

## Inadmissibility & Waivers

**Inadmissibility:** Inadmissibility refers to the inability to apply for immigration benefits and enter the United States because of health-related and economic grounds, commissions of crimes and participation in subversive activity.

**Waivers:** If you are seeking a non-immigrant visa or a green card and you are found to be inadmissible based on any of the grounds below, a waiver is available in most cases. When the attorney applies for the waiver, we admit the problem and ask that the United States Citizenship & Immigration Services (USCIS) (formerly Immigration & Naturalization Service [INS]) nevertheless give us a green card or visa. There are many technical factors involved with whether or not a waiver of inadmissibility is approved. Your best chance of success is by hiring a competent immigration attorney.

Waivers are also available to persons who have been ordered removed after a deportation or removal hearing or who left under an order of removal and who seek readmission within 10 years (or within 20 years in applicable cases) from the date of such physical deportation or removal

To be eligible for a waiver of removability, you must establish hardship to yourself or your close family members if you were to be removed from the U.S.

For example, if you were charged with falsely claiming citizenship, we would apply for a waiver under 212(i) if the failure to admit you to the United States would result in extreme hardship to your United States Citizen or lawfully resident spouse or parent.

Similarly, if you were found inadmissible due to criminal charges, you may be eligible for a waiver under 212(h) if your denial of admission would result in extreme hardship to your United States citizen or lawfully resident spouse, parent, son or daughter.

For persons seeking to adjust their status as refugees or asylees, there is a waiver of most grounds of inadmissibility. The law provides that public charge, labor certification, and lack of immigration documents do not apply to this category of persons seeking to adjust. The law also permits a waiver "for humanitarian purposes, to assure family unity, or when it is in the public's interest" for all other grounds of inadmissibility, except if there is reason to believe that the person is a drug trafficker or inadmissible on security grounds (except membership in a totalitarian party).

### INADMISSIBILITY BASED ON HEALTH-RELATED GROUNDS

Our attorneys are fully qualified to appeal any denial of a green card due to inadmissibility based on health-related grounds. The appeal leads to a medical board hearing where we may bring our own medical experts to testify.

#### Physical Disorders:

Physical disorders would include communicable diseases, such as tuberculosis or HIV infection.

A waiver is available if the person seeking the immigration benefit is the spouse, unmarried son or daughter or the lawfully adopted unmarried minor child of a United States Citizen (USC), Legal Permanent Resident (LPR) or a person issued an immigrant visa or the foreign national has a son or daughter who is a USC, LPR or a person issued an immigrant visa.

#### Mental Disorders:

The foreign individual will be inadmissible if he/she has a mental disorder with behavior which may pose a threat to the property, safety and welfare of others or if such behavior existed in the past and is likely to recur or lead to other harmful behavior. An incident of "Driving Under the Influence" or other alcohol-related violent behavior would qualify as a mental disorder.

A waiver is available under the discretion of the Attorney General.

#### Drug Abuser or Drug Addict:

Drug abuse is defined as the use of a controlled substance, which has not led to addiction. A one-time use of marijuana or amphetamines would qualify as experimentation and would not make you inadmissible.

There is no waiver available for this category, except for simple possession of less than thirty grams of marijuana and under limited circumstances

The following conditions would not exclude you: Mental retardation, insanity per se or one or more attacks of insanity per se, affliction with psychopathic personality, sexual deviation or mental defect, including homosexuality, and chronic alcoholism (so long as it does not pose a threat to the property, safety and welfare of others.)

#### INADMISSIBILITY BASED ON ECONOMIC GROUNDS

##### Public Charge:

A person likely to become a public charge will not be allowed to enter the U.S. A consular or immigration officer will take the following criteria into account in determining the likelihood of Public charge:

1. A person who has received welfare in the past
2. Age
3. Education and skills
4. Capacity to earn a living
5. Physical and mental condition
6. Family situation
7. Work history
8. Affidavits of support by the sponsor
9. Assets, resources and financial status

A waiver is not available but the ground of inadmissibility may be cured by having a sponsor complete and file an Affidavit of Support. However, if a nonimmigrant received public benefits when he/she was not eligible or through fraud, there is a bar of inadmissibility which expires after five years.

