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Chapter 14 - Significant Traffickers in Persons

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A. Purpose

Section 212(a)(2)(H) of the Immigration and Nationality Act (INA) is designed to protect the United States and its people from human trafficking by rendering any alien involved in human trafficking inside or outside the United States inadmissible. Under [INA 212\(a\)\(2\)\(H\)\(i\)](#), the following aliens are inadmissible:

- Any alien who commits or conspires to commit human trafficking offenses inside or outside the United States; [\[1\]](#) or
- Any alien who a consular officer, DHS, the U.S. Department of State (DOS), or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons as defined in [22 U.S.C. 7102](#). [\[2\]](#)

Additionally, the following aliens are inadmissible under [INA 212\(a\)\(2\)\(H\)\(ii\)](#):

- Any alien who a consular officer, DHS, DOS, or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under [INA 212\(a\)\(2\)\(H\)\(i\)](#) and has:
 - Obtained any financial or other benefit from the illicit activity of their spouse or parent 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. ^[3]

B. Background

In 2000, Congress passed the [Victims of Trafficking and Violence Protection Act of 2000 \(TVPA\) \(PDF\)](#), adding INA 212(a)(2)(H) to the inadmissibility grounds. ^[4] This provision made aliens who have been involved in or benefited from severe forms of trafficking in persons inadmissible to the United States. The TVPA was intended to help combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude in the United States and countries around the world through prevention, through prosecution and enforcement against traffickers, and through protection and assistance to victims of trafficking. ^[5]

Congress did not provide any waivers of this inadmissibility ground in [INA 212](#). However, an exception was included ^[6] for any son or daughter of an alien inadmissible under INA 212(a)(2)(H)(ii), provided the son or daughter was a child ^[7] at the time he or she obtained any financial or other benefit from his or her alien parent's involvement in the illicit activity. Additionally, certain categories of nonimmigrants and immigrants may be exempt or have a waiver of inadmissibility available under other sections of law. ^[8]

C. Legal Authorities

- [INA 212\(a\)\(2\)\(H\)](#) – Significant traffickers in persons

D. Definitions

This ground of inadmissibility references a number of definitions under [22 U.S.C. 7102](#), which are critical to making human trafficking inadmissibility determinations.

1. Severe Forms of Trafficking in Persons

“Severe forms of trafficking in persons,” as defined in [22 U.S.C. 7102\(11\)](#), means:

- Sex trafficking [\[9\]](#) in which a commercial sex act is induced by force, fraud, or coercion, [\[10\]](#) or in which the person induced to perform the act is under age 18; [\[11\]](#) or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through force, fraud, or coercion for the purpose of subjection to involuntary servitude, [\[12\]](#) peonage, debt bondage, [\[13\]](#) or slavery. [\[14\]](#)

2. Sex Trafficking

“Sex trafficking,” as defined in [22 U.S.C. 7102\(12\)](#), means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

3. Coercion

“Coercion,” as defined in [22 U.S.C. 7102\(3\)](#), means:

- Threats of serious harm to or physical restraint against any person;
- Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- The abuse or threatened abuse of the legal process.

4. Involuntary Servitude

"Involuntary servitude," as defined in [22 U.S.C. 7102\(8\)](#), includes a condition of servitude induced by means of:

- Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or
- The abuse or threatened abuse of the legal process.

5. Debt Bondage

"Debt bondage," as defined in [22 U.S.C. 7102\(7\)](#), means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

E. Aliens Who Commit or Conspire to Commit Human Trafficking Offenses

The initial language of [INA 212\(a\)\(2\)\(H\)\(i\)](#) provided that any alien who is listed and identified as a significant trafficker in persons in a report to Congress is inadmissible. [\[15\]](#) The referenced report included "any foreign person" [\[16\]](#) who played a significant role or materially assisted in a severe form of trafficking in persons, directly or indirectly in the United States. [\[17\]](#)

In 2008, Congress amended INA 212(a)(2)(H)(i) to replace the reference to any alien listed as a significant trafficker in persons with any alien "who commits or conspires to commit human trafficking offenses in the United States or outside the United States." [\[18\]](#) This broadened the scope of aliens who may be found inadmissible as significant traffickers in persons by not limiting inadmissibility to only those "foreign persons" identified and reported to Congress.

