Cannabis in the United States and its implications in naturalization applications

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In April 2019, the media reported that the United States Citizenship and Immigration Services (USCIS) had denied the naturalization applications of at least two lawful permanent residents who had worked for state-licensed cannabis businesses in the State of Colorado. The Mayor of Denver even wrote a letter to Attorney General William Barr, requesting formal guidance from the US Department of Justice, which would clarify and adjust policies that are negatively impacting the legal immigration status of individuals who work, or who have previously worked, in Colorado's legal cannabis industry.

The Attorney General has not responded to the Mayor of Denver. However, USCIS issued a Policy Alert a few weeks later, announcing that it had updated its Policy Manual to clarify this issue.[1] However, instead of resolving the issue, the updated guidance simply reiterates that cannabis-related activities will likely bar a lawful permanent residence of the United States from naturalization, even if those activities take place in a state that has legalized cannabis.

The updated Policy Manual explains that violations of federal-controlled substance laws (including those involving cannabis) remain a conditional bar to establishing good moral character for naturalization even where that conduct would not be considered an offense under state law. The reference to "conditional" in this context simply means that the prohibited conduct must have occurred during the relevant statutory period. In contrast, permanent bars (such as murder) preclude a finding of good moral character regardless of when the prohibited conduct occurred.

The statutory period during which an applicant must show that he or she has been a person of good moral character depends on the corresponding naturalization provision. It generally commences five years immediately preceding the filing of the naturalization application and continues up to the date of the oath of allegiance.[2] However, for certain spouses of US citizens, the statutory period commences three years preceding the filing of the naturalization application.[3] In addition, for certain members of the military, it commences one year immediately preceding the filing of the naturalization application.[4]

The *Immigration and Nationality Act* (INA) and Chapter 8 of the Code of Federal Regulations (8 CFR) list specific situations that automatically preclude a finding of good moral character.[5] This list includes a conditional bar for violations of any law of the United States, any state, or any foreign country relating to a controlled substance, other than a single offense for simple possession of 30 grams or less of cannabis. According to the updated Policy Manual, such violations may include the possession, manufacture, production, distribution or dispensing of cannabis.

The updated Policy Manual also states that, even where the applicant does not make a valid admission to a cannabis-related offense, he or she may be unable to meet the burden of proof to show that he or she has not committed such an offense.[6] In other words, even in the absence of a formal conviction or legally-valid admission, USCIS could still deny the naturalization application if it suspects that the applicant has engaged in cannabis-related activity.

The updated Policy Manual acknowledges that a number of states and the District of Columbia have enacted laws

permitting the medical or recreational use of cannabis. However, it reiterates that cannabis is still a “Schedule I” controlled substance under the *Controlled Substances Act* (CSA). Schedule I controlled substances have no accepted medical use according to the CSA.

The updated Policy Manual goes on to say that possession of cannabis for recreational or medical purposes, or even employment in the cannabis industry, may constitute conduct that violates federal controlled substance laws. Depending on the specific facts of the case, these activities (whether established by a conviction or an admission by the applicant) may preclude a finding of good moral character during the statutory period.

In summary, a naturalization applicant who has engaged in cannabis-related activity—including employment in the cannabis industry—during the relevant statutory period will likely be denied for failure to satisfy the good moral character requirement, even if such conduct is legal under the laws of the state where it occurred. However, since conditional bars apply only where the prohibited conduct occurred during the relevant statutory period, such a lawful permanent resident could wait until the prohibited conduct falls outside of the statutory period and then apply/reapply for naturalization at that time.

