



U.S. Citizenship and Immigration Services

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Part F - Good Moral Character

Chapter 5 - Conditional Bars for Acts in Statutory Period

In addition to the permanent bars to good moral character (GMC), the Immigration and Nationality Act (INA) and corresponding regulations include bars to GMC that are not permanent in nature. USCIS refers to these bars as “conditional bars.” These bars are triggered by specific acts, offenses, activities, circumstances, or convictions within the statutory period for naturalization, including the period prior to filing and up to the time of the Oath of Allegiance. An offense that does not fall within a permanent or conditional bar to GMC may nonetheless affect an applicant’s ability to establish GMC.

With regard to bars to GMC requiring a conviction, the officer reviews the relevant federal or state law or regulation of the United States, or law or regulation of any foreign country to determine whether the applicant can establish GMC.

The table below serves as a quick reference guide on the general conditional bars to establishing GMC for acts occurring during the statutory period. The sections and paragraphs that follow the table provide further guidance on each bar and offense.

Conditional Bars to GMC for Acts Committed in Statutory Period

Table with 3 columns: Offense, Citation, and Description. Rows include: One or More CIMTs, Aggregate Sentence of Five Yrs or More, Controlled Substance Violation, Incarceration for 180 Days, False Testimony under Oath, and Prostitution Offenses.

Offense	Citation	Description
Smuggling of a Person	<ul style="list-style-type: none"> INA 101(f)(3). 8 CFR 316.10(b)(2)(viii). 	Involved in smuggling of a person to enter or try to enter the United States in violation of law
Polygamy	<ul style="list-style-type: none"> INA 101(f)(3). 8 CFR 316.10(b)(2)(ix). 	Practiced or is practicing polygamy (the custom of having more than one spouse at the same time)
Gambling Offenses	<ul style="list-style-type: none"> INA 101(f)(4)-(5). 8 CFR 316.10(b)(2)(x)-(xi). 	Two or more gambling offenses or derives income principally from illegal gambling activities
Habitual Drunkard	<ul style="list-style-type: none"> INA 101(f)(1). 8 CFR 316.10(b)(2)(xii). 	Is or was a habitual drunkard
Failure to Support Dependents	<ul style="list-style-type: none"> INA 101(f). 8 CFR 316.10(b)(3)(i). 	Willful failure or refusal to support dependents, unless extenuating circumstances are established
Adultery	<ul style="list-style-type: none"> INA 101(f). 8 CFR 316.10(b)(3)(ii). 	Extramarital affair tending to destroy existing marriage, unless extenuating circumstances are established
Unlawful Acts	<ul style="list-style-type: none"> INA 101(f). 8 CFR 316.10(b)(3)(iii). 	Unlawful act that adversely reflect upon GMC, unless extenuating circumstances are established

A. One or More Crimes Involving Moral Turpitude

1. Crime Involving Moral Turpitude (CIMT)

“Crime involving moral turpitude” (CIMT) is a term used in the immigration context that has no statutory definition. Extensive case law, however, has provided sufficient guidance on whether an offense rises to the level of a CIMT. The courts have held that moral turpitude “refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general.”¹³

Whether an offense is a CIMT is largely based on whether the offense involves willful conduct that is morally reprehensible and intrinsically wrong, the essence of which is a reckless, evil or malicious intent. The Attorney General has decreed that a finding of “moral turpitude” requires that the perpetrator committed a reprehensible act with some form of guilty knowledge.¹⁴

The officer should consider the nature of the offense in determining whether it is a CIMT.¹⁵ In many cases, the CIMT determination depends on whether the relevant state statute includes one of the elements that involves moral turpitude. For example, an offense or crime may be a CIMT in one state, but a similarly named crime in another state may not be a CIMT because of differences in the definition of the crime or offense. The officer may rely on local USCIS counsel in cases where there is a question about whether a particular offense is a CIMT.

The table below serves as a quick reference guide on the general categories of CIMTs and their respective elements or determining factors. The paragraphs that follow the table provide further guidance on each category.

General Categories of Crimes Involving Moral Turpitude (CIMTs)

CIMT Category	Elements of Crime
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CIMT Category	Elements of Crime
Crimes against a person	Criminal intent or recklessness, or is defined as morally reprehensible by state (may include statutory rape)
Crimes against property	Involving fraud against the government or an individual (may include theft, forgery, robbery)
Sexual and family crimes	No one set of principles or elements; see further explanation below (may include spousal or child abuse)
Crimes against authority of the Government	Presence of fraud is the main determining factor (may include offering a bribe, counterfeiting)

Crimes Against a Person

Crimes against a person involve moral turpitude when the offense contains criminal intent or recklessness or when the crime is defined as morally reprehensible by state statute. Criminal intent or recklessness may be inferred from the presence of unjustified violence or the use of a dangerous weapon. For example, aggravated battery is usually, if not always, a CIMT. Simple assault and battery is not usually considered a CIMT.

Crimes Against Property

Moral turpitude attaches to any crime against property which involves fraud, whether it entails fraud against the government or against an individual. Certain crimes against property may require guilty knowledge or intent to permanently take property. Petty theft, grand theft, forgery, and robbery are CIMTs in some states.

