

IMMIGRATION CONSEQUENCES OF CONVICTIONS SUMMARY CHECKLIST*

| GROUND FOR DEPORTATION [apply to lawfully admitted noncitizens, such as a lawful permanent resident [LPR] – greencard holder] | GROUND OF INADMISSIBILITY [apply to noncitizens seeking lawful admission, including LPRs who travel out of US] | INELIGIBILITY FOR U.S. CITIZENSHIP |
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| <p>Aggravated Felony conviction</p> <ul style="list-style-type: none"> ➤ <i>Consequences</i> (in addition to deportability): <ul style="list-style-type: none"> ◆ Ineligibility for most waivers of removal ◆ Ineligibility for voluntary departure ◆ Permanent inadmissibility after removal ◆ Subjects client to up to 20 years of prison if s/he illegally reenters the U.S. after removal ➤ <i>Crimes covered</i> (possibly even if not a felony): <ul style="list-style-type: none"> ◆ Murder ◆ Rape ◆ Sexual Abuse of a Minor ◆ Drug Trafficking [probably includes any felony controlled substance offense; may include misdemeanor marijuana sale offenses and 2nd misdemeanor possession offenses] ◆ Firearm Trafficking ◆ Crime of Violence + 1 year sentence** ◆ Theft or Burglary + 1 year sentence** ◆ Fraud or tax evasion + loss to victim(s) > \$10,000 ◆ Prostitution business offenses ◆ Commercial bribery, counterfeiting, or forgery + 1 year sentence** ◆ Obstruction of justice offenses + 1 year sentence** ◆ Certain bail-jumping offenses ◆ Various federal criminal offenses and possibly state analogues [money laundering, various federal firearms offenses, alien smuggling, etc.] ◆ Attempt or conspiracy to commit any of the above | <p>Conviction or <i>admitted commission</i> of a Controlled Substance Offense, or DHS (formerly INS) has reason to believe individual is a drug trafficker</p> <ul style="list-style-type: none"> ➤ No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana) <hr/> <p>Conviction or <i>admitted commission</i> of a Crime Involving Moral Turpitude [CIMT]</p> <ul style="list-style-type: none"> ➤ This category covers a broad range of crimes, including: <ul style="list-style-type: none"> ◆ Crimes with an <i>intent to steal or defraud</i> as an element [e.g., theft, forgery] ◆ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act [e.g., murder, rape, some manslaughter/assault crimes] ◆ Most sex offenses ➤ <i>Petty Offense Exception</i>—for one CIMT if the client has no other CIMT + the offense is not punishable > 1 year (e.g., in New York can't be a felony) + does not involve a prison sentence > 6 months <hr/> <p>Prostitution and Commercialized Vice</p> | <p>Certain convictions or admissions of crime will statutorily bar a finding of good moral character for up to 5 years:</p> <ul style="list-style-type: none"> ➤ Controlled Substance Offense [except in case 30g of marijuana] ➤ Crime Involving Moral Turpitude ➤ 2 or more offenses of any type + aggregate prison sentence of 5 years ➤ 2 gambling offenses ➤ Confinement to a jail for an aggregate period of 180 days <hr/> <p>Aggravated felony may bar a finding of moral character forever, and thus may make your client <i>permanently</i> ineligible for citizenship</p> |
| <p>Controlled Substance conviction</p> <ul style="list-style-type: none"> ➤ EXCEPT a single offense of simple possession of 30g or less of marijuana | <p>Conviction of 2 or more offenses of any type + aggregate prison sentence of 5 years</p> | <p style="text-align: center;">INELIGIBILITY FOR LPR CANCELLATION OF REMOVAL</p> <ul style="list-style-type: none"> ➤ Aggravated Felony Conviction ➤ Offense covered under Ground of Inadmissibility when committed within the first 7 years of residence after admission in the U.S. |
| <p>Crime Involving Moral Turpitude [CIMT] conviction</p> <ul style="list-style-type: none"> ➤ For crimes included, see Grounds of Inadmissibility ➤ An LPR is deportable for 1 CIMT committed within 5 years of admission into the U.S. and for which a sentence of 1 year or longer may be imposed ➤ An LPR is deportable for 2 CIMT committed at any time “not arising out of a single scheme” | <p style="text-align: center;">INELIGIBILITY FOR ASYLUM OR WITHHOLDING OF REMOVAL BASED ON THREAT TO LIFE OR FREEDOM IN COUNTRY OF REMOVAL</p> <p>“Particularly serious crimes” make noncitizens ineligible for asylum and withholding. They include:</p> <ul style="list-style-type: none"> ➤ Aggravated felonies <ul style="list-style-type: none"> ◆ All will bar asylum ◆ Aggravated felonies with aggregate 5 year sentence of imprisonment will bar withholding ◆ Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding ➤ Other serious crimes—no statutory definition [For sample case law determinations, see Appendix F in NYSDA Immigration Manual] | |
| <p>Firearm or Destructive Device conviction</p> | | |
| <p>Domestic Violence conviction or other domestic offenses, including:</p> <ul style="list-style-type: none"> ➤ Crime of domestic violence ➤ Stalking ➤ Child abuse, neglect or abandonment ➤ Violation of order of protection (criminal or civil) | | |
| CONVICTION DEFINED | | |
| <p>“A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where:</p> <p>(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, AND</p> <p>(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.”</p> <p>THUS:</p> <ul style="list-style-type: none"> ◆ A drug treatment or domestic violence counseling alternative to incarceration disposition could be considered a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated) ◆ A deferred adjudication disposition without a guilty plea (e.g., NY ACD) will not be considered a conviction ◆ A youthful offender adjudication will not be considered a conviction if analogous to a federal juvenile delinquency disposition (e.g., NY YO) | | |

*This summary checklist was originally prepared by former NYSDA Immigrant Defense Project Staff Attorney Sejal Zota. Because this checklist is frequently updated, please visit our Internet site at <<http://www.nysda.org>> (click on Immigrant Defense Project page) for the most up-to-date version.

**The 1-year requirement refers to an actual or suspended prison sentence of 1 year or more [A New York straight probation or conditional discharge without a suspended sentence is not considered a part of the prison sentence for immigration purposes.]