

## Waiving Drug Offenses for Admission to the U.S.



# Immigration Blog

By [Eileen M. Martin](#)

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The United States treats drug offences very seriously, and foreign nationals should be attentive to U.S. laws about drugs that may impact their ability to enter the United States.

For the purpose of admission as a Lawful Permanent Resident (LPR) or green card holder, very few drug offences may be waived, and drug trafficking convictions, in particular, are barred entirely from being waived. Furthermore, the legal standard for inadmissibility requires far less than a conviction — if a U.S. Department of Homeland Security officer has “reason to believe” that an individual is now or has been in the past involved in drug trafficking, not only is the individual unable to obtain LPR status, but his spouse and children may be inadmissible as well for having lived off the proceeds of drug trafficking. This standard can be substantiated by a set of facts common among drug traffickers or by a dismissed or withdrawn drug trafficking charge.

Only one kind of drug conviction can be waived. If an applicant can provide evidence that a conviction was based on the possession of a marijuana-based substance under 30 grams, it can be waived, at discretion, for a fee. It is common for the documents related to these matters not to state the substance, the amount, or both making these waivers difficult to obtain.

There are different standards for applicants who want to visit the United States or who qualify for a visa or admission to study or work in the United States. Any of these convictions or reasons to believe can be waived for temporary nonimmigrant purposes. The standards are consistent with those for any criminal conviction or immigration violation, based on the court case *Matter of Hranka*, 16 I&N Dec. 491. Very specifically, *Hranka* sets out a three-pronged test by which a DHS officer can determine whether a waiver should be granted. The officer must assess (1) the seriousness of the offence, (2) the significance of the reason for which the applicant wishes to enter the United States, and (3) the risk of harm to U.S. society that would exist by admitting the applicant.

Let's apply that test to an applicant for a visa or admission. Drug trafficking is considered among the most serious of offences while drug possession is not. Significant reasons for entering the United States include work opportunities or spending time with U.S. citizen family members. Reasons that are less likely to result in waiver issuance include vacation trips, transit to third countries, and meetings that can be conducted remotely. The risk of harm includes an inherent test of whether the applicant is rehabilitated. Some factors considered by adjudicating officers include the recency of offences, the number of offences, and the magnitude of offences. Also included is evidence of remorse and change in life circumstances.

Some applicants who do not qualify for a waiver as an LPR may be able to obtain and remain in non-immigrant status for decades based on a waiver for a temporary non-immigrant visa or status. This strategy is often cumbersome but may be preferable to remaining outside of the United States instead.

If you wish to have an assessment of your drug offences completed, receive advisement on whether you may qualify for a waiver, and determine the best strategy for you to meet your U.S. immigration goals, confer with qualified U.S. immigration counsel. The immigration team at Lippes Mathias LLP is available and eager to be of assistance to you in these matters. For further guidance on this process, contact Eileen M. Martin ([emartin@lippes.com](mailto:emartin@lippes.com)) or Elizabeth M. Klarin ([eklarin@lippes.com](mailto:eklarin@lippes.com)).

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