



CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.

Introduction to Immigration Law Practice E-Learning Course

Week Two

Week Two: Inadmissibility and Deportability

- Inadmissibility and Deportability Concepts
- Inadmissibility and Deportability Grounds
- Overview of selected grounds of inadmissibility:
 - health
 - crimes
 - misrepresentation
 - immigration violations

Assessing a Case

USC Tom comes to see you with his wife Rena, from Israel, who entered on a tourist visa that belongs to her twin sister Rachel.

Rena is finishing her probation term for possession of marijuana, and has a retail theft conviction from 2009.

Rena is hoping her cousin Stuart will be coming to the U.S. soon; she just sent him \$5000 to help him pay for a fake passport and visa.

Assessing a Case

In order to have enough money to send her cousin, Rena had to temporarily stop taking the medication she uses to treat her bipolar disorder. Tom wants you to get started working on the application forms for Rena to immigrate.



Do you have any concerns about taking Rena and Tom's case?

What is Inadmissibility?

Bars non-citizen
from entering
U.S.



Obstacle to
status inside U.S.



Grounds for
removal from
U.S.



Who is Subject to Inadmissibility



Non-citizen
applying for visa
at consulate



Non-citizen
applying for
admission at
port of entry

Who is Subject to Inadmissibility

Must be “admissible” for some immigration statuses, including:

Adjustment of status

TPS

U nonimmigrant status

Who is Subject to Inadmissibility

Grounds for Removal:

For those who entered without inspection (EWI)



For those who were “paroled” in to the U.S.

Número de salida

[REDACTED]

PAROLED PURSUANT TO SEC. 312 (a) (5) OF THE I & N ACT TO: 05/20/08

PURPOSE: PUBLIC INTEREST

44A 05/21/08 3285

Servicio de Inmigración y Naturalización

I-94 Registro de salida

14 Apellido [REDACTED]

15 Primer nombre [REDACTED] Fecha de nac. (dd/m/aa) [REDACTED]

17 Ciudad [REDACTED]

W. B. [REDACTED]

Vea el reverso STAPLE HERE

Inadmissibility In Action

Glenda comes to the U.S. border at Detroit with an expired tourist visa. CBP officer finds her not *admissible* because she doesn't have a valid visa to enter U.S.

Gail came to U.S. without inspection ("EWI") in 2000. Even though Gail has lived in the U.S. for 12 years, she will be charged with inadmissibility if apprehended by DHS because she was never "admitted" to U.S.

Subject to Deportability




Grounds to remove noncitizens who were “inspected and admitted”

Deportability In Action

Natalie came to U.S. on tourist visa in 2009 and has remained longer than her authorized stay. If arrested by an immigration officer, Natalie is subject to charge of deportability in removal proceedings.

LPR Kevin, from Ireland, is convicted of sale of cocaine. As a result of this conviction, Kevin is deportable, and faces losing his residency in removal proceedings.

Inadmissibility Grounds



- Health-related



- Criminal-related



- National security



- Public charge



- Labor protection



- Fraud, misrepresentation



- Documentation



- Evading military service



- Prior removals, unlawful presence



- Miscellaneous

Deportability Grounds

- Inadmissible at time of entry
- Criminal-related
- Failure to register/false docs
- Security-related
- Public Charge
- Unlawful voting

Who Is Inadmissible? Who Is Deportable?



Marta, from Mexico, who entered without inspection?



Shan, from China, who overstayed a tourist visa?



Nigel, an LPR from England, who was just convicted of drug trafficking?



Anniek, from Holland, who entered with student visa and is now applying for adjustment of status?

Homework Review

- Sara, EWI in 1999, now applying for adjustment through VAWA.
- Kasha applying for tourist visa at U.S. consulate in Warsaw.
- Wu, LPR since 1987, in 2011 convicted of larceny, placed in removal proceedings.
- Roberto, LPR since 2005, naturalized in January 2012. Convicted yesterday of armed robbery.
- Monique, EWI in 2009, assaulted by boyfriend, applying for U status.
- Karla, tourist overstay, now applying to adjust status.

MOST COMMON INADMISSIBILITY GROUNDS

Health-based

INA § 212(a)(1)

Fraud, Misrepresentation,
False Claim to USC,
Smuggling

INA § 212(a)(6)

Crimes

INA § 212(a)(2)

Immigration Violations

INA § 212(a)(9)

HEALTH-BASED GROUNDS



FRAUD + MISREPRESENTATION

Obtaining or attempting to gain by fraud or misrepresentation:

Admission

Visa

Other documentation

Other benefit under INA

Ways Around Fraud/Misrepresentation

Show not
material

Timely
retraction

Waived under 212(i),
extreme hardship to
USC/LPR spouse or parent

FALSE CLAIM TO U.S.CITIZENSHIP

On/after 9/30/96

Made to anyone

For benefit under state/federal law

No waiver/one exception for child of USC in certain circumstances

Must be willful, so age and mental state could be factor

SMUGGLING



“Knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the U.S. in violation of law”

SMUGGLING WAIVER

INA § 212(d)(11)

Available to: LPRs returning from trip; applicants for adjustment as IR or family preference categories 1-3 (not 4th)

For humanitarian reasons, assure family unity, in public interest

If only smuggled spouse, parent, child (any age, marital status)

INADMISSIBILITY BASED ON CRIMES- INA § 212(a)(2) INCLUDES:

General crimes,
including crimes of
moral turpitude, drug
violation offenses

Multiple
convictions

Controlled
substance
trafficking

Prostitution and
commercialized
vice

THERE MUST BE SOME KIND OF WAY OUT OF HERE...

