

Screening for Inadmissibility in your Client's Case

Pro Bono Network Webinar
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TAHIRIH
JUSTICE
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Today's Presenters

Tahirih National Office

Kursten Phelps

Co-Director of Client Advocacy (Legal Services)

Richard Caldarone

Litigation Counsel

Agenda

Welcome Introductions

Legal Updates Proposed asylum regulations, case law updates

COVID-19 Updates Agency update

Screening for Inadmissibility in your Client's Case

Identifying inadmissibility, screening for exemptions and identifying if a waiver is available.

Questions

LEGAL UPDATES

Asylum EAD Regulations

As of August 21:

- 30-day deadline for considering EAD applications removed

As of August 25:

- New bars on EADs for EWI, missing 1-year deadline (except UACs), convictions
- 1-year wait, denied if applicant-caused delay when application submitted
- Effective no more than 2 years, terminate upon adverse BIA decision
- Biometrics, no rec'd approvals, no return of incomplete apps
- Litigation in D. Md.; ruling possible before 8/25

USCIS Fee Rule

New/Increased Fees

- \$50 for affirmative asylum application
- \$550 for I-765 EAD application
- \$1,485 for I-929 (Qualifying Family Member of U-1 Nonimmigrant)
- No fees for U, T, VAWA applications

Fee Waiver Changes

- No longer available for asylum seekers for any form (U/T/VAWA still eligible)
- SIJ applicants eligible only if in out-of-home care under supervision of court/child welfare agency
- Lowers income ceiling to 125% of FPG
- Everything effective October 2

DACA

- New DHS memorandum partially rescinding DACA
- No new applications accepted
- Renewals each year, rather than every 2 years
- Fee increase *not* part of final USCIS fee rule

Matter of A-B-

***Diaz-Reynoso v. Barr* (9th Cir. No. 18-72833)**

- Reads *A-B-* as holding that IJs/BIA must consider PSGs on a case-by-case basis
- Reaffirms rule that PSG can't be *exclusively* defined by harm



Matter of A-B-

***Grace v. Barr* (D.C. Cir.)**

- Strikes down "condoned or completely helpless," back to "unable or willing"
- Strikes down departure from most-favorable-precedent rule
- Affirms circularity & "general" rule against DV/gang claims, but says (in line with government concession) that must consider on a case-by-case basis



The Courts of Appeals

***Davila v. Barr* (9th Cir. No. 17-72173)**

- Vacates denial based on unable-or-unwilling where abuser paid off police

***Akosung v. Barr* (9th Cir. No. 17-72829)**

- Asylum claim based on attempted forced marriage
- Ability to flee and hide does not show internal relocation reasonable
- "Women resistant to forced marriage proposals" can be socially distinct group

Miscellaneous

- Public charge blocked again, then unblocked again (except in Second Circuit)
- *Las Americas v. Trump* (D. Or.) – motion to dismiss denied
- USCIS furloughs anticipated at end of August that will dramatically impact processing times

COVID-19 UPDATES

Agency Operating Status

Tahirih updates its [Pro Bono e-Library](#) every day when there is a relevant agency update.

Agency	Status
EOIR- Detained Hearings	Open
EOIR- Non-detained	Postponed through September 4* (Arlington & Baltimore open)
USCIS	Open
ICE ERO	Suspended or Telephonic
State	Phased resumption of visa services, post-by-post basis

SCREENING FOR INADMISSIBILITY

Learning Objectives

TODAY'S OBJECTIVES:

- Define inadmissibility grounds and how they impact your client's case
- Identify concrete screening strategies to identify applicable inadmissibility grounds
- Analyze whether an inadmissibility ground applies to your client.



Addressing Inadmissibility



Is my client subject to inadmissibility or deportability?

Do any grounds of inadmissibility apply to my client?

Do the facts support it?

Are there any exemptions?

Is there a waiver available?

Understanding Admission

Admission

INA § 101(a)(13)(A)

The lawful entry of [an] alien* into the United States after inspection and authorization by an immigration officer.

Admission v. Entry

Admission

Inspection + Authorization + Entry

Entry

A person coming into the U.S. – with or without permission. Does not include a person who is formally stopped for inspection at border or port of entry.

Admissibility v. Deportability

Subject to Inadmissibility

Those who have not been admitted and are seeking admission, whether they are in the country or not.

Subject to Deportability

Those who have been admitted but who the government is trying to remove.

Who's subject to inadmissibility?



