

Providing legal support to attorneys who provide mandated representation to noncitizens in the 7th and 8th Judicial Districts of New York. Funded by the NYS Office of Indigent Legal Services (through Erie County).

Immigration Issues for the Noncitizen Defendant

Contact Information

Welcome to our second issue of the Western New York Immigration Assistance Center newsletter. As you may already know, we've been funded by the New York State Office of Indigent Legal Services to assist you in your 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).

Criminal defense attorneys are required to specifically advise noncitizen clients as to the potential immigration consequences of a criminal conviction before taking a plea. Our Center was established so that we can share our knowledge of immigration law with public defenders and 18b providers to help you determine the immigration consequences of any particular case you may be handling. There is no fee for our services.

Call us. We want to hear from you. In the 8th Judicial District, contact attorney Sophie Feal at 716.847.0662 x 314 or sfeal@ecbavlp.com. In the 7th, contact attorney Wedade Abdallah at 585.295.6066 or wabdallah@lasroc.org.

Upcoming CLE Trainings

All NYS public defenders and assigned counsel attorneys are invited to attend the upcoming CLE trainings. To register, please email your name, address and affiliation to mvaleri@ecbavlp.com. These trainings are free of charge and provide you with two hours of CLE credit.

- **September 16th** in the third floor Jury Room of the Niagara County Courthouse, Lockport from 1:00 p.m.—3:00 p.m.
- **September 23rd** at the Sequestered Tavern in Seneca Falls from 12:00 p.m.—3:00 p.m. (lunch provided courtesy of Cayuga County).
- **September 30th** for Allegany and Cattaraugus Counties (location to be determined) from 1:00 p.m.—3:00 p.m.

We would like to hear from you as to what immigration topics you are most interested in hearing about for round two of our trainings and future newsletters. Please email any comments or suggestions to mvaleri@ecbavlp.com.



Inside this issue

What is Good Moral Character 2

WNY IMMIGRATION
ASSISTANCE CENTER

A joint collaboration between the Erie County Bar Association Volunteer Lawyers Project, Inc. and The Legal Aid Society of Rochester, New York.



What is “Good Moral Character” in Immigration Law?

BY SOPHIE FEAL, ESQ.
Director of Immigration Program
ECBA Volunteer Lawyers Project, Inc.

An understanding of what “good moral character” (GMC) means in immigration law is essential to criminal defense and family law practitioners who want to ensure that noncitizen clients avoid not only removal from the U.S., but also avoid being denied a valuable immigration benefit due to a lack of such character. At 8 USC §1101(f), there is a list of conduct that constitutes a lack of good moral character. 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. The law is also clear that one who has been convicted of an aggravated felony can never establish GMC.

The lack of good moral character affects those lawful permanent residents (LPR) seeking naturalization most profoundly since they must show that they are of “good moral character” in the five years preceding their application for naturalization.¹ Therefore, any criminal offenses, as well as other “bad” conduct during those five years, could derail an LPR’s hope to become a U.S. citizen. Perhaps more disturbing is that if an LPR with a conviction for a removable offense in their record files for naturalization, he or she may be placed in

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removal proceedings if the conviction is discovered by immigration authorities during the required FBI background check. For this reason alone, criminal defense attorneys should advise LPR clients who are convicted of crimes, but for whatever reason are not placed in removal proceedings, to seek consultations with immigration lawyers before filing for any future immigration benefit such as citizenship. Family Court attorneys should also be careful of findings that may be deemed

Footnotes

¹The spouses of US citizens can generally seek naturalization after having been an LPR for three years, therefore, the period required for good moral character would be three years.

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a lack of good moral character if they represent noncitizen individuals who seek an immigration benefit that requires GMC.

In addition, it is important to note that the naturalization laws specifically expand upon what constitutes a lack of good moral character. The regulations 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 further state that unless the applicant establishes extenuating circumstances, he or she 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, the naturalization regulations 8 CFR Section 316.10 state 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.” It advises that the Government may evaluate GMC in accordance with statutory provisions and “the standards of the average citizen in the community of residence.” Thus, all the aforementioned provisions could affect a naturalization applicant who has had issues in Family Court, even if they do not constitute a conviction. It is also noteworthy that a person who is on probation or parole may not be naturalized.

Naturalization, of course, is not the only immigration benefit where GMC is assessed. A person who is undocumented may seek lawful status in the U.S. if he or she 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 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.

We hope to cover good moral character in more detail during our second round of CLEs commencing in 2017, and look forward to seeing you there.