attorneys

- PTI is GOOD. Diversion is bad.
- Any drug conviction is bad.
- Violent crimes are bad.
- Look at the list of aggravated felonies on the handout. These are the worst crimes.
- Always know your client's citizenship.
- Always advise non-citizen clients that a conviction could affect their immigration status. Call for help.

Intersection with Criminal Law

Immigration Hold/Detainer

This is Form I-247, Notice to Appear (NTA), issued by the Department of Homeland Security. It is a legal document that informs an individual of their removal proceedings. The form includes sections for the individual's name, date of birth, and the date and location of the hearing. It also contains a section for the individual to provide their own address and contact information. The form is filled out with handwritten information.This is another instance of Form I-247, Notice to Appear (NTA). It is a legal document that informs an individual of their removal proceedings. The form includes sections for the individual's name, date of birth, and the date and location of the hearing. It also contains a section for the individual to provide their own address and contact information. The form is filled out with handwritten information.

The Detention and Removal Process

- Immigration Hold/Detainer
- Notice to Appear (NTA)
- Immigration Bond Process
- Immigration Court Process
- Airport Detention/NTA for LPRs

Complexities of Immigration Law

Unlawful presence

- If the person entered without inspection, must depart and consular process
- If the person has more than one year of unlawful presence in the U.S, the person cannot return to the U.S. for 10 years
- Waiver for unlawful presence available for some people (not eligible for if a second unlawful entry)

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Complexities of Immigration Law

Many other reasons visas can be denied:

- Criminal history
- Public charge
- Prior misrepresentations
- Prior deportation

Issues in the News: Asylum

A person who “is unable or unwilling to return to, and is unable or unwilling to to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA § 101(a)(42)(A) [8 U.S.C. § 1101(42)(A).