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Criminal Grounds of Removal



U.S. Immigration
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Enforcement

What Will I Discuss?

- Concepts
- Grounds of Removal
- Grounds of Inadmissibility and Deportability
- Crimes Involving Moral Turpitude
- Aggravated Felonies



ALIEN

- Anyone in the U.S. who is not a US citizen

IMMIGRANTS

- Generally refers to aliens who are coming to the US to stay on a permanent basis (LPR)
- **Lawful Permanent Resident (LPR's)**
 - ◆ Non-US citizens

NON-IMMIGRANTS

- Individuals entering the U.S. (generally with a visa) for a temporary period and entering for a specific activity that is in accord with the purpose of the visa.



CONCEPTS

ADMISSION

- The entry of an alien into the US **after** inspection and authorization by an immigration officer.
 - ♦ **Exception-** Aliens paroled for humanitarian (medical) or public benefit (witness in a prosecution) reasons.

PRESENT WITHOUT INSPECTION

- Not admitted (not inspected and authorized by immigration officer to enter the U.S.)



CONCEPTS

ADMISSION (cont.)

LPR's ARE CONSIDERED ADMITTED.

BUT LPRs WHO RETURN TO THE U.S. AFTER A TEMPORARY DEPARTURE ARE CONSIDERED TO BE SEEKING NEW ADMISSION WHEN S/HE HAS:

- ◆ abandoned his/her LPR status.
- ◆ Been absent from the US for more than 180 days.
- ◆ Engaged in illegal activity after departing the U.S.
- ◆ Departed the U.S. during removal proceedings.
- ◆ Committed a crime making him inadmissible.



CONCEPTS

REMOVAL PROCEEDINGS

Proceeding in Immigration Court by which the U.S. tries to remove from the U.S. an alien who has violated the immigration laws.

There are two types of removable aliens:

- **Inadmissible Aliens**

Applies to aliens in removal proceedings who have not been admitted into the U.S.

- **Deportable Aliens**

Applies to aliens in removal proceedings who have been admitted into the U.S.



Concepts

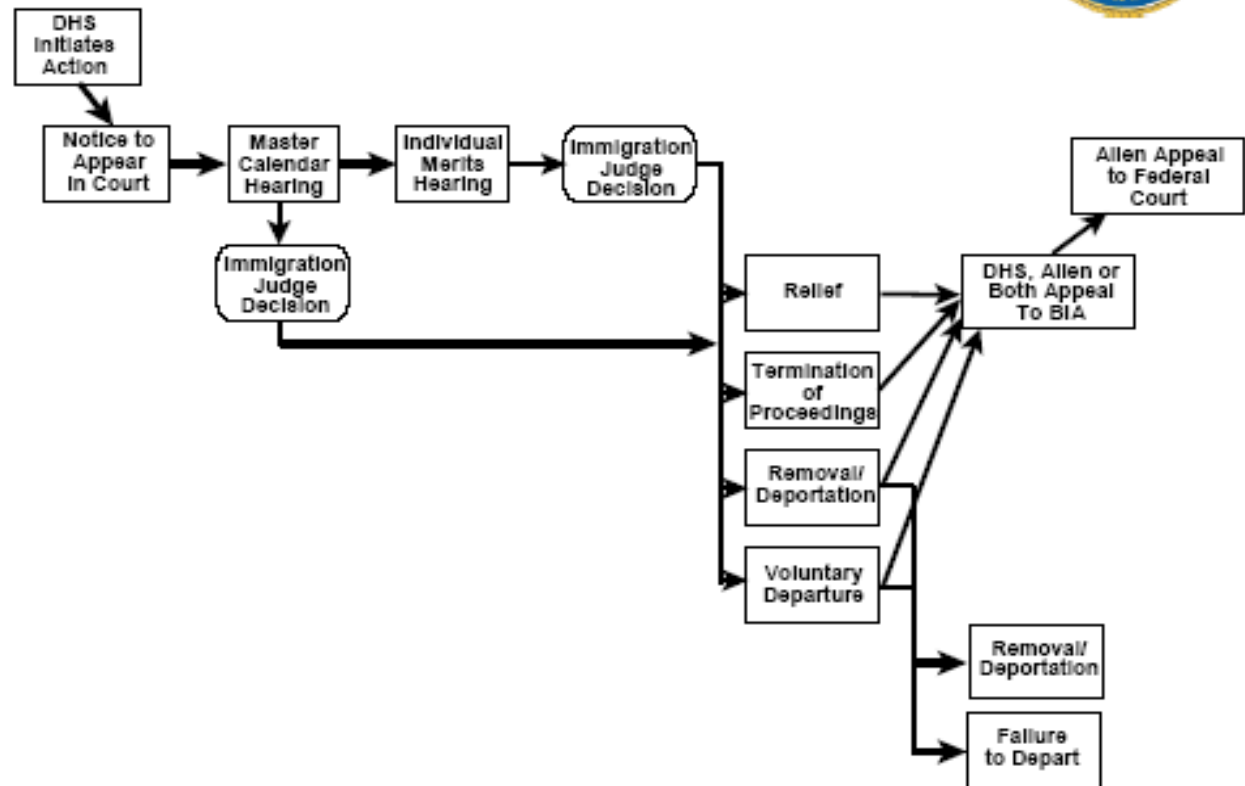
ADMISSION

The concept of “admission” is important because it determines what ground of removal the alien will be placed in: inadmissibility or deportability.



