

## CHAPTER 5:

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The immigration consequences of a criminal conviction or other disposition vary largely with the noncitizen's particular immigration status. This chapter discusses and prioritizes adverse immigration consequences of a criminal disposition based on the client's particular immigration status. For the purposes of presenting the various immigration consequences, noncitizens are divided into five broad categories:

- Lawful permanent residents (LPRs) (*see* § 5.1)
- Refugees (*see* § 5.2)
- Persons granted asylum (*see* § 5.3)
- Noncitizens with temporary lawful status (*see* § 5.4)
- Noncitizens without immigration status (*see* § 5.5)

These are the immigration statuses you are most likely to encounter, but they are not exhaustive.

## 5.1

### Lawful Permanent Resident

A lawful permanent resident, or LPR, is a person allowed to live and work in the U.S. permanently. *See supra* § 2.2B (describing LPR status). Such a client may have immigrated to this country as a child, may have lived and worked in this country for many years, and may have most, if not all, of his or her family in the U.S.

An LPR can be removed or face other adverse immigration consequences because of a criminal conviction, regardless of number of years in the U.S. or U.S. citizen family relationships.

#### A. LPR Client's Immigration Priorities

An LPR can be removed from the U.S. for an offense triggering deportability. *See supra* § 3.2A (describing concept of deportability). Generally, since LPRs want to remain in the U.S., such a conviction will be their greatest immigration concern. In particular, an LPR will be concerned about an aggravated felony conviction, which carries the most severe consequences, including being barred from most forms of relief from removal.

A second and perhaps less important concern is a conviction that triggers inadmissibility. Generally, an LPR cannot be removed for an offense that triggers inadmissibility. However,

if an LPR travels outside of the U.S. after being convicted of such an offense, he or she may be placed in removal proceedings on attempting to return to the U.S. While an LPR can avoid this consequence by not traveling outside of the U.S., this is easier said than done, as many noncitizens travel to visit family members outside of the U.S.

In addition, an LPR may be concerned about eligibility to become a naturalized citizen, which has numerous benefits. Once an LPR has lawfully obtained citizenship, it generally cannot be revoked; he or she can remain in the U.S. without fear of removal. Therefore, if your client is able to avoid a deportable offense, he or she may also want to avoid a disposition that bars a showing of good moral character necessary for naturalization.

### **B. Impact on LPR of an Aggravated Felony Conviction**

Generally, an LPR's greatest immigration concern will be the aggravated felony ground of deportability because it bars eligibility for most forms of relief from removal and effectively subjects an LPR to mandatory deportation. If an individual is deportable, a grant of relief from removal allows an individual to remain in the U.S. Most forms of relief are discretionary and will depend on an individual's ties to the U.S. and other factors. Certain convictions will make noncitizens ineligible for relief from removal. An aggravated felony conviction bars almost all forms of immigration relief, including cancellation of removal. It is not always possible to avoid a deportable offense, but by avoiding an aggravated felony conviction, an LPR client may remain eligible for relief.

In addition to rendering an LPR deportable, an aggravated felony carries other serious immigration consequences, including the following:

- It subjects a person to mandatory detention during the removal proceedings.
- It subjects a person to up to twenty years in prison if he or she reenters the U.S. without permission subsequent to removal.
- It permanently bars immigration to the U.S. in the future.

For a table of the categories of offenses classified as aggravated felonies, *see supra* § 3.3A (also discussing definition of aggravated felony).

### **C. Impact on LPR of Other Dispositions Triggering Deportability**

In addition to an aggravated felony, an LPR will be concerned about other offenses that trigger deportability. For a chart of the principal deportable offenses, *see supra* § 3.3G. *See also supra* §§ 3.3C through F (discussing categories of deportable offenses).

### **D. Impact on LPR of a Criminal Disposition Triggering Inadmissibility**

If your client plans to travel abroad in the future, a secondary concern for your client is a criminal disposition that triggers inadmissibility.

