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Grounds of Deportability and Inadmissibility

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I. Introduction

The purpose of this article is to provide a basic introduction to the grounds of inadmissibility and deportability. These provisions are complex, numerous and require a much more in-depth analysis than can be provided in this article. When determining if a client is inadmissible or deportable, the practitioner must analyze the exact wording of the statute and regulations and review the administrative and federal court decisions and Department of Homeland Security (DHS) written policies and memoranda. Do not presume that your client is inadmissible or deportable just because the Immigration, Customs and Enforcement Branch (ICE) of the DHS[1] alleges that he or she is. Review carefully the allegations of a Notice to Appear, the document which initiates removal proceedings. Do not automatically concede inadmissibility or deportability. Require the ICE to meet its burden of proof in removal proceedings.

II. Basic Differences between Deportability and Inadmissibility

Non-citizens in the United States, including lawful permanent residents (green card holders) are subject to the grounds of inadmissibility [2] and deportability.[3] Grounds of inadmissibility apply to those seeking admission to the U.S. at a Consulate abroad, at the port of entry or when seeking permanent residence either at the Consulate or through adjustment of status This means that they may be denied admission into the United States or denied a visa or permanent residence based on the grounds of inadmissibility or deported from the U.S. based on the grounds of deportability.

Whether the grounds of inadmissibility or deportability apply to the non-citizen depends on his or her immigration status and other factors. The grounds of inadmissibility are generally broader than the grounds of deportation. The non-citizen, classified as an arriving alien, must establish grounds of inadmissibility do not apply by evidence that is "clear and beyond a doubt."[4] Others charged with grounds of inadmissibility must show a lawful admission by clear and convincing evidence.[5] On the other hand, the ICE must establish deportability by clear and convincing evidence.[6] Thus the determination of which statutory provisions apply is a crucial inquiry.

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[1] The Department of Homeland Security includes the Bureau of Immigration, Customs and Enforcement, which initiates and prosecutes removal cases.
[2] 8 U.S.C. §1182, INA §212.
[3] 8 U.S.C. §1227, INA § 237.
[4] 8 U.S.C. §1229a(c)(2)(A), INA §240 (c)(2)(A).
[5] 8 U.S.C.§1229a (c)(2)(B), INA §240(c)(2)(B).
[6] 8 U.S.C. §1229a(c)(3), INA §240(c)(3). *Woodby v. INS,* 385 U.S. 276, 286 (1966).

Depending on the non-citizen's status in the U.S., he or she will be charged under the inadmissibility grounds or deportation grounds of the statute in a removal hearing.

III. Grounds of Inadmissibility

A. Applicability of Grounds of Inadmissibility

The grounds of inadmissibility apply to persons who are seeking to enter the U.S. at a port of entry, i.e. at the border or at an international airport, or those seeking any type of visa to enter the U.S. Inadmissibility also applies to persons who apply for permanent residence, either at a U.S. Consulate abroad or at the DHS offices in the U.S.

In addition, the grounds of inadmissibility apply to a lawful permanent resident who departs the country and seeks to reenter under certain circumstances.[7] The general rule is that a lawful permanent resident who re-enters the U.S. is not seeking "admission" and thus the rules of inadmissibility do not apply. However, in certain circumstances, a lawful permanent resident is considered to be seeking admission and must establish admissibility. A permanent resident who has abandoned his or her residence, has been out of the country for more than 180 days, has engaged in illegal activity after departure, has departed while under removal or extradition proceedings, has committed a criminal offense under the inadmissibility statute, or attempts to enter without being inspected by an immigration officer, is classified as "seeking admission."[8] When counseling a lawful permanent resident, who falls within any of the exceptions listed above, the attorney should determine whether the client should leave the U.S. at all.

B. Health Related Grounds of Inadmissibility--- 8 U.S.C. §1182(a)(1) and §1182(a)(10)(B)

All non-citizens who have communicable diseases, as determined by the Secretary of Health of Human Services[9] and those who seek admission as a permanent resident who do not have certain required vaccinations are inadmissible. [10] An applicant for permanent residence must present a medical examination from one of the DHS or U.S. Consulate approved doctors. In addition, the applicant must present proof of required vaccinations to the examining physician or be immunized at the time of the exam. HIV infection has not been considered to be a medical ground of inadmissibility since January 4, 2010.

A non-citizen who is determined by the Secretary of Health and Human Services (HHS) to have a physical or mental disorder and behavior associated which the disorder that may pose or has posed a threat to the property, safety or welfare of the non-citizen or others is inadmissible.[11] Note that this provision addresses current disorders. However, a

[7] 8 U.S.C. §1101(a)(13)(C), INA §1101(a)(13)(C).
[8] 8 U.S.C. §1101(a)(13)(C)(i)-(vi), INA §101(a)(13)(C)(I)-(vi).
[9] 8 U.S.C. §1182(a)(1)(A)(i), INA §212 (a)(1)(A)(i). Infectious leprosy, lymphogruloma vereum, syphilis and active TB are designated as communicable diseases.
[10] 8 U.S.C. §1182(a)(1)(A)(ii), INA §212 (a)(1)(A)(ii).
[11] 8 U.S.C. §1182(a)(1)(A)(iii)(I), INA § 212(a)(1)(A)(iii)(I).

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