ALL THOSE RULES ABOUT CRIMES INVOLVING MORAL TURPITUDE

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Different Rules Govern Consequences of Crimes Involving Moral Turpitude

A conviction of a crime involving moral turpitude (CIMT) may or may not hurt an immigrant, depending on a number of factors set out in the Immigration and Nationality Act: the number of CIMT convictions, the potential and actual sentence, when the person committed or was convicted of the offense, and the person's immigration situation. A single CIMT conviction might cause no damage, or it might cause a variety of penalties ranging from deportability to ineligibility for relief.

This Advisory will review the statutory provisions that govern when a CIMT conviction has consequences. It will answer the following questions:

1. When does one CIMT conviction trigger the CIMT deportation ground?
2. When do two or more CIMT convictions trigger the CIMT deportation ground?
3. What is the "petty offense" exception to the CIMT inadmissibility ground?
4. When is a CIMT conviction a bar to "10-year" non-LPR cancellation of removal?
5. When is a CIMT conviction a bar to VAWA non-LPR cancellation of removal?
6. When does a CIMT conviction stop the clock on the seven years of residence required for LPR cancellation of removal?
7. When is a CIMT conviction a bar to establishing good moral character?
8. When does a CIMT conviction trigger mandatory detention?
9. What is the effect of a CIMT finding in delinquency proceedings?
10. When can a CIMT conviction be waived under INA § 212(h)?
11. When can a CIMT conviction be waived under INA § 212(c)?
12. What is the "youthful offender" exception to the CIMT inadmissibility ground?

Note: Deportability, Inadmissibility, and Other Consequences

To use these moral turpitude rules, first we must identify *which* rule/s apply to your particular client in her particular situation. Our immigration laws have two separate lists of reasons for which a noncitizen can be "removed" (deported, banished) from the United States: the grounds of inadmissibility and the grounds of deportability. In order to assess whether your client might face removal or qualify for relief, it is important to understand which list applies to your client's situation. A comprehensive discussion is beyond the scope of this Advisory, but here are the basic standards.

1) A noncitizen who has been admitted to the U.S. in any status, or who has adjusted status within the United States, is subject to the grounds of deportability. See INA § 237(a), 8 USC § 1227(a). That means that if she comes within a deportation ground, she can be placed in removal proceedings and removed for being deportable, unless she has some defense to removal.

   Example: A permanent resident, or a person who was admitted on a tourist visa, can be placed in removal proceedings if they become deportable under INA § 237 (e.g., by being convicted of an offense listed in § 237(a)(2)).

2) A noncitizen who asks to enter the United States at a port of entry (border, international airport, etc.) is seeking to be "admitted," and is subject to the grounds of inadmissibility. A person applying for adjustment of status within the United States also is subject to the grounds of inadmissibility. INA § 212(a), 8 USC § 1182(a).

   Example: A person with a student visa or visitor visa who applies for admission at the border can be denied entry if she is inadmissible (e.g., because she was convicted of an offense listed in INA § 212(a)(2)).

   Example: A person who comes to the border with no visa is subject to the grounds of inadmissibility. Even without a criminal conviction, the person automatically is inadmissible due to not having a visa. INA § 212(a)(7).

   A permanent resident who travels abroad on a trip is not considered to be seeking a new admission when she returns to a U.S. port of entry -- *unless* the government proves that she comes within any of five exceptions that are listed in INA § 101(a)(13)(C), 8 USC § 1101(a)(13)(C).[1] Commonly applied exceptions are that the permanent resident committed an offense listed in the crimes grounds of inadmissibility, or stayed outside the U.S. for more than six months. If the government does prove that a § 101(a)(13)(C) exception applies, then the permanent resident is treated like any other noncitizen: she either must be admissible, or be granted a waiver of inadmissibility, in order to be admitted.

3) A noncitizen who entered the U.S. without inspection never has been "admitted," and so faces the grounds of inadmissibility. The person is automatically inadmissible under INA § 212(a)(6), and can be removed unless she is granted some form of relief. A person who is paroled into the United States likewise is subject to the grounds of inadmissibility.

[1] See *Matter of Guzman-Martinez*, 25 I&N Dec. 845 (BIA 2012); *Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011).

Different rules may apply to those granted some sort of permission to stay in the United States. For instance, U non-immigrant status is considered an admission. If your client has some sort of protection, check with an expert to understand which list of rules might apply.

