



Requirements for Naturalization Part II Good Moral Character Week Three

Agenda

- Good Moral Character
 - Statutory Bars
 - Residual Clause
 - Regulatory Bars
 - CIS Interpretations
- Screening for Criminal Issues
- Deportability



Sources of Authority

- INA §101(f)
 - Categories of conduct that preventing GMC
- Residual Clause
 - Average citizen standard
- INA §316(e)
 - Conduct outside of statutory period
- 8 CFR § 316.10
 - Extenuating circumstances
 - Specific limitations
- Policy Manual and Interpretations



What is Good Moral Character How Good Must You Be?



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GOOD MORAL CHARACTER Defined in the Negative

- INA §101(f)
 - No definition of who is a person of Good Moral Character (GMC).
 - Instead, INA §101(f) sets forth list of categories of conduct that prevent a person from demonstrating GMC.



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Demonstrate GMC for How Long?



During the *statutory period* has been a person of good moral character (GMC) and
Still is a person of GMC through processing of application and oath of allegiance.



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Statutory Period

- Five years §316
 - After admission as a permanent resident
- Three years if married to a USC §319
 - After admission as a permanent resident
 - USC spouse has been USC during entire period
 - Married to USC spouse during entire period
 - Living in marital union

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Exception To Statutory Period

- Statutory bars: automatically barred from establishing GMC §101(f)(8), (9):
 - Been convicted of an Aggravated Felony on or after November 29, 1990;
 - Been convicted of murder *at any time*;
 - Involved in persecution, genocide, torture, extrajudicial killings, violation of religious freedom;

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INA §101(f) and Crimes

- INA §101(f)
 - Crimes of moral turpitude
 - INA §212(a)(2)(A)(i)(I).
 - Convictions;
 - Admits having committed, or
 - Admits committing acts which are the essential elements of CIMT

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Exceptions To CIMTs

- Crimes committed while a juvenile
- INA § 212(a)(2)(A)(ii)(II) – Petty Offense Exception
 - Client can show GMC if was convicted of only 1 CIMT, and
 - Maximum possible penalty under the law (not the actual penalty) for his/her crime was 1 year in prison or less, and
 - Client's actual "term of imprisonment" sentence for crime was 6 months or less in jail

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Other Crimes and Sentences

- INA § § 101(f), 212(a)(2)
- Drug crimes
- Multiple crimes with total sentence of more than 5 years
- Drug trafficking
- Jail confinement of 180 days or more

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Statutory Bars - Crimes

- N-400 – Page 15
 22. Have you **ever** committed, assisted, attempted to commit a crime for which you were **not** arrested?
 23. Have you **ever** been arrested, cited, or detained by any law enforcement officer (including immigration officials and Armed forces) for any reason?
 24. Have you **ever** been charged with committing any crime or offense?

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Statutory Bars – Crimes and Sentences

- N-400 – Page 15
 - 26. Have you **ever** been placed in an alternative sentencing or a rehabilitative program ?
- N-400 – Page 16
 - 27. Have you **ever** received a suspended sentence, been placed on probation, or been paroled?
 - 28. Have you **ever** been in jail or prison? How long?



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Statutory Bars – Acts and Conduct

- INA §101(f)(1) and INA §101(f)(3)
 - Habitual drunkard
 - Prostitution;
 - Alien smuggling;
 - Polygamist
 - Gambling
 - False Testimony



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Statutory Bars – Acts and Conduct Questions

- N-400 – Page 16
 - 30. Have you **ever**:
 - a. Been a habitual drunkard?
 - b. Been a prostitute, or procured anyone for prostitution?
 - c. Sold or smuggled controlled substances, illegal drugs or narcotics?
 - d. Been married to more than one person at the same time?
 - e. Married someone for immigration benefits?



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Statutory Bars – Acts and Conduct Questions

- N-400 – Page 16
 - 30. Have you **ever**:
 - f. Helped anyone enter or try to enter the United States illegally?
 - g. Gambled illegally or received income from illegal gambling?
- N-400 – Page 17
 - 31. Have you **ever** given false or misleading information to any U.S. Government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal?



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Unlawful Voting, False Claim, Persecutors

- § § 101(f)(9); 212(a)(3)(E)
- Registers to vote, unlawful voting
- False claim to U.S. citizenship
- Nazi persecution, genocide, torture, violations of religious freedom, child soldiers



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Questions on N-400

- N-400 – Page 13
 - 1. Have you ever claimed to be US citizen?
 - 2. Have you ever registered in a federal, state, or local election in the US?
 - 3. Have you ever voted in a federal, state, or local election in the US?
- N-400 – Pages 14-15
 - 12. Have you persecuted others?
 - 14. Been involved in torture, genocide, military?
 - 20. Recruited a person under age 15?



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Residual Clause - §101(f)(9)

- §101(f)(9)
 - The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character

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Regulations

- 8 CFR § 316.10(b)(3)
 - Unless the applicant established extenuating circumstances, the applicant shall be found to lack gmc if
 - (i) Willfully failed or refused to support dependents;
 - (ii) Had an extramarital affair which tended to destroy an existing marriage;
 - (iii) Committed unlawful acts

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Regulations – Questions

- N-400 – Page 15
 - 22. Have you **ever** committed a crime or offense for which you were **not** arrested?
 - 30. Have you **ever**:
 - h. Failed to support your dependents or to pay alimony?

