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Consequences of criminal activities when crossing the U.S. border

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It should come as no surprise that the United States, and other countries around the globe like Canada, exercise their sovereign right to exclude individuals from entering who have engaged in certain criminal activity. What that does and does not cover may be surprising to some. There are seven categories of criminal activity that can result in inadmissibility for someone who is not a U.S. citizen. These include:

1. **Drug violations:** Violators of laws and regulations pertaining to controlled substances (under U.S. federal law) are inadmissible if they have a conviction, admit to a conviction or admit to the essential elements of a crime. Therefore, if a foreign national admits to smoking marijuana, a federally controlled substance in the U.S., he can be found inadmissible. A foreign national who has been found guilty under a statute for possession of a controlled substance (not drug trafficking), is *not*, however, inadmissible if she was under 18 when the offence occurred, as such an action would be an act of juvenile delinquency

2. **Drug trafficking offences:** If a U.S. Customs and Border Protection officer has reason to believe a foreign national is involved in trafficking in a controlled substance, she may be found to be inadmissible, and her immediate family members also may be found inadmissible if they have knowingly benefited from the proceeds. No charges, no convictions and no admission are required for this ground of inadmissibility. This is the grounds by which some of those active in the cannabis industry (and their family members) are being found inadmissible.

3. **Human trafficking:** No charge or conviction is required for a foreign national to be found inadmissible for human trafficking, if the U.S. government has reason to believe that a foreign national is involved in these activities. Family members who benefit or have benefited from the proceeds in the past five years are also inadmissible, except sons and daughters who were minors at the time.

4. **Prostitution and vice:** Foreign nationals planning to engage in prostitution or other unlawful commercialized vice are not admissible. Further, a foreign national who has been involved within the last 10 years in prostitution (including procuring or importing prostitutes), including receiving proceeds, is inadmissible. It is important to note that no charge or conviction is required for this ground of inadmissibility.

5. **Religious freedom violations by foreign officials:** No charge or conviction is required for a foreign government official to be found inadmissible for committing particularly severe violations of religious freedom.

6. **Money laundering:** If a U.S. government official has reason to believe that a foreign national is engaged in money laundering, that is enough to result in inadmissibility.

7. **Crimes involving moral turpitude (CIMT):** If one has a conviction, admits to a conviction or admits to the essential elements of a CIMT, he may be found to be inadmissible. In order to determine if a specific action is a CIMT, an examination and assessment of the relevant statute must be made. CIMT's are actions that are base, evil or depraved, and can be violations against the state, another individual or property. Acts of juvenile delinquency are not CIMTs. However, not all violations of criminal law by minors are defined as acts of juvenile delinquency. There are limited exceptions for crimes committed by minors, and the petty offence exception, for a single conviction for a CIMT.

The definition of a conviction for U.S. immigration purposes is broad, and covers Canadian conditional discharges, and even offences pardoned in Canada. It is also possible for a foreign national to be criminally inadmissible without any of these types of activities — if he has two or more offences and is sentenced to five years or more in prison, he can be found to be inadmissible.

It can be difficult to change the consequences of an inadmissibility finding for a foreign national under the "reason to believe" standard, or after a conviction is on her record. However, it may be possible to prevent inadmissibility if one is charged under a statute that may render him inadmissible. For instance, an accused may plead to an offence that does not meet the definition of a CIMT or drug possession.

Once an individual is found to be inadmissible, *temporary* non-immigrant waivers can be obtained for these grounds of inadmissibility. The applications can take many months or even years to adjudicate, and sometimes are issued for durations of less than five years, which is the longest period for which a waiver can be obtained. The standards for having these grounds of inadmissibility waived for those who wish to come to the U.S. *permanently* are stricter — for instance, they are not available at all for drug trafficking, or possession of non-marijuana-based drugs — and there is a 15-year wait to waive CIMT grounds of inadmissibility.

With available technology and information sharing, it is becoming more likely that those with criminal records and those who have engaged in actions that can render them inadmissible will have problems entering the U.S. When counsel cannot assist clients in avoiding inadmissibility, waivers can be a solution, when available.