4) Some criminal convictions serve as a bar to eligibility to apply for immigration "relief." We use the term "relief" to include any immigration benefit, lawful status, or waiver, such as asylum, family immigration, or cancellation of removal. Anyone who is undocumented, or who has lawful status but has become deportable or otherwise disqualified from keeping the lawful status, is at risk of being removed unless she can qualify for some kind of relief. Each form of relief has its own standard for which crimes serve as a bar to eligibility. A bar might include an inadmissible offense, deportable offense, both, or neither. (To see a quick summary of the different forms of relief and their applicable crimes bars, see the ILRC *Relief Toolkit* at www.ilrc.org/chart.) We must pay careful attention to the wording in the statute that describes the bars. For example, must the person actually "be" deportable (both subject to the deportation grounds and comes within a ground), or just be convicted of an offense "described in" the deportation ground, to be barred? Must there be a criminal conviction, or is conduct sufficient? This Advisory will highlight these differences; see also discussion of 10-year and VAWA cancellation of removal in Parts 4 and 5, below.

1. When Does One CIMT Conviction Trigger the CIMT Deportation Ground?

Summary. One of the CIMT deportation grounds is triggered by a single conviction of a CIMT, *if* (a) the offense carries a maximum possible sentence of a year or more, *and* (b) the person committed the offense within five years "after the date of admission." INA § 237(a)(2)(A)(i), 8 USC § 1227(a)(2)(A)(i). Note that regardless of the date of conviction, no California misdemeanor, or felony reduced to a misdemeanor, has a possible sentence of a year or more; the maximum potential sentence is 364 days. Cal PC § 18.5(a).

Potential Sentence of One Year. This requirement is based on the maximum possible sentence that could be imposed, not the actual sentence that was imposed.

Recent amendments to California law provide that no California misdemeanor, regardless of the date of conviction, has a potential sentence of one year; the highest potential sentence is 364 days. See California Penal Code §18.5(a) (2017). Where the Penal Code, Vehicle Code, or other section provides that a misdemeanor or "wobbler" (alternative felony/misdemeanor) offense has a potential sentence "not to exceed one year" or similar language, PC § 18.5(a) provides that this actually means the offense has a potential sentence "not to exceed 364 days."[2] As of January 1, 2017, this applies retroactively to all past California convictions. Therefore, *no* single conviction of a California misdemeanor can cause deportability under this section, because even if the misdemeanor is a CIMT that was committed within five years after admission, it does not have a potential sentence of at least a year. It is possible to reduce some felonies to misdemeanors under California law, in which case the "new" misdemeanor will have a maximum possible sentence of just 364 days and will no longer trigger this provision. For further discussion of California sentences and PC § 18.5, see "California Criminal Sentences" advisory at www.ilrc.org/crimes.

[2] Section 18.5(a) provides: Every offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for a period not to exceed 364 days. This section shall apply retroactively, whether or not the case was final as of January 1, 2015.

Example: In 2006, LPR Melissa was convicted of California felony welfare fraud, a CIMT, which she committed within five years after her admission to the U.S. She was sentenced to 9 months in jail. She became deportable at that time because (a) she is subject to the grounds of deportability, based on her admission, and (b) the felony CIMT offense had a maximum possible sentence of a year or more. In 2010, Melissa reduced the felony to a misdemeanor under PC § 17(b)(3). However, she was still deportable because at that time, the conviction still carried a maximum possible sentence of one year. Fortunately, as of January 1, 2017, that offense – like all California misdemeanors with a potential one-year sentence, regardless of date -- automatically changed to have a maximum possible sentence of 364 days. Melissa did not have to go to court to get this changed; it was changed automatically by Penal Code § 18.5(a). While you may have to argue and explain the new California laws to immigration authorities, in fact Melissa no longer is deportable under this CIMT ground. (Note that if Melissa had needed to get an *imposed* sentence reduced from 365 to 364 days, she would need to go to court to request this; see PC § 18.5(b).)

California, Nevada, New Mexico, and Washington all define a misdemeanor as having a potential sentence of 364 days (although it appears that only California applies this law retroactively). Advocates in additional states are considering trying to enact such state legislation, to protect immigrant residents against deportation for a single misdemeanor. See also Part 4, "10-year" cancellation.

For convictions of felony offenses, or of misdemeanors from other states, note that a conviction for *attempt* to commit an offense rather than the offense itself may have a shorter potential sentence. In many jurisdictions, a conviction of attempt has half the potential sentence of the principal offense.

Example: Cary was convicted of attempted theft under a state statute that punishes theft with up to 18 months, and punishes attempt at half that time. Even if the theft is a CIMT, Cary is not deportable because the maximum possible sentence for the attempted crime is only nine months.

