

Beyond the Sentence: When Criminal Convictions Lead to Deportation

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1

Outline of talk:

- ▶ Identifying when a criminal conviction leads to Deportation
- ▶ The legal framework for Deportation after conviction
- ▶ Deportation appeals
- ▶ Importance of advising criminal clients re. immigration consequences of conviction. (Early Plea & Pleas in Mitigation)
- ▶ Post Sentence - Detention & Removal
- ▶ Common Pitfalls
- ▶ The Future of Deportation
- ▶ Conclusion and Q & A

2

Why does this talk matter?

- ▶ Deportation can be more severe than the criminal sentence.
- ▶ Proper Client care. Avoids later complaints.
- ▶ Timing Matters! - Decisions taken at plea and sentencing stage can shape deportation outcomes.
- ▶ Sentencing may not be the end of the matter.

3

DEPORTATION v REMOVAL

- ▶ DEPORTATION:
 - ▶ Reason: Criminality/Public Good
 - ▶ Deportation Order
 - ▶ Re-entry Ban until Deportation Order Revoked
- ▶ REMOVAL:
 - ▶ Reason: No lawful status in the UK
 - ▶ Administrative Removal
 - ▶ Can be Voluntary or Enforced
 - ▶ Re-entry Ban - 1 - 10 years

4

Who can be Deported?

- ▶ A non-British Citizen who has been convicted of a criminal offence in the UK.
- ▶ Often referred to as a “Foreign National Offender” (or FNO) by the Home office.
- ▶ Irish Citizens - not subject to the same automatic deportation rules as other Foreign National Offenders. Only in exceptional national security/public safety situations
- ▶ EU Nationals - Since Brexit generally treated the same as non-EU nationals - although some protections exist depending on length of residence etc.

5

Deportation Statutory Framework

- ▶ Immigration Act 1971 (Deportation Power)
- ▶ UK Borders Act 2007 (Automatic Deportation Duty)
- ▶ Nationality, Immigration and Asylum Act 2002 (Part 5A - Article 8 & Public Interest)
- ▶ Also - Part 13 Immigration Rules

6

Sentence Length Thresholds 3 Bands:

- ▶ Under 12 Months
- ▶ 12 Months to Under 4 Years
- ▶ 4 Years or more

7

SENTENCE UNDER 12 MONTHS

- ▶ Not Automatic Deportation
- ▶ Section 5 of the 1971 Act - Deportation where “Conducive to the public Good”
- ▶ Causes Serious Harm or Persistent Offender = public interest requires deportation.
- ▶ Full Article 8 proportionality Assessment will be carried out

8

Sentence 12 months to Under 4 years

- ▶ Automatic Deportation - s. 32 - 39 UK Borders Act 2007
- ▶ The Secretary of State must make a Deportation Order
- ▶ Exceptions - S. 33 of the 2007 Act
- ▶ 2002 Act Article 8 exceptions are:
 - ▶ Private Life - Exception 1
 - ▶ Family Life with qualifying child/partner - Exception 2
 - ▶ “Unduly Harsh” Test

9

Sentenced to 4 years or more

- ▶ Automatic Deportation
- ▶ S.117C (6) of Nationality, Immigration and Asylum Act 2002 - deportation unless “**Very Compelling Circumstances**” over and above Exceptions 1 and 2 mentioned above

10

What is “Unduly Harsh”

- ▶ Relates to sentences 12months to under 4 years
- ▶ Will be deported unless “Unduly Harsh”
 - ▶ High Threshold
 - ▶ Focuses on impact to partner/child -
 - ▶ More than difficult, inconvenient or upsetting
- ▶ Examples
 - ▶ Disabled child
 - ▶ Single parent carer
 - ▶ Severe mental health issues
 - ▶ Lack of support in country of return

11

“Very Compelling Circumstances”

- ▶ For sentences over 4 years - highest statutory hurdle
- ▶ Combination of Factors
- ▶ Example could be cumulations of:
 - ▶ Long Residence
 - ▶ Childhood Arrival
 - ▶ Family Dependency
 - ▶ Serious Medical illnesses
 - ▶ Rehabilitation
- ▶ Not impossible but is vert evidence heavy

12

Plea in Mitigation & Sentencing

- ▶ The Sentence length determines whether Deportation triggered
- ▶ Plea in mitigation should include immigration consequences
- ▶ Pre - sentence reports can be critical - used in Deportation Appeals

- ▶ Suspended Sentences
 - ▶ Can still trigger Deportation!

- ▶ Criminal Courts don't decide Deportation - but they can set the trapdoor!

13

EXAMPLE: Where early plea and Plea in mitigation assisted....

- ▶ SHERIFF: This is a matter that requires a custodial sentence. And taking into account everything that has been said on your behalf including the timing of your plea, what would otherwise have been a sentence of thirteen months, I will reduce to eleven months....
- ▶ I think I'm right in saying that the 1971 Act is now engaged in terms of what the court may or may not order. In light of the fact that you have an application in your own name, and in light of the fact that you are married and have a stepson in the UK, the court will not make a recommendation today regarding deportation and will allow that process to continue and a determination be made under that process.

14

Post Sentence: What happens next?

- ▶ Issued with Deportation Paperwork
- ▶ Deportation Appeal rights and deadlines
 - ▶ Deportation Paperwork issued - decision to make a Deportation Order
 - ▶ Require to make representations - 28 days
 - ▶ Deportation Appeal - 14 days

- ▶ Once sentence completed - moved to Immigration Detention
- ▶ Can apply for Immigration Bail -
 - ▶ consider if unlawful detention (removal not imminent)
 - ▶ Any Mental Health vulnerabilities

15

Common Pitfalls

- ▶ No immigration advice pre-plea
- ▶ Missing deadlines - due to language barrier, no immigration representation
- ▶ Deportation Appeals - Start gathering evidence if know deportation order coming.
- ▶ Criminal and Immigration agents not corresponding with each other

16

Checklist for Practitioners

- ▶ Criminal Practitioners
 - ▶ Ask immigration questions early
 - ▶ Refer clients to immigration solicitors
 - ▶ Flag sentence length risks early

- ▶ For immigration Practitioners
 - ▶ Obtain criminal papers early - CJSW report is important!
 - ▶ Note Judges sentencing remarks
 - ▶ Gather evidence - e.g Any relevant prison records of Mental Health issues. Can you get an expert report to assist?

17

The future....

- ▶ Deportation Law is ever changing and evolving.

- ▶ Recent immigration statement of changes in March - New rules regarding suspended sentences of at least 12 months - now fall under automatic deportation.

- ▶ Coming soon - Immediate Deportation after sentence?

18

Key Takeaways

- ▶ Criminal Convictions of foreign nationals triggers deportation
- ▶ Sentence length is decisive
- ▶ Early Advice at the criminal stage matters
- ▶ Evidence helps to win Deportation Appeals

19

Any Questions?



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20