Sexual and Family Crimes

It is difficult to discern a distinguishing set of principles that the courts apply to determine whether a particular offense involving sexual and family crimes is a CIMT. In some cases, the presence or absence of violence seems to be an important factor. The presence or absence of criminal intent may also be a determining factor. The CIMT determination depends upon state statutes and the controlling case law and must be considered on a case-by-case basis.

Offenses such as spousal or child abuse may rise to the level of a CIMT, while an offense involving a domestic simple assault generally does not. An offense relating to indecent exposure or abandonment of a minor child may or may not rise to the level of a CIMT. In general, if the person knew or should have known that the victim was a minor, any intentional sexual contact with a child involves moral turpitude.¹⁸¹

Crimes Against the Authority of the Government

The presence of fraud primarily determines the presence of moral turpitude in crimes against the authority of the government. Offering a bribe to a government official and offenses relating to counterfeiting are generally CIMTs. Offenses relating to possession of counterfeit securities without intent and contempt of court, however, are not generally CIMTs.

2. Committing One or More CIMTs in Statutory Period

An applicant who is convicted of or admits to committing one or more CIMTs during the statutory period cannot establish GMC for naturalization.¹²¹ If the applicant has only been convicted of (or admits to) one CIMT, the CIMT must have been committed within the statutory period as well. In cases of multiple CIMTs, only the commission and conviction (or admission) of one CIMT needs to be within the statutory period.

Petty Offense Exception

An applicant who has committed only one CIMT that is considered a “petty offense,” such as petty theft, may be eligible for an exception if all of the following conditions are met:

- The “petty offense” is the only CIMT the applicant has ever committed;
- The sentence imposed for the offense was six months or less; and
- The maximum possible sentence for the offense does not exceed one year.¹⁸¹

The petty offense exception does not apply to an applicant who has been convicted of or who admits to committing more than one CIMT even if only one of the CIMTs was committed during the statutory period. An applicant who has committed more than one petty offense of which only one is a CIMT may be eligible for the petty offense exception.¹⁹¹

Purely Political Offense Exception

This bar to GMC does not apply to a conviction for a CIMT occurring outside of the United States for a purely political offense committed abroad.¹¹⁰¹

B. Aggregate Sentence of Five Years or More

An applicant may not establish GMC if he or she has been convicted of two or more offenses during the statutory period for which the combined, imposed sentence was five years or more.¹¹¹¹ The underlying offenses must have been committed within the statutory period.

Purely Political Offense Exception

The GMC bar for having two or more convictions does not apply if the convictions and resulting sentence or imprisonment of five years or more occurred outside of the United States for purely political offenses committed abroad.¹¹²¹

C. Controlled Substance Violation

1. Controlled Substance Violations

An applicant cannot establish moral character (GMC) if he or she has violated federal or state law or regulation of the United States or law or regulation of any foreign country during the statutory period. ^[13] This includes conspiring to violate or aiding and abetting another person to violate such laws or regulations.

This conditional bar to establishing GMC applies to a conviction for such an offense or an admission to such an offense, or an admission to committing acts that constitute the essential elements of a violation of any controlled substance law. ^[14] Furthermore, a conviction or admission that the applicant has been a trafficker in a controlled substance, or benefited financially from a spouse or parent's trafficking is also a conditional bar. ^[15]

Controlled substance is defined in the Controlled Substances Act (CSA) as a "drug or other substance, or immediate precursor" that is included in the schedule or attachments in the CSA. ^[16] The substance underlying the applicant's state law conviction or admission must be listed in the CSA. ^[17] Possession of controlled substance related paraphernalia may also constitute an offense "relating to a controlled substance" and may preclude the applicant from establishing GMC. ^[18]

2. Conditional GMC Bar Applies Regardless of State Law Decriminalizing Marijuana

A number of states and the District of Columbia (D.C.) have enacted laws permitting "medical" ^[19] or "recreational" ^[20] use of marijuana. ^[21] Marijuana, however, remains classified as a "Schedule I" controlled substance under the federal CSA. ^[22] Schedule I substances have no accepted medical use pursuant to the CSA. ^[23] Classification of marijuana as a Schedule I controlled substance under federal law means that certain conduct involving marijuana, which is in violation of the CSA, continues to constitute a conditional bar to GMC for naturalization eligibility, even where such activity is not a criminal offense under state law. ^[24]

Such an offense under federal law may include, but is not limited to, possession, manufacture or production, or distribution or dispensing of marijuana. ^[25] For example, possession of marijuana for recreational or medical purposes or employment in the marijuana industry may constitute conduct that violates federal controlled substance laws. Depending on the specific facts of the case, these activities, whether established by a conviction or an admission by the applicant, may preclude a finding of GMC for the applicant during the statutory period. An admission must meet the long held requirements for a valid "admission" of an offense. ^[26] Note that even if an applicant does not have a conviction or make a valid admission to a marijuana-related offense, he or she may be unable to meet the burden of proof to show that he or she has not committed such an offense.

