

Common Inadmissibility Issues in U.S. Immigration and How to Manage Them



Immigration Blog

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Inadmissibility can be a crippling issue for both visitors and workers alike. It can sneak up unexpectedly if travelers to the U.S. are not aware of the laws and policies that can prevent entry to the U.S. on a temporary or permanent basis.

Firstly, it's important to recognize that just because you've been admitted to the U.S. in the past, does not mean you will continue to be admitted to the U.S. if something from your past or present somehow comes across the radar of the Department of Homeland Security (DHS). We have many clients who are and have been technically inadmissible for years who become confused when officers bring up their inadmissibility based on long-ago convictions. If they have been inadmissible the whole time, how have they been being admitted—and why is this suddenly coming up (often) years later?

We don't always know what has brought a past conviction or offense to the attention of the DHS; however, once you are on their radar as having an admissibility issue, it's difficult to get off it without specifically requesting

review of the issue.

The most common issues creating inadmissibility are criminal convictions. Certain types of convictions can render one inadmissible, even if the crime has been pardoned by the government of the country where the crime occurred. Unfortunately, U.S. federal law does not recognize many pardons granted by other governments; therefore, while the record of the conviction may have been wiped clean from your home country's records, you may still need those records (or a letter from the court of conviction stating any such record no longer exists) in order to either demonstrate that you are not inadmissible or to apply for a waiver of inadmissibility. Other times, a mere arrest or statement can create inadmissibility, such as a drug-related arrest or admission of having used illegal drugs at any time. This can be because criminal action is not always the issue. Inadmissibility can also be created by health-related concerns, such as addiction.

As noted above, waivers may be available in certain situations. In the case of criminal inadmissibility, if sufficient time has passed since the conviction, the individual's character is proven to be reformed, and the reason for the entry is sufficiently serious, waivers may be granted for some offenses upon submitting evidence that convinces an office of the DHS that you no longer pose a threat to U.S. interests. In some cases, you may need to demonstrate that an extraordinary circumstance exists to merit the waiver—such as one involving national security or foreign policy considerations, or if denying your admission would cause exceptional and extremely unusual hardship to a U.S. citizen. However, even where that standard is met, the agency adjudicating your application may still deny your request for entry as a matter of discretion.

It is important to mention that officers determining admissibility sometimes make a mistake and deem someone inadmissible who is, in fact, not inadmissible. For example, if an individual has only ever had one conviction or admission of a crime involving moral turpitude, they would not be inadmissible if (1) they have only committed one crime involving moral turpitude; (2) they were not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed); and (3) the conviction carries a maximum possible sentence of one year or less (as determined by the law *at the time of the conviction*). But a Customs and Border Protection officer might easily, for example, believe someone to be inadmissible and tell them as much without understanding or knowing about this exception. Admissibility can generally be quickly and simply demonstrated with a letter explaining how the individual fits into the petty offense exception, accompanied by evidence demonstrating that the three requirements above have been met.

If an error regarding your admissibility is entered into DHS's system (such as by Customs and Border Protection, one of the agencies under the DHS), you may be subject to additional screening every time you enter the U.S. after an issue has been raised. However, this need not continue indefinitely. DHS has an online system—called the Traveler Redress Inquiry Program or “DHS TRIP”—through which one can submit an inquiry to resolve difficulties during travel screenings at transportation hubs, such as airports or U.S. borders, through a single point of contact. Challenges that can be overcome by contacting DHS TRIP include watch list issues, screening problems at ports of entry, or situations where travelers believe they have been unfairly or incorrectly delayed, denied boarding, or identified for additional screening at our nation's transportation hubs.

If you or someone you know has questions pertaining to U.S. immigration inadmissibility, please contact [Elizabeth M. Klarin \(eklarin@lippes.com\)](#) of the Lippes Mathias [Immigration Practice Team](#).

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