F. Beneficiaries of Trafficking

The spouse, son, or daughter of an alien who is inadmissible as a significant trafficker in persons is inadmissible if the spouse, son, or daughter:

- Has obtained any financial or other benefit from the illicit activity of the inadmissible spouse or parent within the previous 5 years; [\[19\]](#) and
- Knew or reasonably should have known that the financial or other benefit was the product of such illicit activity. [\[20\]](#)

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\(a\)\(2\)\(H\)\(ii\)](#). However, when the spouse, son, or daughter of the alien inadmissible under INA 212(a)(2)(H)(i) applies for a discretionary immigration benefit, an officer may still consider any financial or other benefit that was knowingly (or that the alien reasonably should have known was) obtained as the product of the illicit activity at any time 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 benefit was that was knowingly (or that the alien reasonably should have known was) received, as well as the amount received when determining the weight to attribute to this negative factor in a case-by-case discretionary analysis. [\[21\]](#)

1. Inadmissibility in Connection to the Spouse or Parent

A spouse, son, or daughter can be found inadmissible as the beneficiary of trafficking even if his or her inadmissible spouse or parent had not previously been found inadmissible under [INA 212\(a\)\(2\)\(H\)\(i\)](#) by an immigration judge, DHS, or DOS.

In cases involving the spouse, son, or daughter of an inadmissible spouse or parent, an officer must assess that his or her spouse or parent would be found inadmissible under INA 212(a)(2)(H)(i) if his or her spouse or parent were to apply for an immigration benefit, and then determine if the spouse, son, or

daughter is inadmissible as the beneficiary of trafficking.

2. Familial Relationship to the Inadmissible Spouse

An alien who meets the definition of spouse can be found inadmissible as the beneficiary of trafficking if the spouse is currently married to the alien who is inadmissible under [INA 212\(a\)\(2\)\(H\)\(i\)](#). If the marriage has been terminated due to divorce or death of the inadmissible spouse, then the former spouse may not be found inadmissible as the beneficiary of trafficking.

An officer may also, as part of a discretionary determination, consider the fact that an alien benefited from the illicit activity of a former spouse if at any time he or she knew or reasonably should have known that the benefit was the product of such illicit activity, when he or she applies for a discretionary immigration benefit. [\[22\]](#) The officer may consider this 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 benefit was knowingly received and the amount received, along with any extenuating circumstances when determining the weight to attribute to this negative factor in a case-by-case discretionary analysis. [\[23\]](#)

3. Familial Relationship to Inadmissible Parent

The son or daughter of an alien inadmissible under [INA 212\(a\)\(2\)\(H\)\(i\)](#) remains the son or daughter of that inadmissible parent even after the death of the parent. Additionally, a step-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. [\[24\]](#)

G. Reason to Believe

A determination of inadmissibility for being a knowing aider, abettor, assister, conspirator, or colluder of a significant trafficker in persons or for finding an

alien to be the beneficiary of severe forms of trafficking in persons only requires a “reason to believe.” ^[25] “Reason to believe” is substantially lower than what would be required for a conviction in a court of law.

At the same time, suspicion is not sufficient to find an alien inadmissible under the reason to believe standard. There must be reasonable, substantial, and probative evidence to support the belief that the alien either is involved or has been involved with severe forms of trafficking in persons or is benefitting from or has benefitted from trafficking. ^[26]

If the alien has been convicted of aiding, abetting, assisting, conspiring, or colluding with a trafficker to commit a severe form of trafficking in persons offense, the conviction is evidence that the alien is inadmissible under [INA 212\(a\)\(2\)\(H\)\(i\)](#). However, a conviction is not required for an alien to be inadmissible. For example, an alien could be found inadmissible under INA 212(a)(2)(H)(i) even though criminal charges have been dismissed, or even if an alien has never been arrested. USCIS may also have reason to believe an alien is a knowing aider, abettor, assister, conspirator, or colluder of a trafficker in severe forms of trafficking in persons based on the alien’s admission, a record of arrests with an unexplained failure to prosecute by the local government, or reliable and corroborative reports.