3. Exception for Single Offense of Simple Possession ^[27]

The conditional bar to GMC for a controlled substance violation does not apply if the violation was for a single offense of simple possession of 30 grams or less of marijuana. ^[28] This exception is also applicable to paraphernalia offenses involving controlled substances as long as the paraphernalia offense is "related to" simple possession of 30 grams or less of marijuana. ^[29]

D. Imprisonment for 180 Days or More

An applicant cannot establish GMC if he or she is or was imprisoned for an aggregate period of 180 days or more during the statutory period based on a conviction. ^[30] This bar to GMC does not apply if the conviction resulted only in a sentence to a period of probation with no sentence of incarceration for 180 days or more. This bar applies regardless of the reason for the conviction. For example, this bar still applies if the term of imprisonment results from a violation of probation rather than from the original sentence. ^[31]

The commission of the offense resulting in conviction and confinement does not need to have occurred during the statutory period for this bar to apply. Only the confinement needs to be within the statutory period for the applicant to be precluded from establishing GMC.

Purely Political Offense Exception

This bar to GMC does not apply to a conviction and resulting confinement of 180 days or more occurring outside of the United States for a purely political offense committed abroad. ^[32]

E. False Testimony

1. False Testimony in Statutory Period

An applicant who gives false testimony to obtain any immigration benefit during the statutory period cannot establish GMC. ^[33] False testimony occurs when the applicant deliberately intends to deceive the U.S. Government while under oath in order to obtain an immigration benefit. This holds true regardless of whether the information provided in the false testimony would have impacted the applicant's eligibility. The statute does not require that the benefit be obtained, only that the false testimony is given in an attempt to obtain the benefit. ^[34]

While the most common occurrence of false testimony is failure to disclose a criminal or other adverse record, false testimony can occur in other areas. False testimony may include, but is not limited to, facts about lawful admission, absences, residence, marital status or infidelity, employment, organizational membership, or tax filing information.

2. Three Elements of False Testimony

There are three elements of false testimony established by the Supreme Court that must exist for a naturalization application to be denied on false testimony grounds: ^[35]

Oral Statements

The "testimony" must be oral. False statements in a written application and falsified documents, whether or not under oath, do not constitute "testimony." ^[36] However, false information provided orally under oath to an officer in a question-and-answer statement relating to a written application is "testimony." ^[37] The oral statement must also be an affirmative misrepresentation. The Supreme Court makes it clear that there is no "false testimony" if facts are merely concealed, to include incomplete but otherwise truthful answers.

Oath

The oral statement must be made under oath in order to constitute false testimony. ^[38] Oral statements to officers that are not under oath do not constitute false testimony.

Subjective Intent to Obtain an Immigration Benefit

The applicant must be providing the false testimony in order to obtain an immigration benefit. False testimony for any other reason does not preclude the applicant from establishing GMC.

F. Prostitution

An applicant may not establish GMC if he or she has engaged in prostitution, procured or attempted to procure or to import prostitutes or persons for the purpose of prostitution, or received proceeds from prostitution during the statutory period.^[39]The Board of Immigration Appeals (BIA) has held that to “engage in” prostitution, one must have engaged in a regular pattern of behavior or conduct.^[40]The BIA has also determined that a single act of soliciting prostitution on one’s own behalf is not the same as procurement.^[41]

G. Smuggling of a Person

An applicant is prohibited from establishing GMC if he or she is or was involved in the smuggling of a person or persons by encouraging, inducing, assisting, abetting or aiding any alien to enter or try to enter the United States in violation of law during the statutory period.^[42]

Family Reunification Exception

This bar to GMC does not apply in certain cases where the applicant was involved in the smuggling of his or her spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law before May 5, 1988.^[43]

H. Polygamy

An applicant who has practiced or is practicing polygamy during the statutory period is precluded from establishing GMC.^[44] Polygamy is the custom of having more than one spouse at the same time.^[45]The officer should review documents in the file and any documents the applicant brings to the interview for information about the applicant’s marital history, to include any visa petitions or applications, marriage and divorce certificates, and birth certificates of children.

I. Gambling

An applicant who has been convicted of committing two or more gambling offenses or who derives his or her income principally from illegal gambling activities during the statutory period is precluded from establishing GMC.^[46]The gambling offenses must have been committed within the statutory period.

J. Habitual Drunkard

An applicant who is or was a habitual drunkard during the statutory period is precluded from establishing GMC.^[47]Certain documents may reveal habitual drunkenness, to include divorce decrees, employment records, and arrest records. In addition, termination of employment, unexplained periods of unemployment, and arrests or multiple convictions for public intoxication or driving under the influence may be indicators that the applicant is or was a habitual drunkard.