- Undocumented people (“entered without inspection”);
- Applicants for admission at the border or port of entry (nonimmigrant visa holders, visa waiver entrants, and immigrant visa (“green card”) holders arriving for the first time);
- Adjustment of status (green card) applicants;
- Parolees (temporary entry due for humanitarian or significant public interest reasons, discretionary and case-by-case basis)
- Alien crewmen
- Certain (but not all) lawful permanent residents, including conditional residents. See INA § 101(a)(13)(C).

What is inadmissibility?

INA

A list of reasons a person can be denied admission to the United States, or removed if already in the United States.

Apply at border, in immigration court, and in applications like VAWA, T, U, and adjustment of status.

Screening for Inadmissibility

Know Your Grounds

Tahirih screens for inadmissibility, but things may be disclosed later, or new grounds may arise.

Ask screening questions in early meetings, and during form preparation. Form questions help flag potential inadmissibility but don't rely on the forms alone.

File FOIA requests and FBI, state background checks early if Tahirih has not already filed. Gather criminal and other records if applicable.



Inadmissibility Grounds

INA § 212(a)

- Immigration Violations
- Fraud and Misrepresentation
- Criminal and Drug Issues
- Health Related Grounds
- Smuggling
- False Claim to US Citizenship
- Public Charge
- Security and Political Grounds
- Ineligible for Citizenship
- Miscellaneous

Immigration Violations



- INA § 212(a)(6)(i) – Present without inspection or parole (entered without inspection or “EWI”)
- INA § 212(a)(9)(B) – Continuous unlawful presence (triggered upon subsequent departure)
 - Over 180 days but less than one year of ULP = 3 year bar
 - One year or more of ULP = 10 year bar
- INA § 212(a)(9)(C) – “Permanent” Bar
 - Aggregate period of more than one year of ULP + entry or attempted re-entry without admission or
 - ordered deported or removed + unlawful re-entry or attempted re-entry without admission

Immigration Violations



INA § 212(a)(6)(B) – failure to attend removal hearing (5 year bar)

INA § 212(a)(9)(A) – prior removal orders

- ordered removed under INA 240, not arising from time of arrival or who left after an order of removal was outstanding , or pre-1997 exclusion or deportation order (10 year bar)
- subject to an expedited removal order at the border or a removal order from an immigration judge after proceedings initiated immediately upon arrival in the U.S. relating to the person's "admissibility" (5 year bar)
- Multiple orders or removals (20 year bar)
- Removed + aggravated felony conviction (permanent)

Fraud and Misrepresentation



- INA § 212(a)(6)(C)(i) “An alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States, or other benefit provided under this Act is inadmissible.”
- INA § 212(a)(6)(C)(ii) – falsely claims to be a U.S. citizen for any purpose or benefit under the INA, or under any other federal or state law

Screening Questions



- How, when, where they entered the US (each time)?
- Did they, do they have a valid passport?
- Have they ever had any status or pending immigration applications?
- Have they ever been to immigration court or seen an immigration judge? Ever received any documents, papers, notices from immigration?
- Have they ever been removed or deported (at border or from the interior of the country)?
- If encountered immigration at border, what happened? Detained?
- Ever lied or embellished on an immigration application or signed something they didn't understand? Checked citizen on an I-9 or job application or other form?

Criminal Grounds



- INA §212(a)(2)(A)(i)(I) - Admission or conviction of a crime involving moral turpitude
- INA § 212(a)(2)(A)(i)(II) - Admission or conviction of a controlled substance offense
- INA § 212(a)(2)(C) - Drug trafficking (officer knowledge or reason to believe)
- INA § 212(a)(2)(D) – Engaging in prostitution and commercialized vice
- INA § 212(a)(2)(B) - Conviction for multiple criminal convictions where the total aggregate sentence is 5 years or more

Conviction v. Admission

Conviction

- formal judgment of guilt of the alien entered by a court or
- if adjudication of guilt has been withheld, where
 - finding of guilt by judge or jury, guilty or nolo contendere plea and
 - judge has ordered some form of punishment, penalty, or restraint on liberty

Admission

- The act is considered criminal under the law applicable to time and place of act
- Person was clearly advised of essential elements of alleged crime
- Person clearly admitted conduct constituting the essential elements of the crime and
- Admission was made in a free and voluntary manner

Screening Questions



- Have you ever been arrested, given a ticket, sent to court?
- Were you convicted? Were you sentenced (if so what was the sentence)?
- Ever had handcuffs put on you or put in a police car?
- Ever been before a judge (a person in a robe)?
- When, where, what happened? Did you have an attorney?
- Have you told anyone you have used drugs?
- Residence history (this will help you do background checks)

