

## **IMMIGRATION: From Darkness into Light**

Many Jamaicans in the United States are undocumented and in peril of incarceration and eventual removal. What can our countrymen and women do when they are faced with detention frequently because of accident of birth, or just one error in judgment, or reliance on bad advice from a Notary or an "immigration consultant"?

Immigration detention is a shocking and belittling experience for most Jamaicans and should be avoided at all costs. The answer to avoiding this embarrassment lies in educating oneself and being aware of the situations which could lead to this perilous state of affairs.

### **Amnesty?**

It has been suggested that there are 12 million undocumented aliens living in the United States. It is impossible to assess how many of these are Jamaicans. Several Congressional Bills, which have yet to become law, propose that anyone who has lived in the United States for more than five years and worked for at least two of the five years should become a Legal Permanent Resident. None of the pending Senate or House Amnesty Bills have the political support for immediate passage. In addition, many of these Bills have conflicting provisions.

The 1986 Immigration Reform and Control Act (IRCA) legalized 2.7 million unauthorized aliens. This amnesty was successful and provides a useful example which current legislators can follow. It is submitted that the new Amnesty being legislatively contemplated should go further than IRCA, and should accelerate the visa numbers of those who are pending beneficiaries under all properly filed I-130 petitions.

It is hoped that members of the Jamaican Diaspora will debate the pros and cons of an Immigration Amnesty in the United States. Some Jamaicans, who have obtained U.S. immigration benefits, without violating the law, object to an Amnesty. However, most diasporic Jamaicans believe that an Amnesty will improve the lives of thousands of individuals who currently operate under the radar of Border Patrol, fearing expulsion and the heartbreak of family destruction.

Removal precipitates a sudden crisis in the life of a US-based alien. The Immigration authorities, usually Border Patrol, frequently and without notice, approach the house of the targeted alien and take him or her into custody. If the alien lives alone with minor children, the DHS will refer the child to State-based Children's Services.

There are three major contingencies which can lead to detention of an alien:

### **1. Airport Detention**

All non-citizens entering the United States have to go through DHS inspection. US Airport computers have full access to the criminal records of aliens resident in the United States through the National Crime Information Computer (NCIC). These computers are regularly updated. These computers also have full cross-access to records of prior Orders of Deportation.

The Immigration and Nationality Act makes it mandatory that the US government take a non-citizen into custody and hold him or her without bond, if the non-citizen has been convicted of certain removable offences and released from jail after 8 October, 1998. Those offences are crimes of violence, theft and moral turpitude (including dealing in narcotics).

Further, a legal permanent resident is subject to mandatory detention if he or she was convicted of crimes of moral turpitude, aggravated felonies, controlled substance and firearms offenses, and was released from jail after 8 October, 1998. This can occur at the airport. Individuals who fraternize knowingly with US or foreign- based felons may be detained at the airport under the broad "reason to believe" standard if they are deemed to have knowledge of narcotics based criminal activity. This method is frequently used against Jamaicans. Some Jamaicans refer to this in the vernacular as getting "STUCK."

All major US Airports have holding-areas where 20 or more aliens may be temporarily detained, pending their immediate departure or transfer to a detention facility.

## **2. Immigration Detainer**

While a non-citizen is in jail in Florida or New York, the DHS may interview the non-citizen while he or she is in custody. Normally the DHS will place a "detainer" on the non-citizen. A detainer prevents the non-citizen from being released to the public, instead the non-citizen is transferred to DHS Detention. This leads to perpetual custody and is very disheartening for the non-citizen. Once the detainee has completed his or her time in prison, he or she will be transferred into DHS custody. Similar practices occur throughout the U.S.

Recent decisions by the US Supreme Court suggest that the DHS has only 180 days to deport the non-citizen after a final Order of Removal or he or she must be released. It is important for the detained individual to seek clarification on his or her rights.

## **3. Prior Orders of Deportation**

The DHS has a campaign to pick up persons living in the United States who have outstanding orders of Deportation. In Florida "Operation Phoenix" resulted in a sweep of more than 15 Jamaican families in April 2006. Most of them are now in the Krome Avenue Processing Center located in swampy, mosquito-infested, rural Dade County.

### **Without Hope?**

The Diaspora should be mindful that for many non-citizens the threat of unexpected arrest, detention and deportation is still a significant reality. Many deportees arrive in Jamaica without hope or options and decide to prey on the society. Consequently, many have become "persons of concern" to the Jamaican security forces.

It is time, therefore, to assess our stance on this most critical issue and to make our voices heard. Let us move from the darkness into the light.

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