

## **HIGHLIGHTS TO INA § 237 ON DEPORTABLE ALIENS**

### **[8 U.S.C.A. § 1227]\***

#### **(a) Classes of deportable aliens**

#### **(1) Inadmissible at time of entry or adjustment of status or violates status**

##### **(A) Inadmissible aliens**

- Any alien who, at the time of entry or adjustment of status, was inadmissible by the law existing at such time is deportable

##### **(B) Present in violation of law**

- Present in violation of the law or has nonimmigrant (or other admission documentation) revoked

##### **(C) Violated nonimmigrant status or condition of admission**

- (i)** Failed to maintain nonimmigrant status or comply with conditions of that immigration status
- (ii)** Failed to comply with any terms, conditions and controls imposed by a waiver issued for inadmissibility based on communicable disease of public health

##### **(D) Termination of conditional permanent residence**

- (i)** Termination of conditional permanent resident status for spouses and children or for entrepreneurs
- (ii)** **EXCEPTION: Extreme hardship waiver** (i.e., terminated good faith marriage; battered by or subjected to extreme cruelty by USC or LPR spouse or parent)

##### **(E) Smuggling**

- (i)** Knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the U.S. up to 5 years of the date of any entry to the U.S.
- (ii)** **Special Rule: Family Reunification** – immigrant physically present in the U.S. on May 5, 1988 and is seeking admission as an immigrant
- (iii)** **Waiver:** For humanitarian purposes, to assure family unity or it is within the public interest to waive deportation for LPR attempting to smuggle spouse, parent, son or daughter

##### **(F) Repealed**

##### **(G) Marriage fraud**

- Procured a visa or other document by fraud or misrepresentation if
  - (i)** Admission based on immigrant visa or other documentation procured on the basis of marriage entered into less than 2 years prior admission and within 2 years is judicially annulled or terminated unless evidence substantiates that the marriage was not contracted for the purpose of evading immigration laws, or
  - (ii)** It appears that the alien failed or refused to fulfill the marital agreement which was made for the purpose of procuring admission to the U.S.

---

\* 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.

- (H) **Waiver authorized for certain misrepresentations**
- **Waiver** of deportation for alien who was inadmissible at the time of admission for procuring an immigration benefit by way of fraud or misrepresenting a material fact if the alien is:
    - (i)(I) A spouse, parent, son or daughter of USC or LPR; and
    - (II) was in possession of a valid visa or other immigration document and was otherwise admissible at the time of such admission except for grounds of inadmissibility regarding labor certification or invalid immigration admission document which were a direct result of that fraud or misrepresentation
  - (ii) Is a VAWA self-petitioner

## (2) **Criminal offenses**

### (A) **General Crimes**

#### (i) **Crimes of moral turpitude**

- (I),(II) any alien who is convicted of a crime involving moral turpitude committed **within five years after the date of admission** for a crime for which a sentence of **one year or longer may be imposed**, is deportable

#### (ii) **Multiple criminal convictions**

- any alien who **at any time after admission** is convicted of **2 or more CIMT's, not arising out of a single scheme of criminal misconduct**, regardless of whether he is confined for the offenses or if the convictions arise from a single trial, is deportable
- **CIMT** has been defined as a crime that is "inherently base, vile, or depraved, and contrary to accepted rules of morality and the duties owed between persons or to society in general"
- The "base, vile, or depraved" conduct must be found within the elements of the statute
- There must be a "conviction" of a statute defined to be a CIMT

#### (iii) **Aggravated felony**

- any alien who is convicted of an **aggravated felony at any time after admission** is deportable
- Defined in **INA §101(a)(43); 8 USC §1101(a)(43)**
- Aggravated felony creates a statutory bar to most forms of relief from removal can be an aggravated felony. *United States v. Pacheco*, 225 F.3d 148 (2d Cir. 2000)
  - A misdemeanor can be an aggravated felony. *Id.*
- A crime need not be committed "with aggravation" for it to be an aggravated felony (i.e., includes most NY felonies and several NY class A misdemeanor offenses).
- **Avoid "AGGRAVATED FELONY" conviction because it:**
  - Bars almost all forms of relief from removal available from an immigration judge so that deportation is a near certainty
  - Triggers mandatory detention without bond
  - Permanently bars return to the US after deportation

- (iv) **High Speed Flight**
  - High speed flight from an immigration checkpoint
- (v) **Failure to register as a sex offender**
  - Sex Offender Registration and Notification Act by reason of a conviction under Federal law
- (vi) **Waiver:** of CIMT, multiple crimes, aggravated felony and high speed flight if granted a full and unconditional pardon by the President or by a state Governor
- (B) **Controlled Substances**
  - (i) any alien who at **any time after admission** has been convicted of a violation of ...**any law or regulation** of a State, the United States, or a foreign country **relating to a controlled substance**, other than a **single offense** involving **possession for one's own use of 30 grams or less of marijuana**, is deportable.
  - (ii) any alien who, is, or at **any time after admission** has been, a **drug abuser** or **addict** is deportable.
- (C) **Certain Firearm Offenses**
  - Convicted of any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer to sale, exchange, use, own, possess, or carry any weapon, part or accessory which is a firearm or destructive device.
- (D) **Miscellaneous Crimes**
  - Convicted of a conspiracy or attempt to violate:
    - (i) any offense relating to federal espionage, sabotage, treason, sedition for which a term of 5 years or more of imprisonment may be imposed
    - (ii) any offense under Threats against President and successors to the Presidency or Expedition against friendly nation
    - (iii) a violation of any provision of the Military Selective Service Act or the Trading with the Enemy Act, or
    - (iv) a violation of travel restriction by entering in to or departing from the U.S. in violation of Presidential regulations, or aiding another to do so, or making a false statement in application for permission to enter or leave with intent to secure granting of permission for herself or another, or furnishing entry or exit permit to another not issued for another's use, or falsifying entry or exit permit, or attempting to use or furnish false entry or exit permit or importing, holding, or harboring noncitizen for prostitution or any other immoral purpose punishable by up to 10 years imprisonment
- (E) **Crimes of domestic violence, stalking, or violation of protection order and crimes against children**
  - (i) Domestic violence, stalking, and child abuse
  - (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 protection order** that involves protection against credible **threats of violence, repeated harassment, or bodily** -

