

Residents liable for deportation after criminal conviction

"Deportation" is a term we normally link to overstayers or big criminals who are on temporary visas. Typically one would think that a resident would not be liable for deportation. However a new section under the Immigration Act 2009 includes a power for Immigration New Zealand to deport residents if they are convicted "of an offence for which the court has the power to impose imprisonment for a term of 3 months or more" within 2 years of obtaining residency or while on temporary visas.

Section 161(1)(b) of the Immigration Act 2009 also empowers Immigration New Zealand to deport residents if they are convicted of an offence punishable by more than 2 years, within 5 years of obtaining their residency. Section 161 means that a residency does not make the person safe from deportation if they were to be convicted of offences involving drunk driving, careless driving, dangerous driving, refusing to provide blood (or specimen), common assault, domestic assault or other ranges of offences which one would consider moderate. Under s167 of the Immigration Act 2009, a minister or Immigration New Zealand has 10 years to consider this deportation. An opinion provided by one of Queen City Law's specialist immigration lawyer's confirmed that this was just a matter of time and process.

As this provision is new, many criminal barristers do not quite understand the implications on a conviction and therefore do not properly include such arguments in a discharge without conviction application. One recent case, heard in the Morrinsville District Court, based on an unfortunate dangerous driving charge did not properly deal with this issue either and led to a conviction for the unfortunate defendant. Submissions in the application for a discharge without conviction covered a "potential prejudice or delays to a future citizenship application", but did not adequately address the liability for deportation.

The defendant was not aware he was liable for deportation at the time and came to Queen City Law and I therefore successfully appealed this sentencing to the Hamilton High Court in February 2014 where Justice Woodhouse found that although the circumstances for the dangerous driving charge was not to be dismissed, the grave consequences of the potential deportation for 10 years was simply too much, warranting a successful discharge without conviction.

During this hearing in the High Court, the crown made references to several case law extracts which included residents making applications for discharge without conviction. These cases did not include direct submissions covering this grave consequence (namely the liability for deportation). Counsel had made arguments towards a prejudice in future visa applications and did not make any direct references to a liability for deportation. This was because some of the cases were heard before the changes to the Immigration Act was made in 2009, but some of the cases involved counsel that simply did not know the applicable immigration law and the dire consequences.

Residents or temporary visa holders, have you been charged or convicted of an offence that will make you liable for deportation? You need to be aware of the implications and liability for deportation and contact us now if you wish to rectify this situation.

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to matters dealt with in this publication.

About the author Tina Hwang

- Tina specialises in property including conveyancing, litigation and construction.
- Tina also specialises in disputes including commercial and employment (having worked for both employers and employees)
- Email: tina@queencitylaw.co.nz / DDI: 09 970 8812