The criminal grounds of inadmissibility are generally broader than the grounds of deportability and include offenses that are not covered under the comparable deportability grounds. For example, a conviction of simple possession of 30 grams or less of marijuana

triggers inadmissibility, but not deportability. As a result, an LPR client convicted of such an offense would not be subject to removal and could remain in the U.S. unless he or she traveled outside of the U.S. and on return was considered inadmissible.

For a chart of the principal criminal grounds of inadmissibility, *see supra* § 3.4G. *See also supra* §§ 3.4A through F (discussing categories of inadmissible offenses).

#### **E. Impact on LPR of a Criminal Disposition Barring Naturalization**

LPRs seek to naturalize and become U.S. citizens for a number of reasons. Once lawfully obtained, citizenship generally cannot be revoked and LPRs can remain in the U.S. without fear of removal. There are also a number of other benefits of citizenship, such as the right to vote, the right to travel freely, the right to sponsor relatives for immigration to the U.S., and eligibility for certain state and federal jobs. If an LPR client is able to avoid a deportable offense, he or she may then be concerned about avoiding a disposition that bars eligibility for naturalization.

In many cases, naturalization requires a showing of good moral character for five years. *See supra* § 3.6 (discussing requirements for naturalization). If an LPR client is convicted of or admits certain crimes, he or she is precluded from demonstrating good moral character for up to five years. The convictions listed below bar a showing of good moral character:

- Convictions triggering inadmissibility that involve crimes involving moral turpitude (subject to the petty offense exception), drugs, prostitution, and multiple criminal convictions
- Conviction, on or after November 29, 1990, of an aggravated felony. Such a conviction makes your client permanently ineligible for citizenship.
- Conviction of two or more gambling offenses
- Confinement, as a result of conviction, to a penal institution for an aggregate period of 180 days or more

Bear in mind that if your client is convicted of one of these offenses, he or she may still be eligible for naturalization five years after the date of conviction or the completion of any jail sentence (whichever is later).

## **5.2**

### **Refugee (who has not yet obtained LPR status)**

Refugees have been conditionally admitted to the U.S. based on a fear of persecution in their country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion. *See supra* § 2.2C (describing refugee status).

Refugees can be removed because of a criminal conviction and thus can be returned to a country where they may be harassed, imprisoned, tortured, or even killed. There is much at stake in a criminal case for a client with refugee status.

### A. Refugee Client's Immigration Priorities

A refugee has been given conditional, not permanent, permission to reside in the U.S. Most refugees want to remain in the U.S. permanently because of their fear of persecution. Refugees who have been in the U.S. for at least one year must report to immigration authorities to apply for adjustment to LPR status. *See* INA § 209(a), 8 U.S.C. § 1159(a). For technical reasons particular to refugee status, a refugee client's primary immigration concern is an offense that triggers inadmissibility, not deportability. If a refugee has been convicted of a crime triggering inadmissibility, the refugee is ineligible to adjust to LPR status. Further, the refugee may be placed in removal proceedings if convicted of a crime triggering inadmissibility. *See* INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 209.1(e).

Second, if your refugee client cannot avoid an offense triggering inadmissibility, he or she may still be able to remain in the U.S. permanently by seeking a special form of relief for refugees and asylees. A disposition involving drug trafficking is a bar to such relief.

### B. Impact on Refugee of a Criminal Disposition Triggering Inadmissibility

The principal concern of a refugee client is a criminal disposition triggering inadmissibility. If convicted of an inadmissibility offense, refugees can be denied adjustment to LPR status, and they can be removed from the U.S. Other offenses can also result in a denial of adjustment to LPR status in the discretion of the immigration judge or officer, but they are not automatic bars.

For a chart of the principal criminal grounds of inadmissibility, *see supra* § 3.4G. *See also supra* §§ 3.4A through F (discussing categories of inadmissible offenses).

