

U.S. Citizenship and Immigration Services

Academy Training Center

BUILDING THE WORKFORCE OF TOMORROW



BASIC: BSC_217

Inadmissibility, Deportability and Waivers

Instructor Guide

Instructor Guide

Revision Date: First Edition



OFFICE OF HUMAN CAPITAL AND TRAINING

Page | 1

USCIS, ACADEMY TRAINING CENTER | 4500 FULLER AVE | IRVING, TEXAS 75038

AILA Doc. No. 15082634. (Posted 8/26/15)

Inadmissibility, Deportability and Waivers

Creation Date: January 2015

Revision Date: January 2015

Notice to Instructors: The participant materials (in "Student Materials" on ECN) include both a note-taker and a participant guide (PG). Both are PDF documents. Since many officers may not have USCIS laptops, we recommend that you print out and make available the note-taker for the presentation.

This training does not contain individually scored participant assessments contained in individual training records.

Acknowledgements: Faculty and Curriculum Development (FAC-D) of the USCIS Academy Training Center (ATC) wishes to acknowledge and expresses its sincere appreciation and gratitude to all the members of the working group. This deliverable would not have come to fruition in as short a period as it has without your hard work and meaningful contributions.

Important Note: This text has been compiled for TRAINING ONLY. It is not intended to, does not, and may not be relied upon to create or confer any right(s) or benefit(s), substantive or procedural, enforceable at law by any individual or other party in benefit applications before USCIS, in removal proceedings, in litigation with the United States, or in any other form or manner. This training does not have the force of law, or of a DHS directive and it should NOT be used in place of official directives or publications. The text information is current according to the references listed. You should, however, remember that it is YOUR responsibility to keep up with the latest professional information available for your area of responsibility.

Content Feedback POC:

Carolynn D. Vernon
Academy Training Center
[ECN Link to Training Material Correction Form](#)

TABLE OF CONTENTS

TITLE	PAGE
Notice to Instructors	ii
Acknowledgements	ii

Contents

INSTRUCTOR PREPARATION	9
Classroom	9
Required Material	9
Equipment Setup	9
INTRODUCTION	10
<i>Gain Attention</i>	10
<i>Motivation</i>	10
<i>Instructor Introduction</i>	11
<i>Class Rules and House-keeping</i>	11
<i>Safety</i>	11
<i>Overview</i>	12
<i>Objectives</i>	12
LESSON/TOPIC 1: DISTINGUISH BETWEEN INADMISSIBILITY AND DEPORTABILITY	13
Lesson 1	13
<i>Inadmissibility and Deportability</i>	14
<i>When INA § 212 Applies</i>	15
<i>When INA § 212 Applies</i>	16
<i>When INA § 212 Applies</i>	18
<i>(Lesson Content)</i>	18
LESSON/TOPIC 2: IDENTIFY THE GROUNDS OF INADMISSIBILITY UNDER INA § 212	20
Lesson 2	20
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	21
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	21
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	21
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	22
<i>(Lesson Content)</i>	22
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	22
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	22
<i>Describe INA § 212(g) Waivers</i>	23
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	24
<i>(Lesson Content)</i>	24
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	25
<i>(Lesson Content)</i>	25
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	26
<i>(Lesson content)</i>	26
<i>Describe INA § 212(g) Waivers</i>	26
<i>(Lesson Content)</i>	26
<i>Describe INA § 212(a)(1) – Health-Related Grounds</i>	27

(Lesson Content).....	27
Describe INA § 212(a)(1) – Health-Related Grounds.....	28
(Lesson Content).....	28
Describe INA § 212(g) Waivers.....	28
(Lesson Content).....	28
Describe INA § 212(a)(1) – Health-Related Grounds.....	29
(Lesson Content).....	29
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	29
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	30
(Lesson Content).....	30
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	30
(Lesson Content).....	30
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	31
(Lesson Content).....	31
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	31
(Lesson Content).....	31
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	32
(Lesson Content).....	32
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	33
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	33
Lesson Content).....	33
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	34
(Lesson Content).....	34
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	34
(Lesson Content).....	34
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	34
(Lesson Content).....	34
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	35
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	35
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	35
(Lesson Content).....	35
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	37
(Lesson Content).....	37
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	38
(Lesson Content).....	38
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	39
(Lesson Content).....	39
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	40
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	41
(Lesson Content).....	41
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	42
(Lesson Content).....	42
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	43
(Lesson Content).....	43
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	45
(Lesson Content).....	45
Describe INA § 212(a)(2) – Criminal and Related Grounds.....	46
(Lesson Content).....	46

<i>Describe INA § 212(a)(2) – Criminal and Related Grounds.....</i>	<i>46</i>
<i>(Lesson Content).....</i>	<i>46</i>
<i>Describe INA § 212(a)(2) – Criminal and Related Grounds.....</i>	<i>47</i>
<i>(Lesson Content).....</i>	<i>47</i>
<i>Describe INA § 212(a)(2) – Criminal and Related Grounds.....</i>	<i>48</i>
<i>(Lesson Content).....</i>	<i>48</i>
<i>Describe INA § 212(a)(2) – Criminal and Related Grounds.....</i>	<i>48</i>
<i>(Lesson Content).....</i>	<i>48</i>
<i>Describe INA § 212(a)(2) – Criminal and Related Grounds.....</i>	<i>49</i>
<i>Describe INA § 212(a)(2) – Criminal and Related Grounds.....</i>	<i>49</i>
<i>(Lesson Content).....</i>	<i>49</i>
<i>Describe INA § 212(a)(2) – Criminal and Related Grounds.....</i>	<i>50</i>
<i>(Lesson Content).....</i>	<i>50</i>
<i>Describe INA § 212(a)(2) – Criminal and Related Grounds.....</i>	<i>51</i>
<i>Describe INA § 212(c) Waivers.....</i>	<i>51</i>
<i>Describe INA § 212(h) Waivers.....</i>	<i>52</i>
<i>(Lesson Content).....</i>	<i>52</i>
<i>Describe INA § 212(h) Waivers.....</i>	<i>53</i>
<i>(Lesson Content).....</i>	<i>53</i>
<i>Describe INA § 212(h) Waivers.....</i>	<i>54</i>
<i>(Lesson Content).....</i>	<i>54</i>
<i>Describe INA § 212(h) Waivers.....</i>	<i>54</i>
<i>(Lesson Content).....</i>	<i>54</i>
<i>Explain Extreme Hardship.....</i>	<i>55</i>
<i>(Lesson Content).....</i>	<i>55</i>
<i>Explain Extreme Hardship.....</i>	<i>56</i>
<i>(Lesson Content).....</i>	<i>56</i>
<i>Explain Exercising Discretion.....</i>	<i>56</i>
<i>(Lesson Content).....</i>	<i>56</i>
<i>Explain Exercising Discretion.....</i>	<i>57</i>
<i>(Lesson Content).....</i>	<i>57</i>
<i>Explain Exercising Discretion.....</i>	<i>57</i>
<i>(Lesson Content).....</i>	<i>57</i>
<i>Describe INA § 212(h) Waivers.....</i>	<i>58</i>
<i>(Lesson Content).....</i>	<i>58</i>
<i>Describe INA § 212(h) Waivers.....</i>	<i>58</i>
<i>(Lesson Content).....</i>	<i>58</i>
<i>Describe INA § 212(a)(3) – Security and Related Grounds.....</i>	<i>60</i>
<i>Describe INA § 212(a)(4) – Public Charge.....</i>	<i>61</i>
<i>(Lesson Content).....</i>	<i>61</i>
<i>Describe INA § 212(a)(4) – Public Charge.....</i>	<i>61</i>
<i>Describe INA § 212(a)(4) – Public Charge.....</i>	<i>62</i>
<i>Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants.....</i>	<i>63</i>
<i>Describe INA § 212(k) Waivers.....</i>	<i>63</i>
<i>Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants.....</i>	<i>65</i>
<i>Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants.....</i>	<i>66</i>
<i>(Lesson Content).....</i>	<i>66</i>
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators.....</i>	<i>66</i>

<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	67
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	69
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	69
<i>Describe INA § 212(i) Waivers</i>	71
<i>(Lesson Content)</i>	71
<i>Describe INA § 212(i) Waivers</i>	72
<i>(Lesson Content)</i>	72
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	73
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	74
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	75
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	76
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	76
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	77
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	78
<i>Describe INA § 212(d)(11) Waivers</i>	79
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	80
<i>Describe INA § 212(d)(12) Waivers</i>	80
<i>(Lesson Content)</i>	80
<i>Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators</i>	81
<i>Describe INA § 212(a)(7) – Documentation Requirements</i>	82
<i>Describe INA § 212(a)(7) – Documentation Requirements</i>	83
<i>Describe INA § 212(a)(7) – Documentation Requirements</i>	84
<i>Describe INA § 212(a)(7) – Documentation Requirements</i>	84
<i>Describe INA § 212(d)(4) Waiver</i>	85
<i>Describe INA § 212(a)(8) – Ineligible for Citizenship</i>	85
<i>Describe INA § 212(a)(8) – Ineligible for Citizenship</i>	86
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	87
<i>(Lesson Content)</i>	87
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	89
<i>(Lesson Content)</i>	89
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	91
<i>(Lesson Content)</i>	91
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	92
<i>(Lesson Content)</i>	92
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	96
<i>(Lesson Content)</i>	96
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	97
<i>(Lesson Content)</i>	97
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	97
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	98
<i>(Lesson Content)</i>	98
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	98
<i>(Lesson Content)</i>	98
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	99
<i>(Lesson Content)</i>	99
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	100
<i>(Lesson Content)</i>	100
<i>Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence</i>	100

(Lesson Content).....	100
Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence.....	101
(Lesson Content).....	101
Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence.....	102
(Lesson Content).....	102
Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence.....	102
(Lesson Content).....	102
Describe INA § 212(a)(9)(b)(v) Waivers.....	102
(Lesson Content).....	102
Describe INA § 212(a)(9)(b)(v) Waivers.....	103
(Lesson Content).....	103
Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence.....	104
(Lesson Content).....	104
Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence.....	104
(Lesson Content).....	104
Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence.....	107
Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence.....	108
Describe INA § 212(a)(10) – Miscellaneous.....	110
Describe INA § 212(a)(10) – Miscellaneous.....	110
Describe INA § 212(a)(10) – Miscellaneous.....	111
Describe INA § 212(a)(10) – Miscellaneous.....	112
Describe INA § 212(a)(10) – Miscellaneous.....	113
Describe INA § 212(a)(10) – Miscellaneous.....	113
Describe INA § 212(a)(10) – Miscellaneous.....	113
Describe INA § 212(a)(10) – Miscellaneous.....	114
Describe Nonimmigrant Waivers.....	115
(Lesson Content).....	115
Identify Forms Used to Adjudicate Waivers	116
LESSON/TOPIC 3: IDENTIFY GROUNDS OF DEPORTABILITY UNDER INA § 237	117
Lesson 3	117
Describe INA § 237(a)(1)(A) – Inadmissible at Time of Entry or Adjustment of Status	119
Describe INA § 237(a)(1)(A) – Inadmissible at Time of Entry or Adjustment of Status	119
Describe INA § 237(a)(1)(B) - Present in Violation of Law.....	120
Describe INA § 237(a)(1)(C)(i) - Nonimmigrant Status Violators.....	121
Describe INA § 237(a)(1)(C)(i) - Nonimmigrant status violators.....	121
Describe INA § 237(a)(1)(C)(i) - Nonimmigrant Status Violators.....	121
Describe INA § 237(a)(1)(C)(i) - Nonimmigrant status violators.....	121
Describe INA § 237(a)(1)(C)(ii) – Violators of Condition of Entry.....	122
Describe INA § 237 (a)(1)(D)(i) – Termination of Conditional Permanent Residence.....	122
Describe INA § 237 (a)(1)(D)(ii) – Termination of Conditional Permanent Residence.....	123
Describe INA § 237 (a)(1)(E)(i) – Alien Smuggling	124
Describe INA § 237 (a)(1)(E)(i) – Alien Smuggling	124
Describe INA § 237(a)(1)(G) – Marriage Fraud.....	125
Describe INA § 237(a)(1)(G) – Marriage Fraud.....	125
Describe INA § 237(a)(1)(G) – Marriage Fraud.....	126
Describe INA § 237(a)(1)(G) – Marriage Fraud.....	126
Describe INA § 237(a)(1)(G) – Marriage Fraud.....	126
Describe INA § 237(a)(2)(A)(i) – Crimes Involving Moral Turpitude	127

(Lesson Content).....	128
Describe INA § 237 (a)(2)(A)(v) – Failure to Register as a Sex Offender.....	132
Describe INA § 237 (a)(2)(B)(i) – Controlled substances conviction.....	132
Describe INA § 237 (a)(2)(B)(i) – Controlled substances conviction.....	132
Describe INA § 237 (a)(2)(B)(i) – Controlled substances conviction.....	133
Describe INA § 237 (a)(2)(B)(i) – Controlled substances conviction.....	133
Describe INA § 237 (a)(2)(B)(ii) – Drug Abusers and Addicts.....	134
Describe INA § 237 (a)(2)(C) – Certain Firearm Offenses.....	134
Describe INA § 237 (a)(2)(C) – Certain Firearm Offenses.....	134
(Lesson Content).....	135
LESSON/TOPIC 4: IDENTIFY WHAT CONSTITUTES A CONVICTION AND SENTENCE FOR IMMIGRATION PURPOSES.....	144
Statutory Definition of Conviction – INA § 101(a)(48).....	145
Evidence to Prove a Conviction.....	151
Pardons.....	152
Pardons.....	153
Juvenile Delinquency.....	154
INA § 101(a)(48)(B)- Sentence and Term of Imprisonment.....	155
INA § 101(a)(48)(A)- Sentence and term of imprisonment.....	155
INA § 101(a)(48)(B) - Sentence and term of imprisonment.....	155
Suspended Sentences and Resentencing.....	155
Suspended Sentences and Resentencing.....	155
Consecutive, Concurrent and Indeterminate Sentences.....	157
Consecutive, Concurrent and Indeterminate Sentences.....	157
(Lesson Content).....	157
Consecutive, Concurrent and Indeterminate Sentences.....	158
CLOSING.....	158
Summary and Lesson Debrief.....	158
Level 1 Evaluation.....	159
Homework.....	159
Assess Performance.....	159
Participant References.....	159
REVIEW EXERCISES.....	160
APPENDIX.....	169
CREATE YOUR OWN CLASSROOM SETUP.....	169

Instructor Preparation

Classroom **Determined by location of training.**

**Required
Material**

Course Title Instructor Guide (Insert ECN Link)

Course Title Presentation (Insert ECN Link)

Course Title Participant Guide (Insert ECN Link)

Course Title Participant Guide Note-Taker (Insert ECN Link)

**Equipment
Setup**

- **Laptop for presentation**
 - **Projector for PowerPoint Presentation**
 - **Projection screen (if applicable)**
 - **Cables to connect laptop to projector**
 - **Presenter “clicker” to advance slides**
-

Introduction

Gain Attention

Instructor may begin by asking the class the following questions:

- What is the difference between inadmissibility and deportability?
- What is the section of law in the INA that covers inadmissibility grounds?
- What is the section of law in the INA that covers deportability grounds?
- What is the section of law in the INA that covers removal proceedings?

The instructor can discuss the answers provided by the participants and tell them that this course module will help us answer these questions and more.

(For the instructor: The answers to the above questions are in Lesson 1).



Motivation

As an Immigration Services Officer (ISO), you will be challenged with adjudications that require a detailed understanding of inadmissibility, deportability and waivers. For example:

INA §§ 212 and 237 have many similarities with respect to charges contained within each section, yet each has separate and unique sections for which there is no corresponding charge in the other. In the areas of criminal offences, security issues, fraud, and alien smuggling, the two are very similar, yet there are instances where an individual may be deportable for committing an offense that in and of itself, would not render the individual inadmissible to the United States.

A person convicted of armed robbery and sentenced to 10 years in prison would be inadmissible as an applicant for admission under INA § 212(a)(2)(A)(i)(I) for having been convicted of a Crime Involving Moral Turpitude (CIMT) and if he or she had been admitted to the United States he or she would be removable



under INA § 237(a)(2)(A)(i) if the CIMT was committed within five years of admission, or removable pursuant to INA § 237(A)(2)(A)(iii) for an aggravated felony crime of violence for which the term of imprisonment imposed is at least one year, or an aggravated felony theft offense for which the term of imprisonment imposed is at least one year. Both relate to the convictions for Crimes Involving Moral Turpitude (CIMT) but there is no ground of inadmissibility for an aggravated felony.

It is such particulars that you as an ISO will be reminded of once you get to your offices. This course module in BASIC intends to lay the foundation and help you gain the knowledge required towards your adjudication tasks when you get back to your offices.

Instructor Introduction

Introduce yourself as the instructor for this session.



Class Rules and House-keeping

Establish rules for questions (e.g. parking lot), discussion, breaks, cell phones, etc...



Safety

Notify participants regarding Fire Safety, Weather Notifications (if any), and all safety related procedures as needed.

Overview

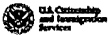
Given a field situation involving the adjudication of specified applications, you, as an ISO will identify the applicable grounds of inadmissibility or deportability and will determine whether the applicant is eligible to apply for a waiver of the ground of inadmissibility. This course module will help us meet 5 specific objectives that are outlined as corresponding lessons.



Lesson Overview

Lessons

- Lesson 1: Distinguish between inadmissibility and deportability
- Lesson 2: Identify grounds of inadmissibility under INA § 212
- Lesson 3: Identify waivers of inadmissibility under INA § 212
- Lesson 4: Identify grounds of deportability under INA § 237
- Lesson 5: Identify what constitutes a conviction and sentence for immigration purposes



Objectives

Today's objectives will be to cover the following lessons:

- Lesson 1: Distinguish between inadmissibility and deportability
- Lesson 2: Identify grounds of inadmissibility and waivers under INA § 212
- Lesson 3: Identify grounds of deportability and waivers under INA § 237
- Lesson 4: Identify what constitutes a conviction and sentence for immigration purposes

Lesson/Topic 1: Distinguish Between Inadmissibility and Deportability

Lesson 1: Distinguish Between Inadmissibility and Deportability

Introduction

- An alien must demonstrate that he or she is admissible to U.S.
- An alien must not be inadmissible to the U.S. under INA § 212
- If inadmissible, must establish eligibility for a waiver and a favorable exercise of discretion in order to be admitted
- Aliens already admitted may be subject to removal pursuant to INA § 237 if removable



Lesson 1

Introduction

Distinguish between the concepts of inadmissibility and deportability.

An alien seeking admission to the United States, whether as a nonimmigrant or as an immigrant, or as one seeking a benefit such as adjustment of status to that of lawful permanent resident (LPR), must demonstrate that he or she is admissible to the United States. The alien must not be inadmissible to the United States under any of the grounds of inadmissibility specified in section 212(a) of the Immigration and Nationality Act (INA). If inadmissible, the alien may be able to establish that he or she is eligible for a waiver of such inadmissibility, and that he or she warrants a favorable exercise of discretion by the government in order to be admitted to the United States.

Those aliens who have already been admitted, whether as nonimmigrants on a temporary basis or immigrants, may be subject to removal from the United States if they have committed acts either prior to admission or after admission that render them removable under INA § 237.

Whether an alien has been admitted to the United States, is seeking to adjust status or is seeking admission at a Port of Entry (POE) will determine whether the grounds of inadmissibility or deportability apply.

The following are our objectives for this lesson.

- What is inadmissibility and deportability?
- Identify when INA § 212 applies.
- Identify when INA § 237 applies.

• **Removal Proceedings under INA § 240.**

**Inadmissibility
and
Deportability**

(Lesson
Content)

What is Inadmissibility and Deportability?

What is inadmissibility and deportability?

The grounds of inadmissibility at INA § 212(a) are designed to prevent the admission of specified groups of aliens to the United States. The grounds of deportability at INA § 237 are designed to remove aliens who have previously been admitted to the U.S but who, after admission, are found to have committed immigration, criminal or national security violations, or are found to have been ineligible for admission in the first place.

Adjustment of status under INA § 245 is an admissions process conducted inside the U.S. in order to relieve previously admitted nonimmigrant aliens or aliens present without admission or parole of the burden of leaving the country to obtain an immigrant visa (via consular processing) and returning to the U.S. to seek immigrant admission at a POE .

Accordingly, an applicant for adjustment of status is given the same status under the immigration laws as someone who is seeking admission to the U.S. and pursuant to INA § 245, must establish admissibility to the U.S. under INA § 212. An applicant for admission bears the burden of proving admissibility clearly and beyond a doubt. INA §240(c)(2)(A).

Lesson 1: Distinguish Between Inadmissibility and Deportability

When does INA § 212 apply?

- The term *inadmissible* refers to those aliens ineligible for "admission"
- *Admission* means "... the lawful entry of [an] alien into the [U.S.] after inspection and authorization by an immigration officer." INA § 101(a)(13)(A).
- An alien is *inadmissible* at the time of inspection or adjustment of status if in violation of INA § 212.
- "... Except as otherwise provided ... aliens who are inadmissible ... are ineligible to receive visas and ineligible to be admitted to the United States ..." INA § 212(a).



When INA § 212 Applies

(Lesson Content)

Identify when INA § 212 Applies

When does INA § 212 apply?

The term *inadmissible* refers to those aliens who are ineligible for "admission" into the U.S.

The term *admission* means "... the lawful entry of [an] alien into the United States after inspection and authorization by an immigration officer." INA § 101(a)(13)(A). In *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), the BIA held that an alien seeking to show that he or she has been "admitted" to the United States need only prove procedural regularity in his or her entry, which does not require the alien to be questioned by immigration authorities or be admitted in a particular status. Quilantan entered the United States by riding in a car driven by a U.S. citizen from Mexico to the United States. The immigration officer asked the driver whether he was a U.S. citizen, then waved the car through without asking Quilantan whether she was a U.S. citizen or had an entry document. The BIA concluded that an alien who physically presents herself for questioning and makes no knowing false claim to citizenship is "inspected," even though she volunteers no information and is asked no questions by the immigration authorities, and that such an alien has satisfied the "inspected and admitted" requirement of 245(a) of the Act. In contrast, an alien who makes a false claim of U.S. citizenship in order to gain entry into the United States has not been admitted. *Matter of Pinzon*, 26 I&N Dec. 189 (BIA 2013).

An alien is deemed inadmissible at the time of inspection or adjustment of status if the alien is in violation of INA § 212.

INA § 212(a) reads:

- "(a) Classes of Aliens Ineligible for Visas or Admission. Except as otherwise ... aliens

who are inadmissible . . . are ineligible to receive visas and ineligible to be admitted to the United States . . .”

INA § 212(a) is applied both by Consular and DHS Officers abroad, by DHS CBP Officers at a POE, and USCIS Immigration Services Officers (ISO) at District Offices and Service Centers.

Lesson 1: Distinguish Between Inadmissibility and Deportability

When does INA § 212 apply? (cont'd)

- Applies to nonimmigrant aliens seeking admission at POE
- Applies to aliens during consular processing
- Applies to immigrants seeking admission at POE
- Applies to returning LPRs at POE if regarded as seeking admission in certain circumstances listed in INA §101(a)(13)(C)
- Applies to paroled aliens
- Applies to aliens present without admission or parole
- Applies to aliens applying for adjustment of status



When INA § 212 Applies

(Lesson Content)

Identify when INA § 212 Applies

When does INA § 212 apply?

INA § 212 applies in a variety of contexts. Consider the following:

1. Used for aliens seeking admission to the U.S. at a POE or applying for adjustment of status.

- May be a nonimmigrant with or without proper documents.
- May be an intending immigrant with or without proper documents.

2. Used for a returning resident alien who is deemed to be making an application for admission under the provisions of INA § 101(a)(13)(C). *Vartelas v. Holder*, 566 U.S. ___, 132 S. Ct. 1479 (2012)[interpreting 101(a)(13)(C)(v)]; *Gonzaga-Ortega v. Holder*, 736 F.3d 795 (9th Cir. 2013)(returning LPR attempted to smuggle his niece who lacked entry documents into the U.S. by bringing her in his car and coaching her to tell immigration officers that she was a U.S. citizen; due to this illegal activity, the LPR was treated as an applicant for admission.); *Matter of Guzman Martinez*, 25 I&N Dec. 845 (BIA 2012)[attempted alien smuggling is illegal activity within 101(a)(13)(C)(iii)].

Examples of LPRs who depart the U.S. and upon return are considered to be seeking admission include: an alien who remained outside the U.S. for

two prior to returning [i.e. absent for a continuous period in excess of 180 days within 101(a)(13)(C)(ii)]; or, an LPR convicted of a CIMT or other offense within INA §212(a)(2) and thereafter departs the U.S. without having received a §212(h) waiver.

3. Used when adjudicating an application for adjustment of status.

- INA § 245, NACARA § 202, HRIFA § 902, legalization, Cuban Adjustment Act, and other adjustment provisions all have as an eligibility requirement that the person be admissible to the U.S.
- Determinations of admissibility are made under INA § 212.

4. Applied to an alien who is paroled into the U.S. under INA § 212(d)(5)(A).

5. Applied to an alien who is present in the U.S. without having been inspected and admitted or paroled into the U.S.

- Such alien is inadmissible to the U.S. under INA § 212(a)(6)(A)(i).
 - Such person has not been admitted to the U.S., even though the person is physically present in the U.S. Instead, he or she is an applicant for admission.
 - Prior to April 1, 1997, a person who was physically present in the U.S. and who had not been inspected was subject to a charge of deportability under former INA § 241 for having “entered” without inspection.
 - The concept of “entry” was replaced by “admission” in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).
-

Lesson 1: Distinguish Between Inadmissibility and Deportability

When does INA § 237 apply?

- Applies to admitted aliens no longer eligible for the status previously accorded
- Applies to admitted aliens ineligible to be admitted in the first place



When INA § 212 Applies

(Lesson Content)

Identify when INA § 237 applies

When does INA § 237 apply?

As previously noted, the grounds of deportability at INA § 237 are designed to remove aliens who have previously been admitted to the U.S. but who, after admission, are found to have committed immigration, criminal or national security violations, or are found to have been ineligible for admission in the first place.

Consider the following situations where INA § 237 applies:

1. Used when an alien has been admitted to the United States, and thereafter commits an offense, is no longer eligible for the status previously accorded, or was ineligible to be admitted in the first place.

- Under these circumstances, the alien is placed in removal proceedings under INA § 240 with the issuance of a Notice to Appear (NTA).
- An alien's last entry into the U.S. must be an admission, in order to be charged under INA § 237.

2. In the USCIS context, charges under INA § 237 are typically lodged against an applicant for adjustment of status who has been admitted in a nonimmigrant status, does not qualify for adjustment of status, and no longer qualifies for the nonimmigrant classification.

- The most common ground of deportability in the USCIS context is when the person has been admitted as a nonimmigrant and has remained longer than authorized, in violation of INA § 237(a)(1)(B).

3. Charges under INA § 237 may also be used when Conditional Permanent Residence (CPR) status is terminated or when it is determined that an applicant for naturalization is subject to removal from the U.S.

due to the commission of an offense or the discovery that the alien was never lawfully admitted as an LPR.

4. Used when an alien has been convicted of a criminal offense after having been admitted to the U.S. whether as a nonimmigrant or as an immigrant.

- Often seen in the context of a Lawful Permanent Resident (LPR) who is denied naturalization.
- May also be seen in adjustment applications if the person was admitted in a nonimmigrant classification, committed an offense after arrival, and is denied adjustment of status.

5. Also used when the person was admitted erroneously, when he or she was inadmissible at the time of admission.

- The alien is charged under INA § 237(a)(1)(A) with reference to the corresponding ground of inadmissibility under INA § 212(a) that rendered the person inadmissible at the time of admission.

Lesson 1: Distinguish Between Inadmissibility and Deportability

Removal Proceedings under INA § 240

- Begins with filing a Notice to Appear (NTA) with the immigration court. 8 CFR 239.1(a), 1239.1(a).
- If not admitted then only charges under INA § 212 apply
 - Arriving aliens
 - Parolees
 - Presence without admission or parole.
- If admitted, only charges under INA § 237 apply



Removal Proceedings Under INA § 240

(Lesson Content)

Removal Proceedings under INA § 240

Removal Proceedings under INA § 240

The process begins with the issuance of a NTA. Whether the charges on the NTA will be pursuant to INA §§ 212 or 237 depends on how the alien last entered the U.S. If the alien was not admitted, charges under INA § 212 will be used. Therefore, aliens who are arriving aliens, aliens who are paroled or those who entered without inspection are subject to INA § 212. If the alien was admitted, charges under INA § 237 will be lodged. The alien is placed into removal proceedings under INA § 240 and an Immigration Judge may ultimately order the removal of the alien.

Lesson/Topic 2: Identify the Grounds of Inadmissibility under INA § 212

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

- INA § 212(a)(1) – Health-Related Grounds
- INA § 212(a)(2) – Criminal and Related Grounds
- INA § 212(a)(3) – Security and Related Grounds
- INA § 212(a)(4) – Public Charge
- INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants
- INA § 212(a)(6) – Illegal Entrants and Immigration Violators



Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

- INA § 212(a)(7) – Documentation Requirements
- INA § 212(a)(8) – Ineligible for Citizenship
- INA § 212(a)(9) – Previously Removed and Unlawful Presence
- INA § 212(a)(10) – Miscellaneous



Lesson 2 Introduction

Identify the Grounds of Inadmissibility under INA § 212

They are as follows:

Describe INA § 212(a)(1) – Health-Related Grounds

Describe INA § 212(a)(2) – Criminal and Related Grounds

Describe INA § 212(a)(3) – Security and Related Grounds

Describe INA § 212(a)(4) – Public Charge

Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants

Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

Describe INA § 212(a)(7) – Documentation Requirements

Describe INA § 212(a)(8) – Ineligible for Citizenship

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

Describe INA § 212(a)(10) – Miscellaneous

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(1) – Health-Related Grounds-Overview

- INA § 212(a)(1)(A)(i) – Communicable disease of public health significance
- INA § 212(a)(1)(A)(ii) – Immigrants lacking proof of all of the required vaccinations
- INA § 212(a)(1)(A)(iii)(I), (II) – Physical or mental disorders with associated harmful behavior (current disorder and past disorder that is likely to recur or lead to other harmful behavior)
- INA § 212(a)(1)(A)(iv) – Drug abuse and drug addict



Describe INA § 212(a)(1) – Health-Related Grounds

(Lesson Content)

Describe INA § 212(a)(1) – Health-Related Grounds

INA § 212(a)(1) – Health-Related Grounds - Overview

There are four statutory provisions related to the health grounds of inadmissibility. They are as follows:

- INA § 212(a)(1)(A)(i) – Communicable disease of public health significance
- INA § 212(a)(1)(A)(ii) – Immigrants lacking proof of all of the required vaccinations
- INA § 212(a)(1)(A)(iii)(I), (II) – Physical or mental disorders with associated harmful behavior (current disorder and past disorder that is likely to recur or lead to other harmful behavior)
- INA § 212(a)(1)(A)(iv) – Drug abuse and drug addict

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(1) – Health-Related Grounds-Overview

- Report of Medical Examination and Vaccination Record (Form I-693) required
- Immigrant visa applicants
- Refugees applying for admission under INA § 207
- Adjustment applicants
- K and V nonimmigrants
- All other nonimmigrants and applicants for admission (who have not already had a medical exam) if reason to believe inadmissible on medical grounds



Describe INA § 212(a)(1) – Health-Related Grounds

(Lesson Content)

Describe INA § 212(a)(1) – Health-Related Grounds

INA § 212(a)(1) – Health-Related Grounds-Overview

A medical exam is required to make a finding of inadmissibility under INA § 212(a)(1)(A). Medical exams are required for the following aliens:

- Immigrant visa applicants
- Refugees applying for admission under INA § 207
- Adjustment applicants
- K (fiancé) and V (family members of LPRs, eligible to receive a visa under §203(a)(2)(A) filed under §204 on or before the enactment of the Legal Immigration Family Equity Act,

if pending for 3 or more years)
nonimmigrants

- All other nonimmigrants and applicants for admission (who have not already had a medical exam) may be required to undergo a medical exam if there are reasons to believe they may be inadmissible on medical grounds.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(1) – Health-Related Grounds-Overview

- Form I-693 is conclusive evidence of inadmissibility
- Class A medical conditions render an alien inadmissible
 - Must be certified on Form I-693 signed by panel physician or civil surgeon
- Class B medical conditions do not render an alien inadmissible
 - May raise questions of inadmissibility on other grounds



Describe INA § 212(a)(1) – Health-Related Grounds

(Lesson Content)

Describe INA § 212(a)(1) – Health-Related Grounds

The Report of Medical Examination and Vaccination Record (Form I-693), is conclusive evidence of an alien's inadmissibility.