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Regulations and Probation or Parole

- 8 CFR § 316.10(b)(c)(1)
Applicant on probation, parole, or suspended sentence during statutory period is NOT *automatically* precluded but probation must be terminated at time of interview
- N-400 – Page 16
27. A. Have you ever received suspended sentence, probation or parole?
27. B. If yes, have you completed probation or parole?

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USCIS Policy Manual and Interpretations

- Prior Memo -- U.S. Department of Justice, Immigration and Naturalization Service, June 18, 1999, Yates Memo, *Effect of Failure to Register for the Selective Service on Eligibility for Naturalization*
- Policy Manual

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Interpretations – Questions

- N-400 – Pages 17 - 18
46. A. Are you a male who lived in the US at any time between your 18th and 26th birthdays (this does not include as a lawful nonimmigrant)?
C. 2. If yes and did not register, attach statements and status information letter

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GMC and Crimes



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Screening for Criminal Issues

- Talking to clients about their criminal history can be tricky because:
 - Clients may be confused about the *facts* of past criminal problems
 - Clients may be confused about the *legal consequences* of past criminal problems
 - Clients *may not want to tell* you about their past criminal problems

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Beware of Legal Jargon

- Don't assume your client knows what you mean when you say:
 - Arrested
 - Cited
 - Conviction
 - Sentence

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What Information Do You Need?

- Charge, including statutory cite
- Disposition (case outcome, including penalty imposed)
- Classification of crime (felony or misdemeanor, what level)
- May also need penalty range – maximum penalty that could be imposed, besides actual penalty imposed

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Types of Criminal Records To Consider

- FBI RAP SHEETS
- STATE CRIMINAL ARREST RECORDS
- COURT RECORDS

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Court Records

- Complaint
- Plea Agreement
- Court Disposition
- Sentencing Docs



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GETTING COPIES OF STATUTES

- Necessary for any analysis of criminal conviction
- Need to get copy of statute as it existed year client was convicted
- Sentencing guidelines to see maximum possible sentence for conviction

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IF YOUR CLIENT SAYS.....

- I was only 17 when it happened
- Oh that? That was years ago
- It wasn't a big deal; I only had to pay a fine
- My lawyer said the whole thing was dismissed after 6 months, so I have no record
- I paid to get my record expunged

Does she have a conviction?

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IMMIGRATION LAW DEFINITION OF CONVICTION – INA 101(a)(48)(A)

- Court finds guilty or
- Court withholds adjudication and
 - Judge/jury finds guilty
 - Person admits guilt, or
 - Person enters nolo contendere plea
 - Person admits sufficient facts
- Court orders punishment

Example: Sally pleads guilty to a retail theft charge in Illinois and is sentenced to supervision. She also has to pay a fine and court costs. Under Illinois law, supervision is not considered a conviction. Does Sally have a conviction under *immigration* law?

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WHAT'S NOT A CONVICTION?

- The following are NOT convictions:
 - Not guilty plea
 - Nolle prosequi
 - Dismissal
 - Juvenile delinquency finding

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IMMIGRATION LAW DEFINITION OF SENTENCE – INA 101(a)(48)(B)

“Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part”

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So.....

- Lucille is charged with felony theft but it's her first offense. The judge sentences her to 18 months incarceration but then suspends the sentence and imposes a two year probation term.
- What is Lucille's sentence for purposes of immigration law?

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Homework: Mary Martin

- Crime convicted of?
- Date of conviction?
- Sentence she received?
- Maximum possible term of imprisonment for crime?
- Can Mary show GMC?
- Do any exceptions apply to Mary?
- Any concerns about deportation?

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DEPORTABILITY: INA 237

- Who is subject to the grounds of deportability?
 - Non-citizens who were “inspected and admitted”
 - Lawful Permanent Residents
- Why is deportability relevant to naturalization cases?
- What are consequences of being “deportable”?

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DEPORTABILITY GROUNDS

- Inadmissible at time of entry or adjustment/ Alien Smuggling/Marriage Fraud
- Crime based grounds (CIMTs, aggravated felony, controlled substances, firearms, DV)
- Failure to register/False Documents, false claim to USC
- Security Related Grounds
- Public Charge
- Unlawful Voters



INA § 237(a)(2)(A) (i)

- Convicted of a **crime involving moral turpitude** committed **within 5 years** after the date of admission, **and**
- is convicted of a crime for which a sentence of **one year or longer** may be imposed
- Remember Lucille ? Could she be deportable ? What else do you need to know ?
- *Lucille is charged with felony theft but it's her first offense. The judge sentences her to 18 months incarceration but then suspends the sentence and imposes a two year probation term.*



Deportable for Being Inadmissible: What Does it Look Like?

Cesar has been an LPR since 2005. In 2002, he used his USC cousin's birth certificate to get a driver's license, but this never came up at his adjustment interview.



Work For Week Four

- Reading on Loyalty Oath, Naturalization Interview and Filing Tips
 - N-400 Exercise
 - Quiz
 - Question Corner
- Questions? Problems? Let us know!!!



Work for Week Four

HAVE FUN!
SEE YOU NEXT WEEK!



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Questions?



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