

9 FAM 40.21(a)

CRIMES INVOLVING MORAL TURPITUDE

(CT:VISA-1442; 06-15-2010)
(Office of Origin: CA/VO/L/R)

9 FAM 40.21(a) RELATED STATUTORY PROVISIONS

(CT:VISA-1442; 06-15-2010)

See INA 212(a)(2) (8 U.S.C. 1182(a)(2)) and INA 212 (h) (8 U.S.C. 1182(h)).

INA 212(a)(2)(A)

(2) Criminal and Related Grounds

(A) Conviction of Certain Crimes

(i) In General

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) A crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime), or
- (II) 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 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

(ii) 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, or

- (II) 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)(B)

- (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)(C)

- (C) Controlled Substance Traffickers

Any alien who the consular officer or the Attorney General knows or has reason to believe—

- (i) Is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or
- (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)(D)

- (D) Prostitution and Commercialized Vice

Any alien who-

- (i) Is coming to the United States 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,
- (ii) 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, or
- (iii) 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)(E)

- (E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution. -Any alien-
 - (i) Who has committed in the United States at any time a serious criminal offense (as defined in section 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 United States, and
 - (iv) Who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.

INA 212(a)(2)(F)

- (F) Waiver Authorized

For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

INA 212(a)(2)(G)

- (G) Foreign Government Officials Who Have Committed Particularly Severe Violations of Religious Freedom.

Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time,

particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible.

INA 212(a)(2)(H)

(H) Significant Traffickers in Persons

(i) In General

Any alien who *commits or conspires to commit human trafficking offenses in the United States or outside the United States, 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 [sic] section 103 of such Act, is inadmissible.*

(ii) Beneficiaries of Trafficking

Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, 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.

(iii) Exception for Certain Sons and Daughters

Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

INA 212(a)(2)(I)

(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 which is described in section 1956 or 1957 of title 18, United States Code (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(h)

h. Waiver of Subsection (a)(2)(A)(i)(I), (II), (B), (C), (D), and (E) *(8 U.S.C. 1182(a)(2)(A)(i)(I), (II), (B), (C), (D), and (E))*

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) *(8 U.S.C. 1182(A)(i)(I), (B), (D), and (E))* of subsection (a)(2) *(8 U.S.C. 1182(a)(2))* of this section and subparagraph (A)(i)(II) *(8 U.S.C. 1182(A)(i)(II))* of such subsection 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 Attorney General that—
 - (i) The alien is inadmissible only under subparagraph (D)(i) *(8 U.S.C. 1182(D)(i))* or (D)(ii) *(8 U.S.C. 1182(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; or
 - (B) In the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or
 - (C) The alien is a VAWA self-petitioner; and
- (2) The Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of 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. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence 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 United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

9 FAM 40.21(a) RELATED REGULATORY PROVISIONS

(CT:VISA-1442; 06-15-2010)

See 22 CFR 40.21.

40.21 Crimes involving moral turpitude and controlled substance violators.

(a) Crimes involving moral turpitude —

- (1) **Acts must constitute a crime under criminal law of jurisdiction where they occurred.** A Consular Officer may make a finding of *inadmissibility* under INA 212(a)(2)(A)(i)(I) (*8 U.S.C. 1182(a)(2)(A)(i)(I)*) based upon an alien's admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, only if the acts constitute a crime under the criminal law of the jurisdiction where they occurred. However, a Consular Officer must base a determination that a crime involves moral turpitude upon the moral standards generally prevailing in the United States.
- (2) **Conviction for crime committed under age 18.** (i) An alien will not be ineligible to receive a visa under INA 212(a)(2)(A)(i)(I) (*8 U.S.C. 1182(a)(2)(A)(i)(I)*) by reason of any offense committed:
 - (A) Prior to the alien's fifteenth birthday, or
 - (B) Between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony

involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code.

- (ii) An alien tried and convicted as an adult for a violent felony offense, as so defined, committed after having attained the age of fifteen years, will be subject to the provisions of INA 212(a)(2)(A)(i)(I) (*8 U.S.C. 1182(a)(2)(A)(i)(I)*) regardless of whether at the time of conviction juvenile courts existed within the convicting jurisdiction.
- (3) **Two or more crimes committed under age 18.** An alien convicted of a crime involving moral turpitude or admitting the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude shall be inadmissible under INA 212(a)(2)(A)(i)(I) (*8 U.S.C. 1182(a)(2)(A)(i)(I)*), even though the crimes were committed while the alien was under the age of 18 years.
- (4) **Conviction in absentia.** A conviction in absentia of a crime involving moral turpitude does not constitute a conviction within the meaning of INA 212(a)(2)(A)(i)(I) (*8 U.S.C. 1182(a)(2)(A)(i)(I)*).
- (5) **Effect of pardon by appropriate U.S. authorities/foreign states.** An alien shall not be considered ineligible under INA 212(a)(2)(A)(i)(I) (*8 U.S.C. 1182(a)(2)(A)(i)(I)*) by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(A)(i)(I) (*8 U.S.C. 1182(a)(2)(A)(i)(I)*).
- (6) **Political offenses.** The term "purely political offense", as used in INA 212(a)(2)(A)(i)(I) (*8 U.S.C. 1182(a)(2)(A)(i)(I)*), includes offenses that resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.
- (7) **Waiver of ineligibility—INA 212(h).** If an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(I) (*8 U.S.C. 1182(a)(2)(A)(i)(I)*) but is qualified to seek the benefits of INA 212(h) (*8*

U.S.C. 1182(h)), the consular officer shall inform the alien of the procedure for applying to DHS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from DHS of the approval of the alien's application under INA 212(h) (*8 U.S.C. 1182(h)*).

(b) Controlled substance violators —

- (1) **Date of conviction not pertinent.** An alien shall be ineligible under INA 212(a)(2)(A)(i)(II) (*8 U.S.C. 1182 (a)(2)(A)(i)(II)*) irrespective of whether the conviction for a violation of or for conspiracy to violate any law or regulation relating to a controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 802), occurred before, on, or after October 27, 1986.
- (2) **Waiver of ineligibility—INA 212(h).** If an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(II) (*8 U.S.C. 1182(a)(2)(A)(i)(II)*) but is qualified to seek the benefits of INA 212(h) (*8 U.S.C. 1182(h)*), the consular officer shall inform the alien of the procedure for applying to DHS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from DHS of the approval of the alien's application under INA 212(h) (*8 U.S.C. 1182(h)*).

(56 FR 30422, July 2, 1991, as amended at 64 FR 55418, Oct. 13, 1999) (revising (a):71FR 34519 (6/15/06).