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Chapter 10 – Controlled Substance Traffickers

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A. Purpose

[Section 212\(a\)\(2\)\(C\)](#) of the Immigration and Nationality Act (INA) bars the admission of aliens involved in illicit trafficking of a controlled substance or certain designated chemicals. Aliens inadmissible under this ground include:

- Any alien who is or has been an illicit trafficker of any controlled substance or in any listed chemical as defined in [21 U.S.C. 802](#); ^[1]
- Any alien who is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking of any controlled or listed substance or chemical as defined in 21 U.S.C. 802, or an alien who has endeavored to do so; ^[2] and
- Any alien who is the spouse, son, or daughter of an alien inadmissible under [INA 212\(a\)\(2\)\(C\)\(i\)](#) and who:
 - Obtained any financial or other benefit from the illicit activity of their

spouse or parent within the previous 5 years; [3] and

- Knew or reasonably should have known that the financial or other benefit was the product of such illicit activity. [4]

B. Background

Keeping the United States safe from the trafficking of controlled substances has long been a priority of the United States [5] since even before the consolidation of immigration laws in the Immigration and Nationality Act (INA) in 1952. [6] Early laws restricting the import, manufacture, sale, and dealing in certain drugs imposed immigration consequences for violations. [7]

The INA established section 212(a)(23), [8] that excluded aliens from the United States who were convicted of certain drug offenses, as well as aliens who were convicted of a violation of any law or regulation relating to the illicit trafficking of certain narcotic drugs or any alien who consular or immigration officers “know or have reason to believe is or has been an illicit trafficker” in those drugs.

Congress enacted the Controlled Substances Act (CSA) in 1970 to create a unified legal framework to regulate certain drugs and other substances that are deemed to pose a risk of abuse and dependence, [9] and in 1986, Congress amended INA 212(a)(23) by replacing the list of drug-related conduct and substances with a general reference to any law or regulation of a State, the United States, or a foreign country relating to a controlled substance as defined in section 102 of the CSA. [10]

In 1987, Congress amended INA 212(a)(23) and established a separate provision to exclude aliens who immigration or consular officers know or have reason to believe are or have been illicit traffickers in a controlled substance, as defined in section 102 of the CSA, from entering the United States. [11] The amendments also excluded aliens who immigration or consular officers know or have reason to believe are or have knowingly assisted, abetted, conspired, or colluded with others in the illicit trafficking of controlled substances. [12]

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which redesignated provisions in [INA 212\(a\)](#) from grounds of exclusion to inadmissibility and added, removed, and modified several grounds. ^[13] The ground of inadmissibility for controlled substance traffickers moved to [INA 212\(a\)\(2\)\(C\)](#) without any changes to the inadmissibility provisions. In 1999, Congress expanded [INA 212\(a\)\(2\)\(C\)](#) to make certain family members who have obtained any financial or other benefit from the illicit activity of an alien inadmissible under that provision in certain circumstances. ^[14]

C. Legal Authorities

- [INA 212\(a\)\(2\)\(C\)](#) – Controlled substance traffickers

D. Overview of Controlled Substance Traffickers

1. Conduct Involving a Controlled Substance or Listed Chemical as Defined in 21 U.S.C. 802

An alien is inadmissible under [INA 212\(a\)\(2\)\(C\)](#) if he or she is or has been an illicit trafficker in any controlled substance or in any listed chemical as defined in [21 U.S.C. 802](#); is or has been or has endeavored to be a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking of any such controlled or listed substance or chemical; or is the spouse, son, or daughter of such an alien where the spouse, son, or daughter has, within the previous 5 years, obtained any financial or other benefit from the illicit activity and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity. ^[15]

A conviction is not required to find an alien inadmissible as a controlled substance trafficker under [INA 212\(a\)\(2\)\(C\)](#). ^[16] The officer must know, or have a reason to believe, that the alien was involved in illicit trafficking of a controlled substance or listed chemical. ^[17]

[21 U.S.C. 802](#) defines the term “controlled substance” as “a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter.” ^[18] 21 U.S.C. 802 defines the term “listed chemical” as “any list I chemical or any list II chemical.” ^[19] For determinations of inadmissibility, it is generally irrelevant under which specific schedule, list, or classification the “controlled substance” or “listed chemical” is specifically identified in 21 U.S.C. 802.

If the substance involved is not listed in 21 U.S.C. 802 as either a controlled substance or listed chemical, then the alien is not inadmissible under [INA 212\(a\)\(2\)\(C\)](#). ^[20] Officers must determine if the substance involved was listed in 21 U.S.C. 802 at the time of the trafficking. If the substance or chemical involved was not listed at the time that the alien or their spouse or parent was trafficking the substance or chemical, then the alien is not inadmissible (even if the substance or chemical has subsequently been listed). ^[21] If the substance or chemical was listed at the time of the trafficking, but not listed at the time of the inadmissibility determination, the alien may be inadmissible.

