

REPRESENTING UNDOCUMENTED PARENTS

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Non-profits with immigration attorneys

- Immigrant Law Center of Minnesota – covers all MN
- Mid-Minnesota Legal Aid – covers central MN with offices in Minneapolis, Willmar, and St. Cloud
- Southern Minnesota Regional Legal Services – covers southern MN with offices throughout, main immigration office in St. Paul
- The Advocates for Human Rights – cover all MN, specialize in asylum cases
- Civil Society – Based in Twin Cities, work primarily with contract and volunteer attorneys
- Battered Women's Legal Advocacy Project
- Access Justice – non-profit for people who don't qualify for our services – know nothing about the services they provide

What Undocumented Means

- Lack the necessary documents that provide temporary or permanent status
- How does one become undocumented?
 - Enter the country without inspection by an immigration officer
 - Enter lawfully with a visa, but stay past period of authorized stay
 - Visitors, students, visa waiver program
 - Difference between duration of a visa and duration of authorized stay: visas can be valid for a single entry for one year, but customs and border patrol will only authorize a stay for a limited time

CRIMINAL ISSUES

Criminal Issues

- 2 areas where a client could get in trouble: deportability and inadmissibility
 - Generally, deportability applies to people who have been admitted to the United States and inadmissibility would apply to people who have not
 - Undocumented individuals could face both types of grounds
- Requires a conviction

What is a conviction?

- With respect to an alien, a formal judgment of guilt of the alien entered by a court **or**, if adjudication of guilt has been withheld, where-
 - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
 - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
- Only requires admission of facts to warrant a finding of guilt! So, continuance for dismissal could be a problem if they admit facts on the record (since presumably the judge has ordered some conditions during the CFD period).

Inadmissibility

- Crimes involving moral turpitude
 - Exception for ONE CIMT if happened either
 - When alien was under 18 or
 - Maximum possible penalty was less than one year and actually sentenced to less than 6 months prison
 - Does not matter how much time is served if they are sentenced to more than 6 months they don't qualify
- 2 or more criminal convictions regardless of whether they happened from the same activity IF combined sentence was more than 5 years
- Controlled Substance Traffickers

What is a crime involving moral turpitude?

- Not defined by statute
- Board of Immigration Appeals definition is: conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general
- Child abuse is a crime involving moral turpitude. In *Re Lopez-Meza* 21 I&N Dec. 1188 references several types of cases that have been found to have CIMT
- Anything related to sexual contact with a minor will be a CIMT
- Identity theft may be a CIMT

Example of what is child abuse

- Loeza-Dominguez v. Gonzales 428 F.3d 1156
 - Specifically states that malicious punishment of a child under MN Statute can be a crime of child abuse
 - Board of Immigration Appeals says child abuse is “any form of cruelty to a child’s physical, moral, or mental well-being.”
 - Immigrant argued the MN statute is divisible, so some convictions could fall under that definition and others do not.
 - Court says even if that were true (which it said was unlikely), when looking at the criminal complaint, which was part of the record, there was physical harm to the child.

Deportability

- Specific ground for crimes of “child abuse, child neglect, or child abandonment”. 8 USC 1227(a)(2)(E)
- Also specifically says that a crime of domestic violence, including violation of an OFP, is a removable offense
- Crimes involving moral turpitude, but limits it to certain circumstances
 - Within 5 years of admission
- Multiple criminal convictions: 2 or more CIMTs
- Aggravated felonies, including sexual abuse of a minor
- Controlled substance convictions

Moral of the story?

- Criminal convictions are bad, avoid them at all costs
- Sometimes it is better to actually serve a small amount of time than have a longer jail sentence stayed

REUNIFICATION ISSUES

Child in Foster Care

- Parent is required to pay for child's placement in foster care.
- If parent is undocumented and not working they can't pay
- If parent is undocumented and working under a false name, could raise issues of identity theft, which probably will be a CIMT making them removable.

Chemical Dependency

- If client has to go through CD treatment or assessment, if doesn't have insurance to cover the process, might not be able to complete it
- If they do have insurance through an employer, but in the incorrect name, how to document for the court?
 - Client could get in trouble related to identity theft
- If no insurance (or insurance doesn't cover it), and not working, how do they pay for it?

Sufficient Income

- What if family lacks income in general?
- Generally, undocumented members of a family are ineligible for public benefits.
 - Undocumented individuals are not eligible for federal TANF funds, meaning no MFIP
 - If there are US citizen kids, they are eligible, but undocumented parents must report income, even if they are working under another name or without authorization
 - A conviction for welfare fraud is a CIMT and could prevent them from getting status in the future.
- Ineligible for unemployment compensation

Housing

- Undocumented immigrants can qualify for public housing if there is at least one lawfully present individual in the home (most likely a US citizen child).
- But, subsidy will be reduced because parent will not be included (since they don't qualify)
- Regardless of status, many areas have waiting lists that are difficult to get on.

TYPES OF RELIEF

U Status

- Provides path to lawful permanent residence to victims of certain types of crimes who are helpful with a criminal investigation
- Crimes include: domestic assault, felonious assault, trafficking, abduction, kidnapping, rape, sexual assault, among others
- Crime must be investigated: means client had to report to police and cooperate with the investigation and/or prosecution
- Victim must have suffered substantial physical or mental harm as a result of the criminal activity

VAWA

- Undocumented domestic violence victims who are married to someone with lawful permanent residence or US citizenship could be eligible for lawful permanent residence through VAWA
- Victim must have been subject to battery or extreme mental cruelty by qualifying spouse

Deferred Action for Childhood Arrivals

- Provides temporary protection from deportation and work authorization to individuals who arrived in the US before 16th birthday and have completed high school or are in school.
- Possible younger parents are eligible, must have been under the age of 31 on June 15, 2012 (born June 16, 1981 or later)
- Lots of requirements, including that they have lived in US continuously since June 15, 2007

Family Members

- Immediate relatives could petition if they have status
 - If there has been a petition in the past, possible could use that
- Time it takes depends on status of relative and relationship between relatives
- US citizens can currently apply for:
 - Spouses, children, parents and siblings
 - Spouses, unmarried children under 21, and parents are immediate relatives, others have waiting periods
- Lawful permanent residents can apply for:
 - Spouses, unmarried children.
 - Spouses and children under 21 are in one category, unmarried children over 21 in another.
- Given long waiting periods, might not be a viable option

Comprehensive Immigration Reform

- Current bill would provide for a Registered Provisional Immigrant status
 - Would remain in this status for initial period of 6 years, could be renewed.
 - Has 13 year path to citizenship
- Current version requires proof of physical presence starting December 31, 2011.
- Has a number of requirements, including employment or education, paying back taxes, and relatively clean criminal records
- Not sure what final law will look like, though safe to assume there will be amendments and changes.

QUESTIONS?

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