Similarly, an alien’s spouse or parent is not required to be convicted of a human trafficking or severe form of trafficking in persons offense for an alien to be inadmissible as a beneficiary of trafficking. Additionally, an alien is not required to be convicted of benefiting financially or in any other way from human trafficking or severe forms of trafficking in persons to be inadmissible. ^[27]

H. Exceptions, Exemptions, and Waivers of Inadmissibility

1. Exceptions

A son or daughter who was a child ^[28] at the time he or she received the

benefits of the illicit activity of their parent is not inadmissible under [INA 212\(a\)\(2\)\(H\)\(ii\)](#). ^[29] There is no exception in the statute applicable to current spouses who benefited from the illicit activity of their spouse.

2. Exemptions

For certain immigration benefits, aliens are not subject to the inadmissibility ground under [INA 212\(a\)\(2\)\(H\)](#). 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. ^[30]

Victims of qualifying criminal activity (U nonimmigrants) applying for adjustment of status under INA 245(m) are also exempt from the significant trafficking in persons inadmissibility, because the ground does not apply to their immigrant category. ^[31]

Additionally, some nonimmigrant categories are not subject to [INA 212\(a\)\(2\)\(H\)](#), including:

- Diplomats or foreign government officials (A-1 and A-2 nonimmigrants);
- Aliens transiting to and from the United Nations Headquarters District (C-2 nonimmigrants);
- Foreign government officials, their immediate family members, attendants, servants, or personal employees in immediate and continuous transit through the United States (C-3 nonimmigrants);
- Employees of international organizations and members of their immediate family members (G-1, G-2, G-3, and G-4 nonimmigrants); and
- Employees of the North Atlantic Treaty Organization (NATO) and their immediate family members (NATO-1 through NATO-4 and NATO-6 nonimmigrants). ^[32]

3. Waivers

While there is no immigrant waiver available for this ground of inadmissibility within [INA 212](#), Congress has established a few category-specific waivers in other sections of law. [\[33\]](#)

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 make a formal request for 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 the eligibility requirements for that waiver and merits a favorable exercise of discretion. Examples of immigrant categories where a waiver is available for this ground include aliens applying for adjustment to lawful permanent residence as:

- Special immigrant juveniles (SIJs); [\[34\]](#)
- Victims of trafficking (T nonimmigrants); [\[35\]](#)
- Refugees; [\[36\]](#)
- Asylees; [\[37\]](#)
- Certain entrants before January 1, 1982 (“Legalization”); [\[38\]](#)
- Aliens with continuous residence in the United States since before January 1, 1972 (“Registry”); [\[39\]](#) and
- Amerasians under the Amerasian Homecoming Act. [\[40\]](#)

Aliens may also apply for a waiver of this inadmissibility when applying for certain other immigration benefits, including, but not limited to, aliens seeking:

- Temporary residence as a special agricultural worker; [\[41\]](#)
- Temporary Protected Status; [\[42\]](#) and
- Suspension of deportation or special rule cancellation of removal pursuant to the Nicaraguan Adjustment and Central American Relief Act

(NACARA). [\[43\]](#)

[INA 212\(d\)\(3\)\(A\)](#) provides for a discretionary waiver of inadmissibility under [INA 212\(a\)\(2\)\(H\)](#) for an alien applying for admission to the United States as a nonimmigrant.

