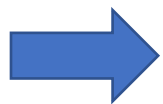




## How will my Criminal History Impact my Chances for Immigration Relief?

Certain criminal convictions and other criminal activity may affect your ability to qualify for immigration relief, or may affect whether the judge decides to grant your case. Different forms of immigration relief have different requirements, and some criminal activity may disqualify you or otherwise impact your chances for relief. Criminal convictions or other criminal activity may also affect your eligibility for bond. Please refer to the handout, “How will my criminal history affect my chances for bond” for more information.

It is very important to note that a criminal conviction might not necessarily disqualify you from relief, even if it has the same name as one of the convictions listed below. In some cases, a complicated legal analysis is required to figure out if your conviction actually fits into a category of crimes in immigration law (as opposed to criminal law). For example, in immigration law, there are categories of crimes called “aggravated felonies,” (the most serious category of crimes) “crimes involving moral turpitude,” (crimes that the law considers morally wrong) and “controlled substance offenses,” (crimes relating to drugs). Moreover, the words that are used in immigration law sometimes have different meanings than when they are used in criminal law. For instance, a “felony” in criminal law is not necessarily the same thing as a “felony” in immigration law. Whether your crime impacts your immigration case is a complicated decision that **the judge makes**. For all of these reasons, the most important thing to remember is that **you do not have to accept that your crime disqualifies you or impacts you just because the government prosecutor says it does, and you can challenge the judge’s decision through an appeal.**



### (Re)adjustment of Status (Obtaining a green card in the U.S.)

Adjusting your status means applying for and obtaining a green card while you are in the United States. After you adjust your status, you will be a “Lawful Permanent Resident” which means that you have a green card. If you lose your green card or the government tries to take it away, you can also “re-adjust” your status, meaning, go through the process again to get your green card back.

There are requirements that you must meet to be able to apply for your green card. These requirements are different based on how you are applying. You should consult a lawyer to understand whether you are eligible to apply for your green card through your family, your



employer, as a refugee or asylee, or as a victim of domestic violence, a victim of a serious crime or a victim of human trafficking.

If you have been convicted of a crime, it could impact your ability to adjust your status (obtain a green card). This is so because one of the requirements of getting your green card is that you have to prove that you are “**admissible**” to the United States. You can be disqualified from being allowed to get immigration status if you are “**inadmissible**” because you have committed certain crimes. These are laws designed to prevent the government from giving people immigration status if they have been convicted of (or admit to committing) certain crimes. --

The following criminal activity could make you **inadmissible** from the United States and therefore prevent you from adjusting your status (obtaining your green card):

- ❖ Conviction or admission of having committed a “**crime involving moral turpitude**”

**What is a “crime involving moral turpitude”?** There is no one definition. Generally, it means that the crime you were convicted of requires that you did it on purpose (acted with intent) and also that what you were convicted of doing is considered to be morally wrong in the eyes of the law. To find out if the crime that you were convicted of is a crime involving moral turpitude, you need to know the exact crime that you were convicted of and in which state. A lawyer will need to read the law to see exactly what the crime you were convicted of says that you did. If that crime in that state is the same as what the immigration laws say is a crime involving moral turpitude, the judge may be able to find that your crime is one. As you can tell, this is a very complicated determination.

- There are two exceptions where even if you have been convicted of a crime involving moral turpitude, you can still adjust your status. The first exception is if you have **only one** crime involving moral turpitude on your record, and the crime you were convicted of has a maximum sentence of one year, **and** the sentence you actually received was six months or less. The second exception is if you committed the crime when you were under 18, and that was at least five years before you applied to adjust your status.

- ❖ Conviction or admission of having committed a **controlled substance offense\***

**What is a “controlled substance offense”?** In general, this means a crime relating to drugs. But, not all crimes related to drugs are “controlled substance offenses” in the eyes of the immigration laws. To determine whether your drug-related crime is a “controlled substance offense,” you need to know the exact crime you were convicted of and in which state. Then, a lawyer needs to read the law to determine exactly what you were convicted of doing. If what you



were convicted of doing matches the immigration law’s definition of a “controlled substance offense,” then the judge may be able to find that your crime is one.

