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Non-Immigrant Visa Revocation for DUI Arrests

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Recent guidance from the Department of State is having significant and long-term consequences for non-immigrants arrested for driving under the influence or a related offense. While most individuals who are arrested and/or convicted for driving under the influence face embarrassment, criminal penalties, and suspension of driving privileges, non-immigrants may also find their visa revoked and be barred from admission to the United States.

In September 2016, the U.S. Department of State published guidance on its recent policy which requires consular officers to prudentially revoke non-immigrant visas for individuals who have “an arrest or conviction of driving under the influence, driving while intoxicated, or similar arrests/convictions (DUI) that occurred within the previous five years.” The basis for this policy is a potential health-related ground of inadmissibility for alcoholism.

This new policy arises out of the agency’s increased concerns about drunk driving and DUI-related offenses. It reflects a much more aggressive approach to addressing those concerns. The Department of State has begun revoking otherwise-valid nonimmigrant visas immediately upon notification of an arrest for driving under the influence, even while the individual is in the United States, based on the suspicion that the individual is ineligible for a visa based upon physical or mental health-related grounds. Unlike other grounds for inadmissibility or ineligibility for a visa, a conviction or determination of guilt is not required. It is sufficient for the Department of State to be notified by local law enforcement that a non-immigrant was arrested for a DUI-related offense.

Although visa revocation can be a ground for court-ordered removal from the U.S., the Department of State has stated that a revocation based on a DUI arrest does not require the individual to leave the United States. While visa revocation under this policy does not mean that individuals are required to depart the U.S., if the individual does depart the U.S., he or she is required to obtain a new visa prior to entering the U.S. Obtaining a new visa from a consular post, with pending criminal charges can be challenging.

The Department of State has reportedly issued notices to individuals arrested for DUI-related offenses requiring them to depart the U.S. immediately and report to their consular post overseas. Departing with a pending criminal action may create substantial difficulties for the defense in a criminal case because the individual may not be able to obtain a new visa to be physically present in the U.S.

This new visa revocation guidance presents significant concerns for nonimmigrant visa holders, their families, and employers. Individuals who may be affected by this new policy and criminal defense attorneys whose clients who may be affected, should consult an immigration attorney.

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