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May 17–18, 2019

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Inadmissibility Grounds in Us, Ts, and VAWAs – Do They Apply and How to Overcome Them

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Goals

- Identify how inadmissibility grounds impact VAWA self-petitions, U and T applications
- Discuss best practices in overcoming inadmissibility for survivors
- Identify strategies for challenging improper waiver denials



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In what section of the INA are the grounds of inadmissibility found?

A. § 237

B. § 212(a)

C. § 212(d)(14)

D. § 212(a)(9)



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Inadmissibility

INA §212

- 10 General categories
- Apply to both consular processing and AOS in US

Framework

- Does it apply?
- Do the facts support it?
- Is there an exception that applies?
- Is there a waiver available?



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Name the grounds of inadmissibility that VAWA self-petitioners are specifically exempt from.

A. Public charge and false claim to USC

B. Conviction of domestic violence crime and failure to attend removal proceedings

C. Public charge and present without admission & parole

D. CIMT (1st offense, less than 6 mon. sent. and prostitution)



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Inadmissibility and VAWA

- What applies?
- Are there VAWA provisions related to the inadmissibility?
- Discretion and Hardship



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Special VAWA Provisions for Inadmissibility

Exceptions

- Public charge - Not applicable to VAWAs, Us or Ts
- Present without admission or parole
- 212(a)(9)(B)

Waivers

- Communicable diseases
- Criminal grounds
- Fraud (beware of false claim to USC)
- Permanent Bar



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Also Look at General Waiver Provisions

- CIMT: Petty Offense, Juvenile exceptions
- Waiver for Smuggling
- INA § 212(h) waivers
 - Intersection with VAWA waiver



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Health Inadmissibility Ground INA § 212(a)(1) (A)(i)
communicable disease of public health significance

- Eligible for waiver under INA
§ 212(g)(1)(C) if applicant has
obtained classification or status as a
VAWA self-petitioner



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Certain Criminal Inadmissibility Grounds INA §212(a)(2) CIMTs, multiple convictions, prostitution, commercialized vice, simple possession – 212(h)

→Eligible for waiver under INA § 212(h)(1)(C): The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

- if applicant has obtained classification or status as a VAWA self-petitioner
- Applicant must present positive evidence to warrant favorable discretion



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In applying for the VAWA-specific waiver for the fraud and misrepresentation ground, who must VAWA self-petitioners show extreme hardship to?

A. Self-petitioner or LPR, USC, or qualified alien parent or child

B. USC or LPR parents only

C. USC or LPR parents or children

D. Self-petitioner



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Immigration Fraud INA § 212(a)(6)(C)(i) material misrepresentation

Eligible for waiver under INA § 212(i)(1) if:

- applicant is a VAWA self-petitioner AND
- Extreme hardship to applicant *or* applicant's USC/LPR/qualified alien parent or child



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Miguel, VAWA self-petitioner, wants to apply for adjustment but he said that his abusive spouse insisted that he leave the country and re-enter without inspection several times.

What grounds of inadmissibility possibly apply?

A. Misrepresentation, CIMT

B. Present without admission, CIMT, and permanent bar

C. 10 year bar and permanent bar

D. Misrepresentation



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Unlawful Presence & Permanent Bar

3 Year Bar = Unlawful presence more than 180 days/less than a year + departure

10 Year Bar = Unlawful presence one year/more + departure

Permanent Bar =

- Unlawful presence one year/more + departure + unlawful reentry attempt or
- Removal + unlawful reentry/attempt



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3 and 10 Year Bars

- **VAWA Exception:**
Self-petitioner + violation of status “substantially”
connected to abuse
- **General Waiver:**
Extreme hardship to USC/LPR spouse or parent



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Permanent Bar

- **VAWA Waiver:**
Connection between
 - Battering or extreme cruelty and
 - Removal, departure, reentry or reentries or attempted reentries
- **General Waiver:**
10 years + request to apply for readmission



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When Hilda was about to turn 18, Peter left for a trip and told her to come with the kids. He assured her that because he was a business owner, had money and was a USC, she would have no problems crossing the border. When Peter sent for her, she agreed to come. They all drove through El Paso. When the car was stopped, the officer asked the coyote if they were all USCs. The coyote said yes and Hilda, in the back, nodded in agreement, and they all entered the country. Does false claim to USC apply?

A. No because she was under 18.

B. No because Peter told her to do it.

C. Yes.

D. No because the coyote answered for her.



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False Claims to US Citizenship

Limited Exception

Children of USC
parents (or former USC
parents); lived in US
before 16; reasonably
believed USC

Why 1996
matters

What if false
claim has nexus
to abuse?