Note that the criminal grounds of inadmissibility do not include some crimes that would render a person deportable—namely, firearm and domestic violence offenses. (If, however, the firearm or domestic violence offense constitutes a crime of moral turpitude, which is one of the crimes of inadmissibility, the offense could still render the person inadmissible.) Therefore, a conviction for carrying a concealed firearm would not render your client inadmissible and would not bar adjustment to LPR status.

### C. Impact on Refugee of Drug Trafficking and Certain Other Dispositions

If your refugee client cannot avoid an offense triggering inadmissibility, he or she may still be able to remain in the U.S. permanently by seeking a special form of relief for refugees and asylees. *See* INA § 209(c), 8 U.S.C. § 1159(c). Such relief is barred by any conviction that provides the government “reason to believe” that the refugee has been involved in drug trafficking. *See id*; *see also supra* § 3.4A (discussing meaning of drug trafficking in this context).

In addition, since 2002, a conviction of a “violent or dangerous” crime has made it more difficult for refugees and asylees to obtain such discretionary relief. *See Matter of Jean*, 23 I&N Dec. 373, 381–84 (AG 2002). “Violent and dangerous” crimes are not an automatic bar, however. The term “violent and dangerous” crime has not been defined, but unpublished decisions indicate that it may include felony assault crimes and sex crimes.

## 5.3

### Person Granted Asylum (who has not yet obtained LPR status)

A person granted asylum has been admitted indefinitely to the U.S. due to a threat of persecution in his or her country of nationality. *See supra* § 2.2C (describing asylee status). Asylees can be removed because of a criminal conviction and thus returned to a country where they may be harassed, imprisoned, tortured, or even killed. There is much at stake in a criminal case for a client who has been granted asylum.

Both refugees and asylees have been admitted to the U.S. due to a threat of persecution. Both groups can work in the U.S. and adjust to LPR status. Refugee status, however, is granted to an individual prior to entering the U.S., based on U.S. refugee policy and priorities. Upon application, he or she is granted a visa, and then is admitted to the U.S. as a refugee. In contrast, asylum is granted to an individual after entry into the U.S. Thus, the individual entered the U.S. in some other status or unlawfully, but then applied for and was granted asylum.

For technical immigration law reasons pertaining to their status, a refugee can be removed for an offense triggering inadmissibility, while an asylee can be removed only if convicted of a “particularly serious crime.” However, both groups are concerned about adjusting to LPR status and therefore with avoiding offenses that trigger inadmissibility.

#### A. Asylee Client's Immigration Priorities

An asylee's greatest concern is conviction of a “particularly serious crime,” including any aggravated felony, because he or she can be removed for such an offense. *See* INA § 208(c)(2)(B)&(3), 8 U.S.C. § 1158(c)(2)(B)&(3). An asylee will not be removed based on the other crime-related grounds of deportability.

Another significant concern for asylees is an offense triggering inadmissibility. Like a refugee, an asylee has been given conditional, not permanent, permission to reside in the U.S. An asylee can lose his or her status if conditions in the country of nationality change. To remain permanently in the U.S., an asylee must adjust status to an LPR. If the asylee has been convicted of a crime making him or her inadmissible, he or she is ineligible to become an LPR.

Third, if your asylee client cannot avoid a crime of inadmissibility or an aggravated felony, he or she may still be able to remain in the U.S. permanently by seeking a special form of relief for refugees and asylees. A disposition involving drug trafficking is a bar to such relief.

#### B. Impact on Asylee of an Aggravated Felony Conviction

An asylee's primary immigration concern is a conviction of a “particularly serious crime,” for which he or she can be deported. *See* INA § 208(c)(2)&(3), 8 U.S.C. § 1158(c)(2)&(3). There is no statutory definition of a particularly serious crime. However, in the context of determining whether an asylee can be deported, an aggravated felony conviction is a *per se* conviction for a “particularly serious crime.” *See* INA § 208(b)(2)(B)(i), 8 U.S.C. § 1158(b)

(2)(B)(i). For a table of the categories of offenses classified as aggravated felonies, *see supra* § 3.3A (also discussing definition of aggravated felony).

