



[Home](#) > [Policy Manual](#) > [Volume 12 - Citizenship and Naturalization](#) > [Part F - Good Moral Character](#) >

Chapter 5 - Conditional Bars for Acts in Statutory Period

## Chapter 5 - Conditional Bars for Acts in Statutory Period

### Guidance

[Resources \(10\)](#)

[Appendices \(1\)](#)

[Updates \(10\)](#)

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 and the alien may be able to later naturalize if able to establish good moral character. 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.<sup>[1]</sup> An offense that does not fall within a permanent or conditional bar to GMC may nonetheless affect an alien’s ability to establish GMC.<sup>[2]</sup>

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 alien 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**

Offense	Citation	Description
<b>One or More Crimes Involving Moral Turpitude (CIMTs)</b>	<ul style="list-style-type: none"><li>• <a href="#">INA 101(f)(3)</a></li><li>• <a href="#">8 CFR 316.10(b)(2)(i)</a>,</li><li>• <a href="#">(iv)</a></li></ul>	Conviction or admission of one or more CIMTs (other than political offense), except for one petty offense
<b>Aggregate Sentence of 5 Years or More</b>	<ul style="list-style-type: none"><li>• <a href="#">INA 101(f)(3)</a></li><li>• <a href="#">8 CFR 316.10(b)(2)(ii)</a>,</li><li>• <a href="#">(iv)</a></li></ul>	Conviction of two or more offenses with combined sentence of 5 years or more (other than political offense)
<b>Controlled Substance Violation</b>	<ul style="list-style-type: none"><li>• <a href="#">INA 101(f)(3)</a></li><li>• <a href="#">8 CFR 316.10(b)(2)(iii)</a>,</li><li>• <a href="#">(iv)</a></li></ul>	Violation of any law on controlled substances, except for simple possession of 30g or less of marijuana

Offense	Citation	Description
<b>Incarceration for 180 Days</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)(7)</a>.</li> <li>• <a href="#">8 CFR 316.10(b)(2)(v)</a>.</li> </ul>	Incarceration for a total period of 180 days or more, except political offense and ensuing confinement abroad
<b>False Testimony under Oath</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)(6)</a>.</li> <li>• <a href="#">8 CFR 316.10(b)(2)(vi)</a>.</li> </ul>	False testimony for the purpose of obtaining any immigration benefit
<b>Prostitution Offenses</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)(3)</a>.</li> <li>• <a href="#">8 CFR 316.10(b)(2)(vii)</a>.</li> </ul>	Engaged in prostitution, attempted or procured to import prostitution, or received proceeds from prostitution
<b>Smuggling of a Person</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)(3)</a>.</li> <li>• <a href="#">8 CFR 316.10(b)(2)(viii)</a>.</li> </ul>	Involved in smuggling of a person to enter or try to enter the United States in violation of law
<b>Polygamy</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)(3)</a>.</li> <li>• <a href="#">8 CFR 316.10(b)(2)(ix)</a>.</li> </ul>	Practiced or is practicing polygamy (the custom of having more than one spouse at the same time)
<b>Gambling Offenses</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)(4)–(5)</a>.</li> <li>• <a href="#">8 CFR 316.10(b)(2)(x)–(xi)</a>.</li> </ul>	Two or more gambling offenses or derives income principally from illegal gambling activities
<b>Habitual Drunkard</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)(1)</a>.</li> <li>• <a href="#">8 CFR 316.10(b)(2)(xii)</a>.</li> </ul>	Is or was a habitual drunkard
<b>Two or More Convictions for Driving Under the Influence (DUI)</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)</a>.</li> </ul>	Two or more convictions for driving under the influence during the statutory period
<b>Failure to Support Dependents</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)</a>.</li> <li>• <a href="#">8 CFR 316.10(b)(3)(i)</a>.</li> </ul>	Willful failure or refusal to support dependents, unless extenuating circumstances are established
<b>Adultery</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)</a>.</li> <li>• <a href="#">8 CFR 316.10(b)(3)(ii)</a>.</li> </ul>	Extramarital affair tending to destroy existing marriage, unless extenuating circumstances are established

Offense	Citation	Description
<b>Unlawful Acts</b>	<ul style="list-style-type: none"> <li>• <a href="#">INA 101(f)</a></li> <li>• <a href="#">8 CFR 316.10(b)(3)(iii)</a></li> </ul>	Unlawful acts that adversely reflect upon GMC, unless extenuating circumstances are established

## A. One or More Crimes Involving Moral Turpitude

### 1. Crime Involving Moral Turpitude

“Crime involving moral turpitude” (CMT) 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 CMT. 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.”<sup>[3]</sup>

Whether an offense is a CMT 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.<sup>[4]</sup>

The officer should consider the nature of the offense in determining whether it is a CMT.<sup>[5]</sup> In many cases, the CMT 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 CMT in one state, but a similarly named crime in another state may not be a CMT 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 CMT.

The table below serves as a quick reference guide on the general categories of CMTs 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 (CMTs)**

CMT Category	Elements of Crime
<b>Crimes Against a Person</b>	Criminal intent or recklessness, or is defined as morally reprehensible by state (may include statutory rape)
<b>Crimes Against Property</b>	Involving fraud against the government or an individual (may include theft, forgery, robbery)
<b>Sexual and Family Crimes</b>	No one set of principles or elements; see further explanation below (may include spousal or child abuse)
<b>Crimes Against Authority of the Government</b>	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 CMT. Simple assault and battery is not usually considered a CMT.

#### *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.<sup>[6]</sup>

#### *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 alien who is convicted of or admits to committing one or more CIMTs during the statutory period cannot establish GMC for naturalization.<sup>[7]</sup> If the alien 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 alien 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 alien has ever committed;
- The sentence imposed for the offense was 6 months or less; and
- The maximum possible sentence for the offense does not exceed one year.<sup>[8]</sup>

The petty offense exception does not apply to an alien 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 alien who has committed more than one petty offense of which only one is a CIMT may be eligible for the petty offense exception.<sup>[9]</sup>

#### *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.<sup>[10]</sup>

## B. Aggregate Sentence of 5 Years or More

An alien 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 5 years or more.<sup>[11]</sup> 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 5 years or more occurred outside of the United States for purely political offenses committed abroad.<sup>[12]</sup>

## C. Controlled Substance Violation

### 1. Controlled Substance Violations

An alien cannot establish good moral character (GMC) if he or she has violated any controlled substance-related federal or state law or regulation of the United States or law or regulation of any foreign country during the statutory period.<sup>[13]</sup> 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.<sup>[14]</sup> Furthermore, a conviction or admission that the alien has been a trafficker in a controlled substance, or benefited financially from a spouse or parent's trafficking is also a conditional bar.<sup>[15]</sup>