- ❖ Reason to believe you are a **drug trafficker**
    - This does not require that you were convicted of drug trafficking. If the judge thinks that there is reason to believe that you are or have been a drug trafficker, even if your actions did not result in a criminal conviction, you can be barred from getting a green card.
  - ❖ Two or more convictions for any offense with **total sentence of 5 years** or more\*
  - ❖ Engaged or intend to engage in **prostitution or commercialized vice** (illegal gambling)\*
  - ❖ Reason to believe you have engaged or will engage in **human trafficking** (forced someone to work in labor or the sex trade through force, fraud or coercion)
- Reason to believe you have engaged or will engage in **money laundering**

NOTE: \*Even if you are “inadmissible” because of your crime(s), you may be eligible for a waiver (a pardon) which would allow you to get your green card anyway. This waiver is called a “**212(h) waiver of inadmissibility**.” To qualify for it, you have to be able to show that your removal would result in extreme hardship (suffering) to a U.S. citizen or LPR (green-card holder) spouse, parent, son, or daughter. If you are inadmissible because of a controlled substance offense, you are only eligible for the waiver if you have only a single offense on your record involving 30 grams or less of marijuana. If you are inadmissible because of having engaged in prostitution, you may be eligible without a showing of extreme hardship if your actions were more than 15 years ago and you have been “rehabilitated.”

**Note:** If you entered the United States as a refugee and want to become a lawful permanent resident (green card holder), you may be able to apply for a different waiver (pardon) that would allow you to get your green card even though you have crimes that make you inadmissible. That waiver is called the “**209(c) waiver of inadmissibility**.” This waiver applies to more criminal activity than the 212(h) waiver; the only criminal ground that is not waivable is “reason to believe” that you are or have been involved in drug trafficking. However, if you are found to have committed a “violent or dangerous crime,” you will have to show a very high level of hardship to you or your family to have any chance of receiving a waiver.



Asylum



You can also be disqualified from asylum if you have certain crimes on your record, or if the judge thinks that, as a result of your crimes, you don't deserve to be granted asylum.

To be eligible for asylum, you must prove that you meet all requirements and show that you have not been convicted of a category of crimes in immigration law called “**particularly serious crimes.**” To determine whether your criminal conviction is a “particularly serious crime,” the immigration judge will look at a few things about your crime: the nature of the offense, the circumstances surrounding the offense, the length of the sentence, and whether the offense indicates a danger to the community. The judge will decide whether all of the information taken together makes the crime “particularly serious” under the law. Here are some general principles:

- ❖ **A crime that is an “aggravated felony” is automatically “particularly serious” for asylum.**

**What is an “aggravated felony”?** In general, it is a crime that fits in to the category of the most serious crimes under the immigration laws. To determine whether your crime is an “aggravated felony,” you need to know the exact crime you were convicted of and in which state. Then, a lawyer needs to read the law to determine exactly what you were convicted of doing. If what you were convicted of doing matches the immigration law’s definition of an “aggravated felony,” then the judge may be able to find that your crime is one. Crimes that may be an aggravated felony include: murder, rape, sexual abuse of a minor, drug trafficking, unlawful trafficking in firearms or explosives, a crime of violence with a sentence of at least one year, a theft offense with a sentence of at least one year, obstruction of justice with a sentence of at least one year, money laundering involving \$10,000 or more, a fraud conviction with loss to the victim of \$10,000 or more, and an attempt or conspiracy to commit an aggravated felony.

- ❖ **Even if your crime is not an “aggravated felony,” it can still be considered a “particularly serious crime.**
  - **Crimes against people** are **usually** considered to be “particularly serious.”
  - **Crimes against property** are **sometimes** considered to be “particularly serious.”
  - **Crimes involving drugs and firearms** are **sometimes** considered to be “particularly serious.”

