

CRIMES INVOLVING MORAL TURPITUDE

Elements of CIMT Conviction for Removal Purposes pursuant to 8 U.S.C. § 1227(a)(2)(A) (i) - a conviction of a criminal offense involving moral turpitude or committed within five (5) years of the non-citizen's last admission into the U.S. (or 10 years with an S visa) and for which the maximum possible sentence is at least one (1) year or more in jail and a sentence of at least six (6) months or more imposed.

Multiple CIMTs: Any non-citizen convicted of 2 or more CIMTs, not arising out of a single scheme of conduct, is deportable, **regardless** of the sentence(s) of confinement and whether or not the convictions arose from a single trial. 8 U.S.C. §1227(a)(2)(A)(ii).

Examples of Possible CIMTs punishable by a maximum sentence of at least one (1) year or more in jail with an actual sentence of at least six (6) Months or more in DC Superior Court:

•AWIK •Theft I •Threats (felony) •APO •AWIR •Aggravated Assault •ADW •Stalking •Robbery •Dest. Prop (felony) •UUUV •Rec. Stolen Property •PWID •Burglary (depending on purpose of the offense) •Stalking •Perjury •BRA (felony) •Arson •Some Attempt Felonies •The Petty Offense Exception: See 8 U.S.C. 1182 (a)(2)(A)(ii)(II).

A non-citizen client can adjust his/her status with only **one** CIMT:

- ✓ the maximum sentence is not more than one year &
- ✓ the sentence imposed is not more than six (6) months in jail.

FIREARMS OFFENSES

Firearms Offenses: 8 U.S.C. §1227 (a)(2)(C)

- This provision relates only to the element of possession in firearms offenses for immigration purposes.
- Use of a firearm or destructive device must be an original element of the offense to qualify as a firearms offense for immigration purposes.
- Offenses must relate to the possession, carrying, purchasing, sale of, exchanging, using, ownership of or attempting to do so involving a firearm and/or a destructive device.

Examples of Removable Firearms Offenses in DC Superior Ct.:

•CPWOL (Misdemeanor & Felony) •CDW (Shotgun) •Poss. of a Firearm During a Crime of Violence •PPW(a)-firearms •Possession of an Unregistered Firearm •Attempted CPWOL

IMPORTANT:

- A penalty enhancement as part of an offense involving a firearm due to the use of a firearm during the commission of the offense, i.e. Armed Robbery, PWID while armed, etc., **does** constitute a firearms offense for immigration purposes. See *Matter of Martinez-Zapata*, 24 I&N Dec. 424 (BIA 2007).

No Inadmissibility Issues for Firearms Convictions.

DRUG OFFENSES

Drug Offenses are classified in two (2) Grounds of Removal:

- 1) Conviction-based Grounds of Removal, and
- 2) Conduct-based Grounds of Removal.

Conviction-based Grounds for Removal:

- **Any** conviction for a drug offense constitutes grounds for deportation. See 8 U.S.C. §1227(a)(2)(B)(i). Drug convictions can also include inchoate crimes involving controlled substances. 8 U.S.C. §1227(a)(2)(B)(i). Drug-free zone penalty enhancements also considered drug offenses for immigration purposes. See *Matter of Martinez-Zapata*, 24 I&N Dec. 424 (BIA 2007).

IMPORTANT: EXCEPTION FOR DRUG CONVICTIONS:

A client will not be rendered deportable, for a **single** conviction involving possession for one's own use of thirty (30) grams or less of marijuana. 8 U.S.C. 1227(a)(2)(B)(i).

Conduct-based Grounds for Removal:

No Conviction is necessary for removal of a non-citizen for drug abuse and addiction. 8 U.S.C. §1227(a)(2)(B)(ii). Deportability grounds for drug addiction and abuse are listed in 8 U.S.C. §1227(a)(4)(A)(ii) and apply at any time after entry into the U.S.

IMPORTANT: Any offense involving drug trafficking may render client inadmissible even without a conviction if law enforcement has "reason to believe" the client is involved in such activity. 8 U.S.C. §1182(C).