Within five years of admission. The BIA has set out a relatively clear definition of what constitutes an "admission" that starts the five-year clock for the CIMT deportation ground. The Board held that if a person is admitted to the U.S. in any status, and then adjusts status to permanent residence, the adjustment does not re-start the five-year clock. The five years continues to run from the initial admission. In contrast, if a person enters without inspection and then adjusts status, the five years begins on the date of adjustment. See *Matter of Alyazji,* 25 I&N Dec. 397 (BIA 2011), partially overturning *Matter of Shanu*, 23 I&N Dec. 754 (BIA 2005). The Board stated that admission must be "the admission by virtue of which the alien was then in the United States." *Id*. at 398.

In *Alyazji* the Board discussed different scenarios to show when the admission starting the five-year clock occurs. In each of the following examples, assume that the person was convicted of a CIMT that has a potential sentence of at least one year (for example, a California felony). The person will be deportable if the offense was committed within five years after the "date of admission."

Example 1. Alice is admitted to the U.S. on a visitor's visa in 2001 and overstays her visa. In 2006 she adjusts status to lawful permanent residence. She commits and is convicted of the CIMT in 2007. Her "date of admission" for purposes of the five years is the date she was admitted as a visitor in 2001. Since that was more than five years before she committed the offense in 2007, she is not deportable. See *Alyazji, supra* at 408. The result would be the same if Alice had not fallen out of status before adjusting.

Example 2. Ben enters the U.S. without inspection in 2001. In 2006 he adjusts status to lawful permanent residence (for example, pursuant to INA § 245(i) or as an asylee). His "date of admission" for purposes of the five years is the 2006 date of adjustment. *Id.* p. 401. If he commits the CIMT in 2007, he will be deportable.

Example 3. Cory is admitted to the U.S. as a permanent resident in 2002. In 2008 he leaves the U.S. for a few weeks just to visit his mother. Upon his return, he does not make a new "admission," pursuant to INA § 101(a)(13)(C).[3] In 2009 he commits the CIMT. While *Alyazji* does not address this situation, under the *Alyazji* test the date of admission for purposes of the five years should be 2002, not 2008, because his 2008 return was neither an admission nor an adjustment.

Example 4. The BIA discussed a hypothetical example involving a long absence. Say that David was admitted as a visitor in 2000, then left the U.S. from 2000 to 2012, and then entered the U.S. without inspection and later adjusted status in 2014. The BIA held that for purposes of this deportation ground, the five years began at his adjustment in 2014. He is not in the U.S. "by virtue of" his admission in 2000.

Example 5. The BIA did not discuss what happens to a person living in the U.S. with a student or work visa, who took short trips outside the U.S. occasionally (and therefore made new admissions after each trip), but maintained uninterrupted lawful presence. Arguably this person's five years started from the original admission on a nonimmigrant visa.

2. When Do Two or More CIMT Convictions Trigger the CIMT Deportation Ground?

A person who is subject to the grounds of deportability is deportable for two or more CIMT convictions that occur after admission, as long as they do not arise from a *single scheme of criminal misconduct*. INA § 237(a)(2)(A)(ii), 8 USC § 1227(a)(2)(A)(ii). The BIA has a narrow interpretation of whether something arises from a "single scheme." Unless two charges arose from the very same incident, it may be difficult to get that exception. For example, where the person used bad credit cards at four locations over the course of a few hours, the BIA held that it was not a single scheme. *Matter of Islam*, 25 I&N Dec. 637, 638 (BIA 2011).

Example: Stan entered the U.S. without inspection and was convicted of a fraud offense. He later adjusted status. Then he was convicted of two offenses arising from an incident at a convenience store: attempted theft and assault with a deadly weapon. Assume that all of these offenses are CIMTs. Arguably, Stan is not deportable. His first conviction was not after admission, so it does not count here. The next two convictions may come within the "single scheme" exception, since they literally arose from the same incident. But if he ever gets another CIMT conviction he will be deportable.

3. What Is the Petty Offense Exception to the CIMT Inadmissibility Ground?

A noncitizen who is subject to the grounds of inadmissibility, and who is convicted of or formally admits committing one CIMT (that is not a "purely political" offense) is inadmissible – *unless* she comes within a statutory exception like the so-called "petty offense" exception. This exception applies when: (1) The person committed only one CIMT (ever); (2) The person was not "sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed)" and (3) the offense carries a maximum possible sentence of no more than one year. INA § 212(a)(2)(A)(ii)(II), 8 USC §

[3] A lawful permanent resident who travels outside the United States is not considered to be seeking a new admission upon her return, unless she comes within one or more enumerated categories set out in INA § 101(a)(13)(C), 8 USC § 1101(a)(13)(C), such as being inadmissible under the crimes grounds, or remaining outside the United States for more than six months.