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.<sup>[16]</sup> The substance underlying the alien's state law conviction or admission must be listed in the CSA.<sup>[17]</sup> Possession of controlled substance related paraphernalia may also constitute an offense “relating to a controlled substance” and may preclude the alien from establishing GMC.<sup>[18]</sup>

### 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”<sup>[19]</sup> or “recreational”<sup>[20]</sup> use of marijuana.<sup>[21]</sup> Marijuana, however, remains classified as a “Schedule I” controlled substance under the federal CSA.<sup>[22]</sup> Schedule I substances have no accepted medical use pursuant to the CSA.<sup>[23]</sup> 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.<sup>[24]</sup>

Such an offense under federal law may include, but is not limited to, possession, manufacture or production, or distribution or dispensing of marijuana.<sup>[25]</sup> 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 alien, may preclude a finding of GMC for the alien during the statutory period. An admission must meet the long held requirements for a valid “admission” of an offense.<sup>[26]</sup> Note that even if an alien 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<sup>[27]</sup>

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.<sup>[28]</sup> 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.<sup>[29]</sup>

## D. Imprisonment for 180 Days or More

An alien 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.<sup>[30]</sup> 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.<sup>[31]</sup>

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 alien 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.<sup>[32]</sup>

## E. False Testimony

### 1. False Testimony in Statutory Period

An alien who gives false testimony to obtain any immigration benefit during the statutory period cannot establish GMC.<sup>[33]</sup> False testimony occurs when the alien 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 alien'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.<sup>[34]</sup>

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:<sup>[35]</sup>

#### *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."<sup>[36]</sup> However, false information provided orally under oath to an officer in a question-and-answer statement relating to a written application is "testimony."<sup>[37]</sup> 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.<sup>[38]</sup> Oral statements to officers that are not under oath do not constitute false testimony.

#### *Subjective Intent to Obtain an Immigration Benefit*

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

## F. Prostitution

An alien 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.<sup>[39]</sup> 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.<sup>[40]</sup> The BIA has also determined that a single act of soliciting prostitution on one's own behalf is not the same as procurement.<sup>[41]</sup>

## G. Smuggling of a Person

An alien 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.<sup>[42]</sup>

#### *Family Reunification Exception*

This bar to GMC does not apply in certain cases where the alien 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.<sup>[43]</sup>

## H. Polygamy

An alien who has practiced or is practicing polygamy during the statutory period is precluded from establishing GMC.

<sup>[44]</sup> Polygamy is the custom of having more than one spouse at the same time.<sup>[45]</sup> The officer should review documents in the file and any documents the alien brings to the interview for information about the alien's marital history, to include any visa petitions or applications, marriage and divorce certificates, and birth certificates of children.

## I. Gambling

An alien 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.<sup>[46]</sup> The gambling offenses must have been committed within the statutory period.

## J. Habitual Drunkard

An alien who is or was a habitual drunkard during the statutory period is precluded from establishing GMC.<sup>[47]</sup> 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 alien is or was a habitual drunkard.

## K. Certain Acts in Statutory Period

Although the INA provides a list of specific bars to good moral character,<sup>[48]</sup> the INA also allows a finding that “for other reasons” a person lacks good moral character, even if none of the specific statutory bars applies.<sup>[49]</sup> The following sections provide examples of acts that may lead to a finding that an alien lacks GMC “for other reasons.”<sup>[50]</sup>

### 1. Driving Under the Influence

The term “driving under the influence” (DUI) includes all state and federal impaired-driving offenses, including “driving while intoxicated,” “operating under the influence,” and other offenses that make it unlawful for a person to operate a motor vehicle while impaired. This term does not include lesser included offenses, such as negligent driving, that do not require proof of impairment.

Evidence of two or more DUI convictions during the statutory period establishes a rebuttable presumption that an alien lacks GMC.<sup>[51]</sup> The rebuttable presumption may be overcome<sup>[52]</sup> if the alien is able to provide “substantial relevant and credible contrary evidence” that he or she “had good moral character even during the period within which he [or she] committed the DUI offenses,” and that the “convictions were an aberration.”<sup>[53]</sup> An alien's efforts to reform or rehabilitate himself or herself after multiple DUI convictions do not in and of themselves demonstrate GMC during the period that includes the convictions.

### 2. Failure to Support Dependents

An alien who willfully failed or refused to support his or her dependents during the statutory period cannot establish GMC unless the alien establishes extenuating circumstances.<sup>[54]</sup> The GMC determination for failure to support dependents includes consideration of whether the alien has complied with his or her child support obligations abroad in cases where it is relevant.<sup>[55]</sup>

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.<sup>[56]</sup>

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

- Deserts a minor child;<sup>[57]</sup>

- Fails to pay any support;<sup>[58]</sup> or
- Obviously pays an insufficient amount.<sup>[59]</sup>

If the alien has not complied with court-ordered child support and is in arrears, the alien 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 alien established GMC.<sup>[60]</sup>

#### *Extenuating Circumstances*

If the alien shows extenuating circumstances, a failure to support dependents should not adversely affect the GMC determination.<sup>[61]</sup>

The officer should consider the following circumstances:

- An alien's unemployment and financial inability to pay the child support;<sup>[62]</sup>
- 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;<sup>[63]</sup>
- Whether the nonpayment was due to an honest but mistaken belief that the duty to support a minor child had terminated;<sup>[64]</sup> and
- Whether the nonpayment was due to a miscalculation of the court-ordered arrears.<sup>[65]</sup>

### 3. Adultery

An alien who has an extramarital affair during the statutory period that tended to destroy an existing marriage is precluded from establishing GMC.<sup>[66]</sup>

#### *Extenuating Circumstances*

If the alien shows extenuating circumstances, an offense of adultery should not adversely affect the GMC determination.<sup>[67]</sup> Extenuating circumstances may include instances where the alien divorced his or her spouse but later the divorce was deemed invalid or the alien and the spouse mutually separated and they were unable to obtain a divorce.<sup>[68]</sup>

## L. Unlawful Acts

### 1. Unlawful Acts Provision

An alien who has committed, was convicted of, or was imprisoned for an unlawful act during the statutory period may be found to lack GMC if the act adversely reflects on his or her moral character, unless the alien can demonstrate extenuating circumstances.<sup>[69]</sup> An act is unlawful if it violates a criminal or civil law of the jurisdiction where it was committed. The provision addressing “unlawful acts” does not require the alien to have been charged with or convicted of the offense.<sup>[70]</sup> The fact that none of the statutorily enumerated bars to GMC applies does not preclude a finding under this provision that the alien lacks the GMC required for naturalization.<sup>[71]</sup>