Health Related Grounds



- INA § 212(a)(1)(A)(i) – Communicable disease as defined by HHS (42 CFR § 34.2(b))
 - Gonorrhea
 - Infectious Hansen's disease
 - Infectious Syphilis
 - Active tuberculosis
 - Other declared communicable diseases
- INA § 212(a)(1)(A)(ii) – Failure to Prove Required Vaccinations
- INA § 212(a)(1)(A)(iii) – Mental or Physical Disorder
- INA § 212(a)(1)(A)(iv) – Drug Addiction or Abuse

Screening Questions



- Any medical conditions or issues?
- Any drug or alcohol use/abuse? DUIs or other issues with drinking or drug use?
- Have you had thoughts of harming yourself or tried to hurt yourself or someone else?
- When did these start? (Are they connected to the abuse?)

Smuggling



- INA § 212(a)(6)(E) – Knowingly has encouraged, induced, assisted, abetted, or aided any other noncitizen try to enter or enter the US at any time.

Screening Questions



- Have you provided money or other help to anyone coming into the US, including your children or other family members? What happened?

Insufficient Documents



- INA § 212(a)(7)(A) – **immigrants** who do not have “a valid unexpired immigrant visa, reentry permit, border crossing identification card or ... a valid unexpired passport” or other documents needed for entry, are inadmissible.
- INA § 212(a)(7)(B)(i) – **nonimmigrants** without a valid nonimmigrant visa or border crossing card, or seeking a nonimmigrant visa without a passport valid for for a minimum of six months from the date of the expiration of the initial period of the alien’s admission or contemplated initial period of stay.

Public Charge



- INA § 212(a)(4), but see new rule discussed in prior webinars expanding public charge definition to:
 - Receiving one or more public benefits specified at 8 CFR §212.21(b) for more than 12 months in the aggregate within any 36-month period. The test counts the months of benefits receipt so that receiving two benefits in one month is counted as two months of benefits.
 - Expanding the “totality of the circumstances” analysis

Screening Questions



- Have you (or your family member) received public benefits?
- What is your employment situation?

Security Grounds



- INA § 212(a)(3)(A) – a person determined to be seeking to enter the US to engage solely, principally, or incidentally in
- (i) any activity
 - (I) to violate any law of the United States relating to espionage or sabotage or
 - (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,
- (ii) any other unlawful activity, or
- (iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

Security Grounds



- INA § 212(a)(3) –
- Persons whose admission into the United States would bring about serious foreign policy consequences
- Members of the Communist or any totalitarian party (immigrant visas)
- .Participants in Nazi persecution or genocide

Security Grounds - Terrorism



- INA § 212(a)(3)(B) boiled down:
 - Has engaged in or is likely to engage in terrorist activity post-entry
 - has incited terrorist activity
 - is a representative or member of a terrorist group or endorses or espouses terrorist activity
 - endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization (“material support”)
 - Received military-type training from or on behalf of a terrorist organization
 - Is the spouse or child of someone inadmissible under terrorism grounds (if inadmissible activity within past 5 years)

Terrorism Related Grounds

“Terrorist Activity”

INA § 212(a)(3)(B)(iii)

- Highjacking/sabotage of conveyance
- Seizing/detaining, with threat to kill, injure, detain someone to compel someone else (or gov’t org) to do or not do something
- A violent attack upon an internationally protected person or upon their liberty
- assassination.
- Use of any biological agent, chemical agent, or nuclear weapon or device, explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain)

Terrorism Related Grounds

Three Tiers of Terrorist Organizations

- Tier I: Organizations designated as a Foreign Terrorist Organization (FTOs) under INA § 219.
- Tier II: Secretary of State in consultation with the Attorney General may designate organizations that have engaged in terrorist activity, published in the Federal Register
- Tier III: Any group of two or more individuals, whether organized or not, which engages in or has a subgroup which engages in terrorist activity.

Screening Questions



- Were you involved in any organizations or political parties in your home country?
- Did you engage in political protests?
- Were you ever arrested anywhere in the world for any reason?
- Did you ever get any military or weapons training? From whom?
- Were you ever responsible for detainees, work in a prison, or have any encounters with any violent group?

Miscellaneous Grounds



- INA § 212(a)(10)
 - Practicing Polygamists (belief, practice, and intent to practice)
 - Abduction of children across international borders;
 - A guardian required to accompany a helpless applicant;
 - Unlawful voting in violation of any federal, state, or local law.
 - Renounced U.S. citizenship in order to avoid U.S. taxation

Inadmissibility Exemptions

Does the ground really apply?

