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Fighting Deportability

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Because the consequences of deportation are harsh, it has been described as "draconian", not different from "exile or banishment". It is not limited to undocumented aliens. Even permanent residents who have been in the U.S. for many years may be deported.

Oftentimes, the alien under deportation proceedings readily concedes deportability for fear that the immigration judge may retaliate against him. While this fear is not totally unfounded, it could be a mistake to admit deportability. The alien may be waiving certain forms of discretionary relief. Professional assistance should be sought.

The INS has the burden to prove deportability by clear, convincing and unequivocal evidence. This may not be easy especially if the evidence was improperly obtained.

Deportation grounds may be grouped into several categories:

1. Entry without inspection. This includes entry with fraudulent documents. Permanent residents who are not inspected at the time of entry may be deported under this ground.
2. Failure to maintain non-immigrant status. A non-immigrant visa is to be used solely for the purpose that it was obtained. Thus a visitor's visa cannot be used for employment. Non-immigrants are also required to leave the U.S. when their visas expire. Violating a non-immigrant status is a common ground for deportation.
3. Failure to comply with conditions of stay. Sometimes the INS allows aliens like those having communicable diseases or mental or physical disorder to enter provided they comply with certain conditions. If they don't fulfill the conditions, they could be deported.
4. Failure to comply with requirements relating to conditional permanent resident. An alien who marries a U.S. citizen or permanent resident is given conditional permanent resident status if he or she has been married for less than two years. To remove the conditional status, the couple should file a joint petition two years after marriage. Otherwise the alien spouse could be deported. This is meant to discourage marriages which are entered into for the sole purpose of obtaining a green card. In some cases filing a joint petition is impossible because the couple have separated. The alien spouse in this situation may file the petition if he or she could prove that the marriage was bona fide from the beginning but it just didn't work or if she could prove that the separation was due to spousal abuse.
5. Aiding or abetting illegal entry. An alien who helps another enter the U.S. illegally is deportable. Assisting immediate relatives such as spouse, parent, son or daughter to enter illegally may be exempted from this rule under certain circumstances for humanitarian reasons. Letting an illegal alien live in your house does not automatically make you deportable.

6. Convictions for crimes of moral turpitude. An alien who is convicted of a crime involving moral turpitude within five years after entry which results in imprisonment of at least one year is deportable. Crimes of moral turpitude refer to those with malicious intent. Crimes that involve fraud are examples.
7. Aggravated felons. Those convicted of serious crimes such as murder, rape, trafficking in drugs, firearms or destructive devices, money laundering, and other crimes which result in an imprisonment of at least five years are deportable.
8. Drug offenses. Drug addicts, drug abusers or anyone convicted of violating any law relating to controlled substances are deportable. Possession of 30 grams or less of marijuana for personal use may not be a ground if it is a single offense.
9. Weapons violation. This refers to purchasing, selling, offering for sale, exchanging, using, possessing or carrying any firearm or destructive devices in violation of the law.
10. Miscellaneous crimes and prostitution. This covers anyone convicted of espionage, sedition, treason, extortion, blackmail, or other violation of security laws, using false travel documents to enter or depart from the U.S., or the importation into the U.S. of any alien for prostitution or other immoral purposes.
11. Willfully failing to report a change of address within 10 days of such change is deportable.
12. Obtain their visas or other immigration documents through fraud.
13. Engaging in terrorist activities such as hijacking, sabotage, the taking of hostages, violent attacks on internationally known protected persons, assassinations, as well as those engaged in the export of goods, technology and sensitive information which endangers national security.
14. Becoming a public charge within five years after entry may also be deportable.