In addition to proving that you meet all requirements and showing that you have not been convicted of a particularly serious crime, you must also receive a **positive exercise of discretion**



from the immigration judge, meaning that the judge must decide that you deserve asylum. A judge is not required to grant an application for asylum and will weigh all of the evidence to determine whether to grant or deny your application. The immigration judge will consider any criminal convictions on your record in making this decision.

## Withholding of Removal

To be eligible for withholding of removal, you must prove that you meet all requirements and show that you have not been convicted of a “**particularly serious crime.**”

\*Note that a “particularly serious crimes” is different in asylum and withholding of removal cases, which means that *not all convictions that count as “particularly serious crimes” for asylum necessarily count as “particularly serious crimes” for withholding of removal.* This means that even if a certain conviction disqualifies you from asylum, you still may be able to apply for withholding of removal.

To determine whether a conviction is a “particularly serious crime,” the immigration judge will look at the nature of the offense, the circumstances surrounding the offense, the length of the sentence, and whether the offense indicates a danger to the community.

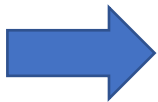
- ❖ **Crimes against people** are **usually** considered to be “particularly serious.”
- ❖ **Crimes against property** are **sometimes** considered to be “particularly serious.”
- ❖ **Crimes involving drugs and firearms** are **sometimes** considered to be “particularly serious.”

For withholding of removal, examples of crimes found to be “**particularly serious crimes**” include:

- ❖ A crime is automatically a “particularly serious crime” for withholding of removal if it is an **aggravated felony** with a **sentence of five years** or more.
- ❖ Most **drug trafficking** offenses
- ❖ Some **drug possession** offenses
- ❖ **Firearm trafficking** offenses
- ❖ Some **firearm-related** offenses
- ❖ Certain **assault** and **battery** offenses



- ❖ Certain **sex** offenses
- ❖ **Kidnapping**
- ❖ **Murder or Manslaughter**
- ❖ **Reckless endangerment**
- ❖ **Burglary and robbery**
- ❖ Some **theft** offenses
- ❖ Some **fraud** offenses



## Cancellation of Removal

There are two types of cancellation of removal. The first type of cancellation of removal is for **certain permanent residents (green card holders)**. The second type of cancellation of removal is for people who are not permanent residents but who, among other things, have been **present in the United States for at least ten years**. These two types of cancellation of removal have different requirements and certain criminal convictions will impact your eligibility for each differently.

Both forms of cancellation of removal require you to demonstrate that you've lived in the United States for a certain number of years. However, many (**but not all!**) of the convictions listed below will “stop” your time in the United States from continuing to count towards the ten years. This is called the “stop-time” rule. For example, if you need to show you've been present in the U.S. for seven years, but you committed one of certain criminal offenses three years ago, you can't count any of the time after that.

### *Cancellation of Removal for **Certain Permanent Residents***

If you are a permanent resident and wish to apply for cancellation of removal, you must show in addition to other requirements that you have not been convicted of an **aggravated felony**. (See above box, “**What is an “aggravated felony”?**”) The following are examples of common aggravated felonies, though there are others:

- ❖ Murder
- ❖ Rape
- ❖ Sexual Abuse of a Minor



- ❖ Drug trafficking
- ❖ Unlawful trafficking in firearms or explosives
- ❖ A crime of violence with a sentence of at least one year
- ❖ A theft offense with a sentence of at least one year
- ❖ Obstruction of justice with a sentence of at least one year
- ❖ Money laundering involving \$10,000 or more
- ❖ A fraud conviction with loss to the victim of \$10,000 or more
- ❖ An attempt or conspiracy to commit an aggravated felony

You must also receive a **positive exercise of discretion** from the immigration judge. A judge is not required to grant an application for cancellation of removal and will weigh all of the evidence to determine whether to grant or deny your application. The immigration judge will consider any criminal convictions on your record in making this decision.

