

### 8(D) Immigrants, Aliens & Non-Citizens

The author knows of two attorneys who have made an effort to make themselves known as experts in the field of the immigration law. Lamar Peckham of Santa Rosa (707 527 8050) publishes an intermittent newsletter called *Crimigration Notes*, on the subject of the immigration consequences of criminal proceedings.

Dan P. Danilov, Esq., of Seattle (206 624 6868; FAX: 206 624 0812) is apparently one of America's finest immigration attorneys, having obtained permanent resident status for Nikita Khrushchev's son Sergei.

#### For more information:

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### **8(D)(a) Immigrant Visa**

An alien with a drunk driving conviction on his record has to jump through some hoops in order to be given an immigrant visa within two years of the conviction. 8 U.S.C. §1182(a)(1)(A)(ii) requires the exclusion of any alien who:

(I) [has] a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) [has] had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior,

Regulations of the U.S. Secretary of Health and Human Services adopted pursuant to these provisions, and current guidelines of the Centers for Disease Control interpreting the regulations, preclude issuance of immigrant visas based upon an episode of DWI or other alcohol-related harmful behavior, within two years past. However, a waiver is available under 8 U.S.C. §1182, subdivision (g). The U.S. Consul or other official involved can provide the alien with a FORM I-601 Waiver Application.

### 8(D)(b) Can't Become Citizen While on Probation

Rumor has it that one cannot become a naturalized U.S. citizen while on probation for any crime. The author offers a free update to this book for a reference to the specific statutory or regulatory provisions that is the basis for this policy.

### 8(D)(c) Deportation for Lack of "Good Moral Character"

**Misdemeanor Drunk Driving:** Misdemeanor drunk driving convictions usually don't involve moral turpitude (see, e.g., *Singh v. Waters* 87 F.3d 346 (9th Cir 1996)) (but see the discussion about moral turpitude and attorney discipline above) and usually don't involve drugs. They don't generally result in deportation. But amnesty status is not granted to illegal aliens who have three or more misdemeanor convictions. See *People v. Guzman* (1981) 116 CA3d 186, 172 CR 34 - Must inform of deportation possibility if prejudicial; *People v. Aguilera* (1984) 162 CA3d 128, 208 CR 418; *People v. Soriano* (1987) 194 CA3d 1470, 240 CR 328.

**Felony Conviction With Sentence of One Year or More:** On the other hand, a felony drunk driving conviction, even one without any injury to another, can be a deportable offense. *In re Magallanes-Garcia*, is published on the internet at (case-sensitive):

<http://www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3341.pdf>

In this opinion, the court held that the defendant's felony drunk driving conviction entailed a *substantial risk that physical force may be used against the person or property of another*. That, plus the sentence of more than one year in prison, made it a deportable *crime of violence* under 8 U.S.C. §1101(a)(43)(F). The defendant must actually be sentenced to one year or more, but it makes no difference whether or not the sentence was suspended (8 U.S.C. §1101(a)(48)). (Relevant portions of 8 U.S.C. §1101 are reproduced in Appendix B.)

In *Rosas-Paniagua v. Reno* 76 F. Supp. 2d 1060 (DC ND CA 1999), the opinion held that the proper forum for a challenge to such a deportation order is the U.S. Court of Appeals, not the district court.

#### For more information:

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