What Are Grounds of Inadmissibility? How U.S. Bars to Re-Entry and Waivers Work



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A ground of inadmissibility is a legal reason, set out in the Immigration and Nationality Act (INA), that bars a foreign national from entering the United States. Did you know that every time a foreign national enters the U.S., a U.S. CBP officer makes a determination on whether the officer believes there is a relevant ground of inadmissibility that applies? If the officer determines that there is, U.S. immigration law prevents him or her from permitting that foreign national to enter the U.S.

The grounds of inadmissibility cover many areas, including health, criminal and drugs, security and terrorism, public charge and immigration violations. That is a lot of legal ground to cover in what may be a brief CBP inspection of 20 seconds and two questions!

Medical Inadmissibility and Health-Related

CBP officers do not really determine whether someone is medically inadmissible. That is generally left to a doctor.

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However, officers do assess whether someone should see a physician for a determination of whether, for instance, they could be a danger to themselves or others. And even though drunk driving convictions do not make one criminally inadmissible to the U.S., a doctor can conclude that the foreign national is medically inadmissible based on the standards set by the U.S. Centers for Disease Control and Prevention (CDC).

Criminal and Drug Grounds of Inadmissibility

Determining criminal inadmissibility is a very technical assessment, which may depend on foreign statutes and how long the foreign national could have been incarcerated, even if he never was. In addition, one can be criminally inadmissible even if she was never charged, if she admits to the essential element of a crime. And there can be a difference between whether someone has a conviction under U.S. immigration law versus under the law of his home country. Drug charges can have some of the most severe and long-term consequences for those who wish to enter the U.S. Drug trafficking - the most severe form of drug offence - is a difficult charge to contest with a CBP officer, because that officer only needs reason to believe in order to find the foreign national to be inadmissible to the U.S. permanently.

Immigration Violations, Fraud and Revoked Visas

Immigration violations make up several grounds of inadmissibility, from committing immigration fraud, to smuggling other foreign nationals into the U.S., to having the wrong documents, to past immigration violations (whether the foreign national knew about them or not). For instance, if your visa was cancelled (revoked) by the U.S. Department of State because you had a DUI, but you were not aware this had occurred when you travelled to the U.S. using that visa, ignorance would be no defence to attempting to enter the U.S. with invalid documentation. An honest mistake like this can become a long-term or permanent problem.

How the Public Charge Rule Affects Admission

The "public charge" ground of inadmissibility is one that we more often see in the immigration (permanent residence) context instead of for visitors. It prevents foreign nationals from entering the U.S. if the U.S. government believes that they might take advantage of needs-based welfare programs because they may be unable to cover their own expenses.

Security, Terrorism and Foreign Policy Grounds

The security and terrorism grounds of inadmissibility include those who may have been associated with the Communist Party, and those whose entry is not in the best interests of the U.S. government's foreign policy. This is in addition to those who have engaged or plan to engage in activities against the U.S. government and its citizens.

Which Grounds of Inadmissibility can be Waived?

Some of these grounds of inadmissibility can be waived through a waiver of inadmissibility in certain circumstances, while others cannot. For someone who requires a waiver, that application process occurs in conjunction with a visa process. If the foreign national does not require a visa, CBP will make an adjudication of the waiver request before that individual is able to apply successfully for admission to the U.S.

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Some grounds of inadmissibility can be waived for visitors (nonimmigrants), but not for immigrants, or there may be strict parameters around whether they can be waived for immigrants. For instance, the INA describes as "inadmissible" someone who has been convicted of or admitted to a conviction related to a controlled substance, or who has even just admitted to the essential elements of a crime related to a controlled substance. This ground of inadmissibility can be waived for nonimmigrants. But for immigrants, it can only be waived if the substance was a marijuana-based substance, and the amount was 30 grams or less.

Key Takeaways

• A CBP officer decides at every U.S. port of entry whether a ground of inadmissibility bars a foreign national from entering.
• The grounds of inadmissibility under the Immigration and Nationality Act cover health, criminal and drug offences, security, public charge and immigration violations.
• Some grounds of inadmissibility can be overcome with a waiver, and the rules are stricter for green card applicants than for visitors.

Anyone with any questions related to inadmissibility to the U.S. can feel free to contact Eileen M. Martin (emartin@lippes.com) or Elizabeth M. Klarin (eklarin@lippes.com) of the Lippes Mathias LLP's immigration practice team to explore the legal and practical effects of inadmissibility.

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