Only Class A medical conditions render an alien inadmissible under INA § 212(a)(1)(A).

- The Class A medical condition must be certified on the medical report signed by the panel physician or civil surgeon.
- Class B medical conditions do not render an alien inadmissible on medical grounds under INA § 212(a)(1)(A), but can possibly raise questions of inadmissibility on other grounds.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(1)(A)(i) – Communicable Disease of Public Health Significance

- Statute:
 - "Any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance . . ."
- Applies to: Aliens seeking admission
- Evidence: Class A Medical Condition on Form I-863
- Waiver: INA § 212(g)(1)



Describe INA § 212(a)(1) – Health-Related Grounds

Describe INA § 212(a)(1) – Health-Related Grounds

INA § 212(a)(1)(A)(i) – Communicable Disease of Public Health Significance

"Any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance" is inadmissible. INA § 212(a)(1)(A)(i) (Emphasis added).

A "Communicable disease of public health significance" is defined at 42 C.F.R. § 34.2(b) and includes 7 medical conditions, *i.e.* Chancroid, Gonorrhea, Granuloma Inguinale, Hanson's disease

(leprosy, infectious), Lymphogranuloma Venereum, Syphilis (untreated) and Tuberculosis, active and infectious. The respondent, an LPR who was a citizen of the Philippines, in *Matter of Vallejos*, 14 I&N Dec. 68 (BIA 1972), was found deportable as inadmissible at entry due to a dangerous contagious disease, i.e. leprosy.

The regulations at 42 C.F.R. § 34.2(b) have been amended whereby HIV is no longer listed as a communicable disease of public health significance. Effective January 4, 2010, an HIV infection no longer made an alien inadmissible under INA § 212(a)(1)(A)(i). Please see "Public Law 110-293, 42 C.F.R. 34.2(b) and Inadmissibility Due to Human Immunodeficiency Virus (HIV) Infection" for the full text of the memorandum.

A waiver is available under INA § 212(g)(1).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(g)(1)-Waiver for INA § 212(a)(1)(A)(i) (communicable disease of public health significance)

- The [Secretary] may waive [inadmissibility under INA § 212(a)(1)(A)(i)] in the case of any alien who-
 - (A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a [USC or LPR], or of an alien who has been issued an immigrant visa,
 - (B) has a son or daughter who is a [USC or LPR], or an alien who has been issued an immigrant visa; or
 - (C) is a VAWA self-petitioner . . .



Describe INA § 212(g) Waivers (Lesson Content)

Describe INA § 212(g)(1) waiver

INA § 212(g)(1) – Waiver for INA § 212(a)(1)(A)(i) (communicable disease of public health significance)

“The [Secretary] may waive [inadmissibility under INA § 212(a)(1)(A)(i)] in the case of any alien who-

- (A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa,
- (B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa; or
- (C) is a VAWA self-petitioner,
- in accordance with such terms, conditions, and controls, if any, including the giving of

bond, as the Attorney General, in the discretion of the Attorney General after consultation with the Secretary of Health and Human Services, may by regulation prescribe”

A waiver under INA § 212(g)(1) is discretionary and has no hardship requirement.

The medical waivers have supplementary information that must be completed in the Application for Waiver of Grounds of Inadmissibility (Form I-601).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(1)(A)(i) - Immigrants lacking proof of all of the required vaccinations

- **Statute:**
 - “Any alien . . . who seeks admission as an immigrant, or . . . adjustment of status . . . and who has failed to present documentation of having received vaccination against vaccine preventable diseases . . .”
- **Applies to:** Adjustment and Immigrant Visa applicants
- **Evidence:** Form I-693
- **Waiver:** INA § 212(g)(2)



Describe INA § 212(a)(1) – Health-Related Grounds

(Lesson Content)

Describe INA § 212(a)(1) – Health-Related Grounds

INA § 212(a)(1)(A)(ii) - Immigrants lacking proof of all of the required vaccinations

“Any alien . . . who seeks admission as an immigrant, or . . . adjustment of status . . . and who has failed to present documentation of having received vaccination against vaccine preventable diseases . . .” is inadmissible. INA § 212(a)(1)(A)(ii).

Under the INA, aliens are required to obtain the following vaccines: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, Haemophilus influenza type B, and hepatitis B.

Additionally, the Center for Disease Control (CDC) requires vaccines for varicella, influenza, pneumococcal pneumonia, rotavirus, hepatitis A and the meningococcal vaccines.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(1)(A)(i) – Immigrants lacking proof of all of the required vaccinations

• Exception at INA § 212(a)(1)(C):

- Adopted child described in 101(b)(1)(F)(orphan) or (G) (Hague)
- 10 years of age or younger
- Applying for immigrant visas (IR3s and IR4s)
- Affidavit from adoptive parent attesting vaccination will occur within 30 days of admission or when medically appropriate



Describe INA § 212(a)(1) – Health-Related Grounds

(Lesson Content)

Exception at INA § 212(a)(1)(C)

There is an exception to the vaccination requirement. It is as follows:

- INA § 212(a)(1)(C) for adopted children age 10 or under applying for immigrant visas under INA § 201(b) [IR3s and IR4s]. IR3 and IR4 visas are for children adopted in other countries, or who are being brought over for adoption. If both parents have met the child before the foreign adoption was finalized, the child can be issued an IR-3 visa. If only one or neither of the adoptive parents has met the child before the foreign adoption was finalized, the child must be re-adopted in the United States. The child is issued an IR-4 visa.
- The adoptive parent must sign an affidavit attesting that the child will be vaccinated within 30 days of admission or when it is medically appropriate.
- Adoptive parents who cannot sign the affidavit in good faith because of religious/moral objections must apply for a waiver for the child.

INSTRUCTOR'S NOTE: An "exception means if an alien meets the requirements of an exception to a ground of inadmissibility, the alien is not inadmissible under that particular ground of inadmissibility."

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(1)(A)(i) - Immigrants lacking proof of all of the required vaccinations

- Applies to adjustment under INA §§ 209, 210, 245 and 245A or immigrant visas on or after September 30, 1996
- Does not apply to
 - Registry applicants under INA § 249
 - Applications for cancellation of removal and adjustment of status for certain nonpermanent residents under INA § 240A(b)



Describe INA § 212(a)(1) – Health-Related Grounds

(Lesson content)

INA § 212(a)(1)(A)(ii) - Immigrants lacking proof of all of the required vaccinations continued:

The vaccination requirements apply to anyone who filed an adjustment of status or an immigrant visa application on or after September 30, 1996.

Adjustment applications include:

- INA §§ 209, 210, 245 and 245A
- Registry applicants under INA § 249 are not required to comply with the vaccination requirements (applicants for adjustment of status under INA § 249 must have entered the U.S. prior to January 1, 1972).
- The vaccination requirements do not apply in the context of applications for cancellation of removal and adjustment of status for certain nonpermanent residents under INA § 240A(b).

A waiver is available under INA § 212(g)(2).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(g)(2) - Waiver for INA § 212(a)(2)(A)(ii) (vaccination requirements)

- The [Secretary] may waive . . . [INA § 212(a)(2)(A)(ii)] in the case of any alien-
 - (A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,
 - (B) for whom a civil surgeon . . . certifies . . . that such vaccination would not be medically appropriate, or
 - (C) under such circumstances . . . such a vaccination would be contrary to the alien's religious beliefs or moral convictions . . .



Describe INA § 212(g) Waivers

(Lesson Content)

Describe INA § 212(g) waivers

INA § 212(g)(2)-Waiver for INA § 212(a)(2)(A)(ii) (vaccination requirements).

“The [Secretary] may waive . . . [INA § 212(a)(2)(A)(ii)] in the case of any alien-

- (A) who receives vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,
- (B) for whom a civil surgeon . . . certifies . . . that such vaccination would not be medically appropriate, or
- (C) under such circumstances . . . such a vaccination would be contrary to the alien's religious beliefs or moral convictions . . .”

This waiver is discretionary and does not require a

qualifying relative or hardship.

The medical waivers have supplementary information that must be completed in the Form I-601. [Note: The Form I-601 is not required for aliens who are seeking to overcome inadmissibility based on missing vaccinations or vaccinations being not medically appropriate].

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(1)(A)(iii)(I) - Present Physical/Mental Disorder

• **Statute:**

• "Any alien . . . determined . . . to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others . . ."

• **Evidence:** Finding on Form I-693

• **Waiver:** INA § 212(g)(3)



Describe INA § 212(a)(1) – Health-Related Grounds

(Lesson Content)

Describe INA § 212(a)(1) – Health-Related Grounds

INA § 212(a)(1)(A)(iii)(I) – Present Physical/Mental Disorder

“Any alien . . . who is determined . . . to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others . . .” is inadmissible. INA § 212(a)(1)(A)(iii)(I).

The civil surgeon or panel physician must determine that the alien currently has a physical or mental disorder and exhibits harmful behavior associated with that disorder.

A waiver is available under INA § 212(g)(3).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(1)(A)(ii)(II) Past Physical/Mental Disorder

• **Statute:**

• "Any alien . . . determined . . . to have had a physical or mental disorder and a history of behavior associated with the disorder which has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior . . ."

• **Evidence:** Finding on Form I-693

• **Waiver:** INA § 212(g)(3)



Describe INA § 212(a)(1) – Health-Related Grounds (Lesson Content)

INA § 212(a)(1)(A)(iii)(II) – Past Physical/Mental Disorder

"Any alien . . . who is determined . . . to have had a physical or mental disorder and a history of behavior associated with the disorder which has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior..." is inadmissible. INA § 212(a)(1)(A)(iii)(II).

The civil surgeon or panel physician must determine that the alien had a physical or mental disorder in the past, and exhibited associated harmful behavior.

A determination that the harmful behavior is likely to recur or lead to other harmful behavior is also required.

A waiver is available under INA § 212(g)(3).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(g)(3) – Waiver under INA § 212(a)(2)(A)(ii) (past or present physical or mental disorder and associate harmful behavior)

• "The [Secretary] may waive [INA § 212(a)(2)(A)(ii)] . . . in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] . . . may by regulation prescribe."



Describe INA § 212(g) Waivers (Lesson Content)

Describe INA § 212(g) waivers

INA § 212(g)(3) – Waiver under INA § 212(a)(2)(A)(iii) (past or present physical or mental disorder and associate harmful behavior).

"The [Secretary] may waive [INA § 212(a)(2)(A)(iii)] . . . in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] . . . may by regulation prescribe."

Waiver is discretionary. No qualifying relative or hardship requirement.

Secretary may require the imposition of terms, controls or conditions after consultation with the Secretary of Health and Human Services.

The medical waivers have supplementary information that must be completed in the Form I-601.

Please refer to published memoranda for additional information.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(1)(A)(iv) – Drug Abuse and Drug Addict

- **Statute:**
 - "Any alien . . . determined . . . to be a drug abuser or addict . . ."
- **Applies to:** History of drug abuse/addiction
- **Evidence:** Finding on Form I-693
- **Waiver:** None



Describe INA § 212(a)(1) – Health-Related Grounds
(Lesson Content)

Describe INA § 212(a)(1) – Health-Related Grounds

INA § 212(a)(1)(A)(iv) – Drug Abuse or Drug Addict

“Any alien . . . who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict . . .” is inadmissible. INA § 212(a)(1)(A)(iv).

An alien is found to be a drug abuser or addict at the present time, per the CDC’s Technical Instructions. Aliens determined by the civil surgeon or panel physician to be in remission are classified as Class B and are not inadmissible. Remission is determined per the CDC’s Technical Instructions.

No waiver is available for aliens inadmissible under INA § 212(a)(1)(A)(iv).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2) – Criminal and Related Grounds

- INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude
- INA § 212(a)(2)(A)(i)(II) – Controlled Substance Violations
- INA § 212(a)(2)(B) – Multiple Criminal Convictions
- INA § 212(a)(2)(C) – Drug Trafficking
- INA § 212(a)(2)(D) – Prostitution/Commercialized Vice



Describe INA § 212(a)(2) – Criminal and Related Grounds
(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2) – Criminal and Related Grounds

There are nine statutory provisions related to the criminal grounds of inadmissibility.

They are as follows:

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude

INA § 212(a)(2)(A)(i)(II) – Controlled Substance Violations

INA § 212(a)(2)(B) – Multiple Criminal Convictions

INA § 212(a)(2)(C) – Drug Trafficking

INA § 212(a)(2)(D) – Prostitution/Commercialized Vice

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2) – Criminal and Related Grounds

- INA § 212(a)(2)(E) – Asserted Immunity
- INA § 212(a)(2)(G) – Particularly Severe Violations of Religious Freedom
- INA § 212(a)(2)(H) – Trafficking in Persons
- INA § 212(a)(2)(I) – Money Laundering



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(E) – Asserted Immunity

INA § 212(a)(2)(G) – Particularly Severe Violations of Religious Freedom

INA § 212(a)(2)(H) – Trafficking in Persons

INA § 212(a)(2)(I) – Money Laundering

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

- Statute:
 - “... [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”
- Applies to: Aliens who commit CIMTs
- Evidence: Conviction or admission on a sworn statement
- Waiver: INA § 212(h), INA § 212(c) (limited to LPRs)



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

“... [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime” is inadmissible. INA § 212(a)(2)(A)(i)(I).

This ground of inadmissibility is triggered via a criminal conviction or an admission by the alien that he or she committed acts which constitute a CIMT.

A waiver is available under INA § 212(h) or possible under former INA § 212(c) in limited circumstances.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

- Admitted conduct must constitute essential elements of a crime
- Four requirements for a valid admission
 - Must provide alien with definition of crime found in relevant criminal code
 - Must explain definition in understandable terms
 - Alien must admit to each element of crime
 - Admission must be voluntary and knowing



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

“Admits committing” a CIMT means an alien’s admitted conduct must constitute the essential elements of the crime.

USCIS must provide the alien with the definition of the crime found in the relevant criminal code, must explain the definition in understandable terms, and the alien must admit to each element of the crime and the admission must be voluntary and knowing. *Matter of Flores*, 17 I&N Dec. 255 (BIA 1980); *Matter of K*, 7 I&N Dec. 594 (BIA 1957); *Matter of G-M-*, 7 I&N Dec. 40 (BIA 1955).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

- No statutory definition of what constitutes a CIMT, only court interpretations
- The crime must involve both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness
- Moral turpitude refers to conduct which shocks the public conscience as being inherently base, vile or depraved, contrary to the rules of morality



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

There is no statutory definition of what constitutes a CIMT, only court interpretations. To qualify as a CIMT, a crime must involve “both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness.” *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1 (A.G. 2008).

Moral turpitude refers to conduct which “shocks the public conscience as being inherently base, vile or depraved, contrary to the rules of morality.” *Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988); *Jordan v. DeGeorge*, 341 U.S. 223 (1951).

Thus, a CIMT involves acts or conduct accompanied by a mental state of:

- Evil intent,
- Corruption of the mind, or
- Knowledge

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

- Recklessness
 - Crimes involving a conscious disregard of a substantial risk coupled with infliction of serious bodily injury/aggravating factor may amount to moral turpitude
- Negligence
 - Crimes involving negligent conduct, where the offender failed to be aware of a substantial risk involved in the conduct, generally not found to involve moral turpitude (use reasonable person standard)
- Consult your local OCC



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

What about the recklessness or negligence?

Recklessness:

- Crimes involving conduct that involves a conscious disregard of a substantial risk coupled with infliction of serious bodily injury or an aggravating factor may amount to moral turpitude. *Knapik v. Ashcroft*, 384 F.3d 84 (3d Cir. 2004); *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976) (use of a deadly weapon used with reckless conduct) *Matter of Franklin*, 20 I&N Dec. 867 (BIA 1994)(involuntary manslaughter committed by recklessly causing the death of another was a CIMT).

Negligence:

- Crimes involving negligent conduct, where the offender failed to be aware of a substantial risk involved in the conduct, are generally not found to involve moral turpitude (use reasonable person standard). *Matter of Perez-Contreras*, 20 I&N Dec. 615 (BIA 1992).

Consult your local Office of the Chief Counsel (OCC)

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

- Courts generally do not consider the facts underlying the offense, but only the statutory definition of the criminal offense
- The statute, not the conduct, controls whether a crime is a CIMT
- Classification of the crime as a felony or misdemeanor does not control whether a crime is a CIMT



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

A court generally does not consider the facts underlying the offense, but only the statutory definition of the criminal offense. *Matter of Tobar-Lobo*, 24 I&N Dec. 143 (BIA 2007).

The statute, not conduct, controls whether a crime is a CIMT. *Matter of Short*, 20 I&N Dec 136, 137 (BIA 1989).

Classification of the crime as a felony or misdemeanor does not control whether a crime is a CIMT. *Matter of Tran*, 21 I&N Dec. 29 (BIA 1996); *Matter of Abreu-Semino*, 12 I&N Dec. 775, 777 (BIA 1968).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

- Three general categories
- Crimes against the government
- Crimes against person
- Crimes against property



Describe INA § 212(a)(2) – Criminal and Related Grounds

Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Although there is a range of interpretations of what crimes involve moral turpitude, the crimes that the courts have generally held to involve moral turpitude generally fall into one of the following three categories:

- Crimes against government
- Crimes against the person
- Crimes against property

Consult your local OCC.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(A)(i) – Crimes Involving Moral Turpitude (CIMT)

Crimes Against Government

- CBAT
 - Counterfeiting
 - Perjury
 - Willful tax evasion
 - Using mail to defraud
 - Welfare fraud
- Not a CIMT
 - False statements not amounting to perjury



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

The following are examples of CIMTs.

Crimes Against the Government

- CIMT: Counterfeiting, perjury, willful tax evasion, using mail to defraud, welfare fraud.
- NOT A CIMT: False statements *not* amounting to perjury.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(A)(i) – Crimes Involving Moral Turpitude (CIMT)

Crimes Against Person

- CIMT
 - Murder
 - Voluntary manslaughter
 - Kidnapping
 - Aggravated assault
 - Domestic assault
 - Rape
 - Indecent Assault



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Crimes Against Person

- CIMT: Murder, voluntary manslaughter, kidnapping, aggravated assault, assault with intent to rob or kill, assault with a deadly weapon, assault against a police officer, domestic assault, assault and battery on a special relationship, e.g. child, spouse police officer, rape, indecent assault and battery on a child

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(A)(i) – Crimes Involving Moral Turpitude (CIMT)

Crimes Against Person

- Generally not CIMT
 - Possession of weapons offenses (no intent to use)
 - Joyriding
 - Disorderly conduct
 - Simple assault



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Crimes Against Person

NOT A CIMT: Possession of weapons offenses (no intent to use), joyriding, disorderly conduct and simple assault.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(A)(i) – Crimes Involving Moral Turpitude (CIMT)

Crimes against property

- CIMT
 - Blackmail
 - Forgery
 - Robbery
 - Burglary
 - Extortion
 - Malicious destruction of property
 - Theft



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Crimes Against Property

- CIMT: Blackmail, forgery, robbery, burglary, extortion, malicious destruction of property.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(A)(i) – Crimes Involving Moral Turpitude (CIMT)

Crimes Against Property

- NOT A CIMT
 - Possession of stolen property where guilty knowledge not essential
 - Damaging private property where no evil intent in statute



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Crimes Against Property

- NOT A CIMT: possession of stolen property where guilty knowledge not essential, damaging private property where no evil intent in statute governing the law where the offense occurred, trespassing, loitering.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(A)(i) – Crimes Involving Moral Turpitude (CIMT)

Driving Under the Influence (DUI)

- Simple DUI not a CIMT
- Aggravated DUI can be a CIMT, if statute under which alien charged has an element of knowingly driving while intoxicated, or knowing that one's license was suspended



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Simple Driving Under the Influence (DUI) is not a CIMT but aggravated DUI can be a CIMT, if the statute under which the alien was charged has an element of knowingly driving while intoxicated, or knowing that one's license was suspended. *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001)(aggravated DUI in violation of AZ Rev. Stat. §28-692(A)(2), which is based on multiple violations of simple DUI, is not a CIMT); *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999)(aggravated DUI under Az Rev. Stat. §28-692(a)(a) is a CIMT because it requires DUI knowing his driver's license was suspended).

This is a good point to explain that there is an analysis of criminal statutes referred to in case law as the categorical and modified categorical approach, as outlined in *Matter of Chairez*, 26 I&N Dec. 349 (BIA 2014).. While we have included a summary of the current case law for instructors, students need only be made aware that this analysis exists. If there are questions about a crime, adjudicators should consult their supervisory chain and Office of Chief Counsel should be consulted as the analysis can be difficult.

Instructor Note: To conduct an analysis under *Chairez*, first consider the statute under the categorical inquiry using the “realistic probability” approach which asks whether moral turpitude necessarily inheres in all cases that have a **realistic probability** of being prosecuted. *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008). If the criminal statute applies to some conduct that involves moral turpitude and some that does not, then the crime is not “categorically” a crime involving moral turpitude. Not all circuits use the realistic probability test (e.g. some use the minimum criminal conduct test and others use the common case test).

Second, if the statute is “**divisible**,” adjudicators may use the “modified categorical approach” to determine whether the individual was convicted under the portion of the statute that involves moral turpitude. Generally, a statute is divisible if it: (1) lists multiple discrete offenses as enumerated alternatives (list/outline form); or (2) defines an offense by reference to disjunctive sets of elements. The modified categorical approach considers the record of conviction (indictment, plea, verdict, and sentence) to determine which offense the defendant/alien was convicted of committing.

Optional Exercise – recommend showing the participants state criminal statutes to illustrate the difference between a crime of moral turpitude and those found not to be crimes of moral turpitude. See e.g. *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999) and Arizona Revised Statutes sections 28-1381 and 28-1383(A)(1); *Matter of Alfonso Cores Medina* 26 I&N Dec 79 (BIA 2013) and California

Penal Code section 314(1) compared with Matter of Mueller, 11 I&N Dec. 268 (BIA 1965) and Wisconsin Statutes section 944.20(2); and Esparza-Rodriguez v Holder, 699 F.3d 821 (5th Cir. 2012) and Texas Penal Code section 22.01.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Political Offense Exception

- "... (other than a purely political offense)" INA § 212(a)(2)(A)(i)(I)
- Defined in DOS regulations
- Includes offenses that resulted in a conviction obviously based on fabricated charges or predicated on repressive measures against racial, religious, or political minorities



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

There are statutory exceptions to the INA § 212(a)(2)(A)(i)(I) ground of inadmissibility.

They are as follows:

Political Offense Exception:

"... (other than a purely political offense)" INA § 212(a)(2)(A)(i)(I)

Defined in DOS regulations at 22 C.F.R. § 40.21(a)(6).

Includes offenses that resulted in a conviction obviously based on fabricated charges or predicated on repressive measures against racial, religious, or political minorities. *See Matter of O'Cealeagh*, 25 I&N Dec. 976 (BIA 2006)(conviction for aiding and abetting the murder of two British corporals was not a purely political offense because it was neither fabricated nor trumped-up).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Youthful Offender Exception

- Only 1 CIMT
- Under age 18 when committed crime
- Committed, and released from confinement (if sentenced)
- More than 5 years before date of application for visa, admission, or adjustment of status



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Youthful Offender Exception:

“Clause (i)(I) shall not apply to an alien who committed only one crime if-(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States . . .” INA § 212(a)(2)(A)(ii)(I).

1 CIMT under age 18, and

The CIMT was committed, and the alien was released from confinement (if sentenced), more than 5 years before the date of application for a visa, admission, or adjustment of status.

If a minor violates a criminal offense and is adjudged delinquent (rather than tried as an adult), this is not a conviction for immigration purposes. *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981; *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2001)(the Board concluded that a New York provision that corresponds to the Federal Juvenile Delinquency Act is not an immigration conviction).

A hypothetical that illustrates the youthful offender exception would be as follows:

Alec Alien was born 1/1/1990. On 12/1/2007, he commits a misdemeanor CIMT offense for which he is convicted (as an adult) on 2/1/2008, and sentence to serve 5 months on probation. When he is 23 years old, he applies to adjust status based on an approved

I-130 filed by his USC wife. Based upon his conviction, will he need a waiver under INA §212(h) in order to adjust?

Answer: No, he will not need a waiver. Although he was convicted after age 18, he committed the offense while under 18. He was never confined and more than five years has passed since the date of commission.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Petty Offense Exception

- 1 CIMT
- The maximum statutory penalty possible did not exceed 1 year imprisonment
- If convicted, the sentence imposed did not exceed 6 months (regardless of the time actually served)



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude (CIMT)

Petty Offense Exception

“Clause (i)(I) shall not apply to an alien who committed only one crime if . . . the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).” INA § 212(a)(2)(A)(i)(II).

1 CIMT,

The maximum penalty possible did not exceed 1 year imprisonment, and

If convicted, the sentence imposed did not exceed 6 months (regardless of the time actually served).

For example, in *Matter of Garcia*, 25 I&N Dec. 332 (BIA 2010), the respondent was convicted of misdemeanor domestic assault and battery, for which the maximum penalty is confinement for 1 year, and for which he was sentenced to 3 years of

probation. Although this offense was a crime involving moral turpitude, it also satisfied the petty offense exception.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(A)(i)(II) – Controlled Substance Violation

• **Statute:**

“... [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a violation of (or conspiracy or attempt to violate) any law or regulation of a state, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 USC 802))”

• **Evidence:** Conviction or admission

• **Waiver:** INA § 212(h) (single possession of 30 grams or less of marijuana) and former INA § 212(c)



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(II) – Controlled Substance Violation

“... [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a violation of (or conspiracy or attempt to violate) any law or regulation of a state, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 USC 802))” is inadmissible. INA § 212(a)(2)(A)(i)(II).

Controlled substances are defined at 21 U.S.C. § 802. The list of controlled substances by schedule can be found at 21 U.S.C. § 812.

“Admits committing” a controlled substance violation requires that the alien’s admitted conduct constitutes the essential elements of the crime. USCIS must provide the alien with the definition of the crime found in the relevant criminal code, must explain the definition in understandable terms, and the alien must admit to each element of the crime and the admission must be voluntary and knowing. In *Pazcoguin v. Radcliffe*, 292 F.3d 1209 (9th Cir. 2002), as part of the visa issuance process, Pazcoguin underwent a psychiatric exam during which he admitted the doctor that he smoked marijuana for several years in the past. Nevertheless, Pazcoguin received an immigrant visa. At the Honolulu Airport Pazcoguin repeated his admission

of marijuana use in a sworn statement and was paroled. The Ninth Circuit concluded Pazcoguin was excludable as admitting acts which constituted the essential elements of a controlled substance violation.

Waiver available INA § 212(h) with respect to a single possession of 30 grams or less of marijuana, and possible under former INA § 212(c). In *Matter of Abosi*, 24 I&N Dec. 204 (BIA 2007), an LPR departed the United States and, upon his return, was found in possession of 0.7 grams of marijuana and convicted of a petty misdemeanor. He again left the United States, but due to the conviction was not admitted and was placed in removal proceedings charged under INA §212(a)(2)(A)(i)(II). The BIA ruled that a returning LPR within INA §101(a)(13)(C) and charged with a ground of inadmissibility is eligible to apply for §212(h) without also filing for adjustment of status.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(A)(i)(II) – Controlled Substance Violation

- Phrase "relating to a controlled substance" includes possession of drug paraphernalia
- Waivable if the paraphernalia reasonably relates to simple possession for one's own use of 30 grams or less of marijuana



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(A)(i)(II) – Controlled Substance Violation

The phrase "relating to a controlled substance" includes possession of drug paraphernalia and is waivable if the paraphernalia reasonably relates to simple possession for one's own use of 30 grams or less of marijuana. See *Matter of Martinez-Espinosa*, 25 I&N Dec. 118 (BIA 2009).

Depending on the drug paraphernalia involved, a waiver may be available under INA § 212(h) if the paraphernalia involved reasonably relates to possession for one's own use of 30 grams or less of marijuana, e.g. possession of a marijuana pipe. See *id.*

Instructor Note: There is a pending U.S. Supreme Court decision on this point. *Mellouli v. Holder*, 719 F.3d 995 (8th Cir. 2013), cert. granted. The

question in the case is whether, to trigger deportability under 8 U.S.C. § 1227(a)(2)(B)(i), which provides that a noncitizen may be removed if he has been convicted of violating “any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21) . . .,” the government must prove the connection between a drug paraphernalia conviction and a substance listed in section 802 of the Controlled Substances Act.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(B) – Multiple Criminal Convictions

• **Statute:**

• “Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.”

• **Applies to:** 2 + crimes, aggregate sentences at least 5 years

• **Evidence:** Conviction(s)

• **Waiver:** INA § 212(h) or former INA § 212(c).



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(B) – Multiple Criminal Convictions

“Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.” INA § 212(a)(2)(B).

This ground of inadmissibility applies to any type of conviction, not just CIMTs. As such, 2 or more convictions *and* aggregate sentences of at least 5 years is required. For example, in *Pina-Galindo*, 26 I&N Dec. 423 (BIA 2014), the respondent had multiple convictions related to intoxication, including a third degree felony for driving while intoxicated, for which he received a suspended sentence of 10 years confinement and 5 years probation. Because these convictions and this sentence met the requisites of INA § 212(a)(2)(B), he was ineligible for cancellation of removal.

A waiver is available under INA § 212(h) or former INA § 212(c).

A “consecutive sentence” to confinement is defined as “When one sentence of confinement is to follow another in point of time, the second sentence is deemed to be consecutive. May also be applied to suspended sentences. Also called ‘from and after’ sentences.” See *Black’s Law Dictionary*, 6th Edition.

- Example: Jim was convicted of two counts of assault. For Court 1, he received a sentence of one year imprisonment. For Court 2, he received a sentence of one year consecutive to Count 1.

A “concurrent sentence” to confinement is defined as “Two or more terms of imprisonment, all or part of each term of which is served simultaneously . . .”

See Black’s Law Dictionary, 6th Edition.

- Example: Jim was convicted two counts of assault. For Court 1, he received a sentence of one year imprisonment. For Court 2, he received a sentence of one year imprisonment concurrent with Count 1.

When computing the aggregate sentence to confinement, do not add together concurrent sentences.