Other offenses may be considered a particularly serious crime in the discretion of the immigration judge. The relevant factors include the nature and underlying facts of the conviction, the type of sentence imposed, and the future dangerousness of the defendant. *See Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982).

### C. Impact on Asylee of a Criminal Disposition Triggering Inadmissibility

Another significant concern for an asylee client is an offense that renders him or her inadmissible. Because asylum does not confer a permanent right to reside in the U.S., an asylee may want to adjust to LPR status. To adjust his or her status, a person granted asylum must avoid the crime-related grounds of inadmissibility. For a chart of the principal criminal grounds of inadmissibility, *see supra* § 3.4G. *See also supra* §§ 3.4A through F (discussing categories of inadmissible offenses). Other offenses can result in a denial of adjustment of status in the discretion of the immigration judge or officer, but they are not automatic bars.

Note that the criminal grounds of inadmissibility do not include some crimes that would render a person deportable—namely, firearm and domestic violence offenses. (If, however, the firearm or domestic violence offense constitutes a crime of moral turpitude, which is one of the crimes of inadmissibility, the offense could still render the person inadmissible.) Therefore, a conviction for carrying a concealed firearm would not render your client inadmissible and would not bar adjustment to LPR status.

### D. Impact on Asylee of Drug Trafficking and Certain Other Dispositions

If your asylee client cannot avoid an offense triggering inadmissibility, he or she may still be able to adjust to LPR status by seeking a special form of relief for refugees and asylees. *See* INA § 209(c), 8 U.S.C. § 1159(c). Such relief is barred by any conviction that provides the government “reason to believe” that the refugee has been involved in drug trafficking. *See id.*; *see also supra* § 3.4A (discussing meaning of drug trafficking in this context).

In addition, a conviction of a “violent or dangerous” crime may make it more difficult to obtain such discretionary relief. *See supra* § 5.2C (discussion of violent and dangerous crimes).

## 5.4

### Noncitizen with Temporary Lawful Status

Individuals with temporary lawful status include nonimmigrant visa holders and individuals with temporary protected status (TPS).

- Nonimmigrant visa holders are admitted to the U.S. on a temporary visa for a specific purpose, such as tourism, study, or temporary work. *See supra* § 2.2D (describing nonimmigrant visa holders).
- TPS provides temporary protection to nationals of countries experiencing dire and extraordinary conditions that make it too dangerous to return. *See supra* § 2.2D

(describing TPS). The current countries designated for TPS are Burundi, El Salvador, Honduras, Liberia, Nicaragua, Somalia, and Sudan.

These noncitizens may have only temporary status, but like LPRs they may have come to this country many years ago and may have lived and worked in this country for many years. Individuals with temporary lawful status can be removed because of a criminal conviction.

#### A. Immigration Priorities for Noncitizen with Temporary Lawful Status

Noncitizens with temporary lawful status may be removed from the U.S. based on an offense that triggers deportability. Such offenses are, therefore, their primary immigration concern.

A secondary concern is an offense that triggers inadmissibility. Certain noncitizens with temporary lawful status may be able to become LPRs based on a family relationship or employer sponsor. These individuals will be concerned about offenses that trigger inadmissibility, which would preclude them from becoming an LPR and remaining in the U.S. permanently.

If your client cannot avoid a conviction triggering inadmissibility, he or she may still be able to become an LPR by seeking 212(h) relief, which allows noncitizens to adjust to LPR status despite such a conviction (if your client is otherwise eligible to obtain LPR status). A controlled substance offense bars 212(h) relief.