### ➔ *Cancellation of Removal for Non-Permanent Residents*

If you are not a permanent resident and wish to apply for cancellation of removal, you must show in addition to other requirements that you have not been convicted of certain offenses.

The following criminal convictions could make you **ineligible for cancellation of removal**:

- ❖ One “**crime involving moral turpitude**” (see above box, “**What is a “crime involving moral turpitude”?**”) (except if the maximum sentence for the charge is *less than* one year and the actual sentence served was six months or less)
- ❖ **Controlled substance** offense (see above box, “**What is a “controlled substance offense”?**”)
- ❖ Two or more convictions for any offense with a **total sentence of 5 years** or more
- ❖ **Prostitution or commercialized vice**
- ❖ **Human trafficking**
- ❖ **Money laundering**



- ❖ **Firearm** offense
- ❖ **Document fraud**
- ❖ **High-speed flight** from an immigration checkpoint (under federal law)
- ❖ Failure to **register as a sex offender** (under federal law)
- ❖ **Espionage, treason, or sabotage**
- ❖ Crime of **domestic violence, stalking, or child abuse, neglect, or abandonment**
- ❖ Two or more “**crimes involving moral turpitude**” (not involving same incident)
- ❖ **Aggravated felony**

In addition to showing that you have not been convicted of any of the above offenses, you also must prove that you have been a person of “**good moral character**” for the previous ten years. The decision as to whether you have been a person of “good moral character” is **discretionary**, and you must prove to the immigration judge that you meet this standard.

You will be unable to meet the standard for “good moral character” if, **at any time**, you have:

- ❖ Been convicted of **murder** or an **aggravated felony**
- ❖ Engaged in **persecution, genocide, torture, or severe violations of religious freedom**

You will also be unable to meet the standard for “good moral character” if, **during the last ten years**, you have been convicted of or admitted to:

- ❖ A “**crime involving moral turpitude**” (except if the crime was committed when you were under 18 and at least five years before application for admission or if the crime was punishable by not more than one year and you were not sentenced to more than 6 months)
- ❖ A **controlled substance offense** (except one conviction of possession of less than 30 grams of marijuana)
- ❖ Reason to believe you are a **drug trafficker**
- ❖ Two or more convictions for any offense with **total sentence of 5 years** or more
- ❖ Engaging or intending to engage in **prostitution or commercialized vice**
- ❖ “**Alien smuggling**”





- ❖ Coming to the United States to practice **polygamy**
- ❖ Being a **habitual drunkard**
- ❖ Making a living from or having two or more convictions for **illegal gambling**
- ❖ Giving false testimony to receive immigration benefits
- ❖ Being **confined to jail or prison for 180 days** or more as a result of a conviction

Finally, you must also receive a **positive exercise of discretion** from the immigration judge. A judge is not required to grant an application for cancellation of removal and will weigh all of the evidence to determine whether to grant or deny your application. The immigration judge will consider any criminal convictions on your record in making this decision.

**Note:** There is a form of cancellation of removal for non-permanent residents known as “VAWA cancellation” or “special-rule” cancellation for people who can show they’ve been subjected to “battery or extreme cruelty” by United States citizens or residents in the United States. If you can show that, the cancellation of removal standards are easier to meet. You only need to show you’ve been a person of good moral character for *three* years, rather than ten. And, you may qualify for a waiver for a criminal conviction if you can show that the conviction was related to the abuse you suffered.

**Note:** There is also a form of cancellation of removal called “NACARA cancellation” or “Special-rule cancellation” for individuals from Guatemala, El Salvador, or former Soviet Bloc countries **who entered the United States no later than the early 1990s** and meet certain other requirements. An aggravated felony conviction bars this form of relief, but many of the other criminal convictions listed do not. Because this form of relief is rare and has other very specific requirements, if you are from one of the countries listed above and entered the United States in the 1990s, or earlier, please consult with an attorney to see if you might be eligible.



