



Outline from R. Blake Chisam for “Real ID, Criminal Issues And Hot Topics In Removal” session 3

Understanding Criminal Databases

Immigration and customs officers can now access criminal databases like the NCIC easily. It's also much easier for law enforcement agents to access immigration records. The net result of both these trends is to make it much more likely that your clients' criminal records, including those of petitioners, will be noticed.

Criminal and immigration databases have become far more sensitive and the people who use them have become much more adept at using them. They can be used to locate information based on biometric (e.g., fingerprints) and biographical (e.g., name) information.

Most law enforcement and immigration databases contain inaccuracies and correcting those inaccuracies can be difficult. If you know that information about a client in a database is inaccurate, you should request the agency managing the database to correct it.

Handling Inspections at Ports of Entry

I'd like to mention a couple of things regarding how to handle inspections. The first is to avoid them. The second is how to do them.

Most inspection problems that relate to criminal issues should be avoided whenever possible. If it appears that your client, whether he's a nonimmigrant or an immigrant, is inadmissible because of a criminal ground, then you've got to strongly advise him not to travel in the first place.

Of course, to advise your client you have to know that there's something to be worried about. And that means you have to get your client to tell you that they've been arrested, indicted, convicted or the like.

I recommend having a process in place that obligates a client to tell you whether they or any of their family members have ever come into

contact with the criminal justice system and what the outcome of that contact was. If your client doesn't tell you, you should retain the right to withdraw as his counsel or, at a minimum, to charge him more money, which he ought to pay up front. Naturally, this isn't as easy as it sounds.

If the client is an individual, as opposed to an employee of one of your corporate business clients, you'll want to ask him the question before you file anything. What do you do when the criminal issue arises after you've filed the papers? How do you get them to tell you then? I think you've got to say to your client, in writing, that he's under a continuing obligation to keep you informed about anything that could affect his immigration status, including arrests, indictments, convictions, tax problems, orders of protection, speeding tickets and so on. It's not a perfect solution, but, then again, you're not your client's mother either.

After you've finished getting your client his green card, you've got to tell him what can make him deportable and/or inadmissible. You should implore your clients, in writing, to contact you if they get so much as a speeding ticket. I'm not joking. If your client gets a speeding ticket, he's going to have to explain it and provide evidence that he's satisfied any fine he had to pay when he tries to naturalize.

If your client is a corporation that has an interest in helping its employees maintain their immigration status, then you'll want to advise the company to implement a policy requiring its employees to inform the company when anything happens, positively or negatively, that could affect their immigration status. Many companies already have policies about handling their employees' criminal conduct, so you won't necessarily be breaking new ground. However, you'll want to work with the company's employment lawyers to construct a policy that will best serve the company's needs.

So what do you do once you find out that a client has a criminal issue? You should first speak to the client and find out as much as you can about the offense. You'll also need to get copies of the charges, the indictment or information and conviction or disposition records, if any. Often, it's a good idea to speak with your client's criminal lawyer and to make it known that your client should not enter any plea agreement until they've run the proposed disposition past you.

Once you have the information you need about the criminal matter, you'll need to research whether the offense could make your client deportable or inadmissible—or both. For example, if the offense is a simple DUI, then your client is likely not going to be either inadmissible or deportable. If, on the other hand, your client's husband has been convicted of shoplifting, he could be both, and you'll need to probe deeper. On the deportability side, you'll want to see if your client committed the offense within five years of admission or whether the maximum possible prison sentence he could have received was one year or longer. On the inadmissibility side, you'll want to evaluate whether the petty offense exception applies.

If the offense makes your client inadmissible, you have to advise them not to travel outside the U.S. If they insist on traveling or don't tell you about the offense before they travel, you'll likely have to deal with the issue once your client gets placed into secondary inspection or applies for a new visa abroad.

So how do you handle the inspection itself? The answer depends on the type of inspection and the criminal issue involved.

There are essentially three levels of inspection: primary, secondary and deferred. Primary inspection is the most common type and you will hardly ever be involved in that. Primary inspection happens right after your client gets off the plane. He shows his passport and entry document (e.g., visa, permanent resident card, etc.). The inspector will take a fingerprint and digital photograph and may ask a few questions in the moments before your client's immigration and criminal record, if any, pop up on the inspector's computer screen.

If anything pops up on the screen, the inspector will refer your client to secondary inspection, at which your client has no right to a lawyer. However, your client may have the opportunity to call you so you should be sure that your clients know how to reach you.

Since you can't be there with your client, your role at secondary inspection is more like that of an advisor. If there's a risk your client may get placed into secondary inspection or if your client calls to tell you they've been put there, you will likely be limited to telling him what to expect and to advising him what to—or, more importantly, what not to—

say. On occasion, I've been able to reach an inspector or a supervisor by phone and a couple of times by fax, while a client is in secondary inspection. However, that's a rare occurrence and one that often proves quite unfruitful.

When immigration inspectors can't make a definitive determination of inadmissibility during secondary inspection, they often parole the alien into the U.S. and require him to appear for deferred inspection. Here, your role can be greater and you'll have a bit more opportunity to advocate for your client. At deferred inspection, an inspector can still take the position that your client can't have a lawyer present. However, most permit attorneys to be appear with their clients.

During a deferred inspection, you'll want to project the image of someone helpful, a handy person to have around. You should definitely try not to act like a "lawyer" and you ought to avoid appearing arrogant. And you certainly shouldn't act like a know it all. If you do, you'll put the inspector on the defensive and he'll try to either put you in your place or take it out on your client ... or both.

Dealing with Criminal Issues in USCIS Petitions and Applications

How do you deal with immigration issues in USCIS petitions and applications? The short answer is to answer the question asked on the form, and then document your answer carefully, but with the minimum amount of paper necessary to do so. If the offense doesn't make your client ineligible for the benefit you're seeking (e.g., naturalization, adjustment of status, etc.), you should, in an addendum, explain why it doesn't. If it does, then you probably shouldn't file the case at all. There's hardly a worse feeling than showing up for a naturalization or adjustment interview and seeing an ICE officer who's going to take your client into custody.

Of course, you have to know about the criminal issue in the first place. You also have to be able to evaluate its influence on your client's eligibility for the benefit your seeking. To do this, follow a similar strategy to that outlined above.