REMOVAL PROCEEDINGS

EOIR Removal Proceedings Process



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INADMISSIBLE ALIENS INA § 212



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INADMISSIBLE ALIENS

Grounds of inadmissibility apply to individuals who:

- Seek a visa at a consulate;
- Seek admission at a port of inspection or airport; or
- Are LPR's seeking to enter the U.S.

Inadmissible aliens are:

- Ineligible for Visa
- Ineligible obtain LPR status



INADMISSABLE ALIENS

General Grounds of Inadmissibility

- 212(a)(1) - Health
- **212(a)(2) - Criminal**
- 212(a)(3) - Security
- 212(a)(4) - Public Charge
- 212(a)(5) - Labor Certification
- 212(a)(6) - Illegal Entrants
- 212(a)(7) - Documentary Requirements
- 212(a)(8) - Ineligible for Citizenship
- 212(a)(9) - Unlawful Presence



INADMISSIBLE ALIENS CRIMINAL GROUNDS

- **212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude**
- 212(a)(2)(A)(i)(II) – Controlled Substance Violations
- 212(a)(2)(B) – Multiple Criminal Convictions
- 212(a)(2)(C) – Drug Trafficking
- 212(a)(2)(D)(i) – Prostitution
- 212(a)(2)(D)(ii) – Proceeds of Prostitution
- 212(a)(2)(H) – Trafficking in Persons
- 212(a)(2)(I) – Money Laundering



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INADMISSIBLE ALIENS CRIMINAL GROUNDS

CRIMES INVOLVING MORAL TURPITUDE

212(a)(2)(A)(i)(I)



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INADMISSIBLE ALIENS CRIMINAL GROUNDS

INA § 212 (a)(2)(A)(i)(I):

Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude.

NO CONVICTION REQUIRED, AD ADMISSION IS ENOUGH



INADMISSABLE ALIENS

Criminal Grounds (cont.)—

Examples of Crimes Involving Moral Turpitude:

- Assault with a Dangerous/Deadly Weapon
- Robbery/Manslaughter/Murder
- Domestic Violence
- Burglary with Intent to Commit Theft/Larceny
- Receiving Stolen Property/Theft
- Bad Checks/Tax Evasion/Forgery/Money Laundering
- Perjury
- Lewdness/Statutory Rape
- Reckless Endangerment
- Distribution/Unlawful Sale of Drugs
- Accessory Before/After the Fact (if underlying crime is a CIMT)



INADMISSABLE ALIENS

Criminal Grounds (cont.)

WHAT IS A CRIME INVOLVING MORAL TURPITUDE?

DEFINITION: Moral turpitude is . . . conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. *Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988).

“Neither the seriousness of a criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Rather, the state statute is controlling. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989).



INADMISSABLE ALIENS - Criminal Grounds

Crimes Involving Moral Turpitude

“INTENT” Requirement - Generally

GENERALLY, crimes involving moral turpitude require evil intent. *Matter of Flores*, 17 I&N Dec. 225 (BIA 1980).

But see, NYPL § 120.00, Assault in the third degree

A person is guilty of assault in the third degree when with intent to cause physical injury to another person, he causes such injury to such person or to a third person.

- A crime involving intentional conduct is not enough in itself a crime involving moral turpitude. *In Re: Derrick* 2005 WL 698372 (BIA) (unpublished).



INADMISSABLE ALIENS – Criminal Grounds

Crimes Involving Moral Turpitude (CIMT)

*VA Code § 18.2-51.2. Aggravated malicious wounding;
penalty*

(A) If any person maliciously shoots, stabs, cuts or wounds any other person, . . . , with the intent to maim, disfigure, disable or kill, he shall be guilty . . . if the victim is thereby severely injured . . .

INTENT + AGGRAVATING FACTOR = CIMT



INADMISSABLE ALIENS – Criminal Grounds

Crimes Involving Moral Turpitude (CIMT)

WHAT IF THE LANGUAGE OF THE STATUTE HAS NOT INTENT IN IT?

VA Code. § 18.2-266. Driving motor vehicle, engine, etc., while intoxicated, etc.

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train (i) while such person has a blood alcohol concentration of 0.08 percent . . . , (ii) while such person is under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug . . . to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely, (iv) while such person is under the combined influence of alcohol and any drug or (v) while such person has a blood concentration of . . . , or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood.

Generally: No INTENT = NOT a CIMT



INADMISSIBLE ALIENS – Criminal Grounds Crimes Involving Moral Turpitude (CIMT)

BUT, IS A SPECIFIC “INTENT” ALWAYS
NEEDED TO FIND CIMT?

