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Immigration: Grounds of Inadmissibility

The Immigration and Nationality Act (INA) sets forth the grounds of inadmissibility under which foreign nationals may be denied admission to the United States.

Admission to the United States

The term *admission* refers to the lawful entry of a foreign national into the United States after inspection and authorization by an immigration officer (INA §101(a)(13); 8 U.S.C. §1101(a)(13)). Immigration officials make admissibility determinations when foreign nationals

- arrive at a U.S. port of entry (POE);
- are encountered at the border between ports of entry;
- are encountered within the United States without having being lawfully admitted or paroled (e.g., after entering the United States surreptitiously, without inspection by an immigration officer);
- apply for a nonimmigrant (temporary) or immigrant (permanent) visa;
- apply to adjust to lawful permanent resident (LPR) status or to change their nonimmigrant status from within the United States; and
- apply to naturalize to become a U.S. citizen.

Inadmissibility determinations are made by immigration officers in various contexts, including at POEs, on the border between POEs, in the interior of the country, and at U.S. consulates and embassies abroad. Depending on the context, inadmissibility determinations are made by immigration officials from the Department of Homeland Security's (DHS's) Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS), as well as the Department of State.

Grounds of Inadmissibility

Health-Related Grounds

There are four health-related grounds of inadmissibility: (1) communicable diseases of public health significance, (2) lacking required vaccinations (immigrants only), (3) physical or mental disorder with associated harmful behavior, and (4) drug abuse or drug addiction. These grounds are further defined in 42 C.F.R. §34.2. (INA §212(a)(1); 8 U.S.C. §1182(a)(1))

Criminal and Related Grounds

The INA prohibits the admission of certain criminals, including foreign nationals who have committed crimes of moral turpitude, foreign nationals with multiple serious criminal convictions, controlled substance traffickers, foreign nationals engaged in prostitution or commercialized vice, significant traffickers in persons, and money

launderers, among others. There are exceptions in certain situations, such as for those who committed the crime before the age of 18 and five years before their application for a visa/admission. There are also waivers in certain circumstances (see CRS Legal Sidebar LSB10603, *Discretionary Waivers of Criminal Grounds of Inadmissibility Under INA § 212(h)*). (INA §212(a)(2); U.S.C. §1182(a)(2))

Security and Related Grounds

The INA prohibits the admission of any alien who has engaged in a terrorist activity, is considered likely to engage in terrorist activity, has incited terrorist activity, or is a representative or member of a terrorist organization or a group that endorses or espouses terrorist activity. The INA defines *terrorist activity* for the purpose of inadmissibility and includes descriptions of specific terrorist activities, including the hijacking or sabotage of any conveyance, the seizure or threatened violence against another individual in order to compel a third person or governmental organization to do or abstain from an activity, violence against an internationally protected person, assassination, and the use of a weapon of mass destruction or other dangerous device other than for personal monetary gain. According to USCIS, "The definition of terrorism-related activity is relatively broad and may apply to individuals and activities not commonly thought to be associated with terrorism." In addition to terrorism-related activities, those inadmissible under security and related grounds also include foreign nationals whose entry or activities in the United States could adversely affect U.S. foreign policy; members of a totalitarian party; participants in Nazi persecution, genocide, or acts of act of torture or extrajudicial killing; and those who have recruited or used child soldiers. (INA §212(a)(3); 8 U.S.C. §1182(a)(3))

Public Charge Grounds

Under the INA, a foreign national is inadmissible if he or she is "likely at any time to become a public charge." The INA does not define the term *public charge*; the definition has been set forth by agency guidance and regulation. It is currently defined to mean a person who is or is likely to become primarily dependent on public cash assistance or government-funded institutionalization for long-term care. When making public charge determinations, immigration officers consider the foreign national's past, current, or future receipt of Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), state and local cash assistance (general assistance); and benefits provided for institutionalized long-term care. They also consider age, health, family status, assets, resources, financial status, education, and skills. (INA §212(a)(4); 8 U.S.C. §1182(a)(4))

Labor Certification and Qualifications for Certain Immigrants Grounds

The INA prohibits foreign nationals from entering the United States to perform skilled or unskilled labor unless the Secretary of Labor has certified that there are not sufficient U.S. workers who are able, willing, and qualified to perform such work, and that the employment of the foreign national will not adversely affect the wages and working conditions of U.S. workers similarly employed. There are categories of foreign nationals exempt from labor certification, including permanent immigrants entering as priority workers who are persons of extraordinary ability in the arts, sciences, education, business, or athletics; outstanding professors and researchers; certain multinational executives and managers; and certain workers in occupations that DOL has predetermined lack sufficient U.S. workers. There are also specific provisions that bar the admission of unqualified physicians and uncertified health care workers. (INA §212(a)(5); 8 U.S.C. §1182(a)(5))