#### B. Impact on Noncitizen with Temporary Lawful Status of a Criminal Disposition Triggering Deportability

**Concern about Deportable Offenses.** The greatest immigration concern for lawfully admitted noncitizens are dispositions triggering deportability, as they can be removed from the U.S. for such offenses. For a chart of the principal criminal grounds of deportability, *see supra* § 3.3G. *See also supra* §§ 3.3A through F (discussing categories of deportable offenses).

**Additional Concern for Nonimmigrant Client.** A criminal disposition can potentially trigger a separate ground of deportability for nonimmigrant visa holders. A nonimmigrant who has failed to meet the conditions for continued nonimmigrant status is deportable. *See* INA § 237(a)(1)(C)(i), 8 U.S.C. § 1227(a)(1)(C)(i). For example, a student who has failed to maintain a full course of study because he or she was sentenced to six months in jail may be deportable on this ground, even if the conviction itself is not a deportable offense. Similarly, a nonimmigrant with “visitor” status who is sentenced to jail or prison will be deemed to have failed to maintain that status. *See Matter of A*, 6 I&N Dec. 762 (BIA 1955) (visitor status cannot be pursued in jail).

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**Practice Note:** If your client has a nonimmigrant visa other than a visitor visa, your client should consult with an immigration attorney before addressing the pending criminal charges. The consequences for each nonimmigrant status vary substantially and are beyond the scope of this manual.

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**Additional Concern for a Client with TPS.** A client with TPS can also lose status and be removed for any felony conviction or two or more misdemeanor convictions (whether the convictions are entered separately or consolidated for judgment). *See* INA § 244(c)(2)(B)(i), 8 U.S.C. § 1254a(c)(2)(B)(i).

### C. Impact on Noncitizen with Temporary Lawful Status of a Criminal Disposition Triggering Inadmissibility

A secondary concern for noncitizens with temporary lawful status is an offense that triggers inadmissibility, which would prevent them from becoming an LPR. Some noncitizens may have a pending application for LPR status or some basis for acquiring LPR status in the future. For a chart of the principal criminal grounds of inadmissibility, *see supra* § 3.4G. *See also supra* §§ 3.4A through F (discussing categories of inadmissible offenses).

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**Practice Note:** The routes to LPR status are a complicated and constantly changing area of law. If your client is in the process of seeking LPR status, you should consult with his or her immigration attorney regarding the status of the application.

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### D. Impact on Noncitizen with Temporary Lawful Status of Controlled Substance and Certain Other Dispositions

If your client cannot avoid a crime of inadmissibility and is otherwise able to adjust status, he or she may still be able to obtain LPR status by seeking a form of relief known as 212(h) relief. *See* INA § 212(h), 8 U.S.C. § 1182(h). A conviction of a controlled substance offense (other than a single offense of simple possession of 30 grams or less of marijuana if the client has no prior controlled substance convictions) is a bar to 212(h) relief and consequently a permanent bar to obtaining LPR status.

In addition, a conviction of a “violent or dangerous” crime may make it more difficult to obtain discretionary 212(h) relief. *See supra* § 5.2C (discussion of violent and dangerous crimes).

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**Practice Note:** A conviction for a Class 1 misdemeanor possession of marijuana may involve more or less than 30 grams of marijuana. If your client is pleading guilty to a Class 1 misdemeanor possession of marijuana, it is important to document in the record of conviction that your client possessed 30 grams or less of marijuana, if applicable, for purposes of 212(h) relief. *See supra* § 3.5C (describing noncitizen’s burden of establishing right to immigration relief).

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## 5.5 Noncitizens without Immigration Status

Noncitizens without lawful status have no government authorization to be present in the United States. This category includes undocumented persons who entered the U.S. without

inspection (crossed the border illegally), as well as individuals who entered the U.S. on a valid visa but remained past their authorized period of stay. Some of these individuals may have pending applications for status or may be able, now or in the future, to obtain LPR status or persecution-based relief. *See supra* § 2.2E (describing noncitizens without immigration status).