Of course, USCIS may still inquire into conduct that falls outside of the relevant statutory period.[7] This is because a naturalization applicant may be found to lack good moral character even if he or she is not subject to one of the statutory bars described in the INA.[8] However, acts occurring beyond the statutory period should be considered only if the conduct is relevant to the present determination of good moral character.[9] For example, a naturalization applicant who demonstrates exemplary conduct during the statutory period cannot be denied based solely on the existence of a prior criminal offence, which occurred outside the statutory period.[10]

Most lawful permanent residents who have engaged in cannabis-related activity (including employment in the cannabis industry), in states that have legalized such conduct, should not be at risk of immediate removal from the United States since most of the grounds of deportation would not apply. For example, a ground of deportation exists for:

a. A lawful permanent resident (and any other alien) who has been convicted (at any time after admission) of a violation of (or a conspiracy or attempt to violate) any law or regulation of a state, the United States, or a foreign country relating to a controlled substance.[11] A formal conviction is required for this ground to apply.
b. A lawful permanent resident (and any other alien) who is convicted of an aggravated felony at any time after admission.[12] The term “aggravated felony” is defined to include illicit trafficking of a controlled substance or a drug trafficking crime.[13] A formal conviction is required for this ground to apply.
c. An alien who has been a drug abuser or addict at any time after entry. Although this ground does not require a formal conviction, it typically requires a medical opinion from a panel physician before it can be applied. Also, in the case of an alien who is employed in the cannabis industry but who does not use cannabis, this ground would have no application.

Of course, the grounds of **inadmissibility** contained in the INA (which apply at the time of admission) are different from the grounds of **deportation** contained in the INA (which apply after admission). As a result, a lawful permanent resident who is not deportable could still be inadmissible if he or she travels abroad and attempts to re-enter the United States.

The following are examples of grounds of inadmissibility that could potentially apply:

a. An individual who has been convicted of, or who admits to having committed the essential elements of, a controlled substance offense is inadmissible.[14] Legal users of medical or recreational cannabis could fall under this ground, if they make such an admission to a USCIS examiner during a naturalization application, or to a United States Customs and Border Protection (USCBP) officer at the time of entry.

b. An individual is inadmissible if an immigration officer has reason to believe that he or she is an illicit trafficker in a controlled substance, or a knowing assister, abettor, conspirator, or colluder in illicit trafficking.[15] Employees and investors of US cannabis businesses could fall under this ground.

Although a lawful permanent resident who is returning from a trip abroad is not normally subject to grounds of inadmissibility, the INA states that they will apply if that lawful permanent resident has (among other things) committed a criminal offense.[16]

In conclusion, lawful permanent residents who have engaged in cannabis-related activity (including employment in the cannabis industry), even in a state that has legalized such conduct, are at significant risk of having their naturalization applications denied. They may also be at risk of being refused re-entry to the United States if they travel abroad.

For the above reasons, lawful permanent residents (and other foreign nationals) should avoid engaging in any cannabis-related activities in the United States, including employment in the state-licensed cannabis businesses, at least until cannabis has been legalized/decriminalized at the federal level.

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1. See Volume 12: Citizenship and Naturalization, Part F, Good Moral Character, Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5].↩
2. See Volume 12: Citizenship and Naturalization, Part D, General Naturalization Requirements [12 USCIS-PM D].↩
3. See Volume 12: Citizenship and Naturalization, Part G, Spouses of US Citizens [12 USCIS-PM G].↩
4. See Volume 12: Citizenship and Naturalization, Part I, Military Members and their Families [12 USCIS-PM I].↩
5. INA §101(f) and 8 CFR §316.10(b).↩
6. See also 8 CFR §316.10(a)(1), which states that a naturalization applicant bears the burden of demonstrating that, during the statutory period, he or she has been and continues to be a person of good moral character.↩
7. INA §316(e).↩
8. INA §101(f).↩
9. See *Kariuki* v. *Tarrango*, 709 F.3d 495 (5th Cir. 2013).↩
10. See *Lawson* v. *USCIS*, 795 F.Supp.2d 283 (S.D.N.Y. 2911).↩
11. INA §237(a)(2)(B)(i).↩
12. INA §237(a)(2)(A)(iii).↩
13. INA §101(a)(43)(B).↩
14. INA §212(a)(2)(A)(i)(II).↩
15. INA §212(a)(2)(C).↩
16. INA §101(a)(13)(C). The grounds of inadmissibility will not apply if the lawful permanent resident has previously received an immigrant waiver under INA 212(h) [typically granted during a permanent residence application] or cancellation of removal under INA 240A(a) [typically granted during removal proceedings]. However, neither is likely to apply in the case of a lawful permanent resident who has recently engaged in cannabis-related activity in a state that has legalized such conduct.↩

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