2. Illicit Trafficking

The phrase “illicit trafficking” is not defined in the INA, but [INA 212\(a\)\(2\)\(C\)](#) applies to a broad range of activities, including, but not limited to:

- “[A]ny state, federal, or qualified foreign felony conviction involving the unlawful trading or dealing” in a controlled substance or listed chemical as defined by federal law; ^[22]
- Smuggling attempts; ^[23]
- Single instances of purchasing or acquiring a controlled substance or listed substance or chemical with the intent to sell, regardless of whether or not such a sale actually occurred; ^[24] or
- Knowingly and consciously acting as a conduit between supplier and customer. ^[25] This is true even if the alien receives no personal gain or profit from the transaction. ^[26]

Officers may also consider activities involving the sale, transfer, transportation,

production, cultivation or manufacture of a controlled substance, regardless of the alien’s level of involvement, as this ground of inadmissibility applies given the inclusion of these types of activities in federal criminal laws related to drug trafficking. [\[27\]](#)

The term “illicit trafficker” does not require that an alien has been continuously engaged in such activity. [\[28\]](#) Illicit trafficking includes aliens, who on a single occasion, have dealt in controlled substances or listed chemicals. [\[29\]](#) Accordingly, an alien’s involvement as an illicit trafficker may consist of a single act in the past or present.

E. Alien Beneficiaries of a Controlled Substance Trafficker

An alien who is the spouse, son, or daughter of an alien who is inadmissible as an illicit trafficker of any controlled substance is inadmissible if the spouse, son, or daughter:

- Has obtained any financial or other benefit from the illicit activity of that inadmissible alien within the previous 5 years; and
- Knew or reasonably should have known that the financial or other benefit was the product of such illicit activity. [\[30\]](#)

The statute requires that the financial or other benefit has been obtained within the previous 5 years for the beneficiary of trafficking to be inadmissible under [INA 212\(a\)\(2\)\(C\)\(ii\)](#). However, even if the financial or other benefit was not obtained by the spouse, son, or daughter within the previous 5 years, when the spouse, son, or daughter applies for a discretionary immigration benefit, the officer may consider the financial or other benefit obtained as the product of the illicit activity as a negative factor when determining if a favorable exercise of discretion is warranted.

The officer also considers how long ago and the length of time the financial or other benefit that was knowingly (or that the alien reasonably should have known was) received by the spouse, son, or daughter, as well as the amount received when determining the weight to attribute to this negative factor in a

case-by-case discretionary analysis. [\[31\]](#)

1. Inadmissibility in Connection to a Controlled Substance Trafficker

An alien who is the spouse, son, or daughter of an inadmissible alien is also inadmissible as a controlled substance trafficker even if the alien's spouse or parent was not previously found inadmissible under [INA 212\(a\)\(2\)\(C\)\(i\)](#).

In cases in which the alien's spouse or parent was not previously found inadmissible as a controlled substance trafficker, an officer must assess whether the spouse or parent would be found inadmissible for controlled substance trafficking if that spouse or parent were to apply for an immigration benefit.

2. Familial Relationship to the Spouse Who is a Controlled Substance Trafficker

An alien who meets the definition of spouse can be found inadmissible as the beneficiary of controlled substance trafficking if the spouse is currently married to the alien who is inadmissible as a controlled substance trafficker at the time the inadmissibility determination is made. If the marriage has been terminated due to divorce or death of the alien inadmissible as a controlled substance trafficker, the former spouse may not be found inadmissible under [INA 212\(a\)\(2\)\(C\)\(ii\)](#).

However, when the former spouse is applying for a discretionary benefit, [\[32\]](#) if the former spouse obtained any financial or other benefit from the illicit activity of his or her former spouse and knew or reasonably should have known that the benefit was the product of such illicit activity, then the officer may consider the financial or other benefit obtained as the product of the illicit activity as a negative factor when determining if a favorable exercise of discretion is warranted.

The officer should evaluate how long ago and the length of time the financial

or other benefit that was knowingly (or that the alien reasonably should have known was) received, as well as the amount of benefit received, along with any extenuating circumstances when determining the weight to attribute to this negative factor in a case-by-case discretionary analysis. [\[33\]](#)

3. Familial Relationship to the Parent Who is a Controlled Substance Trafficker

An alien who is a son or daughter of an alien inadmissible as a controlled substance trafficker remains the son or daughter of such an alien who is inadmissible under [INA 212\(a\)\(2\)\(C\)\(i\)](#) even after the death of that alien. Additionally, a stepparent-stepchild relationship may continue to exist for immigration purposes after the death of the natural parent or after the divorce of the stepparent and natural parent if there is an ongoing relationship between the stepparent and stepchild. [\[34\]](#)

F. Reason to Believe

A determination of inadmissibility for being a controlled substance trafficker only requires an officer to know or have a “reason to believe” that:

- The alien is or was involved in the illicit trafficking of a controlled substance or listed substance or chemical; including as a knowing aider, abettor, assister, conspirator, or colluder, or has endeavored to do so; or
- A family member of such an alien obtained financial or other benefit from the illicit activity within the previous 5 years and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity.