I. Adjudication

1. Applicability

This ground of inadmissibility applies to any alien seeking a benefit for which admissibility is required. This includes, but is not limited to, any alien seeking admission to the United States at a U.S. port of entry, any alien seeking a nonimmigrant or immigrant visa with DOS at a U.S. embassy or consulate outside of the United States, or any alien seeking adjustment of status. [\[44\]](#)

2. Burden of Proof

The burden of proof to establish admissibility when seeking an immigration benefit is always on the alien. [\[45\]](#) The burden never shifts to USCIS at any time during adjudication. [\[46\]](#)

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 INA 212(a)(2)(H)(i), the officer should find that the alien is inadmissible unless the alien is able to show clearly and beyond doubt [\[47\]](#) that he or she:

- Did not commit or conspire to commit human trafficking offenses inside or outside the United States; or
- Is not or has not been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons as defined in [22 U.S.C. 7102](#).

If there is evidence in the record that would permit a reasonable person to conclude that the alien is inadmissible under INA 212(a)(2)(H)(ii), the officer should find that the alien is inadmissible unless the alien is able to show clearly and beyond doubt [\[48\]](#) that he or she:

- Is not the spouse, son, or daughter of an alien inadmissible under INA 212(a)(2)(H)(i);
- Has not obtained any financial or other benefit from the illicit activity of a spouse or parent within the previous 5 years; or
- 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\(a\)\(2\)\(H\)](#) must be based on evidence, such as convictions, arrest records, systems and security checks, oral testimony, written testimony, or any other documentation containing information about the alien's involvement in the severe trafficking in persons.

An alien's conviction for human trafficking offenses is prima facie evidence [\[49\]](#) that the alien is inadmissible under INA 212(a)(2)(H)(i).

USCIS considers responses on applications and petitions as evidence when determining if an alien is inadmissible under [INA 212\(a\)\(2\)\(H\)](#). [\[50\]](#) Some USCIS forms, including [Form I-485](#), require aliens to indicate if they have ever been involved in the trafficking of another person, or if they have benefited from a spouse or parent's involvement in the trafficking of another person.

If an alien misrepresents information regarding severe trafficking in persons when answering questions on Form I-485, the alien could also be found inadmissible under [INA 212\(a\)\(6\)\(C\)\(i\)](#). [\[51\]](#)

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. [\[52\]](#) 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. [\[53\]](#)

J. Guidelines for Inadmissibility Determinations

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

1. Aliens Who Committed or Conspired to Commit Human Trafficking Offenses

The following table provides officers with an overview of how to determine whether an alien is inadmissible for committing or conspiring to commit human trafficking offenses. [\[54\]](#)

Overview of Inadmissibility Determination for Aliens Who Committed or Conspired to Commit Human Trafficking Offenses

Step	If yes, then...	If no, then...
Step 1: Determine whether the alien has committed human trafficking offenses inside or outside the United States. [55]	Go to Step 3.	Go to Step 2.
Step 2: Determine		

whether the alien has conspired to commit human trafficking offenses inside or outside the United States. [56]	Go to Step 3.	Alien is not inadmissible under INA 212(a)(2)(H)(i) .
Step 3: Determine if the alien qualifies for a waiver. [57]	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)(H)(i) .

An officer only needs to find the alien has committed or conspired to commit human trafficking offenses inside or outside of the United States. A conviction is not required for an alien to be inadmissible under this ground. However, if the alien was convicted of a human trafficking offense, the conviction is evidence that the alien is inadmissible under [INA 212\(a\)\(2\)\(H\)\(i\)](#).

2. Aiders, Abettors, Assisters, Conspirators, or Colluders of Traffickers in Severe Forms of Trafficking in Persons

The following table provides officers with an overview of how to determine whether an alien is inadmissible as an aider, abettor, assister, conspirator, or colluder of traffickers in severe forms of trafficking in persons. [\[58\]](#)

Overview of Inadmissibility Determination for Aiders, Abettors, Assisters,

Conspirators, or Colluders of Traffickers in Severe Forms of Trafficking in Persons