A specific intent is not a prerequisite; it depends on whether the act is accompanied by a “vicious or corrupt mind.” *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001). Thus, crimes such as fraud are considered to involve moral turpitude. *Jordan v. De George*, 341 U.S. 223, 229 (1951).



INADMISSIBLE ALIENS – Criminal Grounds Crimes Involving Moral Turpitude (CIMT)

VA Code §18.2-174. Impersonating Officer.

Any person who shall falsely assume or exercise the functions, powers, duties and privileges incident to the office of sheriff, police . . . or who shall falsely pretend or assume to be such officer, shall be deemed guilty . . .

NO INTENT in the language of the statute, but the FRAUD REFLECTS a VICIOUS or CORRUPT MIND.



INADMISSIBLE ALIENS – Criminal Grounds Crimes Involving Moral Turpitude (CIMT)

COULD RECKLESS BEHAVIOR BE A CIMT?

Definition: Careless, heedless, inattentive; indifferent to consequences. *Black's Law Dictionary, Sixth Edition.*

In some instances, **reckless** behavior may be the basis for a finding of moral turpitude. *Matter of Medina, 15 I&N Dec., 611, 614 (BIA 1976).*



INADMISSABLE ALIENS – Criminal Grounds Crimes Involving Moral Turpitude (CIMT.)

***VA Code § 18.2-51.4. Maiming, etc., of another resulting
from driving while intoxicated***

(A) Any person who, as a result of driving while intoxicated in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty . . .

Reckless Behavior + Aggravating Factor = (?)



INADMISSABLE ALIENS – Criminal Grounds Crimes Involving Moral Turpitude (cont.)

GENERALLY:

“Crimes involving a **reckless** mental state will **not** be deemed to involve moral turpitude absent the presence of some **aggravating factors**, such as the death of a person or the infliction of bodily injury. See, e.g., [Matter of Fualaau, 21 I&N Dec. 475 \(BIA 1996\)](#). ; [Matter of Wojtkow, 18 I&N Dec. 111 \(BIA 1981\)](#); [Matter of Medina, 15 I&N Dec. 611, 613 \(BIA 1976\)](#).”



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DEPORTABLE ALIENS INA § 237



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DEPORTABLE ALIENS

This ground of removability applies to individual who have been:

- **Admitted** to the United States



DEPORTABLE ALIENS

Grounds of Deportability

- 237(a)(1)(A) – Inadmissible at time of entry/adjustment
- 237(a)(1)(C) – Violated status
- 237(a)(1)(D) – Termination of conditional residence
- 237(a)(1)(E) – Alien smuggling
- 237(a)(1)(G) – Marriage fraud
- 237(a)(2)(A) – General crimes
- 237(a)(2)(A)(iii) – **Aggravated Felonies**
- 237(a)(2)(B) – Controlled substances
- 237(a)(2)(C) – Firearms offenses
- 237(a)(2)(E) – Domestic violence
- 237(a)(3) – Failure to register/falsification of documents
- 237(a)(4) – Security and related grounds
- 237(a)(5) – Public charge
- 237(a)(6) – Unlawful voters



DEPORTABLE ALIENS

Criminal Grounds

237(a)(2)(A) – Crimes Involving Moral Turpitude

- Any alien who is convicted of a crime involving moral turpitude committed within five years after the date of admission, **and** is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable.
- Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.



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INADMISSIBLE ALIENS CRIMINAL GROUNDS

AGGRAVATED FELONIES INA § 237(a)(2)(A)(iii)



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DEPORTABLE ALIENS CRIMINAL GROUNDS

Aggravated Felony (AF) is a term defined under INA § 101(a)(43).

- An alien is deportable if convicted of an AF at any time after admission.
- There are more than 20 different types of AF's. But the broadest categories of aggravated felonies under the INA are:
 - Any crime of violence (including crimes involving a substantial risk of the use of physical force) for which the term of imprisonment is at least one year;
 - Any crime of theft (including the receipt of stolen property) or burglary for which the term of imprisonment is at least one year; and
 - Illegal trafficking in drugs, firearms, or destructive devices.



DEPORTABLE ALIENS - CRIMINAL GROUNDS

AGGRAVATED FELONY (AF)

A crime is an AF if the offense meets the definition of “*crime of violence*” at 18 USC § 16, **and** a “*term of imprisonment*” of at least one year has been imposed.

18 USC § 16 defines “crimes of violence” as:

- (a) An offense that has as an element the **use**, attempted **use**, or threatened **use** of physical force against the person or property of another; or

- (b) Any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

You must look at the language of the statute, and not at the facts of the case.



DEPORTABLE ALIENS - CRIMINAL GROUNDS

VA Code § 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated.

Any person who, as a result of driving while intoxicated in a manner so gross as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment is guilty.

“Use” of force under 18 USC § 16(a) requires active employment of force and therefore a mental state higher than negligent or merely accidental conduct. *Leocal v. Ashcroft*, 543 U.S. 1 (2004).



Conclusion

You are able to identify:

- Criminal grounds of removal.
- Crimes Involving Moral Turpitude.
- Aggravated felonies.





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