INSTRUCTOR NOTE: Recommend discussion on the difference between consecutive sentences and concurrent sentences.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(C)(i) – Drug Trafficking

- **Statute:**
 - “Any alien who the consular officer or Attorney General knows or has reason to believe is or has been an illicit trafficker in any controlled substance or any listed chemical . . . , or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled substance or listed substance or chemical”
- **Evidence:** Conviction not required only reasonable belief
- **Waiver:** None



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(C)(i) – Drug Trafficking

“Any alien who the consular officer or Attorney General knows or has reason to believe is or has been an illicit trafficker in any controlled substance or any listed chemical . . . , or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled substance or listed substance or chemical” is inadmissible. INA § 212(a)(2)(C)(i)

- “Trafficking” typically involves the selling, transfer, transporting, production, cultivation or manufacturing of controlled substances, and not for personal use.

There are no exceptions to this ground of inadmissibility nor is there a waiver for this ground except for a possible waiver under former INA § 212(c) in limited circumstances.

“Reason to believe” generally equates with the “probable cause” standard of proof. *Westover v. Reno*, 202 F.3d 475, 480 n.6 (1st Cir. 2000); *Matter of U-H-*, 23 I&N Dec. 355, 356 (BIA 2002)(reasonable grounds to believe that respondent is engaged, or will engage, in terrorist activity, or a danger to the national security).

Courts generally uphold a finding of reason to believe when based upon any of the following:

- Alien’s admission of the relevant crime;
- Alien is directly observed with drugs by the police, immigration, or other government official; or
- Alien has a conviction for possession of a controlled substance or other nontrafficking offense of a quantity beyond personal use.

Mena-Flores v. Holder, 2015 WL 294629 (10th Cir. 2015)(Although alien acquitted of two drug distribution offenses, there was reason to believe the alien was a trafficker based on statements from 5 witnesses involve in the drug operation, an affidavit by a special agent, and IJ’s determination that the alien’s testimony lacked credibility).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(C)(i) – Drug Trafficking

• Reason to Believe

- Examining officer's knowledge/suspicion that an alien is a trafficker must be contemporaneous with application for admission at POE or adjustment of status



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(C)(i) – Drug Trafficking

The phrase “reason to believe” has been interpreted to mean that the examining officer’s knowledge or suspicion that an alien is a trafficker must be contemporaneous with the application for admission at the POE or adjustment of status. *Matter of Rocha*, 20 I&N Dec. 944 (BIA 1995).

No conviction or admission required. *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977).

Here are some examples:

- The BIA has found in unpublished decisions that a USCIS officer adjudicating an adjustment case application (that is denied and referred to immigration court) is capable of finding that the alien is inadmissible under § 212(a)(2)(C) if there are sufficient arrest records and charging documents that establish “probable cause” that the alien is a trafficker in drugs stating that “reason to believe” standard is quite low, i.e., probable cause. *In Re: Juan Francisco Guerra*, 2007 WL 926807.
- “The Immigration Judge found that the police detectives conducting the investigation into the alleged criminal activities of the respondent found sufficient reason to believe that the respondent was involved in the illicit trafficking of cocaine and that the evidence submitted by the DHS in the form of the police report was sufficient to show the respondent’s inadmissibility under section 212(a)(2)(C)[.] *In Re: Maria Teresa Aguilar, a.k.a. Maria Teresa Mejia*, 2008 WL 1924616.
- There was reason to believe that the LPR was a drug trafficker where the vehicle he was driving to cross the border contained 86 pounds of marijuana in a secret

compartment. *Alarcon-Serranov. INS*, 220 F.3d 1116 (9th Cir. 2000).

- In *Matter of V-X*, 26 I&N Dec. 147 (BIA 2013), convictions for delivery of marijuana and knowingly keeping a vehicle for the purpose of keeping or selling a controlled substance constituted fell within this provision.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(C)(ii) – Drug Trafficking-Relatives

• **Statute**

- "Any alien who the consular officer or the Attorney General knows or has reason to believe . . . is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity"



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(C)(ii) – Drug Trafficking-Relatives

"Any alien who the consular officer or the Attorney General knows or has reason to believe-(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity is inadmissible" INA § 212(a)(2)(C)(ii).

Therefore, INA § 212(a)(2)(C)(ii) covers the spouse, son, or daughter of a drug trafficker who has, within the previous 5 years, *knowingly received any benefit* from the trafficking.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(D)(i) – Prostitution

• **Statute**

- "Any alien who . . . is coming to the [U.S.] solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status" INA § 212(a)(2)(D)(i)
- **Applies to:** Prostitutes
- **Evidence:** Conviction or admission to two or more acts
- **Waiver:** INA § 212(h), former INA § 212(c)



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(D)(i) – Prostitution

"Any alien who is coming to the [U.S.] solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status" is inadmissible. INA § 212(a)(2)(D)(i).

Legality or illegality of the prostitution is immaterial.

Applies only to prostitutes.

Requires a conviction or an admission to two or

more acts of prostitution because the term “engaged in prostitution” means conduct that is carried on over a period of time. *Matter of T--*, 6 I&N Dec. 474 (BIA 1955). In *Kepilino v. Gonzales*, 454 F.3d 1057 (9th Cir. 2006), the court concluded that a conviction under a Hawaii statute for prostitution would not support an exclusion charge because the statute was too broad and included intimate touching above clothing for money. Such acts did not fit the traditional definition of prostitution.

A waiver is available under INA § 212(h) or possible under former INA § 212(c).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(D)(i) - Proceeds from Prostitution

• Statute:

• “Any alien who directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10 year period) received, in whole or in part, the proceeds of prostitution.” INA § 212(a)(2)(D)(i)

• Applies to: Pimps not johns

• Evidence: Conviction or admission

• Waiver: INA § 212(h), former INA § 212(c)



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(D)(ii) – Proceeds From Prostitution

“Any alien who directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10 year period) received, in whole or in part, the proceeds of prostitution” is inadmissible. INA § 212(a)(2)(D)(ii).

Does not refer to “Johns” or those customers who solicit or pay a prostitute for personal services for their own behalf. *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008).

Waiver available under INA § 212(h) or possible under former INA § 212(c).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(D)(iii) – Commercialized Vice

• Statute:

• “Any alien who is coming to the [U.S.] to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.” INA § 212(a)(2)(D)(iii)

• Applies to: Illegal gambling and illegal lotteries

• Evidence: Conviction or admission

• Waiver: INA § 212(h)



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(D)(iii) – Commercialized Vice

“Any alien who is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.” INA § 212(a)(2)(D)(iii).

Language referring to “unlawful commercialized vice” has been interpreted to mean crimes such as illegal gambling and illegal lotteries.

A waiver is available for under INA § 212(h) or possible under former INA § 212(c).

Commercialized vice includes illegal lotteries, gambling, and bootlegging liquor. *Matter of A-*, 6 I&N Dec. 540 (BIA 1955). The BIA concluded that “loan sharking” (usury) did not fit the meaning of commercialized vice in *Matter of B-*, 6 I&N Dec. 98 (BIA (1954)).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(E) – Asserted Immunity

• Statute:

• “Any alien- (i) who has committed in the [U.S.] at any time a serious criminal offense (as defined in [INA § 101(h)] ...

• (ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

• (iii) who as a consequence of the offense and exercise of immunity has departed from the [U.S.], and

• (iv) who has not subsequently submitted fully to the jurisdiction of the court in the [U.S.] having jurisdiction with respect to that offense, is inadmissible”



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(E) – Asserted Immunity

“Any alien-

(i) who has committed in the [U.S.] at any time a serious criminal offense (as defined in section 1101(h) of this title),

(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

(iii) who as a consequence of the offense and exercise of immunity has departed from the [U.S.], and

(iv) who has not subsequently submitted fully to the jurisdiction of the court in the [U.S.] having jurisdiction with respect to that offense, is inadmissible.” INA § 212(a)(2)(E).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(E) – Asserted Immunity

- Serious Criminal Offense:
 - Any felony
 - crime of violence
 - crime of reckless driving if involves personal injury to another
 - Driving while intoxicated, under the influence of alcohol or prohibited substances if crime involves personal injury to another
- Evidence: Court records
- Waiver: INA § 212(h)



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(E) – Asserted Immunity

This refers to foreign diplomats or any alien who was involved in serious criminal activity and for whom *immunity from criminal jurisdiction* was exercised. They are inadmissible upon return (*unless* they submit to the jurisdiction of the court to be tried).

- INA § 101(h) defines “serious criminal offense” as any felony, any crime of violence or any crime of reckless driving or driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

A waiver is available under INA § 212(h).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(2)(G) – Violations of Religious Freedom

- Covered in Course 232-Bars to Relief



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(G) – Violations of Religious Freedom

Covered in Bars to Relief course.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(H)(i) – Significant Traffickers in Persons

• **Statute:**

• "Any alien who commits or conspires to commit human trafficking offenses in the [U.S.] or outside the [U.S.], or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of Title 22, is inadmissible."

• **Waiver:** None



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(H)(i) – Significant Traffickers in Persons

"Any alien who commits or conspires to commit human trafficking offenses in the [U.S.] or outside the [U.S.], or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of Title 22, is inadmissible." INA § 212(a)(2)(H)(i).

Includes the spouse, son, or daughter of a trafficker who has received any benefit from the trafficking within the prior 5 years. *See* INA § 212(a)(2)(H)(ii).

The alien spouse, son, or daughter must have known or should have reasonably known the benefit was the result of trafficking in persons.

Pursuant to INA § 212(a)(2)(H)(iii), this subsection does not apply to a son or daughter who was a child at the time that the benefit was received.

Severe forms of trafficking in persons means:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or
- The person induced to perform the act is under age 18 or
- The recruitment, harboring, transporting, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt, bondage, or slavery.

There is no waiver for this ground of inadmissibility.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(2)(I) – Money Laundering

• **Statute:**

• “Any alien-(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense . . . relating to laundering of monetary instruments); or (ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense . . .”

• **Evidence:** Conviction not required only reasonable belief

• **Waiver:** None



Describe INA § 212(a)(2) – Criminal and Related Grounds

(Lesson Content)

Describe INA § 212(a)(2) – Criminal and Related Grounds

INA § 212(a)(2)(I) – Money Laundering

“Any alien-(i) who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense . . . relating to laundering of monetary instruments); or (ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section” is inadmissible.”
INA § 212(a)(2)(I).

Laundering of monetary instruments is done to conceal the source of money gained from criminal enterprises.

Primarily done to hide money gained from organized criminal activity, drug trafficking, or to be used for terrorist activities.

There is no waiver for this ground of inadmissibility.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(c)-Repealed

• Discretionary waiver limited to LPRs

• Waived most criminal grounds

• Repealed by IRIRA, Pub. L. No. 104-208, 110 Stat. 3009, Sept. 30, 1996, effective April 1, 1997.

• Still available for LPRs who pled guilty prior to April 1, 1997, per ruling in *INS v. St. Cyr*, 533 U.S. 289 (2001)

• Adjudicated in the context of removal proceedings

• USCIS has jurisdiction if alien never placed in removal proceedings



Describe INA § 212(c) Waivers

(Lesson Content)

Describe INA § 212(c) waivers

INA § 212(c) (Repealed)

“[LPRs] who temporarily proceed abroad voluntarily and not under an order of deportation, and who are returning to a lawful un-relinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) (other than paragraphs (3) and (9)(C))...The first sentence of this subsection shall not apply to an alien who has been convicted of one or more aggravated felonies and has served for such felony or felonies a term of imprisonment of at least 5 years.”

Discretionary waiver limited to lawful permanent residents. Waived most criminal grounds.

Repealed by IIRIRA, Pub. L. No. 104-208, 110 Stat. 3009, Sept. 30, 1996; extended to cases in which an alien pled guilty prior to April 1, 1997 by *INS v. St. Cyr*, 533 U.S. 289 (2001).

Due to U.S. Supreme Court decision in *INS v. St. Cyr*, 533 U.S. 289 (2001), the waiver exists under limited circumstances – see 8 C.F.R. §§ 212.3 and 1212.3.

Generally adjudicated in the context of removal proceedings by an Immigration Judge, but USCIS does have jurisdiction if the alien has never been placed in removal proceedings. Since it is limited to those persons who are already lawful permanent residents, USCIS will see these applications in very rare circumstances.

Waiver application filed on Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile.

Describe INA § 212(h) Waivers

(Lesson Content)

Describe INA § 212(h) waivers

INA § 212(h) Waiver

INA § 212(h) consists of three waivers: INA §§ 212(h)(1)(A), 212(h)(1)(B), and 212(h)(1)(C).

Sections 212(h)(1)(A), (B) and (C) waive the following grounds of inadmissibility:

- INA § 212(a)(2)(A)(i)(I) – Crime Involving Moral Turpitude (CIMT)
- INA § 212(a)(2)(A)(i)(II) Controlled substance offense - only as it relates to a single offense of simple possession of 30 grams or less of marijuana (no other controlled substance offenses)
- INA § 212(a)(2)(B) – Multiple criminal convictions
- INA §§ 212(a)(2)(D)(i) - (iii) – Prostitution

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(h) Waiver

- 212(h)(1)(A), (B) and (C) can waive...
- INA § 212(a)(2)(A)(i)(I) – Crime Involving Moral Turpitude (CIMT)
- INA § 212(a)(2)(A)(i)(II) Controlled substance offense - only as it relates to a single offense of simple possession of 30 grams or less of marijuana (no other controlled substance offenses)
- INA § 212(a)(2)(B) – Multiple criminal convictions
- INA §§ 212(a)(2)(D)(i) - (iii) – Prostitution and commercialized vice
- INA § 212(a)(2)(E) – Asserted immunity from prosecution



and commercialized vice

INA §212(a)(2)(E) – Asserted immunity from prosecution

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(h)(1)(A) Waiver

• “[May] in . . . discretion . . . waive . . . [INA §§ 212(a)(2)(A)(i)(I), (B), (D), and (E) . . . and INA § 212(a)(2)(A)(i)(II) insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if . . .

- the alien is inadmissible only under . . . (D)(i) or (D)(ii) . . . or
- the activities for which the alien is inadmissible occurred more than 15 years before the date of . . . application . . .
- the admission . . . would not be contrary to the national welfare, safety, or security of the [U.S.] and
- the alien has been rehabilitated . . .”



Describe INA § 212(h) Waivers

(Lesson Content)

Describe INA § 212(h) waivers

INA § 212(h)(1)(A) Waiver

“The [Secretary] may, in his [or her] discretion, waive the application [INA §§ 212(a)(2)(A)(i)(I), (B), (D), and (E) . . . and INA § 212(a)(2)(A)(i)(II) insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that-

- the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated . . .”

Hardship is *not* an eligibility requirement for this waiver.

Must establish that the waiver should be granted as a matter of discretion.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(h)(1)(B) Waiver

- The [Secretary] may, in his discretion, waive [INA §§ 212(a)(2)(A)(i)(I), (B), (D), and (E)] and [INA § 212(a)(2)(A)(i)(II)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if- . . .
 - in the case of an immigrant who is the spouse, parent, son, or daughter of a [USC or LPR]
 - it is established . . . that the alien's denial of admission would result in extreme hardship to the [USC or LPR] spouse, parent, son, or daughter of such alien . . .



Describe INA § 212(h) Waivers

(Lesson Content)

Describe INA § 212(h) waivers

INA § 212(h)(1)(B) Waiver

“The [Secretary] may, in his discretion, waive [INA §§ 212(a)(2)(A)(i)(I), (B), (D), and (E)] and [INA § 212(a)(2)(A)(i)(II)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if- . . .

- in the case of an immigrant who is the spouse, parent, son, or daughter of a [USC or LPR]

it is established . . . that the alien's denial of admission would result in extreme hardship to the [USC or LPR] spouse, parent, son, or daughter of such alien . . .”

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(h)(1)(B) Waiver

- Two pronged analysis
 - Does extreme hardship exist?
 - If yes, should the waiver be granted or denied as a matter of discretion with extreme hardship but one factor with respect to such a discretionary analysis



Describe INA § 212(h) Waivers

(Lesson Content)

Describe INA § 212(h) waivers

INA § 212(h)(1)(B) Waiver

Can waive any of the listed ground but requires a qualifying relative.

Alien must demonstrate that s/he is the spouse, parent, son or daughter of a citizen or LPR and that extreme hardship would result to qualifying relative(s).

Waiver is discretionary.

This is a two pronged analysis.

First, the adjudicator must determine if extreme hardship exists. Second, the adjudicator must determine if the waiver should be granted or denied as a matter of discretion with extreme hardship but one factor with respect to such a discretionary analysis.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

Establishing Extreme Hardship

- "Extreme hardship" means something greater than the normal hardship to the qualifying relative.
- Common consequences of removal or denial of admission "like separation, financial difficulties, etc. are insufficient unless combined with much more extreme impacts."
- Extreme hardship exists "only in cases of great actual or prospective injury" to the qualifying relative.
- The impact of the various factors must be considered both individually and in the aggregate.



Explain Extreme Hardship

(Lesson Content)

Explain Extreme Hardship

Establishing "Extreme Hardship"

Adjudication of an INA §212(h)(1)(B) waiver, as well as certain other waivers (e.g. 212(i) and 212(a)(9)(B)(v)) requires that the alien establish "extreme hardship."

In addition to determining that the alien has established "extreme hardship," an adjudicator must balance the favorable and unfavorable factors (similar standard applied to the former INA § 212(c)) to determine whether relief should be granted as a matter of discretion and is in the best interests of the United States.

Establishing extreme hardship and eligibility for such waivers does not entitle an applicant to that relief. Once established, extreme hardship is but one favorable factor to be considered in the exercise of discretion.

"Extreme hardship" is vaguely defined but means something greater than the normal hardship to the qualifying relative. *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984).

- Common consequences of removal or denial of admission "like separation, financial difficulties, etc. in themselves are insufficient unless combined with much more extreme impacts." *Id.* at 246-47.
- Extreme hardship exists "only in cases of great actual or prospective injury" to the qualifying relative.
- The impact of the various factors must be considered both individually and in the aggregate. *Ngai*, 19 I&N Dec. at 247.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

Establishing "Extreme Hardship"

- The following factors have been considered significant, in assessing a claim of extreme hardship:
 - Significant health needs of a Qualifying Relative (QR)
 - Ability of the QR to have those needs met abroad
 - QR's family ties to U.S. Citizens/LPRs in the U.S.
 - QR's family ties to those living abroad
 - Country conditions to which the QR would return abroad
 - Financial impact of the alien's departure on the QR
 - Any other factors that may establish extreme hardship



**Explain
Extreme
Hardship**

**(Lesson
Content)**

Explain Extreme Hardship

Establishing Extreme Hardship

The following factors have been considered significant, in assessing a claim of extreme hardship:

- Significant health needs of a Qualifying Relative (QR)
- Ability of the QR to have those needs met abroad
- QR's family ties to U.S. Citizens/LPRs in the U.S.
- QR's family ties to those living abroad
- Country conditions to which the QR would return abroad
- Financial impact of the alien's departure on the QR

Any other factors that may establish extreme hardship

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

Discretion

- Requires a balancing of favorable and unfavorable factors
- Favorable factors may include:
 - Existence of extreme hardship
 - Alien's length of lawful residence in the U.S.
 - Alien's rehabilitation and remorse
 - Alien's financial or other responsibilities in the U.S.
 - Alien's legal relatives in the U.S.
 - Alien's length of residence outside the U.S. prior to entry
 - Other humanitarian factors



**Explain
Exercising
Discretion**

**(Lesson
Content)**

Explain Exercising Discretion

Discretion

Adjudication of discretionary applications and waivers requires identifying the favorable and unfavorable factors presented by the facts of the case.

Favorable factors to be considered in the exercise of discretion may include:

- Existence of extreme hardship
- Alien's length of lawful residence in the U.S.
- Alien's rehabilitation and remorse
- Alien's financial or other responsibilities in the U.S.
- Alien's legal relatives in the U.S.
- Alien's length of residence outside the U.S. prior to entry

Other humanitarian factors

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

Discretion

- Unfavorable factors may include:
 - Actual ground of inadmissibility for which waiver sought
 - Nature, severity and history of other immigration law violations.
 - Other violations of law (state, local and federal).
 - Veracity in completing immigration forms or applications.
 - History of misrepresentation and failures to disclose fully and explain any negative immigration or criminal history.
 - Inadmissibility for which no waiver is available (or any available waiver has been denied)
 - Other relevant negative factors



**Explain
Exercising
Discretion**

**(Lesson
Content)**

Explain Exercising Discretion

Discretion

Unfavorable factors to be considered in the exercise of discretion may include:

- The actual ground of inadmissibility for which a waiver is sought may be counted an adverse factor
- The nature, severity and history of any other immigration law violations
- Any other violations of law (state, local and federal)
- The alien's veracity in completing any other immigration forms or applications
- Aliens who have a history of misrepresentation
- Misrepresentations or failures to disclose fully and explain any negative immigration or criminal history
- The alien's inadmissibility on other grounds for which no waiver is available (or any available waiver has been denied). The point of this factor is that the waiver may be denied, as a matter of discretion, if granting the waiver won't actually permit the alien to immigrate.

Other relevant negative factors

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

Discretion

- A denial will:
 - Identify each favorable equity presented by the facts
 - Identify each unfavorable factor
 - Assign some decisional "weight" to each favorable and unfavorable factor, with a reason for the weight given to each
 - Consider the "cumulative" weight of the favorable and unfavorable factors, with a reason for the weight
 - Indicate the final decision on the issue of discretion



**Explain
Exercising
Discretion**

**(Lesson
Content)**

Explain Exercising Discretion

Discretion

A decision denying an application as a matter of discretion will:

- Identify, specifically, each favorable equity presented by the facts of the case
- Identify, specifically, each unfavorable factor
- Assign some decisional "weight" to each favorable and unfavorable factor, with a reason for the weight given to each
- Consider the "cumulative" weight of the favorable and unfavorable factors, with a reason for the weight

Indicate the final decision on the issue of discretion

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(h)(1)(C) Waiver

- "The [Secretary] may, in his discretion, waive [INA §§ 212(a)(2)(A)(i)(I), (B), (D), and (E)] and [INA § 212(a)(2)(A)(i)(II)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if- . . .
- the alien is a VAWA self-petitioner . . ."



Describe INA § 212(h) Waivers

(Lesson Content)

Describe INA § 212(h) waivers

INA § 212(h)(1)(C) Waiver

"The [Secretary] may, in his discretion, waive [INA §§ 212(a)(2)(A)(i)(I), (B), (D), and (E)] and [INA § 212(a)(2)(A)(i)(II)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if- . . .

- the alien is a VAWA self-petitioner . . .

A battered spouse/child or person who has suffered extreme cruelty and is eligible to self-petition may qualify for the waiver (i.e., a VAWA self-petitioner)

No requirement of rehabilitation, qualifying relative or extreme hardship for this waiver

Waiver is discretionary

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(h)(2)

- "No waiver shall be provided [to] . . . an alien who has been
- Convicted of (or who has admitted committing . . .) murder or . . . acts involving torture, or an attempt or conspiracy to commit murder or a . . . act involving torture.
- . . . previously been admitted to the [U.S.] as an [LPR] if either since the date of such admission the alien has been convicted of an aggravated felony or
- . . . has not lawfully resided continuously in the [U.S.] for a period of not less than 7 years immediately preceding the date of initiation of proceedings . . ."



Describe INA § 212(h) Waivers

(Lesson Content)

Describe INA § 212(h) waivers

INA § 212(h)(2)

"No waiver shall be provided [to] . . . an alien who has been

- convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture.
- . . . previously been admitted to the [U.S.] as an [LPR] if either since the date of such admission the alien has been convicted of an aggravated felony or
- the alien has not lawfully resided continuously in the [U.S.] for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove

the alien from the [U.S.]

- No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.”

By regulation, the authority to exercise this discretion is limited for aliens who are inadmissible based on certain crimes.

Under 8 C.F.R. §§ 212.7(d), 1212.7(d), the Attorney General will not favorably exercise discretion in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which the alien clearly demonstrates that a denial of the waiver would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien’s underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under INA 212(h)(2). 8 C.F.R. 1212.7(d). *Matter of Jean*, 23 I&N Dec. 373, 383 (BIA 2002).

Therefore, under 8 C.F.R. § 212.7(d):

- An alien inadmissible due to a conviction that is also a “violent or dangerous crime” must establish “extraordinary circumstances” to be granted a waiver under INA § 212(h)(1).
- Cases of “extraordinary circumstances” may include: National security or foreign policy considerations or exceptional and extremely unusual hardship.
- Even if “exceptional circumstances and extremely unusual hardship” exists, the severity of the offense may still warrant denial of the waiver as a matter of discretion.

The waiver is filed on the Form I-601, Application for Waiver of Grounds of Inadmissibility.

The alien in *Matter of Kanga*, 22 I&N Dec. 1206 (BIA 2000), had been found deportable for her convictions of multiple CIMTs (obtaining property by false information, withholding a credit card, larceny, forgery) and an aggravated felony, but she sought a §212(h) waiver and adjustment of status based on an approved I-130 filed by her USC husband. Additionally, the respondent had 3 USC children. The BIA remanded for the IJ to consider her §212(h) waiver.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(3)-Security and Related Grounds*

- INA § 212(a)(3)(A)(i) – Espionage, sabotage, export
- INA § 212(a)(3)(A)(ii) – Unlawful activity
- INA § 212(a)(3)(A)(iii) – Overthrow of U.S. government
- INA § 212(a)(3)(B) – Terrorist Activity
- INA § 212(a)(3)(C) – Foreign policy
- INA § 212(a)(3)(D) – Immigrant membership in totalitarian party
- INA § 212(a)(3)(E) – Nazi persecution, Genocide, Commission of Any Act of Torture or Extrajudicial Killing
- INA § 212(a)(3)(F) – Association with Terrorist Organization
- INA § 212(a)(3)(G) – Recruitment or Use of Child Soldiers

*Covered in Bars to Relief and TRIG Courses



Describe INA § 212(a)(3) – Security and Related Grounds

(Lesson Content)

Describe INA § 212(a)(3) – Security and Related Grounds

Security and Related Grounds – INA § 212(a)(3)

The following grounds of inadmissibility are covered in the Terrorist-Related Grounds of Inadmissibility and Bars to Relief courses.

INA § 212(a)(3)(A)(i) – Espionage, sabotage, export

INA § 212(a)(3)(A)(ii) – Unlawful activity

INA § 212(a)(3)(A)(iii) – Overthrow of U.S. government

INA § 212(a)(3)(B) – Terrorist Activity

INA § 212(a)(3)(C) – Foreign policy

INA § 212(a)(3)(D) – Immigrant membership in totalitarian party

INA § 212(a)(3)(E) – Nazi persecution, Genocide, Commission of Any Act of Torture or Extrajudicial Killing

INA § 212(a)(3)(F) – Association with Terrorist Organization

INA § 212(a)(3)(G) – Recruitment or Use of Child Soldiers

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(4) – Public Charge

• Statute:

• "Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the [Secretary] at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible."

• Factors to Consider:

- Age, health, family status
- Assets, resources, financial status
- Education and skills



Describe INA § 212(a)(4) – Public Charge

(Lesson Content)

Describe INA § 212(a)(4) – Public Charge
INA § 212(a)(4)-Public Charge

"Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the [Secretary] at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." INA § 212(a)(4).

The following factors are considered in determining if one is a public charge.

- Age
- Health
- Family
- Assets, resources, financial status
- Education and skills

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(4) – Public Charge

• I-864 Required For:

- Immediate relatives
- Family-based immigrants (except for battered spouses and children and widows/widowers)
- Employment-based immigrants, if a relative filed the petition or has a significant ownership interest in the company that filed the petition



Describe INA § 212(a)(4) – Public Charge

Describe INA § 212(a)(4) – Public Charge
INA § 212(a)(4)-Public Charge

Certain immigrant visa and adjustment of status applicants are inadmissible on public charge grounds, unless their sponsor has signed a legally binding Affidavit of Support (Form I-864) on their behalf.

- Required for immediate relatives under INA § 201(b)(2) and all family-based immigrants under INA § 203(a) (except for battered spouses and children and widows/widowers).
- There are several memos discussing the adjudication of Form I-864. See affidavit of support memo by Michael Aytes dated November 23, 2005 and for new rules for affidavit of support that became effective on July 21, 2006, see *Consolidation of Policy Regarding USCIS Form I-864, Affidavit of Support*, dated June 27, 2006.

An Affidavit of Support (Form I-134) may be

used to overcome inadmissibility in cases where a public charge ground of inadmissibility appears, and where the legally binding Form I-864 is not mandatory.

Public charge does not include receipt of non-cash benefits (WIC, public housing, job training, school lunch); and health benefits (Medicaid, CHIP), other than long-term nursing home. However, use of social security or temporary assistance for needy families could result in a finding of public charge. DHS/DOS consider past and current ability to work, current employment and other factors.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(4) – Public Charge

Public Charge Not Applicable To:

- Refugees seeking admission under INA § 207.
- Refugees and asylees adjusting under INA § 209
- Amerasians
- Applicants for adjustment under the Cuban Adjustment Act
- Applicants for adjustment under NACARA or HRIFA
- Special Immigrant Juveniles
- Lautenberg parolees
- Applicants for registry under INA § 249
- VAWA Self-Petitioner
- U and T nonimmigrants



**Describe INA § 212(a)(4) –
Public Charge**

**Describe INA § 212(a)(4) – Public Charge
INA § 212(a)(4)-Public Charge**

Public Charge Not Applicable to

The public charge ground of inadmissibility is inapplicable to the following aliens:

- Refugees seeking admission under INA § 207
- Refugees and asylees adjusting under INA § 209
- Amerasians
- Applicants for adjustment under the Cuban Adjustment Act
- Applicants for adjustment under NACARA or HRIFA
- Special Immigrant Juveniles
- Lautenberg parolees
- Applicants for registry under INA § 249
- VAWA Self-Petitioner

- U and T Nonimmigrants

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(5)(A) – Labor Certification

- **Statute:**
 - "Any alien who seeks to enter the [U.S.] for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified [a labor certification] . . ."
- **Waiver:** INA § 212(k)



Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants

Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants

INA § 212(a)(5)(A) – Labor Certification

“Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that- (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.” INA § 212(a)(5)(A).

Applicable to applicants seeking admission or adjustment of status.

A waiver is available under INA § 212(k).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(k) – Waiver for INA § 212(a)(5) (lack of labor certification) and INA § 212(a)(7)(A)(i) (invalid immigrant documents)

- Discretionary and requires the alien to:
 - Possess an immigrant visa
 - Be otherwise admissible
 - Prove that inadmissibility was not known to him or her, and could not have been ascertained by the exercise of reasonable diligence before departing to the U.S. or applying for admission



Describe INA § 212(k) Waivers (Lesson Content)

Describe INA § 212(k) waivers

INA § 212(k) – Waiver for INA § 212(a)(5) (lack of labor certification) and INA § 212(a)(7)(A)(i) (invalid immigrant documents)

“Any alien, inadmissible from the United States under [INA §§ 212(a)(5)(A), 212(a)(7)(A)(i) of subsection (a) of this section], who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the [Secretary] if

the [Secretary] is satisfied that inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the [U.S.] and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant's application for admission."

Waiver is discretionary and is used exclusively at the port of entry or renewed in removal proceedings. See 8 C.F.R. § 212.10; *Matter of Aurelio*, 19 I&N Dec. 458 (BIA 1987). The waiver is filed on Form I-601, Application for Waiver of Grounds of Inadmissibility.

