



**KPB Immigration Law Firm**

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**Article: What happens when an immigrant gets a DUI?**

**By:** Christopher A. Kerosky and Susanna Bogue

There have been several recent developments in immigration law practice regarding the effects of being charged with driving while intoxicated which is known as driving under the influence (DUI) in California.

Many people who hold valid visas to work (including the E treaty visa, the L company transfer visa, and the H-1B professional worker visa), who have been arrested for driving under the influence are receiving letters informing them that their nonimmigrant visa has been revoked. The concept of the presumption of innocence before a conviction seems to have been abandoned for temporary work visa holders. Under the Department of State's newly revised Foreign Affairs Manual, 9 FAM 302.2-7(B)(3) "Substance-Related Disorders under INA 212(a)(1)(A)(iii) – Alcohol and Other Non-Controlled Substances", a visa can be revoked for "a single alcohol related arrest or conviction within the last five years; two or more alcohol related arrests or convictions within the last ten years; or if there is any other evidence to suggest an alcohol problem."

If the visa is revoked, the person who departs the US will have to apply for a new one at their home Embassy or Consulate and after being denied the visa, will then be required to be referred to a panel physician for evaluation, after which (assuming the doctor determines there is no alcohol dependence and the person is not a probable "threat" to society) they will return to have the visa issued.

Obviously, such a requirement will lead to delay in all cases involving an arrest for a DUI and in some cases the visa will not be reissued. If the visa is not issued and the DUI trial has not taken place, this leads to a further problem in that it is unlikely that a visitor visa would be issued to someone who has lived for years in the US even if the only reason for their trip is to fight the DUI. Once denied a visitor visa, most consulates will not reconsider their denial until at least a year has passed.

It's important to note that this article is primarily covering the effects of an alcohol-related arrest for people who hold nonimmigrant (temporary) visas and who are applying for a visa outside of the US. The situation is different for permanent residents (green card holders). DUIs are not considered to be crimes of moral turpitude (CMT) and as such do not trigger removal (deportation) proceedings.

Also, for the purposes of applying for naturalization, it is a conviction which is important, not an arrest. A conviction in California for a simple DUI normally includes a three years period of probation, during which time a person is normally not eligible to apply for naturalization. Even after the three years expire, many applications for naturalization will be denied if the most

recent half of the period for good moral character (five years, or three years for spouses living with US citizens for three years) includes time spent on probation.

For those who are undocumented, a DUI arrest can often mean the immigrant is turned over to ICE for the commencement of deportation proceedings. Some judges will not even let an immigrant bond out of jail because they are considered a “danger to society” even after one DUI. After 2 or 3 DUIs, the chances are the immigrant will remain in detention until deported. Drinking and driving is never a good idea; it’s even more perilous if you’re an immigrant. Just don’t do it.

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**About the author:**

**Christopher A. Kerosky** of the law firm of KEROSKY PURVES & BOGUE LLP has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine “Super Lawyers” edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C.

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