

WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

MONTHLY NEWSLETTER

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Everything You Need to Know for Your Noncitizen Clients

If your noncitizen client is facing criminal charges or adverse findings in Family Court. Please contact the WNY Regional Immigration Assistance Center.

We are funded by the New York State Office of Indigent Legal Services (ILS) to assist mandated representatives in the 7th and 8th Judicial Districts in their representation of noncitizens accused of crimes or facing findings in Family Court following the Supreme Court ruling in *Padilla v. Kentucky*, 559 U.S. 356 (2010), which requires criminal defense attorneys to specifically advise noncitizen clients as to the potential immigration consequences of a criminal conviction before taking a plea. There is no fee for our service. Please consider contacting us, whether you are a criminal defense, appellate or family defense attorney, for any of the following services:

- To receive advisals on plea offers and other dispositions to reduce and alleviate the immigration consequences on a noncitizen's status
- To join you in communicating to your client the aforementioned advisal we have provided
- To assist you by providing language access to communicate with a client who does not speak English when your office does not have such capacity, or provide you with a list of referrals to interpretation/translation services
- To assist you in determining the status of a noncitizen who does not have documentation of that status available
- To communicate our advisal concerning your noncitizen client in writing or orally to opposing counsel or to a court
- To provide CLEs on the immigration consequences of crimes to your defender community
- To participate in case conferences with you and others in your office to discuss noncitizen cases in the criminal justice system
- To refer you to deportation defense services and counsel

WE'RE HIRING: JOIN OUR TEAM!

The Legal Aid Bureau of Buffalo and the Ontario County Public Defender's Office operate a Regional Immigration Assistance Center (RIAC) to cover the 7th and 8th Judicial Districts of New York. The mission of the RIAC is to provide advice and consultations, CLEs and other trainings, and any necessary support to mandated representatives regarding the immigration consequences to noncitizens of criminal and family court proceedings. The RIAC will serve public defenders and appellate attorneys, and Assigned Counsel panel members, throughout Western New York.

We seek a full-time Staff Attorney for this project who will be based primarily in Canandaigua, located in the Finger Lakes region of New York, with a weekly presence in Rochester, NY. See back page for more information.



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CAREFUL: YOU MAY NEED TO ASSESS WHEN A NATURALIZED CITIZEN COMMITTED AN OFFENSE TO PROPERLY ADVISE

By Sophie Feal, Managing Attorney, WNYRIAC, Legal Aid Bureau of Buffalo, Inc.

As we all know, people born in the U.S. are citizens, as are those born in Puerto Rico, the Panama Canal Zone, the U.S. Virgin Islands, and Guam. U.S. citizens are eligible to carry a U.S. passport and may never be deported or denied admission to this country, though they may be detained, searched and questioned at the border upon seeking admission. *See, Tabaa v. Chertoff*, 509 F3d 89 (2d Cir. 2007). Some citizens have dual nationality and may hold more than one passport, depending upon the laws of the countries in which they were born or hold citizenship. Certain people born in a U.S. possession, such as American Samoa, may be a U.S. national, but not a citizen, though they may also carry a U.S. passport.

In addition, children born abroad to U.S. citizens may *acquire* citizenship at birth by operation of law. A child who qualifies for acquisition may obtain proof of their citizenship at the time of their birth from a U.S. Consulate abroad or, later in time, they may apply for a certificate of citizenship or a U.S. passport. As well, children who are under eighteen years of age may *derive* U.S. citizenship by operation of law when a parent naturalizes, as described below. However, the laws on acquisition and derivation of U.S. citizenship through parentage are complex and may depend on the law in effect at the time of the child's birth.

"A naturalized citizen may be denaturalized in civil or criminal proceedings in those rare instances where fraud or concealment has occurred, such as when a pending arrest was not disclosed. If a defense attorney represents someone who has been naturalized, they should be certain to consider whether the offense was committed before the date of naturalization and whether the arrest was disclosed on the naturalization application."

Naturalization is the process by which a foreign-born person with permanent residence becomes a U.S. citizen. Once a person effectively naturalizes, which includes filing an application, attending an interview, and passing a test, as well as taking an oath of allegiance to this country, they have the same rights and obligations as any other U.S. citizen and no longer hold a green card. A naturalized citizen will have a certificate of naturalization and possibly, a US passport, as evidence of their status.

It is important to note, however, that a naturalized citizen may be denaturalized in civil or criminal proceedings in those rare instances where fraud or concealment has occurred, such as when an arrest is not properly disclosed. See e.g., 8 USC §1451; 18 USC §1425; <https://www.justice.gov/opa/pr/department-justice-creates-section-dedicated-denaturalization-cases>; https://nipnlg.org/PDFs/practitioners/practice_advisories/fed/2020_07Apr_denaturalization-pa.pdf . This particular problem may arise when someone is arrested while a naturalization application is pending or when an accusatory instrument alleges crimes committed before naturalization was granted.

The applicant for naturalization is expected to respond to a question asking if they have ever been arrested, and even a question asking whether they have committed a crime for which they have not been arrested. If a defense attorney represents someone who has been naturalized, they should be certain to consider whether the offense charged was committed before the date of naturalization, and whether the arrest was disclosed on the naturalization application so that the

client does not face future denaturalization for the failure to disclose such a fact. The Immigrant Defense Project, a fellow RIAC, produced this practice advisory to remind practitioners of this:

https://www.immigrantdefenseproject.org/wp-content/uploads/Advisory-for-Defense-Attorneys_-Identifying-clients-at-risk-of-denaturalization3-1.pdf.

An applicant for naturalization must first generally be a lawful permanent resident (LPR) for at least five years before they are eligible to apply. There is an exception for those married to U.S. citizens.* They may apply to naturalize after three years as an LPR, but there are specific requirements which must be met in addition to the marriage to a U.S. citizen.