Must be in possession of an immigrant visa and be otherwise admissible.

Alien must demonstrate that ground of inadmissibility was not known to, and could not have been ascertained by reasonable diligence, by the immigrant before departing for the United States or applying for admission.

In *Matter of Aurelio*, 19 I&N Dec. 458 (BIA 1987), the alien was charged excludable for lacking a valid immigrant visa. Her father had filed a visa petition for her in 1970, she was interviewed in 1979, and the visa issued in 1982, although her father had died in 1981. The BIA agreed with the IJ's denial of a §212(k) waiver because the applicant was not uneducated, was aware of her father's lengthy illness and death when applying for the visa, and should have ascertained in the exercise of reasonable diligence the impact of her father's death on the immigrant visa..

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(5)(B) – Unqualified Physicians

• **Statute:**

• "An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose . . . and who is coming to the [U.S.] principally to perform services as a member of the medical profession is inadmissible, unless the alien . . . has passed parts I and II of the National Board of Medical Examiners Examination . . . and (i) is competent in oral and written English."

• **Waiver:** None



Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants

Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants

INA § 212(a)(5)(B) – Unqualified Physicians

"An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date." INA § 212(a)(5)(B).

A graduate of an unaccredited medical school coming to the United States to perform principally services in the medical profession is inadmissible unless the alien passed parts I and II of the National Board of Medical Examiners Examination, and the alien must be competent in oral and written English.

There is an exception for graduates of medical school fully and permanently licensed to practice medicine in a state on January 9, 1978, and practicing medicine in that state on that date.

No waiver is available.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(5)(C) – Uncertified Foreign Health Care Workers

• Statute:

“... [A]ny alien who seeks to enter the [U.S.] for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services ...”

• Waiver: None



Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants

(Lesson Content)

Describe INA § 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants

INA § 212(a)(5)(C) – Uncertified Foreign Health Care Workers

“... [A]ny alien who seeks to enter the [U.S.] for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services ...” INA § 212(a)(5)(C).

Health-care workers are inadmissible unless certified by an accrediting agency approved by the DHS/HHS.

Health-care workers include nurses, physical therapists, occupational therapists, physician assistants and medical technicians.

No waiver is available.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(6) – Illegal Entrants and Immigration Violators

- INA § 212(a)(6)(A) – Present without admission or parole
- INA § 212(a)(6)(B) – Failed to attend INA § 240 proceedings
- INA § 212(a)(6)(C)(i) – Fraud/willful misrepresentation
- INA § 212(a)(6)(C)(ii) – False claim to U.S.C.
- INA § 212(a)(6)(D) – Stowaway
- INA § 212(a)(6)(E) – Smuggling
- INA § 212(a)(6)(F) – Civil document fraud
- INA § 212(a)(6)(G) – Student visa abuser



Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

(Lesson Content)

Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

There are 8 categories of aliens inadmissible under INA § 212(a)(6). The categories are as follows:

- INA § 212(a)(6)(A) – Present without admission or parole (PWI)
- INA § 212(a)(6)(B) – Failed to attend INA § 240 proceedings
- INA § 212(a)(6)(C)(i) – Fraud/willful misrepresentation
- INA § 212(a)(6)(C)(ii) – False claim to U.S.C.

- INA § 212(a)(6)(D) – Stowaway
- INA § 212(a)(6)(E) – Smuggling
- INA § 212(a)(6)(F) – Civil document fraud
- INA § 212(a)(6)(G) – Student visa abuser

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers.**

INA § 212(a)(6)(A) - Present Without Admission or Parole

• Statute

• "An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the [Secretary of Homeland Security] is inadmissible."

• Waiver: None but INA § 245(i) provides for possible adjustment



**Describe INA § 212(a)(6) –
Illegal Entrants
and
Immigration
Violators**

(Lesson
Content)

**Describe INA § 212(a)(6) – Illegal Entrants and
Immigration Violators**

INA § 212(a)(6)(A) - Present Without Admission
or Parole

"An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the [Secretary of Homeland Security] is inadmissible." INA § 212(a)(6)(A).

The ground of inadmissibility applies to aliens who are in the U.S. and did not undergo inspection. Examples include the following:

- Circumventing a POE
- False claim to USC status at POE because USCs are not inspected
- Irregular maritime arrivals

There is an exception under INA § 212(a)(6)(A)(ii) - Battered Spouses/Child. The exception covers self-petitioning spouses and derivative beneficiaries who were battered or subject to extreme cruelty by a spouse or parent *and* can establish there was a substantial connection between the illegal entry and the abuse. However, pursuant to a memorandum issued on April 11, 2008, a VAWA applicant is *not required* to show a connection between the illegal entry and abuse, and the ground of inadmissibility under INA § 212(a)(6)(A)(i) is waived for an alien with an approved VAWA self-petition. See Memorandum (in appendix) dated April 11, 2008, entitled "Adjustment of Status for VAWA self-petitioner who is present without inspection – *Revision of Adjudicator's Field Manual (AFM)*"

Chapter 23.5 (AFM Update AD 08-16)".

Additionally, the following aliens are not subject to INA § 212(a)(6)(A).

- Adjustment of status applicants under NACARA § 202 or HRIFA § 902
- Applicants for change of status to V nonimmigrant classification

An alien who is inadmissible under INA § 212(a)(6)(A)(i) is nonetheless eligible to apply for adjustment of status under INA § 245(i), provided that s/he otherwise meets the requirements of that section. See Memorandum dated February 19, 1997, entitled "*Request for Legal Opinion: The Impact of the 1996 Act on Section 245(i) of the Act,*" from the Office of the General Counsel of INS.

This ground of inadmissibility is most commonly referred to as "PWI" (present without inspection). PWI derives from the former ground of *deportability* – EWI (entry without inspection) – which IIRIRA eliminated in 1996.

The terms "presence" in the United States "without admission or parole" are used in the new ground of *inadmissibility* (INA § 212(a)(6)(A)(i)) rather than the old term ("entry without inspection") that defined the old ground of *deportability* (formerly INA § 241(a)(1)(B) under 1952 Act).

This ground inadmissibility does not continue after the alien has left the U.S.

There is no waiver but for adjustment purposes an alien must meet the requirements of INA § 245(i).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(6)(B) – Failure to Attend Removal Proceedings

• Statute:

• "Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's admissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible"

• Waiver: None



**Describe INA § 212(a)(6) –
Illegal Entrants
and
Immigration
Violators**

(Lesson
Content)

**Describe INA § 212(a)(6) – Illegal Entrants and
Immigration Violators**

INA § 212(a)(6)(B) – Failure to Attend Removal
Proceedings

"Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's admissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible." INA § 212(a)(6)(B).

Aliens who failed to attend removal hearings and are ordered removed *in absentia* are also barred from relief in the United States for a period of ten years from the date of scheduled departure. See INA § 212(a)(9)(A)(ii).

For this ground of inadmissibility, the departure from the United States triggers a bar for 5 years from the date of departure. This is in addition to any bars related to INA § 212(a)(9)(A) for those attempting to enter after removal.

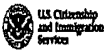
**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(6)(C)(i) – Fraud/Material Misrepresentation

• Statute:

• "Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit under this Act is inadmissible."

• Waiver: INA § 212(i)



**Describe INA § 212(a)(6) –
Illegal Entrants
and
Immigration
Violators**

(Lesson
Content)

**Describe INA § 212(a)(6) – Illegal Entrants and
Immigration Violators**

INA § 212(a)(6)(C)(i) – Fraud/Material
Misrepresentation

"Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit under this Act is inadmissible." INA § 212(a)(6)(C)(i).

The elements of fraud are as follows:

- Fraud/misrepresentation made to a U.S. Government official
- Misrepresentation is related to a material fact

-
- To obtain an immigration benefit

Materiality is a legal question of whether misrepresentation or concealment was predictably capable of affecting the official decision. A material fact is one that would shut off a line of inquiry or could influence the official decision (further investigation cut off). See *Kungys v. U.S.*, 485 U.S. 759 (1988); *Matter of N-G-*, 17 I&N Dec. 536 (BIA 1980)(Citizen of China used brother's name and identification to obtain refugee status and conceal a four year stay in Macao).

While silence alone is not a material misrepresentation, an intentional, deliberate and voluntary omission does fall under this inadmissibility ground. *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(LPR who entered as a refugee deliberately failed to reveal his employment as a Special Police officer assigned to work with the Bosnian military during the Srebrenica Massacre during the Bosnian War).

A timely retraction of a false statement or false statement relieves the alien from this inadmissibility ground. The retraction must be voluntary and prior to exposure of the misrepresentation. *Matter of M-*, 9 I&N Dec. 118 (BIA 1960).

This is a perpetual bar, however, a waiver is available under INA § 212(i).

A hypothetical the instructor may pose to the class: An alien entered Mexico in 1948, when he was 18 years of age, with a false Mexican passport obtained for him by his father. In applying for the nonresident alien Mexican border crossing card the respondent certified that his name was Fernando Chee Acevedo; that his date of birth was May 1, 1929; and that he was born in Chihuahua, Mexico. The true facts are that the respondent's name is Kai Hing Hui and that he was born on December 14, 1930 in China.

Was this misstatement material or not material?

As a citizen of China he was ineligible for a nonresident alien Mexican border crossing card, use of which is limited to Mexican nationals (8 C.F.R. § 212.6). The Board held that an alien's misrepresentation regarding his identity, place of birth, and date of birth in order to obtain a Border Crossing Card were material. *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(i) – Waiver of INA § 212(a)(6)(C)(i) (fraud and material misrepresentation)

- "The [Secretary] may, in [his or her discretion] . . . waive [INA § 212(a)(6)(C)(i)] in the case of an immigrant who is the spouse, son, or daughter of a [USC or LPR] if
- it is established . . . that the refusal of admission . . . would result in extreme hardship to the [USC or LPR] spouse or parent of such an alien or,
- in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's [USC or LPR], or qualified alien parent or child."



Describe INA § 212(i) Waivers (Lesson Content)

Describe INA § 212(i) waivers

INA § 212(i) – Waiver of INA § 212(a)(6)(C)(i) (fraud and material misrepresentation)

"The [Secretary] may, in the discretion of the [Secretary], waive [INA § 212(a)(6)(C)(i)] in the case of an immigrant who is the spouse, son, or daughter of a [USC or LPR] if

- it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the [USC or LPR] spouse or parent of such an alien or,
- in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's [USC or LPR], or qualified alien parent or child.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1)."

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(i) – Waiver of INA § 212(a)(6)(C)(i) (fraud and material misrepresentation)

Two pronged analysis

- Does extreme hardship exist?
- If yes, should the waiver be granted or denied as a matter of discretion with extreme hardship but one factor with respect to such a discretionary analysis.



**Describe INA § 212(i) Waivers
(Lesson Content)**

Describe INA § 212(i) waivers

INA § 212(i) – Waiver of INA § 212(a)(6)(C)(i) (fraud and material misrepresentation)

Alien must be the spouse, son or daughter of a U.S. citizen or LPR.

Alien must demonstrate that the refusal of his or her admission to the U.S. will result in extreme hardship to a qualifying relative.

Does not include extreme hardship to the alien's *children*. However, the effect of denial of admission on *children* is not a basis for eligibility, but may be relevant in determining whether denial of admission will impose hardship on a qualifying relative.

For VAWA cases, hardship to the alien himself or herself may be considered, as well as hardship to the alien's parent or child.

Waiver is discretionary. This is a two pronged analysis.

- First, the adjudicator must determine if extreme hardship exists.
- Second, the adjudicator must determine if the waiver should be granted or denied as a matter of discretion with extreme hardship but one factor with respect to such a discretionary analysis.

Waiver application filed on Form I-601, Application for Waiver of Grounds of Inadmissibility.

The alien in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), was convicted of possession of a false identification document with the intent to defraud the United States, which rendered him inadmissible under INA §212(a)(6)(i) and necessitated a §212(i) waiver. The BIA concluded that the following facts did not

establish extreme hardship: respondent is a 24-year-old citizen of Mexico who has resided in the United States since 1989 and was recently married in 1995. At the time of the marriage, the respondent's wife was a lawful permanent resident; she became a naturalized United States citizen in 1996. They reside with her family. Most of the respondent's family resides in Mexico. The couple have very little money. Therefore, if forced to accompany the respondent to Mexico, the respondent's wife would be unable to travel back and forth to visit her family in the United States, and would have difficulty in obtaining employment in Mexico. The BIA considered the hardship undermined due to the marriage having occurred after the initiation of removal proceedings, the wife's lack of employment, the respondent's employment as a musician in a band, and the lack of real financial ties in the United States.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(6)(C)(i)(I) – False Claim to U.S. Citizenship

• Statute:

• "Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or state law is inadmissible."

• **Applies To:** False claims after 09/30/96.

• **Waiver:** None



**Describe INA § 212(a)(6) –
Illegal Entrants and
Immigration
Violators**

(Lesson
Content)

**Describe INA § 212(a)(6) – Illegal Entrants and
Immigration Violators**

INA § 212(a)(6)(C)(ii)(I) – False Claim to U.S.
Citizenship

"Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or state law is inadmissible." INA § 212(a)(6)(C)(ii)(I).

Statute applies to false claims made *on or after* September 30, 1996 (date of enactment of IIRIRA).

False claims prior to 09/30/96 may fall under INA § 212(a)(6)(C)(i) relating to fraud or willful misrepresentation of a material fact. The false claim must have been made to a U.S. government official to procure an immigration benefit under the Act.

Waiver: False claims under INA § 212(a)(6)(C)(i)

prior 09/30/96 can be waived under INA § 212(i), but a false claim under INA § 212(a)(6)(C)(ii) after 09/30/96, cannot be waived.

INA § 212(a)(6)(C)(ii) covers false claims made to a State or Federal official, or to a private individual, for ANY State or Federal Benefit. Not limited to immigration benefits. Examples:

- False statements to obtain a passport (18 U.S.C. § 1542). *Matter of Barcenas-Barrera*, 25 I&N Dec 40 (BIA 2009)(False representation of birth in Texas on passport application is a false claim to USC).
- False claims to citizenship (18 U.S.C. § 911)
- False claims made to a private individual with respect to employment eligibility verification. This is because INA § 274A covers the verification of employment eligibility, and statements made during the I-9 process can be made to a private or a government employer. *Matter of Bett*, 26 I&N Dec. 437 (BIA 2014).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(6)(C)(i)(II)-Exception

• Statute:

• "In the case of an alien making [a false claim to U.S. citizenship], if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of an alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the [U.S.] prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible: . . ."



Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

(Lesson
Content)

Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

INA § 212(a)(6)(C)(ii)(II)-Exception

“In the case of an alien making a representation described in subclause (I) [*a false claim to U.S. citizenship*], if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of an alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of the subsection based on such representation.”

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(6)(C)(i)(I) – False Claim to U.S. Citizenship

- No waiver available but must know claim false
- “I thought I was a citizen” is affirmative defense
 - Must be established “clearly and beyond a doubt”
- Minors (<18 years) not protected against inadmissibility
 - May be able to establish lack of capacity to understand consequence of act
 - As with claim of mistaken belief, it is an affirmative defense one must prove



Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

(Lesson
Content)

Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

INA § 212(a)(6)(C)(i)(I) – False Claim to U.S.
Citizenship

No waiver is available for a false claim to United States citizenship.

DHS view is that the individual must have known the claim was false.

- “I thought I was a citizen” is an affirmative defense that the applicant must establish “clearly and beyond a doubt.”
- If false claim made while under the age of 18, the fact that one was a minor when the false claim was made does not categorically protect against this ground of inadmissibility.
- An alien who is a minor may be able to establish, however, that he or she lacked the capacity to understand the consequence of the act.
- As with claim of mistaken belief, it is an affirmative defense that the individual must prove.

*See Memo from Seth Grossman, Dep. GENCO,
False Citizenship Claims by Children: Knowledge
and Legal Capacity Element (Dec. 6, 2012).*

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(6)(C)(i) – False Claim to U.S. Citizenship

False Claims Prior to 9/30/96

- May fall under INA § 212(a)(6)(C)(i) relating to fraud or willful misrepresentation of a material fact
- Must have been made to a U.S. government official to procure an immigration benefit under the Act.
- Waiver is available under INA § 212(i) if false claim is charged under INA § 212(a)(6)(C)(i).



**Describe INA § 212(a)(6) –
Illegal Entrants
and
Immigration
Violators**

(Lesson
Content)

**Describe INA § 212(a)(6) – Illegal Entrants and
Immigration Violators**

INA § 212(a)(6)(C)(ii)(I) – False Claim to U.S.
Citizenship

False Claims Prior to 9/30/96:

A false claim to U.S. citizenship made *before* September 30, 1996, may fall under INA § 212(a)(6)(C)(i) *relating to fraud or willful misrepresentation of a material fact.*

It must have been made to a U.S. government official to procure an immigration benefit under the Act. Examples include, but are not limited to, false claims made to a State Department official to obtain a U.S. passport, or a false claim to an inspector at the POE.

A waiver is available under INA § 212(i) if false claim is charged under clause (i) of INA § 212(a)(6)(C) (willful misrepresentation).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(6)(D) – Stowaways

- Statute:
 - "Any alien who is a stowaway is inadmissible."

- Waiver: None



**Describe INA § 212(a)(6) –
Illegal Entrants
and
Immigration
Violators**

(Lesson
Content)

**Describe INA § 212(a)(6) – Illegal Entrants and
Immigration Violators**

INA § 212(a)(6)(D) – Stowaways

"Any alien who is a stowaway is inadmissible."
INA § 212(a)(6)(D) .

The alien must be a stowaway now, or on most recent attempt to enter the U.S.

Stowaways include aliens on a vessel, aircraft or commercial transportation without a ticket.

No waiver is available.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(6)(E)(i) – Alien Smugglers

• Statute:

• "Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the United States in violation of law is inadmissible."

• Waiver: INA § 212(d)(11)



Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

(Lesson
Content)

Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

INA § 212(a)(6)(E)(i) – Alien Smugglers

"Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the United States in violation of law is inadmissible." INA § 212(a)(6)(E)(i).

Elements

- Knowledge
- Violation of law
- Not necessarily for monetary or other gain.

A waiver is available at INA § 212(d)(11).

In *Guzman Martinez*, 25 I&N Dec. 845 (BIA 2012), an LPR at POE attempted to bring an undocumented juvenile into the United States in violation of law. Based on this illegal activity within the meaning of 101(a)(13)(C), officers paroled the LPR into the United States & issued an NTA charging inadmissibility under §212(a)(6)(E).

Suppose a mother seeking admission at the border untruthfully claims that her children are USC's. Since the misrepresentation did not concern herself, it is not within 212(a)(6)(C), but could sustain a smuggling charge. She could seek a waiver pursuant to 212(d)(11), unless she also attempted to smuggle her fiancé whom she later married (i.e. not a permitted family member at the time smuggled).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(6)(E)(ii)- Special Rule in the Case of Family Reunification

- Alien must have engaged in smuggling only his/her spouse, parent, son, or daughter (and no one else) prior to 5/5/88
- Alien must be Family Unity applicant (SAW or legalization cases)
- Alien is applying for visa or adjustment of status.



Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

(Lesson
Content)

Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

INA § 212(a)(6)(E)(ii)-Special Rule in the Case of Family Reunification

“Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.”

The alien must have encouraged, induced, assisted, abetted, or aided only his/her spouse, parent, son, or daughter (and no one else) to enter the U.S. in violation of the law.

This conduct must have taken place before 5/5/88.

The alien must be an “eligible immigrant” as defined at 8 C.F.R. § 236.11.

The alien must be applying for admission as an immediate relative or a family-based immigrant under INA § 203(a)(2) (including section 112 of Public Law 101-649 relating to spouses and minor children of legalized aliens) OR benefits under section 301(a) of Pub. L. No. 101-649.

Must have been physically present in the U.S. on or before the specified date: December 1, 1988, if the spouse or unmarried child of an individual who was granted status as a SAW or May 5, 1988, if the spouse or unmarried child of an individual who was granted status as a lawful temporary resident or lawful permanent resident under INA § 245A or lawful permanent residence under section 202 of IRCA.

A waiver is available under INA § 212(d)(11) under limited circumstances.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(d)(11) - Waiver for alien smuggling under INA § 212(a)(6)(E)(i)

- Limited to LPRs, immigrants, applicants for adjustment of status as immediate relatives or as preference immigrants
- Must be otherwise admissible
- Who encouraged, induced, assisted, abetted or aided *only* the alien's spouse, parent, son, or daughter (and no other individual) to enter the U.S. in violation of law
- Waiver is discretionary and is granted for humanitarian purposes, to assure family unity, or in the public interest



Describe INA § 212(d)(11) Waivers (Lesson Content)

Describe INA § 212(d)(11) waivers

INA § 212(d)(11) - Waiver for alien smuggling under INA § 212(a)(6)(E)(i)

“The [Secretary] may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive [INA § 212(a)(6)(E)(i)] in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under [INA § 211(b)] and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under [INA § 203(a)] (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.”

Limited to LPRs, immigrants, applicants for adjustment of status as immediate relatives or preference immigrants.

Must otherwise be admissible.

Limited to a lawful permanent resident who temporarily proceeded abroad voluntarily and who is otherwise admissible, or an alien seeking admission or adjustment of status as an immediate relative or as a preference immigrant under INA § 203(a) (other than paragraph (4) thereof) who encouraged, induced, assisted, abetted or aided *only* an individual who was the alien's spouse, parent, son, or daughter (and no other individual)

to enter the U.S. in violation of law.

Waiver is discretionary for humanitarian purposes, to assure family unity, or if it is otherwise in the public interest.

Filed on Form I-601, Application for Waiver of Grounds of Inadmissibility.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(6)(F) – Civil Penalty/Document Fraud

- Statute:
 - "An alien who is the subject of a final order for violation of section 274C is inadmissible."
 - Relates to aliens involved in forgery, counterfeiting, or using, accepting or receiving any falsely made immigration related document
 - Charge not currently pursued due to settlement agreement in *Walters v. Reno*
- Waiver: INA § 212(d)(12)



Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

(Lesson Content)

Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

INA § 212(a)(6)(F) – Civil Penalty/Document Fraud

"An alien who is the subject of a final order for violation of section 274C is inadmissible." INA § 212(a)(6)(F).

INA § 274C relates to forgery, counterfeiting, or using, accepting or receiving any immigration related document and an alien can be fined up to \$2000 per document.

INA § 212(a)(6)(F) applies to an alien who has been issued a final order to pay a fine for an immigration document violation.

A waiver is available in limited circumstances under INA § 212(d)(12).

Violations under this ground are rare as ICE has abandoned pursuing violations under INA § 274C due to the settlement agreement in the *Walters v. Reno* case.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(d)(12) - Waiver of INA § 212(a)(6)(F) – Civil Penalty/Document Fraud

- Violations rare
- ICE abandoned pursuing violations under INA § 274C due to the settlement agreement in the *Walters v. Reno* case



Describe INA § 212(d)(12) Waivers

(Lesson Content)

Describe INA § 212(d)(12) waivers

INA § 212(d)(12) -Waiver of INA § 212(a)(6)(F) – Civil Penalty/Document Fraud

"The [Secretary] may, in the discretion of the [Secretary] for humanitarian purposes or to assure family unity, waive application of clause (i) of [INA § 212 (a)(6)(F)] ...

- (A) in the case of an alien lawfully admitted for permanent residence who

temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under [INA § 211(b)], and

- (B) in the case of an alien seeking admission or adjustment of status under [INA §§ 201(b)(2)(A), 203(a)],
- if no previous civil money penalty was imposed against the alien under [INA § 274C] and the offense was committed solely to assist, aid, or support the alien's spouse or child (and not another individual).
- No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this paragraph."

Violations under this ground are rare as ICE has abandoned pursuing violations under INA § 274C due to the settlement agreement in the *Walters v. Reno* case.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(6)(G) - Student Visa Abuser

• Statute:

• "An alien who obtains the status of a nonimmigrant under [INA § 101(a)(15)(F)(i)] . . . and who violates a term or condition of such status under [INA § 214(m)] is inadmissible until the alien has been outside the [U.S.] for a continuous period of 5 years after the date of violation."

• Applies to: Students who attend public schools without reimbursing the school for costs.

• Waiver: None



Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violators

(Lesson Content)

Describe INA § 212(a)(6) – Illegal Entrants and Immigration Violator

INA § 212(a)(6)(G) – Student Visa Abuser

"An alien who obtains the status of a nonimmigrant under [INA § 101(a)(15)(F)(i)] . . . and who violates a term or condition of such status under [INA § 214(m)] is inadmissible until the alien has been outside the [U.S.] for a continuous period of 5 years after the date of violation." INA § 212(a)(6)(G).

Applicable to aliens who obtain F-1 status 60 days after September 30, 1996 (November 29, 1996), including aliens who extend their stay after this period.

INA § 214(m) bars F-1 student status for aliens seeking to attend public elementary school or a public adult education program. Entry to attend

public secondary school is permitted but only if the aggregate period of F-1 status does not exceed one year and the alien reimburses the school for the costs of providing the education.

An alien who initially enters to attend private school and then transfers to a public school (subject to the exception previously described) is deemed to have violated F-1 status.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(7)(A)(i)(I) – Intending immigrants

• Statute:

“... [A]ny immigrant at the time of application for admission who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required ... is inadmissible.”

• Waiver: INA § 212(k)



Describe INA § 212(a)(7) – Documentation Requirements

(Lesson Content)

Describe INA § 212(a)(7) – Documentation Requirements

INA § 212(a)(7)(A)(i)(I) – Intending immigrants

“... [A]ny immigrant at the time of application for admission who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required ... is inadmissible.” INA § 212(a)(7)(A)(i)(I).

An immigrant is “Every alien except an alien who is within one of the nonimmigrant classifications” – INA § 101(a)(15).

Towards this end, there is a presumption that every alien is an immigrant. Presumption of intending immigrant examples:

- Applying as immigrant without valid immigrant document, not eligible for any other classification
- Applying as a nonimmigrant and not eligible for any nonimmigrant classification
- Applying with expired immigrant or nonimmigrant visa

This charge is used most often for intending immigrants, even if they are properly documented as nonimmigrants.

Documents MUST match the alien's purpose.

Examples:

- Alien attempting to enter the U.S. with a Border Crossing Card (BCC) and with the intention, or evidence, that the true purpose is to work.
- F-1 student planning to go to school part-time and work full-time as a nanny.
- Any nonimmigrant planning to attend a full course of study at an *unaccredited* school.

REMEMBER – INA § 212(a)(7)(A)(i)(I) is used when there is no nonimmigrant classification for which the alien is eligible and the alien does not possess a valid immigrant visa.

A waiver is available under INA § 212(k).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(7)(A)(i)(I) – Improper Immigrant Visa Classification

• Statute:

• "...Any immigrant... whose visa has been issued without compliance with the provisions of section 203, is inadmissible"

• Waiver: INA § 212(k)



**Describe INA § 212(a)(7) –
Documentation
Requirements**

(Lesson
Content)

**Describe INA § 212(a)(7) – Documentation
Requirements**

INA § 212(a)(7)(A)(i)(II) – Improper Immigrant
Visa Classification

"...Any immigrant... whose visa has been issued without compliance with the provisions of section 203, is inadmissible" INA § 212(a)(7)(A)(i)(II).

Alien applies with an immigrant visa, but is no longer eligible for the classification indicated on his/her visa, but, is eligible for another classification.

A waiver is available under INA § 212(k).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(7)(B)(i)(I) - Nonimmigrant Without Proper Documents

• Statute:

• "Any nonimmigrant who is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period . . . is inadmissible."

• Waiver: INA § 212(d)(4)



**Describe INA § 212(a)(7) –
Documentation
Requirements**

(Lesson
Content)

**Describe INA § 212(a)(7) – Documentation
Requirements**

INA § 212(a)(7)(B)(i)(I) - Nonimmigrant Without
Proper Documents

“Any nonimmigrant who is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien’s admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period. . . . is inadmissible.” INA § 212(a)(7)(B)(i)(I).

Waiver is available under INA § 212(d)(4).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(7)(B)(i)(II) – Nonimmigrant without Valid
Nonimmigrant Visa

• Statute:

• "Any nonimmigrant who . . . is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission is inadmissible."

• Waiver: INA § 212(d)(4)



**Describe INA § 212(a)(7) –
Documentation
Requirements**

(Lesson
Content)

**Describe INA § 212(a)(7) – Documentation
Requirements**

INA § 212(a)(7)(B)(i)(II) – Nonimmigrant without
Valid Nonimmigrant Visa

“ Any nonimmigrant who . . . is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission is inadmissible.” INA § 212(a)(7)(B)(i)(II).

Applicant for admission with nonimmigrant documents and a nonimmigrant purpose which do not match, BUT the alien has established to the officer that he or she has a bona fide nonimmigrant purpose.

Examples:

- Multiple entry B-1/B-2 visa with passport not valid as long as it needs to be valid
- Applying as a B-2 with an I-20AB with the intention of attending an *accredited* school full time

Waiver is available under INA § 212(d)(4).

Describe INA § 212(d)(4) Waiver

(d)(4) Temporary admission of nonimmigrants

“Either or both of the requirements of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases, or (B) on the basis of reciprocity with respect to nationals of foreign contiguous territory or of adjacent islands and residents thereof having a common nationality with such nationals, or (C) in the case of aliens proceeding in immediate and continuous transit through the United States under contracts authorized in section 238(c).”

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(8)(B) – Draft Evaders and Deserters

• Statute:
 • “Any person who has departed from or who has remained outside the [U.S.] to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible except that this . . . shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the [U.S.] as a nonimmigrant.”

• Waiver: None



Describe INA § 212(a)(8) – Ineligible for Citizenship

(Lesson Content)

Describe INA § 212(a)(8) – Ineligible for Citizenship

INA § 212(a)(8)(A) – Immigrants Ineligible for Citizenship

“Any *immigrant* who is permanently ineligible for citizenship is inadmissible.” INA § 212(a)(8)(A).

Does not apply to nonimmigrant visa applicants or aliens applying for admission as nonimmigrants.

The phrase “ineligible to citizenship” in INA § 212(a)(8)(A) refers only to those aliens who are barred from naturalization by virtue of their evasion of military service. *In re Serano*, 651 F.2d 178 (3d Cir. 1981)(applicant was ineligible for naturalization as a result of his exemption from military service, knowingly sought under treaty with foreign country, even though local draft board never properly changed applicant’s classification from either I-A or I-H); *Gramaglia v. U.S.*, 766 F.2d 88 (2^d Cir. 1985); *Matter of Martin-Arencibia*, 13 I. & N. Dec. 166, 167 (Reg. Comm’r 1969).

Does not apply to aliens convicted of an *aggravated felony*. *Matter of Kanga*, 22 I&N Dec.

1206 (BIA 2000). Thus, such convictions do not render an alien inadmissible under INA § 212(a)(8)(A) as an alien who is permanently ineligible to citizenship. See definition of “ineligible to citizenship” at INA § 101(a)(19).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(9)(A)(i) – Prior Removals: arriving aliens and expedited removals

• **Statute:**

• “Any alien who has been ordered removed under section [235(b)(1) . . .] or at the end of proceedings under section [240 . . .] initiated upon the alien’s arrival in the [U.S.] and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.”

• **Waiver:** None



Describe INA § 212(a)(8) – Ineligible for Citizenship

(Lesson Content)

Describe INA § 212(a)(8) – Ineligible for Citizenship

INA § 212(a)(8)(B) – Draft Evaders and Deserters

“Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is inadmissible except that this . . . shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.” INA § 212(a)(8)(B).

