



**Practice Advisory:**  
**Representing Criminalized Survivors:**  
**Impact of Criminal Inadmissibility on Survivor-Based**  
**Immigration Remedies<sup>1</sup>**

January 18, 2023

**Table of Contents**

<b><i>Introduction</i></b>	<b>2</b>
<b><i>I. Convictions</i></b>	<b>3</b>
<b><i>II. Common criminal grounds of inadmissibility</i></b>	<b>4</b>
<b><i>III. Good Moral Character</i></b>	<b>6</b>
<b><i>IV. The importance of skilled criminal defense counsel</i></b>	<b>8</b>
<b><i>V. Exceptions vs. waivers</i></b>	<b>9</b>
<b><i>VI. Exceptions to criminal grounds of inadmissibility</i></b>	<b>11</b>
<b>A. Petty offense exception to the CIMT ground of inadmissibility</b>	<b>11</b>
i. Examples	<b>12</b>
<b>B. “Youthful offender” exception to the CIMT ground of inadmissibility</b>	<b>12</b>
<b>C. Chart: Comparing exceptions to the CIMT ground of inadmissibility</b>	<b>15</b>

---

<sup>1</sup> Copyright 2022, ASISTA. This practice advisory is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). The advisory is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client’s case. Counsel should independently confirm whether the law has changed since the date of this publication. ASISTA is grateful to the Immigrant Legal Resource Center (ILRC) for their review and suggestions.

<b>VII. The impact of criminal grounds of inadmissibility on specific forms of survivor-based immigration relief</b>	<b>15</b>
<b>A. U nonimmigrant status</b>	<b>15</b>
1. INA § 212(d)(14): U nonimmigrant waiver or “(d)(14)” waiver	16
2. INA §212(d)(3) (“general” nonimmigrant waiver or “(d)(3) waiver”)	17
<b>B. U adjustment of status</b>	<b>18</b>
<b>C. T nonimmigrant status</b>	<b>19</b>
1. Waivers of inadmissibility for T nonimmigrant applicants	19
2. Chart: Waivers for T nonimmigrant applicants with criminal ground(s) of inadmissibility	21
<b>D. T adjustment of status</b>	<b>21</b>
1. Inadmissibility	21
2. Good Moral Character	23
3. Discretion	25
4. Chart: impact of criminal ground(s) of inadmissibility incurred <i>during</i> T nonimmigrant status	26
<b>E. VAWA Self-Petition</b>	<b>27</b>
1. Chart: Criminal grounds of inadmissibility and VAWA Self-Petitions	29
<b>F. VAWA Adjustment of Status</b>	<b>30</b>
1. Chart: Options for VAWA AOS applicants with criminal ground(s) of Inadmissibility	32
<b>G. VAWA Cancellation of Removal</b>	<b>33</b>
1. The effect of the inadmissibility exceptions on VAWA cancellation	34
2. Waivers for VAWA cancellation applicants	35
<b>Conclusion</b>	<b>37</b>

## Introduction

Many immigrant survivors of gender based violence have convictions or other adverse contacts with law enforcement. These contacts may result in immigration consequences that could prevent them from accessing survivor-based immigration benefits. Even if adverse consequences attach, however, survivors may be eligible for waivers or exceptions that would still allow them to benefit from immigration remedies. Some broad waivers are technically available, but require extensive advocacy. Other waivers are limited in scope, and require a connection of the circumstances underlying the offense to the abuse experienced by the applicant. Because all of the waivers are discretionary and their denials may present challenges to applicants seeking review<sup>2</sup>, practitioners should note the exceptions to criminal inadmissibility grounds and the statutory limitations to the definition of conviction.

This Practice Advisory will discuss representing immigrant survivors with criminal legal system contacts in the context of common grounds of inadmissibility, eligibility bars based on good moral character, and waivers of inadmissibility. In this advisory, we will survey the impact of criminal grounds of inadmissibility on common forms of relief available to immigrant survivors of violence, and their associated waivers of bars to eligibility, and offer practice tips for representing survivors with criminal legal system contacts. This resource is only an introduction to criminal inadmissibility and practitioners should always research their circuit.

### I. Convictions

For some (though not all) criminal grounds of inadmissibility to attach, the noncitizen must have a conviction as defined in the immigration statute. The INA defines a “conviction” as “a formal judgment of guilt of the [noncitizen] entered by a court, or, if adjudication of guilt has been withheld,” “a judge or jury has found the [noncitizen] guilty or the [noncitizen] has entered a plea of guilty or nolo contendere or has admitted sufficient facts to support a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the [noncitizen’s] liberty to be

---

<sup>2</sup> See *Patel v. Garland*, 142 S. Ct. 1614 (2022), [Practice Advisory: Judicial Review of Discretionary Relief After Patel v. Garland \(National Immigration Litigation Alliance July 2022\)](#).

imposed.”<sup>3</sup> Thus, a noncitizen who participates in a diversionary program that requires the noncitizen to admit guilt still has a conviction for immigration purposes, regardless of whether the charges are ultimately dismissed and regardless of whether the disposition is considered a conviction under state law.