DOMESTIC VIOLENCE OFFENSES

Elements of Removable Domestic Violence Offenses 8 U.S.C. §1227(a)(2)(E)- Any non-citizen who at any time after admission is convicted of the following: •A crime of domestic violence• A crime of stalking• A crime of child abuse • A crime of child neglect and/or• A crime of child abandonment•

A Crime of "Domestic Violence" means any "Crime of Violence," pursuant to 18 U.S.C. §16, committed against a person classified as the following:

- A current or former spouse• A person with a child in common
 - A person cohabiting w/ the defendant• A person similarly situated to a spouse• A person from whom the defendant is protected by family & domestic violence laws- family or a household member•
- IMPORTANT: Stay Away Orders and Civil Protection Order Violations** - 8 U.S.C. §1227(a)(2)(E)(ii)- A court's factual finding that a non-citizen has violated a CPO or stay away order will trigger removal proceedings. No conviction is necessary; such a finding by a court is sufficient to trigger removal and is effective for violations of CPO occurring **after September 30, 1996**. The statute defines a protection order as any injunction, including temporary or final orders issued by civil and criminal courts, as a means of preventing acts of domestic violence.

AGGRAVATED FELONIES

Divisible & Ambiguous Statutes: At times, an immigration court must review the record of conviction to determine whether a conviction is an aggravated felony. An offense becomes an aggravated felony when one of the elements involves a crime of violence against a person with a sentence of one year or more. *Matter of Sweetser*, 22 I&N Dec. 709 (BIA 1999).

IMPORTANT: Any sentence of confinement, suspended or imposed, will be considered for aggravated felony offenses. 8 U.S.C. §1101(a)(48)(B). Straight probation does not create a sentence qualifying the offense as an aggravated felony.

Elements of a Crime of Violence – 8 U.S.C. §1101(a)(43)(f) & 18 U.S.C. §16

An offense that has an element of the use, attempted use, or threatened use of physical force against the person or property of another, both misdemeanors and felony convictions apply. See 18 U.S.C. §16(a). 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 court of committing the offense, only felony convictions apply. See 18 U.S.C. §16(b). See *Matter of Martin*, 23 I&N Dec. 491 (BIA 2002).

Aggravated Felonies fall into Two (2) Categories under 8 U.S.C. §1101(a)(43):

1) Crimes for which a sentence of **at least** one year or more is imposed, and 2) Offenses without regard for sentence.

Examples of Aggravated Felonies with a Sentence of At Least One (1) Year or More Imposed:

•Burglary (some offenses) •Carjacking •ADW •Robbery •Aggravated Assault •Arson •Felony BRA •Obstruction of Justice •Carrying a Pistol without a License• Accessory After the Fact •Rec. Stolen Property • Perjury • Some Attempt Felonies •Assault on a Police Officer •Cruelty to Children •

Examples of Aggravated Felonies Regardless of Sentence Imposed:

•Murder I & II •Sex Abuse •Sex Abuse of a Minor •PWID & Distribution See *Santos-Lopez*, 23 I&N Dec. 419 (BIA 2002).

•Fraud-related offenses (in excess of \$10,000) •Human Trafficking (slavery, peonage and alien smuggling)

Removal Consequences of an Aggravated Felony Conviction:

Removal in this category has very limited available relief. If the client is not an LPR, s/he can subject to expedited removal in immigration court, i.e. no right to see a judge. Client is subject to mandatory detention in immigration court without a bond hearing.

Inadmissibility Consequences of an Aggravated Felony Conviction

Barred permanently from ever legally entering the US and subject to a charge of Illegal Re-entry Charge in federal court as well as Loss of Good Moral Character. See 8 U.S.C. §1101(f)(8). If your client is an LPR, s/he can be barred from cancellation of removal with an aggravated felony conviction.

NOTE: REMOVABLE OFFENSES CAN BE CLASSIFIED UNDER MORE THAN ONE CATEGORY!!