

Immigration implications of a DUI conviction

I often get asked to assist migrants who have been convicted of driving under the influence of alcohol (DUI). This article explains the possible immigration consequences of a DUI conviction.

The character rules

Applicants must meet good character requirements to be approved a New Zealand visa. This is unless they are eligible to be considered for, and have been granted, a character waiver. The character rules for temporary and residence class visas differ. For residence, there is a longer list of character concerns that may result in an application being declined.

Importantly, individuals with particularly serious character concerns are not eligible to be considered for a character waiver, regardless of the visa type. Examples of more serious concerns include prison sentences of 12+ months in the last 10 years, or a previous deportation from any country. These individuals will need to be granted a special direction before any visa can be approved. Special directions are considered at the absolute discretion of the Minister (or a delegated decision-maker) and are granted infrequently.

As evidence of good character police certificates are required for a residence application or when requesting a temporary visa of 24+ months. For shorter stays, Immigration New Zealand (INZ) rely on declarations in visa application forms to assess character.

The rules applied to a DUI conviction

If a DUI conviction is declared, it is likely that INZ will request further information. This could include a police certificate (if not already provided) or the court ruling report, including sentencing details.

For temporary entry, any New Zealand conviction with a possible sentence of 3+ months in prison will fail the good character requirements. This would include a DUI, which carries a maximum prison term of 3 months. Confusingly, if an applicant has an offshore DUI conviction, this will only be an issue if they were actually imprisoned.

For residence, a DUI could trigger the character rules on several grounds. Any conviction that results in a prison term will require a character waiver, whether it was served, deferred or suspended. Further, a driving conviction in the last 5 years or any New Zealand conviction with a possible sentence of 3+ months in prison will also fail the residence good character requirements.

What if an individual doesn't meet the character requirements?

If the good character requirements are not met, an applicant will require a character waiver. The relevant (listed) considerations differ between visa classes but these assessments are fairly similar in practice. An Immigration Officer will consider whether the applicant's surrounding circumstances are compelling enough to justify waiving the good character requirements. This will balance the character risk or significance of the withheld information against things like the benefit an applicant will bring to New Zealand and any strong family links.

Character waivers are available for both temporary and residence visa applications. This is provided the applicant does not have a particularly serious character concern that requires a special direction. In practice, DUIs often require a character waiver but are very unlikely to be considered particularly serious character concerns.

It's important to declare DUIs

It is not just criminal offending that triggers the good character rules. Making a statement or providing information, evidence or submissions that are false,

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misleading or forged, or withholding material information could be a character issue. This would cover a situation where a conviction, such as a DUI, is withheld when completing a visa application form. For INZ to conclude that an applicant does not meet the good character requirements in this situation, an Immigration Officer must determine that it was 'more likely than not' the offence was deliberately withheld.

Deportation liability

If convicted of DUI while in New Zealand a temporary visa holder *may* receive a deportation liability notice (**DLN**). If a DLN is received, they will have 14 days to give good reasons for why deportation should not proceed. If this is unsuccessful, there is the option to appeal on humanitarian grounds to the Immigration and Protection Tribunal (**IPT**) within 28 days of the DLN being received. In practice, we infrequently see DLNs issued in this situation. Instead, a DUI is more likely to be raised with the next visa application.

Residence visa holders can also be issued with a DLN if they are convicted of DUI within two years of becoming a resident. If this happens and the deportation liability is not cancelled, an appeal to the IPT on humanitarian grounds can also be made within 28 days.

To be successful with a humanitarian IPT appeal there must be exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and it cannot be contrary to the public interest to allow them to remain in New Zealand. This is a very high threshold to meet. If all appeal options are exhausted, a deportation order can be issued. This has serious consequences, including a period of prohibition on re-entering New Zealand and possible difficulty travelling to other jurisdictions.

Our advice

All convictions should be declared to INZ. A DUI won't always disqualify an individual from getting a visa, but

failing to declare it could result in a visa being declined on character grounds.

If a character waiver is needed, the outcome will depend on the individual circumstances of a visa applicant. For example, a one-off DUI that is declared in the application form is more likely to get a character waiver than multiple offences that are not declared. Further, an individual working in a Green List occupation or with significant family links to New Zealand is more likely to get a character waiver than someone working in a lower skilled role with no New Zealand family.

We recommend individuals seek immigration advice if they have a DUI conviction and hold or will be applying for a New Zealand visa.

Want to know more?

If you have any questions about immigration character concerns, please contact our immigration specialist [Tash Rae](#).