

REGISTERING TO VOTE IN A U.S. ELECTION: IMMIGRATION CHALLENGES FOR THE NON U.S. CITIZEN

One of the main benefits of U.S. citizenship is the ability to vote. However, too often non-immigrants and immigrants alike are made to believe that they can register to vote and/or vote based on aggressive/illegal tactics used by organizations intent on registering as many people as they can to vote in upcoming elections. Although most aliens are aware of the prohibition against them from voting or registering to vote in the U.S., these organizations use persuasive language and intimidation designed to confuse and push them into registering. By registering more people, these organizations gain influence and, by extension, money. One of the most famous cases of this is currently in the news and involves the Association of Community Organizations for Reform Now (ACORN) – an organization which coordinated a national effort that produced flawed registration applications associated with Senator Obama’s campaign.

The implications of such organizational practices can be severe for immigrants and non-immigrants alike, in that voting is considered a deportable offense. Specifically, the Immigration and Nationality Act says that “any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.”

While this law appears to relate only to aliens who have actually voted and not to aliens who simply registered to vote, there is also a separate problem involving false claims to U.S. citizenship. When a person registers to vote, the registration form typically states that the registrant is, and affirms that they are a U.S. citizen. By signing the form, a non-U.S. citizen alien may be considered to have falsely represented his or herself to be a citizen of the United States and will be considered deportable for this particular offense (rather than for the offense of actually voting).

When applying for an immigration benefit, such as naturalization, an applicant may have to answer the question of whether he or she has registered to vote or voted in the past. In actuality, this may be the first time USCIS is made aware of an alien’s illegal registration and/or voting. Because of this risk, the alien should carefully consider whether to apply for naturalization and probably should not apply if they have actually voted.

If the government does decide to place a person into removal proceedings for voting or registering to vote it must prove that, under the state or federal voting statute, a violation occurred. Depending upon the federal,

state, or local law that was violated, the DHS may be required to prove that the respondent acted knowingly or willfully.

To determine whether a respondent knowingly or willfully violated a voting statute adjudicating officers should determine: 1) how, when and where the applicant registered to vote and/or voted; 2) the extent of the applicant's knowledge of the election laws; 3) whether the applicant received any instructions, or was questioned verbally about his or her eligibility to vote; 4) who provided the applicant with information about election laws or his or her eligibility to vote; and 5) whether the election registration form and/or voting ballot: a) contained a specific question asking if the applicant was a U.S.C.; b) required the applicant to declare under penalty of perjury that he or she is a U.S.C.; or c) required the applicant to be qualified to vote and lists specifically the requirement of U.S. citizenship elsewhere on the form.

If, based upon these factors, the respondent is not found by the Immigration Judge to have knowingly or willfully violated a voting statute, the alien will not be removed. In addition, there is a separate exception to the voting/false registration ban involving aliens who permanently resided in the U.S. prior to age 16, having parents that are both U.S. citizens, and who "reasonably" believed at the time of making such representation that he or she was a citizen. Since this exception is very narrow, however, it only applies to a very small percentage of cases.

So, what should you do if you falsely registered? If you have not voted, the best way to start to fix this problem is to immediately withdraw your registration and keep records of the withdrawal, as well as copies of the original registration (if available) and a copy of the voting record to prove that although you registered, you did not actually vote. In addition, for future reference, write down the circumstances surrounding your registration including an explanation as to why you did not realize you could not register.

If, however, you did vote, you should still withdraw your registration as soon as possible and keep records of your registration, voting history, and registration withdrawal. An explanation should also be written out for future reference. Withdrawing your registration will not change the fact that you voted; however, it will provide circumstantial evidence to show that you took steps to correct your error after finding out you made one.

If you need assistance with this or any other immigration-related issue, please contact our law firm.