

Immigration Consequences of Criminal Activity

The Congressional Research Service provided the following report on *Immigration Consequences of Criminal Activity* to the Congress in October 2006.

In general, aliens may legally enter the United States under one of three categories: (1) legal permanent residents (LPRs), who are also commonly referred to as immigrants; (2) nonimmigrants, who are aliens permitted to enter the United States temporarily for a specific purpose, such as for tourism, academic study, or temporary work; and (3) refugees, who are aliens facing persecution abroad and are of special humanitarian concern to the United States. There are two aspects for legal admission under each of these categories. First, an alien must fulfill the substantive requirements for admission under a specified category. For example, in order to enter the United States as a nonimmigrant student, an alien must demonstrate that he is a bona fide student at an approved school. Second, aliens who fulfill substantive requirements for admission may nevertheless be denied admission if they fall within a class of inadmissible aliens listed under Immigration & Nationality Act (INA) Section (§) 212. Once admitted, aliens remain subject to removal if they fall within a class of deportable aliens listed under INA § 237. The INA contains bars for admission and grounds for deportation based on criminal conduct.

This report discusses the potential immigration consequences of criminal activity. “Criminal activity” generally refers to conduct for which an alien has been found or plead guilty before a court of law, though in limited circumstances consequences may attach to the *commission* of a crime or *admission of acts constituting the essential elements of a crime*. Consequences may flow from violations of either federal, states or, in many circumstances, foreign criminal law. Some federal crimes are set out in the INA itself — alien smuggling, for example. However, not all violations of immigration law are crimes. Notably, being in the U.S. without legal permission — i.e., being an “illegal alien” — is *not* a crime in and of itself. Thus, for example, an alien who overstays a student visa may be an “illegal alien,” in that the alien may be subject to removal from the U.S., but such an alien is not a “criminal alien.”

CATEGORIES OF CRIMINAL ALIENS

The INA lists a number of criminal grounds for designating an alien as inadmissible or deportable. Most crimes included under these grounds are not specifically mentioned, but instead fall under a broad category of crimes, such as *crimes involving moral turpitude* or *aggravated felonies*. In addition, certain criminal conduct precludes a finding of *good moral character* under the INA, thereby preventing an alien from becoming either a naturalized U.S. citizen or a candidate for certain types of relief.

Crimes Involving Moral Turpitude: Whether a crime involves moral turpitude has been determined by judicial and administrative case law rather than a statutory definition. In general, if a crime manifests an element of baseness or depravity under current mores — if it evidences an evil or predatory intent — it involves moral turpitude. Thus, certain crimes such as murder, rape, blackmail, and fraud have been considered

crimes involving moral turpitude, whereas crimes such as simple assault have not been considered to involve moral turpitude.

Aggravated Felonies: Congress has designated specific offenses as aggravated felonies for immigration purposes, and it has made removal of aliens convicted of such crimes a priority through streamlined procedures and ineligibility for various types of relief.

The INA defines “aggravated felony” through the listing of a number of criminal categories and specified crimes. The broadest categories of aggravated felonies under the INA are:

- any crime of violence (including crimes involving a substantial risk of the use of physical force) for which the term of imprisonment is at least one year;
- any crime of theft (including the receipt of stolen property) or burglary for which the term of imprisonment is at least one year; and
- illegal trafficking in drugs, firearms, or destructive devices

Many specific crimes are also listed as aggravated felonies under the INA. These include

- murder; rape; sexual abuse of a minor;
- illicit trafficking in a controlled substance, including a federal drug trafficking offense;
- illicit trafficking in a firearm, explosive, or destructive device;
- federal money laundering or engaging in monetary transactions in property derived from specific unlawful activity, if the amount of the funds exceeded \$10,000;
- any of various federal firearms or explosives offenses;
- any of various federal offenses relating to a demand for, or receipt of, ransom;
- any of various federal offenses relating to child pornography;
- a federal racketeering offense;
- a federal gambling offense (including the transmission of wagering information in commerce if the offense is a second or subsequent offense) which is punishable by imprisonment of at least a year;
- a federal offenses relating to the prostitution business;
- a federal offenses relating to peonage, slavery, involuntary servitude, or trafficking in persons;
- any of various offenses relating to espionage, protecting undercover agents, classified information, sabotage, or treason;
- fraud, deceit, or federal tax evasion, if the offense involves more than \$10,000;
- alien smuggling, other than a first offense involving the alien’s spouse, child, or parent;
- illegal entry or reentry of an alien previously deported on account of committing an aggravated felony;
- an offense relating to falsely making, forging, counterfeiting, mutilating, or altering a passport or immigration document if (1) the term of imprisonment is at