1182(a)(2)(A)(ii)(II). For information about the definition of both a sentence to a term of imprisonment (an imposed sentence) and a maximum possible sentence, see "California Criminal Sentences" advisory at www.ilrc.org/california-criminal-sentences-and-eligibility-relief.

A person who comes within the petty offense exception is not inadmissible under the CIMT ground. She does not need to apply for a waiver; the benefit is automatic. The statute provides that the CIMT inadmissibility ground "*shall not apply to an alien who"* comes within the petty offense exception. It appears that in every context that the CIMT inadmissibility ground is used – bars to relief based on inadmissibility, statutory bars to establishing good moral character, etc. -- the petty offense applies to protect the person. These same benefits apply to the less commonly used "youthful offender exception" that is discussed at Part 11, below. (Note that a slightly different bar applies to 10-year non-LPR cancellation; see next section.)

4. When Does a Single CIMT Conviction Bar Eligibility for "10 Year" Non-LPR cancellation?

Summary: Non-LPR cancellation of removal is a possible relief for persons who have lived in the U.S. for at least ten years and who meet other strict requirements. INA § 240A(b)(1), 8 USC § 1229b(b)(1). The BIA held that a single CIMT conviction is a bar to eligibility for this type of non-LPR cancellation if either (a) it has a maximum possible sentence of *a year or more*, or (b) a sentence of more than six months was imposed. Remember that no California misdemeanor offense has a maximum possible sentence of a year or more, under California Penal Code § 18.5(a); see Part 1. Therefore, no single California misdemeanor conviction is a bar to non-LPR cancellation as a CIMT, unless the person was sentenced to over six months in custody.

While it can be difficult to actually win a § 240A(b)(1) case due to the requirement to prove extraordinary hardship, there are tremendous advantages in at least remaining statutorily eligible to apply. That entitles the person to a regular hearing before an immigration judge, and it may be helpful in obtaining release from detention. A CIMT conviction can affect eligibility, because the applicant must establish 10 years of good moral character, and must not come within the "offense under" bar discussed below. (The stop-clock rule at INA § 240(d) also applies, but that rarely comes into play for § 240A(b)(1) cases.)

Discussion. An applicant for "10-year" non-LPR cancellation of removal is subject to a uniquely worded statutory bar. The person must not have been "convicted of an offense under" the main inadmissibility or deportability grounds relating to crimes. INA § 240A(b)(1)(C), 8 USC § 1229b(b)(1)(C).

First, note that this requires a conviction. A person who engaged in conduct, or admits having engaged in conduct, that is described in these removal grounds, but was not convicted, is not barred under this section. (Note, however, that the person also must establish 10 years of good moral character and meet the stop-time rule, so be sure that the conduct or admission of conduct is not a bar to doing that. See Part 7 on good moral character.).

In interpreting the phrase "convicted of an offense under" the removal grounds, the BIA combined the CIMT deportation and inadmissibility grounds (including the petty offense exception) to create a unique standard that *only* applies to 10-year cancellation. It held that a single conviction of a crime involving moral turpitude (CIMT) is a bar to LPR cancellation, unless it meets three criteria: it is the only CIMT that the person ever has committed; a sentence of no more than six months was imposed in the case; and the offense carried a maximum possible sentence of *less than* one year. *Matter of Cortez,* 25 I&N Dec. 301 (BIA 2010); *Matter of Pedroza,* 25 I&N Dec. 312 (BIA 2010).

Don't be fooled. The CIMT bar to 10-year cancellation may sound similar to the requirements for the petty offense exception to the moral turpitude inadmissibility ground, but they are not the same. They both require a sentence of no more than six months. However, the petty offense exception requires a single CIMT to have a potential sentence of *one year or less*, and it applies in several contexts. Avoiding the bar to 10-year cancellation requires a single CIMT to have a potential sentence of *less than one year*, and it only applies to 10-year cancellation.