These noncitizens may have no current immigration status, but like LPRs, they may have come to this country many years ago and may have lived and worked in this country for many years. An individual without status can be deported because of a criminal conviction. If an individual does not have lawful immigration status, he or she also may be deported immediately on that basis alone.

Because a client without status can be deported for being here unlawfully, sometimes criminal defense attorneys assume that the outcome of the criminal case does not matter. However, a removal based on criminal grounds (especially aggravated felony grounds) carries many more adverse consequences than a removal based on unlawful presence in the U.S. Thus, the outcome of the criminal case may still be important.

#### **A. Immigration Priorities for Noncitizen Client without Immigration Status**

Some individuals without immigration status may have a pending application for status or may be able, now or in the future, to obtain LPR status or persecution-based relief. Even if an individual is currently ineligible to obtain lawful status, that circumstance could change in the future. For example, Congress may pass a large-scale immigration reform bill in the future, providing an opportunity for lawful status for many undocumented persons. Therefore, even if your client does not have a present basis to obtain lawful status, the client may still be concerned about offenses that bar eligibility for lawful status in the future.

A client who wants to acquire LPR status, now or in the future, will be most concerned about offenses that trigger inadmissibility. Because individuals without status are in the U.S. unlawfully, the only way they can remain in the U.S. is by acquiring lawful status. However, a noncitizen cannot obtain lawful status and be “admitted” if convicted of an offense that triggers inadmissibility. Other offenses can prevent a noncitizen from acquiring lawful status in the discretion of the immigration judge or officer, but they are not automatic bars.

If your client cannot avoid an offense that triggers inadmissibility, he or she may still be able to become an LPR by seeking 212(h) relief, which allows noncitizens to adjust to LPR status despite such a conviction (if the noncitizen is otherwise eligible to obtain LPR status). A controlled substance offense bars 212(h) relief.

If your client has a fear of persecution in the country of nationality, he or she will also be concerned about any disposition that bars persecution-based relief, in particular a conviction of an aggravated felony or drug trafficking offense.

In addition, your client may be concerned about “voluntary departure.” Voluntary departure allows an individual to leave the U.S. voluntarily at his or her own expense in lieu of being removed by the government. If eligibility for voluntary departure is a concern, your client should avoid an aggravated felony conviction, which is a bar to voluntary departure.

## B. Impact on Noncitizen without Immigration Status of a Criminal Disposition Triggering Inadmissibility

Your client may have a pending application for LPR status or may be otherwise concerned about his or her ability to obtain LPR status in the future. If this is a priority for your client, he or she should avoid offenses that trigger inadmissibility. For a chart of the principal criminal grounds of inadmissibility, *see supra* § 3.4G. *See also supra* §§ 3.4A through F (discussing categories of inadmissible offenses).

Note that the criminal grounds of inadmissibility do not include some crimes that would render a person deportable—namely, firearm and domestic violence offenses. (If, however, the firearm or domestic violence offense constitutes a crime of moral turpitude, which is one of the crimes of inadmissibility, the offense could still render the person inadmissible.) Therefore, a conviction for carrying a concealed firearm would not render your client inadmissible and bar adjustment to LPR status.

## C. Impact on Noncitizen without Immigration Status of Controlled Substance and Certain Other Dispositions

If your client cannot avoid a crime of inadmissibility and is otherwise eligible to adjust status, he or she may still be able to obtain LPR status by seeking 212(h) relief. *See supra* § 5.4D (describing 212(h) relief). A conviction of a controlled substance offense (other than a single offense of simple possession of 30 grams or less of marijuana if the client has no prior controlled substance convictions) is a bar to 212(h) relief and consequently a permanent bar to obtaining LPR status.

In addition, a conviction of a “violent or dangerous” crime may make it more difficult to obtain 212(h) relief. *See supra* § 5.2C (discussion of violent and dangerous crimes).

