

CRIMINAL INADMISSIBILITY GROUNDS. INA § 212(a)(2)

Will or may result in ineligibility to obtain lawful admission status in the US or prevent a noncitizen who already has lawful admission status from being able to return to the US from a trip abroad.

- Conviction or admission of a **Controlled Substance Offense** (if categorical match to federal “controlled substances”)
- DHS reason to believe that individual is a **drug trafficker** [see RTB box]
- Conviction or admission of a **Crime Involving Moral Turpitude (CIMT)**, including *generally* offenses:
 - with an *intent to steal or defraud* as an element or
 - in which *bodily harm* is caused or threatened by an intentional act **or** *serious bodily harm* is caused or threatened by a reckless act. [Matter of Fualaau](#), 21 I&N Dec. 475 (BIA 1996) or
 - that are sex-related
- Petty Offense Exception – for 1 CIMT if no other CIMT & the offense is not punishable > 1 yr & does not involve a prison sentence > 6 mos.
- **Prostitution** (conviction, admission, or intent to engage in US) or other **commercialized vice**
- Conviction of **2 or more offenses** of any type & **aggregate sentence to confinement of 5 yrs**

CRIMINAL BARS TO 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter. INA § 212(h)

- Conviction or admission of a **Controlled Substance Offense** other than a single offense of simple possession of 30g or less of marijuana
- Conviction or admission of a **violent or dangerous crime** is a presumptive bar, 8 CFR § 1212.7(d)
- Conviction of an **Aggravated Felony**, or a **Criminal Inadmissibility Offense** if removal proceedings initiated before 7 yrs of lawful residence. **But note: these bars do not apply to non-LPRs or LPRs who adjusted to LPR status inside US & have not entered as LPR from abroad.** [Matter of J-H-J](#), 26 I&N Dec. 563 (BIA 2015)

CRIMINAL BARS ON ASYLUM based on a well-founded fear of persecution in country of removal. INA § 208(b)(2) – OR ON WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal. INA § 241(b)(3)(B)

- Conviction of a **“Particularly Serious Crime” (PSC)**
 - **All Aggravated Felonies, INA § 101(a)(43), are PSCs for asylum**
 - **Aggravated felonies w/ aggregate 5 yr + sentences of imprisonment are PSCs for withholding**
 - **Withholding presumptively barred for Aggravated Felonies involving unlawful trafficking in controlled substances** – [Matter of Y-L](#), 23 I&N Dec. 270 (A.G. 2002)
- Conviction of **other offenses deemed a PSC**. IDP/HIRC [Particularly Serious Crime Bars Chart](#)
- Conviction of a **violent or dangerous crime** presumptively bars asylum. [Matter of Jean](#), 23 I&N Dec. 373 (A.G. 2002)

CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for asylees or refugees). INA § 209(c)

- DHS reason to believe that individual is a **drug trafficker** [see RTB box]
- **Violent or dangerous crime** is a presumptive bar. [Matter of Jean](#), 23 I&N Dec. 373 (A.G. 2002)

CRIMINAL BARS ON NON-LPR CANCELLATION OF REMOVAL based on 10+ yrs US continuous physical presence & “exceptional & extremely unusual” hardship to USC/LPR spouse, parent or child. INA § 240(A)(b)(1) – OR ON VAWA CANCELLATION based on 3+ yrs continuous physical presence of battered spouse or child & “extreme hardship” to battered person, their child, or parent. INA § 240A(b)(2)

- Conviction of an offense described under the criminal inadmissibility or deportability grounds
- Conviction or admission of crimes barring finding of good moral character (GMC) during 3 or 10 yr period [see GMC bars on back]

CRIMINAL DEPORTABILITY GROUNDS. INA § 237(a)(2)

Will or may result in deportation of a noncitizen who already has a lawful admission status, such as a lawful permanent resident (LPR).

- Conviction of a **Controlled Substance Offense (CSO)** (if categorical match to federal “controlled substance”) *EXCEPT* a single offense of simple possession of 30g or less of marijuana
- Conviction of a **Crime Involving Moral Turpitude (CIMT)**
 - One CIMT committed w/ 5 yrs of admission into the US & for which a prison sentence of **1 yr or longer** may be imposed
 - Two CIMTs committed *at any time* after admission & “not arising out of a single scheme”
- Conviction of a **Firearm or Destructive Device Offense** (if categorical match to federal “firearm/destructive device”)
- Conviction of a **Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order** (criminal or civil)
- Conviction of an **Aggravated Felony** – defined in INA § 101(a)(43) & including the following crimes, even if not a felony, or **attempts or conspiracies to commit them:**

