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CONVICTIONS for certain criminal offenses could cause denial of a visa or lead to removal. Under INA 101(a)(48)(A), the term conviction, with respect to an alien, means: (1) a formal adjudication of guilt entered by a court; or, (2) if adjudication of guilt is withheld: (a) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or has admitted sufficient facts to warrant a finding of guilt; and (b) the judge has ordered some form of punishment, penalty or restraint on the alien's liberty.

There are instances however where the outcome of a legal proceeding does not qualify as a conviction for purposes of immigration law. A proceeding involving a juvenile is a good example.

First, under INA 212(a)(2)(A)(i)(I), an alien who is convicted of a crime involving moral turpitude (CIMT) is inadmissible or disqualified from obtaining a visa or admission into the US.

However, under INA 212(a)(2)(A)(ii)(I), a CIMT conviction cannot be a basis for inadmissibility if: (1) the alien committed only one crime; (2) when the alien was under 18 years of age; (3) the crime was committed more than 5 years before the visa and admission application; and (4) the alien

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was released from prison more than 5 years before the visa and admission application.

Second, under 22 CFR 40.21(a)(2)(i), a conviction which would otherwise qualify as a CIMT would not count as a conviction if the alien was under 15 years of age when the crime was committed. If the alien was over 15 but under 18 years of age, a conviction which would otherwise qualify as a CIMT would not count as a conviction except if the alien was tried and convicted as an adult for a violent felony.

Third, as far back as 1944, the Board of Immigration Appeals (BIA) has consistently held that: (1) juvenile delinquency proceedings are not criminal proceedings; (2) acts of juvenile delinquency are not crimes; and (3) findings of juvenile delinquency are not convictions for immigration purposes. The Federal Juvenile Delinquency Act (FJDA) explains that a juvenile delinquency proceeding results in the adjudication of a status rather than a conviction for a crime. The FJDA defines a juvenile as a person under 18. It defines juvenile delinquency as any federal crime committed by a juvenile.

A state proceeding may qualify as a juvenile adjudication if it is sufficiently analogous to the federal procedure under the FDJA. For example in *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000), the BIA found that a

youthful offender adjudication under Article 720 of the New York Criminal Procedure Law corresponds to a determination of juvenile delinquency under the FJDA. However, in *Uritsky v. Gonzales*, 399 F.3d 728 (6th Cir. 2005), the Sixth Circuit Court of Appeals found that a sentence of probation under section 762.11-16 of the Michigan Compiled Laws also known as the Youthful Trainee Act (YTA), counts as a conviction.

When an individual is determined to be a youthful offender under New York law, his conviction is vacated and this does not depend on his future good behavior. Thus, a youthful offender adjudication under New York law is not an expungement or other rehabilitative act. In contrast, a criminal action against an individual is not completely vacated under Michigan's YTA until the individual completes his probation or sentence and the judge may revoke youthful trainee status at any time. These differences make the Michigan law more analogous to a rehabilitative expungement than an adjudication of juvenile delinquency.

Finally, to say that a juvenile adjudication is not a conviction for immigration purposes does not mean that it has no possible effect on an alien's immigration application. In *Wallace v. Gonzales*, 463 F.3d 135 (2nd

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Cir. 2006), the Second Circuit Court of Appeals held that although a juvenile delinquency adjudication does not count as a conviction, it may be considered a relevant factor when evaluating an application for discretionary relief such as adjustment of status. The Second Circuit explained that since the purpose of adjustment of status is to provide worthy aliens with relief, nothing should prevent the Immigration Judge from considering an applicant's anti-social conduct as an adverse factor regardless if the conduct led to a conviction, a youthful offender adjudication or no legal judgment.

Here's an example to help us understand these rules. X was arrested for theft, which is a CIMT, when he was 16 years old. He went through a state proceeding that qualifies as a juvenile delinquency adjudication. If X applies for adjustment of status, he would not be found inadmissible for a CIMT which means he would not need to file an application for a waiver of inadmissibility. However, USCIS in its discretion may still deny his adjustment application if it finds that X's conduct that led to his juvenile delinquency adjudication was sufficiently serious as to outweigh the equities in his favor.

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