

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

March 2021

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The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

This month we briefly touch on the various proceedings in Family Court to highlight some of the important immigration concerns for noncitizens.

PART 3: IMMIGRATION CONSEQUENCES IN SPECIFIC FAMILY COURT PROCEEDINGS UNDER THE FAMILY COURT ACT

ARTICLE 3: Juvenile Delinquency

- A JD finding is NOT a conviction for immigration purposes.
- If the client later ADMITS the elements of certain offenses, they can be deemed inadmissible (denied re-entry from a trip abroad or deemed ineligible for green card) even though there is no conviction.

ARTICLE 4: Child Support

- Willful noncompliance with a Child Support order prevents a client from demonstrating “good moral character” for purposes of obtaining citizenship, and
- Negatively impacts any application or benefit that requires the favorable exercise of discretion (e.g. release on bond, cancellation of removal, waiver of inadmissibility/deportation).

ARTICLE 5: Paternity

- Order/Declaration is required to prove parent/child relationship for anyone seeking an immigration benefit based on a family relationship where the parents are not married (e.g. green card or necessary waiver).
- Establishes the obligation to support the child (See Article 4 above).

ARTICLE 6: Custody

- Status of parents is important!
- Lack of status does not mean court cannot grant order of custody.
- International travel must be considered.

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PART 3: IMMIGRATION CONSEQUENCES IN SPECIFIC FAMILY COURT PROCEEDINGS

UPCOMING EVENTS:

3/18/21: Criminal Court and Immigration by RIAC2. 12:00pm - 1:30 pm. Open to all. To register, email: marcello@ocgov.net

4/1/21: Family Court and Immigration by RIAC2. 12pm - 1:30 pm. Open to all. To register, email: marcello@ocgov.net

4/14/21: Oneida Co Bar Assoc. Immigration Update 12 - 1:30 pm To register, email: diane@oneidacountybar.org

4/22/21: Immigration in Criminal and Family Court combined CLE by RIAC2. 12 pm - 2:30 pm. Open to all. To register, email: marcello@ocgov.net



5/13/21: Criminal Court and Immigration by RIAC2. 3:00 pm - 4:30 pm. Open to all. To register, email: marcello@ocgov.net

6/3/21: Family Court and Immigration by RIAC2. 3:00 pm - 4:30 pm. Open to all. To register, email: marcello@ocgov.net

6/24/21: Immigration in Criminal and Family Court combined CLE by RIAC2. 2:00 pm - 4:30 pm. Open to all. To register, email: marcello@ocgov.net



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Chief Defenders & Assigned Counsel Administrators:

Contact the RIAC2 to schedule your next training, lunch hour or other session in your office/county. We will provide CLE credit!

- Child Citizenship Act: Automatic acquisition of citizenship requires child under age 18 to be in legal and residential custody of USC parent.
- May be important for discretionary decisions by DHS

ARTICLE 8: Family Offenses

- Findings can lead to criminal charges that may be deportable offenses (e.g. assault, drug possession, EWOC).
- Violation of an Order of Protection makes a noncitizen deportable by a mere finding in Family or Criminal Court without any criminal conviction.
- Order of Protection database shared with DHS and its agencies; an OOP can result in inquiries upon return from trip abroad or in application for a green card and/or citizenship.

ARTICLE 10: Abuse and Neglect

- Findings are not deportable offenses but can be basis for criminal charges that are deportable (e.g. EWOC).
- Admissions to conduct on the record can negatively impact any Immigration application such as green card, citizenship, waiver of inadmissibility /deportability, etc.
- DHS can request records from your client in adjudicating any application. Failure to produce records can result in denial of an application that if granted, offers the only way client can remain in U.S. Consider the effect on other family members.

Important considerations and strategies:

- Avoid any findings that will lead to criminal prosecution.
- Ask for ACD without admissions.
- Get protection for children who may travel internationally to assure their return to the U.S.
- Do not let a party's immigration status prevent you from advocating for your client.
- With child support, ask for non-willful violation.
- Get expanded Order of Protection that includes conditions that have nothing to do with the no-contact or stay away (i.e. protection) part of the Order. For example, include a condition that parenting class is required or payment of fees for supervised visitation is required. If client violates the Order, s/he can admit to these unrelated conditions without triggering removability.

Note that this is a **BRIEF** summary. Each case is fact-specific, so it is important to consult with the RIAC to obtain advice on the immigration consequences, not only for your client, but also for the other members of the family, especially children.

Next month, we will talk about assignment of counsel for noncitizens detained by ICE.

AS ALWAYS, CONTACT YOUR RIAC AS SOON AS POSSIBLE!