##### Labor Certification:

Persons who are seeking entry to perform skilled or unskilled labor without an approved labor certification are inadmissible.

A waiver is not available but if you are immigrating under the National Interest Waiver, a labor certification is not necessary. Please see our discussion under National Interest Waiver for Physicians in Underserved Areas.

##### Physicians of unaccredited schools:

A medical graduate of an unaccredited school who has not passed the foreign medical graduates exam and is incompetent in oral and written English if the graduate is seeking entry into the United States in a category based on their profession (second and third employment-based preference) is inadmissible. The exclusion also applies to teaching, research and other activities, which require a medical degree but does not apply to physicians of national or international distinction in the field of medicine.

A waiver is not available.

##### Uncertified foreign health care workers:

Health care workers such as nurses (including supervisory nurses not engaged in clinical work), physical therapists, occupational therapists, speech-language pathologists, medical technologists and technicians, and physician assistants. This category does not include dentists, medical doctors, physical therapist assistants, medical teachers, medical researchers, managers of health care facilities or medical consultants in the insurance industry.

Waiver: to be admissible, a health care worker must present certification from the Commission on Graduates of Foreign Nursing Schools or the equivalent confirming that:

- (1) The person's education, training, license and experience meet all applicable U.S. requirements under the classification, are comparable to U.S. health care workers and are authentic, and the license is unencumbered;
- (2) The person is competent in oral and written English; and

(3) The person has passed a test/examination if such test is administered by a majority of states.

Former Citizens:

Former citizens who renounced citizenship for tax purposes after September 30, 1996, are inadmissible.

No waiver is available.

#### INADMISSIBILITY BASED ON CRIMINAL GROUNDS

Crimes involving moral turpitude:

Foreign nationals over the age of 18 years old who have committed crimes involving moral turpitude more than five years prior to the date of their application for a visa are inadmissible to the United States. Moral turpitude is defined as "conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general ... Moral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, or malum in se so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude." Matter of Franklin, 20 I&N Dec. 867, 868 (BIA 1994), affirmed, 72 F.3d 571 (8th Cir. 1995).

If you were imprisoned, you must have been released more than five years prior to applying for immigration benefits.

A petty offense does not qualify as a crime of moral turpitude. A petty offense conviction is where the maximum penalty possible for the crime does not exceed imprisonment for one year and you were not sentenced to more than six months of imprisonment regardless of how long you served.

The petty offense exception does not apply if you have committed more than one offense and does not apply to drug cases, except for simple possession of less than 30 grams of marijuana.

Examples of Crimes of Moral Turpitude. Some of the following examples largely depend upon the state in which the crime was committed.

Crimes of moral turpitude can be grouped into seven categories as follows:

1) Crimes Against the Person - Examples:

(a) Involving Moral Turpitude:

- Assault with intent to rob or kill or to commit abortion or rape
- Assault with intent to kill
- Assault with intent to cause serious physical injury
- Assault with a deadly weapon
- Aggravated assault
- Assault with a dangerous weapon
- Carrying a concealed weapon with intent to use
- Child abuse
- Spousal abuse
- Aggravated stalking where threat is involved
- Willful infliction of corporal injury on spouse parent or own child, or roommate
- Certain disorderly conduct
- Loitering for lewd purposes
- Solicitation
- Mayhem
- Attempted murder
- Manslaughter stemming from assault and battery
- Voluntary manslaughter
- Murder
- Accessory after the fact to murder

(b) Not involving moral turpitude:

- Assault and battery (simple). Examples:
- Assault related to resisting arrest;
- Assault on police;
- Assault with intent to commit a felony unless the felony is a crime of moral turpitude.
- Assault where recklessness could be an element but without serious bodily harm.
- Driving Under or While Under the Influence (DUI or DWI) - simple.

- DUI or DWI that was aggravated but without culpable mental state.
- Malicious mischief.
- Simple kidnapping.
- Involuntary manslaughter.
- Weapons possession.