Any alien who left the U.S. during a time of war or national emergency to avoid military service. [between 9/24/39-9/24/78]

Does not apply to nonimmigrant who left and reapplies for nonimmigrant visa.

The term “person” also applies to former USCs.

EXCEPTION: President Carter's pardon. Only for draft evaders between 8/4/64 and 3/28/73. Pres. Proc. 4483, 42 Fed. Reg. 4391 (1977).

Had to re-enter the U.S. prior to June 1, 1978.

NO exceptions for deserters.

INA §§314 and 315 expressly render military deserters, draft evaders, and aliens who sought exemption from the military based on alienage ineligible for citizenship.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(9)(A)(i) – Prior Removals: arriving aliens and expedited removals

• Statute:

• "Any alien who has been ordered removed under section [235(b)(1) . . .] or at the end of proceedings under section [240 . . .] initiated upon the alien's arrival in the [U.S.] and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

• Waiver: None



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(A)(i) – Prior Removals: arriving aliens and expedited removals

"Any alien who has been ordered removed under section [235(b)(1) . . .] or at the end of proceedings under section [240 . . .] initiated upon the alien's arrival in the [U.S.] and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible." INA § 212(a)(9)(A)(i).

Covers 2 groups of aliens:

- Aliens put into INA § 240 removal proceedings as arriving aliens (on or after 4/1/97) upon arrival at the POE and who were ordered removed under those proceedings.
- Aliens ordered removed under INA § 235(b)(1) [expedited removal].

Does not apply to aliens ordered excluded or deported before 4/1/97.

The alien is inadmissible:

- For 5 years if removed once.
- For 20 years if removed 2 or more times.
- Always (perpetual bar), if s/he is an aggravated felon (not necessarily removed as an aggravated felon).

Emphasize that no provision of §212(a)(9) applies until the alien departs the United States.

Consequently, neither an unexecuted removal order nor years of unlawful presence renders an alien inadmissible until the alien departs the

United States.

Due to the complexity of §212(a)(9), you may want to pose the following hypothetical to the class:

Alien A, a native and citizen of Country Z, entered the U.S. without inspection in 2011. He was apprehended at the U.S. border, placed in expedited removal proceedings, and removed to Country Z a few days later in 2011. While in Country Z, he married a U.S. citizen who filed a Form I-130 petition on his behalf. The Form I-130 petition, along with Alien A's immigrant visa application, were approved. It is 2015, and Alien A is seeking admission to the U.S. on his immigrant visa.

Q: Is Alien A inadmissible under INA § 212(a)(9)(A)(i)?

A: Yes; (1) he was ordered removed under expedited removal proceedings pursuant to INA § 235(b)(1), and (2) he is seeking admission within 5 years of his removal.

Note: In this case, the consular officer should not have approved Alien A's immigrant visa application without an approved Form I-212.

Rather than waiting until 2016 to seek admission, Alien A could have applied for consent to reapply for admission, on the Form I-212, before the 5-year period is up. If USCIS had approved the Form I-212 in conjunction with the immigrant visa application, then Alien A would not be inadmissible. DHS also has authority, however, to grant consent to reapply in conjunction with an application for admission at a port-of-entry. 8 C.F.R. § 212.2(e). CBP has jurisdiction over an application for consent to reapply only in the case of an alien seeking admission as a nonimmigrant. Form I-212 Instructions, p. 7 (3/12/2014 edition). Thus, USCIS would have jurisdiction in the case of an immigrant visa holder at the port-of-entry. If approved, the approval is retroactive to the date he embarked outside the U.S. and triggered the 5-year bar. INA § 212(a)(9)(A)(iii); 8 C.F.R. § 212.2(i).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(9)(A)(ii) – Other prior removals

• **Statute:**

• "Any alien not described in clause (i) who-(I) has been ordered removed under [240] or any other provision of law, or (II) departed the [U.S.] while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible."

• **Waiver:** None



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(A)(ii) – Other prior removals

“Any alien not described in clause (i) who-(I) has been ordered removed under [240] or any other provision of law, or (II) departed the [U.S.] while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.” INA § 212(a)(9)(A)(ii).

Alien was ordered removed under INA § 240 or any other provision of law.

Proceedings were initiated on or after 4/1/97, but not upon arrival at the POE.

Alien was physically removed by the government or left while under an outstanding order of removal (self-removal or self-deport).

“Any other provision of law”

- May have been removed before 4/1/97 under the pre-IIRIRA provisions of INA § 236 or INA § 242.
- May have been a VWP removal under INA § 217(b). [Note: A VWP refusal is not the same as a VWP removal.]
- May have been removed under ANY OTHER SECTION OF LAW.

The alien is inadmissible:

- For 10 years if removed once.
- For 20 years if removed 2 or more times.
- Always, if s/he is an aggravated felon (not necessarily removed as an aggravated felon).

To illustrate this provision, consider the following hypotheticals:

1. Alien B, a native and citizen of Country Y, was admitted to the U.S. on a B-2 visitor visa in 2000. She overstayed her nonimmigrant admission and was placed in INA § 240 proceedings. In 2004, she was ordered removed to Country Y. Rather than leaving, however, she remained in the U.S. and married a U.S. citizen. Her U.S. citizen spouse filed a Form I-130 petition on her behalf which was approved. In 2013, Alien B returned to Country Y. While in Country Y, she applied for and was granted an immigrant visa. It is 2015, and Alien B is seeking admission to the U.S. on her immigrant visa.

Q: Is Alien B inadmissible under INA § 212(a)(9)(A)(ii)?

A: Yes; (1) she was ordered removed under INA § 240 proceedings initiated on or after 4/1/1997 and not upon arrival at the POE; (2) she departed the U.S. while the order was outstanding, and (3) she is seeking admission within 10 years of her departure.

Note: In this case, the consular officer should not have approved Alien B's immigrant visa application without an approved Form I-212. Rather than waiting until 2023 to seek

admission, Alien B could apply for consent to reapply for admission, on the Form I-212, before the 10-year period is up. If USCIS approves the Form I-212, the approval is retroactive to the date she embarked outside the U.S. and triggered the 10-year bar. INA § 212(a)(9)(A)(iii); 8 C.F.R. § 212.2(i).

2. Same facts as above, except that Alien B has remained in the U.S. the entire time and, instead of applying for an immigrant visa, she filed an application for adjustment of status in 2015.

Q: Is Alien B inadmissible under INA § 212(a)(9)(A)(ii)?

A: No; she is not inadmissible under INA § 212(a)(9)(A)(ii) because her removal order has not been executed. It is the execution of the removal order that triggers the 10-year bar. Note: Because Alien B is in removal proceedings and is not an arriving alien, USCIS does not have jurisdiction to adjudicate her adjustment application. Jurisdiction to adjudicate the adjustment application lies exclusively with the Immigration Judge. 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(1).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(9)(A)(ii) - Exception

• Statute:

- "Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the [U.S.] or attempt to be admitted from foreign contiguous territory, the [Secretary] has consented to the alien's reapplying for admission."

• Form:

- Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212)



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(A)(iii)-Exception

"Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the [U.S.] or attempt to be admitted from foreign contiguous territory, the [Secretary] has consented to the alien's reapplying for admission." INA § 212(a)(9)(A)(iii).

INA §§ 212(a)(9)(A)(i) and 212(a)(9)(A)(ii) do

not apply if the alien has received consent to reapply for admission via the filing and receipt of an approved Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212).

A simple INA 212(a)(9)(A) hypothetical to pose to the students:

- 1990: nonimmigrant convicted of theft & receives 1 year sentence;
- 2001: Alien ordered removed as an aggravated felon & he departs;
- 2005: Alien from outside U.S. requests permission to reapply to enter. Alien has approved I-130 based on marriage to USC.
- Can alien receive permission to reapply? Could alien qualify for adjustment of status?

Answer: Yes, could receive discretionary approval pursuant to INA §212(a)(9)(iii). To adjust, would need §212(h) waiver. *Matter of Michel*, 21 I&N Dec 1101 (BIA 1998).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(9)(B)(i)(I) – 3 Year Bar

• Statute:

"Any alien (other than an alien lawfully admitted for permanent residence) who . . . was unlawfully present in the [U.S.] for a period of more than 180 days but less than 1 year, voluntarily departed the [U.S.] (whether or not pursuant to section [244(e)] prior to the commencement of proceedings under section [235(b)(1)] . . . or section [240], and again seeks admission within 3 years of the date of such alien's departure or removal . . . is inadmissible."

• Waiver: INA § 212(a)(9)(B)(v)



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson
Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(B)(i)(I) – 3 Year Bar

"Any alien (other than an alien lawfully admitted for permanent residence) who . . . was unlawfully present in the [U.S.] for a period of more than 180 days but less than 1 year, voluntarily departed the [U.S.] (whether or not pursuant to section [244(e)] prior to the commencement of proceedings under section [235(b)(1)] . . . or section [240], and again seeks admission within 3 years of the date of such alien's departure or removal . . . is inadmissible." INA § 212(a)(9)(B)(i)(I).

The alien must have accrued more than 180 days, but less than 1 year of UP.

The alien must have left the U.S. voluntarily and applied for a visa or for admission within 3 years of the date of departure.

The departure must have been made before proceedings were commenced under INA § 235(b)(1) - [expedited removal] or INA § 240 [removal proceedings created by IIRIRA]. If the departure takes place during or after proceedings, the bar does not apply.

A formal Voluntary Departure (VD) order is not needed for the departure to be considered voluntary.

A waiver is available under INA § 212(a)(9)(B)(v).

Here are three hypotheticals relating to INA §212(a)(9)(B) and one relating to INA §212(a)(9)(A):

1. Alien EWIs after 4/1/1997, remains unlawfully present for 181 days, then NTA issues, and at the Master Calendar requests voluntary departure, which IJ grants & alien departs U.S. on day 200.

Q: Is alien inadmissible?

A: No. Why not? §212(a)(9)(B) only triggers after 180 days if alien departs prior to commencement of proceedings. By waiting until after proceedings commenced, this alien is not inadmissible under (9)(B)(i)(I).

2. Alien C, a native and citizen of Country X, was admitted to the U.S. on a B-2 visitor visa in 1999. He remained in the U.S. beyond the expiration of his nonimmigrant admission in 2000. In 2004, he became the beneficiary of an approved Form I-140 petition with a priority date of April 27, 2001. That same year, he properly filed an application to adjust his status pursuant to INA § 245(i). His

application was prima facie approvable when filed, but it was held in abeyance because a visa number was not yet available. In the meantime, Alien C applied for and obtained an advance parole document so that he could return to Country X to attend to his aging parents. His request was granted, and he traveled to Country X and back on several occasions between 2004 and 2006, returning each time in accordance with the terms of his advance parole document. In 2006, Alien C returned from Country X for the last time and was paroled into the U.S. A visa number has become available, and you are adjudicating his adjustment application.

Q: Is Alien C inadmissible under INA § 212(a)(9)(B)?

A: No. Alien C was unlawfully present in the U.S. for more than one year (from the time his nonimmigrant admission expired in 2000 until he properly filed his adjustment application in 2004). However, under the BIA's decision in *Matter of Arrabally*, 25 I&N Dec. 771 (BIA 2012), his multiple exits from the U.S. between 2004 and 2006 pursuant to an advance parole document did not constitute "departures" within the meaning of INA § 212(a)(9)(B). In the absence of a removal or departure from the U.S. subsequent to a period of unlawful presence, INA § 212(a)(9)(B) does not apply. The facts of this hypothetical come from the *Matter of Arrabally* decision, where the BIA held that the respondents were not inadmissible under INA § 212(a)(9)(B) or ineligible for INA § 245(i) adjustment on that basis.

Note: This case presents a good opportunity to highlight the distinction between unlawful presence and unlawful status. From the time his nonimmigrant admission expired in 2000 until he was paroled into the U.S. at least 4 years later,

Alien C was not in a lawful immigration status as defined in 8 C.F.R. § 245.1(d)(1). If he were applying to adjust under INA § 245(a), he would be barred by INA § 245(c)(2) for failing to maintain continuously a lawful status since entry into the U.S., as he is not an immediate relative and does not qualify for the other exceptions. He would also be barred by INA § 245(c)(7) for seeking adjustment in an employment-based category while not in a lawful nonimmigrant status. In this case, however, he is seeking to adjust under INA § 245(i), which waives the bars in INA § 245(c). Thus, as long as he is INA § 245(i)-eligible, he is not subject to the bars in INA §245(c).

3. Alien D, a native and citizen of Country W, entered the U.S. without inspection in 1998.

In 2001, he was granted TPS. He married a U.S. citizen in 2010. In 2014, Alien D applied for an advance parole document and his request was approved. He traveled to Country W using the advance parole document, and he was paroled into the U.S. at the end of 2014. In 2015, his U.S. citizen spouse filed a Form I-130 petition on his behalf, and he concurrently filed an application for adjustment of status.

Q: Is Alien D inadmissible under INA § 212(a)(9)(B)?

A: No. Alien D was unlawfully present in the U.S. for more than one year (from his 1998 entry without inspection until he was granted TPS in 2001). However, under the BIA's *Matter of Arrabally* decision, his exit from the U.S. in 2014 pursuant to an advance parole document did not constitute a "departure" within the meaning of INA § 212(a)(9)(B). In the absence of a removal or departure from the U.S. subsequent to a period of unlawful presence, INA § 212(a)(9)(B)

does not apply.

4. Same facts as above, except that Alien D was ordered removed in absentia in 1999.

Q: Is Alien D inadmissible under INA § 212(a)(9)(A)?

A: This remains an open question. If you have a case involving a TPS grantee with an order of removal who subsequently traveled on advance parole and is seeking adjustment of status, please bring it to the attention of OCC.

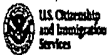
Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(9)(B)(i)(II) – 10 Year Bar

• Statute:

• "Any alien (other than an alien lawfully admitted for permanent residence) who . . . has been unlawfully present in the [U.S.] for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the [U.S.] is inadmissible."

• Waiver: INA § 212(a)(9)(B)(v)



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(B)(i)(II) – 10 Year Bar

"Any alien (other than an alien lawfully admitted for permanent residence) who . . . has been unlawfully present in the [U.S.] for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the [U.S.], is inadmissible." INA § 212(a)(9)(B)(i)(II).

The alien must have accrued 1 year or more of UP.

The alien must have left or have been removed and apply for a visa or for admission within 10 years of the date of departure or removal.

It does not matter whether the alien left before, during, or after the commencement of removal proceedings.

Waiver available under INA § 212(a)(9)(B)(v).

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA §§ 212(a)(9)(B)(i)(I) and (II)

- 3 and 10 year bars to admission, depending on the period of UP
- The alien's departure from the U.S. triggers the bar
- Leaving the U.S. under a grant of advance parole is not a departure that triggers INA § 212(a)(9)(B) inadmissibility
- The clock started running 4/1/97
- UP accrued before 4/1/97 does not count
- UP is not counted in the aggregate



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA §§ 212(a)(9)(B)(i)(I) and (II)

3 and 10 year bars to admission, depending on the period of unlawful presence.

The alien's departure from the United States triggers the bar.

Leaving the United States under a grant of advance parole is **not** a departure that triggers INA § 212(a)(9)(B) inadmissibility, *Matter of Arrabally and Matter of Yerrabally*, 25 I&N Dec. 771 (BIA 2012)].

The clock started running 4/1/97. UP accrued before 4/1/97 does not count.

UP is not counted in the aggregate.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

What is unlawful presence?

- Statute:
 - "[A]n alien is deemed to be unlawfully present in the [U.S.] if the alien is present in the [U.S.] after the expiration of the period of stay authorized by the [Secretary] or is present in the [U.S.] without being admitted or paroled." INA § 212(a)(9)(B)(i)
- Includes aliens in violation of status



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

What is unlawful presence?

"[A]n alien is deemed to be unlawfully present in the [U.S.] if the alien is present in the [U.S.] after the expiration of the period of stay authorized by the [Secretary] or is present in the [U.S.] without being admitted or paroled." INA § 212(a)(9)(B)(ii).

Per INA § 212(a)(9)(B)(ii), an alien is considered unlawfully present if s/he is in the U.S. after the expiration of the period of stay authorized by the Secretary], or is present in the U.S. without being admitted or paroled. Includes aliens in violation of status.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

How is UP counted for nonimmigrants?

- "Date certain" NIV holders accrue UP as of the date the I-94 expires
- "Date certain" NIV holders accrue UP before the I-94 expires if USCIS or an IJ finds a status violation
- NIV holders admitted D/S accrue UP on date USCIS issues a denial decision which contains a finding of a status violation while adjudicating a request for another immigration benefit
- NIV holders begin accruing UP on the date that the IJ issues an order finding a status violation in removal proceedings



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

How is UP counted for nonimmigrants?

Depends on whether the alien was admitted for a specific date or for duration of status (D/S).

- "Date certain" nonimmigrant visa holders accrue UP as of the date the I-94 expires.
- Date certain nonimmigrant visa holders accrue UP before the I-94 expires if USCIS or an IJ finds a status violation.
- Nonimmigrants admitted D/S begin accruing UP either on the date that USCIS issues a denial which contains a finding of a status violation while adjudicating a request for another immigration benefit, or on the date that the IJ issues an order finding a status violation in removal proceedings.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(9)(B)(i) – Statutory Exceptions

Exceptions:

- Minors (under 18 years of age)
- Bona fide asylum applicants
- Aliens in U.S. with pending I-730
- Family unity beneficiaries under Immigration Act of 1990
- Certain battered spouses, parents and children
- Victims of trafficking in persons
- Nonimmigrants whose cases are tolled



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(B)(iii) – Statutory Exceptions

Aliens present in unlawful status who do not accrue unlawful presence by statute and are considered to be in an authorized status:

- Minors (under 18 years of age)
- Bona fide asylum applicants (including children aging out and dependents of asylum applicants) unless alien is employed without authorization
- Aliens physically present in the U.S. with a Form I-730 pending
- Family unity beneficiaries under the Immigration Act of 1990

- Certain battered spouses, parents and children
- Victims of severe forms of trafficking in persons, if the trafficking was at least one central reason for the alien's unlawful presence in the United States.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(9)(B)(iv) – Tolling period (applies to 3 year bar only)

- Aliens with timely filed applications for Extensions of Stay or Change of Status
 - Must be non-frivolous [not filed for an improper purpose]
 - No unauthorized employment
 - No accrual of UP for a period of 120 days
 - Tolling continues until date of the USCIS decision



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(B)(iv) – Tolling period (applies to 3 year bar only)

“In the case of an alien who-(I) has been lawfully admitted or paroled into the United States, (II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and (III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.” INA § 212(a)(9)(B)(iv).

Applies to aliens with timely filed applications for an Extension of Stay (EOS) or Change of Status (COS).

- The application must be non-frivolous [not filed for an improper purpose]
- The alien must not engage in unauthorized employment
- Aliens will not accrue UP for a period of 120 days
- Tolling continues until date of the USCIS decision
- “Tolling” means “to stop the running of” time. No UP will accrue during the tolling

period.

- Per USCIS policy, nonimmigrants seeking an extension of stay or change of status will be considered to be in authorized stay until their applications are decided in prolonged decisions by USCIS. Nonimmigrants must remain in compliance with statutory filing requirements.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

When does an alien accrue UP?

- USCIS will consider certain periods of time to be "a stay authorized by the Attorney General/Secretary" and not deemed a period of unlawful presence
- A "stay authorized by the Attorney General/Secretary" could be the result of the alien's lawful status, a statutory exception, or USCIS policy



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

When does an alien accrue UP?

USCIS will consider certain periods of time to be "a stay authorized by the Attorney General/Secretary" and will therefore not be deemed to be periods of unlawful presence for INA § 212(a)(9)(B) purposes.

A "stay authorized by the Attorney General/Secretary" could be the result of the alien's lawful status, a statutory exception, or USCIS policy.

All of these situations are discussed in depth in chapter 40.9 of the Adjudicator's Field Manual.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

Classes of Aliens in Authorized Status

- Lawful permanent residents, including Conditional Permanent Residents
- Lawful temporary residents (INA § 245A)
- Conditional permanent residents (INA §§ 216; 216A)
- Aliens granted Cancellation of Removal or Suspension of Deportation
- Lawful nonimmigrants
- Aliens in refugee status
- Aliens granted asylum
- Aliens granted Temporary Protected Status (TPS)
- Aliens present as parolees



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

Classes of Aliens in Authorized Status

Aliens present in one of the following categories are considered to be in an authorized status:

- Lawful permanent residents
- Lawful temporary residents (INA § 245A)
- Conditional permanent residents (INA §§ 216; 216A)
- Aliens granted Cancellation of Removal or Suspension of Deportation

- Lawful nonimmigrants
- Aliens in refugee status
- Aliens granted asylum
- Aliens granted Temporary Protected Status (TPS)
- Aliens present as parolees

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

Policy Exceptions to the Accrual of UP

- Aliens with properly filed pending applications for Adjustment of Status or Registry
- Nonimmigrants with pending requests for EOS or COS ("tolling") (beyond 120 days and under INA §§ 212(a)(9)(B)(i)(II) & (C)(i)(I))
- Nonimmigrants with pending requests for EOS or COS who depart the U.S. during the pendency of the request
- Nonimmigrants with approved EOS or COS requests
- Aliens with pending legalization, LIFE legalization or SAW applications



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

Policy Exceptions to the Accrual of UP

Aliens present in unlawful status who do not accrue unlawful presence by virtue of USCIS policy for purposes of INA §§ 212(a)(9)(B); (C)(i)(I) and are considered to be in an authorized status:

- Aliens with properly filed pending applications for adjustment of status or registry (INA §§ 209; 245; 245(i); 249; Cuban Haitian Adjustment § 202; NACARA § 202(b); HRIFA § 902)
- Nonimmigrants with pending requests for extension of status (EOS) or change of status (COS) ("tolling") (beyond 120 days and under INA §§ 212(a)(9)(B)(i)(II) & (C)(i)(I))
- Nonimmigrants with pending requests for extension of status (EOS) or change of status (COS) who depart the U.S. during the pendency of the request
- Nonimmigrants whose request for extension of status (EOS) or change of status (COS) was approved
- Aliens with pending legalization, LIFE legalization or SAW applications

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

Policy Exceptions to the Accrual of UP

- Aliens granted family unity under the LIFE Act
- Aliens with pending TPS applications
- Aliens granted voluntary departure pursuant to INA § 240B
- Aliens granted a stay of removal
- Aliens granted deferred action, including DACA



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence
(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

Policy Exceptions to the Accrual of UP

- Aliens granted family unity under the LIFE Act
- Aliens with pending TPS applications
- Aliens granted voluntary departure pursuant to INA § 240B
- Aliens granted a stay of removal
- Aliens granted deferred action, including DACA

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

Policy Exceptions to the Accrual of UP

- Aliens granted withholding or deferral of removal under CAT
- Aliens granted withholding of removal or deportation
- Aliens granted Deferred Enforced Departure
- Aliens granted satisfactory departure under 8 C.F.R. § 217.3



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence
(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

- Aliens granted withholding or deferral of removal under the Convention Against Torture
- Aliens granted withholding of removal or deportation
- Aliens granted deferred enforced departure (DED)
- Aliens granted satisfactory departure under 8 C.F.R. § 217.3

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(9)(B)(v) - Waiver of INA § 212(a)(9)(B)(i) for 3 and 10 year bars

- "The [Secretary] has sole discretion to waive . . . in the case of an immigrant who is the spouse or son or daughter of a [USC or LPR], if it is established to the satisfaction of the [Secretary]
- that the refusal of admission to such . . . alien would result in extreme hardship to the [USC or LPR] spouse or parent of such alien



Describe INA § 212(a)(9)(b)(v) Waivers
(Lesson Content)

Describe INA § 212(a)(9)(B)(v) Waivers

INA § 212(a)(9)(B)(v) - Waiver of INA § 212(a)(9)(B)(i) for 3 and 10 year bars

"The [Secretary] has sole discretion to waive . . . in the case of an immigrant who is the spouse or son or daughter of a [USC or LPR], if it is established to the satisfaction of the [Secretary] . . .

- that the refusal of admission to such . . . alien would result in extreme hardship to

the [USC or LPR] spouse or parent of such alien.

- No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.”

Waives 3 and 10 year bars.

Alien must have a qualifying relative: U.S. Citizen/LPR spouse or parent.

Alien must establish that refusal of alien’s admission would result in extreme hardship to his/her U.S. Citizen/LPR spouse or parent (hardship to alien’s child(ren) does not count).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(9)(B)(v) - Waiver of INA § 212(a)(9)(B)(i) for 3 and 10 year bars

- Two pronged analysis
- Does extreme hardship exist?
- If yes, should the waiver be granted or denied as a matter of discretion with extreme hardship but one factor with respect to such a discretionary analysis.



Describe INA § 212(a)(9)(b)(v) Waivers

(Lesson Content)

Describe INA § 212(a)(9)(B)(v) Waivers

INA § 212(a)(9)(B)(v) - Waiver of INA § 212(a)(9)(B)(i) for 3 and 10 year bars

Waiver is discretionary. This is a two pronged analysis.

- First, the adjudicator must determine if extreme hardship exists.
- Second, the adjudicator must determine if the waiver should be granted or denied as a matter of discretion with extreme hardship but one factor with respect to such a discretionary analysis.

Waiver application is filed on Form I-601, Application for Waiver of Grounds of Inadmissibility.

Effective March 4, 2013, Form I-601A, Application for Provisional Unlawful Presence Waiver, allows certain Immediate Relatives to apply for this waiver before departing the United States to attend their immigrant visa interviews.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(9)(C)(i) – Prior Violations

• Statute:

• "Any alien who . . . has been unlawfully present in the United States for an aggregate period of more than 1 year . . . , and who enters or attempts to reenter the United States without being admitted is inadmissible."

• Waiver: None



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(C)(i)(I) – Prior Violations

"Any alien who . . . has been unlawfully present in the United States for an aggregate period of more than 1 year . . . , and who enters or attempts to reenter the United States without being admitted is inadmissible." INA § 212(a)(9)(C)(i)(I).

The alien must have accrued more than 1 year of UP.

- No UP before 4/1/97 counts.
- UP is counted IN THE AGGREGATE.
- The alien must have entered illegally or attempted to enter illegally on or after 4/2/98, which would have been the first date on which an alien could have accrued one year of unlawful presence and subsequently reentered or attempted to reenter.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(9)(C)(i)(II) – Aliens Who Enter Illegally After Removal

• Statute:

• "Any alien who . . . has been ordered removed under section [235(b)(1)] . . . , section [240] . . . , or any other provision of law, and who enters or attempts to reenter the [U.S.] without being admitted is inadmissible."

• Waiver: None



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(C)(i)(II) – Aliens Who Enter Illegally After Removal

"Any alien who . . . has been ordered removed under section [235(b)(1)] . . . , section [240] . . . , or any other provision of law, and who enters or attempts to reenter the [U.S.] without being admitted is inadmissible." INA § 212(a)(9)(C)(i)(II).

The alien must have been removed.

The removal may have been under INA §§ 235(b)(1), 240 or any other provision.

The removal may have occurred before, on, or after 4/1/97.

The illegal entry (or attempted illegal entry) must have occurred on or after 4/1/97.

Here are four hypotheticals illustrating INA 212(a)(9)(C):

1. Alien E, a native and citizen of Country V, entered the U.S. without inspection in 1987. In 1997, he married a U.S. citizen. In 1998, he was apprehended by law enforcement authorities, placed in INA § 240 proceedings, and removed to Country V. In 2000, he reentered the U.S. without inspection. In April 2001, his U.S. citizen wife filed a Form I-130 petition on his behalf, which was approved in 2002. Later in 2002, Alien E filed an application to adjust his status pursuant to INA § 245(i).

Q: Is Alien E inadmissible under INA § 212(a)(9)(C)(i)(II)?

A: Yes; (1) he was removed from the U.S. and (2) he returned without admission on or after 4/1/1997.

2. Same facts as # 1, except that Alien E was removed in 1996.

Q. Is Alien E inadmissible under INA § 212(a)(9)(C)(i)(II)?

A: Yes. A removal under "any provision of law" can be the basis for inadmissibility under INA § 212(a)(9)(C)(i)(II), so long as the return without admission took place on or after 4/1/1997.

3. Same facts as # 1, except that Alien E was removed in 1996, and never returned without admission until 2000.

Q. Is Alien E inadmissible under INA § 212(a)(9)(C)(i)(I) in addition to INA § 212(a)(9)(C)(i)(II)?

A. No. In determining inadmissibility under INA § 212(a)(9)(C)(i)(I), both the unlawful presence and the unlawful return must have taken place on or after 4/1/1997.

Note: Alien E would still be inadmissible under INA § 212(a)(9)(C)(i)(II), since removal under any provision of law supports a finding of inadmissibility if the alien returned without admission on or after 4/1/1997.

4. Same facts as # 1, except that while Alien E was in Country V, he filed a Form I-212. USCIS approved his Form I-212 in 2000, a few days prior to his reentry without inspection.

Q: Is Alien E inadmissible under INA § 212(a)(9)(C)(i)(II)?

A: Yes; he is inadmissible under INA § 212(a)(9)(C)(i)(II) for the reasons explained above; he was removed from the U.S. and he reentered without inspection. The approval of his Form I-212 permitted him to next seek admission to the U.S. without invoking INA § 212(a)(9)(A). A grant of consent to reapply under INA § 212(a)(9)(A) only means he could have returned lawfully; it does not give permission to return without admission. By reentering without admission, however, he made himself inadmissible under INA § 212(a)(9)(C)(i)(II), as well as INA § 212(a)(9)(A). The fact that he had an approved Form I-212 prior to his reentry without inspection did not exempt him from INA § 212(a)(9)(C)(i)(II), because he did not meet the remaining requirements of the exception: he did not wait outside the U.S. for 10 years since his departure and he did not apply for admission to the U.S.

The facts of this hypothetical come from the BIA's 2006 decision in *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). In that case, the BIA held: "Although the respondent obtained permission to reapply for admission after removal in 2000, such permission merely authorized him to

seek admission without regard to the otherwise-applicable ground of inadmissibility set forth at INA 212(a)(9)(A)(ii). It did not authorize him to be admitted in fact or to enter without admission . . . Because the respondent's request for permission to reapply for admission was made less than 10 years after he departed the United States in 1998, it could have no effect on his inadmissibility under section 212(a)(9)(C)(i)(II)." *Matter of Torres-Garcia*, 23 I&N Dec. at 872-73.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(9)(C)(i)-Exception

• Statute:

- "Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the [U.S.] or attempt to be readmitted from a foreign contiguous territory, the Secretary . . . has consented to the alien's reapplying for admission."



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence (Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(C)(ii)-Exception

"Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the [U.S.] or attempt to be readmitted from a foreign contiguous territory, the Secretary . . . has consented to the alien's reapplying for admission." INA § 212(a)(9)(C)(ii).

Clause (i) does not apply if the alien waits more than 10 years after last departure from the U.S. **before seeking admission, and** has received consent to reapply for admission from outside the U.S.

Application for consent to reapply for admission is filed on the Form I-212 and must apply from outside the U.S. prior to attempting to be readmitted to the U.S.

