

## **9 FAM 40.21(b) CONTROLLED SUBSTANCE VIOLATORS**

*(CT:VISA-1442; 06-15-2010)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 40.21(b) RELATED STATUTORY PROVISIONS**

*(CT:VISA-1442; 06-15-2010)*

See INA 212(a)(2)(C) and (H) (8 U.S.C. 1182(a)(2)(C) and (H)) and INA 212(h) (8 U.S.C. 1182(h)), and Title 18 of the U.S.C.

#### **INA 212(a)(2)**

(2) Criminal and related grounds-

(C) CONTROLLED SUBSTANCE TRAFFICKERS- Any alien who the consular officer or the Attorney General knows or has reason to believe—

(i) *Is* or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) *Is* the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(H) SIGNIFICANT TRAFFICKERS IN PERSONS-

(i) IN GENERAL-

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Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of

Homeland Security, the Secretary of State, 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 the section 103 of such Act, is inadmissible.

(ii) **BENEFICIARIES OF TRAFFICKING-** Except as provided in clause (iii), any alien who the consular officer, *the Secretary of Homeland Security* or the Attorney General knows or has reason to believe is the spouse, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

(iii) **EXCEPTION FOR CERTAIN SONS AND DAUGHTERS-** Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.

### **INA 212(h)**

h. Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E) (*8 U.S.C. 1182(a)(2)(A)(i)(I), (II), (B), (D), and (E)*). The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) (*8 U.S.C. (A)(i)(I), (B), (D), and (E)*) of subsection (a)(2) (*8 U.S.C. 1182(a)(2)*) of this section and subparagraph (A)(i)(II) (*8 U.S.C. 1182(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—

- (1)(A) *In the case of any immigrant it is established to the satisfaction of the Attorney General that—*
- (i) *The alien is inadmissible only under subparagraph (D)(i) (*8 U.S.C. 1182(D)(i)*) or (D)(ii) (*8 U.S.C. 1182(D)(ii)*) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,*
  - (ii) *The admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and*
  - (iii) *The alien has been rehabilitated; or*

- (B) *In* the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or
  - (C) *The* alien is a VAWA self-petitioner; and
- (2) *The* Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

## **9 FAM 40.21(b) RELATED REGULATORY PROVISIONS**

*(CT:VISA-1442; 06-15-2010)*

See 22 CFR 40.21(b).

### **40.21 Crimes involving moral turpitude and controlled substance violators.**

- (a) Crimes involving moral turpitude —
- (b) Controlled substance violators —
  - (1) Date of conviction not pertinent. An alien shall be ineligible under INA 212(a)(2)(A)(i)(II) (8 U.S.C. 1182(a)(2)(A)(i)(II)) irrespective

of whether the conviction for a violation of or for conspiracy to violate any law or regulation relating to a controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 802), occurred before, on, or after October 27, 1986.

- (2) Waiver of ineligibility—INA 212(h) (8 U.S.C. 1182(h)). If an immigrant visa applicant is ineligible under INA 212(a)(2)(A)(i)(II) (8 U.S.C. 1182(a)(2)(A)(i)(II)) but is qualified to seek the benefits of INA 212(h) (8 U.S.C. 1182(h)), the consular officer shall inform the alien of the procedure for applying to DHS for relief under that provision of law. A visa may not be issued to the alien until the consular officer has received notification from DHS of the approval of the alien's application under INA 212(h) (8 U.S.C. 1182(h)).

*(56 FR 30422, July 2, 1991, as amended at 64 FR 55418, Oct. 13, 1999)  
(revising (a):71FR 34519 (6/15/06).*