Step	If yes, then...	If no, then...
Step 1: Determine whether the alien is or has been a knowing aider, abettor, assister, conspirator, or colluder of a trafficker in severe forms of trafficking in persons. [59]	Go to Step 3.	Go to Step 2.
Step 2: Determine whether there is reason to believe [60] that the alien is or has been a knowing aider, abettor, assister, conspirator, or colluder of a trafficker in severe forms of trafficking in persons. [61]	Go to Step 3.	Alien is not inadmissible under INA 212(a)(2)(H)(i).
Step 3: Determine if the alien qualifies for a waiver. [62]	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	Alien is inadmissible under INA 212(a)(2)(H)(i).

	continue with the adjudication of the application.	
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An officer only needs to know or have reason to believe [\[63\]](#) an alien is or has been a knowing aider, abettor, assister, conspirator, or colluder of a human trafficker in severe forms of trafficking in persons. 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 a human trafficking offense, the conviction is evidence that the alien is inadmissible under [INA 212\(a\)\(2\)\(H\)\(i\)](#).

3. Beneficiaries of Trafficking

The following table provides officers with an overview of how to determine whether an alien is inadmissible as the beneficiary of trafficking. [\[64\]](#)

Overview of Inadmissibility Determination for Beneficiaries of Human Trafficking

Step	If yes, then...	If no, then...
Step 1: Determine whether the alien is a child, son, daughter, [65] or spouse [66] of a human trafficker [67] or of an aider, abettor, assister, conspirator, or colluder of a trafficker in severe forms of trafficking in persons.	Is the alien a child, and if so, then he or she meets the exception in INA 212(a)(2)(H)(iii) and is not inadmissible under INA 212(a)(2)(H)(ii). If the alien is not a child, go to Step 2.	Alien is not inadmissible under INA 212(a)(2)(H)(ii) .

Step 2: Determine whether the alien has obtained any financial or other benefit from the illicit activity of his or her alien parent or spouse.	Go to Step 4.	Go to Step 3.
Step 3: Determine whether there is reason to believe [68] that the alien obtained any financial or other benefit from the illicit activity by his or her alien parent or spouse.	Go to Step 4.	Alien is not inadmissible under INA 212(a)(2)(H) (ii).
Step 4: Determine whether the alien knew or reasonably should have known that the benefit resulted from the illicit activity of his or her spouse or parent.	Go to Step 5.	Alien is not inadmissible under INA 212(a)(2)(H) (ii).
Step 5: Determine whether the benefit was received within the previous 5 years.	Go to Step 6.	Alien is not inadmissible under INA 212(a)(2)(H) (ii).
	The officer may issue an RFE or NOID to the alien to provide the alien with an opportunity to request a waiver,	Alien is inadmissible

Step 6: Determine if the alien qualifies for a waiver. [69]	unless already requested. If the waiver is approved, the officer should continue with the adjudication of the application.	under INA 212(a)(2)(H)(ii).
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An officer only needs to know or have reason to believe [\[70\]](#) an alien obtained a benefit from severe forms of trafficking in persons and knew or should have known that the benefit was the product of such illicit activity. A conviction is not required for an alien to be inadmissible under this ground.

Footnotes

[\[¹\]](#) See [INA 212\(a\)\(2\)\(H\)\(i\)](#). See Section E, Aliens Who Commit or Conspire to Commit Human Trafficking Offenses [\[8 USCIS-PM D.14\(E\)\]](#).

[\[²\]](#) See [INA 212\(a\)\(2\)\(H\)\(i\)](#). See Section D, Definitions [\[8 USCIS-PM D.14\(D\)\]](#).

[\[³\]](#) See [INA 212\(a\)\(2\)\(H\)\(ii\)](#). See Section F, Beneficiaries of Trafficking [\[8 USCIS-PM D.14\(F\)\]](#).

[\[⁴\]](#) See the Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. 106-386 \(PDF\)](#) (October 28, 2000).

[\[⁵\]](#) See Sections 102(b)(1)-(4) and (24) of the Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. 106-386 \(PDF\)](#), 114 Stat 1466, 1469 (October 28, 2000).

