KEROSKY PURVES & BOGUE LLP

KPB Immigration Law Firm

San Francisco (415) 777-4445

Los Angeles (323) 782-3877

Check **KPB website** for offices throughout the state

Article: Immigration Effects of Drugs and Alcohol: Part 1 DUI's

By: Christopher A. Kerosky

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been arrested for driving under the influence are receiving letters informing them that their nonimmigrant visa has been revoked.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. Talk about a Catch-22!

According to immigration attorney Ellen Krengel, the panel doctor will request a CDT (carbohydrate deficient transfer) to see if there is long-term alcohol abuse in the blood which would show alcohol dependence. The panel doctor will also be asking 11 questions in the form of "Have you ever…" three of the eleven I've listed below. To read the complete list, they can be found in this June 5, 2015 Psychology Today article https://www.psychologytoday.com/us/blog/the-athletes-way/201506/what-are-the-eleven-symptoms-alcohol-use-disorder

• Continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol.

- Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
- Recurrent alcohol use in situations in which it is physically hazardous. [i.e. driving]

Someone who has recently been arrested for driving under the influence may have difficulty only answering one question with a "yes." Ellen says the panel doctors informed a group of immigration lawyers recently that to determine Class A or B, they look for "abuse + behavior" for alcohol, and simple abuse for drugs (eliminates experimental use). If a person is determined to have a Class A medical condition, then they are ineligible for a visa. Class B determinations, while not causing ineligibility mean that the applicant may have a "serious medical condition" and might be unable to care for themselves or require extensive medical treatment or need to be institutionalized.

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) is primarily spent on probation.

Part 2 of this series will deal with the effects of marijuana use under our immigration laws. This will be posted soon.

Check latest immigration news and developments in **KPB Blog**

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.