

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Medical Grounds of Inadmissibility Redefined to Possibly Include DWI

The State Department has recently dramatically redefined grounds of inadmissibility for mental and medical disorders. The new State Department guidelines could result in admissibility of those convicted of DUI/DWI. Thus, as is many criminal matters, the immigration consequences may now greatly outweigh the penal consequences. The results may be particularly harsh for first time simple DUI/DWI offenders who in New Mexico face no jail time at all.

The changes in the guidelines focus on substance-related disorders and physical or mental disorders associated with harmful behavior. Mere existence of a physical or mental disorder will not alone trigger inadmissibility. The disorder must be accompanied by associated harmful behavior.

The harmful behavior fitting the criteria for inadmissibility has been broadened to include DUI/DWI. In the past, DUI/DWI did not affect immigration status since it constituted neither an aggravated felony or a crime of moral turpitude. The redefined guidelines have vastly worsened the possible immigration consequences of a DUI/DWI.

Alcohol abuse is expressly defined as a medical condition that could lead to inadmissibility. Though alcohol abuse alone does not necessarily make a visa applicant inadmissible, alcohol abuse associated with other harmful behavior may. Associated harmful behavior would include any threat to the property, safety or welfare of the foreign national or others. DUI/DWI is specifically included within the definition of harmful behavior.

As a result, any visa applicant will now be referred to panel physicians for evaluation if the applicant has been arrested once within the past 5 years, or twice within the past 10 years for an alcohol related offense. This would include arrests for DUI/DWI. It could also include other alcohol related arrests.

Visa applicants would be well advised to seek the services of an immigration attorney prior to seeking admission to the United States. Perhaps more importantly, any immigrant with prior DUI/DWI or other alcohol related convictions should consult with an attorney prior to any trips outside the U.S. since reentry may be barred under the new State Department guidelines.

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