

### 3.5 Crime-Related Grounds of Inadmissibility

- A. Controlled Substance Offense
  - B. Crime Involving Moral Turpitude
  - C. Conviction of Two or More Offenses of Any Type with an Aggregate Sentence of Imprisonment of at Least Five Years
  - D. Prostitution
  - E. Significant Traffickers in Persons
  - F. Money Laundering
  - G. Chart of Principal Criminal Grounds of Inadmissibility
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### 3.5 Crime-Related Grounds of Inadmissibility

This section reviews the main crime-related grounds of inadmissibility. The criminal grounds of inadmissibility are generally broader than the grounds of deportability and include offenses that are not covered under the comparable deportability grounds. For example, a conviction of simple possession of 30 grams or less of marijuana triggers inadmissibility, but not deportability. There is some overlap with the deportability grounds, but the grounds are different and require close scrutiny. For example, the crime involving moral turpitude ground of inadmissibility covers the same offenses as the crime involving moral turpitude deportability ground, but different rules apply depending on the length of sentence and number of convictions.

Certain criminal grounds of inadmissibility do not require a conviction—mere “bad acts” or status can trigger the penalty. Examples include engaging in prostitution or if the government has “reason to believe” the person has been a drug trafficker, as discussed below.

The controlled substance and moral turpitude grounds of inadmissibility also allow for a finding of inadmissibility without a conviction where a noncitizen *admits* the essential elements of a controlled substance offense or of a crime involving moral turpitude. *See* INA §§ 212(a)(2)(A)(i)(I)&(II), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I)&(II). Generally, this ground has come into play when a noncitizen has made certain admissions to an immigration judge or an ICE officer; it does not apply to an admission in a criminal case that does not result in a conviction. *See Matter of Seda*, 17 I&N Dec. 550 (BIA 1980), *overruled in part on other grounds Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988).

#### A. Controlled Substance Offense

A noncitizen is inadmissible for any conviction of an offense related to any controlled substance, whether felony or misdemeanor. *See* INA § 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i)(II). (A noncitizen can also be inadmissible for an admission of committing such an offense, usually to an immigration judge or immigration officer.) With one exception, the language of this ground is almost identical to the controlled substance ground of deportability discussed *supra* in § 3.4D, Conviction of Any

Controlled Substance Offense. The inadmissibility ground does not contain the exception for a single offense of simple possession of 30 grams of marijuana. In other words, a conviction for possession of any amount of marijuana will make your client inadmissible.

Drug offenses carry serious consequences for non-LPR clients. Drug offenses trigger inadmissibility and permanently preclude noncitizens from obtaining LPR status. The one offense that can be waived by an immigration judge in certain circumstances is simple possession of 30 grams or less of marijuana if the defendant has no prior drug convictions.

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**Practice Note:** If your client is pleading guilty to a Class 1 misdemeanor possession of marijuana, which includes quantities of more and less than 30 grams of marijuana, it is important to document in the record of conviction that your client possessed 30 grams or less of marijuana, if applicable. *See supra* § 3.3C, Burden of Proof on Noncitizen in Applying for Relief and Demonstrating Admissibility.

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A person is also inadmissible if the U.S. government knows or has reason to believe that the person is an illicit trafficker, or knowing aider, abettor, assister, conspirator, or colluder with others in illicit trafficking, in a controlled substance (as defined in 21 U.S.C. § 802). *See* INA § 212(a)(2)(C), 8 U.S.C. § 1182(a)(2)(C). No conviction (or admission) is necessary. Cases have held “drug trafficking” to mean that a person must have been a knowing and conscious participant or conduit in the transfer, passage, or delivery of narcotic drugs.

## B. Crime Involving Moral Turpitude

A noncitizen is inadmissible for a conviction of a crime involving moral turpitude (CMT). *See* INA § 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I). (A noncitizen can also be inadmissible for an admission of such an offense, usually to an immigration judge or immigration officer.) The types of offenses constituting CMTs are described *supra* in § 3.4C, Conviction of a Crime Involving Moral Turpitude.

For purposes of inadmissibility, there is an exception for a petty offense. A conviction is considered a petty offense if the noncitizen has no prior CMT convictions and the maximum *possible* sentence for that offense is one year or less and the *actual* sentence of imprisonment, active or suspended, is six months or less. *See* INA § 212(a)(2)(A)(ii)(II), 8 U.S.C. § 1182(a)(2)(A)(ii)(II). For discussion of what constitutes the maximum possible sentence, see *supra* § 3.4C, Conviction of a Crime Involving Moral Turpitude.

