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INSIGHT

Marijuana and Restrictions on Immigration

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Marijuana is listed as a Schedule I controlled substance under the Controlled Substances Act (CSA), and has been on Schedule I since the CSA was enacted in 1970 (P.L. 91-513). The Schedule I status of marijuana means that it is strictly regulated by federal authorities, regardless of state regulations and laws, and its growth, distribution, and possession (regardless of recreational or medicinal purposes) are prohibited under federal law aside from activities related to lawful research.

Over the last several decades, states and territories have established a range of laws and policies regarding marijuana's medical and recreational use. Most states and territories have deviated from across-the-board prohibition of marijuana, and now have laws and policies allowing for some cultivation, sale, distribution, and possession of marijuana, while some states continue to prohibit any marijuana activity aside from lawful research. These developments have spurred a number of questions regarding potential implications for federal law enforcement activities as well as consequences for individuals who may be acting in accordance with state law but are in violation of federal drug laws and policies.

There are many consequences of marijuana-related activity in the United States. This Insight focuses on the immigration consequences for noncitizens (referred to as *aliens* in immigration law).

Immigration Consequences of Marijuana-Related Activity

Drug-related activity can have various types of immigration consequences. Four key consequences for noncitizens are inadmissibility, deportability, ineligibility for immigration relief, and bar to naturalization. Due to pending legislation that addresses the legality of marijuana under federal law and immigration matters related specifically to marijuana-related activity, this discussion is limited to consequences for marijuana-related activity.

This Insight uses the term *marijuana-related activity* rather than *marijuana offense* because activities that are not illegal in the state or foreign country where they occurred could still have immigration consequences because of the federal prohibition on marijuana and the federal government's jurisdiction over immigration enforcement.

Inadmissibility

Aliens may be denied a visa, admission into the United States, or lawful permanent resident (LPR) status if they have been involved in certain marijuana-related activities (8 U.S.C. §1182(a)), such as

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- a criminal conviction for a federal, state, or foreign marijuana offense;
- an admission of commission of a federal, state, or foreign marijuana offense (this can include admitting marijuana use consistent with states' legal marijuana programs);
- an attempt or conspiracy to commit a federal, state, or foreign marijuana offense;
- immigration authorities knowing, or having reason to believe, that the alien has been involved in marijuana trafficking (working or investing in a state-licensed marijuana industry may be considered trafficking by immigration officers);
- benefitting financially from marijuana trafficking committed by a spouse or parent (within last five years); and
- addiction to or abuse of marijuana.

Deportability

Aliens who have been lawfully admitted to the United States can be removed if they engage in proscribed activities that render them deportable (8 U.S.C. §1227). The marijuana-related activity that can be grounds for deportation include

- a criminal conviction for a federal, state, or foreign marijuana offense; this does not apply if the conviction is for a single offense of possessing 30 grams or less of marijuana for personal use;
- an attempt or conspiracy to commit a federal, state, or foreign marijuana offense;
- an aggravated felony conviction (including marijuana trafficking crimes) (8 U.S.C. §1101(a)(43)); and
- addiction to or abuse of marijuana if it occurred anytime since admission to the United States.

Ineligibility for Immigration Relief

There are several forms of immigration relief for aliens who are inadmissible or deportable. These include waiver of certain criminal inadmissibility grounds, cancelation of removal, voluntary departure, withholding of removal, protection under the Convention Against Torture, asylum, Temporary Protected Status (TPS), and Deferred Action for Childhood Arrivals (DACA). Certain marijuana-related activity may bar an alien from some of these types of relief. A detailed legal discussion of each of these types of relief is outside the scope of this Insight, but for more information, see CRS Report R45151, *Immigration Consequences of Criminal Activity*.

Bar to Naturalization

In general, LPRs may naturalize as U.S. citizens after residing continuously in the United States for five years and satisfying other qualifications (8 U.S.C. §1427(a)). To be naturalized, applicants must establish *good moral character* (GMC), which includes not being convicted of an aggravated felony, among other things (8 U.S.C. §1101(f)). The definition of GMC has been further clarified in regulation to include violating "any law of the United States, any State, or any foreign country relating to a controlled substance, provided that the violation was not a single offense for simple possession of 30 grams or less of marijuana" (8 C.F.R. §316.10(b)(2)). In April 2019, U.S. Citizen and Immigration Services issued guidance clarifying that a marijuana conviction or admission, or involvement in marijuana-related activities, can bar an individual from establishing GMC, even if the marijuana-related activity did not violate applicable state or foreign laws. In May 2019, 43 Members of Congress signed a letter to Attorney

General Barr and then-Acting DHS Secretary McAleenan expressing concerns about how the new policy guidance impacts LPRs employed in a state-authorized cannabis industry.

The MORE Act

The Marijuana Opportunity Reinvestment and Expungement Act of 2019 (H.R. 3884; S. 2777; the MORE Act), would, among other things, remove marijuana from the CSA altogether, thereby ending the federal criminalization of the cultivation, distribution, and possession of marijuana; it would not affect state and foreign laws that continue to prohibit this activity. It also would prohibit the denial of any immigration benefit or protection to aliens who have participated in any marijuana-related activity, including "an admission, addiction or abuse, an arrest … or a conviction." Other bills in the 116th Congress, such as S. 2021 and H.R. 4390, would remove certain marijuana-related activity as a grounds of inadmissibility and deportability, and allow aliens who were deported due to marijuana-related activity to be readmitted.

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