

HIGHLIGHTS TO INA §212(a) EXCLUDABLE ALIENS [8 U.S.C.A. § 1182(a)]*

(a) Classes of aliens ineligible for visas or admission

(1) Health-related grounds

(A) In general -

- (i) **Communicable diseases** (i.e., TB, AIDS, leprosy, several venereal diseases – HIV was removed from the list on 11/3/2009)
- (ii) **Vaccination requirements**
- (iii) **Physical or mental disorder** posing a **threat** to property, safety or welfare of self or others
- (iv) Determined to be a **drug abuser or addict**

(B) **Waiver pursuant to INA §212(g) is available.**

(C) **EXCEPTION:** from immunization requirement for adopted children 10 years or younger

(2) Criminal and related grounds

(A) Conviction of certain Crimes

- (i) **Conviction of, or who admits having committed, or who admits committing acts which constitute the essential elements of:**

- (I) a crime involving moral turpitude (CIMT) (or attempt or conspiracy) or

- (II) any controlled substance violation (or attempt or conspiracy)

- **Crime Involving Moral Turpitude** is “an act which is **per se morally reprehensible and intrinsically wrong**, or **malum in se** so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude.” *Matter of Franklin*, 20 I&N Dec. 867, 868 (BIA 1994)

- (ii) **EXCEPTIONS:** To excludability for CIMT

- (I) crime committed **under the age of 18 yrs.** and client **released from any confinement** at least **5 years prior** to the date of the visa application or application for “admission” to the US.

- (II) **“Petty offense exception”**-convicted of a single crime that carries a **maximum penalty of less than 1 year** for which alien served a prison term of **6 months or less.**

(B) **Multiple Criminal Convictions**

- Conviction of **2 or more offenses** of any type + **aggregate prison sentence of 5 years**

(C) **Controlled Substance Traffickers**

- Any alien who the consular or the AG knows or has reason to believe –
- (i) illicit trafficker in any controlled substance or

* This document is intended only to provide lawyers with an outline of highlights from the statute and should not be used as a substitute for independent legal research and advice supplied by a lawyer in referencing the specific statute.

- (ii) is the spouse, son, or daughter of illicit trafficker if family member has, within the previous 5 years, obtained any financial benefit from the illicit trafficking activity
 - (D) **Prostitution and Commercialized Vice** (*i.e., gambling*)
 - (i) coming to the U.S. solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within the past 10 years of seeking admission (or adjustment of status)
 - (ii) directly or indirectly procures (within 10 years of admission or adjustment of status) or attempts to procure or import, prostitutes or receives proceeds of prostitution
 - (iii) coming to the U.S. to engage in any other unlawful commercialized vice
 - (E) **Aliens Asserting Immunity from Serious Crime and then Depart the U.S.**
 - (i) committed a serious criminal offense at any time in the U.S.
 - (ii) for whom immunity was exercised
 - (iii) who as a consequence of the offense and immunity has departed from the U.S., and
 - (iv) has not subsequently submitted fully to the jurisdiction of the U.S. court for that offense
 - (G) **Foreign Government who committed serious violations of religious freedom**
 - (H) **Significant Human Traffickers**
 - (I) **Money Laundering**
 - (i) consular or AG knows, or has reason to believe, has engaged, is engaging or seeks to enter the U.S. to engage in an offense relating to money laundering; or
 - (ii) consular officer or AG knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others
- (3) **Security Related Grounds**
- (A) **In General**
 - Consular or Attorney General knows, or has reasonable ground to believe, seeks to enter the U.S. to engage solely, principally, or incidentally in-
 - (i) any activity
 - (I),(II) violate any law of the U.S. relating to espionage or sabotage or to evade any law prohibiting export from the U.S. of goods, technology or sensitive information
 - (ii) any other unlawful activity, or
 - (iii) any activity or purpose opposing, controlling or overthrowing the U.S. Government by force, violence or other unlawful means
 - (B) **Terrorist Activities**
 - (i) **In General** – any alien who:
 - (I) engaged in terrorist activity

