

9 FAM 40.25 CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION

*(CT:VISA-1737; 10-06-2011)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.25 RELATED STATUTORY PROVISIONS

(CT:VISA-1737; 10-06-2011)

See INA 212(a)(2)(E) (8. U.S.C. 1182(a)(2)(E)) and INA 212(h) (8. U.S.C. 1182(h)).

INA 212(a)(2)(E)

(2) Criminal and related grounds.-

- (E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution.-Any alien-
 - (i) who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)),
 - (ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,
 - (iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and
 - (iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense, is inadmissible.

INA 212(h)

h. Waiver of subsection (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) of subsection (a)(2) of this section 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—

- (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) or (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.

** As amended by Sec. 601(d)(4) of the Immigration Act of 1990, Act of Nov. 29, 1990, Public Law No. 101-649, 104 Stat. 4978. Subsection (h), as amended has eliminated the requirement of "extreme hardship", and has added the requirement of rehabilitation. Subsection (h) was previously added by Sec. 14, Act of Sept. 26, 1961, 75 Stat. 655. Authority for waiver of excludability for aliens convicted of a single offense of simple possession of marihuana was added by Sec. 4(3), Act of Dec. 29, 1981, Public Law No. 97-116. However, Subtitle M of the Antidrug Abuse Act of 1986, Oct. 27, 1986, Public Law No. 99-570, amended Sec. 212(a)(23) to conform to the Controlled Substances Act (21 U.S.C. 802). Further amended by Section 307(f) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Act of Dec. 12, 1991, Public Law No. 102-232, 105 Stat. 1733.*

9 FAM 40.25 RELATED REGULATORY PROVISIONS

(CT:VISA-1212; 05-04-2009)

22 CFR 40.25 Certain aliens involved in serious criminal activity who have asserted immunity from prosecution. [Reserved]