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**Practice Note:** A conviction for a Class 1 misdemeanor possession of marijuana may involve more or less than 30 grams of marijuana. If your client is pleading guilty to a Class 1 misdemeanor possession of marijuana, it is important to document in the record of conviction that your client possessed 30 grams or less of marijuana, if applicable, for purposes of 212(h) relief. *See supra* § 3.5C (describing noncitizen’s burden of establishing right to immigration relief).

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## D. Impact on Noncitizen without Immigration Status of an Offense that Bars Persecution-Based Claims

**Generally.** Your client may have a pending application for asylum. Or, your client may be someone who fears persecution in his or her country of nationality but never applied for asylum. Or, your client may be a national of a country designated as experiencing civil strife, environmental disaster, or other extraordinary and temporary conditions, and thus be eligible for Temporary Protected Status (TPS).

If your client has a pending application for asylum, fears persecution in the country of removal, or is a national of a TPS-designated country, it may be an important goal of the case to avoid offenses that bar persecution-based claims.

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**Practice Note:** The law of asylum and other persecution-based relief from removal is a complicated and constantly changing area of law. In addition, the countries that are designated for temporary grants of TPS constantly change. If your client has already begun the process of seeking asylum or TPS, and has an immigration attorney or other representative, you should consult with that representative regarding the current status of the application. If not, and your client wants to remain in the U.S., you or your client may consider contacting an immigration lawyer to determine what options are available to your client under the current immigration laws. Once you have been able to determine more precisely your client's immigration prospects, you and your client will be in a better position to determine appropriate strategies for the criminal case.

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**Asylum.** A conviction of a "particularly serious crime" bars asylum. *See* INA § 208(b)(2)(A)(ii), 8 U.S.C. § 1158(b)(2)(A)(ii). There is no statutory definition of a "particularly serious crime." For *asylum* purposes, an aggravated felony conviction is considered a "particularly serious crime." *See* INA § 208(b)(2)(B)(i), 8 U.S.C. § 1158(b)(2)(B)(i). Other offenses may be considered a conviction of a particularly serious crime by an immigration judge.

In addition, a conviction of a "violent or dangerous" crime may make it more difficult to obtain asylum. *See supra* § 5.2C (discussion of violent and dangerous crimes).

**Withholding of Removal.** Even if your client is not eligible for asylum, he or she may be eligible for withholding of removal, a less beneficial form of persecution-based relief than asylum.

Withholding of removal is barred by a conviction of a "particularly serious crime." In this context, a particularly serious crime includes one or more aggravated felony convictions with an aggregate sentence of imprisonment (active or suspended) of five years or more. *See* INA § 241(b)(3)(B), 8 U.S.C. § 1231(b)(3)(B). A particularly serious crime also presumptively includes an aggravated felony conviction involving trafficking in a controlled substance. *See Matter of Y-L, A-G, R-S-R*, 23 I&N Dec. 270 (A.G. 2002) (presumption of particularly serious crime may be rebutted). An immigration judge may determine that some other crime is a "particularly serious crime."

**Temporary Protected Status (TPS).** Your client may be eligible for the temporary relief of TPS if he or she is a national of a designated country. The current countries designated for TPS are Burundi, El Salvador, Honduras, Liberia, Nicaragua, Somalia, and Sudan.

Obtaining TPS is barred by any felony conviction or two or more misdemeanor convictions. *See* INA § 244(c)(2)(B)(i), 8 U.S.C. § 1254a(c)(2)(B)(i). Obtaining TPS is also barred by a crime involving moral turpitude (except for an offense that falls within the petty offense exception), a drug offense (except for a single offense of possession of 30 grams or less of marijuana), or evidence that supports a charge of drug trafficking. *See* INA § 244(c)(2)(A)(iii), 8 U.S.C. § 1254a (c)(2)(A)(iii).