The CIMT bar to 10-year cancellation based on a maximum possible sentence of a year or more is bad news for many people convicted of a single misdemeanor, because the law of many states provides that a misdemeanor has a potential sentence of *up to* a year, which triggers the bar. If your client is hurt by the bar, consider challenging the BIA's interpretation in *Cortez* and *Pedroza*, above. For example, while the BIA stated that it included the CIMT deportation ground in the bar, it failed to incorporate the deportation ground requirement that the offense had to have been committed within five years after admission. See discussion in *Lozano-Arredondo v. Sessions*, 866 F.3d 1082, 1088-1093 (9th Cir. 2017), declining to defer to *Cortez* and remanding to the BIA so it can reconsider its interpretation.

Some states, including California, Nevada, New Mexico, and Washington, define a misdemeanor as having a maximum possible sentence of up to 364 rather than 365 days. These misdemeanors avoid this part of the bar. See discussion of PC § 18.5(a) at Part 1, above.

Example: Assume that each of the following convictions is a CIMT; that it is the only CIMT that each person committed; and that each person was sentenced to 10 days. In other words, the conviction will not be a bar to § 240A(b)(1) cancellation *unless* it carries a potential sentence of a year or more. Which conviction is a bar?

1) California felony grand theft, now reduced to a misdemeanor;
2) Misdemeanor theft from another state, with a potential sentence of one year;
3) *Attempt* to commit a misdemeanor from another state that has a potential sentence of one year, where "attempt" is punishable by up to half of the full sentence.

The first conviction is not a bar, because under PC § 18.5(a) no California misdemeanor has a potential sentence of more than 364 days. The second conviction is a bar because it has a potential sentence of one year. The third conviction is not a bar because it has a potential sentence of six months.

Youthful offenders. While no precedent addresses the subject, a person who committed a single CIMT while under age 18 but was convicted as an adult might be eligible for LPR cancellation even if sentenced to more than six months. This is based on a second, less commonly used exception to the CIMT inadmissibility ground called the "youthful offender" exception. See Part 11, below. This exception applies to a person who committed only one CIMT, while under age 18, and was convicted as an adult, where the the conviction and release from resulting imprisonment occurred at least five years ago. If we use the BIA's approach in *Cortez* and combine the deportation ground and the youthful offender exception, then a single CIMT should not be a bar to non-LPR cancellation as long as (a) the person was under age 18 when he committed the offense and (b) the maximum possible sentence was less than one year. No six-month sentence requirement would apply, because that is not part of the youthful offender exception or the deportation ground.

5. When Does a CIMT Conviction Bar Eligibility for VAWA Non-LPR cancellation?

The crimes bar to VAWA cancellation, INA § 240A(b)(2), is worded differently than the bar to 10-year cancellation, INA § 240A(b)(1). VAWA cancellation requires that the person actually "is not inadmissible" and "is not deportable" under the crimes grounds. The person also must not have been convicted of an aggravated felony and must establish three years of good moral character. INA § 240A(b)(2)(A)(iii), (iv), 8 USC § 1229b(b)(2)(A)(iii), (iv).

The requirement that the person not be inadmissible or deportable provides some protections for VAWA cancellation applicants. First, the person must be *subject to* the grounds of inadmissibility or deportability in order to be "deportable" or "inadmissible." A person who entered the U.S. without inspection is not subject to the grounds of deportation, because those grounds do not apply to someone who has not been admitted. See INA § 237(a), 8 USC § 1227(a). Therefore, conviction of an offense described in the deportation grounds should not bar that person from VAWA eligibility. Likewise, a person who was admitted on a visa is not subject to the grounds of inadmissibility. (Regarding inadmissibility, however, it can get a bit more complex. A VAWA cancellation applicant also must establish three years of good moral character, and an offense listed in § 212(a)(2) and committed during the three years could bar be a bar to doing that, even if the applicant is not subject to the grounds of inadmissibility. See Part 7 on good moral character, below.)

Second, where the person is subject to the grounds of inadmissibility, the actual petty offense and youthful offender exceptions apply. The unique CIMT bar based on combining the inadmissibility and deportability ground set out in *Matter of Cortez* and *Matter of Pedroza*, for 10-year cancellation under § 240A(b)(1), discussed at Part 4 above, do not apply to VAWA § 240A(b)(2) cancellation applicants.

> *Example:* Gina entered the U.S. without inspection in 2005. She married a U.S. citizen, who abused her. In 2009 she was convicted of a misdemeanor California offense that is a misdemeanor CIMT and also meets the definition of a deportable crime of child abuse. She received 10 days in jail. This is her only CIMT.
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> Gina is not barred from applying for VAWA cancellation. She is not inadmissible for a CIMT because she qualifies for the petty offense exception. She is not "deportable" under the child abuse ground, because as someone who entered without inspection she is not subject to the grounds of deportation.