K. Failure to Support Dependents

An applicant who willfully failed or refused to support his or her dependents during the statutory period cannot establish GMC unless the applicant establishes extenuating circumstances.^[48]The GMC determination for failure to support dependents includes consideration of whether the applicant has complied with his or her child support obligations abroad in cases where it is relevant.^[49]

Even if there is no court-ordered child support, the courts have concluded that parents have a moral and legal obligation to provide support for their minor children, and a willful failure to provide such support demonstrates that the individual lacks GMC.^[50]

An applicant who fails to support dependents may lack GMC if he or she:

- Deserts a minor child;^[51]
- Fails to pay any support;^[52]or
- Obviously pays an insufficient amount.^[53]

If the applicant has not complied with court-ordered child support and is in arrears, the applicant must identify the length of time of non-payment and the circumstances for the non-payment. An officer should review all court records regarding child support, and non-payment if applicable, in order to determine whether the applicant established GMC.^[54]

Extenuating Circumstances

If the applicant shows extenuating circumstances, a failure to support dependents should not adversely affect the GMC determination.^[55]

The officer should consider the following circumstances:

- An applicant’s unemployment and financial inability to pay the child support;^[56]
- Cause of the unemployment and financial inability to support dependents;
- Evidence of a good-faith effort to reasonably provide for the support of the child;^[57]
- Whether the nonpayment was due to an honest but mistaken belief that the duty to support a minor child had terminated;^[58]and
- Whether the nonpayment was due to a miscalculation of the court-ordered arrears.^[59]

L. Adultery

An applicant who has an extramarital affair during the statutory period that tended to destroy an existing marriage is precluded from establishing GMC.^[60]

Extenuating Circumstances

If the applicant shows extenuating circumstances, an offense of adultery should not adversely affect the GMC determination.^[61] Extenuating circumstances may include instances where the applicant divorced his or her spouse but later the divorce was deemed invalid or the applicant and the spouse mutually separated

and they were unable to obtain a divorce.^[62]

M. Unlawful Acts

An applicant who has committed, was convicted, or imprisoned for an unlawful act or acts during the GMC period may be found to lack GMC.^[63] This provision may apply to cases where an offense is not specifically listed in the other relevant GMC provisions but rises to the level of preventing the applicant from establishing GMC.^[64] This provision does not require the applicant to have been charged or convicted of the offense.

An “unlawful act” includes any act that is against the law, illegal or against moral or ethical standards of the community. The fact that an act is a crime makes any commission thereof an unlawful act.^[65]

Considering Extenuating Circumstances for Unlawful Acts

If the applicant shows extenuating circumstances, the commission of an unlawful act^[66] or acts should not adversely affect the GMC determination.^[67] An extenuating circumstance must pertain to the unlawful act and must precede or be contemporaneous with the commission of the unlawful act.^[68]

An officer may not consider conduct or equities (including evidence of reformation or rehabilitation) subsequent to the commission of the unlawful act as an extenuating circumstance. Consequences after the fact and future hardship are not considered extenuating circumstances.^[69] If a jury or a court acquitted the applicant, he or she has not committed an unlawful act.

The factors considered in the determination are included in the denial notices in cases that result in an unfavorable determination.

Examples of Unlawful Acts

The following are examples of offenses that may be considered under the unlawful acts regulation. Each GMC determination is made on a case-by-case basis, to include determinations involving an “unlawful act” consideration.

1. Unlawful Voting and False Claim to U.S. Citizenship for Voting

An applicant may fail to show GMC if he or she engaged in unlawful voting or falsely claimed U.S. citizenship for voting.^[70] In September 1996, Congress enacted legislation to address unlawful voting and false claims to U.S. citizenship for purposes of registering to vote or voting.^[71]

- A noncitizen who is convicted of unlawful voting may be fined, imprisoned up to one year, or both, and subject to removal.^[72]
- A noncitizen who is convicted of making a false claim to U.S. citizenship to register to vote or vote may be fined, imprisoned up to five years, or both, and subject to removal.^[73]

The officer may request the applicant to provide a sworn statement regarding his or her testimony on illegal voting or false claim to citizenship for voting. The officer may also require an applicant to obtain any relevant evidence, such as the voter registration card, applicable voter registration form, and voting record from the relevant board of elections commission.

The table below serves as a quick reference guide on the effect on GMC determinations by unlawful voting or for false claims to U.S. citizenship. Further guidance is provided below.

Effect on GMC by Unlawful Voting or False Claim to U.S. Citizenship in Statutory Period

Offense	Penalty if Convicted	Effect on GMC		
		If Convicted	If Imprisoned	If Not Convicted
Unlawful Voting <u>18 U.S.C. 611</u>	May be fined or imprisoned up to 1 yr, or both	Unlikely a CIMT and will not bar GMC by itself	Bars GMC if incarcerated for 180 days or more, or if sentence from convictions total 5 yrs or more	May bar GMC depending on totality of the circumstances, and on whether exceptions apply
False Claim to Citizenship <u>18 U.S.C. 1015(f)</u>	May be fined or imprisoned up to 5 yrs, or both	CIMT and will bar GMC (may be a felony)		

Offenses without Convictions

An officer may find the applicant to lack GMC if the applicant was not convicted of unlawful voting or false claim to citizenship for voting. The officer should consider the totality of the circumstances and weigh all favorable and unfavorable factors of each case, to include whether the applicant qualifies for an exception.

An applicant may only have engaged in unlawful voting if his or her conduct was unlawful under the relevant federal, state, or local election law. The officer should consider the controlling statutes in cases involving potential unlawful voting offenses, because some local municipalities permit lawful permanent residents (LPRs) or other noncitizens to vote in municipal elections.