Unlike INA § 212(a)(9)(A)(iii), an alien who is inadmissible under INA § 212(a)(9)(C)(i) may not apply for permission to reapply for admission until 10 years have passed since the last departure. Once the 10 years have passed, the alien may file the Form I-212, and, at that point, it is a discretionary application. In other words, there is no waiver of the 10-year mandatory waiting period prior to filing the Form I-212.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(9)(C)(i) - VAWA Waiver

• Statute:

• The Secretary . . . may waive the application of clause (i) in the case of . . . a VAWA self-petitioner if there is a connection between- (I) the alien's battering or subjection to extreme cruelty; and (II) the alien's removal, departure from the [U.S.], reentry or reentries into the [U.S.]; or attempted reentry into the [U.S.]



Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

(Lesson Content)

Describe INA § 212(a)(9) – Previously Removed and Unlawful Presence

INA § 212(a)(9)(C)(iii) - VAWA Waiver

“The Secretary . . . may waive the application of clause (i) in the case of . . . a VAWA self-petitioner if there is a connection between- (I) the alien's battering or subjection to extreme cruelty; and (II) the alien's removal, departure from the [U.S.], reentry or reentries into the [U.S.]; or attempted reentry into the [U.S.]” INA § 212(a)(9)(C)(iii).

Hardship is not required.

Must be a connection (note: not “substantial connection” as in INA § 212(a)(9)(B) cases) between the abuse and the alien’s removal, departure, reentry or attempted reentry into the U.S. The 10 year absence requirement in INA §212(a)(9)(C)(ii) does not apply.

Section 212(a)(9) is a particularly complex inadmissibility ground. To ensure understanding, here are some additional hypotheticals to ask the class:

1. 1991: Alien EWIs.
1996: alien receives removal order and is physically removed.
1998: Alien EWIs again.
2010: Alien receives TPS and requests advanced parole, which is granted.
2011: Alien departs U.S. and reenters on advanced parole.
Alien now seeks adjustment of status based upon an approved I-130 filed by a USC spouse.

Is this alien inadmissible and, if so, can he qualify for a waiver?

Answer: §212(a)(9)(A) does not apply because the removal proceedings were initiated prior to 4/1/1997.

§212(a)(9)(B)-Alien has been unlawfully present for more than 1 year after 4/1/1997, but his departure was pursuant to advanced parole and under *Matter of Arrabally*, 25 I&N Dec. 771 (BIA 2012), §212(a)(9)(B) was not triggered upon his departure.

§212(a)(9)(C) - The alien is inadmissible under §212(a)(9)(C) because he has been removed (under any provision at any time) and he illegally re-entered after 4/1/1997, i.e. his EWI in 1998. This alien cannot apply for a waiver until he has waited outside the United States for at least 10 years and received consent to reapply for admission through an approved I-212. *Arrabally* only relieves an alien who departs and reenters on advance parole from triggering §212(a)(9)(B); and not for purposes of triggering inadmissibility under (9)(A) and (C).

2. INA (a)(9)(B), (C) hypothetical.

Joe wants to be an F-1 student, and is currently outside the U.S. He admits to entering U.S. without inspection 3 times, for 5-month periods, then leaving. Is he inadmissible under 212(a)(9)?

Answer: No. Under 212(a)(9)(B), do not aggregate ULP. So the 3 visits of 5 months each did not trigger this bar. Under 212(a)(9)(C), the ULP is aggregate, but this ground isn't triggered until he returns for a 4th visit (i.e. entry after 1 year ULP). Coming once for 8 months would trigger 3 year bar of 212(a)(9)(B), but could avoid if put into removal proceedings and left under voluntary departure

Same facts as #4, but on one occasion, Joe helped his brother enter U.S. unlawfully.

Answer: Alien smuggling under 212(a)(6)(E)—helping brother—no exception for siblings in §212(d)(11) waiver.

He could apply for a nonimmigrant waiver §212(d)(3), since he wants to be a nonimmigrant student.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(10)(A) – Immigrant Polygamist

• Statute:

- "Any immigrant who is coming to the United States to practice polygamy is inadmissible."

• Waiver: None



Describe INA § 212(a)(10) – Miscellaneous

(Lesson Content)

Describe INA § 212(a)(10) – Miscellaneous

INA § 212(a)(10)(A) – Immigrant Polygamist

"Any *immigrant* who is coming to the United States to *practice* polygamy is inadmissible." INA § 212(a)(10)(A).

Applies only to immigrants and adjustment of status applicants. Does not apply to nonimmigrants.

Must be currently practicing polygamy.

Past activities do not form a basis for this charge, although they can be considered in determining the person's intent upon coming to the U.S.

No waiver is available.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(10)(B) – Guardian/Helpless Alien

• Statute:

- "Any alien who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy... and whose protection or guardianship is determined to be required by the alien... is inadmissible."

• Waiver: None



Describe INA § 212(a)(10) – Miscellaneous

(Lesson Content)

Describe INA § 212(a)(10) – Miscellaneous

INA § 212(a)(10)(B) – Guardian/Helpless Alien

"Any alien who is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, mental or physical disability, or infancy... and whose protection or guardianship is determined to be required by the alien... is inadmissible." INA § 212(a)(10)(B).

This ground makes a healthy alien inadmissible who is the guardian of another alien who is helpless and inadmissible for health reasons and is in need of the guardian's care. The healthy guardian is inadmissible if the helpless alien is dependent on the healthy guardian.

Class A medical notification and certification of

helplessness required for helpless alien.

No waiver is available.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(10)(C)(i) – International Child Abductor

• Statute:

“Except as provided in clause (ii), any alien who, after entry of an order by a court in the [U.S.] granting custody to a person of a [U.S.] citizen child who detains or retains the child, or withholds custody of the child, outside the [U.S.] from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.”

• Waiver: None



**Describe INA §
212(a)(10) –
Miscellaneous**

**(Lesson
Content)**

Describe INA § 212(a)(10) – Miscellaneous

**INA § 212(a)(10)(C)(i) – International Child
Abductor**

“Except as provided in clause (ii), any alien who, after entry of an order by a court in the [U.S.] granting custody to a person of a [U.S.] citizen child who detains or retains the child, or withholds custody of the child, outside the [U.S.] from the person granted custody by that order, is inadmissible until the child is surrendered to the person granted custody by that order.” INA § 212(a)(10)(C)(i).

Any alien who detains a U.S. citizen child against a U.S. court order granting custody of a child to another in a country not signatory to the Hague Convention on the Civil Aspects of International Child Abduction is inadmissible until the child is surrendered to the person granted custody.

Requirements for finding of inadmissibility

- U.S. citizen child
- U.S. court order granting custody to person in the U.S.
- Child detained in country not signatory to the Hague Convention
- Person detaining the child remains inadmissible until the child is surrendered to the person granted custody by the court order

No waiver is available.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(10)(C)(i) – Assisting in Child Abduction

• Aliens also inadmissible if intentionally assisted, provided material support or safe haven to an alien described in clause (i).

• Or is a spouse, parent, child, sibling or agent of an alien described in clause (i) unless the child is surrendered to the person granted custody.

• Waiver: None



**Describe INA § 212(a)(10) –
Miscellaneous**

(Lesson
Content)

Describe INA § 212(a)(10) – Miscellaneous

INA § 212(a)(10)(C)(ii) – Assisting in Child
Abduction

“Any alien who-

- (I) is known . . . to have intentionally assisted an alien in the conduct described in clause (i),
- (II) is known . . . to be intentionally providing material support or safe haven to an alien described in clause (i), or
- (III) is a spouse (other than the spouse who is the parent of the abducted child), child (other than the abducted child), parent, sibling, or agent of an alien described in clause (i), if such person has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion, is inadmissible until the child described in clause (i) is surrendered to the person granted custody by the order described in that clause, and such person and child are permitted to return to the United States or such person's place of residence”

An alien is inadmissible who the Secretary of State knows has intentionally assisted, provided material support or safe haven to an alien described in clause (i), or is a spouse, parent, child, sibling or agent of an alien described in clause (i) *unless* the child is surrendered to the person granted custody.

No waiver is available.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(10)(C)(iii)-Exception

• Statute:

- "Clauses (i) and (ii) shall not apply-(I) to a government official of the United States who is acting within the scope of his or her official duties; (II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or (III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980."



Describe INA § 212(a)(10) – Miscellaneous

(Lesson Content)

Describe INA § 212(a)(10) – Miscellaneous
INA § 212(a)(10)(C)(iii)-Exception

“Clauses (i) and (ii) shall not apply-(I) to a government official of the United States who is acting within the scope of his or her official duties; (II) to a government official of any foreign government if the official has been designated by the Secretary of State at the Secretary's sole and unreviewable discretion; or (III) so long as the child is located in a foreign state that is a party to the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.” INA § 212(a)(10)(C)(iii).

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(10)(D)(i) – Unlawful Voter

• Statute:

- "Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible."

• Waiver: None



Describe INA § 212(a)(10) – Miscellaneous

(Lesson Content)

Describe INA § 212(a)(10) – Miscellaneous
INA § 212(a)(10)(D)(i) – Unlawful Voter

“Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is inadmissible.”
INA § 212(a)(10)(D)(i).

Applies to voting that took place at any time.

In *Kimani v. Holder*, 695 F.3d 666 (7th Cir. 2012), the court concluded that unlawful voting did bar adjustment and knowledge that voting was prohibited was not critical.

No waiver is available.

Lesson 2: Identify INA § 212 Inadmissibility Grounds and Waivers

INA § 212(a)(10)(D)(ii)-Exception

• Statute:

- "In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation."



Describe INA § 212(a)(10) – Miscellaneous

(Lesson Content)

Describe INA § 212(a)(10) – Miscellaneous
INA § 212(a)(10)(D)(ii)-Exception

“In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation

that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such violation.” INA § 212(a)(10)(D)(ii).

Alien is not inadmissible if the alien’s parents were or are U.S. citizens, the alien permanently resided in the U.S. prior to age 16, and the alien reasonably believed at the time of the violation that s/he was a USC.

No waiver is available.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

INA § 212(a)(10)(E) – Avoiding Taxation

• Statute:

• “Any alien who is a former citizen of the [U.S.] who officially renounces [U.S.] citizenship and who is determined . . . to have renounced [U.S.] citizenship for the purpose of avoiding taxation by the [U.S.] is inadmissible.”

• Waiver: None



**Describe INA § 212(a)(10) –
Miscellaneous**

**(Lesson
Content)**

Describe INA § 212(a)(10) – Miscellaneous

INA § 212(a)(10)(E) – Avoiding Taxation

“Any alien who is a former citizen of the [U.S.] who officially renounces [U.S.] citizenship and who is determined . . . to have renounced [U.S.] citizenship for the purpose of avoiding taxation by the [U.S.] is inadmissible.” INA § 212(a)(10)(E).

Applies to aliens who renounced on or after 9/30/96.

Determination made by Departments of State, Treasury or Homeland Security. See 22 C.F.R. § 40.105.

No waiver is available.

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

Nonimmigrant Waivers

- INA § 212(d)(1) – Waiver for INA § 101(a)(15)(S) [informants]
- INA § 212(d)(3)(A) – Waiver for inadmissibility other than INA §§ 212(a)(3)(A), (C) or (E)
- INA § 212(a)(3)(B) – Exemption for the material support ground
- INA § 212(a)(4) – Waiver for 212(a)(7)(B)(i)
- INA § 212(d)(13) – Waiver for INA § 101(a)(15)(T) [victims of trafficking]
- INA § 212(d)(14) – Waiver for INA § 101(a)(15)(U) [victims of criminal activity]



**Describe
Nonimmigrant
Waivers**

(Lesson
Content)

Describe Nonimmigrant Waivers

Nonimmigrant Waivers

The following waivers are applied to nonimmigrants only and do not waive inadmissibility grounds for immigrants.

- INA § 212(d)(1) – A specific waiver provision for those nonimmigrants described in INA § 101(a)(15)(S) [informants]. Waives all grounds except those under INA § 212(a)(3)(E).
- INA § 212(d)(3)(A) – Nonimmigrant waiver for most grounds of inadmissibility other than a ground of inadmissibility under specified sections of INA §§ 212(a)(3)(A), (C) or (E) [see text of INA § 212(d)(3)(A)].
- INA § 212(a)(3)(B) - Provides exemption for the material support ground of inadmissibility. Unlike 212(d)(3)(A), this waiver is not limited to nonimmigrants.
- INA § 212(a)(4) – Applies to 212(a)(7)(B)(i).
- INA § 212(d)(13) – A specific waiver provision for those nonimmigrants described in INA § 101(a)(15)(T) [victims of trafficking].
- INA § 212(d)(14) – A specific waiver provision for those nonimmigrants described in INA § 101(a)(15)(U) [victims of criminal activity].

**Lesson 2: Identify INA § 212
Inadmissibility Grounds and Waivers**

Common Forms Used to Adjudicate Waivers

- Form I-601, Application for Waiver of Grounds of Inadmissibility
- Form I-601A, Application for Provisional Unlawful Presence Waiver
- Form I-602, Application by Refugee for Waiver of Grounds of Excludability
- Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal



**Identify Forms
Used to
Adjudicate
Waivers**

**(Lesson
Content)**

Identify Forms Used to Adjudicate Waivers

Common Forms Used to Adjudicate Waivers

Most waiver applications are filed on the Form I-601, Application for Waiver of Grounds of Inadmissibility.

Form I-601A, Application for Provisional Unlawful Presence Waiver, is available to certain immediate relatives to request a provisional unlawful presence waiver under INA § 212(a)(9)(B) and 8 C.F.R. § 212.7(e), before departing the United States to attend their immigrant visa interviews.

A refugee seeking to adjust status under INA § 209 files a request for a waiver using the Form I-602, Application by Refugee for Waiver of Grounds of Excludability.

Permission to reapply for admission after removal is filed on the Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

[The Form I-212 involves many complicated and technical jurisdictional issues, and supervisory personnel should always be notified if an application for a benefit also involves a Form I-212.]

Lesson/Topic 3: Identify Grounds of Deportability under INA § 237

Lesson 3: Identify the Grounds of Deportability under INA § 237

- INA § 237(a)(1)(A) – Inadmissible aliens at time of entry or adjustment of status
- INA § 237(a)(1)(B) – Present in violation of law
- INA § 237(a)(1)(C)(i) – Nonimmigrant status violators
- INA § 237(a)(1)(C)(ii) – Violators of conditions of entry
- INA § 237(a)(1)(D)(i) – Termination of conditional permanent residence
- INA § 237(a)(1)(E)(i) – Smuggling



Lesson 3 Introduction

Identify grounds of deportability under INA § 237

Now we will turn our attention to the grounds of deportability under the law. All of the grounds of deportability are found in INA § 237.

During this lesson, we will:

Describe INA § 237(a)(1)(A) – Inadmissible aliens at time of entry or adjustment of status

Describe INA § 237(a)(1)(B) – Present in violation of law

Describe INA § 237(a)(1)(C)(i) – Nonimmigrant status violators

Describe INA § 237(a)(1)(C)(ii) – Violators of conditions of entry

Describe INA § 237(a)(1)(D)(i) – Termination of conditional permanent residence

Describe INA § 237(a)(1)(E)(i) – Smuggling

Describe INA § 237(a)(1)(G) – Marriage fraud

Describe INA § 237(a)(2)(A)(i) – Crimes involving moral turpitude

Describe INA § 237(a)(2)(A)(ii) – Multiple criminal convictions

Describe INA § 237(a)(2)(A)(iii) – Aggravated felonies

Describe INA § 237(a)(2)(A)(iv) – High speed flight

Describe INA § 237(a)(2)(A)(v) – Failure to register as a sex offender

Describe INA § 237(a)(2)(B)(i) – Controlled substances conviction

Lesson 3: Identify the Grounds of Deportability under INA § 237

- INA § 237(a)(1)(G) – Marriage fraud
- INA § 237(a)(2)(A)(i) – Crimes involving moral turpitude
- INA § 237(a)(2)(A)(ii) – Multiple criminal convictions
- INA § 237(a)(2)(A)(iii) – Aggravated felonies
- INA § 237(a)(2)(A)(iv) – High speed flight
- INA § 237(a)(2)(A)(v) – Failure to register as a sex offender
- INA § 237(a)(2)(B)(i) – Controlled substances conviction
- INA § 237(a)(2)(B)(ii) – Drug Abusers and Addicts



Describe INA § 237(a)(2)(B)(ii) – Drug Abusers and Addicts

Describe INA § 237(a)(2)(C) – Certain firearm offenses

Describe INA § 237(a)(2)(D) – Miscellaneous crimes

Describe INA § 237(a)(2)(E)(i) – Domestic violence, stalking and child abuse

Describe INA § 237(a)(2)(E)(ii) – Violators of protection orders

Describe INA § 237(a)(2)(F) – Trafficking

Describe INA § 237(a)(3)(A) – Change of address

Describe INA § 237(a)(3)(B) – Failure to register or falsification of documents

Describe INA § 237(a)(3)(C) – Document fraud

Describe INA § 237(a)(3)(D) – Falsely claiming citizenship

Describe INA § 237(a)(4) – Security and related grounds

Describe INA § 237(a)(5) – Public charge

Describe INA § 237(a)(6)(A) – Unlawful voters

Lesson 3: Identify the Grounds of Deportability under INA § 237

- INA § 237(a)(2)(C) – Certain firearm offenses
- INA § 237(a)(2)(D) – Miscellaneous crimes
- INA § 237(a)(2)(E)(i) – Domestic violence, stalking and child abuse
- INA § 237(a)(2)(E)(ii) – Violators of protection orders
- INA § 237(a)(2)(F) – Trafficking
- INA § 237(a)(3)(A) – Change of address
- INA § 237(a)(3)(B) – Failure to register or falsification of documents



Lesson 3: Identify the Grounds of Deportability under INA § 237

- INA § 237(a)(3)(C) – Document fraud
- INA § 237(a)(3)(D) – Falsely claiming citizenship
- INA § 237(a)(4) – Security and related grounds
- INA § 237(a)(5) – Public charge
- INA § 237(a)(6)(A) – Unlawful voters



Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(A) – Inadmissible at time of entry or adjustment of status

- **Statute:**
 - "Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable."
- Dependent on INA § 212 inadmissibility ground
- specify the INA § 212 ground on NTA
- Referenced ground must have been in existence at time of entry or adjustment



Describe INA § 237(a)(1)(A) – Inadmissible at Time of Entry or Adjustment of Status

(Lesson Content)

Describe INA § 237(a)(1)(A) – Inadmissible at time of entry or adjustment of status

INA § 237(a)(1)(A) – Inadmissible at time of entry or adjustment of status

“Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.” INA § 237(a)(1)(A).

This is the only deportable ground dependent upon the grounds of inadmissibility of INA § 212(a).

The INA § 212 ground being referenced must have been a ground of inadmissibility at the time of entry or adjustment.

The ground of deportability in the NTA must specify the ground of inadmissibility under INA § 212(a) in the charge.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(A) – Inadmissible at time of entry or adjustment of status

- **NTA Example:**
 - Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: pursuant to INA Section 212(a)(7)(A)(i) of the Immigration and Nationality Act (Act), as amended as any alien who is out in possession of a valid unexpired immigrant visa ... or other valid entry document required by this Act.



Describe INA § 237(a)(1)(A) – Inadmissible at Time of Entry or Adjustment of Status

(Lesson Content)

Describe INA § 237(a)(1)(A) – Inadmissible at time of entry or adjustment of status

INA § 237(a)(1)(A) – Inadmissible at time of entry or adjustment of status

Example of NTA allegations and charge for this ground of deportability:

ALLEGATIONS:

1. You are not a citizen or national of the United States;
2. You are a native of _____ and a citizen of _____;
3. You were admitted to the United States at _____ on or about _____ as a _____;
4. On or about ____, your status was adjusted to that of lawful permanent resident, as the unmarried son of a lawful permanent resident, based on an immigrant visa petition filed on your behalf by ____.

5. At the time of your adjustment of status, you were married to _____, and therefore were not the unmarried son of a lawful permanent resident.

CHARGE:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: pursuant to INA Section 212(a)(7)(A)(i) of the Immigration and Nationality Act (Act), as amended as any alien who is not in possession of a valid unexpired immigrant visa . . . or other valid entry document required by this Act.

Note: If it could be established that the alien had deliberately concealed the marriage in order to gain the immigration benefit, then there would also be a possible charge under INA § 237(a)(1)(A) – 212(a)(6)(C)(i) for fraud or willful misrepresentation of a material fact.

The marriage would be a material fact because there is no immigrant classification available to a married son of a lawful permanent resident. Additional factual allegations would be needed to support such a ground.

Describe INA § 237(a)(1)(B) - Present in Violation of Law

(Lesson Content)

Describe INA § 237(a)(1)(B) - Present in Violation of Law

INA § 237(a)(1)(B) - Present in Violation of Law

“Any alien who is present in violation of the Act or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under [INA § 221(i)] is deportable.” INA § 237(a)(1)(B).

Applies when a nonimmigrant’s visa has been revoked under INA § 221(i) [Secretary of State

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(B) - Present in Violation of Law

- **Statute:**
 - Any alien who is present in violation of the Act or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under [INA § 221(i)] is deportable.”
- Applies when nonimmigrant’s visa revoked under INA § 221(i)
- Typically used for nonimmigrants who have overstayed the period of their admission.



may revoke a nonimmigrant visa].

This charge is used most typically for nonimmigrants who have overstayed the period of their admission.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(C)(i) - Nonimmigrant status violators

• **Statute:**

- "Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status, is deportable."



Describe INA § 237(a)(1)(C)(i) - Nonimmigrant Status Violators

(Lesson Content)

Describe INA § 237(a)(1)(C)(i) - Nonimmigrant status violators

INA § 237(a)(1)(C)(i) - Nonimmigrant status violators

"Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status, is deportable." INA § 237(a)(1)(C)(i).

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(C)(i) - Nonimmigrant status violators

• **Examples include:**

- Nonimmigrant visitor who works without employment authorization
- Nonimmigrant student who fails to maintain a course of study
- Nonimmigrant worker who abandons employment
- Nonimmigrant who is incarcerated and cannot pursue nonimmigrant status
- Nonimmigrant convicted of a crime of violence for which a sentence of more than one year may be imposed
- A willful failure to provide full and truthful information to USCIS, ICE and CBP (does not require materiality)



Describe INA § 237(a)(1)(C)(i) - Nonimmigrant Status Violators

(Lesson Content)

Describe INA § 237(a)(1)(C)(i) - Nonimmigrant status violators

INA § 237(a)(1)(C)(i) - Nonimmigrant status violators

Examples include:

- Nonimmigrant visitor who works without employment authorization
- Nonimmigrant student who fails to maintain a course of study
- Nonimmigrant worker who abandons employment
- Nonimmigrant who is incarcerated (and cannot pursue nonimmigrant status)
- Nonimmigrant convicted of a crime of violence for which a sentence of more than one year may be imposed is in violation of status. 8 C.F.R. § 214.1(g)

Also includes a willful failure to provide full and truthful information to USCIS, ICE and CBP [does not require materiality].

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(C)(i) – Violators of condition of entry

• Statute:

- "Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under [INA § 212(g)] is deportable."
- Applies to violations of conditions imposed related to health waivers under INA § 212(g)
- Communicable diseases/physical or mental disorders
- Requires a certificate from HHS that person failed to comply with set conditions



Describe INA § 237(a)(1)(C)(ii) – Violators of Condition of Entry

(Lesson Content)

Describe INA § 237(a)(1)(C)(ii) – Violators of condition of entry

INA § 237(a)(1)(C)(ii) – Violators of condition of entry

"Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under [INA § 212(g)] is deportable." INA § 237(a)(1)(C)(ii).

This subsection is for violations of conditions imposed related to health waivers under INA § 212(g). It relates to persons granted waivers with communicable diseases/physical or mental disorders.

Use of this ground of deportability requires a certificate from HHS that the person failed to comply with the set conditions.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237 (a)(1)(D)(i) – Termination of conditional permanent residence

• Statute:

- "Any alien with permanent resident status on a conditional basis under [INA § 216] (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under [INA § 216A] (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable."
- Used if CPR status terminated by USCIS



Describe INA § 237 (a)(1)(D)(i) – Termination of Conditional Permanent Residence

(Lesson Content)

Describe INA § 237 (a)(1)(D)(i) – Termination of conditional permanent residence

INA § 237 (a)(1)(D)(i) – Termination of conditional permanent residence

"Any alien with permanent resident status on a conditional basis under [INA § 216] (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under [INA § (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable." INA § 237 (a)(1)(D)(i).

This section relates to the termination of CPR

status conferred under INA § 216 (spouses, sons, daughters) and INA § 216A (entrepreneurs/spouses/children).

It is used if CPR status has been terminated by USCIS.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237 (a)(1)(D)(i) – Termination of conditional permanent residence

- INA § 237(a)(1)(D)(i) provides an exception if alien granted waiver under INA § 216(c)(4)
- INA § 216(c)(4) provides 3 waiver options for CPR unable to comply with joint petition requirements under INA § 216(c)(1)(A)
 - Extreme hardship if removed or
 - Entered marriage in good faith- terminated, alien not at fault or
 - Entered marriage in good faith- battered or extreme cruelty to spouse or child



Describe INA § 237 (a)(1)(D)(ii) – Termination of Conditional Permanent Residence

(Lesson Content)

Describe INA § 237 (a)(1)(D)(i) – Termination of conditional permanent residence

INA § 237 (a)(1)(D)(i) – Termination of conditional permanent residence

INA § 237(a)(1)(D)(ii) provides an exception if the alien has been granted a waiver under INA § 216(c)(4).

INA § 216(c)(4) provides three waiver options to a CPR who is unable to comply with the requirements of filing a joint petition to remove the conditions on residence under INA § 216(c)(1)(A):

- a. Extreme hardship would result if alien is removed, or
- b. Alien entered into the qualifying marriage in good faith, but the marriage was terminated other than due to the alien's fault, and the alien was not at fault in failing to comply with the joint petitioning requirement, or
- c. Alien entered into the qualifying marriage in good faith, but alien spouse or child were battered or subjected to extreme cruelty by the USC/LPR petitioning spouse during the marriage, and the CPR was not at fault in failing to comply with the joint petitioning requirement.
- d. The alien meets the requirements under section 1154(a)(1)(A)(iii)(II)(aa)(BB) of this title and following the marriage ceremony was battered by or subject to

extreme cruelty perpetrated by the alien's intended spouse and was not at fault in failing to meet the requirements of paragraph (1).

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237 (a)(1)(E)(i) – Alien Smuggling

- Statute:
- "Any alien who (prior to, at the time of, or within 5 years of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the U.S. in violation of law is deportable."



Describe INA § 237 (a)(1)(E)(i) – Alien Smuggling

(Lesson Content)

Describe INA § 237 (a)(1)(E)(i) – Alien Smuggling

INA § 237 (a)(1)(E)(i) – Alien Smuggling

"Any alien who (prior to, at the time of, or within 5 years of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the U.S. in violation of law is deportable." INA § 237 (a)(1)(E)(i).

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237 (a)(1)(E)(i) – Alien Smuggling

- INA § 237(a)(1)(E)(i) provides exception in limited circumstances to a spouse, parent, son or daughter prior to 5/5/88
- INA § 237(a)(1)(E)(ii) provides waiver for smuggling one's spouse, parent, son or daughter and no one else
 - Familial relationship had to exist at time of smuggling
- Waiver only adjudicated in the context of removal proceedings



Describe INA § 237 (a)(1)(E)(i) – Alien Smuggling

(Lesson Content)

Describe INA § 237 (a)(1)(E)(i) – Alien Smuggling

INA § 237 (a)(1)(E)(i) – Alien Smuggling

INA § 237(a)(1)(E)(ii) provides an exception in very limited circumstances for smuggling a spouse, parent, son or daughter prior to 5/5/88. To qualify for this exception, the alien must be eligible immigrant under INA § 210 or INA § 245A.

INA § 237(a)(1)(E)(iii) provides a waiver for smuggling one's spouse, parent, son or daughter and no one else.

- The familial relationship had to exist at the time of smuggling.
- *Note: this waiver is adjudicated in the context of removal proceedings, and not by USCIS.*

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(G)(i) – Marriage Fraud

• Statute:

- "An alien shall be considered to be deportable as having procured a visa or other documentation by fraud . . . and to be in the [U.S.] in violation of this Act . . . if
- (i) the alien obtains any admission . . . procured on the basis of a marriage entered into less than 2 years prior to such admission . . .
- [and] 2 years [after] any admission . . . [the marriage is] judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws or . . ."



Describe INA § 237(a)(1)(G) – Marriage Fraud

(Lesson Content)

Describe INA § 237(a)(1)(G) – Marriage Fraud
INA § 237(a)(1)(G)(i) – Marriage Fraud

“An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of [INA § 212(a)(6)(C)(i)]) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if--

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or . . .”_INA § 237(a)(1)(G)(i).

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(G)(i) – Marriage Fraud

- Deportable under INA § 237(a)(1)(G)(i) if . . .
- obtained admission on the basis of a marriage less than 2 years old at the time of admission, and
- marriage terminated within 2 years of entry/admission
- unless establish that marriage not contracted for purpose of evading immigration laws.
- Presumption of marriage fraud, but alien may rebut presumption



Describe INA § 237(a)(1)(G) – Marriage Fraud

(Lesson Content)

Describe INA § 237(a)(1)(G) – Marriage Fraud

To summarize, an alien is deportable for fraud under INA § 237(a)(1)(G)(i) if:

- the alien obtained admission on the basis of a marriage less than 2 years old at the time of admission, and
- has that marriage terminated within 2 years of entry/admission
- unless the alien establishes that such marriage was not contracted for the purpose of evading any provisions of the immigration laws.

There is a presumption of marriage fraud, but the alien may rebut that presumption.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(G)(i) – Marriage Fraud

- Statute:
 - “(i) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien’s marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien’s admission as an immigrant.”
- DHS has burden of proof
- Consult OCC prior to lodging charge



Describe INA § 237(a)(1)(G) – Marriage Fraud

(Lesson Content)

Describe INA § 237(a)(1)(G) – Marriage Fraud INA § 237(a)(1)(G)(ii) – Marriage Fraud

“(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien’s marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien’s admission as an immigrant.” INA § 237(a)(1)(G)(ii).

Before using the marriage fraud charge, consult with USCIS counsel.

ICE counsel may also become involved, as ICE will have the responsibility of establishing the charge in Immigration Court.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(G) – Marriage Fraud

- What is marriage fraud?
- Intent of parties at inception of marriage controls
- Must consider:
 - whether parties intended to establish life together when they entered marriage or
 - whether alien entered the marriage for the purpose of evading the immigration laws



Describe INA § 237(a)(1)(G) – Marriage Fraud

(Lesson Content)

Describe INA § 237(a)(1)(G) – Marriage Fraud INA § 237(a)(1)(G) – Marriage Fraud

What is marriage fraud? The intent of the parties at inception of marriage controls. We must consider:

- whether the parties intended to establish a life together when they entered the marriage, or
- whether the alien entered the marriage for the purpose of evading the immigration laws.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(1)(G) – Marriage Fraud

- Investigation usually required to gather enough evidence
- Evidence / investigation methods can include:
 - Statements from alien and spouse
 - “Substantial circumstantial evidence” including contemporaneous documentation
 - Computerized checks regarding motor vehicles, residences
 - Reports or testimony regarding site visits (bed checks)
 - Sworn statements/transcripts of interviews of other parties



Describe INA § 237(a)(1)(G) – Marriage Fraud

(Lesson Content)

Describe INA § 237(a)(1)(G) – Marriage Fraud INA § 237(a)(1)(G) – Marriage Fraud

An investigation is generally required to gather enough evidence to sustain this charge of deportability.

