

5.1 Lawful Permanent Resident

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5.1 Lawful Permanent Resident

A lawful permanent resident, or LPR, is a person allowed to live and work in the U.S. permanently. *See supra* § 2.2B, Lawful Permanent Resident Status. Such a client may have immigrated to this country as a child, may have lived and worked in this country for many years, and may have most, if not all, of his or her family in the U.S.

An LPR can be removed or face other adverse immigration consequences because of a criminal conviction, regardless of number of years in the U.S. or U.S. citizen family relationships.

A. LPR Client's Immigration Priorities

An LPR can be removed from the U.S. for an offense triggering deportability. *See supra* § 3.2A, Consequences Distinguished. Generally, since LPRs want to remain in the U.S., such a conviction will be their greatest immigration concern. In particular, an LPR will be concerned about an aggravated felony conviction, which carries the most severe consequences, including being barred from most forms of relief from removal.

A second concern is a conviction that triggers inadmissibility. Generally, an LPR cannot be removed for an offense that triggers inadmissibility. However, if an LPR travels outside of the U.S. after being convicted of such an offense, he or she may be placed in removal proceedings on attempting to return to the U.S. While an LPR can avoid this consequence by not traveling outside of the U.S., this is easier said than done, as many noncitizens travel to visit family members outside of the U.S.

Third, if your client cannot avoid an offense triggering deportability, he or she may still be able to remain in the U.S. permanently by seeking relief from removal. Dispositions to avoid include aggravated felonies and particularly serious crimes, explained further below.

In addition, an LPR may be concerned about eligibility to become a naturalized citizen, which has numerous benefits. Once an LPR has lawfully obtained citizenship, it generally cannot be revoked; he or she can remain in the U.S. without fear of removal. Therefore, if your client is able to avoid a deportable offense, he or she may also want to avoid a disposition that bars a showing of good moral character necessary for naturalization.

Last, certain convictions where the victim is a minor will bar a permanent resident (or U.S. citizen) from being able to sponsor a family member for immigration in the future.¹

B. Impact on LPR of an Aggravated Felony Conviction

Generally, an LPR's greatest immigration priority will be to avoid a conviction for an aggravated felony. It not only makes your client deportable, but it also bars eligibility for most forms of relief from removal, resulting in virtually mandatory removal for most clients. If an individual is deportable, a grant of relief from removal allows an individual to remain in the U.S. and keep his or her green card. Most forms of relief are discretionary and will depend on an individual's ties to the U.S. and other factors. Certain convictions will make noncitizens ineligible for relief from removal. An aggravated felony conviction bars almost all forms of immigration relief.

An aggravated felony carries other serious immigration consequences, including:

- It subjects a person to mandatory detention during the removal process.
- It subjects a person to up to twenty years in prison if he or she is prosecuted and convicted of reentering the U.S. without permission after removal.
- It permanently bars immigration to the U.S. in the future.

For a table of the categories of offenses classified as aggravated felonies, see *supra* § 3.4A, Aggravated Felonies Generally.

C. Impact on LPR of Other Dispositions Triggering Deportability

In addition to an aggravated felony, an LPR will be concerned about offenses that trigger deportability on other grounds. *See supra* § 3.4G, Chart of Principal Deportable Offenses. If not convicted of an aggravated felony, a deportable client may remain eligible for relief from removal.

D. Impact on LPR of a Criminal Disposition Triggering Inadmissibility

If your client plans to travel abroad in the future, an additional concern is a criminal disposition that triggers 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

1. The Adam Walsh Act passed in 2006 imposes immigration penalties on U.S. citizens and permanent residents who are convicted of specified crimes relating to minors, including sex and kidnapping offenses. Certain convictions would prevent them from filing a visa petition on behalf of a close family member. *See* Section 402 of the Adam Walsh Act; INA §§ 204(a)(1)(A)(viii), (B)(i), 8 USC §§ 1154(a)(1)(A)(viii), (B)(i). For example, if your LPR client is convicted of indecent liberties, he may not be permitted to file a visa petition for a noncitizen relative.

of marijuana triggers inadmissibility but not deportability. As a result, an LPR client convicted of such an offense would not be subject to removal and could remain in the U.S. unless he or she traveled outside of the U.S. and on return was considered inadmissible. Inadmissible LPR clients should be warned of the consequences of leaving the United States.

For the principal criminal grounds of inadmissibility, see *supra* § 3.5G, Chart of Principal Criminal Grounds of Inadmissibility.

E. Forms of Relief Depending on Offense

If your client cannot avoid deportability, he or she may still be able to remain in the U.S. and keep his or her green card by seeking relief from removal. Below are three principal forms of relief for an LPR client. It may be helpful to consult with an immigration lawyer to determine whether your client is otherwise eligible for these forms of relief.

