Have you helped your children to come to the United States?

Information about the Potential Consequences of “Alien Smuggling”

On February 20, 2017, Secretary John Kelly of the Department of Homeland Security (DHS) announced in a memorandum entitled “Implementing the President’s Border Security and Immigration Enforcement Improvement Policies” that DHS intends to enforce immigration laws against the direct or indirect facilitation of illegal alien smuggling or trafficking into the United States. The following advisory contains important information for those who may be at risk of enforcement action for having engaged in alien smuggling.

What is “Alien Smuggling?”

An “alien smuggler” is defined in the Immigration and Nationality Act as a person who “knowingly has encouraged, induced, assisted, abetted, or aided” any other person to enter or try to enter the United States illegally. Alien smuggling is different from human trafficking in that, by definition, it does not require a physical act or control over a person. An act as simple as encouraging someone to enter the U.S. unlawfully can be considered alien smuggling.

Potential consequences of alien smuggling for undocumented persons:

Alien smuggling is a ground for inadmissibility. This means that a person found to have engaged in alien smuggling who is seeking entry into U.S. would be denied entry. Those who are found to have engaged in alien smuggling and are present in the U.S. without immigration status could be denied immigration benefits. In summary, Alien smuggling is an act that prohibits someone from being lawfully admitted into the United States. If an individual is unlawfully present in the U.S., they may be subject to removal at any time. Even if DHS does not have sufficient evidence to prove an individual has committed alien smuggling, they are at risk of being removed/deported for unlawful presence alone.

Potential consequences of alien smuggling for lawful permanent residents (green card):

Alien smuggling is a ground for deportation. Even if an individual has lawful status, if they are found to have engaged in alien smuggling, they could be at risk of removal/deportation. If it is found that an individual engaged in alien smuggling at any time before, or within five years of entry to the United States, the individual could be placed into removal/deportation proceedings.

Potential effects of alien smuggling on the “Good Moral Character” requirement for immigration benefits:

Undocumented persons and lawful permanent residents alike who have potentially engaged in alien smuggling must take caution when seeking any immigration benefit. Eligibility for many immigration benefits (including, but not limited to applications for U.S. citizenship) require the applicant to show that
he or she is a person of “good moral character” over a defined period of time. Those who are found to have engaged in alien smuggling cannot show good moral character.

Potential criminal implications of alien smuggling:

The Department of Homeland Security (DHS) has indicated that it will refer individuals accused of alien smuggling for criminal prosecution. A conviction for alien smuggling is an aggravated felony, which can carry a maximum sentence of twenty years of imprisonment. Criminal convictions may also cause ineligibility for immigration benefits.

Tips and warnings regarding increased enforcement for alien smuggling:

- The definition of alien smuggling is broad and can include knowingly sending money to fund a trip to, or unlawful entry into, the United States.
- Under some circumstances, there are waivers for those who are found to have engaged in alien smuggling. Consult with an immigration attorney to make sure that you are eligible.
- Expect to be asked questions about whether you have ever engaged in an act that could be considered alien smuggling during any interview or appointment with any immigration official.
- Parents and family members of Unaccompanied Alien Children (UACs) are at a heightened risk for enforcement of alien smuggling. A spokesperson for Immigration and Customs Enforcement (ICE) confirmed on June 30, 2017 that ICE has begun to arrest family members of children in removal proceedings. It is possible that children will be interviewed by an immigration officer upon arrival and questioned on who assisted in their journey to the U.S.
- Do not share information with others regarding action that could potentially constitute alien smuggling. Only information shared with your attorney is confidential.
- DHS monitors social media (Facebook, Twitter, Instagram, Etc.). Be careful what you publish online!
- Know your rights! If you are stopped for questioning by an immigration officer, you have the right to remain silent. If you are detained, you should ask to speak to an attorney right away.
- Always consult with a licensed attorney or accredited representative before seeking any immigration benefit. If you have helped a child come to the United States, you may want to consult an attorney or accredited representative today about risks you may face.