- Deportable for conviction of any “**crime of violence**” against a person committed by:
  - Current or former spouse;
  - Individual with whom person shares a child in common;
  - Individual now or before cohabiting with person as a spouse;
  - Individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs; or
  - Any other individual against a person who is protected from that individual’s acts under the domestic or family violence laws of the US or any State, Indian tribal government, or unit of local government.
- Domestic violence offenses have **ALL** of the following elements:
  - a conviction;
  - after lawful admission to the U.S.;
  - occurring “after” September 30, 1996;
  - listed as a **crime of violence offense**, i.e.,
    - a crime of violence which is a crime against the person as defined in 18 U.S.C. §16(a) or 18 U.S.C. §16(b),
    - committed against:
      - (a) a DV protected person, or
      - (b) stalking, or
      - (c) child abuse, neglect, or abandonment.

- Beneficiaries of trafficking activities

(i) In general – an alien who is subject to a final order of for a document fraud violation

- (ii) **Waiver:** for lawful permanent resident with no prior civil penalty for document fraud violation and the offense was incurred solely to assist, aid, or support alien's spouse or child
- (D) **Falsely claiming citizenship**
  - (i) any alien who falsely represents, or has falsely represented, himself to be a U.S. citizen for any purpose or benefit under the INA or **any Federal or State** law is deportable.
  - (ii) **EXCEPTION:** Making such representation if each natural or adoptive parent is or was a U.S. citizen, the alien permanently resided in the U.S. prior to age 16 and the alien reasonably believed he/she was a U.S. citizen at the time of making the representation

**(4) Security and related grounds**

- (A) **In general** – engage in:
  - (i) espionage or sabotage or violate or evade any law prohibiting the export from the U.S. of goods, technology or sensitive information
  - (ii) any other criminal activity that endangers public or national security, or
  - (iii) any activity with purpose to control or overthrow the U.S. government by force, violence or other unlawful means
- (B) **Terrorist activities** – any alien engaging in terrorist activities or associating with terrorist organizations
- (C) **Foreign Policy**
  - (i) **In general** - ground to believe that presence would have potentially serious adverse foreign policy consequences for the U.S.
  - (ii) **EXCEPTION:** official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.
- (C) **Participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing**
- (D) **Participated in the Commission of severe violations of religious Freedom**
- (E) **Recruitment or use of child soldiers**

**(5) Public Charge**

Any Person is deportable, who, within 5 years from date of admission, becomes a public charge

**(6) Unlawful voters**

- (A) Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation
- (B) **EXCEPTION:** parents who are U.S. citizens & alien resided in the US prior to the age of 16 years.

**(7) Waiver for victims of domestic violence**

- (A) **In general** - Deportation for crime of domestic violence may be waived if the alien has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship
- (i) Upon a determination that:
  - (I) acting in self-defense
  - (II) violated a protection order intended to protect him/her
  - (III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime
    - (aa) that did not result in serious bodily injury; and
    - (bb) crime connected to the battery or extreme cruelty
- (B) **Credible evidence considered** - the Attorney General shall consider any credible evidence relevant to the application. Credibility determination and the weight evidence given shall be within the sole discretion of the Attorney General.

- (b) **Deportation of certain nonimmigrants** - An ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government and the members of the alien's immediate family or a designated principal resident representative of a foreign government, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act, accredited resident members of the staff of such representatives, and members of his or their immediate family **shall not be** required to depart the U.S. without approval of the Secretary of State unless subject to deportation for security related grounds.

- (c) **Waiver of grounds for deportation** - Special immigrants not subject to deportation for inadmissibility at the time of entry or of adjustment of status or violation of status (except smuggling) and failure to change address if circumstances existed before the date special immigrant status was granted

**(d) Administrative Stay**

- (1) If DHS determines that alien has established prima facie eligibility for U or T nonimmigrant visa pursuant to INA § 101(a)(15)(T) or (U), DHS may stay the final order of removal pursuant to INA §241(c)(2) until:
- (A) the T or U nonimmigrant visa is approved; or
  - (B) there is a final administrative denial of the T or U visa and all administrative remedies are exhausted
- (2) A denial of a request for administrative stay of removal shall not preclude alien from applying for a stay of removal, deferred action, or a continuance or abeyance of removal proceedings under any other provision of the U.S. immigration laws

- (3) While administrative stay of removal is in effect, the alien shall not be removed
- (4) Nothing in this subsection shall limit the authority of the Secretary of DHS or the Attorney General to grant a stay of removal or deportation.

(e) **Redesignated**

(f) **Repealed**

(g) **Repealed**

(h) **Redesignated**