

# Immigration Consequences of Criminal Offences

Contributed by Igbanugo Partners International Law Firm  
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Foreign nationals (including lawful permanent residents) with criminal convictions often face collateral, immigration consequences that are far more serious than the punishment of jail time, probation or fines. One of the worst immigration consequences of criminal offenses - ranging from sex crimes to drug charges to firearms violations - is being subject to removal proceedings before an immigration court on grounds of inadmissibility or grounds of removability/deportability.

As far as immigration law is concerned, some of the most significant criminal offense classifications are crimes involving moral turpitude (CIMT) and aggravated felonies. A crime may fall into more than one category. It is important to understand how a crime may be classified under federal law because an offense may have different immigration consequences depending on its category.

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## Inadmissibility versus Removability

If the person in removal proceedings was not "admitted" to the United States, he or she will be charged as inadmissible pursuant to section 212 of the Immigration and Nationality Act (INA). If the person has been "admitted" and is placed in removal proceedings, he or she will be charged as removable or deportable under section 237 of the Act.

## Inadmissibility

The immigration term "inadmissibility" means that a foreign national is ineligible to receive a U.S. visa and to be admitted to the United States. Inadmissibility grounds include not only criminal offenses, but also health-related issues or communicable diseases; illegal entry and immigration violations; documentation fraud; and previous removal from the U.S.

Inadmissibility applies to a wide variety of immigration settings. Persons outside the United States who submit any type of visa application are subject to inadmissibility grounds. Additionally, when a person arrives in the United States in one non-immigrant status, e.g. tourist (B-2 visa), and then attempts to change it to another non-immigrant classification, e.g. student (F-1 visa), he or she has to establish admissibility. Furthermore, inadmissibility grounds apply to individuals who are in the process of adjusting to lawful permanent resident status and to individuals who are seeking to become naturalized U.S. citizens.

Because they are non-citizens, lawful permanent residents (LPRs) or green card holders may also be placed in removal proceedings after a brief trip abroad if they are found inadmissible upon their return to the United States.

## Removability

The second major potential consequence of a criminal offense is removability/deportability. In addition to criminal offenses, grounds of deportability include being inadmissible at the time of entry or adjustment of status; violation of non-immigrant status; marriage fraud; falsification of documents; false claim to U.S. citizenship; termination of conditional permanent residence; and unlawful voting.

The grounds of deportability apply only to individuals who are physically present in the United States and are later charged with being here in violation of the law. They do not apply to persons seeking a visa at an American consulate abroad. Even long-term LPRs may be subject to removal proceedings if they commit criminal offenses after being granted lawful permanent resident status.

## Criminal Offense Categories

### CIMT

As a criminal offense category, a crime involving moral turpitude (CIMT) often results in serious consequences under immigration law. The term "moral turpitude" is not defined by the Immigration and Naturalization Act (INA), but rather by

case law. In general, the phrase "moral turpitude" refers to any acts that are offensive to American ethics and accepted moral standards. CIMTs include: larceny, fraud, crimes of violence, DWI offense combined with an aggravating factor that contains the element of knowledge (e.g. driving with a suspended license), and trafficking in a controlled substance.

A conviction for a CIMT may render a foreign national inadmissible and/or deportable and may subject him or her to mandatory detention. Furthermore, a CIMT may bar an individual from obtaining asylum or U.S. citizenship.

### Aggravated Felony

Another major criminal offense category under immigration law is aggravated felony. A conviction for an aggravated felony has dire immigration consequences for a foreign national and even an LPR. An individual who has been convicted of an aggravated felony offense at any time is removable from the United States. There are very few avenues of relief for this particular offense. Additionally, an individual released from custody after Oct. 8, 1988 for an aggravated felony conviction is subject to mandatory detention. (This provision of INA applies, however, only to aggravated felony convictions occurring on or after Nov. 29, 1990). Furthermore, a person convicted of an aggravated felony will not be able to obtain American citizenship because aggravated felons are permanently barred from establishing good moral character.

Aggravated felony is a statutory term under federal law and is supplemented by federal case law. Aggravated felonies under the INA include: trafficking in a controlled substance; a crime of violence, where the term of imprisonment imposed is at least one year; a theft, burglary, or possession of stolen property offense where the term of imprisonment imposed is at least one year; a crime involving fraud or deceit where loss to the victim(s) exceeds \$10,000; and falsely making, forging, or altering a U.S. passport or instrument, for which the punishment imposed is at least one year (does not include first offenses where the person assisted was the alien's spouse, child, or parent).

Importantly, even certain state misdemeanors can constitute aggravated felonies under federal law. For example, the INA defines one kind of aggravated felony as "illicit trafficking in a controlled substance." "Controlled substance" includes marijuana under federal law. Any controlled substance violation that is a felony under the U.S. Code is an aggravated felony under the INA and makes an individual deportable.

### Consult an Immigration Attorney

Because the collateral, immigration consequences of a criminal conviction may far exceed the actual punishment or sentencing, it is important that all foreign nationals consult an immigration attorney in addition to a criminal defense attorney when faced with criminal charges.

Nothing in this article should be taken as legal advice for an individual case or situation. The information is intended to be general and should not be relied upon for any specific situation. For legal advice, consult an attorney experienced in immigration law.

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\n [answers@igbanugolaw.com](mailto:answers@igbanugolaw.com)