## U and T Visas

In order to receive a **U or T visa**, you must be **admissible** to the United States. (See the explanation of what it means to be “inadmissible” in the section above on Adjustment of Status.)

The following criminal activity could make you **inadmissible** from the United States:

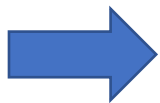
- ❖ Conviction or admission of having committed a “**crime involving moral turpitude**” (except if the crime was committed when you were under 18 and at



least five years before application for admission or if the crime was punishable by not more than one year and you were not sentenced to more than 6 months)

- ❖ Conviction or admission of having committed a **controlled substance offense**
- ❖ Reason to believe you are a **drug trafficker**
- ❖ Two or more convictions for any offense with **total sentence of 5 years** or more
- ❖ Engaged or intend to engage in **prostitution or commercialized vice**
- ❖ Reason to believe you have engaged or will engage in **human trafficking**
- ❖ Reason to believe you have engaged or will engage in **money laundering**

\*Even if you are not admissible, however, you may apply for a **waiver** through Form I-192 asking the government to forgive any reasons you might ordinarily not be allowed to come to or stay in the United States. **This includes past criminal activity**. You can ask for a waiver for almost any prior criminal acts, including criminal activity that did not result in a conviction.



## VAWA

To apply for adjustment of status as a **VAWA** self-petitioner, you must show in addition to other requirements that you are a person of “**good moral character**” and that you are **admissible** to the United States.

You will be unable to meet the standard for “**good moral character**” if you have:

- ❖ Been convicted of **murder** or an **aggravated felony** (see above box, “**What is an “aggravated felony”?**”)
- ❖ Engaged in **persecution, genocide, torture, or severe violations of religious freedom**
- ❖ Been convicted of or admitted to committing a “**crime involving moral turpitude**” (see above box, **What is a “crime involving moral turpitude”?**) (except if the crime was committed when you were under 18 and at least five years before application for admission or if the crime was punishable by not more than one year and you were not sentenced to more than 6 months)\*



- ❖ Been convicted of or admitted to committing a **controlled substance offense** (see above box, “**What is a controlled substance offense**”?) (except one conviction of possession of less than 30 grams of marijuana)
- ❖ Reason to believe you are a **drug trafficker**
- ❖ Two or more convictions for any offense with **total sentence of 5 years** or more\*
- ❖ Engaged or intend to engage in **prostitution or commercialized vice**\*
- ❖ Committed “**alien smuggling**”\*
- ❖ Come to the U.S. to practice **polygamy**
- ❖ Are a **habitual drunkard**
- ❖ Made a living from or have two or more convictions for **illegal gambling**
- ❖ Given false testimony to receive immigration benefits
- ❖ Been **confined to jail or prison for 180 days** or more as a result of a conviction

\*You may be able to avoid a bar to “good moral character” if you can show that the conduct or conviction in question was connected to your being battered or subjected to extreme cruelty.

The **following criminal activity could make you inadmissible from the United States**:

- ❖ Conviction or admission of having committed a “**crime involving moral turpitude**” (see above box, **What is a “crime involving moral turpitude**”?) (except if the crime was committed when you were under 18 and at least five years before application for admission or if the crime was punishable by not more than one year and you were not sentenced to more than 6 months)\*
- ❖ Conviction or admission of having committed a **controlled substance offense**\* (see above box, “**What is a controlled substance offense**”?)
- ❖ Reason to believe you are a **drug trafficker**
- ❖ Two or more convictions for any offense with **total sentence of 5 years** or more\*
- ❖ Engaged or intend to engage in **prostitution or commercialized vice**\*
- ❖ Reason to believe you have engaged or will engage in **human trafficking**
- ❖ Reason to believe you have engaged or will engage in **money laundering**



\*You may be able to apply for a **212(h) waiver of inadmissibility** (see the description of the 212(h) waiver in the above section on adjustment of status) if you can show that you deserve a positive exercise of discretion. If you are inadmissible because of a controlled substance offense, you are only eligible if the offense involved 30 grams or less of marijuana.