### 2. Case-by-Case Analysis

USCIS officers determine on a case-by-case basis whether an unlawful act committed during the statutory period is one that adversely reflects on moral character.<sup>[72]</sup> The officer may make a finding that an alien did not have GMC due to the commission of an unlawful act evidenced through admission, conviction, or other relevant, reliable evidence in the record.<sup>[73]</sup> The case-by-case analysis must address whether:

- The act is unlawful (meaning the act violates a criminal or civil law in the jurisdiction where committed);
- The act was committed or the person was convicted of or imprisoned for the act during the statutory period;

- The act adversely reflects on the person's moral character; and
- There is evidence of any extenuating circumstances.<sup>[74]</sup>

In addition, in cases under the jurisdiction of the Ninth Circuit, the officer's analysis must also consider any counterbalancing factors that bear on the alien's moral character.<sup>[75]</sup>

The following steps provide officers with further guidance on making GMC determinations based on the unlawful acts provision.

*Step 1 – Determine Whether the Alien Committed, Was Convicted of, or Was Imprisoned for an Unlawful Act during the Statutory Period*

The officer should determine if the alien committed, was convicted of, or was imprisoned for any unlawful acts during the statutory period. To determine if an act qualifies as an unlawful act, the officer should identify the applicable law, then look to whether the act violated the relevant law regardless of whether criminal or civil proceedings were initiated or concluded during the statutory period.<sup>[76]</sup>

Officers should only conclude that a person committed the acts in question based on a conviction record, an admission to the elements of the criminal or civil offense, or other relevant, reliable evidence in the record showing commission of the unlawful act.<sup>[77]</sup>

*Step 2 – Determine Whether the Unlawful Act Adversely Reflects on GMC*

The officer should evaluate whether the unlawful act adversely reflects on the moral character of the alien. Unlawful acts that reflect adversely on moral character are not limited to conduct that would be classified as a CIMT.<sup>[78]</sup> In general, an act that is classified as a CIMT<sup>[79]</sup> would be an unlawful act that adversely reflects on the alien's moral character.<sup>[80]</sup> An officer should also consider whether the act is against the standards of an average member of the community. For example, mere technical or regulatory violations may not be against the standards of an average member of the community.<sup>[81]</sup>

*Step 3 – Review for Extenuating Circumstances*

The officer should review whether the alien has shown extenuating circumstances which render the crime less reprehensible than it otherwise would be or the actor less culpable than he or she otherwise would be.<sup>[82]</sup> Extenuating circumstances must pertain to the unlawful act and must precede or be contemporaneous with the commission of the unlawful act.<sup>[83]</sup> It is the alien's burden to show extenuating circumstances that mitigate the effect of the unlawful act on the alien's moral character.<sup>[84]</sup>

If the alien meets his or her burden of proof to demonstrate extenuating circumstances, the officer may find that commission of the unlawful act<sup>[85]</sup> does not preclude the alien from establishing GMC.<sup>[86]</sup> An officer may not, however, 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(s) are not extenuating circumstances.<sup>[87]</sup>

### 3. Examples of Unlawful Acts

There is no comprehensive list of unlawful acts in the INA or regulations. Examples of unlawful acts recognized by case law as barring GMC include, but are not limited to the following:

- Bail jumping;<sup>[88]</sup>
- Bank fraud;<sup>[89]</sup>
- Conspiracy to distribute a controlled substance;<sup>[90]</sup>
- Failure to file or pay taxes (discussed below);
- Falsification of records;<sup>[91]</sup>
- False claim to U.S. citizenship;<sup>[92]</sup>
- Forgery-uttering;<sup>[93]</sup>
- Insurance fraud;<sup>[94]</sup>
- Obstruction of justice;<sup>[95]</sup>

- Sexual assault;<sup>[96]</sup>
- Social Security fraud;<sup>[97]</sup>
- Unlawful harassment;<sup>[98]</sup>
- Unlawfully registering to vote (discussed below);
- Unlawful voting (discussed below); and
- Violating a U.S. embargo.<sup>[99]</sup>

Despite these examples, officers must still perform the case-by-case analysis described above, including whether the act adversely reflects on one's moral character and the existence of any extenuating circumstances, in every case.<sup>[100]</sup>

#### *Failure to File Tax Returns or Pay Taxes in Accordance with Tax Authority*

An alien who fails to file tax returns, if required to do so, or fully pay his or her tax liability, as required under the relevant tax laws, may be precluded from establishing GMC. If there are inconsistencies<sup>[101]</sup> between the record and the alien's tax returns, the alien may be precluded from establishing GMC due to the commission of an unlawful act.<sup>[102]</sup> Once the failure to file tax returns or pay taxes and the relevant law has been identified, the officer must assess on a case-by-case basis whether the alien is ineligible for naturalization under the unlawful acts provision.

If the officer determines that the unlawful conduct violates the standards of an average member of the community, the alien will not be able to establish GMC. However, recognizing the complexities of filing taxes, there may be instances where the officer may determine that the alien's conduct regarding his or her tax return or tax payment did not violate the standards of an average member of the community, or that the alien established extenuating circumstances. In such cases, the alien may establish GMC by showing that he or she has corrected all inconsistencies or errors.

An example of when an alien may not be prevented from establishing GMC despite filing taxes incorrectly could be where the alien is divorced and mistakenly claimed a child as a dependent on his or her tax return for a tax year that the former spouse was entitled to claim the child as a dependent based on the terms of the divorce.

Examples of corrections of such inconsistencies or errors might include a letter from the tax authority indicating that:

- The alien has filed the appropriate forms and returns; and
- The alien has paid the required taxes, or has made arrangements for payment and is doing so in accordance with the pertinent tax authority.

## M. False Claim to U.S. Citizenship, Unlawful Voter Registration, and Unlawful Voting

### 1. Background

It is unlawful for aliens to vote in federal elections or in most state elections.<sup>[103]</sup> Under 18 U.S.C. 611, it is unlawful for an alien to vote in a federal election unless the election was held partly for some other purpose, aliens were authorized to vote for such other purpose under a state or local law and voting for the other purpose was conducted independently of voting for a candidate for federal office.