Illegal Entrants and Immigration Violators Grounds

The INA outlines eight categories of inadmissible illegal entrants and immigration violators: (1) any foreign national who is present in the United States without being legally admitted or paroled, or who arrives in the United States at any time or place other than as designated (there are exceptions for certain battered women and children); (2) foreign nationals who “without reasonable cause” fail to attend their removal proceedings or to remain in attendance at a hearing to determine their inadmissibility or deportability are inadmissible for a period of five years following their subsequent departure; (3) foreign nationals who have, by fraud or willful misrepresentation of a material fact, sought to procure or have procured either admission into the United States or a benefit under the INA; (4) foreign nationals who falsely represent themselves to be U.S. citizens for any purpose or benefit under the INA or any other federal or state law, except under narrow circumstances; (5) stowaways; (6) smugglers; (7) foreign nationals subject to civil penalties for a violation of INA 274C (document fraud); and (8) student visa abusers. (INA §212(a)(6); 8 U.S.C. §1182(a)(6))

Documentation Requirements Grounds

An immigrant is inadmissible if they lack a valid visa, reentry permit, or border crossing identification card and a valid unexpired passport or other suitable travel document. A nonimmigrant is inadmissible if they lack a passport valid for a minimum of six months from the date of the expiration of the initial period of their admission or they lack a valid nonimmigrant visa or border crossing identification card. The nonimmigrant document requirements can be waived for those traveling under the Visa Waiver Program or the Guam and Northern Mariana Islands Visa Waiver Program. (INA §212(a)(7); 8 U.S.C. §1182(a)(7))

Ineligible for Citizenship Grounds

Although the ground “ineligible for citizenship” may suggest a range of ineligibilities linked to the naturalization provisions in Title III of the INA, its actual effect is to bar the entry of individuals who deserted their military service or evaded the military draft (LPRs are eligible to enlist in the U.S. Armed Forces). (INA §212(a)(8); 8 U.S.C. §1182(a)(8))

Aliens Previously Removed Grounds

The INA outlines three categories of previously removed inadmissible aliens: (1) foreign nationals who have been previously removed are barred from the United States for 5, 10, or 20 years depending on the specifics of their case, and they are permanently inadmissible if they were convicted in the United States of an aggregated felony; (2) foreign nationals who were unlawfully present in the United States for between 6 and 12 months are considered inadmissible to the United States for three years, and those unlawfully present for more than one year are inadmissible for 10 years (often referred to as the *three- and ten-year bars*); these bars are triggered when the individual leaves the United States (there are exceptions for those unlawfully present under the age of 18, asylum applicants, certain battered women and children, and victims of trafficking, among others); and (3) foreign nationals are inadmissible if they attempt to reenter the United States without being admitted and were previously unlawfully present for more than one year or had previously been removed (there is an exception if it had been more than 10 years since the last departure from the United States). Waivers can be granted for certain victims of battery or extreme cruelty, and for the spouse or child of a U.S. citizen or LPR if refusal of admission would result in extreme hardship to their spouse or parent. (INA §212(a)(9); 8 U.S.C. §1182(a)(9))

Miscellaneous Grounds

The miscellaneous grounds of inadmissibility include practicing polygamists, guardians required to accompany helpless inadmissible foreign nationals, international child abductors, unlawful voters, and former citizens who renounced their citizenship to avoid taxation. (INA §212(a)(10); 8 U.S.C. §1182(a)(10))

Outcomes

Those deemed inadmissible are subject to a variety of immigration enforcement outcomes, depending on the context. They can be denied an immigration benefit, such as a visa, adjustment of status, or naturalization. They can be denied entry into the United States at or between POEs. If warranted, they can be criminally arrested. Inadmissible foreign nationals already in the United States, as well as those encountered at the border, can be put in formal removal proceedings. Foreign nationals placed in formal removal proceedings may be detained or released from custody pending the outcome of their proceedings. Generally, they will receive a hearing before an immigration judge and may be eligible to seek certain types of relief from removal (e.g., asylum, cancellation of removal). In some circumstances, foreign nationals deemed inadmissible may still be allowed to enter or remain in the United States for a designated period of time. For example, foreign nationals may be granted immigration parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit. Immigration parole does not constitute formal admission to the United States.

Abigail F. Kolker, Analyst in Immigration Policy

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