

3.2 Deportability vs. Inadmissibility

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3.2 Deportability vs. Inadmissibility

A. Consequences Distinguished

A noncitizen can lose her status and be forced to leave the U.S. (removed) if she comes within a ground of *deportability*. In general, the grounds of deportability apply to noncitizens who have been lawfully “admitted”—that is, noncitizens who have entered the U.S. after inspection and authorization by an immigration officer. Lawful permanent residents and others who have a secure lawful immigration status fear becoming deportable.

A noncitizen can be denied admission to the U.S. (and thereby removed) or denied lawful permanent resident status (a green card) if he or she comes within a ground of *inadmissibility*. The grounds of inadmissibility generally apply to individuals who have not been “admitted” and are viewed as seeking admission to the U.S. Immigration law generally deems a person as seeking admission when:

- An individual present at the border or port of entry, including airports and seaports, seeks permission to enter the U.S.
- An individual is physically present in the U.S. but entered without inspection (e.g., crossed the border illegally).
- An individual applies to become a lawful permanent resident (LPR) (*see supra* § 2.2B, Lawful Permanent Resident Status).
- In some instances, a lawfully admitted individual travels abroad after being convicted of a crime and then returns to the U.S.

There are several criminal grounds of deportability and inadmissibility in the federal immigration statute. *See* INA § 212, 8 U.S.C. § 1182 (grounds of inadmissibility); INA § 237, 8 U.S.C. § 1227 (grounds of deportability). These grounds overlap somewhat, but they are not the same and do not have the same impact. It is critical to determine which consequences your client is concerned about, which will depend on your client’s current status and on any future immigration status he or she may seek. For example, a noncitizen client with a non-immigrant work visa will be subject to the grounds of deportability because he or she has already been lawfully admitted to the U.S., but the client will also be concerned about the grounds of inadmissibility if he or she hopes to adjust status to an LPR in the future.

Key Terms: The following definitions may help counsel distinguish different immigration terms.

Admission means the lawful entry into the U.S. after inspection and authorization by an immigration officer. INA § 101(a)(13)(A), 8 U.S.C. § 1101(a)(13)(A).

Deportability applies to noncitizens who have been lawfully admitted to the U.S. (even if their lawful status has expired). LPRs who are in the U.S. and will not be traveling abroad will be most concerned about avoiding deportability.

Inadmissibility applies to people who are seeking admission into the U.S. Noncitizens who plan to adjust status/apply for a green card will be most concerned about avoiding inadmissibility. Also, LPRs convicted of crimes falling within the grounds of inadmissibility who travel abroad may be viewed as seeking admission on their return and thus subject to the grounds of inadmissibility.

B. Relief from Removal

If an immigration judge finds that an individual is deportable or inadmissible, the individual will be removed from the U.S. unless he or she is granted some form of relief from removal.

There are several forms of relief from removal codified in the immigration statute, each with its own specific eligibility requirements. Most forms of relief are discretionary and will depend on an individual's ties to the U.S. and other factors. In most cases, an immigration judge will determine whether relief from removal will be granted and the individual allowed to remain in the U.S. Certain convictions will make noncitizens ineligible for relief from removal, regardless of ties to the U.S., demonstrated rehabilitation, contributions to the community (including military service), and hardship to family members. For a discussion of different forms of relief, see Immigrant Legal Resource Center, [Immigration Relief Toolkit for Criminal Defenders: How to Quickly Spot Possible Immigration Relief for Noncitizen Defendants](#) (Jan. 2016). The main types of convictions that bar relief from removal are discussed in Chapter 5, Determining Possible Immigration Consequences Based on Your Client's Immigration Status.

Practice Note: Except as noted, a person convicted of one of the offenses discussed below may be eligible for limited forms of relief from removal. However, because it can be difficult to get relief, your client should *not* count on it. When possible, it is best for a noncitizen to avoid convictions that provide grounds for removal.

C. Long-Term Consequences of Removal Order

Noncitizens who have been ordered removed face a number of obstacles in returning to the U.S. Once deported, most individuals will not be able to return lawfully to the U.S.

Generally speaking, clients who are removed from the U.S. will be barred from future admission into the U.S. for a statutory period. An individual ordered removed after a removal hearing will generally be barred from the U.S. for ten years. *See* INA § 212(a)(9)(A)(ii), 8 U.S.C. § 1182(a)(9)(A)(ii). In the case of a second or subsequent removal, an individual will be barred from the U.S. for twenty years. *See id.* Although an individual may request permission from the government to return to the U.S. before the end of the statutory time period, such permission is difficult to obtain. *See* 8 C.F.R. § 212.2. Even after the statutory period has passed, it will not be easy for your client to return to the U.S.—your client will still have to establish eligibility for an immigrant visa.

The most drastic consequences are for clients who are removed on the basis of an aggravated felony conviction, discussed further below. These clients will generally not be able to return to the U.S. for life unless special permission to return is authorized by the Attorney General. *See* INA § 212(a)(9)(A)(ii)&(iii), 8 U.S.C. § 1182(a)(9)(A)(ii)&(iii).

Noncitizens who return or attempt to return unlawfully are subject to federal prosecution for illegal reentry and face lengthy prison sentences. *See* INA § 276, 8 U.S.C. § 1326. Prison sentences run up to twenty years if the noncitizen was removed after a conviction of an aggravated felony. *See* INA § 276(b)(2), 8 U.S.C. § 1326(b)(2). In recent years, the U.S. Attorneys' offices have significantly increased enforcement of these federal immigration crimes.