- ♦ **Murder**
- ♦ **Rape**
- ♦ **Sexual Abuse of a Minor**
- ♦ **Controlled substance trafficking** (if categorical match to federal “controlled substance”), including most sale or intent to sell offenses and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism
- ♦ **Firearm Trafficking & other designated firearm/destructive device offenses** (if categorical match to federal “firearm/destructive device”)
- ♦ **Crime of Violence and 1 yr + prison sentence***
- ♦ **Theft or Burglary and 1 yr + prison sentence***
- ♦ **Fraud or tax evasion and loss to victim(s) > \$10, 000**
- ♦ **Prostitution business offenses, commercial bribery, counterfeiting, or forgery and 1 yr + prison sentence***
- ♦ **Obstruction of justice or perjury and 1 yr + prison sentence***
- ♦ **Other offenses listed at INA § 101 (a)(43)**

* “1 yr +” prison sentence includes suspended sentences of 1 yr or more

CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more & continuous residence in US for 7 yrs after admission. INA § 240A(a)(3)

- Conviction of an **Aggravated Felony**, INA § 101(a)(43)
- **Offense** triggering removability referred to in **Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in US**, INA § 240A(d)

MANDATORY DETENTION. INA § 236(c)

- Inadmissibility under INA § 212(a)(2)
- Deportability under INA § 237(a)(2) for:
 - **One CIMT w/ 5 yrs of admission & prison sentence of 1 yr + or**
 - **Two CIMTs or**
 - **An Aggravated Felony or**
 - **A CSO or**
 - **A Firearm or Destructive Device Offense at any time after admission**

“CONVICTION” as defined for immigration purposes. INA § 101(a)(48)(A)

Formal judgment of guilt entered by a court, OR, if adjudication of guilt has been withheld, where:
(i) a judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, &
(ii) the judge has ordered some form of punishment, penalty, or restraint on liberty

- Court-ordered drug treatment or domestic violence counseling alternatives to incarceration (ATI) w/ guilty plea **IS** a conviction for immigration purposes (even if the guilty plea is or might later be vacated)
- Deferred adjudication w/o a guilty plea **NOT** a conviction
- **NOTE: A juvenile delinquency adjudication or analogous youth offender adjudication IS NOT a conviction.** [Matter of Devison-Charles](#), 22 I&N Dec. 1362 (BIA 2000) (NY Youthful Offender)

“ADMISSION” of criminal conduct requires:

- conduct admitted constitutes a crime under the laws of the jurisdiction where it occurred. [Matter of M](#), 1 I&N Dec. 229 (BIA 1942)
 - individual admitted all factual elements of the crime. [Matter of E.N.](#), 7 I&N Dec. 153 (BIA 1956)
 - individual was provided with a definition of the crime by immigration officer before making alleged admission. [Matter of K](#), 9 I&N Dec. 715 (BIA 1962)
 - the admission was voluntarily given. [Matter of G](#), 1 I&N Dec. 225 (BIA 1942)
- NOTE: Guilty plea alone is insufficient.** [Matter of Thomas](#), 21 I&N Dec. 20 (BIA 1995)

REASON TO BELIEVE DRUG TRAFFICKER (RTB). INA § 212(a)(2)(C)

- **DHS does not need to show a conviction.**
 - Only “substantial & probative” evidence that individual engaged in unlawful trading or dealing of a controlled substance
 - Police testimony or reports, admissions by noncitizens, delinquency adjudications, criminal complaints, & other evidence of sale or possession w/ intent to distribute have all been held to support RTB.
- Where RTB comes up:
 - Adjustment of Status (affirmative or defensive) or consular processing
 - Returning LPR (*treated as seeking admission under INA 101(a)(13)(C)*)
 - LPR otherwise removable, needing to re-adjust
 - Spouse &/or children of any of the above if they obtained any financial or other benefit from the illicit activity w/ the previous 5 yrs.
- See IDP [Key Removal Defenses](#), 71–73.

IMMIGRATION CONSEQUENCES OF CONVICTIONS SUMMARY CHECKLIST continued



Criminal bars related to US citizenship, Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS)

CRIMINAL BARS ON OBTAINING US CITIZENSHIP. INA § 101(f)

Will bar an LPR from US citizenship

If occurring during the applicable required residence period, the following bar the finding of **good moral character** (GMC) required for US citizenship:

- ▶ Conviction of an **Aggravated Felony on or after Nov. 29, 1990**
 - Note: this permanently bars citizenship even if committed before the applicable residence period
- ▶ Conviction or admission of **Controlled Substance Offense** (unless single offense of simple possession of 30g < of marijuana)
- ▶ Conviction or admission of a **Crime Involving Moral Turpitude** (unless single CIMT & the offense is not punishable by > 1 year & does not involve a prison sentence > 6 mos)
- ▶ Conviction of 2 or more **offenses of any type & aggregate prison sentence** of 5 years
- ▶ Conviction of 2 or more **gambling offenses**
- ▶ Confinement as a result of a conviction to a penal institution for 180 days or more