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Smuggling

Knowingly

- Encouraged, induced, assisted, abetted, or aided
- Any other noncitizen to enter/try to enter the US
- In violation of the law



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Smuggling

Waiver

- For humanitarian purposes or to ensure family unity and
- Person smuggled was spouse, parent, son, or daughter at the time of the offense



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Filing Inadmissibility Waivers

- File waivers on Form I-601
- File all waiver applications with the Vermont Service Center
- Strategies?
- Filing fee waiver available



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VAWA Relief for Voluntary Departure Overstay

- No 10 ten-year bar on relief or civil penalties for failure to depart, if the abuse was at least one central reason for the overstay
- 8 C.F.R. § 1240.26(b)(3)(iii) – filing motion to reopen or reconsider during voluntary departure period automatically terminates grant of voluntary departure



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No Waiver Available

- Watch out for these
 - Drug trafficking/drug abuse/addiction
 - Controlled substances other than simple possession
 - Trafficking in persons
 - False claims to US citizenship
 - Prior removals → reinstatement of removal
- Explore the U visa option!



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If a client entered without inspection after accruing a year of unlawful presence and leaving the U.S., does he need a waiver when he files for adjustment based on his U status?



A. Yes and they file on form I-601.

B. Yes and they file on form I-192.

C. Maybe.

D. No because the grounds of inadmissibility don't apply.



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Inadmissibility and U visas – at I-918 stage

- INA 212(d)(14)—national and public interest
- Everything potentially waivable except Nazi and Genocide perpetrator INA 212(a)(3)(E)
- Discretionary



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Inadmissibility Waivers

(d)(3) – Hranka Factors

- Risk of harm to society if applicant is admitted
- Seriousness of the applicant's immigration or criminal law violation, if any; and
- Nature of the applicant's reasons for wishing to enter/remain in the US

212(d)(14) – U waiver

- National or public interest
- Beyond interest of applicant or family but community interest
- "Good neighbor"



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No Review of Waiver Discretion

- AAO can review legal issues
- Strategies
 - Was VSC wrong about inadmissibility?
 - Failure to articulate d(14) factors and how weighed
 - Relying solely on d(3) violates the law
 - Declaratory judgment/APA challenge in district court



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INA § 245(a) vs § 245(m)

245(a)

- Inspected and admitted or paroled
- Eligible for IV now and
- Admissible per 212(a)

245(m)

- Physically present for 3 years after U grant
- Staying justified on humanitarian grounds, to ensure family unity, or in the public interest and
- No nazis, genocide, or torture



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U Inadmissibility in Removal

Do IJs has jurisdiction to adjudicate I-192 per d(3)?

- Matter of L-D-G- (7th Circuit)
- Matter of Khan (BIA 2016)
- Baez-Sanchez v. Sessions (7th Cir. 2017)
- Sunday v. Attorney General (3rd Cir. 2016)
- Philip Man v. Loretta Lynch (9th Cir.)



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Adjudication Trends

- USCIS asking for police reports, even in dismissed cases
- Interpretation of inadmissibility standards
- In U context, inadmissibility issues once waived coming up again in AOS
- If it's not named, it's not waived



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Inadmissibility along the Continuum

Inadmissibility ground that

- Should've been disclosed at the outset but wasn't
 - File amended I-192
- Occurs after filing
 - File amended I-192
- Occurs after waitlist approval
 - File amended I-192
- Occurs after U grant
 - Reveal and request exercise of discretion under INA 245(m)



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Inadmissibility for I-929 and Adjustment

- No waivers of inadmissibility for I-929 and Adjustment Under 245(m)
- Dealing with criminal issues as “discretion”



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Alex and his mother were given voluntary departure in 2009. Alex was 6 at the time. They did not depart and the VD became a final order. In 2015, they were granted U visas. Can they adjust their status now?

A. Yes, failure to depart under VD is not a bar to U AOS

B. No, unless in the national or public interest to grant a waiver

C. No, they must wait 10 years after failure to depart

D. Yes, if we can successfully argue that failure to depart was not voluntary



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Failure to Voluntarily Depart

- Matter of L-S-M
 - Adopted decision based on AAO case says failure to comply bars U adjustment for 10 years unless failure to depart not “voluntary”
- Only affects adjustment, not issuance of U
- Explicit VAWA exception, but not for U



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Inadmissibility and T visas – at I-914 stage

- INA 212(d)(3)(B) or INA 212(d)(13)
- Substantially similar to inadmissibility grounds related to U nonimmigrant status, Form I-192
- An applicant requesting a waiver under section 212(d)(13) of the Act on grounds other than health-related grounds must inadmissible were caused by, or were incident to, the victimization
- Most is waivable, with exception to sections 212(a)(3), 212(a)(10)(C), or 212(a)(10)(E) of the INA
- Discretionary



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Adjustment for T Visa Holders

- T visa holders must show admissibility, good moral character, and “extreme hardship involving unusual and severe harm” at the adjustment stage. INA §245(I)(1), 8 CFR §245.23
- T visa holders may apply for waiver on Form I-601 (unlike U visa holders) at the adjustment stage for any ground of inadmissibility not already waived in connection with T nonimmigrant status
- Inadmissibility under sections 212(a)(3), 212(a)(10)(C), or 212(a)(10)(E)—not waivable
- No waiver for unlawful presence is necessary where victimization was a central reason for the applicant’s unlawful presence
 - Must provide evidence of connection with I-485
 - Nexus between victimization and the unlawful presence must be more than “tangential, incidental, or superficial”



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Questions?



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