Cancellation of Removal (if not convicted of an aggravated felony). This is one of the most common forms of relief for a deportable LPR. To be eligible, the person must have lived in the U.S. for at least seven years (since being admitted in any status, e.g., as a tourist or LPR)² and must have been an LPR for at least five of those years. *See* INA § 240A(a), 8 U.S.C. § 1229b(a). A conviction for an aggravated felony will bar such relief. *Id.* Cancellation of removal does not require a showing of any particular level of hardship, either to the applicant or his or her family; however, more serious crimes require more substantial equities to warrant cancellation.

Adjustment of Status (if not convicted of an inadmissible offense). If your client cannot avoid an offense triggering deportability, he or she may still be able to remain in the U.S. if he or she is able to “re-immigrate” through a U.S. citizen or LPR family member. Adjusting status is a defense to deportation and requires that the noncitizen be admissible. *See Matter of Rainford*, 20 I&N Dec. 598 (BIA 1992). Note that the criminal grounds of inadmissibility do not include some crimes that would render a person deportable—namely, firearm and domestic violence offenses. (If, however, the firearm or domestic violence offense constitutes a crime of moral turpitude, which is one of the crimes of inadmissibility, the offense could still render the person inadmissible.) Therefore, a conviction for carrying a concealed firearm would not render your client inadmissible and would not bar adjustment of status.

Withholding of Removal (if not convicted of a particularly serious offense). If your client cannot avoid an offense triggering deportability, and fears persecution in the country of removal, he or she may still be able to remain in the U.S. by seeking “withholding of removal.” *See* § INA 241(b)(3); 8 U.S.C. § 1231(b)(3). It is a less

2. The clock for the seven year residence requirement stops—that is, the person does not get any credit for any of the time—following the *commission* of an offense triggering inadmissibility. *See* INA § 240A(d)(1), 8 U.S.C. § 1229b(d)(1). For example, if your client commits an inadmissible offense six years after moving to the United States (and even if she continues to live here for five more years before being placed in removal proceedings), she will be unable to apply for cancellation of removal.

beneficial form of persecution-based relief and requires a higher threshold showing of persecution than asylum.

Withholding of removal is barred by a conviction of a “particularly serious crime.” In this context, a particularly serious crime includes one or more aggravated felony convictions with an aggregate sentence of imprisonment (active or suspended) of five years or more. *See* INA § 241(b)(3)(B), 8 U.S.C. § 1231(b)(3)(B). The five-year sentence may be for one conviction or different convictions, whether or not resolved at the same time. A particularly serious crime presumptively includes an aggravated felony conviction involving trafficking in a controlled substance. *See Matter of Y-L-, A-G-, R-S-R-*, 23 I&N Dec. 270 (A.G. 2002) (recognizing that presumption of particularly serious crime is rebuttable). Other offenses may be considered particularly serious crimes in the discretion of the immigration judge. *See Matter of M-H-*, 26 I&N Dec. 46 (BIA 2012); *Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007). The relevant factors include the nature and underlying facts of the conviction and the type of sentence imposed.

F. Impact on LPR of a Criminal Disposition Barring Naturalization

LPRs seek to naturalize and become U.S. citizens for several reasons. Once lawfully obtained, citizenship generally cannot be revoked and LPRs can remain in the U.S. without fear of removal. There are also a number of other benefits of citizenship, such as the right to vote, the right to travel freely, the right to sponsor relatives for immigration to the U.S., and eligibility for certain state and federal jobs. If an LPR client is able to avoid a deportable offense, which will generally be the client’s highest immigration priority, a secondary concern may be avoiding a disposition that bars eligibility for naturalization.

In many cases, naturalization requires a showing of good moral character for five years. *See supra* § 3.6, Criminal Bars to Naturalization. If an LPR client is convicted of *or* admits certain crimes, he or she is precluded from demonstrating good moral character for up to five years. The convictions listed below bar a showing of good moral character:

- Convictions triggering inadmissibility that involve crimes involving moral turpitude (subject to the petty offense exception), drugs, prostitution, and multiple criminal convictions.
- Conviction, on or after November 29, 1990, of an aggravated felony. Such a conviction makes your client *permanently* ineligible for citizenship.
- Conviction of two or more gambling offenses.
- Actual confinement, as a result of one or more convictions during the five-year period, to a penal institution for an aggregate period of 180 days or more.

Bear in mind that if your client is convicted of one of these offenses (if it is not an aggravated felony), he or she may still be eligible for naturalization five years *after* the date of conviction or the completion of any jail sentence (whichever is later).