

## [Deportation Prevented, Client May Now Apply For Green Card](#)

After almost five years of contested litigation, deportation proceedings have been terminated in our client's favor enabling him to apply for adjustment of status with Citizenship and Immigration Services.

Immigration Court proceedings were instituted against our client in 2004. He was charged with being removable as an alien who was present in the United States without being admitted or paroled.

At a preliminary hearing we advised the Court that our client is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by his lawful permanent resident spouse. His wife's petition was filed on April 23, 2001, grandfathering him under the former provisions contained in INA §245(i) that allow individuals to pay a penalty fee to cure minor immigration violations enabling them to apply for their Green Cards inside the United States. Our client's priority date is current and there is a visa available for him. We then filed our client's Form I-485, Application to Adjust Status (Green Card application), together with Form I-485, Supplement A penalty fee with the Immigration Court in Buffalo, New York.

Unfortunately, during the course of Immigration Court proceedings our client was criminally charged with violating 8 U.S.C. §1324(a)(3)(A), relating to the hiring of unauthorized aliens for employment. Our client's case was administratively closed by motion of the Department pending the disposition of the criminal case before the U.S. District Court for the Northern District of New York.

After the case was administratively closed our client entered a plea of guilty, and was sentenced to a term of imprisonment of 12 months and 1 day. We advised our client's criminal defense counsel with regards to his plea of guilty that his plea would be acceptable from an immigration perspective because we do not believe that a conviction under 8 U.S.C. §1324(a)(3)(A) is an aggravated felony, nor a crime

involving moral turpitude that would have any adverse immigration consequences.

While serving his term of imprisonment in Pennsylvania, the government moved the Court in Buffalo to reopen our client's case, and change venue to the Immigration Court in Pennsylvania. We opposed the Government's motion for change of venue, arguing that the Department did not allege that our client's criminal conviction had any adverse immigration consequences, nor did it file additional charges of removability, or cite any precedent that a conviction under 8 U.S.C. §1324(a)(3)(A) rendered our client deportable, or in any way precluded him from requesting affirmative relief from removal in the form of adjustment of status. The Court in Buffalo agreed with our argument and denied the Government's motion for reopening, and change of venue.

Our client then completed his term of imprisonment, and an immigration hold was placed on him. The Department again moved the Court to reopen and change venue to the Court in Pennsylvania, but again failed to launch any additional immigration charges against our client or allege that our client was ineligible to apply for his Green Card. We again opposed the motion for change of venue. The Court in Buffalo again denied the Department's motion, and scheduled him for a new court hearing.

Our client was then transported from the detention facility in York, Pennsylvania to the Buffalo Detention facility located in Batavia, New York. Upon transfer we immediately made a request for a custody redetermination hearing. We successfully argued that our client was not subject to the mandatory detention provisions contained in INA §236(c), and that he remained eligible for adjustment of status as affirmative relief from removal, obtaining our client's release from custody on bond.

Our next action was to move the Court to conditionally terminate proceedings against our client to enable him to apply for adjustment of

status with CIS because his criminal conviction has no adverse immigration consequences, and he remained eligible to adjust his status. In response to our motion the Department conceded that our client was not deportable under any criminal ground of removability, and did not oppose our motion to conditionally terminate proceedings.

The Immigration Court in Buffalo, New York signed the order this morning terminating deportation proceedings against our client. He may now apply for his Green Card with Citizenship and Immigration Services, and his immigration ordeal will soon be over with.