



Updated July 29, 2024

Immigration: Grounds of Inadmissibility

Under the Immigration and Nationality Act (INA), aliens may be denied admission to the United States or face other adverse immigration consequences if they are inadmissible. (The INA defines an “alien” as any person not a citizen or national of the United States.) Immigration officials from different agencies make inadmissibility determinations in various contexts, including, for instance, when adjudicating an application for a nonimmigrant (temporary) or immigrant (permanent) visa to come to the United States, when inspecting aliens arriving at U.S. ports of entry or encountered within the country after entering without inspection, when considering an application to adjust to lawful permanent resident (LPR) status, or when determining eligibility for certain forms of relief from removal. This In Focus provides a brief overview of the grounds of inadmissibility.

Health-Related Grounds

The INA bars the admission of aliens who (1) have communicable diseases of public health significance, (2) are applying for immigrant visas or adjustment to LPR status and lack required vaccinations, (3) are determined to have physical or mental disorders with associated harmful behavior, or (4) are found to be drug abusers or addicts. These limitations are subject to waivers and exceptions.

Criminal and Related Grounds

The INA prohibits the admission of certain criminal aliens, including, for example, those who have committed crimes of moral turpitude, those with two or more criminal convictions (other than purely political offenses) for which the aggregate sentences were five years or more of imprisonment, controlled substance traffickers, those engaged in prostitution or commercialized vice, human traffickers, and money launderers. There are exceptions in certain situations. For instance, the crime of moral turpitude ground of inadmissibility does not apply to those who committed the crime before the age of 18 and who committed the crime and were released from imprisonment more than five years before their application for a visa/admission. Additionally, some criminal grounds of inadmissibility may be waived in certain circumstances.

Security and Related Grounds

The INA prohibits the admission of aliens who have engaged in terrorist activity, are considered likely to engage in terrorist activity, have incited terrorist activity, endorse or espouse terrorist activity (or persuade others to), have received military-type training from a terrorist organization, are representatives or members of (or associated with) a terrorist organization, are representatives of a group that endorses or espouses terrorist activity, or are the spouses or children of persons inadmissible on terrorist-related grounds based on activity occurring within the last five years (subject to exception). The INA defines “terrorist

activity” to include certain unlawful activities, such as the hijacking or sabotage of any conveyance, the detention of a person in order to compel a governmental organization to do or abstain from a certain act, assassination, and the use of a weapon of mass destruction. The INA defines “engage in terrorist activity” to cover a wide range of activities, such as committing terrorist activity, soliciting funds for terrorist activity, and providing material support to terrorist organizations. Some of the terrorist grounds of inadmissibility may be waived in certain circumstances.

With some exceptions, the INA also prohibits the admission of aliens who seek to enter the United States to engage in activities related to espionage or sabotage, the violation of certain export laws, the violent opposition to or overthrow of the U.S. government, or other unlawful activity; aliens whose entry or activities in the United States could adversely affect U.S. foreign policy; members of the Communist or any other totalitarian party; participants in Nazi persecution, genocide, or acts of torture or extrajudicial killing; and those who have recruited or used child soldiers.

Public Charge Grounds

With some exceptions, the INA makes aliens who are “likely at any time to become a public charge” inadmissible. The INA does not define the term *public charge*; the definition has been set forth by agency guidance and regulation. It is currently defined as a person who is or is likely to become primarily dependent on public cash assistance or government-funded institutionalization for long-term care. When making public charge determinations, immigration officers consider the foreign national’s past, current, or future receipt of Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), state and local cash assistance (general assistance); and benefits provided for institutionalized long-term care. They also consider age, health, family status, assets, resources, financial status, education, and skills.

Labor Certification and Qualifications for Certain Immigrants Grounds

The INA bars certain aliens who seek to enter the United States to perform skilled or unskilled labor unless the Secretary of Labor certifies that there are not sufficient U.S. workers who are able, willing, and qualified to perform such work, and that the alien’s employment will not adversely affect the wages and working conditions of similarly employed U.S. workers. Some classes of aliens are exempt from labor certification (e.g., permanent immigrants entering as priority workers who are persons of extraordinary ability in the arts, sciences, education, business, or athletics), and this ground of inadmissibility can be waived in some cases. Some INA provisions also bar

the admission of certain “unqualified physicians” and uncertified health care workers, unless an exception applies.