A person who is barred from VAWA cancellation due to being inadmissible or deportable for CIMTs may be able to qualify for VAWA through self-petitioning, along with a § 212(h) waiver. Section 212(h) requirements for VAWA applicants are less stringent than for others. INA § 212(h), 8 USC § 1182(h).

6. When Does a CIMT Stop the Clock on the Seven Years of Residence Required for LPR Cancellation?

Summary*:* A CIMT that comes within the petty offense (see Part 3) or youthful offender (see Part 11) exceptions to the CIMT inadmissibility ground does not stop the seven-year clock, even if the conviction also makes the permanent resident deportable under the CIMT ground. If the person receives a second CIMT conviction, the clock stops as of the date of commission of the second offense, not the first. *Matter of Garcia*, 25 I&N Dec. 332 (BIA 2010).

Arguably, if the LPR is in proceedings charged with being deportable, a CIMT conviction must both fall outside the petty offense and youthful offender exceptions, *and* make the person deportable (as opposed to inadmissible), in order to stop the clock.

Discussion. An applicant for LPR cancellation must have accrued seven years of residence since admission in any status before *either* (a) removal proceedings are begun, or (b) the applicant commits an offense that is "referred to" in INA § 212(a)(2) and that "renders" her deportable or inadmissible for crimes. INA § 240A(d), 8 USC § 1229b(d). This section considers the second trigger, an offense referred to in INA § 212(a)(2) that renders the person either inadmissible or deportable.

The BIA found that a conviction that comes within the petty offense exception is not "referred to" in the CIMT inadmissibility ground at § 212(a)(2). Therefore, unless the offense is referred to in some other § 212(a)(2) ground, the conviction does not fit within the stop-time rule and cannot stop the seven-year clock. This is true even if the conviction makes the person deportable. *Matter of Garcia*, 25 I&N Dec. 332 (BIA 2010). The same result would hold if the person came within the youthful offender exception (see Part 11).

> *Example:* Margaret was admitted to the U.S. as a permanent resident in 2006. In 2008 she was convicted of misdemeanor fraud in a state where a misdemeanor carries a maximum possible sentence of one year. She is sentenced to 30 days jail. Because she committed the offense within 5 years after her admission, Margaret is deportable based on the conviction. Nonetheless, because her conviction fits the petty offense exception, it does not trigger the stop-time rule in INA § 240A(d).
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> (If in 2008 Margaret instead had been convicted of a California misdemeanor that had a maximum possible sentence of a year, she would not be deportable today. That is because as of January 1, 2017, all California misdemeanors, regardless of the date of conviction, now have a maximum possible sentence of 364 days. See discussion of PC § 18.5(a) in Part 1, above)

If a person is convicted of a CIMT that comes within the petty offense exception, and then later is convicted of a second CIMT offense, the seven-year clock stops on the date of commission of the second CIMT, not the first. *Matter of Deando-Roma*, 23 I&N Dec. 597 (BIA 2003).

> *Example:* Serena was admitted to the U.S. as a permanent resident in 2006. In 2008 she was convicted of California misdemeanor fraud and sentenced to 20 days. In 2015 she committed and was convicted of a California theft offense. Assume that both of these are CIMTs. Does she have the seven years of residence since admission?
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> Yes. Her first CIMT offense came within the petty offense exception because it has a potential sentence of not more than a year (here, 364 days) and a sentence imposed of not more than six months (here, 20 days). Therefore it did not stop the clock, under *Matter of Garcia*. Her second CIMT conviction stopped the clock, but as of 2015, not 2008, under *Matter of Deando-Roma*. By 2015, she had seven years of residence since admission in any status.

What if the CIMT conviction is referred to in § 212(a)(2) but does not make the person deportable? Advocates should argue that where an LPR is in removal proceedings charged with being deportable, meaning proceedings brought under INA 237, an offense does not stop the clock unless it is "referred to" in 212(a)(2) and *"renders"* the person deportable. This is because an LPR who has been admitted and is being charged with being deportable is not subject to the grounds of inadmissibility, so no conviction can render the person inadmissible. A conviction can only render the person deportable.

> *Example:* Hal is an LPR who was admitted to the U.S. in 2005. In 2011, at age 30, he committed and was convicted of felony counterfeiting. In 2015 he was convicted of theft. Assume these both are CIMTs. He is placed in removal proceedings in 2017 and charged with being deportable for two CIMTs. Does he have the required seven years' residence?

