

In September, the Department of State released a guidance directive reiterating a policy implemented on November 5, 2015. Though the extent to which the policy is actually being implemented is still somewhat unclear, it could have a significant impact on non-immigrant visa holders charged with OWIs.

The policy requires consular officers to prudentially revoke the non-immigrant visas of persons arrested for or convicted of OWI. Non-immigrant visas are visas issued to persons entering the United States for some temporary purpose (e.g., as a student, tourist, or temporary worker). The theory behind revoking the visa is that an OWI indicates that the person is inadmissible to the United States for having a physical or mental disorder (i.e., alcohol abuse) with associated harmful behavior that is likely to pose a threat to property, safety, or welfare of the person or others. *See* 8 U.S.C. 1182(a)(1)(A)(iii). However, the “prudential” nature of the revocation means that the consulate does not actually determine whether the person is or was inadmissible.

If a person’s visa is prudentially revoked, they can no longer use it to enter the United States. (While the person remains in the United States, they are still considered in-status and lawfully present). So, if they leave the United States and then want to reenter, they will need to apply for and receive a new visa. The application process will require them to show that they are admissible to the United States despite their OWI charge—in other words, it will require them to show that the OWI does *not* reflect a disorder with associated harmful behavior that poses a threat. Generally, any applicant with one alcohol-related arrest in the last five years will be referred to a doctor for a medical examination and clearance before the visa is issued.

In most cases, an applicant with a single OWI and a record of treatment is likely to be granted a visa. However, this varies by consulate and by individual circumstances. **Non-immigrant visa holders who are charged with and/or convicted of OWIs should be advised:** 1) that their visa may be prudentially revoked; 2) if it is revoked they will need to reapply for a visa before reentering the United States; 3) if they reapply within five years of their arrest or conviction they will be referred for an additional medical examination and will need to prove their admissibility on this ground in particular; and 4) issuance of a non-immigrant visa is not guaranteed.