**Exceptions:**

- Juvenile adjudication of delinquency: A juvenile adjudication of delinquency is not considered a “conviction” for immigration purposes.<sup>4</sup>
- Pre-plea diversion: A noncitizen who participated in a diversion program that did not require an admission of guilt does not have a conviction for immigration purposes.<sup>5</sup>
- Vacatur for substantive or procedural defects: A conviction that has been vacated because of a “defect in the underlying criminal proceedings” is not a “conviction” for immigration purposes.<sup>6</sup>
- Convictions on direct appeal: The BIA has held that a conviction is not “final” “for immigration purposes” until the noncitizen waived their appeal rights or the time to file “an initial direct appeal” has expired.<sup>7</sup>

## **II. Common criminal grounds of inadmissibility**

Unless the noncitizen is eligible for an exception or is granted a waiver, a ground of inadmissibility will prevent a noncitizen survivor from accessing many forms of survivor-based immigration relief, including U Nonimmigrant Status, T Nonimmigrant Status, T Adjustment of Status, Violence Against Women Act (“VAWA”) Adjustment of Status, VAWA cancellation of removal. Some grounds of inadmissibility may also prevent a noncitizen from establishing good moral character, which is a necessary prerequisite for some forms of survivor-based immigration relief. There are several waivers of inadmissibility and of the good moral character bars that are available to

---

<sup>3</sup> INA § 101(a)(48)(A).

<sup>4</sup> *Matter of Devison-Charles*, 22 I&N Dec. 1362, 1373 (BIA 2001) (“We therefore reaffirm that an adjudication of...juvenile delinquency is not a conviction for a crime for purposes of the immigration laws.”).

<sup>5</sup> *Cf.* INA §101(a)(48)(A) (INA definition of “conviction” requires the noncitizen to admit guilt or “sufficient facts to warrant a finding of guilt” if adjudication has been withheld).

<sup>6</sup> See *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

<sup>7</sup> See *Matter of J.M. Acosta*, 27 I&N Dec. 420, 432 (BIA 2018).

noncitizens who are applying for survivor-based relief. Therefore, not every survivor who has a criminal ground of inadmissibility will be barred from survivor-based immigration relief. It is important, however, for practitioners to accurately identify grounds of inadmissibility so that they can include them in waiver requests.

The most common criminal grounds of inadmissibility affecting immigrant survivors are as follows:

- **Crime Involving Moral Turpitude:** INA § 212(a)(2)(A)(i)(I): the noncitizen has been “convicted of,” “admits having committed,” or “admits committing acts that constitute the essential elements of” a crime involving moral turpitude (“CIMT”) (“other than a purely political offense”), “or an attempt or conspiracy to commit such a crime.”<sup>8</sup>
  - There is no requirement that an offense is a felony or that the offense has a specific sentence in order for the offense to be a CIMT.
  - Note that an admission to the commission of acts that constitute the essential elements of a CIMT may also trigger inadmissibility under INA § 212(a)(2)(A)(i)(I).
- **Controlled Substance: (“C/S”):** INA § 212(a)(2)(A)(i)(II): the noncitizen has been “convicted of,” “admits having committed,” or “admits committing acts that constitute the essential elements 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 21 U.S.C. § 802.<sup>9</sup>

---

<sup>8</sup> For a thorough discussion of CIMT analysis please see the following resources: [Practice Advisory: Immigration Consequences of Texas Assault](#) (Immigrant Legal Resource Center (“ILRC”) August 2022), [Practice Advisory: How to Use the Categorical Approach Now](#) (ILRC October 2021), [Practice Advisory: All Those Rules About Crimes Involving Moral Turpitude](#) (ILRC June 2021), [Practice Advisory: \*Pereida v. Wilkinson\* and California Offenses](#) (Immigrant Legal Resource Center April 2021), [Practice Alert: Overview of \*Pereida v. Wilkinson\* for Immigration and Criminal Defense Counsel](#) (National Immigration Project of the National Lawyers Guild & Immigrant Defense Project March 2021), [Board of Immigration Appeals and Circuit Court Case Law Chart: Assault-Related CIMTs](#) (CLINIC March 2021).