- (II) Consular, AG or DHS knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity
 - (III) Has indicated an intention to cause death or serious bodily harm, incited terrorist activity
 - (IV) Is a representative of
 - (aa) a terrorist organization
 - (bb) a political, social, or other group that endorses or espouses terrorism
 - (V) Member of terrorist organization described in (vi)(I) or (II)
 - (VI) Member of terrorist organization described in (vi)(III) unless alien can demonstrate by clear and convincing evidence that alien did not know, and should not have reasonably have known, that the organization was a terrorist organization
 - (VII) endorses or espouses terrorist activity or persuades others to do the same or to support a terrorist organization
 - (VIII) has received military-type training from or on behalf of a terrorist organization
 - (IX) spouse or child of alien inadmissible for terrorist activities within the past five years
 - (NOTE: PLO considered to engage in terrorist activity)
 - (ii) **EXCEPTION:** spouse or child who
 - (I) did not know or should not reasonably have known
 - (II) renounced the activity
 - (iii) “Terrorist Activity” defined
 - (iv) “Engage in terrorist activity” defined
 - (v) “Representative” defined
 - (vi) “Terrorist organization” defined
- (C) **Foreign Policy**
- (i) **In General** - excluding aliens when admission will result in **clear negative for foreign policy impact** associated with their admission
 - Secretary of State must have **reasonable ground to believe** alien’s entry/proposed activities within the US would have **potentially serious adverse foreign policy consequences**
 - (ii) **EXCEPTION: Political figure** (i.e., foreign government, candidate for election, etc.) not excludable solely because of any past, current or expected beliefs, statements or associations = lawful in the US
 - (iii) **EXCEPTION: Alien’s past, current or expected beliefs, statements or associations** = lawful in the US (*unless the Secretary of State personally determines that the alien’s admission to the US would compromise compelling US foreign policy interest, and so certifies to the relevant Congressional Committee*)

- (D) **Immigrant Membership in totalitarian party**
 - (E) **Participants in Nazi persecutions or genocide, or the commission of any act of torture or extrajudicial killing**
 - (F) **Association with Terrorist organizations**
 - (G) **Recruitment or use of child soldiers**
- (4) **Public Charge**
- (A) **In General** - “likely at any time to become a public charge...”
 - (B) **Factors to be taken into account:** age, health, family status, assets, resources, and financial status, and education and skills
 - (C) **Family-sponsored immigrants**
 - computation of 125% above the Federal Poverty Guidelines
 - Must show proof of adequate financial support (i.e., a Form I-864, Affidavit of Support is often used to evidence financial support for aliens seeking immigrant status) – *See Matter of Kohama*, 17 I&N Dec. 257 (1978) (Affidavit of support provided by supporting daughter should be given **due consideration** and should not make alien elderly parents subject to public charge provision.)
 - **NOTE:** If the sponsor is an active military officer - it is 100% above the federal poverty guidelines
 - (D) **Certain employment-based immigrants**
 - (E) **Special rule for qualified alien victims** (ex. VAWA or victim of crime)
- (5) **Labor Certification and qualifications for certain immigrants**
- (A) **Labor Certification**
 - (i) requires labor certification for skilled or unskilled labor from the U.S. Department of Labor
 - (I) not sufficient workers able, willing, qualified and available at the time of the application to perform such skilled or unskilled labor, and
 - (II) the employment will not adversely affect the wages and working conditions of US workers similarly employed
 - (ii) certain aliens subject to special rules that do not require proof of unavailable US workers
 - (I) teaching profession
 - (II) exceptional ability in the sciences or the arts
 - (iii) professional athletes
 - (iv) long delayed adjustment applicants – original labor certification shall remain valid with a new job after change of employers if the new job is the same or similar occupation classification as the job for which the certification was issued
 - (B) **Unqualified physicians**
 - (i) must pass parts I and II of the National Board of Medical Examiners Examination or equivalent; and

- (ii) is competent in oral and written English
- (C) **Uncertified foreign health-care workers**
 - Requires a certificate from the Commission on Graduates of Foreign Nursing Schools or equivalent
- (D) **Application of Grounds**