- least a year and (2) the offense is not a first offense relating to the alien's spouse, parent, or child;
- failure to appear for service of a sentence, if the underlying offense is punishable by imprisonment of at least five years;
 - an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles with altered identification numbers, for which the term of imprisonment is at least one year;
 - an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;
 - an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of two years' imprisonment or more may be imposed; and
 - an attempt or conspiracy to commit one of the foregoing offenses.

Unless otherwise specified, an aggravated felony includes both state and federal convictions, as well as foreign convictions for which the term of imprisonment was completed less than 15 years earlier.

Crimes Affecting Assessment of Good Moral Character: The possession of good moral character appears always to have been a statutory requirement for naturalization, and good moral character now also bears on the eligibility for various forms of immigration relief. The activities listed by the INA as prohibiting a finding of good moral character are not exclusive, and engaging in illegal activity that is not specifically designated by the INA may therefore still be considered when assessing character.

Although not every activity listed by the INA as barring a finding of good moral character directly relates to illegal behavior, most do. Pursuant to INA, an alien is barred from being found to have good moral character if, during the period for which character is required to be established, the alien:

- commits certain acts related to prostitution or another commercialized vice;
- knowingly encourages, induces, assists, abets, or aids any other alien to enter or to try to enter the United States in violation of law, except in limited circumstances;
- commits a crime of moral turpitude, unless the alien committed only one crime and either (1) the crime was committed while the alien was a minor and the crime (as well as the alien's release from any imprisonment for the crime) occurred at least five years prior to the pertinent application or (2) the maximum possible penalty for the crime did not exceed one year's imprisonment and the sentence imposed did not exceed six months;
- violates a federal, state, or foreign law or regulation relating to a controlled substance, other than a single offense of possessing 30 grams or less of marijuana;
- commits two or more offenses for which the aggregate sentence imposed was at least five years;

- gives false information in attempting to receive a benefit under the INA;
- has an income principally derived from illegal gambling activities;
- commits at least two gambling offenses for which the alien is convicted;
- is in criminal confinement for at least 180 days; or
- has *at any time* been convicted of an aggravated felony.

As previously mentioned, the INA’s listing of conduct barring a finding of good moral character is not exclusive, and other activities — criminal or otherwise — may also bar an alien from citizenship or immigration benefits on character grounds. Among potential disqualifying conduct are an alien’s deliberate non-support of his or her family, adultery that tended to destroy an existing marriage, and other notorious unlawful conduct. Additionally, crimes committed before the “good moral character” period may be considered.

MAJOR IMMIGRATION CONSEQUENCES FOR CRIMINAL ALIENS

Certain criminal conduct may have a substantial impact upon an alien’s ability to enter or remain in the United States, and it may also affect the availability of discretionary forms of immigration relief and the ability of an alien to become a U.S. citizen. The following sections describe the major immigration consequences for aliens who engage in certain criminal conduct.

Designation as Inadmissible Alien: The INA categorizes certain classes of aliens as inadmissible, making them “ineligible to receive visas and ineligible to be admitted to the United States.” Aliens who commit certain crimes are designated as inadmissible. Aliens designated as inadmissible include any alien who, *inter alia*:

- has been convicted of, admits having committed, or admits to acts comprising essential elements of a crime involving more turpitude (other than a purely political offense), unless (1) the alien committed only one crime and (2)(a) the crime was committed when the alien was under the age of 18 and the crime was committed (and any related incarceration ended) more than five years prior to the application for admission or for a visa or (b) the maximum penalty for the crime at issue did not exceed one year’s imprisonment and, if convicted, the alien was not sentenced to more than six months;
- has been convicted of, admits having committed, or admits to acts comprising essential elements of a federal, state, or foreign law violation relating to a controlled substance;
- based on the knowledge or reasonable belief of a consular officer or immigration officer, (1) is or has been an illicit trafficker in a controlled substance, or knowingly is or has been an aider or abettor of a controlled substance, or (2) is the spouse, son, or daughter of an alien inadmissible for the foregoing reasons, and has, within the previous five years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity;