<sup>9</sup> For a thorough discussion of “controlled substance offense” inadmissibility, please see the following resources: *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015), *Said v. U.S. Attorney Gen.*, 28 F. 4<sup>th</sup> 1328 (11<sup>th</sup> Cir. 2022) (drug schedule overbreadth), 21 C.F.R. § 1308 (controlled substance schedules), [Practice Advisory: Immigrants and Marijuana](#) (ILRC May 2021), [N.8 Controlled Substance](#) (ILRC March 2019), [Practice Advisory: \*Mellouli v. Lynch\*: Further Support for a Strict Categorical Approach for Determining Removability under Drug Deportation and Other Conviction-Based Removal Grounds](#) (National Immigration Project of the National Lawyers Guild (“NIPNLG”) & Immigrant Defense Project (“IDP”) June 2015).

- There is no requirement that an offense is a felony or for the offense to have a specific sentence in order for the offense to be deemed a C/S offense.
  - Note that an admission to the commission of acts that constitute the essential elements of a violation of (or conspiracy to violate) a C/S offense may also trigger INA § 212(a)(2)(A)(i)(II).
- **Note on admissions:** For a noncitizen to trigger the CIMT or C/S ground of inadmissibility based on an admission, the noncitizen must “be given an adequate definition of the crime” that is “explained in understandable terms” and contains all of the essential elements of the crime.<sup>10</sup> In other words, there are limits to what may be considered an “admission,” and advocates should investigate any allegation that their clients admitted inadmissible conduct before conceding.
  - **Two or more offenses:** INA § 212(a)(2)(B): the noncitizen has been “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 sentences to confinement were 5 years or more.” This 5-year period includes suspended sentences.<sup>11</sup>

### III. Good Moral Character

In addition to screening for inadmissibility, practitioners should screen for good moral character (“GMC”) bars if the client is applying for survivor-based immigration relief. Applicants for T adjustment of status and VAWA-based relief are required to demonstrate GMC. Although the INA does not define GMC, INA § 101(f) contains statutory bars to GMC. One GMC bar is inadmissibility under certain criminal grounds at INA § 212(a)(2), including CIMT, controlled substance offense, and multiple

<sup>10</sup> *Matter of K-*, 7 I&N Dec 594, 597-98 (BIA 1957).

<sup>11</sup> See INA § 101(a)(48)(B), *Matter of S-S*, 21 I&N Dec. 900, 902 (BIA 1997) (“In applying section 101(a)(48) of the Act to determine whether the respondent’s sentence satisfies the imprisonment components of the deportation charges, we begin by noting the fact that his sentence was suspended is irrelevant to the analysis, as is the length of time served, if any. This is so even if the “imposition” of that sentence was suspended...the only relevant inquiry is the term to which the respondent was sentenced by the court.”).

criminal convictions with an aggregate sentence to confinement of 5 years or more.<sup>12</sup>

**Note on “aggravated felonies”:** If the immigration benefit the client is applying for requires good moral character, the practitioner should analyze whether the client has a conviction for an “aggravated felony.” An aggravated felony conviction is a *permanent* bar to GMC.<sup>13</sup> Aggravated felonies are defined at INA § 101(a)(43). **A crime does not have to be aggravated or a felony to be an “aggravated felony.”**

- An aggravated felony is a bar to GMC only if there is a *conviction*—an *admission* to an offense deemed an aggravated felony is not sufficient to bar the noncitizen from establishing GMC under the aggravated felony ground.<sup>14</sup>
- The analysis required to determine whether a noncitizen has an aggravated felony conviction is beyond the scope of this advisory. For further discussion of aggravated felonies, please see the resources cited in this footnote.<sup>15</sup>
  - A conviction deemed an aggravated felony is likely a negative discretionary factor. However, its classification as an aggravated felony does not alone trigger a ground of inadmissibility.<sup>16</sup> Although it is uncommon, there may be

---

<sup>12</sup> See INA § 101(f)(3) (“a member of one or more of the classes of persons, whether inadmissible or not, described in...subparagraphs (A) [CIMT and C/S offense] and (B) [multiple criminal convictions] of section 1182(a)(2) of this title...(except as such paragraph relates to a single offense of simple possession of 30 grams or less of marijuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period”).

<sup>13</sup> See INA § 101(f)(8) (“one who **at any time** has been convicted of an aggravated felony (as defined in subsection (a)(43))” (emphasis added)).

<sup>14</sup> See INA § 101(f)(8) (contains the term “convicted” and excludes the term “admitted”).