He should be so found. The 2011 conviction is one "referred to" in the CIMT inadmissibility ground, because it is a CIMT that does not come within the petty offense or youthful offender exceptions. But it did not render Hal deportable, because it was a single CIMT conviction committed more than five years after admission. See Part 1, above. Neither did it render Hal inadmissible, because as a person already admitted to the U.S. he is not subject to the grounds of inadmissibility. Hal's clock did stop in 2015, because that offense is referred to in § 212(a)(2) and also renders him deportable under the CIMT ground.

Immigration judges may be split on this argument. Recently a judge in Seattle disagreed with it, and the case has been appealed to the Ninth Circuit. (For that judge, Hal's clock would have stopped in 2011 because the offense was referred to in INA § 212(a)(2) and also "rendered" Hal inadmissible under 212(a)(2).) A judge in Chicago has agreed with the argument. For further discussion of this argument and of the seven-year rule generally, see ILRC manuals such as *Removal Proceedings,* or *Remedies and Strategies for Lawful Permanent Residents* (www.ilrc.org, 2017).

7. When is a Single CIMT Conviction a Bar to Establishing Good Moral Character?

In general, a noncitizen is statutorily barred from establishing good moral character if, during the time for which good moral character must be shown, she is convicted of or formally admitted committing a single CIMT. INA § 101(f)(3), 8 USC § 1101(f)(3). However, if the conviction or admission comes within the petty offense (see Part 3) or youthful offender (see Part 11) exceptions to the inadmissibility ground, the person is not statutorily barred based on moral turpitude. 8 CFR § 316.10(b)(2).

A word about naturalization, good moral character, and deportability. There are many ways that a person could both be deportable for CIMT, but still eligible to establish good moral character. For example, the deportable conviction could have occurred outside the period of time for which good moral character must be demonstrated. But deportability is still a critical factor. A deportable non-citizen – even one with good moral character -- can be referred to removal proceedings if he submits an affirmative application such as for naturalization.

8. What is the Effect of a Delinquency Finding Relating to a CIMT?

A disposition in juvenile delinquency proceedings is not a "conviction" for immigration purposes. This is in keeping with consistent holdings of the Board of Immigration Appeals "that acts of juvenile delinquency are not crimes ... for immigration purposes."[4]

Being deportable for a CIMT requires a conviction, so a delinquency disposition is not sufficient. A person can be found inadmissible under the CIMT ground just for formally admitting having committed a CIMT, or acts that make up a CIMT, even if there is no conviction.[5] However, an admission made by a minor

[4] *Matter of Devison*, 22 I&N 1362 (BIA 2000)(*en banc*), citing *Matter of C.M.*, 5 I&N Dec. 327 (BIA 1953), *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). In *Devison* the Board held that this longstanding rule was not changed by the 1996 enactment of a statutory definition of conviction at 8 USC § 1101(a)(48)(A), INA § 101(a)(48)(A).

[5] INA § 212(a)(2)(A), 8 USC § 1182(a)(2)(A).

-- or by an adult about a CIMT committed while a minor – should not trigger inadmissibility under this ground, because the admission was of committing the civil offense of juvenile delinquency, not a crime.[6]

9. When Does a CIMT Trigger Mandatory Detention?

Under the mandatory detention provisions, immigration authorities must "take into custody," and thereafter not release, certain noncitizens who are inadmissible or deportable for crimes. A person who "is inadmissible by reason of having committed any offense covered in" INA 212(a)(2) is subject to mandatory detention. INA § 236(c)(1)(A), 8 USC § 1226(c)(1)(A). Here, the person must be subject to the grounds of inadmissibility: for example, a person who entered the U.S. without inspection. A conviction that comes within the petty offense or youthful offender exceptions (see Parts 3, 11) does not cause inadmissibility under the CIMT ground.

The Attorney General also must "take into custody," and thereafter not release, a noncitizen *deportable* for conviction of two CIMTs, or for one CIMT committed within five years of last entry, but only if sentence of one year or more imprisonment was *imposed.* INA 236(c)(1)(B), (C), 8 USC § 1226(c)(1)(B), (C). To be subject to the deportation grounds the person must have been admitted into the U.S. in some status, or adjustment status in the U.S. See above Note: Inadmissibility and Deportability, and see INA § 237(a), 8 USC § 1227(a). Note that the mandatory detention trigger based on conviction of one CIMT is less strict than the CIMT deportation ground: mandatory detention requires a sentence imposed of one year, whereas the deportation ground only requires a potential one-year sentence. See Part 1, above.