The reason to believe standard can be established through the existence of a conviction. [\[35\]](#) Indeed, a conviction for controlled substance trafficking is prima facie evidence [\[36\]](#) that the alien is inadmissible under [INA 212\(a\)\(2\)\(C\)\(i\)](#).

However, no conviction is required to find an alien inadmissible as a controlled substance trafficker or as the spouse, son, or daughter of an alien inadmissible

as a controlled substance trafficker. [\[37\]](#) If the officer has reason to believe the alien is or has been involved in the controlled substance trafficking, or is the spouse, son, or daughter of such an alien who obtained any financial or other benefit of the illicit activity in the previous 5 years and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, then the officer can find the alien inadmissible under INA 212(a)(2)(C)(i) or (ii), as applicable. [\[38\]](#)

Even if the alien is arrested for, but not ultimately charged with, an illicit trafficking offense, or if a criminal complaint has been dismissed, an alien may still be inadmissible. An officer may also consider the facts of an underlying offense, even if the conviction was ultimately vacated or expunged, when determining whether an alien is inadmissible under this ground.

A formal admission or statement, sworn testimony, a record of arrest, or reliable and corroborative reports may be sufficient evidence for an officer to have a reason to believe that an alien is inadmissible under INA 212(a)(2)(C). At the same time, mere suspicion is not sufficient to find an alien inadmissible under the reason to believe standard.

There must exist a probability, supported by evidence, that the alien is or has been involved in or benefited from controlled substance trafficking. A determination that an alien is inadmissible as a controlled substance trafficker should be supported by reasonable, substantial, and probative evidence. [\[39\]](#)

G. Exceptions, Exemptions, and Waivers of Inadmissibility

1. Exceptions

There are no statutory exceptions under [INA 212\(a\)\(2\)\(C\)](#).

2. Exemptions

For certain immigration benefits, aliens are not subject to the inadmissibility

ground under [INA 212\(a\)\(2\)\(C\)](#). Some immigrant categories listed on the Application to Register Permanent Residence or Adjust Status ([Form I-485](#)) to register or obtain documentation of their lawful permanent resident (LPR) status are not subject to an inadmissibility determination. These categories of LPRs, including individuals born in the United States under diplomatic status and American Indians born in Canada, are therefore exempt from this inadmissibility ground. [\[40\]](#)

Other immigration benefits and immigrant categories that are not subject to this ground include:

- Adjustment of status based on S nonimmigrant classification; [\[41\]](#)
- Adjustment of status based on U nonimmigrant classification; [\[42\]](#)
- Diplomats or foreign government officials (A-1 and A-2 nonimmigrants); [\[43\]](#)
- Aliens transiting to and from the United Nations Headquarters District (C-2 nonimmigrants); [\[44\]](#)
- Foreign government officials, their immediate family members, attendants, servants, or personal employees in immediate and continuous transit through the United States (C-3 nonimmigrants); [\[45\]](#)
- Employees of international organizations and members of their immediate family members (G-1, G-2, G-3, and G-4 nonimmigrants); [\[46\]](#) and
- Employees of the North Atlantic Treaty Organization (NATO) and their immediate family members (NATO-1 through NATO-4 and NATO-6 nonimmigrants). [\[47\]](#)

3. Waivers

While there is no waiver available for this ground of inadmissibility within [INA 212](#), Congress has established a few category-specific waivers in other sections of law. [\[48\]](#)

A waiver is distinct from the statutory exemptions. The exemptions are

automatic, based on the immigration benefit sought or the immigrant category. The alien does not need to formally request an exemption and there are no other eligibility criteria. In contrast, an alien must formally request a waiver from USCIS and demonstrate that he or she meets all of the eligibility requirements for that waiver and merits a favorable exercise of discretion. Examples of categories or immigration benefits where a waiver is available for this ground include, but are not limited to:

- Alien witnesses or informants assisting a law enforcement agency when requesting nonimmigrant status, a nonimmigrant visa, or admission as a nonimmigrant (S nonimmigrants); [\[49\]](#)
- Victims of human trafficking when requesting nonimmigrant status, a nonimmigrant visa, or admission as a nonimmigrant (T nonimmigrants) [\[50\]](#) and adjustment of status based on T nonimmigrant classification; [\[51\]](#) and
- Victims of qualifying criminal activity when requesting nonimmigrant status, a nonimmigrant visa, or admission as a nonimmigrant (U nonimmigrants). [\[52\]](#)

