

# Checklist of Crime-Related Grounds of Inadmissibility

By Norton Tooby

## Table of Contents

### I. CONVICTION-BASED GROUNDS OF INADMISSIBILITY RELATED TO CRIMES

[1]	Conviction of a crime involving moral turpitude.....	3
[2]	Conviction of a crime relating to a controlled substance. ....	4
[3]	Multiple convictions with aggregate sentences imposed of five years. ....	4

### II. CONDUCT-BASED GROUNDS OF INADMISSIBILITY RELATED TO CRIMES

[4]	Admission of commission of a crime involving moral turpitude.....	4
[5]	Admission of commission of a crime relating to a controlled substance.....	4
[6]	Illicit trafficker in a controlled substance.....	4
[7]	Family member of illicit trafficker in a controlled substance. ....	5
[8]	Prostitution and commercialized vice. ....	5
[9]	Diplomatic immunity.....	5
[10]	Foreign government official violators of religious freedom. ....	6
[11]	Traffickers in persons. ....	6
[12]	Family members of traffickers in persons. ....	6
[13]	Money laundering.....	6
[14]	Current drug addiction or abuse. ....	6
[15]	False claim of U.S. citizenship (on or after 9/30/96). ....	6
[16]	Visa fraud. ....	7
[17]	Visa document fraud. ....	7
[18]	Alien smuggling. ....	7
[19]	Nazi persecutors. ....	7
[20]	Genocide.....	8
[21]	Polygamists.....	8
[22]	International child abduction.....	8
[23]	Aiders of international child abductors. ....	8
[24]	Unlawful voters. ....	9

[25]	Espionage. ....	9
[26]	Sabotage. ....	9
[27]	Export violations. ....	9
[28]	Terrorist activities.....	9
[29]	Association with terrorist organizations.....	10
[30]	Adverse foreign policy consequences. ....	10
[31]	Totalitarian party members. ....	11
[32]	Entry to commit unlawful activity.....	11
[33]	Entry to overthrow U.S. government. ....	11
[34]	Recruitment or use of child soldiers. ....	12

## **Inadmissibility Grounds Checklist Related to Crimes**

This checklist collects crime-related grounds of inadmissibility. This list was initially prepared on January 25, 2003, and is current as of this publication.

This list includes all grounds of inadmissibility listed under INA § 212(a)(2), 8 U.S.C. § 1182(a)(2) (criminal and related grounds), and additional grounds that can be said to be related to crimes.

This checklist has been organized into two categories: (I) Conviction-based grounds of inadmissibility, which require one or more final criminal conviction(s) that meet a certain definition before inadmissibility is triggered; and (II) Conduct-based grounds of inadmissibility, which are based not on a criminal conviction, but on some behavior or status exhibited by a noncitizen.

### **I. Conviction-Based Grounds of Inadmissibility Related to Crimes**

A criminal conviction is required to trigger these conviction-based grounds of inadmissibility.

[1] *Conviction of a crime involving moral turpitude.* “[A]ny 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 . . . is inadmissible.” INA § 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I). *Exceptions.* Youthful Offender Exception. This ground of inadmissibility “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), 8 U.S.C. § 1182(a)(2)(A)(ii)(I). Petty Offense Exception. This ground of inadmissibility “shall not apply to an alien who committed only one crime if . . . (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)(ii)(II), 8 U.S.C. § 1182(a)(2)(ii)(II). *Waiver*. A waiver is available under INA § 212(h), 8 U.S.C. § 1182(h), to excuse this ground of inadmissibility.<sup>1</sup>

[2] *Conviction of a crime relating to a controlled substance*. “[A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of -- (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 802 of Title 21), . . . is inadmissible.” INA § 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i)(II). *Waiver*. A waiver is available under INA § 212(h), 8 U.S.C. § 1182(h), to excuse this ground of inadmissibility, only “insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .” (*Ibid.*)

[3] *Multiple convictions with aggregate sentences imposed of five years*. “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), 8 U.S.C. § 1182(a)(2)(B). *Waiver*. A waiver is available under INA § 212(h), 8 U.S.C. § 1182(h), to excuse this ground of inadmissibility.

## **II. Conduct-Based Grounds of Inadmissibility Related to Crimes**

A criminal conviction is *not* required to trigger these conviction-based grounds of inadmissibility. They are based on conduct, rather than a conviction.

[4] *Admission of commission of a crime involving moral turpitude*. See [1], *supra*.

[5] *Admission of commission of a crime relating to a controlled substance*. See [2], *supra*.

[6] *Illicit trafficker in a controlled substance*. “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 802 of title 21), 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

---

<sup>1</sup> See 8 C.F.R. § 212.7(d) (eff. 1/27/03) (published as an interim final rule with a further 30-day comment period); 67 FED. REG. 78675 (12/26/02).

to do so . . . is inadmissible.” INA § 212(a)(2)(C)(i), 8 U.S.C. § 1182(a)(2)(C)(i). No waiver is available for this ground of inadmissibility.