#### *National Voter Registration Act of 1993 (NVRA) and Unlawful Voter Registration*

The NVRA<sup>[104]</sup> directs states<sup>[105]</sup> to provide eligible voters with the opportunity to register to vote at the same time they apply for a driver's license or ID card<sup>[106]</sup> at the state's motor vehicle authority.<sup>[107]</sup>

Consequently, the voter registration application has been incorporated into many states' motor vehicle authority applications for a new or renewed driver's license or state ID card.<sup>[108]</sup> The NVRA also requires states to provide citizens with an opportunity to register to vote when applying to other designated state and local offices, including those that provide public assistance and services to persons with disabilities.<sup>[109]</sup>

The portion of the driver's license, ID card, or other benefit application that permits a person to register to vote generally includes a question asking whether the person is a U.S. citizen and instructions or warnings that indicate a person should not register to vote if he or she is not a U.S. citizen.

Further, the registration form may note that if the person answered "no" to the citizenship question, he or she should not complete the form, as the person is not eligible to register to vote.<sup>[110]</sup> Because of these safeguards, ineligible voters are generally not registered to vote, unless they confirm that they are eligible to vote by claiming to be a U.S. citizen.

#### *Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)*

Before the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),<sup>[111]</sup> false claims to U.S. citizenship were considered under broader grounds of fraud and willful misrepresentation, when made to obtain an immigration benefit. IIRIRA added INA sections 237(a)(3)(D) and 237(a)(6), making deportable aliens who falsely claim to be U.S. citizens or who vote in violation of the law.<sup>[112]</sup> Congress also enacted parallel federal criminal provisions to deal specifically with unlawful voting including fraudulent registration.

[18 U.S.C. 611](#) makes it a federal crime for aliens to vote in federal elections. An alien convicted of violating this provision may be fined, imprisoned for up to 1 year, or both. [18 U.S.C. 1015\(e\)](#) criminalizes an alien who knowingly makes a false statement or claims to be a U.S. citizen with the intent to obtain any federal or state benefit or service. [18 U.S.C. 1015\(f\)](#) criminalizes an alien who knowingly makes a false claim to U.S. citizenship in order to register to vote in any federal, state, or local election.

#### *Child Citizenship Act of 2000 (CCA)*

The Child Citizenship Act of 2000 (CCA)<sup>[113]</sup> added an exception to the criminal prosecutions under [18 U.S.C. 611\(c\)](#) and the last clause of [18 U.S.C. 1015\(f\)](#), for lawful permanent residents who resided in the United States prior to age 16, have U.S. citizen parents, and who reasonably believed that he or she was a citizen of the United States at the time of making the false claim.<sup>[114]</sup>

#### *Board of Immigration Appeals (BIA) Caselaw*

On May 7, 2015, the Board of Immigration Appeals (BIA) held in [Matter of Fitzpatrick](#) that an alien is deportable under INA 237(a)(6)(A) regardless of whether the alien knew he or she was committing an unlawful act by voting in violation of 18 U.S.C. 611.<sup>[115]</sup> On June 28, 2019, the BIA further clarified in [Matter of Zhang](#) that an alien's false claim to U.S. citizenship can result in deportability under INA 237(a)(3)(D)(i), even if it was not made knowingly.<sup>[116]</sup>

## 2. Deportability

Under certain sections of the INA, an alien is deportable for unlawful voting or falsely claiming to be a U.S. citizen.<sup>[117]</sup> Therefore, USCIS may issue a Notice to Appear (NTA) to an alien who:

- Falsely represents or has represented himself or herself to be a citizen of the United States for any purpose or benefit under the INA or any Federal or State law,<sup>[118]</sup> unless he or she meets the limited exception in INA 237(a)(3)(D)(ii);<sup>[119]</sup>
- Falsely claims to be a U.S. citizen when registering to vote,<sup>[120]</sup> unless he or she meets the limited exception in INA 237(a)(3)(D)(ii);<sup>[121]</sup> or
- Votes in violation of any federal, state, or local constitutional provision, statute, ordinance, or regulation,<sup>[122]</sup> unless he or she meets the limited exception in INA 237(a)(6)(B).<sup>[123]</sup>

A conviction is not required to issue an NTA under any of these grounds.

An alien may be removable based on a false claim to U.S. citizenship that the alien made in an oral interview, in a written or online application, or by submitting evidence. It is irrelevant whether or not the alien made the claim under oath. USCIS may also obtain information about a false claim to U.S. citizenship, voter registration or voting through record review, evidence the alien submits, documents obtained through other agencies, or other means.

An alien may also be removable based on a false claim to U.S. citizenship even if the alien made the claim without knowledge or intent.<sup>[124]</sup> The alien can make the claim to any federal, state, or local official, or even to a private person, such as an employer.<sup>[125]</sup> An alien who makes a false claim to U.S. citizenship in a driver's license or state benefit application, where unconnected to voter registration, may have violated [18 U.S.C. 1015\(e\)](#) or an applicable state law.<sup>[126]</sup>

USCIS may consider an alien to have falsely claimed to be a U.S. citizen if the alien affirmatively indicates that he or she is a U.S. citizen. If the alien registered to vote, the alien has the burden to prove that the registration form did not contain a question about whether the alien is a U.S. citizen or that the alien did not indicate, in response to such a question, that he or she is a U.S. citizen.

USCIS considers an alien to have falsely claimed to be a U.S. citizen in violation of [18 U.S.C. 1015\(f\)](#), and to be removable under INA 237(a)(3)(D)(i), in cases where the alien answered “yes” to a question asking whether he or she is a U.S. citizen in order to register to vote. This may apply even if the alien’s registration to vote was done simultaneously with the process of a driver’s license or identification (ID) card application, or an application for other state benefits.

#### *Denial of Naturalization Application*

After an NTA is filed with the immigration court, USCIS generally denies the naturalization application under INA 318 based on the existence of pending removal proceedings against the alien,[\[127\]](#) except for certain applications for naturalization based on military service.[\[128\]](#) Furthermore, an alien subject to an order of deportation or removal is not eligible for naturalization, and the naturalization application is denied, except for certain applications for naturalization based on military service.[\[129\]](#)

### 3. Unlawful Acts

Further, an alien commits an unlawful act, and therefore may lack good moral character,[\[130\]](#) if he or she knowingly makes any false statement or claim that he or she is or has been a U.S. citizen or national of the United States, with the intent to obtain on behalf of himself or herself, or any other person, any federal or state benefit or service, or to engage unlawfully in employment in the United States.[\[131\]](#) An alien also commits an unlawful act if he or she makes a false statement or claim that he or she is a U.S. citizen in order to register to vote in any federal, state, or local election.[\[132\]](#) Additionally, an alien commits an unlawful act if he or she unlawfully votes in a federal election.[\[133\]](#)

Voting in a local election is not an unlawful act for good moral character purposes if the alien is eligible to vote under the relevant law. For good moral character in the unlawful acts context, where the alien answered “yes” to a question asking whether he or she is a U.S. citizen in order to register to vote or otherwise made a false claim to U.S. citizenship, the offense must be committed knowingly.[\[134\]](#) The offense under 18 U.S.C. 1015(f) may also be considered to be a crime involving moral turpitude (CIMT) for which the alien lacks GMC if committed within the statutory period.[\[135\]](#) An alien may also be unable to establish GMC under INA 101(f)(3) and INA 212(a)(2)(B) (multiple crimes) and INA 101(f)(7) (confined 180 days or more).