CRIMINAL BARS TO TEMPORARY PROTECTED STATUS (TPS) INA § 244(c) (general eligibility requirements and updates at www.uscis.gov/humanitarian/temporary-protected-status)

- ▶ **One Felony Conviction**
 - Any federal, state, or local crime committed at any time in the US, punishable by imprisonment for >1 yr, regardless of time served
 - Note: Even if an offense has a potential sentence of >1 yr, it will not be treated as a felony for TPS purposes if 1) the offense is classified as a misdemeanor AND 2) the sentence actually imposed is 1 yr or less, regardless of time served
- ▶ **Two Misdemeanor Convictions**
 - Any federal, state, or local crime committed at any time in the US, that is either:
 - Punishable by a term of imprisonment of 1 yr or less, regardless of the term actually served or
 - If 1) the offense is classified as a misdemeanor AND 2) the sentence actually imposed is 1 yr or less, regardless of time served
 - Note: Offenses punishable by a maximum term of 5 days or less are not misdemeanors. 8 C.F.R. § 244.1
 - Note: **certain NY traffic infractions or violations are not considered misdemeanors for purposes of TPS** [January 17, 2010 Neufeld Memo](#)
- ▶ **One Conviction, Admission, or Conduct Triggering a Criminal Inadmissibility Ground**
 - Even if an applicant has <2 misdemeanor convictions, certain criminal offenses may trigger the crimes-related inadmissibility grounds under INA § 212(a)(2) (see reverse side) which are bars to TPS. A discretionary waiver, (INA § 244(c)(2)(A)(ii)), is only available in narrow circumstances
 - Waivers are NOT available for:
 - Conviction or admission of a CIMT. INA § 212(a)(2)(A)(i)(I)
 - Conviction or admission of a CSO (other than a single offense involving simple possession of 30g or less of marijuana). INA § 212(a)(2)(A)(i)(II)
 - Multiple criminal convictions where the aggregate sentence is 5 years or more. INA § 212(a)(2)(B)
 - Reason to believe (RTB) that the applicant is a drug trafficker. INA § 212(a)(2)(C) [See reverse side]
- ▶ **Criminal Bars to Asylum: also apply here** [see reverse side]

CRIMINAL BARS FOR DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) (general eligibility requirements and DACA updates at uscis.gov/DACA)

- ▶ **One Felony Conviction**
 - Any federal, state or local offense that is punishable by imprisonment for a term exceeding 1 yr
 - Does not include state immigration-related offenses
 - Does not matter whether state or local offense is classified as a "felony"
- ▶ **One "Significant Misdemeanor" conviction, including:**
 - **CONDUCT-BASED**
 - An offense punishable by imprisonment of 1 yr or less but greater than 5 days (regardless of sentence actually imposed) and is an offense of:
 - ◆ Domestic violence
 - ◆ Sexual abuse or exploitation
 - ◆ Burglary
 - ◆ Unlawful possession or use of a firearm
 - ◆ Drug distribution or trafficking
 - ◆ Driving under the influence
 - Note: this may include certain offenses that are not classified as misdemeanors in the convicting jurisdiction, e.g. domestic violations or driving under the influence traffic infractions, if punishable by > 5 days in prison
 - **SENTENCE-BASED**
 - Any other offense punishable by imprisonment of **1 yr or less for which the person received a sentence of more than 90 days in custody**
 - Note: Suspended sentences do not count towards the 90 days
- ▶ **Three Misdemeanor Convictions**
 - Three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct
 - Includes federal, state, or local offenses punishable by imprisonment of 1 yr or less but greater than five days (may include certain low-level offenses not classified as misdemeanors if punishable by more than five days in prison e.g. NYS violations)
 - Note: Does not include minor traffic offenses (such as driving without a license)
 - Note: Does not include state immigration-related offenses

OTHER IMPORTANT CONSIDERATIONS FOR THOSE CONSIDERING DACA RENEWAL

OTHER CONDUCT THAT CAN LEAD TO DENIAL OF PROSECUTORIAL DISCRETION

- ▶ Convictions or information indicating that the applicant is a threat to national security or public safety. DHS considers such threats could include: gang membership, participation in criminal activities, or participation in activities that threaten the US

DISPOSITIONS THAT AVOID AUTOMATIC DISQUALIFICATION

- ▶ Juvenile dispositions (but not adult convictions of juveniles) & expunged convictions will not trigger an automatic bar to DACA renewal

IMPORTANT: FUTURE LAWFUL ADMISSION STATUS

- ▶ A conviction triggering the Criminal Inadmissibility Grounds on the reverse side may affect a person's future ability to apply for LPR or other formal admission status, even if it does not bar DACA renewal