(2) Sexual offenses - Examples:

(a) Involving Moral Turpitude:

- Adultery
- Bigamy
- Incest
- Lewd and lascivious conduct
- Oral sex
- Prostitution
- Rape
- Attempted rape
- Statutory rape

(b) Not Involving Moral Turpitude:

- Bastardy
- Indecency
- Indecent assault
- Mailing an obscene letter
- Maintaining a nuisance
- Contributing to the delinquency of a minor
- Vagrancy

(3) Crimes against property - Examples:

(a) Involving moral turpitude:

- Arson
- Blackmail
- Embezzlement
- Extortion
- Forgery
- Fraud
- Larceny
- Possession of stolen property with the knowledge it is stolen
- Receipt of Stolen property
- Robbery
- Burglary
- Stealing cellular air time
- Theft
- Petty theft under California law
- Securities fraud
- Illegal use of credit cards
- Trespass (malicious)

(b) Not involving moral turpitude:

- Passing bad checks where intent is not a necessary element
- Breaking and entering or unlawful entry with no intent
- Burglary
- Malicious destruction of property
- Malicious mischief
- Possession of stolen property where guilty knowledge not essential
- Damaging private property where no evil inherent in statute.
- Theft of services

(4) Crimes against government - Examples:

(a) Involving moral turpitude:

- Attempted bribery
- Kickbacks on government. contracts
- Counterfeiting

- Possession of counterfeit securities
- Transportation of forged securities
- Use of Fraudulent Driver's License
- False statement to obtain license
- False statements on passport applications
- False statements on firearms applications,
- False representations regarding social security numbers.
- Harboring a fugitive
- Immigration fraud under 18 U.S.C. §1546 (possession of document with knowledge that it was altered)
- Impersonating a federal officer
- Possession of stolen mail
- Mail fraud
- Fraud
- Perjury
- Stolen bus transfers (in certain jurisdictions where knowledge that property was stolen is an element.)
- Tax evasion,
- Willful tax evasion under state law
- Turnstile jumping (going into subway without paying)
- Welfare fraud
- Theft and conversion of U.S. funds by obtaining welfare benefits fraudulently

(b) Not involving moral turpitude:

- Using false Social Security card
- Alien smuggling under 8 U.S.C. §1324(a)
- Contempt of Congress
- False attestation on I-9
- False statements not amounting to perjury
- False statement under 18 U.S.C. §1001
- Military matter: desertion
- Failure to report for induction
- Reentry after deportation

(5) Crimes involving fraud

Fraud is almost always a crime of moral turpitude, whether it be against the government or individuals. However, false statements not amounting to perjury are not crimes of moral turpitude.

(6) Violations of regulatory laws

Violations of laws issued by various governmental departments commonly are not crimes of moral turpitude.

Examples of violations of regulatory laws not involving moral turpitude:

- Structuring deposits to avoid reporting requirements under 31 U.S.C. §5324(a)(3)
- Reentry after deportation
- Gambling \*\*\*WAIVERS
- No waiver is available if you have committed a crime such as murder, attempted murder or conspiracy to commit murder, torture or drugs crimes.
- A waiver is available for simple possession of less than 30 grams of marijuana.
- No waiver is available if you hold a green card and you have been convicted of an aggravated felony since receiving your green card.
- No waiver is available if you are a green card holder and you have less than seven years of lawful continuous residence before removal (deportation) proceedings have been initiated against you.
- Waivers are available for all other offenses (crimes of moral turpitude) only if you are the spouse, parent or child of a U.S. citizen or green card holder.
- Waivers are available if the only criminal activity was prostitution.
- Waivers are available if the moral turpitude crime occurred more than 15 years before the application for a visa or green card was filed and you prove that you have been rehabilitated and are not a threat to U.S. security.
- No waiver is available to drug offender except for simple possession of less than 30 grams of marijuana and possibly for a first and only offense or for juvenile offenders.
- No waiver is available for truck traffickers.
- No waiver is available to immediately family members of drug traffickers who benefited knowingly from the illicit money within the last five years. INADMISSIBILITY BASED ON IMMIGRATION VIOLATIONS

Unlawful Presence

Unlawful presence is a ground of inadmissibility. It refers to an alien's presence in the United States after the expiration of the period of stay authorized by the Attorney General or presence in the United States without having been admitted or paroled. If you are unlawfully present for more than 180 days but less than one year beginning April 1, 1997, you are barred from seeking an immigration benefits for three years. If you are unlawfully present for one year or more, you are barred from seeking an immigration benefit for ten years.