### 4. Documentation and Evidence

If USCIS believes that an alien has falsely claimed U.S. citizenship, unlawfully registered to vote, or unlawfully voted in a U.S. election, where appropriate, the officer may take a sworn statement regarding the alien’s false claim to U.S. citizenship, unlawful registration to vote, or unlawful voting.[\[136\]](#) If an officer requires evidence to determine whether the alien in fact made false claims of U.S. citizenship, voted in a U.S. election, or both, the officer may issue a Request for Evidence (RFE). Such evidence may include:

- The voter registration card;
- Applicable voter registration form or application (in some cases this is part of the application for a driver’s license or state ID), if available; and
- Voting record from the relevant board of elections or other authority.

In addition, when assessing unlawful acts, if an alien wishes to demonstrate that once he or she realized that claiming U.S. citizenship was unlawful, they took immediate corrective steps to remediate the violation or violations, such as by notifying state officials, an alien may include supporting evidence, such as:

- Request to be removed from the voter list (if applicable); and
- Proof of removal from the voter list (if applicable).

When there is evidence of one of the above-mentioned unlawful acts, as with all unlawful acts, the officer must make an assessment regarding whether the act reflects adversely on moral character and must consider any extenuating circumstances. This is in addition to the below exception for false claims to U.S. citizenship and unlawful registration or voting.[\[137\]](#)

### 5. Exception for False Claims to U.S. Citizenship and Unlawful Registration or Voting

In 2000, Congress added an exception for deportability and GMC determinations for false claims to U.S. citizenship, unlawful registration to vote, and unlawful voting.<sup>[138]</sup> An alien who was convicted under [18 U.S.C. 611\(c\)](#) or [18 U.S.C. 1015\(f\)](#), and the conviction became final on or after October 30, 2000, is removable and not eligible for an exception under the CCA.<sup>[139]</sup> Otherwise, an alien qualifies for an exception if all of the following conditions are met:

- The alien’s natural or adoptive parents (both parents) are or were U.S. citizens at the time of the violation;<sup>[140]</sup>
- The alien permanently resided in the United States before reaching the age of 16 years; and
- The alien reasonably believed at the time of the violation that he or she was a U.S. citizen.

Evidence of the alien’s parent’s U.S. citizenship is required in order to assess eligibility for the exception. To assess whether the alien 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. This includes weighing such factors as the length of time the alien resided in the United States and the age when the alien became a lawful permanent resident (LPR).

If the alien has established his or her burden of proof for meeting the exception, then he or she is not deportable, and the offense would not be considered an unlawful act. The alien may be eligible for naturalization if other requirements are met. Otherwise, USCIS generally issues an NTA and denies the naturalization application.<sup>[141]</sup>

## Footnotes

---

<sup>[^ 1]</sup> See [INA 316\(a\)](#). See [8 CFR 316.10](#).

<sup>[^ 2]</sup> See [INA 101\(f\)](#). See Chapter 1, Purpose and Background [[12 USCIS-PM F.1](#)].

<sup>[^ 3]</sup> 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).

<sup>[^ 4]</sup> See *Matter of Silva-Trevino (PDF)*, 24 I&N Dec. 687, 688, 706 (A.G. 2008).

<sup>[^ 5]</sup> See *Matter of Esfandiary (PDF)*, 16 I&N Dec. 659 (BIA 1979).

<sup>[^ 6]</sup> See *Matter of Silva-Trevino (PDF)*, 24 I&N Dec. 687 (A.G. 2008).

<sup>[^ 7]</sup> See [INA 101\(f\)\(3\)](#). See [8 CFR 316.10\(b\)\(2\)\(i\)](#).

<sup>[^ 8]</sup> See [INA 212\(a\)\(2\)\(A\)\(ii\)\(II\)](#).

<sup>[^ 9]</sup> See *Matter of Garcia-Hernandez (PDF)*, 23 I&N Dec. 590, 594-95 (BIA 2003).

<sup>[^ 10]</sup> See Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception [[12 USCIS-PM F.2\(F\)](#)].

<sup>[^ 11]</sup> See [8 CFR 316.10\(b\)\(2\)\(ii\)](#).

<sup>[^ 12]</sup> See Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception [[12 USCIS-PM F.2\(F\)](#)].

<sup>[^ 13]</sup> 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\(C\)\(3\)](#)].

<sup>[^ 14]</sup> 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\(E\)](#)].

<sup>[^ 15]</sup> See [INA 101\(f\)\(3\)](#) and [INA 212\(a\)\(2\)\(C\)](#).

<sup>[^ 16]</sup> 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* (PDF), 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\(F\)](#)].

[^33] See [INA 101\(f\)\(6\)](#). See [8 CFR 316.10\(b\)\(2\)\(vi\)](#).

[^34] See [Matter of R-S-J- \(PDF\)](#), 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 \(PDF\)](#), 8 I&N Dec. 399 (BIA 1959).

[^37] See [Matter of Ngan \(PDF\)](#), 10 I&N Dec. 725 (BIA 1964). See [Matter of G-L-T- \(PDF\)](#), 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 \(PDF\)](#), 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 \(PDF\)](#), 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 same as bigamy. Bigamy is the crime of marrying a person while being legally married to someone else. An alien 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 [INA 101\(f\)](#).

[^49] See [INA 101\(f\)](#).

[^50] For information on “unlawful acts” under [8 CFR 316.10\(c\)\(iii\)](#), see Section L, Unlawful Acts [[12 USCIS-PM F.5\(L\)](#)]. As is the case for finding a person lacks GMC “for other reasons,” the statutory authority for the conditional bar to GMC for “unlawful acts” is the last paragraph of [INA 101\(f\)](#).

[^51] See [INA 101\(f\)](#). See [Matter of Castillo-Perez](#), 27 I&N Dec. 664 (A.G. 2019).

[^52] For specific questions on whether the alien may overcome the presumption, officers should consult the Office of the Chief Counsel.

[^53] See [Matter of Castillo-Perez](#), 27 I&N Dec. 664, 671 (A.G. 2019).

[^54] See [8 CFR 316.10\(b\)\(3\)\(i\)](#). See [Hague Convention on the International Recovery of Child Support](#) [↗](#).