Evidence and investigation methods to sustain marriage fraud can include, but are not limited to:

- Statements from the alien and spouse
- “Substantial circumstantial evidence,” including contemporaneous documentation

- Computerized checks regarding motor vehicles, residence
- Reports or testimony regarding site visits (bed checks)
- Sworn statements or transcripts of interviews of other parties

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(A)(i) – Crimes Involving Moral Turpitude

- **Statute:**
 - "Any alien . . .
 - (I) convicted of a [CIMT] committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under [INA § 245(j)]) after the date of admission, and
 - (II) is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable."
- Commission of crime must be within 5 years of alien's last admission; conviction can be at any time.



Describe INA § 237(a)(2)(A)(i) – Crimes Involving Moral Turpitude

(Lesson Content)

Describe INA § 237(a)(2)(A)(i) – Crimes Involving Moral Turpitude

INA § 237(a)(2)(A)(i) – Crimes Involving Moral Turpitude

“Any alien who-

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under [INA § 245(j)]) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable.”
INA § 237(a)(2)(A)(i).

The *commission* of the crime *must be* within 5 years of the alien’s last admission; conviction can be at any time.

The discussion of which crimes are CIMTs is found above under INA § 212(a)(2)(A)(i)(I).

INA § 245(j) refers to informants under § 101(a)(15)(S)(i).

Lesson 3: Identify the Grounds of Deportability under INA § 237

- INA § 237(a)(2)(A)(ii) – Multiple criminal convictions
- **Statute:**
 - "Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable."
- Crimes can be recorded in same conviction record
- Multiple counts completed at different times/different victims
- No particular criminal sentence required



Describe INA § 237(a)(2)(A)(ii) - Multiple Criminal Convictions

(Lesson Content)

Describe INA § 237(a)(2)(A)(ii) - Multiple criminal convictions

INA § 237(a)(2)(A)(ii) – Multiple criminal convictions

“Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.”
INA § 237(a)(2)(A)(ii).

This applies to any alien convicted of 2 or more CIMTs after admission, but those crimes cannot be part of a single scheme of misconduct.

The crimes can be recorded in the same conviction record (multiple counts completed at different times/different victims).

No particular criminal sentence is required.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(A)(iii) – Aggravated Felony

- **Statute:**
 - "Any alien convicted of an aggravated felony at any time after admission is deportable."
- NTA charge should reference applicable subpart of aggravated felony definition
- **Example:**

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as an alien who is convicted of an aggravated felony at any time after admission, to wit: INA § 101(a)(43)(B) – illicit trafficking in a controlled substance.



Describe INA § 237(a)(2)(A)(iii) - Aggravated Felony

(Lesson Content)

Describe INA § 237(a)(2)(A)(iii) - Aggravated Felony

INA § 237(a)(2)(A)(iii) – Aggravated Felony

“Any alien convicted of an aggravated felony at any time after admission is deportable.”

When lodging this charge on an NTA, the charge should reference the subpart of the definition of aggravated felony found at INA § 101(a)(43) that renders the alien an aggravated felon [INA §§ 237(a)(2)(A)(iii) – 101(a)(43)].

Sample NTA charge:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as an alien who is convicted of an aggravated felony at any time after admission, to wit: INA § 101(a)(43)(B) – illicit trafficking in a controlled substance.

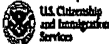
Note: The specific subsection of INA § 101(a)(43)

should be listed.

**Lesson 3: Identify the Grounds of
Deportability under INA § 237**

INA § 101(a)(43) Aggravated Felony Definition

- Complete list in participant guide. Examples include:
 - Murder, rape, or sexual abuse of a minor
 - Illicit trafficking in a controlled substance
 - Crime of violence, as defined in 18 U.S.C. § 16, for which term of imprisonment at least one year
- Definition applies to:
 - State or Federal convictions entered at any time, and
 - foreign violations for which the term of imprisonment was completed within the previous 15 years
- No corresponding ground of inadmissibility



Describe INA § 237(a)(2)(A)(iii) - Aggravated Felony

(Lesson Content)

Describe INA § 237(a)(2)(A)(iii) - Aggravated Felony

INA § 101(a)(43) – Aggravated Felony Definition

List of Aggravated Felony convictions found in the definition at INA § 101(a)(43):

- (A) Murder, rape, or sexual abuse of a minor
- (B) Illicit trafficking in a controlled substance
- (C) Illicit trafficking in firearms or destructive devices, or in explosive materials
- (D) Laundering of monetary instruments if the amount of funds exceeded \$10,000
- (E) Explosives and firearms offenses
- (F) Crime of violence, as defined in 18 U.S.C. § 16, for which the term of imprisonment is at least one year
- (G) Theft offense (including receipt of stolen property) or a burglary offense for which the term of imprisonment is at least one year
- (H) Demand for or receipt of ransom
- (I) Child pornography
- (J) Racketeer influenced corrupt organizations (RICO) offenses or certain gambling offenses for which a term of imprisonment of one year or more *may* be imposed
- (K) Crimes relating to prostitution businesses, transportation for the purpose of prostitution, and crimes relating to peonage,

-
- slavery, involuntary servitude, and trafficking in persons
- (L) Offenses related to national defense information, disclosure of classified information, sabotage, treason, protection of identity of undercover intelligence agents
 - (M) Offense involving fraud or deceit in which the loss to the victim(s) exceeds \$10,000 or tax evasion in which the revenue loss to the Government exceeds \$10,000
 - (N) An offense relating to alien smuggling (includes harboring and transporting), with an exception for an offense committed solely for the purpose of aiding the alien's spouse, parent, or child and no one else
 - (O) An offense of illegal entry or reentry after deportation/removal based on an aggravated felony conviction
 - (P) An offense in violation of 18 U.S.C. § 1543 (falsely making, forging, counterfeiting, mutilating or altering a passport), or an offense described in 18 U.S.C. § 1546(a) (relating to document fraud), for which the term of imprisonment is at least twelve months [exception provided for commission of offense to assist the alien's spouse, parent or child and no one else]
 - (Q) An offense relating to failing to appear to serve a sentence, if the underlying crime is punishable by a term of imprisonment of five years or more
 - (R) An offense relating to commercial bribery, counterfeiting, forgery, or trafficking in altered Vehicle Identification Numbers for which the term of imprisonment is at least one year
 - (S) An offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year
-

(T) An offense relating to failure to appear to answer to a felony charge that is punishable by a term of imprisonment of two years or more

(U) An attempt or conspiracy to commit an offense described in [INA § 101(a)(43)(A)-(T)]

* The Aggravated Felony definition applies to offenses in violation of State or Federal law for convictions entered *at any time*, and to foreign violations for which the term of imprisonment was completed within the previous 15 years.

Note: There is no corresponding ground of inadmissibility under INA § 212(a) for conviction of an aggravated felony.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(A)(iv) - High Speed Flight

• **Statute:**

- "Any alien ... convicted of a violation of section 758 of Title 18 (relating to high speed flight from an immigration checkpoint) is deportable."
- Federal conviction required under 18 U.S.C. § 758
- State convictions don't trigger this ground
- May be waived by pardon under INA § 237(a)(2)(vi)



Describe INA § 237

(a)(2)(A)(iv) - High Speed Flight

(Lesson Content)

Describe INA § 237 (a)(2)(A)(iv) - High Speed Flight

INA § 237(a)(2)(A)(iv) – High speed flight

"Any alien who is convicted of a violation of section 758 of Title 18 (relating to high speed flight from an immigration checkpoint) is deportable."
INA § 237(a)(2)(A)(iv).

This ground requires a conviction for a violation of 18 U.S.C. § 758 (relating to high speed flight from immigration checkpoint).

It only applies to federal convictions for high speed flight and only those prosecuted under 18 U.S.C. § 758.

Although it does not apply to state convictions for flight, a state conviction may constitute an aggravated felony under another provision of INA § 101(a)(43) depending on the circumstances and the sentence imposed.

Note: An alien is not removable under the deportation grounds covering:

- crimes of moral turpitude,
- multiple criminal convictions,

- aggravated felony or
- high speed flight

if a pardon is granted by the President of the United States or a governor of a State. See INA § 237(a)(2)(vi).

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(A)(v) – Failure to Register as a Sex Offender

- Statute:
 - "Any alien . . . convicted under section 2250 of Title 18 is deportable."
- Applies only to federal convictions under 18 U.S.C. § 2250
- State convictions do not trigger this ground



Describe INA § 237 (a)(2)(A)(v) – Failure to Register as a Sex Offender

(Lesson Content)

Describe INA § 237 (a)(2)(A)(v) – Failure to Register as a Sex Offender

INA § 237(a)(2)(A)(v) – Failure to Register as a Sex Offender

“Any alien who is convicted under section 2250 of Title 18 is deportable.” INA § 237(a)(2)(A)(v).

This ground applies only to federal convictions for failure to register as a sex offender under 18 U.S.C. § 2250.

State convictions do not trigger deportability under this ground.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(B)(i) – Controlled substances conviction

- Statute:
 - "Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the [U.S.], or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable."
- List of controlled substances found at 21 U.S.C. § 812



Describe INA § 237 (a)(2)(B)(i) – Controlled substances conviction

(Lesson Content)

Describe INA § 237 (a)(2)(B)(i) – Controlled substances conviction

INA § 237(a)(2)(B)(i) – Controlled substances conviction

“Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.” INA § 237(a)(2)(B)(i).

This ground includes state, federal or foreign country convictions.

It also includes conspiracy and attempt offenses.

The term “controlled substance” is defined by section 102 of the Controlled Substances Act (21 U.S.C. § 802). The schedules (lists) of controlled

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(B)(ii) – Drug Abusers and Addicts

• Statute:

• "Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable."

• "Addict" means any person:

- who habitually uses any habit-forming narcotic drugs so as to endanger public morals, health, safety, or welfare, or
- who is or has been so far addicted to use of such habit-forming narcotic drugs as to have lost power of self-control with reference to his or her addiction

• No conviction or certificate required



Describe INA § 237 (a)(2)(B)(ii) – Drug Abusers and Addicts

(Lesson Content)

Describe INA § 237 (a)(2)(B)(ii) – Drug Abusers and Addicts

INA § 237(a)(2)(B)(ii) – Drug Abusers and Addicts

"Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable." INA § 237(a)(2)(B)(ii).

The term "addict" means any person who habitually uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction.

The burden of proof is upon the government to establish deportability by a preponderance of reasonable, substantial and probative evidence. *Matter of F- S- C-*, 8 I&N Dec. 108, 110 (BIA 1958). Reiterated: Burden of proof is upon ICE to establish deportability by a preponderance of reasonable, substantial and probative evidence. *Matter of F- S- C-*, 8 I&N Dec. 108, 110 (BIA 1958).

This ground does not require conviction or HHS certificate to apply.

Prior to issuing a NTA charging this ground of deportability, you should consult with USCIS counsel.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(C) – Certain Firearm Offenses

• Statute:

• "Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of Title 18) in violation of any law is deportable."

• No corresponding ground of inadmissibility



Describe INA § 237 (a)(2)(C) – Certain Firearm Offenses

(Lesson Content)

Describe INA § 237 (a)(2)(C) – Certain Firearm Offenses

INA § 237(a)(2)(C) – Certain Firearm Offenses

"Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of

Title 18) in violation of any law is deportable.”

The terms “firearm” and “destructive device” are defined in 18 U.S.C. § 921(a)(3) to mean any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. Note that “antique firearms” are excluded from the definition of “firearms.” The Board has ruled that if the alien’s defense to the removal charge concerns whether the gun was an antique, the issue will be treated as an affirmative defense with the burden on the alien to prove the gun was an antique. *Matter of Mendez-Orellana*, 25 I&N Dec. 254 (BIA 2010).

This type of criminal offense may also trigger deportability under the aggravated felony provision at INA §§ 101(a)(43)(C) or 101(a)(43)(E)(ii).

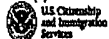
Note: There is no corresponding ground of inadmissibility under INA § 212(a) for conviction of a firearms offense.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(D) – Miscellaneous Crimes

• **Statute**

- “Any alien . . . convicted . . . or convicted of a conspiracy or attempt to violate-
- (i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of Title 18 for which a term of imprisonment of five or more years may be imposed;
- (ii) any offense under section 871 or 960 of Title 18;
- (iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or
- (iv) a violation of section 1185 or 1328 of this title, is deportable.”



Describe INA § 237(a)(2)(D) – Miscellaneous Crimes

(Lesson Content)

Describe INA § 237(a)(2)(D) – Miscellaneous Crimes

INA § 237(a)(2)(D) – Miscellaneous Crimes

“Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate-

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of Title 18 for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of

Title 18;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 1185 or 1328 of this title, is deportable.” INA § 237(a)(2)(D).

(D)(i) – Covers convictions for espionage, sabotage, or treason and sedition, for which a sentence of 5 years or more may be imposed.

(D)(ii) – Covers convictions under 18 U.S.C. §§ 871, 960 [Threats against the President; against other nations with whom we are not at war].

(D)(iii) – Covers convictions for violations of the Military Selective Service Act [50 U.S.C. App. § 451 et seq.], or the Trading with the Enemy Act [50 U.S.C. App. § 1 et seq.].

(D)(iv) – Covers convictions for violations of INA §§ 215, 278 [departure control violations or bringing in or harboring an alien for an immoral purpose].

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(E)(i) – Domestic violence, stalking and child abuse

• Statute:

• “Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable.”

• Applies only to convictions after September 30, 1996



Describe INA § 237(a)(2)(E)(i) – Domestic Violence, Stalking and Child Abuse

(Lesson Content)

Describe INA § 237(a)(2)(E)(i) – Domestic Violence, Stalking and Child Abuse

INA § 237(a)(2)(E)(i) – Domestic violence, stalking and child abuse

“Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term ‘crime of domestic violence’ means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse or the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual

similarly situated to a spouse of the person under the domestic violence or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from the individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government." INA § 237(a)(2)(E)(i).

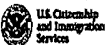
18 USC §16 defines a crime a violence as: (a) an offense that has as an element the use, attempted use or threatened use of physical force against a person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. The ground of deportability only applies to convictions *after* September 30, 1996.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(E)(i) – Domestic violence, stalking and child abuse

... "crime of domestic violence" means any crime of violence against a person committed

- by a current or former spouse of the person,
- by an individual with whom the person shares a child in common,
- by an individual who is cohabiting with or has cohabited with the person as a spouse,
- by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or
- by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government."



Describe INA § 237(a)(2)(E)(i) – Domestic Violence, Stalking and Child Abuse

(Lesson Content)

Describe INA § 237(a)(2)(E)(i) – Domestic Violence, Stalking and Child Abuse

INA § 237(a)(2)(E)(i) – Domestic violence, stalking and child abuse

"For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section 16 of Title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government." INA § 237(a)(2)(E)(i).

Note that the term "crime of domestic violence" is specifically defined within the statutory language.

Only convictions fitting within this definition of

“crime of domestic violence” will trigger this ground of deportability.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(E)(i) – Violations of Protection Orders

Statute:

“Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.”



Describe INA § 237(a)(2)(E)(ii) – Violations of Protection Orders

(Lesson Content)

Describe INA § 237(a)(2)(E)(ii) – Violations of Protection Orders

INA § 237(a)(2)(E)(ii) – Violators of Protection Orders

“Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.” INA § 237(a)(2)(E)(ii).

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(E)(i) – Violations of Protection Orders

“... the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.”

• Applies only to violations committed after September 30, 1996.



Describe INA § 237(a)(2)(E)(ii) – Violations of Protection Orders

(Lesson Content)

Describe INA § 237(a)(2)(E)(ii) – Violations of Protection Orders

INA § 237(a)(2)(E)(ii) – Violators of protection orders

“For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.” INA § 237(a)(2)(E)(ii).

This ground applies only to violations committed after September 30, 1996.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(2)(F) - Trafficking

Statute:

- "Any alien described in [INA § 212(a)(2)(H)] is deportable."
- INA § 212(a)(2)(H) relates to significant traffickers in persons



Describe INA § 237(a)(2)(F)- Trafficking

(Lesson Content)

Describe INA § 237(a)(2)(F) -Trafficking

INA § 237(a)(2)(F) – Trafficking

"Any alien described in [INA § 212(a)(2)(H)] is deportable." INA § 237(a)(2)(F).

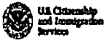
INA § 212(a)(2)(H) relates to significant traffickers in persons.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(3)(A)- Change of Address

Statute:

- "An alien who has failed to comply with the provisions [INA § 265] is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful."
- Aliens required to report a change of address within 10 days



Describe INA § 237(a)(3)(A)- Change of Address

(Lesson Content)

Describe INA § 237(a)(3)(A)- Change of Address

INA § 237(a)(3)(A) –Change of Address

"An alien who has failed to comply with the provisions of [INA § 265] is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful." INA § 237(a)(3)(A).

Aliens are required to report a change of address within 10 days.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(3)(B)- Failure to Register or Falsification of documents

Statute:

- "Any alien who at any time has been convicted—
- (i) under ... [INA § 266(c)] or under section 36(c) of the Alien Registration Act, 1940,
- (ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or
- (iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of Title 18 (relating to fraud and misuse of visas, permits, and other entry documents), is deportable."



Describe INA § 237(a)(3)(B)- Failure to Register or Falsification of Documents

(Lesson Content)

Describe INA § 237(a)(3)(B)- Failure to Register or Falsification of Documents

INA § 237(a)(3)(B) – Failure to Register or Falsification of Documents

"Any alien who at any time has been convicted—

(i) under section 1306(c) of this title [INA § 266(c)] or under section 36(c) of the Alien Registration Act, 1940,

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of Title 18 (relating to fraud and misuse of visas, permits, and other entry documents), is deportable." INA § 237(a)(3)(B).

INA § 237(a)(3)(B)(i) requires a conviction under the sections listed, but the sentence is immaterial.

INA § 237(a)(3)(B)(ii) requires a conviction for violation of 22 U.S.C. § 611 *et seq.* [violation of any provision of the Foreign Agents Registration Act].

INA § 237(a)(3)(B)(iii) requires a conviction under the sections listed. It has to be a conviction under the referenced statute, it cannot be something similar and trigger this ground of deportability.

Conviction must be under the specified sections and no others to trigger this ground.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(3)(C) – Document Fraud

• Statute:

- "An alien who is the subject of a final order for a violation of [INA § 274C] is deportable."
- The statute contains a limited waiver under INA § 237(a)(3)(C)(i).
- ICE is not pursuing final orders in cases under INA § 274C due to the injunction/settlement under *Walters v. Reno*.
- For that reason, this ground of deportability is not used.



Describe INA § 237(a)(3)(C) – Document Fraud

(Lesson Content)

Describe INA § 237(a)(3)(C) – Document Fraud

INA § 237(a)(3)(C) – Document Fraud

"An alien who is the subject of a final order for a violation of [INA § 274C] is deportable." INA § 237(a)(3)(C).

INA § 274C provides for a civil penalty for document fraud.

The statute contains a limited waiver under INA § 237(a)(3)(C)(ii).

ICE is not pursuing final orders in cases under INA § 274C due to the injunction/settlement under *Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998). Because of that situation, this ground of deportability is not used.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(3)(D) – Falsely claiming citizenship

• Statute:

- "Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this chapter (including [INA § 274A]) or any Federal or State law is deportable."
- Applies to claims made on or after September 30, 1996



Describe INA § 237(a)(3)(D) – Falsely Claiming Citizenship

(Lesson Content)

Describe INA § 237(a)(3)(D) – Falsely Claiming Citizenship

INA § 237(a)(3)(D) – Falsely claiming citizenship

"Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this chapter (including [INA § 274A]) or any Federal or State law is deportable." INA § 237(a)(3)(D).

Applies to claims made on or after September 30, 1996.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(3)(D) – Falsely claiming citizenship

- False I-9s submitted to employers count

• INA § 237(a)(3)(D)(ii) provides for a limited exception if:

- alien's parents are/were U.S. citizens
- alien permanently resided in the U.S. prior to attaining age of 16 and
- alien had reasonable belief that s/he was a citizen at time that claim to citizenship was made



Describe INA § 237(a)(3)(D) – Falsely Claiming Citizenship

(Lesson Content)

Describe INA § 237(a)(3)(D) – Falsely Claiming Citizenship

INA § 237(a)(3)(D) – Falsely claiming citizenship

The statute specifically references claims under INA § 274A, which means that false I-9s submitted to employers count under this ground of deportability.

INA § 237(a)(3)(D)(ii) provides for a limited exception if:

- the alien's parents are/were U.S. citizens,
- the alien permanently resided in the U.S. prior to attaining the age of 16 and
- the alien had a reasonable belief that s/he was a citizen at the time that the claim to citizenship was made.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(4) – Security and Related Grounds

• Covered in Bars to Relief and Terrorist Related Inadmissibility Grounds (TRIG) courses

- INA § 237(a)(4)(A) – Espionage, sabotage, exporting goods, criminal activity, overthrow of government
- INA § 237(a)(4)(B) – Terrorist activities
- INA § 237(a)(4)(C) – Foreign policy
- INA § 237(a)(4)(D) – Nazi persecution/genocide/commission of any act of torture or extrajudicial killing
- INA § 237(a)(4)(E) – Severe Violations of Religious Freedom
- INA § 237(a)(4)(F) – Recruitment/Use of Child Soldiers



Describe INA § 237(a)(4) – Security and Related Grounds (Lesson Content)

Describe INA § 237(a)(4) – Security and related grounds

INA § 237(a)(4) – Security and Related Grounds

The following grounds of deportability are covered in the courses Bars to Relief and Terrorist Related Inadmissibility Grounds (TRIG).

INA § 237(a)(4)(A) – Espionage, sabotage, exporting goods, criminal activity, overthrow of government

INA § 237(a)(4)(B) – Terrorist activities

INA § 237(a)(4)(C) – Foreign policy

INA § 237(a)(4)(D) – Nazi persecution/genocide/commission of any act of torture or extrajudicial killing

INA § 237(a)(4)(E) – Severe Violations of Religious Freedom

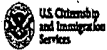
INA § 237(a)(4)(F) – Recruitment/Use of Child Soldiers

Lesson 3: Identify the Grounds of Deportability under INA § 237

• INA § 237(a)(5) – Public charge

• Statute:

- "Any alien who, within 5 years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable."
- Public charge means an alien who has become primarily dependent on the Government
- Causes must have existed prior to entry
- Primarily dependent on the government means receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense



Describe INA § 237(a)(5)- Public Charge

(Lesson Content)

Describe INA § 237(a)(5)- Public Charge

INA § 237(a)(5) – Public charge

"Any alien who, within 5 years after the date of entry, has become a public charge from causes *not* affirmatively shown to have arisen since entry is deportable." INA § 237(a)(5).

Public charge causes must have existed prior to entry.

For removal purposes, public charge means an alien who has become primarily dependent on the government.

Primarily dependent on the government means receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.

Lesson 3: Identify the Grounds of Deportability under INA § 237

INA § 237(a)(5) – Public charge

• Three-part test for determining public charge for removal

1. There must be a legal obligation to repay
2. The agency must demand repayment
3. The alien and other responsible persons must fail to repay



Describe INA § 237(a)(5)- Public Charge

(Lesson Content)

Describe INA § 237(a)(5)- Public Charge

INA § 237(a)(5) – Public charge

There is a three-part test for determining public charge for removal:

- There must be a legal obligation to repay.
- The agency must demand repayment.
- The alien and other responsible persons must fail to repay.

Lesson 3: Identify the Grounds of Deportability under INA § 237

• INA § 237(a)(6)(A) – Unlawful voters

• Statute:

- "Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable."
- Applies to voting occurring at any time
- INA § 237(a)(6)(B) limited exception if:
 - alien's parents are/were U.S. citizens,
 - alien permanently resided in the U.S. prior to turning 16, and
 - alien had a reasonable belief that s/he was a citizen at the time that the claim to citizenship was made



Describe INA § 237(a)(6)(A) – Unlawful Voters

(Lesson Content)

Describe INA § 237(a)(6)(A) – Unlawful Voters

INA § 237(a)(6)(A) – Unlawful voters

"Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable." INA § 237(a)(6)(A).

This ground applies to voting occurring at any time.

INA § 237(a)(6)(B) provides for a limited

exception if:

- the alien's parents are/were U.S. citizens,
- the alien permanently resided in the U.S. prior to attaining the age of 16, and
- the alien had a reasonable belief that s/he was a citizen at the time that the claim to citizenship was made.

Lesson/Topic 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Introduction

- It can be difficult to categorize the outcome of a criminal court proceeding
- This is also true when trying to analyze the punishment a court ordered
- We will discuss how to correctly analyze the various orders a criminal court may issue, and their meaning under immigration law



Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Identify what constitutes a conviction and sentence for immigration purposes

It is not always clear whether the outcome of a criminal court proceeding is considered a criminal conviction under the immigration law.

It can also be difficult to tell what the criminal sentence to imprisonment or other punishment may be.

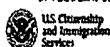
During this lesson, we will cover how to analyze the outcome of a criminal proceeding to determine its meaning for immigration purposes.

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

INA § 101(a)(43)(A) Statutory definition of conviction

• Statute:

- The term "conviction" means . . . a formal judgment of guilt . . . entered by a court or, if adjudication of guilt has been withheld, where--
- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed."



Statutory Definition of Conviction – INA § 101(a)(48)

(Lesson Content)

Statutory definition of conviction – INA § 101(a)(48)

INA § 101(a)(48)(A) – Statutory definition of conviction

“The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where--

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.” INA § 101(a)(48)(A).

The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court.

If adjudication of guilt has been *withheld*:

- A judge or jury has found the alien guilty or
- the alien has entered a plea of guilty or *nolo contendere* or
- has admitted sufficient facts to warrant a finding of guilt, [INA § 101(a)(48)(A)(i)]

and

The judge has ordered that some form of punishment, or restraint be imposed on the alien's liberty.

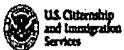
INA § 240 (c) (3) (B) & 8 CFR 1003.41 provide that the following documents (or certified copies) constitute proof of a criminal conviction:

official record of judgment & conviction;
 official record of plea, verdict & sentence;
 docket entry from court records;
 official minutes or transcript of court hearing;
 abstract of conviction record prepared by a court or State official;
 any document prepared under the direction of a court indicating a conviction exists;
 any conviction document maintained by an official of a state or federal penal institution.

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Deferred adjudications

- In some states the court may defer further proceedings without adjudicating guilt if defendant pleads guilty, or *nolo contendere*
- Defendant sentenced to probation, community service or other punishment
- After completing punishment, defendant has no conviction under state law
- This is still a conviction under immigration law since INA definition of conviction is met



Deferred Adjudications

(Lesson Content)

Deferred Adjudications

Deferred adjudications

Some states allow courts to defer further proceedings without entering an adjudication of guilt following a plea of guilty or *nolo contendere*.

This allows a defendant to complete community supervision, probation or perform some other form of punishment, penalty or restriction on the alien's liberty.

Successful completion of the penalty or punishment renders the defendant not convicted of any state crime *for state purposes*.

But, the defendant is convicted for immigration purposes if the two prongs of INA § 101(a)(48)(A) are met.

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Deferred adjudication example

- Defendant pleads guilty to attempted murder
- Criminal court defers adjudication of guilt, but orders defendant to serve 8 years probation
- Conviction for immigration purposes since there is:
 - An admission of guilt
 - Probation (a restraint on liberty)



Deferred Adjudication Example

(Lesson Content)

Deferred Adjudication Example

Deferred adjudication example

The defendant pleaded guilty to attempted murder. The Texas criminal court deferred adjudication of guilt (withheld adjudication of guilt) but ordered defendant to serve 8 years of probation. *Matter of Punu*, 22 I&N Dec. 224 (BIA 1998).

The court's action remains a conviction for immigration purposes because the deferred adjudication of guilt involved *an admission of guilt plus some restraint on liberty*, meeting the two prongs of INA § 101(a)(48)(A)(i) and (ii).

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Deferred prosecution or pre-trial diversion programs

- The court will not adjudicate guilt, and these programs generally do not require a defendant plead guilty
- No conviction for immigration purposes
- Example: Alien arrested for drug offense given opportunity to attend counseling instead of entering plea of guilty. After finishing counseling the charge is dismissed.
 - No finding of guilt or plea of guilty so no conviction.



Deferred Prosecution or Pre-trial Diversion Programs

(Lesson Content)

Deferred prosecution or pre-trial diversion programs

Deferred prosecution or pre-trial diversion programs

Deferred “prosecution” or “pre-trial diversion” programs that do *not* require the defendant to plead guilty or the court to make any finding of guilt *do not constitute* a conviction for immigration purposes.

Example:

An alien who is arrested for a drug offense may be given an opportunity to attend Narcotics Anonymous classes instead of entering a plea to the criminal charge.

If the alien successfully completes Narcotics Anonymous without incident, the charges are dismissed.

Result: In this circumstance this offense is *not* a conviction for immigration purposes because the alien never plead or was

adjudicated or found guilty of a crime.

Nevertheless, the underlying activities can be used in making a discretionary determination or may provide reason to believe the alien is inadmissible under certain charges, such as drug trafficking, INA §212(a)(2)(C)(i).

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Deferred prosecution or pre-trial diversion programs

- Alien arrested for drug offense and offered an opportunity to attend counseling.
- In order to be in program, court requires entry of a plea of no contest to the charge as part of the diversionary agreement.
- The defendant successfully completes the class, and charges are dismissed.
- Conviction under INA



Deferred Prosecution or Pre-trial Diversion Programs

(Lesson Content)

Deferred prosecution or pre-trial diversion programs

Deferred prosecution or pre-trial diversion programs

Another Example:

An alien is arrested for a drug offense and is offered an opportunity to attend Narcotics Anonymous classes. In order to be accepted into the program, the court requires the defendant to enter a plea of no contest to the charge as part of the diversionary agreement.

The defendant successfully completes the class, and charges are dismissed.

Result: this offense *is* a conviction for immigration purposes. There has been a plea of no contest to the charge (INA § 101(a)(48)(A)(i)) and there has been a form of punishment or restraint on liberty imposed in the attendance of classes (satisfying INA § 101(a)(48)(A)(ii)).

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Vacated, expunged, dismissed convictions

- Key Question: What is the reason for the order vacating, expunging, etc.?
- Vacated on legal merits – NOT a conviction
 - Constitutional issue, ineffective assistance of counsel, failure to advise of immigration consequences
- Vacated to avoid immigration consequences or to restore state rehabilitative rights (such as voting rights) – IS a conviction



Vacated, Expunged, Dismissed Convictions

(Lesson Content)

Vacated, expunged, dismissed convictions

Vacated, expunged, dismissed convictions

The reason for the order vacating, dismissing or expunging the conviction is the key in these situations. If the conviction is vacated, expunged, set-aside or dismissed it is:

- NOT a conviction if vacated on the legal merits [e.g., constitutional issue – ineffective assistance of counsel] or a procedural defect [e.g., failure to advise of immigration consequences].
- IS a conviction if vacated for the purpose of avoiding immigration consequences [avoid deportation charge or removal].
- IS a conviction if vacated for the purpose of restoring state rehabilitative rights [e.g., restore civil rights (voting) or gun rights].

Note: Until repealed in 1990, INA §241(b)(2) allowed a state criminal judge to remove the immigration consequences from a crime by granting a judicial recommendation against deportation. Previously granted JRADs remain valid even for a new removal charge is subsequently enacted. *Phong Thanh Nguyen v. Chertoff*, 501 F.3d 107 (2d Cir, 2007)(alien not removable either for conviction of a CIMT or aggravated felony based on rape conviction relating to a five-year-old child since state judge granted JRAD).

