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DV Assault Convictions and Immigration Consequences

The consequences include that at this time Petitioner is deportable under Immigration and Nationality Act (hereafter INA) 237(a)(2)(E)(i), having been convicted of a Felony Assault IV Domestic Violence offense. INA 237(a)(2)(E)(i) provides, in pertinent part, as follows:

> (E) Crimes of Domestic violence, stalking, or violation of protection order, crimes against children and.-
>
> (i) Domestic violence, stalking, and child abuse.-Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable…
>
> (ii) Violators of protection orders. – Any alien who at any time after entry is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable…

Fernandez-Ruiz v. Gonzales, 466 F.3d 1121 (9th Cir. 2006) at 1123 states:

> This case calls upon us to decide whether the petitioner's 2003 Arizona conviction for domestic violence was a "crime of domestic violence" under a federal statute that triggers removal of a legally admitted resident alien from this country. The federal statute, as interpreted by the Supreme Court in Leocal v. Ashcroft, 543 U.S. 1, 125 S.Ct. 377, 160 L.Ed.2d 271 (2004), covers only those crimes involving intentional conduct. Because the relevant Arizona statute permits conviction when a defendant recklessly but unintentionally causes physical injury to another, and because the petitioner's

> documents of conviction do not prove he intentionally used force against another, we conclude the federal statute does not apply.

Also see on "reckless" intent crimes:

- U.S. v. Laurico-Yeno, 590 F.3d 818 (9th Cir. 2010)

Is domestic violence a crime of moral turpitude?

- *Matter of Solon*, 24 I&N Dec. 239 (BIA 2007)(recognizing that simple assaults are generally not considered to be CIMTs)
- Morales-Garcia v. Holder, 567 F.3d 1058 (9th Cir. 2009) (noting that assault and battery, without more, do not qualify as CIMTs

Regarding availability of Cancellation of Removal Relief for Permanent Residents following a conviction for a Domestic Violence crime:

Under well-established immigration law, the Stop-Time Rule provides that the date an offense is committed is the date which stops the time for purposes of calculating continuous residence in the INA 240A(a), In Re Perez, 22 I&N 689 No. 3389 (BIA 1999). Continuous residence time is calculated beginning with a legal admission into the United States. The continuous residence clock began to run when an "alien" obtains legal permanent resident status or other legal status in the United States and ends when he "commits" the offense of Felony Assault IV.

An example of bad immigration advice:

Criminal defense counsel would provide mistaken and affirmatively misleading advice to a defendant who is a legal permanent resident for three years and had not been admitted in any status prior to being accorded permanent residence, that following a plea to Felony IV Domestic Violence, he has no worries with immigration. See INA 240A(a),

INA 240A(d)(1):

> (d) Special Rules Relating to Continuous Residence or Physical Presence.-
> (1) TERMINATION OF CONTINUOUS PERIOD.-- For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end
> (A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 239(a) , or
> (B) when the alien has committed an offense referred to in section 212(a)(2) that renders the alien inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4) , whichever is earliest.

Alternate pleas:

- Harassment
- Assault IV (reckless plea)
- Assault IV (no DV element)
- Disorderly conduct

U-Visas are a path to Legal Permanent Residence

A U-Visa reasonably can be obtained by a complaining domestic assault victim, only if he/she cooperates with law enforcement by testifying against the defendant at trial if needed. The designated law enforcement official or judge is required to sign a I-918 as part of the U-Visa application in order for a U-Visa applicant to reasonably have any chance of succeeding with a U-Visa application to USCIS (United States Citizenship and Immigration Services). An I-918 is available at www.uscis.gov along with relevant instructions on how to apply.

A U-Visa is a four-year, non-immigrant visa. Following approval thereof, a U-Visa holder can reasonably become a permanent resident of the United States after three years by so applying for adjustment of status. A U-Visa applicant also routinely applies for work authorization at the same time and is routinely granted work authorization. The U-Visa holder will reasonably be approved for legal permanent resident status if the U-Visa holder does not have significant non-waivable grounds of inadmissibility into the United States such as serious criminal convictions. The approval of permanent resident status is within the discretion of USCIS even where there are prior criminal convictions. Immigration Counsel should certainly be consulted when applying for U-Visas and/or permanent residence.

U-Visa derivatives are the U-Visa applicant's spouse (U-2), child (U-3), parent (U-4), and sibling (U-5). This means these individuals are eligible to apply for a U-visa and to at the appropriate time apply for legal permanent residence.