The officer does not need to focus on the underlying election law for false claims to U.S. citizenship. An applicant may be considered to have made a false claim to U.S. citizenship if the following conditions have been met on or after September 30, 1996.

- The applicant actually falsely represented himself or herself as a U.S. citizen; and

- The applicant made such misrepresentation in order to register to vote or for voting.

Convictions

A conviction for unlawful voting, by itself, generally should not bar an applicant from establishing GMC because the conviction is unlikely to be a CIMT.^[74] On the other hand, making a false claim to U.S. citizenship in order to register to vote or to vote is a CIMT. An applicant who is convicted of a CIMT is generally precluded from establishing GMC.

A conviction for making a false claim to U.S. citizenship in order to register to vote or for voting is a felony and prevents an applicant from showing GMC unless an exception applies.^[75]

Imprisonment

Unless an applicant qualifies for an exception, the applicant is barred from establishing GMC if:

- The applicant was convicted and imprisoned for 180 days or more during the statutory period for unlawful voting or for making a false claim to U.S. citizenship;^[76] or
- The applicant has multiple convictions with an aggregate sentence of five years or more, which include conviction(s) for unlawful voting or making a false claim to U.S. citizenship.^[77]

Exceptions

In 2000, Congress added exceptions for GMC determinations and removal of noncitizens for unlawful voting and false claims to U.S. citizenship.^[78] The exceptions only apply to convictions that became final on or after October 30, 2000.^[79]

An applicant qualifies for an exception if the following conditions are met:

- The applicant's natural or adoptive parents are or were U.S. citizens at the time of the violation;^[80]
- The applicant permanently resided in the United States prior to reaching the age of 16 years; and
- The applicant "reasonably believed" at the time of the violation that he or she was a U.S. citizen.

To assess whether the applicant "reasonably believed" that he or she was a U.S. citizen at the time of the violation, the officer must consider the totality of the circumstances in the case, weighing such factors as the length of time the applicant resided in the United States and the age when the applicant became an LPR.

2. Failure to File Tax Returns or Pay Taxes

An applicant who fails to file tax returns or pay his or her taxes may be precluded from establishing GMC. LPRs are generally taxed in the same way as U.S. citizens. This means that their worldwide income may be subject to U.S. tax and may need to be reported on their U.S. tax return. The income of LPRs is subject to the same graduated tax rates that apply to U.S. citizens.^[81]

An applicant who did not originally file tax returns or did not pay the appropriate taxes may be able to establish GMC by submitting a letter from the tax authority indicating that:

- The applicant has filed the appropriate forms and returns; and
- The applicant has paid the required taxes, or has made arrangements for payment.

If the officer uncovers inconsistencies in facts submitted on the application for naturalization and material elements on the applicant's tax return, such as marital status, number of children, and employment, the applicant may be precluded from establishing GMC due to an attempt to defraud the Internal Revenue Service (IRS) by avoiding taxes.^[82]

Footnotes

- [^] See [INA 316\(a\)](#). See [8 CFR 316.10](#).
- [^] See [INA 101\(f\)](#). See Chapter 1, Purpose and Background [[12 USCIS-PM F.1](#)].
- [^] See *Medina v. United States*, 259 F.3d 220, 227 (4th Cir. 2001), quoting *Matter of Danesh (PDF)*, 19 I&N Dec. 669, 670 (BIA 1988). See *Matter of Perez-Contreras (PDF)*, 20 I&N Dec. 615, 618 (BIA 1992). See *Matter of Flores (PDF)*, 17 I&N Dec. 225 (BIA 1980) (and cases cited therein).
- [^] See *Matter of Silva-Trevino (PDF)*, 24 I&N Dec. 687, 688, 706 (A.G. 2008).
- [^] See *Matter of Esfandiary (PDF)*, 16 I&N Dec. 659 (BIA 1979).
- [^] See *Matter of Silva-Trevino (PDF)*, 24 I&N Dec. 687 (A.G. 2008).
- [^] See [INA 101\(f\)\(3\)](#). See [8 CFR 316.10\(b\)\(2\)\(i\)](#).
- [^] See [INA 212\(a\)\(2\)\(A\)\(ii\)\(I\)](#).
- [^] See *Matter of Garcia-Hernandez (PDF)*, 23 I&N Dec. 590, 594-95 (BIA 2003).
- [^] See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception [[12 USCIS-PM F.2\(E\)](#)].
- [^] See [8 CFR 316.10\(b\)\(2\)\(ii\)](#).
- [^] See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception [[12 USCIS-PM F.2\(E\)](#)].