Different rules apply for Canadians not issued a Form I-94 and F, J and M students and exchange visitors admitted for "duration of status" who overstay. These categories of people do not accrue lawful presence until and unless an INS official or an immigration judge finds such person to be out of status.

You are not considered "unlawfully present" for up to 120 days if, you have entered the United States through customs, you filed a valid change of status or extension of status before the end of your authorized stay but then subsequently fell out of status so long as you did not work without authorization. In the same way, a minor, an asylum applicant, beneficiaries of the Family Unity program and applicants under the battered spouse or battered child provisions do not accrue unlawful presence time. If you are married to a U.S. citizen or permanent resident, a waiver is available if refusal of the application would cause you extreme hardship.

If you are unlawfully present for an aggregate period of more than one year and you subsequently reenter without proper admission or were ordered removed and subsequently attempt to re-enter without proper admission, no waiver is available.

#### Improper Documentation

You are inadmissible if you entered the United States without proper documentation. However, a waiver is available for a battered woman and a child who came to the United States to seek refuge from such battery or who qualify as self-petitioners. A waiver is also available if you are an individual who had visa petitions or labor certifications filed on your behalf prior to January 14, 1998, or April 30, 2001 and you can prove that you were physically present in the United States on December 21, 2000. Under the Immigration & Nationality Act Section 245(i), by paying \$1,000 penalty, you may adjust your status and obtain a green card without leaving the United States.

#### Previous Deportation

If you previously deported you may apply for a waiver but its approval is at the discretion of the United States Citizenship and Immigration Services (USCIS), formerly known as the Immigration and Naturalization Service (INS).

#### Failure to Attend a Removal or Deportation Hearing before the Immigration Court

If you received a notice to appear for a removal or deportation hearing but you failed to attend, there is a five-year bar to inadmissibility, unless you had a good reason for your failure to attend and you have proper documentation of such good reason. A waiver is available but it is at the discretion of the United States Citizenship and Immigration Services (USCIS), formerly known as the Immigration and Naturalization Service (INS).

#### Misrepresentations

If you lied during the immigration process. A waiver will be granted if you are the spouse of child of a United States citizen or green card holder if the refusal of admission would result in extreme hardship to your spouse or parent.

#### False Claim of American Citizenship

If you made a false claim to U.S. citizenship, you are inadmissible and no waiver is available.

#### Document Fraud Conviction under I.N.A. Sec. 274(c)

If you were convicted of document fraud under the Immigration and Naturalization Act Section 274c (8 USC 1324(c)), you are inadmissible. A waiver is available if you are a permanent resident and you left the United States voluntarily and if you applied as an immediate relative or other family-based petition, if the document fraud was committed solely to help the person's spouse or child and there was no penalty applied as part of the underlying civil proceeding.

#### Student Visa Abusers

If you improperly obtained F-1 status to attend a public educational institution, there is a five-year bar to admissibility and no waiver is available.

#### Persons with Deportation Orders

If you were ordered deported, there is a twenty-year bar before you may apply for any immigration benefits in the United States. You may apply for a waiver, the approval of which is discretionary with USCIS.

#### Stowaways

If you were a stowaway, no waiver is available. After 10 years, you may apply for advance permission to reapply for admission.

#### Alien Smugglers (Coyotes)

Smugglers of illegal aliens. A waiver is available if you were a green card holder or you are immigrating under a family or employment-based visa petition and you were smuggling in persons who were your immediate family members.

#### Draft Evasion

Unless you were a U.S. citizen at the time of evasion or desertion, you are inadmissible to the United States if you are a draft evader. There is no waiver available.

#### Document Violations

If you do not have a current passport or visa. The USCIS may remove you without a hearing and exclude you for 5 years if you enter without proper documents or lie during the inspection process. A waiver is available, which is discretionary with the USCIS.

#### Miscellaneous Grounds

The following category of persons are inadmissible to the United States and no waiver is available.

- Polygamists.
- Guardians accompanying aliens who are excludable.
- International child abductors. The ground of inadmissibility will not apply if you are a national of a country that signed the Hague Convention on International Child Abduction.  
See <http://patriot.net/~crouch/flnc/hague.html> for participating countries.
- Unlawful voters.
- Former U.S. citizens who renounced citizenship to avoid taxation.