[^55] See [Convention on the International Recovery of Child Support and Other Forms of Family Maintenance](#).

[^56] 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).

[^57] See *United States v. Harrison*, 180 F.2d 981 (9th Cir. 1950).

[^58] See *In re Malaszenko*, 204 F.Supp. 744 (D. N.J. 1962). See *In re Mogus*, 73 F.Supp. 150 (W.D. Pa. 1947).

[^59] See *In re Halas*, 274 F.Supp. 604 (E.D. Pa. 1967). See *Petition of Dobric*, 189 F.Supp. 638 (D. Minn. 1960).

[^60] See [8 CFR 316.10\(b\)\(3\)\(i\)](#).

[^61] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [[12 USCIS-PM F.2\(G\)](#)].

[^62] See *In re Huymaier*, 345 F.Supp. 339 (E.D. Pa. 1972).

[^63] See *Petition of Perdiak*, 162 F.Supp. 76 (S.D. Cal. 1958).

[^64] See *In re Valad*, 465 F.Supp. 120 (E.D. Va. 1979).

[^65] See *Etape v. Napolitano*, 664 F.Supp.2d 498, 517 (D. Md. 2009).

[^66] See [8 CFR 316.10\(b\)\(3\)\(ii\)](#).

[^67] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [[12 USCIS-PM F.2\(G\)](#)].

[^68] 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).

[^69] See [INA 101\(f\)](#). See [8 CFR 316.10\(b\)\(3\)\(iii\)](#). For cases arising in the Ninth Circuit, in addition to extenuating circumstances, USCIS must also consider and weigh all factors relevant to the determination of GMC, which include education, family background, employment history, financial status, and lack of criminal record. See *Hussein v. Barrett*, 820 F.3d 1083 (9th Cir. 2016).

[^70] See *United States v. Jean-Baptiste*, 395 F.3d 1190 (11th Cir. 2005) (finding that even where a conviction for a crime occurs after naturalization, the alien lacked the good moral character for naturalization when the crime was committed during the statutory period). Likewise, if the unlawful act is committed outside the statutory period, but the alien is convicted or imprisoned for the unlawful act during the statutory period, he or she will be barred from establishing good moral character.

[^71] See [INA 101\(f\)](#). See [8 CFR 316.10\(b\)\(3\)\(iii\)](#), [8 CFR 316.10\(b\)\(1\)](#), and [8 CFR 316.10\(b\)\(2\)](#) (other relevant GMC regulations). See *United States v. Jean-Baptiste*, 395 F.3d 1190 (11th Cir. 2005).

[^72] See [INA 101\(f\)](#) and [INA 316\(a\)\(3\)](#). See [8 CFR 316.10\(b\)\(3\)\(iii\)](#).

[^73] 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 C, Definition of Conviction [[12 USCIS-PM F.2\(C\)](#)] and Section E, Admission of Certain Criminal Acts [[12 USCIS-PM F.2\(E\)](#)]. See [INA 101\(f\)](#). See [8 CFR 316.10\(b\)\(3\)\(iii\)](#). Other significant evidence, for example, includes but is not limited to a fine, civil judgment, guilty plea which was later withdrawn after completion of rehabilitation program, voting records, or unexplained discrepancies on tax filings.

[^74] See, generally, *United States v. Jean-Baptiste*, 395 F.3d 1190, 1195 (11th Cir. 2005).

[^75] See *Hussein v. Barrett*, 820 F.3d 1083 (9th Cir. 2016).

[^76] See *Etape v. Napolitano*, 664 F. Supp.2d 498, 507 (D. Md. 2009). See *Meyersiek v. USCIS*, 445 F. Supp.2d 202, 205–06 (D.R.I. 2006) (“Although the words ‘unlawful acts’ are not further defined, the Court interprets them to mean bad acts that would rise to the level of criminality, regardless of whether a criminal prosecution was actually initiated.”). See *United States v. Jean-Baptiste*, 395 F.3d 1190, 1193 (11th Cir. 2005).

[^77] See [8 CFR 316.10\(b\)\(3\)\(iii\)](#). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [[12 USCIS-PM F.2\(E\)](#)]. Other relevant, reliable evidence, for example, includes but is not limited to a fine, civil judgment, guilty plea which was later withdrawn after completion of rehabilitation program, voting records, or unexplained discrepancies on tax filings.

[^78] See *Khamooshpour v. Holder*, 781 F.Supp.2d 888, 896 (D. Ariz 2011). See *Agarwal v. Napolitano*, 663 F.Supp.2d 528, 542 (W.D. Tex 2009).

[^79] See Section A, One or More Crimes Involving Moral Turpitude, Subsection 1, Crime Involving Moral Turpitude [[12 USCIS-PM F.5\(A\)\(1\)](#)].

[^80] See *United States v. Teng Jiao Zhou*, 815 F.3d 639 (9th Cir. 2016) (finding that first degree robbery under California Penal Code, Section 211 was a CIMT and therefore an unlawful act that adversely reflected on one’s moral character).

[^ 81] See [8 CFR 316.10\(a\)\(2\)](#). See *Abdi v. U.S. Citizenship and Immigration Services*, 923 F.Supp.2d 1160, 1166 (D. Minn. 2013).

[^ 82] See [8 CFR 316.10\(b\)\(3\)\(iii\)](#). See [INA 101\(f\)](#). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [[12 USCIS-PM F.2\(G\)](#)]. See *United States v. Suarez*, 664 F.3d 655, 662 (7th Cir. 2011). See *United States v. Lekarczyk*, 354 F.Supp.2d 883 (W.D. Wis. 2005).

[^ 83] See *United States v. Jean-Baptiste*, 395 F.3d 1190, 1195 (11th Cir. 2005) (citing *Rico v. INS*, 262 F.Supp.2d 6 (E.D.N.Y. 2003)).

[^ 84] See *United States v. Lekarczyk*, 354 F.Supp.2d 883 (W.D. Wis. 2005).

[^ 85] See [8 CFR 316.10\(b\)\(3\)\(iii\)](#).

[^ 86] 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\(G\)](#)]. For cases under the jurisdiction of the Ninth Circuit Court of Appeals, however, the officer must also consider and weigh the alien's evidence relevant to moral character beyond that which precedes or is contemporaneous with and applies directly to the unlawful act. See *Hussein v. Barrett*, 820 F.3d 1083, 1089-90 (9th Cir. 2016) (finding that the officer must consider all of the alien's evidence on factors relevant to the GMC determination to determine if the catch-all provision in the statute precludes the alien from establishing GMC). In the Ninth Circuit, positive additional factors counterbalance an unlawful act committed in the statutory period if the factors are sufficient to overcome the weight of the negative act.