H. Adjudication

1. Applicability

This ground of inadmissibility applies to any alien seeking an immigration benefit for which admissibility is required. This includes, but is not limited to, adjustment of status to that of an LPR, an alien who is applying for an immigrant visa with the U.S. Department of State (DOS) at a U.S. embassy or consulate outside of the United States, or an alien applying for admission as an immigrant at a U.S. port of entry. [\[53\]](#)

2. Burden of Proof

The burden of proof to establish admissibility when seeking an immigration benefit is always on the alien. [\[54\]](#) The burden never shifts to the U.S.

government at any time during adjudication. [\[55\]](#)

3. Standard of Proof

If there is evidence in the record that would permit a reasonable person to conclude that the alien is inadmissible under this ground, the officer should find that the alien has not successfully met the burden of proof.

An alien who fails to meet the burden of proof is inadmissible under [INA 212\(a\)\(2\)\(C\)](#) unless the alien is able to show clearly and beyond doubt [\[56\]](#) that he or she:

- Is not or has not been an illicit trafficker in any controlled substance or in any listed substance or chemical as defined in [21 U.S.C. 802](#);
- Is not or has not been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking of a controlled substance or in any listed substance or chemical as defined in 21 U.S.C. 802; or
- Is not the spouse, son, or daughter of an alien inadmissible under [INA 212\(a\)\(2\)\(C\)\(i\)](#) and has not:
 - Obtained any financial or other benefit from the illicit activity of their spouse or parent within the previous 5 years; and
 - Did not know or could not have reasonably known that the financial or other benefit was the product of such illicit activity.

4. Evidence

A finding of inadmissibility under [INA 212\(a\)\(2\)\(C\)](#) must be based on evidence, such as criminal convictions, arrest records, security and systems checks, oral testimony, written testimony, or any other documentation containing information about the alien's involvement in controlled substance trafficking or about how the alien derived benefits from the controlled substance trafficking.

USCIS considers responses on applications and petitions as evidence when determining if an alien is inadmissible under [INA 212\(a\)\(2\)\(C\)](#). [\[57\]](#) Some USCIS

forms, including [Form I-485](#), require aliens to indicate if they have ever trafficked in or benefited from, or knowingly aided, assisted, conspired or colluded in the illegal trafficking of any controlled substances, such as chemicals, illegal drugs, or narcotics. [Form I-485](#) also requires aliens to indicate if, within the last 5 years, they obtained from a spouse or parent any financial or other benefit from illicit trafficking of a controlled substance or listed substance or chemical.

If an alien misrepresents information regarding illicit trafficking of a controlled substance or listed substance or chemical or obtaining financial or other benefits from illicit trafficking when answering questions on Form I-485, the alien could also be found inadmissible under [INA 212\(a\)\(6\)\(C\)\(i\)](#). [\[58\]](#)

5. Derogatory Information

In general, USCIS is required to provide sufficient notice when derogatory information is uncovered during the course of the adjudication that is not known to the alien and USCIS intends to deny the benefit request on the basis of that derogatory information. [\[59\]](#) If the alien is unaware of the derogatory information and its impact on eligibility, USCIS must provide the alien an opportunity to rebut that information. [\[60\]](#)

I. Guidelines for Inadmissibility Determinations

The tables below map out the process for making admissibility determinations by class of alien described in [INA 212\(a\)\(2\)\(C\)](#).

1. Controlled Substance Traffickers

The following table provides officers with an overview of how to determine whether an alien who is or was an illicit trafficker of any controlled substance or in any listed substance or chemical is inadmissible. [\[61\]](#)

Overview of Inadmissibility Determination of Controlled Substance Traffickers

Step	If yes, then...	If no, then...
Step 1: Determine whether the conduct involves a controlled substance or listed substance or chemical as defined in 21 U.S.C. 802 . [62]	Go to Step 2.	Alien is not inadmissible under INA 212(a)(2)(C)(i) .
Step 2: Determine whether the alien is an illicit trafficker based on his or her activity with a controlled substance or listed substance or chemical. [63]	Go to Step 3.	Alien is not inadmissible under INA 212(a)(2)(C)(i) . [64]
Step 3: Determine if the alien qualifies for any waiver. [65]	The officer may issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to the alien to provide him or her an opportunity to request a waiver, unless already requested. If the waiver is approved, the officer should continue with the adjudication of the application.	Alien is inadmissible under INA 212(a)(2)(C)(i) .