- has been convicted of two or more offenses for which the aggregate sentence imposed was at least five years;
- is coming to the United States to engage in (or within 10 years of applying for admission has engaged in) prostitution (including procurement and receipt of proceeds) or is coming to the United States to engage in another form of unlawful commercialized vice;
- committed a serious crime for which diplomatic immunity or other form of immunity was claimed;
- (1) is listed as a trafficker in persons in a report under the Trafficking Victims Protection Act or is known or reasonably believed to have aided or otherwise furthered severe forms of human trafficking or (2) is known or reasonably believed to be the adult child or spouse of such an alien and knowingly benefited from the proceeds of illicit activity while an adult;
- based on the knowledge or reasonable belief of a consular officer or immigration officer, is engaging, or seeks to enter the United States to engage, in a federal offense of money laundering, or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in such an offense; or
- based on the knowledge or reasonable belief of a consular officer or immigration officer, seeks to enter the United States to engage in espionage, sabotage, export control violations, unlawful opposition to the government, or other unlawful activity.

Although not expressly listed as such, a conviction for an aggravated felony may also make an alien inadmissible. Other types of unlawful conduct (which may also be covered under criminal grounds) precluding admission include terrorist activities, alien smuggling (with limited exception), immigration document fraud, illegal entry into the United States, unlawful voting, international abduction of a child who is a U.S. citizen, participation in genocide, and severe violations of religious freedom while serving as a foreign government official.

Waivers: Various criminal grounds for inadmissibility are, by their own terms, subject to exception. For example, the crime of moral turpitude category does not cover certain juvenile or minor offenses. Further, even if a crime is covered, most criminal grounds for inadmissibility may nevertheless be waived in a number of circumstances. Authority to waive certain criminal grounds of inadmissibility is contained in INA § 212(h).

Criminal grounds for inadmissibility that may be waived are:

- crimes involving moral turpitude;
- a single offense of simple possession of 30 grams or less of marijuana;
- multiple convictions for which at least five year's imprisonment was imposed;
- prostitution or other unlawful commercialized vices; and
- serious criminal activity for which the alien has asserted immunity.

INA § 212(h)(1) establishes that relevant immigration officials have discretion to waive a designation of inadmissibility on account of the foregoing conduct if four requirements are met. These requirements are that:

- the alien is seeking admission as an LPR;

- the conduct making the alien inadmissible either involved prostitution or another unlawful commercial vice or, in the case of other criminal conduct, occurred more than 15 years before the date of the alien's application for a visa, entry or adjustment of status;
- the alien's admission into the United States would not be contrary to the national welfare, safety, or security of the United States; and
- the alien has been rehabilitated.

An additional waiver is available for immediate family members under INA § 212(h)(1)(B) if:

- the alien is seeking admission as an LPR;
- the alien is the spouse, parent, son, or daughter of a U.S. citizen or LPR; and
- denial of admission would cause extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter.

A further circumstance where a waiver is available for inadmissible criminal conduct involves alien spouses or children of U.S. citizens or LPRs, when those aliens have been battered or subjected to extreme cruelty by the citizen or LPR.

Certain aliens are barred from consideration for § 212(h) waivers. No waiver is permitted for aliens who have been convicted of murder or criminal acts involving torture, as well as attempts or conspiracies to commit murder or a criminal act involving torture. Further, a waiver under §212(h) is not available in the case of an alien who has previously been admitted to the United States as an LPR if either (1) since the date of such admission the alien has been convicted of an aggravated felony (2) the alien has not lawfully resided continuously in the United States for at least seven years immediately preceding the date of initiation of proceedings to remove the alien from the United States.

In addition to §212(h) waivers, criminal grounds may be waived for aliens seeking temporary admission as nonimmigrants, such as those seeking to enter the United States as tourists. Also, certain permanent residents may seek waivers through cancellation of removal, which will be discussed later.

