

Immigration Effects of a Delinquency Adjudication

Adjudication of Delinquency Not a Conviction. A juvenile delinquency adjudication is not a conviction for immigration purposes. *See Matter of Devision*, 22 I&N Dec.1362 (BIA 2000); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). Thus, regardless of the nature of the offense, a juvenile delinquency adjudication should not trigger any adverse immigration consequences based on conviction of a crime.

Under the North Carolina Juvenile Code, jurisdiction of a juvenile may be transferred to superior court on motion of the prosecutor, defense attorney, or the court if the juvenile was at least 13 years old at the time of the alleged commission of the offense and the offense would be a felony if committed by an adult. G.S. 7B-2200. A conviction of a 13-, 14-, or 15-year-old resulting from a transfer to superior court may constitute a conviction for immigration purposes. *Cf. Vieira Garcia v. INS*, 239 F.3d 409, 414-415 (1st Cir. 2001) (upholding BIA decision that 17-year-old tried as adult under Rhode Island law was convicted for immigration purposes).

Other Potential Consequences of Adjudication. A finding of juvenile delinquency still could have adverse consequences for a noncitizen. First, it could be considered an adverse factor if the juvenile applies for any discretionary benefit under the immigration laws, such as adjustment of status to that of a lawful permanent resident. *See Wallace v. Gonzalez*, 463 F.3d 135 (2d Cir. 2006) (upholding BIA and immigration judge's consideration of noncitizen's New York youthful offender adjudication when evaluating his application for adjustment of status).

Second, certain grounds of inadmissibility and deportability do not require a conviction; mere “bad acts” or status can trigger the penalty. Examples include engaging in prostitution, being a drug addict or abuser, using false documents, smuggling aliens, or the government’s having “reason to believe” the person ever has been a drug trafficker. Thus, a juvenile delinquency adjudication involving one of these offenses could support a finding of inadmissibility. *See Matter of Favela*, 16 I&N 753 (BIA 1979) (holding that individuals who pled guilty to drug trafficking in juvenile proceedings are inadmissible as drug traffickers, even though there is no conviction). Adjudications involving these offenses also can be used to deny an application for Special Immigrant Juvenile Status (SIJS), which helps certain undocumented children in the state juvenile/foster care system obtain lawful immigration status. An adjudication involving drug trafficking will bar SIJS relief.

Adapted from Sejal Zota and John Rubin, *Immigration Consequences of a Criminal Conviction in North Carolina* (North Carolina Indigent Defense Manual Series, UNC School of Government, 2008).

See also, American Bar Association, *Collateral Consequences in the State of North Carolina*, in “Think Before You Plea: Juvenile Collateral Consequences in the United States,” available at <http://www.beforeyouplea.com/nc>.