

DUI Arrests May Result in the Prudential Revocation of a Validly Issued Nonimmigrant Visa

Contrary to popular opinion, there are serious immigration consequences for nonimmigrants who are arrested for driving under the influence

(DUI) or a related offense. According to recently released guidance found in the Department of State's Foreign Affairs Manual, the Department of State (DOS) is authorized to prudentially revoke a visa based on a potential ineligibility for health related reasons when it is notified that a visa holder with a still valid visa was arrested or convicted of a DUI or related offense. Depending on

the nature of the arrest, a consular post can choose to revoke the foreign national's visa by simply sending an email with the following notification:

Your nonimmigrant visa (F1, H-1B,

L-1A), issued by the United States Embassy in [], has been revoked because additional information became available after the visa was issued. You will not be able to travel



By Maria C. Ramos



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to the United States with this visa. If you wish to travel to the U.S., you will be required to reappear before a U.S. consular officer to establish your eligibility for a visa before being permitted to apply for entry to the United States.

Important to note here is that DOS may revoke the visa simply on the basis of an arrest. Determination of guilt is not required.

Consequently, if a foreign national's visa is revoked, he or she cannot use the visa to enter the U.S. without first reappearing before a U.S. consular

officer and re-establishing his or her visa eligibility. Indeed, if a foreign national attempts to enter the U.S. with a revoked visa, he or she will be flagged prior to boarding a flight, or denied entry into the U.S. upon landing.

If the foreign national is already within the U.S., however, a foreign national may stay until his or her visa expires. DOS has stated that a prudential revocation does not automatically invalidate that person's status in the U.S. After all, once a person enters the U.S., his or her immigration status is governed by the I-94 record. DOS,

however, has issued notices to foreign nationals arrested for DUI related offenses requiring them to depart the U.S. immediately and report to their consular post abroad. Don't forget: a visa revocation can be grounds for court-ordered removal by Immigration and Customs Enforcement (ICE).

Without a doubt, DOS's prudential revocation policy raises significant concerns for foreign nationals. What happens if a foreign national no longer uses the email address provided to DOS when he or she applied for his or her nonimmigrant visa? What if the foreign national was mistakenly arrested but the consular post was notified of the arrest anyway?

Remember, a determination of guilt is not required by DOS in order to be able to revoke a visa. Continue to check back with us for updates on this policy, how it is being enforced, and the potential repercussions for our clients.

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