In order to find an alien inadmissible, an officer only needs to know or have reason to believe ^[66] that an alien is or has been a trafficker of any controlled substance or in any listed substance or chemical. A conviction is not required for an alien to be inadmissible under this ground. However, if the alien was convicted as a controlled substance trafficker, that conviction is evidence that the alien is inadmissible under [INA 212\(a\)\(2\)\(C\)\(i\)](#).

2. Aiders, Abettors, Assistors, Conspirators, or Colluders to Controlled Substance Traffickers

The following table provides officers with an overview of how to determine whether an alien is inadmissible as a knowing aider, abettor, assister, conspirator, or colluder with others in illicit trafficking of any controlled substance or listed substance or chemical. ^[67]

Overview of Inadmissibility Determination for Aider, Abettor, Assister, Conspirator, or Colluder to Controlled Substance Traffickers

Step	If yes, then...	If no, then...
Step 1: Determine whether the conduct involves a controlled substance or listed substance or chemical as defined in 21 U.S.C. 802 . ^[68]	Go to Step 2.	Alien is not inadmissible under INA 212(a)(2)(C)(i) .
Step 2: Determine whether the activity with a controlled substance or listed substance or chemical is illicit trafficking. ^[69]	Go to Step 3.	Alien is not inadmissible under INA 212(a)(2)(C)(i) .

Step 3: Determine whether the alien is or has been involved in activities supporting the illicit trafficking of a controlled substance or listed substance or chemical or endeavored to do so.	Go to Step 4.	Alien is not inadmissible under INA 212(a)(2)(C)(i) .
Step 4: Determine if the alien qualifies for a waiver of inadmissibility. [70]	The officer may issue an RFE or NOID to the alien to provide him or her an opportunity to request a waiver, unless already requested. If the waiver is approved, the officer should continue with the adjudication of the application.	Alien is inadmissible under INA 212(a)(2)(C)(i) .

An officer only needs to know or have reason to believe [\[71\]](#) an alien is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in illicit trafficking of any controlled substances or listed substance or chemical, or endeavored to do so. A conviction is not required for an alien to be inadmissible under this ground. However, if the alien was convicted of aiding, abetting, assisting, conspiring, or colluding to commit an illicit trafficking offense of any controlled substance or listed substance or chemical, the conviction is evidence that the alien is inadmissible under [INA 212\(a\)\(2\)\(C\)\(i\)](#).

3. Alien Beneficiaries of a Controlled Substance Trafficker

The following table provides officers with an overview of how to determine whether an alien is inadmissible as an alien who is a beneficiary of a controlled substance trafficker. [\[72\]](#)

Overview of Inadmissibility Determination for Alien Beneficiary of a Controlled Substance Trafficker

Step	If yes, then...	If no, then...
Step 1: Determine whether the conduct involves a controlled substance or listed substance or chemical as defined in 21 U.S.C. 802 . [73]	Go to Step 2.	Alien is not inadmissible under INA 212(a)(2)(C)(ii) .
Step 2: Determine whether the activity with a controlled substance or listed substance or chemical is illicit trafficking. [74]	Go to Step 3.	Alien is not inadmissible under INA 212(a)(2)(C)(ii) .
Step 3: Determine whether the alien is the spouse, son, or daughter of an alien who would be inadmissible for illicit trafficking of a controlled substance or listed substance or chemical. [75]	Go to Step 4.	Alien is not inadmissible under INA 212(a)(2)(C)(ii) .
Step 4: Determine if the alien:		

• Has, with the previous 5 years, obtained any financial or other benefit from the illicit activity of the alien who is the spouse or parent; and • Knew or reasonably should have known that the financial or other benefit was the product of such illicit activity. [76]	Go to Step 5.	Alien is not inadmissible under INA 212(a)(2)(C)(ii) .
Step 5: Determine if the alien qualifies for any waiver. [77]	The officer may issue an RFE or NOID to the alien to provide him or her an opportunity to request a waiver, unless already requested. If the waiver is approved, the officer should continue with the adjudication of the application.	Alien is inadmissible under INA 212(a)(2)(C)(ii) .

An officer only needs to know or have reason to believe [\[78\]](#) that an alien is or has been a beneficiary of illicit trafficking of any controlled substance or listed substance or chemical. A conviction is not required for an alien to be inadmissible under this ground.

Footnotes

[^1] See [INA 212\(a\)\(2\)\(C\)\(i\)](#).

[^2] See [INA 212\(a\)\(2\)\(C\)\(i\)](#).

[^3] An alien must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. See [8 CFR 103.2\(b\)\(1\)](#). Therefore, USCIS not only will consider any financial or other benefits obtained from the illicit activity 5 years before the alien files for an immigration benefit, but will also consider such benefits that may have been received after filing and up to final adjudication of the immigration benefit.

[^4] See [INA 212\(a\)\(2\)\(C\)\(ii\)](#).