In order to naturalize there are rules about physical presence in the U.S., language ability, and knowledge of U.S. history and civics, but the critical requirement for criminal defense and family law attorneys to understand is the requirement that the applicant prove that they are of “good moral character” (GMC) in the five (or three) years preceding the application for naturalization. *Any* criminal offense, as well as other “bad” conduct during those years, could derail an LPR’s hope to become a U.S. citizen. A list of conduct that statutorily constitutes a lack of “good moral character” is found at 8 USC §1101(f); INA §101(f). This conduct includes convictions for most removable criminal offenses, as well as for having been confined, as a result of any conviction, to an aggregate period of 180 days in a penal institution. In addition, there is conduct that does not require a conviction, such as being a “habitual drunkard,” deriving income principally from gambling, or giving false testimony for the purposes of gaining an immigration benefit; and a person who is on probation or parole may not be naturalized. The law is also clear that one who has been convicted of an aggravated felony can *never* establish GMC, and caselaw holds that two drinking and driving related convictions creates a rebuttable presumption that an applicant lacks the requisite GMC. *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019).

The naturalization regulations further expand upon what constitutes a lack of good moral character. The rules

CONT'D ON PAGE 4

*There are also special rules for the naturalization of members of the military which are not covered in this article.

Post-Deportation Self-Assessment Guide

If your client is interested in information on their right to return to the U.S. after being deported, this guide may be a resource:

[Post-Deportation Self-Assessment Guide \(click here\)](#)

This guide is intended as a self-assessment resource for individuals who have previously been deported and want to return legally to the United States. This guide provides general information about immigration law and does not constitute legal advice. This guide was originally prepared by the Post-Deportation Human Rights Project (PDHRP) in 2011 and was updated by the National Immigration Project of the NLG and Boston College's Center for Human Rights & International Justice in 2023 to reflect developments in law and practice.

add that a person engaged in prostitution or commercialized vice lacks GMC, as does one involved in “alien” smuggling, or one who has practiced or is practicing polygamy. The regulations also state that unless the applicant establishes extenuating circumstances, they will be deemed to lack GMC for willful failure or refusal to support dependents; or having an affair which tended to destroy an existing marriage. Finally, 8 CFR §316.10 states that “the fact that a person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.”

Perhaps more troubling than being denied citizenship is that if an LPR with a conviction for a removable offense on their record files for naturalization, they may be placed in removal proceedings if the conviction is discovered by immigration authorities as the result of the required FBI background check. Therefore, it is imperative that criminal defense attorneys carefully advise LPR clients who are convicted of crimes to seek consultations with immigration lawyers before filing for any future immigration benefit such as citizenship, renewing a “green card,” or for that matter, having any contact with any branch of the Department of Homeland Security.

Naturalization is not the only immigration benefit where GMC is assessed. A person who is undocumented may seek lawful status in the U.S. if they can show ten years of continuous presence in the U.S., and GMC for those ten years, among other requirements. As well, those who have been victims of domestic violence and seek special permanent residency status under the Violence Against Women Act (VAWA) must prove they are of good moral character to obtain this status. Those who receive “T” visas for survivors of human trafficking must also show GMC to ultimately receive permanent residence. Consequently, it may be vital to assess criminal and family cases for its GMC implications, and not solely to determine whether a criminal plea would render a noncitizen deportable..

MORE INFORMATION ABOUT STAFF ATTORNEY POSITION

REQUIREMENTS:

NYS Bar admission and 1-5 years of experience of removal defense experience in immigration, with knowledge about the intersection of criminal law and immigration law, and an interest in how immigration law affects family law proceedings. Candidates must have a demonstrated commitment to indigent defense and immigrant clients. Reliable transportation and a valid license to drive a motor vehicle or demonstrated capacity to meet the transportation needs of the position.

This position will require travel throughout the 7th and 8th judicial districts to work with institutional providers, as well as occasional overnight travel to NYC, Albany and our office in Buffalo, NY.

Candidates should be well organized with good communication skills and writing ability for daily consultations with criminal defense and family law attorneys representing non-citizens, and have a desire to conduct CLEs and trainings for lawyers and others. The RIAC is comprised of a small team located in two separate offices. Most work is done virtually, so any candidate should be self-motivated and comfortable working independently. The ability to speak a language spoken by the region’s noncitizen communities is an advantage, but not required.

STAFF ATTORNEY CONT'D.

This position is full-time.

Salary Range: \$66,000 - \$105,000, depending on experience.

A comprehensive benefits package including medical, dental, and vision benefits is available to you and your dependents. In addition, we offer generous vacation, personal, and sick time. Other benefits available to you are long-term disability insurance, supplemental term life insurance, parking expense reimbursement plan, transit plan, a flexible spending account, and a 401(k) retirement plan.

Many of our attorneys apply for New York State Higher Education Services Corporation District Attorney and Indigent Legal Services Attorney Loan Forgiveness Program and the Federal Public Service Loan Forgiveness Program.

The Legal Aid Bureau of Buffalo, Inc. values Diversity, Equity and Inclusion and is an Equal Opportunity Employer. Minorities / Females / Disabled / Veterans / Sexual Orientation / Gender Identity.

Please send your cover letter, at least three references, and resume to resume@legalaiddubuffalo.org or The Legal Aid Bureau of Buffalo, Inc., Attention: Human Resources, 290 Main Street, Suite 400, Buffalo, NY 14202.

Interviews will be conducted on a rolling basis.

The WNY Regional Immigration Assistance Center

A partnership between the Ontario County Public Defender's Office
and the Legal Aid Bureau of Buffalo, Inc.