In the Ninth Circuit, mandatory detention applies only if immigration authorities detained the person promptly upon release from criminal custody based on a conviction that triggers mandatory detention. *Preap v. Johnson*, 831 F.3d 1193 (9th Cir. 2016). Also note that prolonged detention has been challenged in many circuits. Even in cases where mandatory detention provisions apply, the person might become eligible for a bond hearing after the passage of time.

10. When Can a CIMT Conviction Be Waived Under INA § 212(h)?

A qualifying non-citizen can ask to waive multiple CIMT convictions under INA § 212(h), 8 USC § 1182(h). There is no statutory limit on the number of convictions that can be waived in one § 212(h) application, or on the number of times a person can apply for § 212(h).

The exception is that some, but not all, permanent residents are subject to bars to § 212(h)(2). Determining LPR eligibility for § 212(h) is a two-step determination. First, is the person even subject to the bars? In general, if the person became a permanent resident by consular processing she is subject to the bars, and if she became a permanent resident by adjustment of status she might not be. Second, if the person is subject to the LPR bars, there are two instances where a CIMT cannot be waived: if the CIMT also is an aggravated felony and the conviction occurred after the person was admitted at the border as an LPR, or if an NTA was issued before the person had accrued seven years of lawful continuous residence.

[6] *Matter of MU*, 2 I&N Dec. 92 (BIA 1944) (admission by adult of activity while a minor is not an admission of committing a crime involving moral turpitude triggering inadmissibility); but see *United States v. Gutierrez-Alba*, 128 F.3d 1324 (9th Cir. 1997) (without discussion of the issue of admission of juvenile delinquency, the court found that juvenile's guilty plea in adult criminal proceedings constitutes admission, regardless of whether adult criminal court prosecution was ineffective due to defendant's minority status).

For further discussion of § 212(h), see books such as *Removal Proceedings,* or *Remedies and Strategies for Lawful Permanent Residents* (www.ilrc.org, 2017).

11. When Can a CIMT Conviction Be Waived Under INA § 212(c)?

A permanent resident who pled guilty to certain offenses before April 1, 1997 may be able to apply for relief today under former INA § 212(c), 8 USC 1182(c), in removal proceedings to defend against a charge of deportability or (at a port of entry, under INA § 101(a)(13)(C)) inadmissibility, or in connection with a defensive application for adjustment of status. If the conviction occurred between April 24, 1996 and April 1, 1997, special rules apply because AEDPA restricts the deportation grounds that can be waived under § 212(c). In that case § 212(c) will not waive a charge of deportability based on conviction of two CIMTs if *both* carry a potential sentence of one year. (Note that no California misdemeanor carries a potential sentence of one year. See Cal PC § 18.5(a) and discussion at Part 1, above. Depending upon the date of conviction, the same is true for misdemeanors from Nevada, New Mexico, and Washington states.)

Section 212(c) still is available to waive the CIMT ground of *inadmissibility* for any CIMT conviction/s before April 1, 1997, including those with a potential sentence of a year or more. Therefore, if a permanent resident was barred from applying for a waiver of deportability for two CIMT convictions from between April 24, 1996 and April 1, 1997, the person still might be able to apply for a waiver of inadmissibility under § 212(c) in conjunction with an application for adjustment. For further discussion of § 212(c), see online Practice Advisories[7] and see *Remedies and Strategies for Lawful Permanent Residents* (www.ilrc.org, 2017).

12. What is the Youthful Offender Exception to the CIMT Inadmissibility Ground?

The CIMT inadmissibility ground has two exceptions: the "petty offense" exception (see Part 3, above) and the less well-known "youthful offender" exception. Under the youthful offender exception, a noncitizen is not inadmissible under the moral turpitude ground based on a conviction in adult court if he or she committed only one CIMT, while under the age of eighteen, and if the commission of the offense and the release from any resulting imprisonment occurred over five years before the current application. INA § 212(a)(2)(A)(ii)(I), 8 USC § 1182(a)(2)(A)(ii)(I). (Note that this exception is not aimed at a juvenile court disposition regarding a CIMT, which is not a conviction at all. See Part 8, above. It is designed to help youth convicted as adults.) The youthful offender exception should bring the same multiple immigration benefits as the petty offense exception. See Part 3, above.

[7] See § 212(c) Advisories at the National Immigration Project of the National Lawyers Guild website, www.nipnlg.org.