Illegal Entrants and Immigration Violators Grounds

The INA specifies eight categories of inadmissible illegal entrants and immigration violators: (1) aliens present in the United States without being admitted or paroled, or who arrive in the United States at any time or place other than as designated (there are exceptions for certain battered spouses and children); (2) aliens who “without reasonable cause” fail to attend their removal proceedings and who seek admission within five years of their departure or removal; (3) alien who have, by fraud or willful misrepresentation of a material fact, sought to procure or have procured admission into the United States or a benefit under the INA (unless they qualify for a waiver); (4) aliens who falsely represent themselves to be U.S. citizens for any purpose or benefit under the INA or any other federal or state law, except under narrow circumstances; (5) stowaways; (6) human smugglers (subject to waiver); (7) aliens subject to civil penalties for document fraud under INA Section 274C (subject to waiver); and (8) student visa abusers who have been outside the United States for less than five years.

Documentation Requirements Grounds

The INA makes aliens seeking admission as immigrants (i.e., LPRs) inadmissible if they lack a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document, and a valid unexpired passport or other suitable travel document. Aliens seeking admission as nonimmigrants (e.g., temporary workers) are inadmissible if they lack a passport valid for a minimum of six months from the date of the expiration of the initial period of their admission to the United States or they lack a valid nonimmigrant visa or border crossing identification card. Immigration officials have authority to waive these documentation requirements in some cases (e.g., for those traveling under the Visa Waiver Program).

Ineligibility for Citizenship Grounds

The INA makes certain aliens who are “ineligible for citizenship” inadmissible. Although this language may suggest a range of ineligibilities linked to the INA’s naturalization provisions, its actual effect is to bar the entry of individuals who deserted their U.S. military service or evaded the military draft (LPRs are eligible to enlist in the U.S. Armed Forces).

Aliens Who Were Previously Removed or Accrued Unlawful Presence Grounds

Under the INA, certain aliens who were previously removed or accrued unlawful presence in the United States are inadmissible. First, aliens who have been previously removed are inadmissible for 5, 10, or 20 years depending on the specifics of their case, and they are permanently inadmissible if convicted of an aggravated felony. Second, aliens who were unlawfully present in the United States for more than 180 days but less than one year, and departed the United States before the commencement of formal removal proceedings, are inadmissible for three years; and those who were unlawfully present for one year or more are inadmissible for 10 years after the date of their departure or removal (some periods do not count toward the accrual of

unlawful presence, including any period when the alien is under the age of 18 or has a pending asylum application, and this bar does not apply to certain battered spouses and children and victims of trafficking). Third, aliens who enter or attempt to reenter the United States without authorization after accruing more than one year of unlawful presence in the United States or after being ordered removed are permanently inadmissible.

These grounds of inadmissibility can be waived in some circumstances, depending on the facts of the case and the specific ground being applied (e.g., if the DHS Secretary “has consented to the alien’s reapplying for admission”).

Miscellaneous Grounds

The INA contains “miscellaneous” grounds of inadmissibility applicable to aliens who (1) are seeking admission as LPRs and coming to the United States to practice polygamy; (2) are required to accompany (as guardians) aliens who are inadmissible and certified to be helpless from sickness, mental or physical disability, or infancy; (3) unlawfully withhold custody of a U.S. citizen child abroad from a person granted custody of the child by a U.S. court or who assist or are certain relatives of the child abductor (subject to certain exceptions); (4) have voted in violation of any federal, state, or local constitutional provision, statute, ordinance, or regulation (subject to exception); or (5) are former U.S. citizens who officially renounced their citizenship to avoid taxation.

Suspension of Entry

The INA also authorizes the President “to suspend the entry of all aliens or any class of aliens” whenever the President “finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States.” Presidential Administrations have invoked this authority on many occasions—for example, to restrict the entry of nationals of certain countries that inadequately shared information and presented national security concerns, and to suspend entry of aliens arriving by air from certain countries during the COVID-19 pandemic.

Waiver Authority for Nonimmigrants

Immigration officials can also waive most grounds of inadmissibility for aliens seeking to enter the United States temporarily as nonimmigrants (e.g., tourists). This waiver authority does not cover aliens who are inadmissible under certain security-related grounds (e.g., espionage activity). Immigration officials can also waive inadmissibility, except for certain grounds, for aliens seeking nonimmigrant status as victims of trafficking or specified crimes.

Parole of Applicants for Admission

The INA authorizes immigration officials to parole an alien seeking admission who is otherwise inadmissible into the United States temporarily “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” While parole does not constitute an admission to the United States, DHS has utilized this authority extensively to allow many applicants for admission to enter the United States for certain periods of time and for specific reasons.

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