[\[⁶\]](#) See [INA 212\(a\)\(2\)\(H\)\(iii\)](#).

[\[⁷\]](#) For the definition of “child” see [INA 101\(b\)\(1\)](#).

[^ 8] See Section H, Exceptions, Exemptions, and Waivers of Inadmissibility [[8 USCIS-PM D.14\(H\)](#)].

[^ 9] See [22 U.S.C. 7102\(12\)](#). See Subsection 2, Sex Trafficking [[8 USCIS-PM D.14\(D\)\(2\)](#)].

[^ 10] See [22 U.S.C. 7102\(3\)](#). See Subsection 3, Coercion [[8 USCIS-PM D.14\(D\)\(3\)](#)].

[^ 11] See [22 U.S.C. 7102\(11\)\(A\)](#).

[^ 12] See [22 U.S.C. 7102\(8\)](#). See Subsection 4, Involuntary Servitude [[8 USCIS-PM D.14\(D\)\(4\)](#)].

[^ 13] See [22 U.S.C. 7102\(7\)](#). See Subsection 5, Debt Bondage [[8 USCIS-PM D.14\(D\)\(5\)](#)].

[^ 14] See [22 U.S.C. 7102\(11\)\(B\)](#).

[^ 15] See Section 111(d) of the Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. 106-386 \(PDF\)](#), 114 Stat 1485 (October 28, 2000).

[^ 16] The TVPA defines “foreign person” as any citizen or national of a foreign state or any entity not organized under the laws of the United States, including a foreign government official, but does not include a foreign state. See Section 111(f) of the Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. 106-386 \(PDF\)](#), 114 Stat 1486 (October 28, 2000).

[^ 17] See Section 111(a)(1) and (b) of the Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. 106-386 \(PDF\)](#), 114 Stat 1485 (October 28, 2000).

[^ 18] See Section 222(f)(1) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat 5071 (December 23, 2008). See [INA 212\(a\)\(2\)\(H\)\(i\)](#).

[^ 19] 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 considers any financial or other benefits obtained from the illicit activity 5 years before the

alien files for an immigration benefit, and also considers such benefits that may have been received after filing but up to final adjudication of the immigration benefit.

[^ 20] See [INA 212\(a\)\(2\)\(H\)\(ii\)](#).

[^ 21] 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](#)].

[^ 22] 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](#)].

[^ 23] For more information on discretionary analysis 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 A.10](#)].

[^ 24] See [Matter of Pagnerre \(PDF\)](#), 13 I&N Dec. 688 (BIA 1971). See [Matter of Mowrer \(PDF\)](#), 17 I&N Dec. 613 (BIA 1981).

[^ 25] See [INA 212\(a\)\(2\)\(H\)\(i\)](#) and [INA 212\(a\)\(2\)\(H\)\(ii\)](#).

[^ 26] See [Matter of Rico \(PDF\)](#), 16 I&N Dec. 181 (BIA 1977).

[^ 27] See Section F, Beneficiaries of Trafficking [[8 USCIS-PM D.14\(F\)](#)].

[^ 28] For the definition of a “child,” see [INA 101\(b\)\(1\)](#).

[^ 29] See the exception at [INA 212\(a\)\(2\)\(H\)\(iii\)](#).

[^ 30] 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\(A\)](#)].

[[^ 31](#)] See [INA 245\(m\)\(1\)](#). See [8 CFR 245.24\(b\)](#).

[[^ 32](#)] See [INA 102](#). See [22 CFR 41.21\(d\)\(2\)](#).

[[^ 33](#)] 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](#)].

[[^ 34](#)] See [INA 245\(h\)\(2\)\(B\)](#). See [8 CFR 245.1\(e\)\(3\)\(v\)](#). See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based Adjustment, Chapter 7, Special Immigrant Juveniles, Section C, Eligibility Requirements, Subsection 4, Admissibility and Waiver Requirements [[7 USCIS-PM F.7\(C\)\(4\)](#)].

