

## 5.2 Refugee (who has not yet obtained LPR status)

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## 5.2 Refugee (who has not yet obtained LPR status)

Refugees have been conditionally admitted to the U.S. based on a fear of persecution in their country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion. *See supra* § 2.2C, Refugee or Asylee Status.

Refugees can be removed because of a criminal conviction and thus can be returned to a country where they may be harassed, imprisoned, tortured, or even killed. There is much at stake in a criminal case for a client with refugee status.

Both refugees and asylees (discussed *infra* in § 5.3, Person Granted Asylum (who has not yet obtained LPR status)) have been admitted to the U.S. due to a threat of persecution. Both groups can work in the U.S. and adjust to LPR status. Refugee status, however, is granted to an individual *before* entering the U.S., based on U.S. refugee policy and priorities. Upon application, he or she is granted a visa, and then is admitted to the U.S. as a refugee. In contrast, asylum is granted to an individual *after* entry into the U.S. Thus, the individual entered the U.S. in some other status or unlawfully, but then applied for and was granted asylum.

### A. Refugee Client's Immigration Priorities

Refugees may be removed from the U.S. based on an offense that triggers deportability. *See Matter of D-K-*, 25 I&N Dec. 761 (BIA 2012). Such offenses are their primary immigration concern.

A secondary concern is an offense that triggers inadmissibility. Refugees who have been in the U.S. for at least one year are eligible to adjust to LPR status. *See* INA § 209(a), 8 U.S.C. § 1159(a). These individuals will be concerned about offenses that trigger inadmissibility, which would preclude them from becoming an LPR and remaining in the U.S. permanently.

Third, if your refugee 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 drug trafficking, violent offenses, and particularly serious crimes, explained further below.

## **B. Impact on Refugee of a Criminal Disposition Triggering Deportability**

The principal concern for a refugee client is a disposition triggering deportability, as he or she can be removed from the U.S. for such offenses. For the principal criminal grounds of deportability, see *supra* § 3.4G, Chart of Principal Deportable Offenses.

## **C. Impact on Refugee of a Criminal Disposition Triggering Inadmissibility**

Another significant concern for a refugee client is an offense that renders him or her inadmissible. Because refugee status does not confer a permanent right to reside in the U.S., a refugee may want to adjust to LPR status. To adjust his or her status, a refugee must avoid the crime-related grounds of inadmissibility. For the principal criminal grounds of inadmissibility, see *supra* § 3.5G, Chart of Principal Criminal Grounds of Inadmissibility. Other offenses can result in a denial of adjustment of status in the discretion of the immigration judge or officer, but they are not automatic bars.

## **D. 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. by seeking relief from removal. Below are three principal forms of relief for a refugee client. It may be helpful to consult with an immigration lawyer to determine whether your client is otherwise eligible for these forms of relief.

**209(c) Waiver (if not convicted of drug trafficking or violent offense).** If your refugee client cannot avoid an offense triggering deportability, he or she may still be able to remain in the U.S. permanently by seeking a 209(c) waiver, a special form of relief for refugees and asylees for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. See INA § 209(c), 8 U.S.C. § 1159(c). Such relief is barred by any conviction that provides the government “reason to believe” that the refugee has been involved in drug trafficking. See *id.*; see also *supra* § 3.5A, Controlled Substance Offenses.

In addition, since 2002, a conviction of a “violent or dangerous” crime will presumptively bar such discretionary relief. See *Matter of Jean*, 23 I&N Dec. 373, 381–84 (A.G. 2002). Neither the statute nor regulations define “violent and dangerous” crime, but both court and agency decisions indicate that it may include crimes of assault, manslaughter, robbery, and sex offenses.

**Adjustment of status (if not convicted of inadmissible offense).** If your refugee client cannot avoid an offense triggering deportability, he or she may still be able to remain in the U.S. permanently by seeking adjustment of status and becoming an LPR. Adjusting status is a defense to deportation, and refugees are otherwise eligible to adjust status after one year of residence in the U.S. 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 refugee client cannot avoid an offense triggering deportability, he or she may still be able to remain in the U.S. by seeking “withholding of removal” based, again, on the client’s previously determined fear of persecution in the country of removal. *See* § INA 241(b)(3); 8 U.S.C. § 1231(b)(3). It is a less 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. The five-year sentence may be for one conviction or different convictions, whether or not resolved at the same time. *See* INA § 241(b)(3)(B), 8 U.S.C. § 1231(b)(3)(B). 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.