

Lack of Exceptions for Minors

Let me tell you a story about a boy named Juan. Juan's family brought him to the US without inspection when he was five. When he turned 16, his entire family was ordered to appear for a deportation hearing. His parents decided not to attend and didn't even tell Juan about it. When Juan turned 18, he married his high school sweetheart, a US citizen. Juan, wanting to 'do things the right way' went to the US consulate in Mexico to apply for an immigrant visa. There, he is told that because he failed to attend his removal proceeding and was ordered removed in his absence, he is banned for ten years¹ and that for the first five years of those ten, he is not eligible to apply for a waiver of the bar². He is told that it does not matter whether he actually knew that he was ordered to appear as the notice was sent to his correct address at the time³. He is told that it does not matter that he is married to a US citizen and that she is expecting his child. Unfortunately, Juan's story is not unique.

Immigration law does not have enough exceptions for violations committed by children. It is possible that when Congress created the law, they did not intend for children to be held responsible for certain actions. They just weren't thinking about children when they wrote certain passages. It is an oversight, and I would argue that it is clearly an oversight. Yet, for many grounds of inadmissibility, the Department of State and Department of Homeland Security have taken a draconian letter-of-the-law approach to the culpability of minors.

The diminished culpability of children for criminal acts is recognized throughout the entire world⁴. Most of immigration law is civil, rather than criminal, but the diminished culpability of minors has been upheld by the courts⁵. Even so, the Department of State and Department of Homeland Security steadfastly hold that for many passages in the law⁶, there is no exception for minors unless explicit in the statute. A child of any age can be barred from re-entering the United States for 5 to 10 years or life (depending on the violation) if the child is deported⁷, fails to attend a deportation hearing⁸, makes a false claim to US citizenship⁹, or enters without inspection after a deportation¹⁰ or after being unlawfully present in the United States for more than a year¹¹. Because these bars don't actually start until the alien departs the US¹², the alien may not actually experience the punishment until adulthood, many years after unintentionally or even unknowingly committing a violation as a child.

As with many subjects, the Immigration and Nationality Act is inconsistent on this matter. This is because, over time, new or altered sections are passed by different sessions of Congress, who don't always thoroughly consider whether the new or changed part is consistent with the rest of the Act. For example, the section on inadmissibility for criminal acts includes an exception for crimes – even felonies

¹ INA 212(a)(9)(A)(ii)

² INA 212(a)(6)(B)

³ *Matter of Peugnet*, 20 I&N Dec. 233 (BIA 1991); *Matter of Huete*, 20 I&N Dec. 250 (BIA 1991)

⁴ *Old enough to be a criminal?* UNICEF, <http://www.unicef.org/pon97/p56a.htm>

⁵ *Davila-Bardales v. INS*, 27 F.3d 1 (1994), *Singh v. Gonzales*, 451 F.3d 400, 407-09 (6th Cir. 2006)

⁶ For most misrepresentation, an alien may only be held responsible if the misrepresentation occurred after the alien turned 14. Yet for my client, who was accused of a false claim of citizenship as a minor, the Advisory Opinion office of the Department of State claimed that there were no exceptions for minors.

⁷ INA 212(a)(9)(A)

⁸ INA 212(a)(6)(B)

⁹ INA 212(a)(6)(C)(ii)

¹⁰ INA 212(a)(9)(C)(ii)

¹¹ INA 212(a)(9)(C)(i)

¹² Except for the lifetime bar for false claim of citizenship, which commences immediately when the false claim is made.

– committed before the age of 18¹³. This section was written long before the section on inadmissibility for a false claim of citizenship¹⁴, which does not have an exception for minors. So, an alien minor who commits a felony is not inadmissible, but an alien minor who claims to be a citizen is inadmissible for life with no waiver. It's ridiculous for the Department of State or Department of Homeland Security to claim that Congress meant to do that.

The decision of the government to interpret laws in a way that doesn't make sense and enforce those interpretations is perplexing to say the least. The government's stance on immigration violations committed by minors is one of the outstanding examples of how immigration law has broken free from the confines of sensible legal reasoning and justice.

¹³ INA 212(a)(2)(A)(ii)(I) has been around since before 1990.

¹⁴ INA 212(a)(6)(C)(ii) was created in 2000.