[[^ 35](#)] See [INA 245\(l\)\(2\)](#). See [8 CFR 245.23\(a\)\(5\)](#) and [8 CFR 245.23\(b\)\(4\)](#). See Volume 9, Waivers and Other Forms of Relief, Part O, Victims of Trafficking, Chapter 5, Waivers for T Nonimmigrants Applying for Adjustment of Status [[9 USCIS-PM O.5](#)].

[[^ 36](#)] See [INA 209\(c\)](#). See [8 CFR 209.1\(f\)](#). See Volume 7, Adjustment of Status, Part L, Refugee Adjustment, Chapter 3, Admissibility and Waiver Requirements [[7 USCIS-PM L.3](#)].

[[^ 37](#)] See [INA 209\(c\)](#). See [8 CFR 209.2\(b\)](#). See Volume 7, Adjustment of Status, Part M, Asylee Adjustment, Chapter 3, Admissibility and Waiver Requirements [[7 USCIS-PM M.3](#)].

[[^ 38](#)] See [INA 245A\(d\)\(2\)\(B\)](#).

[[^ 39](#)] See [INA 249](#). See Volume 7, Adjustment of Status, Part O, Registration, Chapter 4, Aliens Who Entered the United States Prior to January 1, 1972, Section D, Eligibility Requirements, Subsection 4, Admissibility and Waiver Requirements [[7 USCIS-PM O.4\(D\)\(4\)](#)].

[[^ 40](#)] See [Pub. L. 100-202 \(PDF\)](#), 101 Stat. 1329, 1329-183 (December 22, 1987), as amended by [Pub. L. 101-167 \(PDF\)](#), 103 Stat. 1211 (November 21, 1989); [Pub.](#)

[L. 101-513 \(PDF\)](#), 104 Stat. 1979 (November 5, 1990); [Pub. L. 101-649 \(PDF\)](#), 104 Stat. 4978 (November 29, 1990); and [Pub. L. 102-232 \(PDF\)](#), 105 Stat. 1733 (December 12, 1991). See Volume 7, Adjustment of Status, Part P, Other Adjustment Programs, Chapter 9, Amerasian Immigrants, Section C, Eligibility Requirements, Subsection 3, Admissibility and Waiver Requirements [[7 USCIS-PM P.9\(C\)\(3\)](#)].

[[^ 41](#)] See [INA 210\(c\)\(2\)\(B\)](#).

[[^ 42](#)] See [INA 244\(c\)\(2\)\(A\)](#). See [8 CFR 244.3](#).

[[^ 43](#)] See Section 203(b) of NACARA, [Pub. L. 105-100 \(PDF\)](#), 111 Stat 2198 (November 19, 1997).

[[^ 44](#)] See [INA 212\(a\)\(2\)\(H\)](#).

[[^ 45](#)] 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](#)].

[[^ 46](#)] See [INA 291](#).

[[^ 47](#)] See [INA 291](#). See [Matter of Bett \(PDF\)](#), 26 I&N Dec. 437 (BIA 2014).

[[^ 48](#)] See [INA 291](#). See [Matter of Bett \(PDF\)](#), 26 I&N Dec. 437 (BIA 2014).

[[^ 49](#)] Prima facie evidence is defined as evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced. See Black Law Dictionary (12th ed. 2024).

[[^ 50](#)] See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence [[1 USCIS-PM E.6](#)].

[[^ 51](#)] For more information, see Part J, Fraud and Willful Misrepresentation [[8 USCIS-PM J](#)].

[[^ 52](#)] See [8 CFR 103.2\(b\)\(16\)](#).

[[^ 53](#)] 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\(G\)\(3\)](#)].