[7] *Family member of illicit trafficker in a controlled substance.* “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), 8 U.S.C. § 1182(a)(2)(C)(ii). No waiver is available for this ground of inadmissibility.

[8] *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)(D), 8 U.S.C. § 1182(a)(2)(D).

*Waiver.* A waiver is available under INA § 212(h), 8 U.S.C. § 1182(h), to excuse this ground of inadmissibility.

[9] *Diplomatic immunity.* “Any alien --

- (i) who has committed in the United States 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 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)(E), 8 U.S.C. § 1182(a)(2)(E).

*Waiver.* A waiver is available under INA § 212(h), 8 U.S.C. § 1182(h), to excuse this ground of inadmissibility.

[10] *Foreign government official violators of religious freedom.* “Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section 6402 of Title 22, and the spouse and children, if any, are inadmissible.” INA § 212(a)(2)(G), 8 U.S.C. § 1182(a)(2)(G).

[11] *Traffickers in persons.* “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 section 7102 of Title 22, is inadmissible.” INA § 212(a)(2)(H)(i), 8 U.S.C. § 1182(a)(2)(H)(i).

[12] *Family members of traffickers in persons.* “[A]ny 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, is inadmissible[,] except 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)(H)(ii)-(iii), 8 U.S.C. § 1182(a)(2)(H)(ii)-(iii).

[13] *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 (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), 8 U.S.C. § 1182(a)(2)(I).

[14] *Current drug addiction or abuse.* “Any alien . . . (iv) 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), 8 U.S.C. § 1182(a)(1)(A)(iv).

[15] *False claim of U.S. citizenship (on or after 9/30/96).* A noncitizen is inadmissible if the INS finds s/he made a false claim of United States citizenship, in order to obtain any

benefit under the immigration laws. INA § 212(a)(6)(c)(ii), 8 U.S.C. § 1182(a)(6)(c)(ii). This act must have occurred on or after September 30, 1996, the effective date of IIRAIRA, which added this ground to the law. IIRAIRA § 344(a).

[16] *Visa fraud*. “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 provided under this chapter is inadmissible.” INA § 212(a)(6)(c)(i), 8 U.S.C. § 1182(a)(6)(c)(i). *Waiver*. A waiver is available under INA § 212(i), 8 U.S.C. § 1182(i), for an immigrant who is the “spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence,” in case of extreme hardship to the relative.

[17] *Visa document fraud*. A person who is under a final order in a civil proceeding under INA § 274C, 8 U.S.C. § 1324C, finding s/he manufactured, used, or possessed any forged, altered or borrowed documents to obtain immigration benefits, or who has attempted to do so, is inadmissible. See INA § 212(a)(6)(F), 8 U.S.C. § 1182(a)(6)(F). *Waiver*. A waiver is available to excuse this ground of inadmissibility for (1) a lawful permanent resident who temporarily went abroad not under a removal order and who is otherwise admissible as a returning resident under INA § 211(b), and (2) a person seeking to immigrate and obtain lawful permanent resident status based on a family visa petition. The waiver applicants must not have been previously fined under § 274C, and must have committed the offense “solely to assist, aid or support the alien’s spouse or child (and no other individual).” The waiver will be granted for humanitarian purposes or to assure family unity. Some other waivers are also available. See ILRC § 6.14.

[18] *Alien smuggling*. A person is inadmissible if s/he “at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.” INA § 212(a)(6)(E), 8 U.S.C. § 1182(a)(6)(E). Exception. An automatic exemption is available for persons who are the relatives of legalized noncitizens and are applying for Family Unity or immigration through a family visa petition. See INA § 212(a)(6)(E)(ii), 8 U.S.C. § 1182(a)(6)(E)(ii). *Waiver*. A waivers is available to certain persons provided they assisted only their spouse, parent, or child, and no other person: permanent residents and persons immigrating through a family visa petition as immediate relatives under the first, second or third preference (excluding persons immigrating through siblings or through employment). INA § 212(d)(11), 8 U.S.C. § 1182(d)(11). Cancellation of removal may also be available for qualifying noncitizens. INA § 240A, 8 U.S.C. § 1229b.

[19] *Nazi persecutors*. A noncitizen who from March 23, 1933 to May 8, 1945, in association with the Nazi government of Germany, its allies and dependents, participated in the persecution of any person because of race, religion, national origin, or political

opinion. INA § 237(a)(4)(D), 8 U.S.C. § 1227(a)(4)(D), referring to INA § 212(a)(3)(E)(i), 8 U.S.C. § 1182(a)(3)(E)(i).

[20] *Genocide*. Any noncitizen who has engaged in conduct defined as genocide under the International Convention on the Prevention and Punishment of Genocide. INA § 237(a)(4)(D), 8 U.S.C. § 1227(a)(4)(D), referring to INA § 212(a)(3)(E)(ii), 8 U.S.C. § 1182(a)(3)(E)(ii).

[21] *Polygamists*. “Any immigrant who is coming to the United States to practice polygamy is inadmissible.” INA § 212(a)(10)(A), 8 U.S.C. § 1182(a)(10)(A).

