

## **DUI NOT NECESSARILY A BARRIER TO NATURALIZATION**

Contributed by the Staff of Immigration Law Associates, P.C.

One of the most common concerns of permanent residents looking to become new citizens of the United States is that their arrest for DUI (Driving Under the Influence) will not only prevent them from reaching this goal, but it may also subject them to deportation. Although the movement toward criminalization of drunk driving has had great support and compelling proponents, the Immigration Service has not always seen it as an act requiring disqualification from naturalization. That is not to say that multiple DUIs will not be heavily scrutinized, but that if an applicant were to only have one DUI within the five years preceding application for naturalization, that applicant may still be allowed to attend the oath ceremony and swear in as a new citizen.

Why would the Service allow this? Well, the question really involves around the overall moral character of the applicant. In order to qualify for naturalization, an applicant must evidence that he or she is a person of good moral character. The Service evaluates claims of good moral character on a case-by-case basis in accordance with the standards of the average citizen in the community of residence. For example, if you were to have two DUIs in the past years, it might be difficult for you to argue that you are a person of good moral character. That is because it appears that you did not learn from your first arrest and you continued behavior that is potentially harmful to others.

Conversely, if you had one DUI more than five years ago and no DUIs since, this would show a reform of character. The Immigration Service is likely to excuse this because you have shown that you learned from your misdeed and you have taken steps to improve yourself as a result. Now, in the previous paragraph we saw that a person who has had only one DUI in the last five years (also known as the "statutory period") before the date of application and up to the date of naturalization interview may still be naturalized despite the arrest. That may be because a DUI is not considered a crime involving moral turpitude (CIMT). That is, an act or behavior that gravely violates moral sentiment or accepted moral standards of community. Having committed a CIMT precludes a finding of moral character.

Until fairly recently, DUIs were considered to be simple traffic offenses. This has changed, of course, and to the great benefit of society, but making the mistakes of driving drunk is still not considered a CIMT. That may help explain why one DUI in the statutory period is not an absolute bar to naturalization. Although you have not had a significant period of time to show reform of character, the fact that it was only one mistake in your life and the mistake was that of a crime not considered involving moral turpitude, the Service may excuse this one mistake as simply a one-time only mistake. However, what if you had one DUI more than five years ago and one DUI in the last five years?

This is a trickier question. However, chances are that your application will be denied for failure to reform character. Although you only have one DUI in the statutory period, you have had a previous DUI and you did not learn from your mistake. In the Immigration and Nationality Act, Congress was careful to include the following clause: "In determining whether the applicant has sustained the burden of establishing good moral character..., the Attorney General shall not be limited to the applicant's conduct during the five years preceding the filing of the application, but may take into consideration as a basis for such determination the applicant's conduct and acts at any time prior to that period." Since you have committed the crime during the last five years as you have committed before in the past, you will have time arguing that your application should be approved, although in theory, naturalization during this time period may still be possible since

DUI is not generally considered a crime involving moral turpitude. Your best bet however, will be to wait five years after your last arrest for DUI and then file a application for Naturalization.

What about deportation? Is there a chance you will be deported for DUI? A recent decision from the United States Supreme Court relates to this question and suggests that the charge of DUI will not subject an alien to deportation. In *Leocal v. Ashcroft*, The Court held that state DUI offenses that either do not have a mens rea (i.e., guilty mind) component or require only a showing of negligence in the operation of vehicle are not crimes of evidence and are, therefore, not deportable offenses.

As each person's personal situation is unique, it is advisable to seek legal council prior to filing your naturalization application.

Immigration Law Associates, P.C. now has former INS naturalization officer on staff who can provide a confidential assessment of the likelihood of your case. For more information please call (847) 763-8500.