[[^] 54] The inadmissibility ground under [INA 212\(a\)\(2\)\(H\)](#) applies to any alien seeking a benefit which requires admissibility unless this ground is expressly exempted. 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. Some classifications of aliens may qualify for an exception or exemption from this ground of inadmissibility, and an inadmissibility determination is not required for those aliens. See Section H, Exceptions, Exemptions, and Waivers of Inadmissibility, Subsection 1, Exceptions [[8 USCIS-PM D.14\(H\)\(1\)](#)], and Subsection 2, Exemptions [[8 USCIS-PM D.14\(H\)\(2\)](#)].

[[^] 55] See Section E, Aliens Who Commit or Conspire to Commit Human Trafficking Offenses [[8 USCIS-PM D.14\(E\)](#)] and Section D, Definitions [[8 USCIS-PM D.14\(D\)](#)].

[[^] 56] See Section E, Aliens Who Commit or Conspire to Commit Human Trafficking Offenses [[8 USCIS-PM D.14\(E\)](#)] and Section D, Definitions [[8 USCIS-PM D.14\(D\)](#)].

[[^] 57] See Section H, Exceptions, Exemptions, and Waivers of Inadmissibility, Subsection 3, Waivers [[8 USCIS-PM D.14\(H\)\(3\)](#)].

[[^] 58] The inadmissibility ground under [INA 212\(a\)\(2\)\(H\)](#) applies to any alien seeking a benefit which requires admissibility unless this ground is expressly exempted. 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. Some classifications of aliens may qualify for an exception or exemption from this ground of inadmissibility, and an inadmissibility determination is not required for those aliens. See Section H, Exceptions, Exemptions, and Waivers of Inadmissibility, Subsection 1, Exceptions [[8 USCIS-PM D.14\(H\)\(1\)](#)], and Subsection 2, Exemptions [[8 USCIS-PM D.14\(H\)\(2\)](#)].

[[^ 59](#)] See Section D, Definitions [[8 USCIS-PM D.14\(D\)](#)].

[[^ 60](#)] See Section G, Reason to Believe [[8 USCIS-PM D.14\(G\)](#)].

[[^ 61](#)] See Section D, Definitions [[8 USCIS-PM D.14\(D\)](#)].

[[^ 62](#)] See Section H, Exceptions, Exemptions, and Waivers of Inadmissibility, Subsection 3, Waivers [[8 USCIS-PM D.14\(H\)\(3\)](#)].

[[^ 63](#)] See Section G, Reason to Believe [[8 USCIS-PM D.14\(G\)](#)].

[[^ 64](#)] The inadmissibility ground under [INA 212\(a\)\(2\)\(H\)](#) applies to any alien seeking a benefit which requires admissibility unless this ground is expressly exempted. 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. Some classifications of aliens may qualify for an exception or exemption from this ground of inadmissibility, and an inadmissibility determination is not required for those aliens. See Section H, Exceptions, Exemptions, and Waivers of Inadmissibility, Subsection 1, Exceptions [[8 USCIS-PM D.14\(H\)\(1\)](#)], and Subsection 2, Exemptions [[8 USCIS-PM D.14\(H\)\(2\)](#)].

[[^ 65](#)] See Section F, Beneficiaries of Trafficking, Subsection 3, Familial Relationship to Inadmissible Parent [[8 USCIS-PM D.14\(F\)\(3\)](#)].

[[^ 66](#)] See Section F, Beneficiaries of Trafficking, Subsection 2, Familial Relationship to the Inadmissible Spouse [[8 USCIS-PM D.14\(F\)\(2\)](#)].

[[^ 67](#)] See Section E, Aliens Who Commit or Conspire to Commit Human Trafficking Offenses [[8 USCIS-PM D.14\(E\)](#)].

[[^ 68](#)] See Section G, Reason to Believe [[8 USCIS-PM D.14\(G\)](#)].

[\[^ 69\]](#) See Section H, Exceptions, Exemptions, and Waivers of Inadmissibility, Subsection 3, Waivers [\[8 USCIS-PM D.14\(H\)\(3\)\]](#).

[\[^ 70\]](#) See Section G, Reason to Believe [\[8 USCIS-PM D.14\(G\)\]](#).

Current as of October 02, 2026