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**Practice Note:** TPS country designations constantly change; the designations of the countries listed above may expire or new countries may be added. If your client is a national of one of the countries listed above, check the website of the U.S. Citizenship and Immigration Service—[www.uscis.gov](http://www.uscis.gov)—to determine if the country is still designated. Also, if your client is not from a country listed above, but that country is now suffering from some dangerous condition, you can check the website to determine whether it has been designated for TPS.

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#### **E. Impact on Noncitizen without Immigration Status of a Conviction that Bars Voluntary Departure**

If your client cannot avoid removal, he or she may be interested in “voluntary departure.” Voluntary departure allows an individual to leave the U.S. voluntarily at his or her own expense in lieu of being removed by the government. Your client may prefer this alternative to deportation. For example, if deported by the government, your client will be barred from immigrating to the U.S. for a minimum statutory period of time (depending on the basis for the removal). *See supra* § 3.2C (describing statutory bars to immigration). If your client voluntarily departs, however, he or she may not be subject to these statutory bars to returning to the U.S. Also, your client may want to avoid any harassment or stigma in the country to which he or she returns as a result of forcible removal from the U.S.

Clients interested in voluntary departure must avoid a conviction of an aggravated felony, which is a bar to voluntary departure. *See* INA §§ 240B(a)(1)&(b)(1)(C), 8 U.S.C. §§ 1229c(a)(1)&(b)(1)(C).

## **5.6**

### **Summary of Priorities in Representing Noncitizen Clients by Status**

The following is based on the likely priorities of noncitizen clients in criminal proceedings.

#### **LPR's Immigration Priorities**

1. Most importantly, an LPR should avoid an aggravated felony conviction, which bars most forms of relief from removal.
2. An LPR should also avoid other offenses triggering deportability, for which he or she can be removed.
3. If your client plans to travel abroad in the future, he or she should avoid a criminal disposition that triggers inadmissibility.
4. If your client is able to avoid a deportable offense, he or she may also want to avoid a disposition that bars naturalization.

#### **Refugee's Immigration Priorities**

1. A refugee should avoid an offense that triggers inadmissibility, as a refugee can be removed from the U.S. for such an offense.

2. If your refugee client cannot avoid an offense that triggers inadmissibility, he or she should at least avoid a drug trafficking disposition, which bars a special form of relief from removal for refugees and asylees.

#### **Asylee's Immigration Priorities**

1. An asylee should avoid a conviction of a particularly serious crime, specifically an aggravated felony, as he or she can be removed from the U.S for such an offense.
2. Your asylee client should avoid an offense that triggers inadmissibility if he or she wants to adjust to LPR status.
3. If your asylee client cannot avoid a crime of inadmissibility or an aggravated felony, he or she should at least avoid a drug trafficking disposition, which bars a special form of relief from removal for refugees and asylees.

#### **Immigration Priorities for Noncitizen with Temporary Lawful Status**

1. A noncitizen with temporary lawful status should avoid an offense that triggers deportability or otherwise results in loss of status.
2. A noncitizen with temporary lawful status should avoid an offense that triggers inadmissibility if he or she wants to adjust to LPR status.
3. If your noncitizen client with temporary lawful status cannot avoid a crime of inadmissibility and is otherwise able to adjust status, he or she should at least avoid a controlled substance offense, which precludes 212(h) relief from removal.

#### **Immigration Priorities for Noncitizen Client without Immigration Status**

1. A noncitizen without immigration status should avoid an offense that triggers inadmissibility if he or she wants to acquire LPR status.
2. If a noncitizen client without immigration status cannot avoid a crime of inadmissibility, he or she should at least avoid a controlled substance offense, which permanently bars an individual from adjusting to LPR status.
3. If your client has a fear of persecution in the country of nationality, he or she should avoid any disposition that bars persecution-based relief.
4. If your client is interested in voluntary departure, he or she should avoid an aggravated felony conviction.