First, may be able to argue crime DOESN'T trigger inadmissibility

Second, INA § 212(h) may waive:

- Crimes of moral turpitude
- Multiple criminal convictions
- Prostitution and commercialized vice
- Immunity from prosecution for serious criminal misconduct
- Single offense of simple possession of 30 grams or less of marijuana

Inadmissible for EWI



INA SEC. 212(a)(6)(a) – present in U.S. without admission or parole

Not applicable to VAWA self-petitioners

Three-Headed Monster: 212(a)(9)

Aliens with prior expulsion orders seeking readmission (212(a)(9)(A))

Aliens with accrued unlawful presence seeking readmission (212(a)(9)(B))

Aliens with accrued unlawful presence (more than one year) on or after April 1, 1997 or prior removal order at any time, who seek to reenter or reenter unlawfully (212(a)(9)(C))



What is “Unlawful Presence”

- Overstay authorized period of stay
- Present without admission or parole (EWI)
- IJ or CIS determines status violation

3/10 YEAR BAR WAIVER



Extreme hardship to USC/LPR spouse or parent

Form I-601

Submitted at time of finding of inadmissibility for consular processing or at time of filing for adjustment

Provisional Waiver

Where 3/10 year bar is the only ground of inadmissibility

Only for Immediate Relatives

Hardship only to USC spouse or parent

Form I-601A

Implementation began March 4, 2013

Permanent Bar at 212(a)(9)(C): What Does it Mean?

- Any alien who has been unlawfully present in the U.S. for an *aggregate period of more than 1 year* **or** *who has been ordered deported or removed from the U.S.* and who enters or attempts to reenter without being admitted is inadmissible.
- **After** 10-years outside U.S. can apply for waiver.
- This is known as the “permanent bar” to admission

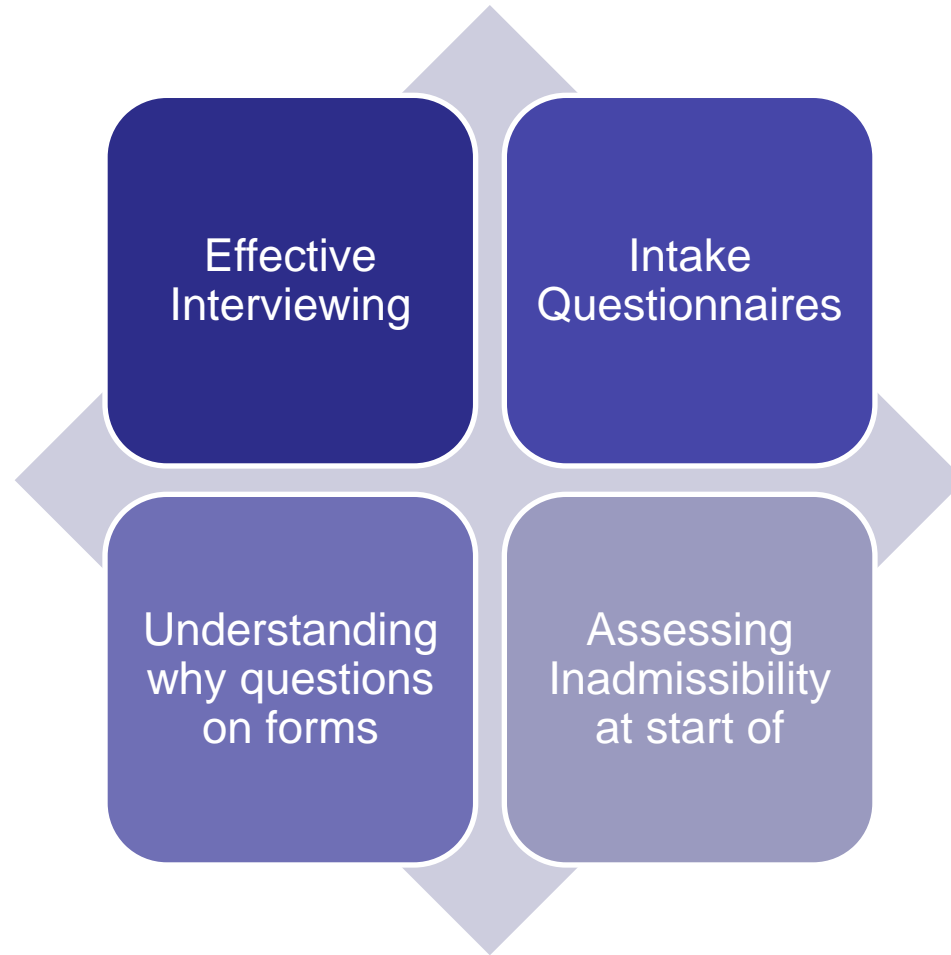
Unlawful Presence and Permanent Bars: What Do they Look Like?

Damian entered the U.S. without inspection in 2005. In 2011, he married USC Helen and she filed a petition for him. Gregory then receives an appointment for his immigrant visa interview in Peru in June 2012.

What immigration bar applies when Damian leaves for his consular appointment?

What immigration bar applies if Damian returns to the U.S. EWI before his case is decided?

INADMISSIBILITY: How Do You Know?



Don't file if you don't know!

How Does DHS Know?

Self-reporting on forms



Biometrics



Medical exam



Interview

Advocate has duty of candor to tribunal

Next Steps: Week Three

Reading

Exercises

Questions?



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