(6) Illegal Entrants and Immigration Violators

- (A) **Aliens present without admission or parole**
 - (i) In General - present in the U.S. **without being admitted** or **paroled** or who arrived in the U.S. at any time or place other than designated by the Attorney General
 - (ii) **EXCEPTION:** certain battered women and children who demonstrates that
 - (I) **VAWA self-petitioner**
 - (II) **alien or alien's child has been battered or subjected to extreme cruelty** by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household and alien spouse or parent consented or acquiesced to such battery or cruelty
- (B) **Failure to attend removal proceeding**
 - fails or refuses to attend removal proceeding without **reasonable cause** and seeks admission to the U.S. **within 5 years** of subsequent **departure** or removal
- (C) **Misrepresentation**
 - (i) fraud or willfully misrepresents material facts to procure an immigration benefit
 - **"WILLFUL"** = **"knowingly"** or **"intentionally"** made misrepresentation
 - The misrepresentation must be made or offered to a U.S. government authority alien is fully aware of information sought and knowingly, intentionally or deliberately made an untrue statement
 - *(i.e., includes instance where alien acts on advice of another and is consciously aware of the untruthfulness but does NOT include accidental, inadvertent or honest belief made)*
 - **Misrepresentation** defined:
 - Assertion or manifestation not in accordance with the facts
 - Requires an **affirmative act** taken by the alien (silence or failure to volunteer information is NOT misrepresentation)
 - Must be made before a U.S. official (i.e., *Consulate officer, CIS adjudicator, CBP or ICE officer, etc.*)
 - Must be made in alien's own application

- Misrepresentation made by applicant's attorney or agent is also misrepresentation.
- **WAIVERS: INA §212(i) waiver is available** in the discretion of the Attorney General to waive the application of INA §212(a)(6)(C)(i) in the case of an immigrant who is the **spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence** if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of the alien would **result in extreme hardship** to the citizen or lawful resident spouse or parent of the alien.
- *Matter of Cervantes-Gonzales*, BIA 22 I&N Dec. 560 (1999)
 - Extreme Hardship** - includes unusual or beyond that which normally be expected upon deportation (*i.e., common results of deportation are insufficient and uprooting family and separation from friends is not extreme hardship*). The elements to establish such hardship are dependent upon the facts and circumstances of each case. *See Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1997).
- (ii) falsely claiming citizenship
 - (I) **In General** - falsely representing to be a U.S. citizen for any purpose or benefit under the INA or under State or Federal Law.
 - (II) **EXCEPTION:** alien has U.S. citizen parent and resided in the U.S. prior to age 16 and "reasonably believed" at the time of making the representation that he/she was a citizen.
- (iii) **Waiver authorized**
- (D) **Stowaways**
- (E) **Smugglers**
 - (i) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the U.S. in violation of the law
 - (ii) **Special Rule: Family Reunification**
 - (iii) **Waiver:** AG for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive smuggling inadmissibility for LPR who temporarily proceeded abroad voluntarily (not under an order of removal), if the alien 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 to enter the United States in violation of law.
(See INA §212(d)(11))
- (F) **Subject of civil penalty**
- (G) **Student Visa Abusers**
 - Violates conditions of nonimmigrant student status is inadmissible to the U.S. until he/she has been outside of the U.S. for a continuous period of 5 years after the date of the violation

(7) Documentation Requirements

(A) Immigrants

- (i)** At the time of application for admission
 - (I)** not in possession of a valid unexpired visa, reentry permit, border crossing ID card, or other valid entry document and valid, unexpired passport or other travel document or document of identity and nationality, or
 - (II)** has an issued visa that does not comply with INA §203 (i.e., immigrant visa preference categories)

(ii) Waiver: See INA §212(k) **waiver is available.**

(B) (i) In General - Any nonimmigrant who:

- (I)** not in possession of a passport valid for a minimum of six months from the date of expiration of initial period of admission or contemplated period of stay
- (II)** not in possession of a valid nonimmigrant visa or border crossing ID card at the time of applying for admission

(ii) Waiver authorized for (i): See INA §212(d)(4)

(iii) Waiver authorized for (i) for visitors of Guam or the Commonwealth of the Northern Mariana Islands: See INA §212(l)

(iv) Visa waiver program for (i) – includes a list of several designated European countries exempt from obtaining a visitor visa for admission to the U.S.

