

U.S. immigration laws 'can be unforgiving'

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Terry VanDuzee isn't the first, and is likely far from the last, Canadian to find his future scuttled by something that happened in their past.

VanDuzee married an American woman in Sept. 2002, but when he applied to immigrate to the U.S. was told he would never be granted permanent resident status because he had two separate convictions for marijuana possession on his criminal record.

That the convictions were from 1978 and 1979, when VanDuzee was 18 and 19 years old, matters not in the least.

"American immigration laws can be very unforgiving and in many ways they have gotten worse as penalties for drug infractions in the United States have gotten worse," says Todd Rubin, an immigration lawyer with Parker, Poe, Adams & Bernstein in Raleigh, N.C.

Rubin says U.S. immigration law can get very complicated and he suggests anyone with a criminal conviction consult with a lawyer who is an expert in the subject to look at their individual case.

"But to make it simple, if you are immigrating, if you have committed a crime of moral turpitude, you may be inadmissible either temporarily or permanently," he says, though there is an exception for people with only one conviction on a crime whose maximum penalty was a year or less and for which they were sentenced to serve six months or less.

If you have a criminal record, you must apply for a waiver in order to be allowed into the U.S. However, the rules for convictions involving controlled substance are much stricter.

One charge of simple possession of marijuana gives you the right to apply for a waiver, which may or may not be granted.

"But if he has two offences, he is now even ineligible to apply for an immigrant waiver," says Henry Chang, an immigration lawyer with Chang & Boos in Toronto.

And forget it if you're caught with any other kind of drug. Even one drug offence connected to any other kind of controlled substance is enough to keep you from ever moving south of the border.

Rubin says a non-immigrant waiver allows a little more leeway.

"In theory you can be convicted for much worse things," he says. "You can come in as long as you can show you aren't going to be a danger to the United States and you usually have to show rehabilitation."

Those waivers are only temporary, but can be renewed and could allow you to obtain a work permit, for example, so that you could stay in the U.S. for an extended period of time.

But with drug convictions, there is only one path to permanent residency.

"The only way is to get Congress to amend the act," Chang says. "This is not even for getting the waiver. That is just being in the ball park to try."

VanDuzee was pardoned by the Canadian government in 1993, but Rubin says foreign pardons are not usually recognized.

"The poor guy is out of luck," Chang says. "He can look at the non-immigrant option. After 30 years I see no problems in getting a non-immigrant waiver, but to go there and get a green card, that unfortunately is out of the question... Even if they wanted to, they couldn't."

There is a little more flexibility in Canadian immigration laws.

Chris Stewart, an immigration lawyer with Stewart McKelvey in Moncton, says criminal convictions are divided into three categories: summary convictions, which tend to be the least serious crimes, indictable offences with maximum penalties of less than 10 years, and indictable offences with maximum penalties of more than ten years.

Canadian immigration officials translate crimes committed in other countries into what you would have been charged with here.

Committing one indictable offence makes you criminally inadmissible. Committing one summary offence does not hinder your application, but committing two will also render you inadmissible.

However, Canada has its own version of a waiver, which is called applying for rehabilitation. There is also something called deemed rehabilitation.

"In other words, if your offences are minor enough and long enough ago, they automatically fall off the page," Stewart says.

If you have two or more summary convictions, Stewart says you are deemed rehabilitated five years after the completion of the sentence, and the same is true 10 years after the completion of a sentence for an indictable offence with a maximum punishment of less than 10 years, as long as your record has stayed clean in that time.

If convicted of an offence with a maximum penalty of more than 10 years, you must apply for rehabilitation.

Chang says one problem in Canada is the vast majority of offences are considered indictable.

He says 90 per cent of offences in the criminal code are hybrid offences, meaning the Crown has the choice to proceed with a summary or a more serious indictable charge.

But when crimes committed elsewhere are being judged in by the Canadian system for immigration purposes, if there is a choice between summary and indictable, it is treated as an indictable offence.

"Even minor offences can turn out to be problems," Chang says.

Rubin personally feels the U.S. immigration laws should be more flexible, "but unfortunately I am probably in the minority," he says. "The American Congress has not shown itself to be terribly forgiving recently."

Chang too sees change in the U.S. as unlikely.

"Getting something like this changed would have a lot of political implications and no one would want to go there," he says.