[^ 87] See *United States v. Jean-Baptiste*, 395 F.3d 1190, 1195 (11th Cir. 2005).

[^ 88] See *United States v. Lekarczyk*, 354 F.Supp.2d 883, 887 (W.D. Wis 2005).

[^ 89] See *United States v. Lekarczyk*, 354 F.Supp.2d 883, 887 (W.D. Wis 2005).

[^ 90] See *United States v. Jean-Baptiste*, 395 F.3d 1190 (11th Cir. 2005).

[^ 91] See *Etape v. Napolitano*, 664 F.Supp.2d 498 (D. Md. 2009).

[^ 92] See, for example, [18 U.S.C. 1001](#).

[^ 93] See *United States v. Lekarczyk*, 354 F.Supp.2d 883, 887 (W.D. Wis 2005).

[^ 94] See *United States v. Salama*, 891 F.Supp.2d 1132, 1140-41 (E.D. Cal. 2012).

[^ 95] See *Etape v. Napolitano*, 664 F.Supp.2d 498 (D. Md. 2009).

[^ 96] See *United States v. Okeke*, 671 F.Supp.2d 744 (D. Md. 2009).

[^ 97] See *Etape v. Napolitano*, 664 F.Supp.2d 498 (D. Md. 2009).

[^ 98] See *Sabbaghi v. Napolitano*, 2009 WL 4927901 (W.D. Wash. 2009) (unpublished).

[^ 99] See *Khamooshpour v. Holder*, 781 F.Supp.2d 888, 896-97 (D. Ariz 2011).

[^ 100] See Subsection 2, Case-by-Case Analysis [[12 USCIS-PM F.5\(L\)\(2\)](#)]. See *Hussein v. Barrett*, 820 F.3d 1083 (9th Cir. 2016).

[^ 101] Examples of material facts include marital status, number of dependents, and income.

[^ 102] Examples of such unlawful acts include attempt to defraud the IRS by avoiding taxes in violation of 26 U.S.C. 7201 or 26 U.S.C. 6663 or filing a false document under penalties of perjury in violation of 26 U.S.C. 7206(1). 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). See [Matter of M- \(PDF\)](#), 8 I&N Dec. 535 (BIA 1960) (conspiracy to defraud the U.S. government by avoiding taxes is a CIMT). See [Matter of E- \(PDF\)](#), 9 I&N Dec. 421 (BIA 1961).

[^ 103] See [18 U.S.C. 611](#).

[^ 104] See [Pub. L. 103-31 \(PDF\)](#), 107 Stat. 77 (May 20, 1993) (codified at [52 U.S.C. 20501-20511](#)). For more information about the NVRA, see the U.S. Department of Justice (DOJ)'s [About the National Voter Registration Act](#) webpage.

[^ 105] The NVRA applies to 44 States. Certain states (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming) and territories (Puerto Rico, Guam, Virgin Islands, American Samoa) are exempt from the NVRA. For more information, see DOJ’s [About the National Voter Registration Act](#) webpage.

[^ 106] See [52 U.S.C. 20504](#) (Section 5 of the NVRA).

[^ 107] This includes departments of motor vehicles or equivalent state agencies. Because of the requirement for motor vehicle authorities to participate in voter registration, the NVRA is often referred to as the “Motor Voter” law.

[^ 108] See, for example, California’s [Driver License Renewal \(PDF\)](#) and New York’s [Application for Permit, Driver License or Non-driver ID Card \(PDF\)](#).

[^ 109] See [52 U.S.C. 20506](#) (Section 7 of the NVRA). See, for example, New York’s [Apply for SNAP](#) webpage.

[^ 110] See, for example, New Jersey’s [Voter Registration Application \(PDF\)](#)<sup>2</sup> and Colorado’s [Driver License or ID Card Renewal by Mail and Voter Registration \(PDF\)](#) form.

[^ 111] See Section 347 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), [Pub. L. 104-208 \(PDF\)](#), 110 Stat. 3009-546, 3009-637 (September 30, 1996).

[^ 112] See IIRIRA, [Pub. L. 104-208 \(PDF\)](#), 110 Stat. 3009, 3009-637 (September 30, 1996).

[^ 113] See Section 201(b) of the Child Citizenship Act (CCA) of 2000, [Pub. L. 106-395 \(PDF\)](#), 114 Stat 1631 (October 30, 2000).

[^ 114] These criminal provision exceptions only apply to convictions that became final on or after October 30, 2000. See section 201(d)(3) of [Pub. L. 106-395 \(PDF\)](#).

[^ 115] See [Matter of Fitzpatrick](#), 26 I&N Dec. 559 (BIA 2015).

[^ 116] See [Matter of Zhang](#), 27 I&N Dec 569 (BIA 2019). See [INA 237\(a\)\(3\)\(D\)](#).

[^ 117] See [INA 237\(a\)\(6\)\(A\)](#) and [INA 237\(a\)\(3\)\(D\)\(i\)](#).

[^ 118] See [INA 237\(a\)\(3\)\(D\)\(i\)](#).

[^ 119] See [INA 237\(a\)\(3\)\(D\)\(ii\)](#). See Subsection 5, Exception for False Claims to U.S. Citizenship and Unlawful Registration or Voting [[12 USCIS-PM F.5\(M\)\(5\)](#)].

[^ 120] See [INA 237\(a\)\(3\)\(D\)\(i\)](#).

[^ 121] See [INA 237\(a\)\(3\)\(D\)\(i\)](#) and [INA 237\(a\)\(3\)\(D\)\(ii\)](#).

[^ 122] See [INA 237\(a\)\(6\)\(A\)](#).

[^ 123] See [INA 237\(a\)\(6\)](#) and [INA 237\(a\)\(6\)\(B\)](#).

[^ 124] In [Matter of Zhang](#), 27 I&N Dec. 569 (BIA 2019), the Board of Immigration Appeals (BIA) noted that unlike INA 212(a)(6)(C)(i), the plain language of INA 237(a)(3)(D)(i) does not require an intent to falsely represent citizenship to trigger this ground of removability. The BIA in *Zhang* reasoned that “the absence of a ‘knowing’ or ‘willful’ requirement for false claims to citizenship in sections 212(a)(6)(C)(ii)(I) and 237(a)(3)(D)(i) indicates that there was no congressional intent to include one.”

[^ 125] For example, the alien could make a false claim to U.S. citizenship to comply with the employment verification requirements under [INA 274A](#) or for tax credit purposes.

[^ 126] The offense would not be under [18 U.S.C. 1015\(f\)](#) which involves registering to vote.