Read the statute to see whether there is a statutory exemption or exception to the applicability of the inadmissibility ground to your client.

There are some **general** exemptions and some **specific** exemptions.



General Exemptions

- **CIMT**
 - Crimes committed under age 18 + released from confinement >5 years before application or entry or
 - Single petty offense if maximum possible penalty of 1 year in prison and actual sentence not more than 6 months
- Smuggling exemption if qualified for Family Unity and
 - Applying for either Family Unity or an immediate relative or second preference category immigrant visa
- Prior removal orders if did not depart after removal order (seek to reopen and terminate)
- False Claim to US Citizenship
 - Children of US citizen parents, lived in US before age 16, and reasonably believed US

VAWA Self-Petitioner Exemptions



- **Public charge**
- **Entry without inspection or parole**
- **Unlawful presence under INA § 212(a)(9)(B) if can establish a substantial connection between unlawful presence and abuse**

SIJS Self-Petitioner Exemptions



- Public charge
- Present without admission or parole
- Misrepresentation, including false claim to U.S. citizenship
- Stowaways
- Not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document
- Unlawful presence

Previewing Waivers

Ground	VAWA Waiver	Standard
Communicable Disease	INA §212(g)(1)(C)	Positive discretion
CIMT, Multiple Convictions, Prostitution, Commercialized Vice, Simple Possession <30 g Marijuana	INA §212(h)(1)(C)	Positive Discretion
Material Misrepresentation	INA § 212(i)(1)	Hardship to qualifying relative or self
Permanent Bar	INA 212(a)(9)(C)(iii)	connection between the abuse and deportation, departure, reentry, or attempted reentry.

Previewing Waivers

Discretionary U visa waivers

- Available for all grounds except Nazi persecution, genocide, or torture or extrajudicial killing [INA § 212(a)(3)(E) under INA § 212(d)(14)]
- Standard = national or public interest



Previewing Waivers

Discretionary T visa waivers

- All grounds except security related grounds [(INA § 212(a)(3)], international child abduction [(INA § 212(a)(10)(C)] and renunciation of citizenship for tax avoidance [(INA § 212(a)(10)(E)] under INA § 212(d)(13)
- Standard = National interest plus connection to trafficking victimization (except health grounds)



Questions?

After the webinar, contact

- Your Tahirih mentor attorney
- Kursten Phelps, kurstenp@tahirih.org



How You Can Help

Our work is amplified by the power of many. As Pro Bono Network members, there are many ways to contribute your time, resources, and expertise.

CO-COUNSEL

[Directly represent](#), with Tahirih mentorship, an immigrant survivor in their asylum, VAWA, T, U visa, or Special Immigrant Juvenile Status immigration matters.

IMPACT LITIGATION

[Work with Tahirih](#) on federal litigation, amicus briefs, and other impact litigation opportunities.

ADVOCATE

Respond to our [advocacy alerts](#) to submit comments or engage in other advocacy on behalf of immigrant survivors.

RESEARCH

Help Tahirih with [research](#) and analyze legal questions or research country conditions evidence to help immigrant survivors seeking asylum and other forms of relief.

DONATE

Tahirih's [Client Fund](#) is a pool of money that we may use to provide immediate and critical support to survivors of gender-based violence who are currently in crisis.

SPREAD THE WORD

Encourage a colleague to join Tahirih's [Pro Bono Network](#).

Contact Us



OUR OFFICES

Atlanta

230 Peachtree Street NW
Atlanta, GA 30303

(p): 470-481-4700 | (f): 470-481-7400
atlanta@tahirih.org

Baltimore

211 E. Lombard Street, Suite 307
Baltimore, MD 21202

(p) 410-999-1900 | (f) 410-630-7539
baltimore@tahirih.org

Greater Washington, DC | National

6400 Arlington Blvd., Suite 400
Falls Church, VA 22042

(p) 571-282-6161 | (f) 571-282-6162
greaterdc@tahirih.org | justice@tahirih.org

Houston

1717 St. James Place, Suite 450
Houston, TX 77056

(p) 713-496-0100 | (f) 713-481-1793
houston@tahirih.org

San Francisco Bay Area

881 Sneath Lane, Suite 115
San Bruno, CA 94066

(p) 650-270-2100 | (f) 650-466-0006
SFBayArea@tahirih.org