

Criminal Immigration Law  
Criminal Defense of Aliens in Iowa -- Update

Criminal immigration law underwent extreme changes in 1996. Most changes are harsh and punitive. Some make little or no sense, and may have unreasonable and unintended consequences.

- Highlights -

\*\* The definition of "aggravated felony" has been greatly expanded. It now includes:

- a. all forms of rape and sexual abuse of a minor
- b. crimes of violence with a possible of sentence of one year (all serious misdemeanor assaults in Iowa)
- c. thefts with a possible sentence of at least one year (all serious misdemeanor thefts in Iowa)

\*\* A conviction for any "aggravated felony" is a complete bar to any immigration benefits. No relief from deportation or "cancellation of removal" is available. Former INA § 212(c) has been repealed -- hence, equitable relief from deportation or "212(c) relief" is no longer available.

\*\* A conviction for domestic abuse assault, even a simple misdemeanor, is a deportable offense. A conviction for violation of a civil or criminal no-contact order is a deportable offense. Unintended consequence: the breadwinner of the family may be deported, when all the spouse wanted was some marriage counselling. Solution: plead to simple misdemeanor assault if possible.

\*\* Child endangerment is now a deportable offense. In Iowa a defendant charged with OWI having children in the car is often charged with child endangerment.

\*\* Most deportation or removal decisions involving alien criminal defendants are no longer reviewable by the Federal court, whether district or appellate. These provisions removing deportation decisions of the executive branch (the Justice Department) from judicial review are open to challenge, both under the due process doctrine and the separation of power doctrine.

\*\* Deferred judgments no longer offer protection from deportation. A deferred judgment now has the same legal effect for deportation as a regular judgment of conviction.

\*\* On the positive side, legal permanent residents found deportable or removable due to a firearms offense are no longer totally barred from relief from deportation or cancellation of removal. The provisions governing this, INA § 240A(a), only bars cancellation of removal for persons convicted of an aggravated felony.

Immigration And Naturalization Act

(Pertinent Sections)

**General Classes Of Aliens Ineligible To Receive Visas  
And Ineligible For Admission; Waivers Of Inadmissibility**

**INA § 212; 8 U.S.C. 1182**

(2) Criminal and Related Grounds

(A) Conviction of Certain Crimes

(i) In General

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of -

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country related to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

is inadmissible.

(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if -

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement of prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple Criminal Convictions

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate

sentence to confinement were 5 years or more is inadmissible.

(C) Controlled Substance Traffickers

Any alien who the consular officer or the Attorney General knows or has reason to believe

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or

(ii) is the spouse, son, or daughter of an alien inadmissible under clause (i) has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity,

is inadmissible.

**General Classes Of Deportable Aliens**

**INA § 237; 8 U.S.C. § 1227**

(a) Classes of Deportable Aliens

Any alien (including an alien crewman) in the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(2) Criminal offenses

(A) General crimes

(i) Crimes of moral turpitude

Any alien who --

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under § 245(j) of this Title) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed, is deportable.

(ii) Multiple criminal convictions

Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) Aggravated felony

Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) High speed flight

Any alien who is convicted of a violation of § 758 of Title 18, United States Code (relating to high speed flight from an immigration checkpoint), is deportable.

(v) Waiver authorized

Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances

(i) Conviction

Any alien who at any time after admission has been convicted 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 (as defined in § 102 of the Controlled Substances Act (21 U.S.C. 802), other than a single offense involving possession for one's own use of thirty grams or less of marijuana, is deportable.

(ii) Drug abusers and addicts

Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) Certain firearm offenses

Any alien who at any time after entry is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying in violation of any law, any weapon, part, or accessory which is a firearm or destructive device (as defined in § 921(a) of Title 18, United States Code) is deportable.

(D) Miscellaneous crimes

Any alien who at any time has been convicted (the judgment on such conviction becoming final) of,

or has been so convicted of a conspiracy or attempt to violate --

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of Title 18, United States Code, for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under § 871 or 960 of Title 18, United States Code;

(iii) violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of § 215 or 278 of this Act, is deportable.