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**Practice Note:** Because misdemeanors in North Carolina other than impaired driving are not punishable by one year or more of imprisonment under structured sentencing, the commission of one misdemeanor CMT offense will fall within the petty offense exception and not make your client inadmissible. Two CMTs will not fall within the petty offense inadmissibility exception, however, even if they arise out of the same transaction or are consolidated for judgment or run concurrently. The reason is that the petty offense exception is limited to one CMT.

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### **C. Conviction of Two or More Offenses of Any Type with an Aggregate Sentence of Imprisonment of at Least Five Years**

A noncitizen who has been convicted of two or more offenses of any type with an aggregate sentence of imprisonment, active or suspended, of five years or more is inadmissible. *See* INA § 212(a)(2)(B), 8 U.S.C. § 1182(a)(2)(B).

### **D. Prostitution**

Prostitutes or persons who have engaged in or sought to engage in prostitution or to procure prostitution within 10 years of application for admission are inadmissible. *See* INA § 212(a)(2)(D), 8 U.S.C. § 1182(a)(2)(D); 22 C.F.R. § 40.24. The Board of Immigration Appeals has held that to “engage in” prostitution, one must have engaged in a regular pattern of behavior and conduct. *See Matter of T-*, 6 I&N Dec. 474 (BIA 1955); *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008) (noncitizen convicted of a single act of solicitation of prostitution did not come within inadmissibility ground for prostitution). A conviction of a prostitution offense is also a crime involving moral turpitude and may trigger inadmissibility on that ground, possibly even if only a one-time occurrence. *See, e.g., Rohit v. Holder*, 670 F.3d 1085 (9th Cir. 2012).

### **E. Significant Traffickers in Persons**

Any noncitizen is inadmissible if he or she commits or conspires to commit human trafficking offenses in the U.S. or outside of the U.S. *See* INA § 12(a)(2)(H), 8 U.S.C. § 1182(a)(2)(H). A person is also inadmissible if the government knows or has reason to believe that the individual has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons. *See id.*

### **F. Money Laundering**

A noncitizen is inadmissible if the government knows or has reason to believe that the individual has engaged, is engaging, or seeks to enter the U.S. to engage in money laundering, or who is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in money laundering. *See* INA § 212(a)(2)(I), 8 U.S.C. § 1182(a)(2)(I).

### **G. Chart of Principal Criminal Grounds of Inadmissibility**

The following chart lists the principal criminal grounds of inadmissibility. It does not include two other grounds involving foreign government officials and diplomats, which are not of concern to state law practitioners. An interested reader can find the complete list of the criminal grounds of inadmissibility at INA § 212(a)(2), 8 U.S.C. § 1182(a)(2).

Ch. 3: Criminal Grounds of Removal (Sept. 2017)

Ground of Inadmissibility	Significant Features	Exceptions
Crime involving moral turpitude (CMT)	<ul style="list-style-type: none"> <li>• Conviction (or admission)</li> <li>• Committed at any time</li> </ul>	Petty offense, including almost all misdemeanors, if <ul style="list-style-type: none"> <li>• client has no prior CMTs,</li> <li>• maximum <i>potential</i> prison sentence is one year or less, and</li> <li>• <i>actual</i> sentence is six months or less</li> </ul>
Controlled substance offense	<ul style="list-style-type: none"> <li>• Conviction (or admission)</li> <li>• Includes felonies or misdemeanors</li> <li>• Includes drug paraphernalia offenses</li> <li>• Includes single offense of simple possession of 30 grams or less of marijuana (even though it is not an offense triggering deportation)</li> </ul>	Controlled substance offenses render an individual permanently inadmissible, except for a single possession of 30 grams or less of marijuana if the defendant has no prior drug convictions; such an offense can be waived by an immigration judge under certain circumstances
Trafficking in controlled substance	<ul style="list-style-type: none"> <li>• No conviction (or admission) necessary</li> <li>• May be based on government knowledge or reason to believe</li> </ul>	
Conviction of multiple offenses	<ul style="list-style-type: none"> <li>• Includes offenses of any type</li> <li>• Must be at least 2 convictions</li> <li>• Aggregate sentence of imprisonment (active or suspended) of 5 years or more</li> </ul>	
Prostitution	<ul style="list-style-type: none"> <li>• No conviction (or admission) necessary (however, immigration officers generally rely on a conviction or an admission)</li> </ul>	
Trafficking in persons	<ul style="list-style-type: none"> <li>• No conviction necessary</li> <li>• May be based on government knowledge or reason to believe</li> </ul>	
Money laundering	<ul style="list-style-type: none"> <li>• No conviction necessary</li> <li>• May be based on government knowledge or reason to believe</li> </ul>	