[^5] See Harrison Narcotics Act of 1914, [Pub. L. 63-223 \(PDF\)](#), 38 Stat. 785 (December 17, 1914) and Narcotic Drug Import and Export Act of 1922, [Pub. L. 67-227 \(PDF\)](#), 42 Stat. 596 (May 26, 1922).

[^6] This Act is also referred to as the McCarran-Walter Act, [Pub. L. 82-414 \(PDF\)](#) (June 27, 1952).

[^7] See Harrison Narcotics Act of 1914, [Pub. L. 63-223 \(PDF\)](#), 38 Stat. 785 (December 17, 1914) amended by the Revenue Act of 1918, [Pub. L. 65-254 \(PDF\)](#), 40 Stat. 1057 (February 24, 1919), Narcotic Drug Import and Export Act of 1922, [Pub. L. 67-227 \(PDF\)](#), 42 Stat. 596 (May 26, 1922) (providing for deportation of an alien convicted of importing narcotic drugs into the United States), the Revenue Act of 1926, [Pub. L. 69-20 \(PDF\)](#), 44 Stat. 9 (February 26, 1926) (granting control over the importation, manufacture, compounding, sale, dealing in, dispensing of certain substances such as opium and coca leaves), and [Pub. L. 71-683 \(PDF\)](#), 46 Stat. 1171 (February 18, 1931) (providing for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics).

[^8] See [Pub. L. 82-414 \(PDF\)](#), 66 Stat. 163, 184 (June 27, 1952).

[^9] See Comprehensive Drug Abuse Prevention and Control Act of 1970, [Pub.](#)

[L. 91-513 \(PDF\)](#), Title II, 84 Stat. 1242 (October 27, 1970) (codified as amended at 21 U.S.C. 801–904).

[\[^ 10\]](#) See Anti-Drug Abuse Act of 1986, [Pub. L. 99-570 \(PDF\)](#), 100 Stat. 3207, 3247 (October 27, 1986).

[\[^ 11\]](#) See Foreign Relations Authorization Act, Fiscal years 1988 and 1989, [Pub. L. 100-204 \(PDF\)](#), 101 Stat. 1331, 1399 (December 22, 1987).

[\[^ 12\]](#) See Foreign Relations Authorization Act, Fiscal years 1988 and 1989, [Pub. L. 100-204 \(PDF\)](#), 101 Stat. 1331, 1399 (December 22, 1987).

[\[^ 13\]](#) See Section 308(a) of IIRIRA, Division C of [Pub. L. 104-208 \(PDF\)](#) (September 30, 1996).

[\[^ 14\]](#) See Section 809 of the Intelligence Authorization Act for Fiscal Year 2000, [Pub. L. 106-120 \(PDF\)](#) (December 3, 1999).

[\[^ 15\]](#) See [21 U.S.C. 802](#) and [21 U.S.C. 812](#).

[\[^ 16\]](#) See [Matter of Favela \(PDF\)](#), 16 I&N Dec. 753 (BIA 1979).

[\[^ 17\]](#) For more information, see Section F, Reason to Believe [\[8 USCIS-PM D.10\(F\)\]](#).

[\[^ 18\]](#) See [21 U.S.C. 802\(6\)](#). For a full list of controlled substances or listed substance or chemicals, see [21 U.S.C. 812](#) and [21 CFR 1308.11 - 1308.15](#).

[\[^ 19\]](#) See [21 U.S.C. 802\(33\)](#).

[\[^ 20\]](#) An alien is not inadmissible under [INA 212\(a\)\(2\)\(C\)](#) if the substance or chemical involved is considered a controlled substance in another country and is not listed in 21 U.S.C. 802.

[\[^ 21\]](#) See, for example, [Lopez Ventura v. Sessions \(PDF\)](#), 907 F.3d 306, 315-316 (5th Cir. 2018).

[\[^ 22\]](#) See [Matter of L-G-H- \(PDF\)](#), 26 I&N Dec. 365, 368 (BIA 2014) (citing [Matter of Davis \(PDF\)](#), 20 I&N Dec. 536, 540-41 (BIA 1992), modified on other grounds, [Matter of Yanez \(PDF\)](#), 23 I&N Dec. 390 (BIA 2002)).

[^ 23] See [Matter of Favela \(PDF\)](#), 16 I&N Dec. 753 (BIA 1979).

[^ 24] See *Matter of P-*, 5 I&N Dec. 190 (BIA 1953).

[^ 25] See *Matter of R-H*, 7 I&N Dec. 675 (BIA 1958).

[^ 26] See *Matter of R-H*, 7 I&N Dec. 675, 678 (BIA 1958).

[^ 27] See [18 U.S.C. 924\(c\)\(2\)](#), [21 U.S.C. 801](#) et seq., and [21 U.S.C. 951](#) et seq.