13. [^] See 21 U.S.C. 802 for federal definition of “controlled substance.” For good moral character provisions, see INA 101(f)(3), INA 212(a)(2)(A)(i)(II), and INA 212(a)(2)(C). Also, see 8 CFR 316.10(b)(2)(iii) and (iv). Note that the conditional bar to GMC for a controlled substance violation does not apply if the violation was for a single offense of simple possession of 30 grams or less of marijuana. See Subsection 3, Exception for Single Offense of Simple Possession [12 USCIS-PM F.5(C) (3)].
14. [^] An admission must comply with the requirements outlined in Matter of K (PDF), 7 I&N Dec 594 (BIA 1957) (establishing requirements for a valid “admission” of an offense); See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)].
15. [^] See INA 101(f)(3) and INA 212(a)(2)(C).
16. [^] See 21 U.S.C. 802(6). The term “controlled substance” does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.
17. [^] See 21 U.S.C. 802(6). See also Ruiz-Vidal v. Gonzales, 473 F.3d 1072, 1078 (9th Cir. 2007); Matter of Hernandez-Ponce (PDF), 19 I&N Dec. 613, 616 (BIA 1988); Matter of Mena (PDF), 17 I&N Dec. 38, 39 (BIA 1979); Matter of Paulus (PDF), 11 I&N Dec. 274, 275-76 (BIA 1965).
18. [^] The paraphernalia offense must be connected to a drug defined in 21 U.S.C. 802. See Mellouli v. Lynch, 135 S.Ct. 1980 (2015). Conviction for, or an admission to the essential elements of a trafficking offense may be considered a Crime Involving Moral Turpitude, which may trigger a bar to a finding of GMC. See INA 101(f)(3). See 8 CFR 316.10(b)(2)(i). See Section A, One or More Crimes Involving Moral Turpitude [12 USCIS-PM F.5(A)].
19. [^] See, for example, Cal. Health & Safety Code section 11362.5; Colo. Rev. Stat. 44-11-101, *et. seq.*; Haw. Rev. Stat. sections 329-121 to 329-128; Me. Rev. Stat. Ann., Tit. 22, 2383-B(5); Nev. Rev. Stat. sections 453A.010-453A.810; Ore. Rev. Stat. sections 475.300-475.346.
20. [^] See, for example, Washington Initiative 502 at section 20, amending RCW 69.50.4013 and 2003 c 53 s 334; Colorado Amendment 64, Amending Colo. Const. Art. XVIII 16(3), Colo. Rev. State. Sections 44-12-101, *et. seq.* These laws are commonly known as permitting certain “recreational use” of marijuana and may include conduct such as use, possession, purchase, transport, and consumption. See, for example, Washington Initiative 502 at section 20, amending RCW 69.50.4013 and 2003 c 53 s 334; Colorado Amendment 64, Amending Colo. Const. Art. XVIII 16(3).
21. [^] “Marihuana” is defined by the Controlled Substances Act (21 U.S.C. 802(16)):
- (A) Subject to subparagraph (B), the term “marihuana” means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.
 - (B) The term “marihuana” does not include –
 - (i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or
 - (ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.
22. [^] See 21 U.S.C. 812(c).
23. [^] See 21 U.S.C. 812(b)(1)(B).
24. [^] See 21 U.S.C. 812(b)(1)(B). See 21 U.S.C. 844(a).
25. [^] See 21 U.S.C. 841(a) (“unlawful for any person knowingly or intentionally...to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.”). See 21 U.S.C. 844 (simple possession). See 21 U.S.C. 802(15) (defining manufacture) and 8 U.S.C. 802(22) (defining production).
26. [^] See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)]. See Matter of K- (PDF), 7 I&N Dec. 594 (BIA 1957) (establishing requirements for a valid “admission” of an offense).
27. [^] The BIA defined “offense” in INA 212(h) as “refer[ring] to the specific unlawful acts that made the alien inadmissible, rather than to any generic crime.” Matter of Martinez Espinoza (PDF), 25 I&N Dec. 118, 124 (2009). Multiple offenses that are parts of a single act and are committed simultaneously may be considered a “single offense.” Matter of Davey (PDF), 26 I&N Dec. 37 (BIA 2012).
28. [^] See INA 101(f)(3). See 8 CFR 316.10(b)(2)(iii). As explained in subsection 2, the decriminalization of certain activities involving marijuana in certain states and the District of Columbia (D.C.) does not affect the applicability of the controlled substances violation conditional bar to establishing GMC.
29. [^] See Matter of Martinez Espinoza, 25 I&N Dec. 118 (BIA 2009), abrogated on other grounds by Mellouli v. Lynch, 135 S.Ct. 1980 (U.S. 2015).
30. [^] See INA 101(f)(7). See 8 CFR 316.10(b)(2)(v).
31. [^] See Matter of Piroglu (PDF), 17 I&N Dec. 578 (BIA 1980).
32. [^] See Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception [12 USCIS-PM F.2(E)].
33. [^] See INA 101(f)(6). See 8 CFR 316.10(b)(2)(vi).
34. [^] See Matter of R-S-J, 22 I&N Dec. 863 (BIA 1999).
35. [^] See Kungys v. United States, 485 U.S. 759, 780-81 (1988).
36. [^] See Matter of L-D-E, 8 I&N Dec. 399 (BIA 1959).
37. [^] See Matter of Ngan, 10 I&N Dec. 725 (BIA 1964). See Matter of G-L-T, 8 I&N Dec. 403 (BIA 1959).
38. [^] See Matter of G-, 6 I&N Dec. 208 (BIA 1954).
39. [^] See INA 101(f)(3) and INA 212(a)(2)(D)(i) and INA 212(a)(2)(D)(ii). See 8 CFR 316.10(b)(2)(vii).
40. [^] See Matter of T, 6 I&N Dec. 474 (BIA 1955).
41. [^] See Matter of Gonzalez-Zoquiapan, 24 I&N Dec. 549 (BIA 2008).
42. [^] See INA 101(f)(3) and INA 212(a)(6)(E). See 8 CFR 316.10(b)(2)(viii).
43. [^] See INA 212(a)(6)(E)(ii). See Section 301 of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649, 104 Stat. 4978, 5029 (November 29, 1990).
44. [^] See INA 101(f)(3) and INA 212(a)(10)(A). See 8 CFR 316.10(b)(2)(ix).