[22] *International child abduction*. “Except as provided in clause (ii), any alien who, after entry of an order by a court in the United States granting custody to a person of a United States citizen child who detains or retains the child, or withholds custody of the child, outside the United States 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), 8 U.S.C. § 1182(a)(10)(C)(i).

[23] *Aiders of international child abductors*. “Any alien who --

(I) is known by the Secretary of State to have intentionally assisted an alien in the conduct described in clause (i),

(II) is known by the Secretary of State 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.” INA § 212(a)(10)(C)(ii), 8 U.S.C. § 1182(a)(10)(C)(ii). 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), 8 U.S.C. § 1182(a)(10)(C)(iii).



[24] *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), 8 U.S.C. § 1182(a)(10)(D)(i). 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), 8 U.S.C. § 1182(a)(10)(D)(ii).

[25] *Espionage.* “Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in – (i) any activity (I) to violate any law of the United States relating to espionage . . . is inadmissible.” INA § 212(a)(3)(A)(i)(I), 8 U.S.C. § 1182(a)(3)(A)(i)(I).

[26] *Sabotage.* “Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in – (i) any activity (I) to violate any law of the United States relating to . . . sabotage . . . is inadmissible.” INA § 212(a)(3)(A)(i)(I), 8 U.S.C. § 1182(a)(3)(A)(i)(I).

[27] *Export violations.* “Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in – (i) any activity . . . (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information . . . is inadmissible.” INA § 212(a)(3)(A)(i)(II), 8 U.S.C. § 1182(a)(3)(A)(i)(II).

[28] *Terrorist activities.* “Any alien who –  
(I) has engaged in a terrorist activity;  
(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));  
(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;  
(IV) is a representative (as defined in clause (v)) of-- (aa) a terrorist organization (as defined in clause (vi)); or (bb) a political, social, or other group that endorses or espouses terrorist activity;

(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);  
(VI) is a member of a terrorist organization described in clause (vi) (III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;  
(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;  
(VIII) has received military-type training (as defined in section 2339D(c)(1) of Title 18) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or  
(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible.” INA § 212(a)(3)(B)(i), 8 U.S.C. § 1182(a)(3)(B)(i).

*Exception.* “Subclause (VII) of clause (i) does not apply to a spouse or child – (I) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible under this section; or (II) whom the consular officer or Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.” INA § 212(a)(3)(B)(ii), 8 U.S.C. § 1182(a)(3)(B)(ii).

[29] *Association with terrorist organizations.* “Any alien who the Secretary of State, after consultation with the Attorney General, or the Attorney General, after consultation with the Secretary of State, determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities that could endanger the welfare, safety, or security of the United States is inadmissible.” INA § 212(a)(3)(F), 8 U.S.C. § 1182(a)(3)(F).

[30] *Adverse foreign policy consequences.* “An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is inadmissible.” INA § 212(a)(3)(C)(i), 8 U.S.C. § 1182(a)(3)(C)(i). *Exceptions.* An official of a foreign government shall not be inadmissible solely because of beliefs, statements or associations if they would be lawful within the United States. INA § 212(a)(3)(C)(ii), 8 U.S.C. § 1182(a)(3)(C)(ii). An alien shall not be inadmissible solely because of beliefs, statements or associations if they would be lawful within the United States, “unless the Secretary of State determines that the alien’s admission would compromise a compelling United States foreign policy interest.” INA § 212(a)(3)(C)(iii), 8 U.S.C. § 1182(a)(3)(C)(iii).

[31] *Totalitarian party members.* “Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.” shall not be inadmissible solely because of beliefs, statements or associations if they would be lawful within the United States. INA § 212(a)(3)(D)(i), 8 U.S.C. § 1182(a)(3)(D)(i). Exception. An alien is not inadmissible on this ground “if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.” INA § 212(a)(3)(D)(ii), 8 U.S.C. § 1182(a)(3)(D)(ii). An alien is not inadmissible on this ground “if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that – (I) the membership or affiliation terminate at least – (a) 2 years before the date of such application, or (b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and (II) the alien is not a threat to the security of the United States.” INA § 212(a)(3)(D)(iii), 8 U.S.C. § 1182(a)(3)(D)(iii). *Waiver.* The Attorney General may waive this ground of inadmissibility “in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son or daughter of an alien lawfully admitted to permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.” INA § 212(a)(3)(D)(iv), 8 U.S.C. § 1182(a)(3)(D)(iv).

[32] *Entry to commit unlawful activity.* “Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in – . . . (ii) any other unlawful activity [than relating to espionage, sabotage, or export violations] . . . is inadmissible.” INA § 212(a)(3)(A)(ii), 8 U.S.C. § 1182(a)(3)(A)(ii).

[33] *Entry to overthrow U.S. government.* “Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in – . . . (iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means . . . is inadmissible.” INA § 212(a)(3)(A)(iii), 8 U.S.C. § 1182(a)(3)(A)(iii).

[34] *Recruitment or use of child soldiers.* "Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code, is inadmissible." INA § 212(a)(3)(G), 8 U.S.C. § 1182(a)(3)(G).