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Finality of a conviction

- Conviction final when defendant exhausts all direct appeals (appeals defendant is entitled to)
- Right of appeal to state appellate court, but not state supreme court
- If convicted after pleading guilty, right to appeal is usually waived
- Finality varies by circuit – consult OCC
- Collateral attacks, appeals of sentence, etc. don't effect finality



Finality of a Conviction

(Lesson Content)

Finality of a conviction

Finality of a conviction

Note: Please consult with local Office of Chief Counsel (OCC) if needed.

A conviction is final when:

- The alien has exhausted any “direct appeals” to which he is entitled.
- Defendants have a right of appeal to a state appellate court, but not to the state supreme court.

The issue of direct appeals generally arises when a person has been convicted after a trial. Usually, a defendant will waive the right to appeal if s/he enters a plea of guilty or no contest.

The issue of finality of a conviction varies by circuit. Some circuit courts of appeals have found that a conviction is final regardless of whether appeals have been exhausted or waived (1st, 2nd, 5th, 7th, 9th and 10th). *See Planes v. Holder*, 652 F.3d 991, 995 (9th Cir. 2011) (a conviction is final for immigration purposes in spite of any pending appeals as IIRIRA eliminated a direct appeal from the finality rule in its definition of conviction); *Waugh v. Holder*, 642 F.3d 1279, 1284 (10th Cir. 2011); *Montenegro v. Ashcroft*, 355 F.3d 1035, 1037 (7th Cir. 2004); *see also Puello v. Bureau of Citizenship & Immig. Servs.*, 511 F.3d 324, 332 (2d Cir. 2007); *Moosa v. INS*, 171 F.3d 994, 1009 (5th Cir. 1999).

Compare with *Matter of Cardenas-Abreu*, 24 I&N. Dec. 795 (BIA 2009) (dicta - conviction subject to direct appeal of right cannot trigger deportation proceedings remains the law); *See Pino v. Landon*, 349 U.S. 901 (1955); *Paredes v. Att’y Gen. of U.S.*, 528 F.3d 196, 198 (3d Cir. 2008); *United States v. Garcia-*

Echaverria, 374 F.3d 440, 445 (6th Cir. 2004); *Matter of Ozkok*, 19 I. & N. Dec. 546, 552 n.7 (BIA 1988).

“Discretionary appeals,” “collateral attacks” or “sentence” challenges on a conviction do not defeat finality.

Consult OCC if you plan to rely on a conviction for which direct appeals have not been exhausted. See *Aguilera-Montero v. Mukasey*, 548 F.3d 1248 (9th Cir. 2008). See *Balogun v Attorney General*, 425 F.3d 1356 (11th Cir. 2005) (ruling that the pardon provision in INA 237 does not extend to INA 212). But see *Matter of H*, 6 I&N Dec. 90 (BIA 1954).

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Evidence to prove a conviction

- Official record of judgment and conviction or official record of plea, verdict, and sentence
- Docket entry from court records
- Court minutes, transcript or abstract
- Any document or record prepared by court indicating conviction.
- Any document or record [showing the conviction maintained by a State or Federal penal institution.]



Evidence to Prove a Conviction
(Lesson Content)

Evidence to prove a conviction

Evidence to prove a conviction

Both the INA and the regulations set out what types of documents prove a conviction under immigration law. The statutory provision is INA § 240(c)(3)(B), and the regulation is found at 8 C.F.R. § 1003.41.

The statutory and regulatory lists are quite similar and state that any of the following documents constitute proof of a conviction:

- Official record of judgment and conviction
- Official record of plea, verdict, and sentence
- Docket entry from court records
- Court minutes or transcript
- Court abstract
- Any document or record prepared by the court indicating a conviction.
- Any document or record attesting to a conviction maintained by an official of a State or Federal penal institution.

[Note: 8 CFR 1003.41(d) “Any other

evidence that reasonably indicates the existence of a criminal conviction may be admissible of evidence thereof.”]

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Pardons

- INA § 237(a)(2)(A)(vi) states that an alien will not be deportable under INA sections:
 - 237(a)(2)(A)(i) [CIMT],
 - 237(a)(2)(A)(ii) [multiple CIMTs],
 - 237(a)(2)(A)(iii) [conviction of an aggravated felony], or
 - 237(a)(2)(A)(iv) [high speed flight],
- if he or she received a full and unconditional pardon by the U.S. President or a U.S. state governor



Pardons (Lesson Content)

Pardons Pardons

Under INA § 237(a)(2)(A)(vi), an alien will not be deportable under INA sections:

- 237(a)(2)(A)(i) [CIMT],
- 237(a)(2)(A)(ii) [multiple CIMTs],
- 237(a)(2)(A)(iii) [conviction of an aggravated felony], or
- 237(a)(2)(A)(iv) [high speed flight],

if the alien, subsequent to the criminal conviction, has been granted a full and unconditional pardon by the President of the United States or by the Governor of any State in the United States. Neither a legislative nor a foreign pardon will provide relief.

Note: The pardon provision does not cure deportability other than for these offenses specified. In other words, a pardon has no effect on any other ground of deportability, including possession of a controlled substance (INA § 237(a)(2)(B)(i)).

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Pardons

- Statute covers deportability, but in the majority of circuits a full, unconditional pardon waives the comparable inadmissibility grounds as well
 - The exceptions are the Ninth and Eleventh circuits
- Foreign pardons have no effect on deportability or inadmissibility
- Although there has been a full, U.S. pardon, discretionary relief may still be denied



Pardons (Lesson Content)

Pardons

Pardons

The statutory provision on pardons relates to deportability. What effect does a pardon have on inadmissibility?

In the majority of circuits a full and unconditional pardon by the president or a governor will waive the grounds of exclusion (i.e., inadmissibility) comparable to the listed grounds of deportability.

However, a pardon does *not* remove a ground of inadmissibility in the Ninth and Eleventh Circuits.

In *Aguilera-Montero v. Mukasey*, 548 F.3d 1248 (9th Cir. 2008), the Ninth Circuit Court of Appeals upheld the BIA's determination that a full and unconditional pardon of a cocaine conviction did not waive the ground of inadmissibility under INA § 212(a)(2)(A)(i)(II), because there was no comparable provision in INA § 212 referenced in INA § 237(a)(2)(A)(vi).

In *Balogun v. U.S. Attorney General*, 425 F.3d 1356, 1358 (11th Cir. 2005), the Eleventh Circuit Court of Appeals found that there was no pardon provision in the grounds of inadmissibility, and that therefore an inadmissible alien would remain inadmissible despite the issuance of a pardon.

Foreign pardons do not cure inadmissibility or deportability.

Even when there has been a presidential or gubernatorial pardon, discretionary relief may still be denied.

Consult OCC if you plan to rely on a conviction for which direct appeals have not been exhausted. See *Aguilera-Montero*

v. Mukasey, 548 F.3d 1248 (9th Cir. 2008). See *Balogun v Attorney General*, 425 F.3d 1356 (11th Cir. 2005) (ruling that the pardon provision in INA §237 does not extend to INA §212). But see *Matter of H*, 6 I&N Dec. 90 (BIA 1954).

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Juvenile delinquency

- Minors generally treated as juveniles in court and adjudicated delinquent after committing an offense
- Adjudication of delinquency is not a criminal conviction
- Read court records carefully to see if the minor was adjudicated delinquent, or was tried as an adult
- If tried as an adult, the result is a criminal conviction despite the defendant's age



Juvenile Delinquency (Lesson Content)

Juvenile Delinquency

Juvenile Delinquency

Minors who commit criminal offenses are usually treated as juveniles by the court and therefore are not convicted of a crime, but instead adjudicated delinquent.

The records of the court proceeding will generally contain markings indicating that the proceeding was relating to a “juvenile” and typically will reference that the person has been “adjudicated delinquent” pursuant to that state’s juvenile delinquency statutes. A foreign offense that would constitute an act of juvenile delinquency under the Federal Juvenile Delinquency Act is not a criminal conviction for immigration purposes. *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981)

Conviction of a minor, an alien under age 18, as an adult *is* a conviction for immigration purposes, *i.e.* a minor who was tried as an adult. In such case, the minor will have been convicted under the same statutory provision as an adult offender.

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

INA § 101(a)(48)(B) - Sentence and term of imprisonment

• **Statute:**

- "Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part."



INA § 101(a)(48)(B)- Sentence and Term of Imprisonment

INA § 101(a)(48)(A)- Sentence and term of imprisonment

INA § 101(a)(48)(B) - Sentence and term of imprisonment

"Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part." INA § 101(a)(48)(B).

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Suspended sentences and resentencing

- A sentence to confinement counts as a sentence for immigration purposes:
 - Even if imposition or execution of the criminal sentence is suspended, and
 - Even if the individual does not actually serve the time
- Resentencing by the criminal court is effective to change the length of sentence



Suspended Sentences and Resentencing

Suspended sentences and resentencing

Suspended sentences and resentencing

A sentence to confinement counts as a sentence for immigration purposes, even if imposition or execution of the sentence is suspended, and even if the individual does not actually serve the time.

Resentencing by the criminal court to a period of less than one year is effective to remove the alien from an aggravated felony classification requiring a sentence of a year or more.

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Suspended sentences and resentencing

- The reason that a court changes a defendant's sentence is *irrelevant*
- If the court resents the defendant, then only the new sentence can be used for immigration purposes
- Typically seen when the alien is convicted of an offense that is an aggravated felony requiring a sentence of 1 year or longer
 - Resentencing to less than a year means the defendant is no longer convicted of an aggravated felony



Suspended Sentences and Resentencing

Suspended sentences and resentencing

Suspended sentences and resentencing

Unlike the situation when a court vacates a conviction, the reason for the modification of sentence or resentencing is *irrelevant*.

If an alien criminal defendant is successful in requesting the court modify the criminal sentence, then it is only the new sentence that can be used for immigration purposes.

This is most typically seen with respect to various aggravated felony provisions that have a minimum sentence required in order to be considered an aggravated felony (e.g., a

crime of violence, burglary, theft, and others).

If an alien convicted of one of these offenses is resentenced to a term of imprisonment of less than one year, his or her conviction is no longer considered to be for an aggravated felony.

However, a probation violation could result in an increased sentence that counts for immigration purposes.

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Suspended sentences and resentencing

- Defendant convicted of burglary and sentenced to two years' imprisonment.
- Asks court to modify sentence or resentence, explaining that he will be removed as an aggravated felon otherwise.
- Court resentsences to 9 months: He is no longer an aggravated felon under INA § 101(a)(43)(G) as since now sentenced to less than 1 year.
- Court vacates conviction: Still convicted due to the reason for order vacating. Still an aggravated felon.



Suspended sentences and resentencing

Suspended sentences and resentencing

Suspended sentences and resentencing

Examples:

An alien criminal defendant is convicted of burglary and is sentenced to two years' imprisonment. While serving the sentence, the defendant asks the court to modify the sentence or resentence him, explaining that he will be removed as an aggravated felon otherwise.

If the criminal court resentsences him to 9 months' imprisonment, then the defendant has no longer been sentenced to a term of imprisonment of at least one year, and is **no longer an aggravated felon** pursuant to INA § 101(a)(43)(G). It does not matter that the purpose of the resentencing was to avoid the immigration consequences.

The same alien, instead of asking the court to modify his sentence, seeks to vacate the conviction because he will be removed as an aggravated felon. The court vacates the conviction. In that case, the alien is **still convicted of an aggravated felony**, because the conviction had been vacated with the purpose of avoiding the immigration consequence.

Because issues of sentencing, re-sentencing,

and vacating convictions can be very technical, consultation with the USCIS Office of the Chief Counsel is recommended.

Consecutive, Concurrent and Indeterminate Sentences

Consecutive, concurrent and indeterminate sentences

Consecutive, concurrent and indeterminate sentences

If sentences are served concurrently, count the longer sentence, because the sentences are being served at the same time, and the shorter sentence will be completed while the person is still serving the longer sentence.

Example: A defendant is convicted of two counts of robbery, and is sentenced to 2 years for one count and 3 years for the other to be served concurrently. The overall sentence is counted as 3 years, which is the longer sentence imposed.

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Consecutive, concurrent and indeterminate sentences

- Sentences served concurrently- count the longer sentence
- *Example:*
 - A defendant is convicted of two counts of robbery, and is sentenced to 2 years for one count and 3 years for the other to be served concurrently.
 - The overall sentence is counted as 3 years, which is the longer sentence imposed.



Consecutive, Concurrent and Indeterminate Sentences

Consecutive, concurrent and indeterminate sentences

Consecutive, concurrent and indeterminate sentences

If sentences are served consecutively, add all the sentences together, because the defendant is required to satisfy one sentence before beginning to serve the other sentence.

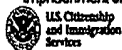
Example: A defendant is convicted of two counts of robbery, and is ordered to serve 2 years imprisonment for one count and 3 years imprisonment on the other count, to be served consecutively. The defendant must serve the sentence of one count before beginning to serve the other, so the total period of imprisonment ordered is 5 years.

(Lesson Content)

Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Consecutive, concurrent and indeterminate sentences

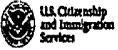
- Sentences served consecutively – add all the sentences together
- *Example:* Defendant convicted of two counts of robbery, and is ordered to serve 2 years imprisonment for one count and 3 years imprisonment on the other count, to be served consecutively.
- The defendant must serve the sentence of one count before beginning to serve the other, so the total period of imprisonment ordered is 5 years.



Lesson 4: Identify What Constitutes a Conviction and Sentence for Immigration Purposes

Consecutive, concurrent and indeterminate sentences

- Indeterminate sentence is counted as the maximum amount of time the person could be required to serve under a sentence imposed by the judge.
- *Example:* A defendant is ordered to serve an indeterminate sentence of between 3 and 8 years. This is counted as a term of imprisonment of 8 years.
- Indeterminate sentence is when the judge sets a range - not the same as the maximum sentence that could be imposed.



Consecutive, Concurrent and Indeterminate Sentences

Consecutive, concurrent and indeterminate sentences

Consecutive, concurrent and indeterminate sentences

An indeterminate sentence is counted as the maximum amount of time the person could be required to serve under a sentence imposed by the judge.

Example: A defendant is convicted of robbery and is ordered to serve an indeterminate sentence of between 3 and 8 years. This is counted as a term of imprisonment of 8 years.

Note: an indeterminate sentence is not the same as the maximum sentence that could be imposed for an offense under a criminal statute. An indeterminate sentence is when the judge sentences that particular defendant to a range of time to be imprisoned (and then release is generally determined based on the defendant's behavior and rehabilitation while incarcerated).

Closing

Summary and Lesson Debrief

An alien seeking admission to the United States, whether as a nonimmigrant or as an immigrant, or as one seeking a benefit such as adjustment of status to that of lawful permanent resident, must demonstrate that s/he is admissible to the United States. Grounds of inadmissibility are found at INA § 212. In contrast, an alien who has already been admitted to the United States can become subject to removal if s/he commits one of the deportable offenses listed in INA § 237.

The determination of whether to use a ground of inadmissibility or ground of deportability depends on whether the benefit application being adjudicated requires the applicant to prove admissibility. If so, then the grounds of INA § 212 are applied.

If the application is denied, then a determination is made

whether or not the alien has been admitted to the United States. An alien who has departed while under a grant of advance parole is an arriving alien and is subject to any grounds of inadmissibility under INA § 212. An alien who has been admitted to the United States under a nonimmigrant or immigrant classification, but whose application for a benefit has been denied, is subject to grounds of deportability under INA § 237. The procedure for the issuance of a charging document (Form I-862) is covered in the NTA (Notices to Appear) course. Remember that an alien who is present in the United States without having been inspected and admitted is subject grounds of inadmissibility under INA § 212, and specifically under INA § 212(a)(6)(A)(i).

Even if an alien is inadmissible or deportable, s/he may be eligible to apply for a waiver of that ground of inadmissibility or deportability. Most waiver applications are filed on the Form I-601, although an application by a refugee for a waiver of inadmissibility is filed on the Form I-602. Most waivers are also discretionary in nature. Even if an alien is statutorily eligible for the waiver, s/he must demonstrate that s/he warrants a favorable exercise of discretion.

Level 1 Evaluation

This is done via Learning Edge' BASIC course page.

Homework

None.

Assess Performance

- Through Examination(s) in BASIC
- Instructor can review participants' understanding through knowledge check/review exercises (next section, part 2)

Participant References

Immigration Law Handbook

Review Exercises

Lab #1: INTRODUCTION AND INADMISSIBILITY GROUNDS

1. **List three situations where an alien is “seeking admission” and the INA § 212 grounds are applied.**
 - ❖ Alien is seeking admission as an arriving alien at a port of entry (alien is outside the U.S.; includes alien paroled into the U.S., asylee, refugee)
 - ❖ Alien is seeking admission when applying for adjustment of status (alien is inside the U.S.)
 - ❖ Alien is seeking admission when present in the U.S. without inspection and admission or parole (alien is inside the U.S.)

2. **If an alien’s last arrival was not an admission into the U.S. under what section of law is the alien’s charge of removability on the Notice to Appear?**
 - ❖ Under INA § 212 since the alien was not admitted to the U.S. on the last arrival

3. **Who is required to undergo a medical exam?**
 - ❖ Immigrant visa applicants
 - ❖ Refugees applying for admission under INA § 207
 - ❖ Applicants for adjustment of status
 - ❖ K and V nonimmigrant visa applicants
 - ❖ Other applicants for admission if there is a reason to believe that the applicant may be inadmissible on health-related grounds

4. **True or False. All Class A and B medical conditions render an alien inadmissible.**
 - ❖ False. Only a Class A certificate renders an alien inadmissible on health-related grounds

5. **Who is required to meet vaccination requirements?**
 - ❖ Any alien seeking admission as an immigrant or an applicant for adjustment of status (for applications filed on or after 9/30/96)

6. For an alien to be inadmissible under INA § 212(a)(2)(A)(i)(I), the alien may be convicted of the offense, admit having committed the offense, or admit committing acts constituting the essential elements of the offense. If an officer relies upon the alien admitting having committed acts constituting the essential elements of the offense, what steps or procedures must be completed?

- ❖ Officer must read the offense language from the criminal statute
- ❖ Officer must explain the language in common terms to the alien
- ❖ Alien must admit to each of the elements of the offense
- ❖ Alien's admission must be knowing and voluntary
- ❖ Sworn statement is recommended

7. If an alien's offense meets the "petty offense" exception for a CIMT, the alien is not considered inadmissible. List the three elements that an alien's offense must satisfy for the "petty offense" exception to apply under INA § 212(a)(2)(A)(ii)(II):

- ❖ Alien has committed only one CIMT
- ❖ The maximum penalty possible for the offense did not exceed one year imprisonment
- ❖ The alien was not sentenced to more than 6 months' confinement, regardless of whether the alien served any time

8. Is an alien inadmissible under INA § 212(a)(2)(A)(i)(II) for having committed any offense relating to a drug conviction? Explain.

- ❖ Yes, any drug offense renders the alien inadmissible under INA § 212(a)(2)(A)(i)(II), but the alien may be able to apply for a waiver under INA § 212(h) if the offense involves only one offense for simple possession of 30 grams or less of marijuana.

9. Is an alien inadmissible under any of the following – INA §§ 212(a)(6)(C)(i), (6)(C)(ii) or (7)(A)(i)(I) for making a false claim to U.S. citizenship at the port of entry on September 29, 1996? Explain.

- ❖ Inadmissible under INA § 212(a)(6)(C)(i) for fraud or willful misrepresentation of a material fact because the false claim was made to a government official for the purpose of obtaining an immigration benefit

- ❖ Inadmissible under INA § 212(a)(7)(A)(i)(I) as an intending immigrant who is not in possession of a valid immigrant visa (all aliens presumed to be immigrants unless they can establish a valid nonimmigrant purpose)
- ❖ Not inadmissible under INA § 212(a)(6)(C)(ii) because that false claim to citizenship provision only applies to statements made on or after 9/30/96

10. Is an alien inadmissible under INA §§ 212(a)(6)(C)(i) or 212(a)(6)(C)(ii) for making a false claim to U.S. citizenship when the alien applied for driver's license on September 30, 1996? Explain.

- ❖ Inadmissible under INA § 212(a)(6)(C)(ii) only, because the false claim to citizenship was made in order to obtain a State benefit on or after 9/30/96. Note that there is no waiver available for this ground of inadmissibility.

11. True or False! An alien who is convicted of aggravated assault with a deadly weapon and is sentenced to 1.5 years in jail is inadmissible under INA § 212(a)(2)(A)(i)(I).

- ❖ True; no exceptions apply, but a waiver may be available under INA § 212(h)

12. True or False. An alien who has legally worked as a prostitute in her home country for the past 3 years and is applying for adjustment of status is inadmissible under INA § 212(a)(2)(D)(i).

- ❖ True, although a waiver under INA § 212(h) may be available

13. The waiver under INA § 212(h)(1) waives which five inadmissibility grounds?

- ❖ INA § 212(a)(2)(A)(i)(I) – CIMT
- ❖ INA § 212(a)(2)(A)(i)(II) – only for one simple possession of 30 grams or less of marijuana
- ❖ INA § 212(a)(2)(B) – multiple convictions
- ❖ INA § 212(a)(2)(D) – prostitution, proceeds from prostitution and commercialized vice
- ❖ INA § 212(a)(2)(E) – asserted immunity from prosecution

14. An alien convicted for sale of marijuana is inadmissible under three possible grounds of inadmissibility. What are they?

- ❖ INA § 212(a)(2)(A)(i)(I) – CIMT
- ❖ INA § 212(a)(2)(A)(i)(II) – controlled substance offense
- ❖ INA § 212(a)(2)(C) – reason to believe the alien is a drug trafficker

15. True or False. An alien who voted in the Presidential election of November 1996 is inadmissible under INA § 212(a)(10)(D)(i).

- ❖ True, unless the exception under INA § 212(a)(10)(D)(ii) applies

16. What factors can be considered in determining whether an alien is inadmissible as a public charge under INA § 212(a)(4)?

- ❖ Age, health, family status, assets, resources, financial status, education, skills

17. True or False. All aliens seeking admission or applying for adjustment of status are subject to the public charge ground of inadmissibility under INA § 212(a)(4).

- ❖ False [Note to Instructor: Please see section above regarding aliens for which public charge ground may not apply. Example: Refugees, Asylees].

18. True or False. An alien who arrives and is present in the United States by coming through the port of entry at 2 a.m. when the port is closed without any inspectors present is subject to inadmissibility under INA § 212(a)(6)(A)(i).

- ❖ True [Note to Instructor: Please see section above regarding INA § 212(a)(6)(A)]

19. An alien who smuggles or assists in smuggling aliens into the U.S. is inadmissible under INA § 212(a)(6)(E)(i). The alien is eligible to apply for a waiver under INA § 212(d)(11) if the alien has smuggled which qualifying relatives?

- ❖ Parent, spouse, son or daughter, and no other individual. Example: if the alien smuggled his spouse, but also smuggled his brother, then he is not eligible to apply for the waiver.

20. An alien who is a VAWA self-petitioner is applying for adjustment of status, but is inadmissible and needs a waiver under INA § 212(i). What elements must the applicant satisfy to be granted this waiver?

- ❖ The applicant must establish extreme hardship to him/herself, any United States citizen, lawful permanent resident, or qualified alien children, or parents, and must show that s/he warrants a favorable exercise of discretion

21. An alien who is an immediate relative of a U.S. citizen is applying for adjustment of status, but is inadmissible and needs a waiver under INA § 212(i). What elements must the applicant satisfy to be granted this waiver?

- ❖ Applicant must establish extreme hardship to spouse or parent (children do not count), and that s/he warrants a favorable exercise of discretion

22. List the three different bases for a waiver under INA § 212(h) and describe them briefly.

- ❖ INA § 212(h)(1)(A) waives INA § 212(a)(2)(D)(i), (ii), or any other offense waivable under INA § 212(h) if more than 15 years have passed since the offense and the alien demonstrates rehabilitation, no threat to safety/security, and that it is warranted as a matter of discretion
- ❖ INA § 212(h)(1)(B) requires that the applicant have a qualifying relative (parent, spouse or child who is a USC or LPR), extreme hardship, and that a favorable exercise of discretion is warranted
- ❖ INA § 212(h)(1)(C) is for a VAWA applicant who must simply demonstrate that a favorable exercise of discretion is warranted

23. Is there a waiver or exception for an alien who is inadmissible under INA § 212(a)(9)(A)? Explain.

- ❖ INA § 212(a)(9)(A)(iii) provides an exception to the bars of inadmissibility if the person has obtained consent to reapply for admission to the United States after removal (Form I-212)

24. Is there any waiver or other form of relief for an alien who is inadmissible under INA § 212(a)(9)(B)? Explain.

- ❖ INA § 212(a)(9)(B)(v) provides a waiver for unlawful presence, and the alien must demonstrate extreme hardship to a USC/LPR parent or spouse and that a favorable exercise of discretion is warranted

25. Is there any waiver or other form of relief for an alien who is inadmissible under INA § 212(a)(9)(C)? Explain.

- ❖ INA § 212(a)(9)(C)(ii) provides an exception to the permanent bar. Once the alien has waited 10 years after the date of last departure from the United States, s/he may file a Form I-212 from outside the United States to request permission to reapply for admission.

LAB #2: DEPORTABILITY GROUNDS AND CONVICTIONS

- 1. When is an alien subject to grounds of deportability under INA § 237?**
 - ❖ When the alien has been admitted to the United States and thereafter becomes ineligible for classification given, commits an offense that renders him/her deportable, or was not entitled to the classification given at the time of admission
- 2. List the three statutory elements to satisfy a finding of deportability under INA § 237(a)(2)(A)(i) for conviction of a crime involving moral turpitude.**
 - ❖ Conviction
 - ❖ Offense committed within 5 years of admission (10 years if admitted under INA § 245(j) relating to informants)
 - ❖ Possible sentence for the offense (regardless of actual sentence) was at least one year
- 3. True or False. An alien who has been convicted of one drug offense is always deportable under INA § 237(a)(2)(B)(i).**
 - ❖ False, an alien who has been convicted of one offense for simple possession of 30 grams or less of marijuana for personal use is not deportable
- 4. Is an alien deportable under INA § 237(a)(2)(B)(i) for a single drug conviction where the charge is "Possession of less than 2 pounds of marijuana?"**
 - ❖ Only if the government (ICE in removal proceedings) is able to establish the amount of marijuana was more than 30 grams
- 5. Is an alien deportable for false claim to U.S. citizenship if the claim was made on September 29, 1996 to obtain a state driver's license?**
 - ❖ No, the provision only applies if the claim was made on 9/30/96 or later
- 6. An alien was admitted as an immigrant last month. Yesterday, the alien assisted his brother-in-law, sister and mother to enter the U.S. near the Arizona border. Is the immigrant subject to deportability under INA § 237(a)(1)(E)(i)?**

- ❖ Yes [Note: He is not eligible for a waiver because the waiver applies only to an alien's spouse, parent, son or daughter].
- 7. An alien was admitted at the port of entry as an immigrant spouse of a U.S. citizen, but at the time of her admission she was married to another man. What are the possible charges of deportability?**
- ❖ INA § 237(a)(1)(A) – 212(a)(6)(C)(i) [fraud/willful misrepresentation]
 - ❖ INA § 237(a)(1)(A) – 212(a)(7)(A)(i)(I) [not in possession of a valid immigrant visa]
 - ❖ INA § 237(a)(1)(A) – 212(a)(10)(A) [practicing polygamy? – No. – Under immigration law her prior marriage rendered the marriage to the USC invalid]
 - ❖ INA § 237(a)(1)(G) – if it can be established that alien failed to fulfill the marital agreement
- 8. An alien was admitted on a B-2 visitor's visa and overstayed the time authorized on the I-94. What is the applicable ground of deportability?**
- ❖ INA § 237(a)(1)(B) [overstay]
- 9. An alien admitted as an F-1 student dropped out of school after one week and began working. What is the applicable ground of deportability?**
- ❖ INA § 237(a)(1)(C) [violated conditions of admission]
- 10. An alien was convicted for sale and transportation of marijuana within 4 years of his last admission to the United States. The possible sentence was 1-5 years' imprisonment, but the alien was sentenced to 6 months in jail. What is/are the applicable ground(s) of deportability?**
- ❖ INA § 237(a)(2)(A)(i) – CIMT [drug trafficking is a CIMT]
 - ❖ INA § 237(a)(2)(A)(iii) – INA § 101(a)(43)(B) – aggravated felon as drug trafficker
 - ❖ INA § 237(a)(2)(B)(i) – controlled substance offense conviction
- 11. An alien voted in the Presidential election of November 1996. What are the applicable grounds of deportability?**
- ❖ INA § 237(a)(6) – unlawful voting, although an exception could apply
 - ❖ INA § 237(a)(3)(D) – false claim to U.S. citizenship (possible if on or after 9/30/96)
- 12. An alien has two convictions for petty theft and is sentenced to 5 months in jail and 1 year probation on the second conviction. What is the ground of deportability?**

- ❖ INA § 237(a)(2)(A)(ii) – multiple CIMTs

13. List at least two grounds of deportability that have no comparable inadmissibility ground.

- ❖ INA § 237(a)(2)(A)(iii) – aggravated felony conviction
- ❖ INA § 237(a)(2)(C) – firearms conviction

14. To charge a ground of deportability under INA § 237(a)(2)(A)(iii), what other statute must be referenced in the Notice to Appear?

- ❖ INA § 101(a)(43), noting the specific subsection involved; e.g., 101(a)(43)(B) – drug trafficking

15. An alien is deportable under INA § 237(a)(2)(E)(i) for a crime of domestic violence if the conviction is after September 30, 1996. Who must be the victim in these crimes?

- ❖ Victim can be a current or former spouse, one who shares a child in common, or cohabits as a spouse, an individual who is cohabiting with or has cohabited with the perpetrator as a spouse, an individual similarly situated to a spouse of the perpetrator under the domestic or family violence laws of the jurisdiction where the offense occurs, or any other individual who is protected from the perpetrator's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

16. Which of the following is a “conviction” for immigration purposes?

- Formal judgment of “guilt” entered by a court – Yes
- “Deferred prosecution” where the defendant is not required to plea – No
- Conviction vacated due to failure to advise of immigration consequences – No
- Conviction vacated to avoid immigration consequences – Yes
- Conviction vacated for rehabilitative purposes – Yes
- “Adjudication” withheld but with a plea of guilty and 1 year probation – Yes
- Conviction vacated for ineffective assistance of counsel – No

17. What is a sentence for immigration purposes?

True or False:

- An alien has his criminal reduced from 1.5 years to 364 days. For immigration purposes his sentence is still 1.5 years. True or False.**
False

- b. An alien is sentenced to probation. He violates probation and is sentenced to 2 years in jail. For immigration purposes his sentence is still probation. True or False.**

False

What is a sentence for immigration purposes?

c. An alien is sentenced to 2.5 years for possession of narcotics and 3 years for arson, to be served consecutively. For immigration purposes his sentence is 5.5 years. Note: However, on an NTA, each count would be a separate removable offense referencing the term of imprisonment for the respective count.

d. An alien is sentenced to 6 months for petty theft and 7 months for sexual assault, to be served concurrently. For immigration purposes his sentence is 7 months. Note: However, on an NTA, each count would be a separate removable offense referencing the term of imprisonment for the respective count.

Appendix

Create Your Own Classroom Setup