45. [^] Polygamy is not the crime of marrying a person while being legally married to someone else. An applicant who has committed bigamy may be susceptible to a denial under the “unlawful acts” provision.
46. [^] See [INA 101\(f\)\(5\)](#). See [8 CFR 316.10\(b\)\(2\)\(x\)](#) and [8 CFR 316.10\(b\)\(2\)\(xi\)](#).
47. [^] See [INA 101\(f\)\(1\)](#). See [8 CFR 316.10\(b\)\(2\)\(xii\)](#).
48. [^] See [8 CFR 316.10\(b\)\(3\)\(i\)](#). See [Hague Convention on the International Recovery of Child Support](#).
49. [^] See Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.
50. [^] See *Brukiewicz v. Savoretti*, 211 F.2d 541 (5th Cir. 1954). See *Petition of Perdiak*, 162 F.Supp. 76 (S.D. Cal. 1958). See *Petition of Dobric*, 189F.Supp. 638 (D. Minn. 1960). See *In re Malaszenko*, 204 F.Supp. 744 (D.N.J. 1962) (and cases cited). See *Petition of Dobric*, 189 F.Supp. 638 (D. Minn. 1960). See *In re Huymaier*, 345 F.Supp. 339 (E.D. Pa. 1972). See *In re Valad*, 465 F.Supp. 120 (E.D. Va. 1979).
51. [^] See *U.S. v. Harrison*, 180 F.2d 981 (9th Cir. 1950).
52. [^] See *In re Malaszenko*, 204 F.Supp. 744 (D. N.J. 1962). See *In re Mogus*, 73 F.Supp. 150 (W.D. Pa. 1947).
53. [^] See *In re Halas*, 274 F.Supp. 604 (E.D. Pa. 1967). See *Petition of Dobric*, 189 F.Supp. 638 (D. Minn. 1960).
54. [^] See [8 CFR 316.10\(b\)\(3\)\(i\)](#).
55. [^] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [[12 USCIS-PM F.2\(G\)](#)].
56. [^] See *In re Huymaier*, 345 F.Supp. 339 (E.D. Pa. 1972).
57. [^] See *Petition of Perdiak*, 162 F.Supp. 76 (S.D. Cal. 1958).
58. [^] See *In re Valad*, 465 F.Supp. 120 (E.D. Va. 1979).
59. [^] See *Etape v. Napolitano*, 664 F.Supp.2d 498, 517 (D. Md. 2009).
60. [^] See [8 CFR 316.10\(b\)\(3\)\(ii\)](#).
61. [^] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [[12 USCIS-PM F.2\(G\)](#)].
62. [^] See *In re Petition of Schroers*, 336 F.Supp. 1348 (S.D.N.Y. 1971). See *In re Petition of Russo*, 259 F.Supp. 230 (S.D.N.Y. 1966). See *Dickhoff v. Shaughnessy*, 142 F.Supp. 535 (S.D.N.Y. 1956).
63. [^] See [INA 101\(f\)](#). See [8 CFR 316.10\(b\)\(3\)\(iii\)](#).
64. [^] See [8 CFR 316.10\(b\)\(1\)](#) and [8 CFR 316.10\(b\)\(2\)](#) (other relevant GMC regulations).
65. [^] See *U.S. v. Lekarczyk*, 354 F.Supp.2d 883 (W.D. Wis. 2005). See *Jean-Baptiste v. United States*, 395 F.3d 1190 (11th Cir.2005). Collateral estoppel bars a defendant who is convicted in a criminal trial from contesting this conviction in a subsequent civil action with respect to issues necessarily decided in the criminal trial. See *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 157 (1963).
66. [^] See [8 CFR 316.10\(b\)\(3\)\(iii\)](#).
67. [^] See [INA 101\(f\)](#). See [8 CFR 316.10\(b\)\(3\)\(iii\)](#). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [[12 USCIS-PM F.2\(G\)](#)].
68. [^] See *Jean-Baptiste v. United States*, 395 F.3d 1190 (11th Cir. 2005) citing *Rico v. INS*, 262 F.Supp.2d 6 (E.D.N.Y. 2003).
69. [^] See *Jean-Baptiste v. United States*, 395 F.3d 1190 (11th Cir. 2005).
70. [^] See [18 U.S.C. 611](#) (voting by aliens). See [18 U.S.C. 1015\(f\)](#) (false claim to U.S. citizenship).
71. [^] See [INA 212\(a\)\(10\)\(D\)\(i\)](#) and [INA 237\(a\)\(6\)\(A\)](#) (addressing unlawful voting). See [INA 212\(a\)\(6\)\(C\)\(ii\)\(I\)](#) and [INA 237\(a\)\(3\)\(D\)\(i\)](#) (addressing false claims to U.S. citizenship). These provisions were added by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), [Pub. L. 104-208 \(PDF\)](#) (September 30, 1996).
72. [^] See [18 U.S.C. 611](#) (voting by aliens).
73. [^] See [18 U.S.C. 1015\(f\)](#) (false claim to U.S. citizenship).
74. [^] See [18 U.S.C. 611](#) (voting by noncitizens). See [8 U.S.C. 1015\(f\)](#) (false claim to U.S. citizenship).
75. [^] See [INA 101\(f\)\(3\)](#).
76. [^] See Chapter 5 Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More [[12 USCIS-PM F.5\(D\)](#)]. See [INA 101\(f\)\(7\)](#).
77. [^] See Chapter 5 Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More [[12 USCIS-PM F.5\(B\)](#)]. See [INA 101\(f\)\(3\)](#).
78. [^] See [INA 101\(f\)](#). See [INA 212\(a\)\(10\)\(D\)\(ii\)](#) and [INA 237\(a\)\(6\)\(B\)](#) (unlawful voting exception). See [INA 212\(a\)\(6\)\(C\)\(ii\)\(II\)](#) and [INA 237\(a\)\(3\)\(D\)\(i\)](#)(false claims to U.S. citizenship exception). These provisions were added by the Child Citizenship Act of 2000 (CCA), [Pub. L. 106-395](#) (October 30, 2000).
79. [^] See Section 201(d)(3) of the CCA, [Pub. L. 106-395](#), 114 Stat. 1631, 1636 (October 30, 2000).
80. [^] As a matter of policy, USCIS has determined that the applicant’s parents had to be U.S. citizens at the time of the illegal voting or false claim to U.S. citizenship in order to meet the first prong of this exception.
81. [^] See [IRS Publication 519, U.S. Tax Guide for Aliens \(PDF\)](#).
82. [^] The following involve defrauding the United States by avoiding taxes (a CIMT). See *Matter of M*, 8 I&N Dec. 535 (BIA 1960). See *Matter of E*, 9 I&N Dec. 421 (BIA 1961). See *Carty v. Ashcroft*, 395 F.3d 1081 (9th Cir. 2005) (state failure to pay taxes; evasion is same as fraud). See *Wittgenstein v. INS*, 124 F.3d 1244 (10th Cir. 1997) (state crime).