[^ 28] See *Matter of P-*, 5 I&N Dec. 190 (BIA 1953).

[^ 29] See *Matter of P-*, 5 I&N Dec. 190 (BIA 1953).

[^ 30] See [INA 212\(a\)\(2\)\(C\)\(ii\)](#).

[^ 31] For more information on discretionary analysis for immigration benefits, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [[1 USCIS-PM E.8](#)] and for adjustment of status applications, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [[7 USCIS-PM A.10](#)].

[^ 32] For example, if the alien is applying for adjustment of status as a family-based immigrant, INA 245(a) allows the officer to consider relevant factors and information based on the totality of the circumstances on whether the alien merits a favorable exercise of discretion. See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [[7 USCIS-PM A.10](#)].

[^ 33] For more information on discretionary analysis for immigration benefits, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [[1 USCIS-PM E.8](#)] and for adjustment of status applications, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [[7 USCIS-PM A.10](#)].

[^ 34] See [Matter of Pagnerre \(PDF\)](#), 13 I&N Dec. 688 (BIA 1971). See [Matter of Mowrer \(PDF\)](#), 17 I&N Dec. 613 (BIA 1981).

[^ 35] If an alien has been convicted of a controlled substance offense, he or she may be subject to three or more separate grounds of inadmissibility: [INA 212\(a\)\(2\)\(A\)\(i\)\(I\)](#), [INA 212\(a\)\(2\)\(A\)\(i\)\(II\)](#), and [INA 212\(a\)\(2\)\(C\)\(i\)](#). All grounds of inadmissibility under [INA 212\(a\)](#) should be determined separately, if applicable.

[^ 36] Prima facie evidence is defined as evidence that will establish a fact or sustain a judgement unless contradictory evidence is produced. See Black Law Dictionary (12th ed. 2024).

[^ 37] See [Matter of Favela \(PDF\)](#), 16 I&N Dec. 753 (BIA 1979).

[^ 38] See [Matter of Favela \(PDF\)](#), 16 I&N Dec. 753 (BIA 1979).

[^ 39] See [Matter of Rico \(PDF\)](#), 16 I&N Dec. 181 (BIA 1977).

[^ 40] See [8 CFR 101.3](#) and [8 CFR 264.2](#). See [INA 289](#). See Volume 7, Adjustment of Status, Part O, Registration, Chapter 3, Children Born in the United States to Accredited Diplomats [[7 USCIS-PM O.3](#)] and Chapter 5, Other Special Laws, Section A, American Indians Born in Canada [[7 USCIS-PM O.5\(A\)](#)].

[^ 41] See [INA 245\(j\)](#). See [8 CFR 245.11](#).

[^ 42] See [INA 245\(m\)](#). See [8 CFR 245.24\(b\)](#).

[^ 43] See [INA 102](#). See [22 CFR 41.21\(d\)\(2\)](#).

[^ 44] See [INA 102](#). See [22 CFR 41.21\(d\)\(2\)](#).

[^ 45] See [INA 102](#). See [22 CFR 41.21\(d\)\(2\)](#). For more information on limited application of ineligibilities to officials and employees of foreign governments and international organizations, see [9 FAM 402.3](#).

[^ 46] See [INA 102](#). See [22 CFR 41.21\(d\)\(2\)](#).

[^ 47] See [INA 102](#). See [22 CFR 41.21\(d\)\(2\)](#).

[^ 48] For more information, see Volume 9, Waivers and Other Forms of Relief, Part, A, Waiver Policies and Procedures, Chapter 2, Forms of Relief [[9 USCIS-PM A.2](#)].

[^ 49] See [INA 212\(d\)\(1\)](#) and [INA 212\(d\)\(3\)](#).

[^ 50] See [INA 212\(d\)\(3\)](#) and [INA 212\(d\)\(13\)](#). See Volume 9, Waivers and Other Forms of Relief, Part O, Victims of Trafficking [[9 USCIS-PM O](#)].

[^ 51] See [INA 245\(l\)](#). See [8 CFR 245.23](#). See Volume 9, Waivers and Other Forms of Relief, Part O, Victims of Trafficking [[9 USCIS-PM O](#)].

[^ 52] See [INA 212\(d\)\(14\)](#).

[^ 53] For more information on adjustment of status, see Volume 7, Adjustment of Status [[7 USCIS-PM](#)].

[^ 54] See [INA 291](#). See [Matter of Bett \(PDF\)](#), 26 I&N Dec. 437 (BIA 2014). For more information, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 4, Burden and Standards of Proof [[1 USCIS-PM E.4](#)].

[^ 55] See [INA 291](#).

[^ 56] See [INA 291](#). See [Matter of Bett \(PDF\)](#), 26 I&N Dec. 437 (BIA 2014).