(E) Crimes of domestic violence, stalking, or violation of protective order, crimes against children and [sic]

(i) Domestic violence, stalking, and child abuse.

Any alien who at any time after entry is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in § 16 of Title 18, United States Code) against a person committed by a current or former spouse or the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any state, Indian tribal government, or unit of local government.

(ii) Violators of protection orders

Any alien who at any time after entry is enjoined under a protection order issued by a court and who the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a dependent lite order in another proceeding.

## **AGGRAVATED FELONY**

**INA § 101(a)(43); 8 U.S.C. § 1101(a)**

The term "aggravated felony" means --

A. murder, rape, or sexual abuse of a minor;

B. illicit trafficking in any controlled substance (as defined in § 924(C)(2) of Title 18, United States Code);

C. illicit trafficking in any firearms or destructive devices (as defined in § 921 of Title 18, United States Code) or in explosive materials (as defined in § 841(c) of that Title);

D. an offense described in § 1956 of Title 18, United States Code (relating to laundering of monetary instruments), or § 1957 of that Title (relating to engaging in monetary transaction in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;

E. an offense described in --

(i) § 842(h) or (i) of title 18, United States Code, or § 844(d), (e), (f), (g), (h), or (i) of that Title (relating to explosive materials offenses);

(ii) § 922(g) (1), (2), (3), (4) or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of title 18, United States Code (relating to firearms offenses); or

(iii) § 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

F. a crime of violence (as defined in § 16 of Title 18, United States Code, but not including a purely political offense) for which the term of imprisonment imposed is at least one year;

G. a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year;

H. an offense described in § 875, 876, 877, or 1202 of Title 18, United States Code (relating to the demand for or receipt of ransom);

I. an offense described in § 2251, 2251A, or 2252 of Title 18, United States Code (relating to child pornography);

J. an offense described in § 1962 of Title 18, United States Code (relating to racketeer influenced corrupt organization), or an offense described in § 1084 (if it is a second or subsequent offense) or of 1955 of that Title (relating to gambling offenses) for which a sentence of one year imprisonment or more may be imposed;

K. An offense that --

(i) relates to the owning, controlling, managing or supervising of a prostitution business;

(ii) is described in § 2421, 2422, or 2423 of Title 18, United States Code (relating to transportation for the purpose of prostitution) if committed for commercial advantage;

(iii) is described in § 1581, 1582, 1583, 1584, 1585, or 1588 of Title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

L. an offense described in --

(i) § 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18, United States Code;

(ii) § 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents); or

(iii) § 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);

M. an offense that --

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or

(ii) is described in § 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue lost to the government exceeds \$10,000;

N. an offense described in paragraph (1)(A) or (2) of § 274(a) (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this act;

O. an offense described in § 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

P. an offense --

(i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of § 1543 of Title 18, United States Code, or is described in § 1546(a) if such Title (relating to document fraud) and

(ii) for which the term of imprisonment is 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

Q. an offense relating to a failure to appear by a defendant for service of sentence in the underlying offense is punishable by imprisonment for a term of 5 years or more;

R. an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

S. an offense relating to obstruction of justice, perjury or subordination of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

T. an offense relating to failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

U. an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.

#### **INA § 101(a)(48)(A). CONVICTION**

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication has been withheld, where-

(i) a judge or jury has found the alien guilty of the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment of a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of imposition or execution of that imprisonment or sentence in whole or in part.

### **Title 18 - CRIMES AND CRIMINAL PROCEDURES**

#### **§ 16. Crime of violence defined.**

The term "crime of violence" means--

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

\* \* \*

## **§ 921. Definitions**

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designated to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means -

(A) any explosive, incendiary, or poison gas -

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of § 4684(2), 4685, or 4686 of Title 10; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to

be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.