Legal Authorities

[18 U.S.C. 611](#) - Voting by aliens

[INA 101\(a\)\(48\)\(A\)](#) - Definition of conviction

[INA 101\(f\)](#) - Definition of good moral character

[INA 316\(e\)](#), [8 CFR 316.10](#) - Good moral character

[INA 316](#), [8 CFR 316](#) - General requirements for naturalization

[INA 318](#) - Prerequisite to naturalization, burden of proof

[INA 332](#), [8 CFR 332](#) - Naturalization administration, executive functions

Forms

[G-28, Notice of Entry of Appearance as Attorney or Accredited Representative](#)

Appendices

No appendices available at this time.

Technical Update - Replacing the Term “Foreign National”

October 08, 2019

This technical update replaces all instances of the term “foreign national” with “alien” throughout the Policy Manual as used to refer to a person who meets the definition provided in INA 101(a)(3) [“any person not a citizen or national of the United States”].

[Read More](#)

AFFECTED SECTIONS

[1 USCIS-PM - Volume 1 - General Policies and Procedures](#)

[2 USCIS-PM - Volume 2 - Nonimmigrants](#)

[6 USCIS-PM - Volume 6 - Immigrants](#)

[7 USCIS-PM - Volume 7 - Adjustment of Status](#)

[8 USCIS-PM - Volume 8 - Admissibility](#)

[9 USCIS-PM - Volume 9 - Waivers](#)

[10 USCIS-PM - Volume 10 - Employment Authorization](#)

[11 USCIS-PM - Volume 11 - Travel and Identity Documents](#)

[12 USCIS-PM - Volume 12 - Citizenship and Naturalization](#)

POLICY ALERT - Controlled Substance-Related Activity and Good Moral Character Determinations

April 19, 2019

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to clarify that violation of federal controlled substance law, including for marijuana, remains a conditional bar to establishing good moral character (GMC) for naturalization even where that conduct would not be an offense under state law.

[Read More](#)

AFFECTED SECTIONS

[12 USCIS-PM F.5 - Chapter 5 - Conditional Bars for Acts in Statutory Period](#)

POLICY ALERT - Comprehensive Citizenship and Naturalization Policy Guidance

January 07, 2013

USCIS is issuing updated and comprehensive citizenship and naturalization policy guidance in the new USCIS Policy Manual.

[Read More](#)

AFFECTED SECTIONS

12 USCIS-PM - Volume 12 - Citizenship and Naturalization

Current as of November 21, 2019