[^ 127] See [8 CFR 1239.1\(a\)](#) (removal proceedings commence by the filing of an NTA with the immigration court). See [INA 318](#). See *Klene v. Napolitano*, 697 F.3d 666, 669 (7th Cir. 2012). See *Rumierz v. Gonzales*, 456 F.3d 31 (1st Cir. 2006). See *Ajlani v. Chertoff*, 545 F.3d 229 (2nd Cir. 2008). See *Zayed v. U.S.*, 368 F.3d 902 (6th Cir. 2004). See *De Lara Bellajaro v. Schiltgen*, 378 F.3d 1042, 1043 (9th Cir. 2004), as amended. See *Martinez v. Johnson*, 104 F.Supp.3d 835, 843 (W.D. Tex. 2015). See *Ka Lok Lau v. Holder*, 880 F.Supp.2d 276 (D. Mass. 2012). See *Farghaly v. Frazier*, 404 F. Supp. 2d 1125, 1127 (D. Minn. 2005). But see *Yith v. Nielsen*, 881 F.3d 1155 (9th Cir. 2018) (declining to give effect to 8 CFR 318.1 by holding that an NTA is not a “warrant of arrest”). In *Yith*, the Ninth

Circuit concluded a “warrant of arrest” is separate from an NTA; therefore, in the Ninth Circuit, USCIS can adjudicate a naturalization application for an alien who is in proceedings if there is no separate warrant of arrest. Officers should consult with USCIS counsel on any cases in the Ninth Circuit involving pending removal proceedings.

[^ 128] See [INA 328\(b\)\(2\)](#) (aliens currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See [INA 329\(b\)\(1\)](#) (aliens eligible for military naturalization under INA 329(a)). See [8 CFR 329.2\(e\)\(3\)](#). See Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization, Section F, Removal Proceedings [[12 USCIS-PM D.2\(F\)](#)].

[^ 129] See [INA 318](#). See [INA 328\(b\)\(2\)](#) (aliens currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See [INA 329\(b\)\(1\)](#) (aliens eligible for military naturalization under INA 329(a)). See Part I, Military Members and their Families, Chapter 2, One Year of Military Service during Peacetime (INA 328) [[12 USCIS-PM I.2](#)] and Chapter 3, Military Service during Hostilities (INA 329) [[12 USCIS-PM I.3](#)].

[^ 130] See [8 CFR 316.10\(b\)\(3\)\(iii\)](#).

[^ 131] See [18 U.S.C. 1015\(e\)](#).

[^ 132] See [18 U.S.C. 1015\(f\)](#).

[^ 133] See [18 U.S.C. 611\(a\)](#). Note that it is not unlawful for an alien to vote in an election held in part for the purpose of electing candidates to federal office if the election is held partly for some other purpose, aliens are authorized to vote for such other purpose under state or local law, and voting for such other purpose is conducted independently of voting for a candidate for federal office.

[^ 134] In contrast to a false claim to U.S. citizenship under the unlawful acts analysis, where the false claim must be “knowing,” an alien may be inadmissible or deportable based on a false claim to U.S. citizenship even if the alien mistakenly believed he was a U.S. citizen. See [Matter of Zhang](#), 27 I&N Dec. 569 (BIA 2019). For more information, see Volume 8, Admissibility, Part K, False Claim to U.S. Citizenship [[8 USCIS-PM K](#)].

[^ 135] See [18 U.S.C. 1015\(e\)](#) and [18 U.S.C. 1015\(f\)](#). See [INA 101\(f\)\(3\)](#) (one or more CIMTs), as discussed in Section A, One or More Crimes Involving Moral Turpitude [[12 USCIS-PM F.5\(A\)](#)].

[^ 136] An additional sworn statement may be unnecessary where the alien has admitted to falsely claiming U.S. citizenship, or to unlawfully voting, or both in his or her responses in the Application for Naturalization ([Form N-400](#)), given that Form N-400 is signed by the alien certifying under penalty of perjury that the information therein is true and correct. See [Matter of A.J. Valdez and Z. Valdez](#), 27 I&N Dec. 496, 499 (BIA 2018) (explaining that courts have held that a “signature on a form establishes a strong presumption that the signer knows its contents and has assented to them, absent evidence of fraud or other wrongful acts by another person.”). However, if the alien did not provide an explanation, or USCIS learned of the false claim through other means, a sworn statement may be appropriate to determine the circumstances under which the false claim, unlawful voter registration, or voting occurred, including whether an exception to finding a lack of good moral character applies.

[^ 137] See [8 CFR 316.10\(b\)\(3\)\(iii\)](#). See *United States v. Suarez*, 664 F.3d 655, 662 (7th Cir. 2011). See *United States v. Lekarczyk*, 354 F.Supp.2d 883 (W.D. Wis. 2005). See [INA 101\(f\)](#). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [[12 USCIS-PM F.2\(G\)](#)].

[^ 138] See [INA 101\(f\)](#). See [INA 237\(a\)\(3\)\(D\)\(ii\)](#) and [INA 237\(a\)\(6\)\(B\)](#). These provisions were added by the Child Citizenship Act of 2000 (CCA), but they apply to all applications filed on or after September 30, 1996. See Section 201(a)(2) of the CCA, [Pub. L. 106-395 \(PDF\)](#), 114 Stat. 1631, 1636 (October 30, 2000).

[^ 139] See Section 201(d)(3) of the CCA, [Pub. L. 106-395 \(PDF\)](#) (Oct. 30, 2000).

[^ 140] As a matter of policy, USCIS has determined that the alien’s parents had to be U.S. citizens at the time of the false claim to U.S. citizenship, unlawful registration, or unlawful voting in order to meet the first prong of this exception.

[^ 141] Special consideration must be given to aliens in the Ninth Circuit and individuals applying for naturalization based on military service. In *Yith*, the Ninth Circuit concluded a ‘warrant of arrest’ is separate from an NTA; therefore, in the Ninth Circuit, USCIS can adjudicate a naturalization application for an alien who is in proceedings if there is no separate warrant of arrest. See *Yith v. Nielsen*, 881 F.3d 1155 (9th Cir. 2018). Officers should consult with USCIS counsel on any cases in the Ninth Circuit involving pending removal proceedings. For current or former members of the military, see [INA 328\(b\)\(2\)](#) (aliens currently in the U.S. armed

forces and eligible for military naturalization under INA 328(a)). See [INA 329\(b\)\(1\)](#), (aliens eligible for military naturalization under INA 329(a)). See [8 CFR 329.2\(e\)\(3\)](#).

Current as of August 29, 2025

---