(8) Ineligible for Citizenship

(A) In General – any immigrant permanently ineligible to citizenship

(B) Draft Evaders – departed the U.S. to avoid or evade training or services in the armed forces in time of war or a period declared by the President of a national emergency

(9) Aliens previously removed

(A) Certain Aliens previously removed

(i) Arriving alien previously ordered removed or who seeks admission within 5 years of date of removal (or within 20 years of second or subsequent removal or at any time in the case of an aggravated felony)

(ii) other aliens who –

- (I)** has been ordered deported or
- (II)** departed from the U.S. while an order of removal was outstanding and who seeks admission within 10 years of 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)

- (iii) **EXCEPTION:** (i) and (ii) shall not apply if AG has consented to alien's reapplying for admission to the U.S.
- (B) **Aliens unlawfully present**
 - (i) In General – any alien who was
 - (I) Unlawfully present in the U.S. for more than 180 days but less than one year voluntarily departs the U.S. prior to commencement of removal proceedings is barred from seeking admission to the U.S. for 3 years or
 - (II) Unlawfully present in the U.S. for one year or more is barred from seeking admission to the U.S. for 10 years
 - (ii) **Construction of “unlawful presence”** – unlawfully present in the U.S. after expiration of period of authorized stay or is present in the U.S. without being admitted or paroled
 - (iii) **EXCEPTIONS:**
 - (I) **Minors** under the age of 18 years
 - (II) **Asylees** during period of pending bona fide application for asylum unless employed without authorization in the U.S.
 - (III) **Family Unity** applied to beneficiary of family unity protection pursuant to INA §301
 - (IV) **Battered Women and Children**
 - (V) **Victims of a Severe Form of Trafficking**
 - (iv) **Tolling for Good Cause** – in the case of an alien who –
 - (I) was lawfully admitted or paroled into the U.S.
 - (II) has filed a nonfrivolous application for extension or change of status before expiration date of authorized stay, and
 - (III) has not been employed in the U.S. without authorization during pendency of such application, time will be tolled during pendency of application, but **shall not exceed 120 days**
 - (v) **Waiver: extreme hardship waiver** if refusal of admission to such immigrant would result in extreme hardship to USC or LPR spouse or parent
- (C) **Aliens Unlawfully Present After Previous Immigration Violations**
 - (i) **In General** – any alien who
 - (I) has been unlawfully present in the U.S. for an aggregate period of more than 1 year
 - (II) has been ordered removed and who enters or attempts to reenter the U.S. without being admitted
 - (ii) **EXCEPTION:** (i) will not apply if DHS has consented to the alien's reapplying for admission to the U.S.
 - (iii) **WAIVER:** DHS may waive (i) if the alien is a VAWA self-petitioner if there is 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 to the U.S.; or attempted reentry into the U.S.

(10) Miscellaneous

- (A) **Practicing Polygamists**
- (B) **Guardian required to accompany helpless alien** who is inadmissible
- (C) **International Child Abduction**
 - (i) In General – detains, retains or withholds custody of child outside of the U.S. after custody order is granted
 - (ii) supporting abductors and relatives of abductors
 - (I) Secretary of State knows to have intentionally assisted in (i);
 - (II) Secretary of State knows to intentionally assist or providing material support or safe haven
 - (III) is a spouse, child, parent, sibling or agent of child abductor may be deemed inadmissible until child is returned by designation of the Secretary of State
- (D) **Unlawful Voters**
 - (i) In General - in violation of any Federal, State or local constitutional provision, statute, ordinance or regulation
 - (ii) **EXCEPTION:** voter had U.S.C. natural or adoptive parent(s) or voter permanently resided in the U.S. prior to age of 16 and reasonably believed authorized to vote.
- (E) **Former Citizens who renounced citizenship to avoid taxation**