Deportation: The criminal grounds for deportation cover both broad categories and specific crimes. Among those deportable on criminal grounds is any alien who:

- is convicted of a single crime involving moral turpitude that was committed within five years of admission and that is punishable by imprisonment of at least one year;
- is convicted of two or more crimes involving moral turpitude not arising from a single scheme of misconduct;
- is convicted of an aggravated felony at any time after admission into the United States;
- is convicted after admission of any violation of a federal, state, or foreign law or regulation relating to a controlled substance (other than a single offense for possessing 30 grams or less of marijuana for personal use);
- is, or at any time after admission has been, a drug abuser or drug addict;

- is convicted at any time after admission of an offense related to a firearm or destructive device (including unlawful commerce relating to, possession, or use of a firearm or destructive device);
- is convicted at any time of an offense relating to espionage, sabotage, or treason or sedition, if the offense is punishable by imprisonment of five years or more;
- is convicted of an offense under the Military Selective Service Act or the Trading with the Enemy Act;
- is convicted of an offense under 18 U.S.C. § 758 (high-speed flight from an immigration checkpoint);
- is convicted of an offense related to launching an expedition against a country with which the United States is at peace;
- is convicted of threatening by mail the President, Vice President, or other officer in the line of presidential succession;
- is convicted at any time after entry of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment; or
- violates a protection order related to violence or harassment.

Waivers: Crimes involving moral turpitude, aggravated felonies, and high-speed flight from an immigration checkpoint may all be automatically waived as grounds for deportability upon the alien receiving a full and unconditional pardon by the President or governor. *Cancellation of removal* as a form of discretionary relief, which is discussed below, and §212(h) *waivers of inadmissibility*, which are discussed above, may also be relevant in deportation cases.

Cancellation of Removal: The Attorney General may cancel the removal of certain otherwise inadmissible or deportable non-LPRs if they have been in the United States continuously for at least 10 years and their removal would result in exceptional and extremely unusual hardship for immediate family members. However, certain criminal activity makes an alien ineligible for cancellation of removal despite whatever roots the alien has established in the United States. Disqualifying criminal activity includes convictions of crimes that preclude a finding of good moral character and crimes that fall within the criminal grounds for inadmissibility or deportation. Civil immigration document fraud also precludes relief. Additionally, “continuous residence” for purposes of qualifying for relief stops on the *commission* of an offense that would render the alien inadmissible.

The Attorney General may cancel the removal of an alien who has been an LPR for at least five years, if the alien has resided in the United States continuously for at least seven years and has not been convicted of an aggravated felony. Further, “continuous residence” for purposes of qualifying for relief stops upon the *commission* of an offense that would render the alien inadmissible.

Voluntary Departure: Through a grant of voluntary departure, an otherwise deportable alien may depart the United States without the stigma and legal consequences that would attach to a compulsory removal order. There are two standards for voluntary

departure, depending on whether permission to leave voluntarily is sought before or after removal proceedings against the alien are completed. If voluntary departure is sought before proceedings are initiated (e.g., upon the alien being arrested by an immigration enforcement officer) or completed, the only criminal disqualification is for conviction of an aggravated felony (terrorist activities are also disqualifying). If voluntary departure is sought after removal proceedings are completed, the alien must not have been convicted of an aggravated felony and must also have been a person of good moral character for at least five years preceding.

Adjustment of Status: Under certain circumstances, an alien with nonimmigrant status may adjust to LPR status. Certain aliens without legal status may also adjust if they had a preference petition or labor certification application filed on their behalf as of April 30, 2001, or under certain other circumstances. Otherwise eligible aliens are barred from adjustment if they are inadmissible, including those who are inadmissible on criminal grounds.

Registry: The INA has long contained authority for the adjustment to LPR status for aliens who have lived in the United States for an extended period. Known as the registry provision, this authority now allows for the adjustment of aliens who have lived in the United States since before 1972. However, aliens who are inadmissible on criminal grounds are ineligible for adjustment, as are aliens who lack good moral character.

Naturalization Restrictions: An essential requirement for becoming a U.S. citizen through naturalization is that the applicant establishes that he or she has been, and continues to be, a person of good moral character. An LPR seeking naturalization is required to maintain good moral character for *at least five years* preceding his or her application for naturalization; five years being the minimum period of time that a person lawfully admitted into the United States must continuously reside in the country before applying for naturalization.

As discussed previously, certain criminal acts may disqualify an alien from being found to possess good moral character.