



REQUESTING AN INTERNATIONAL TRANSFER TO ANOTHER COUNTRY

Can I be deported before I have finished serving my time in prison?

Yes, under certain circumstances. Some people may be able to finish serving time in a prison in their home country. To do this, the U.S. must have an international transfer treaty with that country. See list of countries in Appendix C. The state department of corrections, the U.S. government, and authorities in your home country must approve the transfer. Additional specific conditions of eligibility are delineated in the various treaties. Much of the practice and procedure for prisoner transfers is governed by 18 U.S.C. § 4100 et seq.

You can request a transfer by filling out a Transfer Request Application Form with your case worker in prison. A consular official from your home country might also be able to advise and assist you with this process. A federal magistrate will hold a hearing on your request and ask you if you agree to the transfer and agree to give up all rights to appeal or attack your conviction. You cannot get a transfer if you are attacking your conviction.

Will this affect my criminal sentence?

No. Your home country must follow the sentence you already received. Therefore, you will remain in prison after being sent back to your country.

How will a transfer affect my immigration rights?

Think carefully before asking for a transfer. If you are transferred to your country before you have an Immigration Court hearing, you will lose the chance to go before an Immigration Judge and ask the judge to excuse your criminal conviction and remain in the U.S. See pages 15 to 21 for defenses to removal. If you accept an international transfer, you will lose that right. This means that if you have a conviction for certain crimes, such as an aggravated felony, you will forever lose the right to live permanently in the U.S. You will never be allowed to return to the U.S. (except maybe for short visits) even if you are married to a U.S. citizen and have children in the U.S. People who need to be particularly careful about giving up their rights are:

- lawful permanent residents (someone with a green card)
- someone with a spouse, parent, son or daughter who is a lawful permanent resident or a U.S. citizen
- someone who is afraid to go back to his or her country

What if my conviction is for a non-violent offense?

You may also be deported before finishing your sentence if you have been convicted of a non-violent offense, and deportation is appropriate and in the best interest of the U.S. or the state

where you are imprisoned. 8 U.S.C. §1231(a)(4). There are some additional requirements. Contact PAIR if you are interested.

How is the decision to approve or deny my transfer request made?

The Department of Justice makes the decision to approve or deny a proposed transfer based on your entire record. The Department of Justice considers the seriousness of the offense and your role in it, the existence of outstanding fines or restitution orders, your prior criminal record (if any), the strength of your ties to each country, and the likelihood that the transfer will promote your rehabilitation. Sometimes the government also considers special humanitarian concerns - - such as terminal illness of you or a close family member. Before making a decision, the Department of Justice collects information from many places about each person seeking a transfer. The process usually takes at least three months.

For more information, visit the website of the Department of Justice, Criminal Division, Office of Enforcement Operations, International Prisoner Transfer Program at <http://www.justice.gov/criminal-oeo/international-prisoner-transfer-program>.