[^ 57] See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence [[1 USCIS-PM E.6](#)].

[^ 58] For more information, see Part J, Fraud and Willful Misrepresentation [[8 USCIS-PM J](#)].

[^ 59] See [8 CFR 103.2\(b\)\(16\)](#).

[^ 60] When a benefit requestor is aware of the information that USCIS may use to make an adverse determination because the benefit requestor provided the information or the information was provided in support of another benefit request filed by the same requestor, USCIS may, but is not required to, disclose information in a detailed description before issuing a final decision. See [8 CFR 103.2\(b\)\(16\)\(i\)](#). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny, Subsection 4, Notices of Intent to Deny [[1 USCIS-PM E.6\(F\)\(4\)](#)] and Section G, Derogatory Information Unknown to the Benefit Requestor, Subsection 1, Documents and Information That USCIS Cannot

Disclose [[1 USCIS-PM E.6\(G\)\(1\)](#)] and Subsection 3, How USCIS Discloses Derogatory Information [[1 USCIS-PM E.6\(G\)\(3\)](#)].

[[^ 61](#)] The inadmissibility ground under [INA 212\(a\)\(2\)\(C\)](#) applies to any alien seeking a benefit which requires an inadmissibility determination. However, the guidance outlined in this subsection is intended for USCIS officers and does not include guidance for other agencies that may also make inadmissibility determinations.

[[^ 62](#)] See Section D, Overview of Controlled Substance Traffickers, Subsection 1, Conduct Involving a Controlled Substance or Listed Chemical as Defined in 21 U.S.C. 802 [[8 USCIS-PM D.10\(D\)\(1\)](#)].

[[^ 63](#)] See Section D, Overview of Controlled Substance Traffickers, Subsection 2, Illicit Trafficking [[8 USCIS-PM D.10\(D\)\(2\)](#)].

[[^ 64](#)] The alien may be subject to the grounds of inadmissibility under [INA 212\(a\)\(2\)\(A\)\(i\)\(I\)](#) and [INA 212\(a\)\(2\)\(A\)\(i\)\(II\)](#).

[[^ 65](#)] See Section G, Exceptions, Exemptions, and Waivers of Inadmissibility [[8 USCIS-PM D.10\(G\)](#)].

[[^ 66](#)] See Section F, Reason to Believe [[8 USCIS-PM D.10\(F\)](#)].

[[^ 67](#)] The inadmissibility ground under [INA 212\(a\)\(2\)\(C\)\(i\)](#) applies to any alien seeking a benefit which requires an inadmissibility determination. However, the guidance outlined in this subsection is intended for USCIS officers and does not include guidance for other agencies that may also make inadmissibility determinations.

[[^ 68](#)] See Section D, Overview of Controlled Substance Traffickers, Subsection 1, Conduct Involving a Controlled Substance or Listed Chemical as Defined in 21 U.S.C. 802 [[8 USCIS-PM D.10\(D\)\(1\)](#)].

[[^ 69](#)] See Section D, Overview of Controlled Substance Traffickers, Subsection 2, Illicit Trafficking [[8 USCIS-PM D.10\(D\)\(2\)](#)].

[[^ 70](#)] See Section G, Exceptions, Exemptions, and Waivers [[8 USCIS-PM D.10\(G\)](#)].

[^ 71] See Section F, Reason to Believe [8 USCIS-PM D.10(F)].

[^ 72] The inadmissibility ground under [INA 212\(a\)\(2\)\(C\)\(ii\)](#) applies to any alien seeking a benefit which requires an inadmissibility determination. However, the guidance outlined in this subsection is intended for USCIS officers and does not include guidance for other agencies that may also make inadmissibility determinations.

[^ 73] See Section D, Overview of Controlled Substance Traffickers, Subsection 1, Conduct Involving a Controlled Substance or Listed Chemical as Defined in 21 U.S.C. 802 [8 USCIS-PM D.10(D)(1)].

[^ 74] See Section D, Overview of Controlled Substance Traffickers, Subsection 2, Illicit Trafficking [8 USCIS-PM D.10(D)(2)].

[^ 75] See Section E, Alien Beneficiaries of a Controlled Substance Trafficker, Subsection 2, Familial Relationship to the Spouse Who is a Controlled Substance Trafficker [8 USCIS-PM D.10(E)(2)].

[^ 76] See Section E, Alien Beneficiaries of a Controlled Substance Trafficker [8 USCIS-PM D.10(E)].

[^ 77] See Section G, Exceptions, Exemptions, and Waivers of Inadmissibility [8 USCIS-PM D.10(G)].

[^ 78] See Section F, Reason to Believe [8 USCIS-PM D.10(F)].

Current as of October 02, 2026