<sup>15</sup> [Practice Advisory: Virginia Firearms Offenses And The Categorical Approach In The Fourth Circuit Under Gordon v. Barr](#) (Capital Area Immigrants’ Rights Coalition (“CAIR Coalition”) July 2021), [Practice Advisory: Borden v. United States: Supreme Court Limits Scope of “Crimes of Violence”](#) (NIPNLG June 2021), [Aggravated Felonies And The Harmful Exclusion Of People From Immigration Relief](#) (NIPNLG & Immigrant Justice Network April 2021), [Aggravated Felonies: An Overview](#) (American Immigration Council March 2021), [Practice Advisory: California Sentences and Immigration](#) (ILRC November 2020), [Practice Advisory: Criminal Consequences Updates from the BIA and the Ninth Circuit](#) (CLINIC June 2020), [Practice Advisory: Ninth Circuit holds Calif Pen C 243\(d\) is a crime of violence in U.S. v. Perez](#) (ILRC August 2019), [BIA Rejects Retroactive Application Of Cal Pen 18.5\(A\). 364-Day Misdemeanor Law Matter of Velasquez-Rios](#) (ILRC October 2018), [Practice Advisory: Sessions v. Dimaya: Supreme Court Strikes Down 18 U.S.C. § 16\(b\) as void for vagueness](#) (NIPNLG & IDP April 2018).

<sup>16</sup> See *generally* INA § 212(a) (does not include “aggravated felony” in the grounds of inadmissibility).

situations when a conviction meets the definition of “aggravated felony” but is not a ground of inadmissibility.<sup>17</sup>

- A noncitizen with an aggravated felony conviction is not statutorily barred from *U nonimmigrant status*, which contains no GMC requirement and only considers grounds of *inadmissibility* in the eligibility determination. Although a noncitizen with an aggravated felony is technically still eligible for U nonimmigrant status, in practice these cases are often denied. When determining whether the client is likely to succeed with a waiver of inadmissibility for a ground such as EWI or other non-criminal ground of inadmissibility, practitioners should be aware that USCIS will likely deny the waiver as a matter of discretion based on the aggravated felony. Practitioners should contact ASISTA or other experts for advice on minimizing the impact of an aggravated felony in a waiver application.

#### **IV. The importance of skilled criminal defense counsel**

Due to the often harsh impacts of criminal convictions on noncitizens, it is critical that immigration practitioners whose noncitizen clients have pending criminal charges communicate with the client’s criminal defense counsel (with the client’s permission). Practitioners should ensure that their client’s criminal defense counsel is aware of the immigration consequences of various potential dispositions. Criminal dispositions that may seem benign, such as a plea to a misdemeanor theft offense with a 1-year sentence to incarceration (suspended), may in reality be fatal to a noncitizen’s eligibility

---

<sup>17</sup> For example, depending on the law in the jurisdiction of conviction, an older theft conviction may be deemed an “aggravated felony” but not a ground of inadmissibility. In 2000, the BIA held that *aggravated felony* theft “does not require as a statutory element the specific intent to permanently deprive an owner” of their property. See *Matter of V-Z-S*, 22 I&N Dec. 1338, 1345-46 (BIA 2000). In contrast, until *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), the BIA required “an intent to *permanently* deprive an owner of property” (emphasis in original) in order to deem a theft conviction a *CIMT*. See *id.* at 849. Several circuits have cautioned against retroactive application of *Diaz-Lizarraga*. See *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018), *Francisco-Lopez v. Attorney Gen. U.S.*, 970 F.3d 431 (3d Cir. 2020), *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019), *Garcia-Martinez v. Sessions*, 886 F.3d 1291 (9th Cir. 2018), *Lucio-Rayos v. Sessions*, 875 F.3d 573 (10th Cir. 2017). Thus, depending on how “theft” is defined in the jurisdiction of conviction, there is a *possibility* that a noncitizen who, before *Diaz-Lizarraga*, was convicted and sentenced to at least 1 year of incarceration for a theft offense that did not involve “intent to permanently deprive” has an “aggravated felony” theft conviction but is not inadmissible for that conviction.



for certain immigration statuses and, if they already have status, even cause them to be deportable.<sup>18</sup>

Similarly, noncitizens who were convicted of criminal offenses after *Padilla v. Kentucky*<sup>19</sup> and whose criminal defense attorneys did not advise them of the immigration consequences of a criminal conviction should consider consulting a post-conviction relief expert to determine if post-conviction relief based on ineffective assistance of counsel is a possibility. At least one circuit has held that a conviction vacated due to ineffective assistance of counsel is no longer a conviction for immigration purposes.<sup>20</sup>

Post-conviction relief may be available to noncitizens on other bases than ineffective assistance of counsel. However, it is important to understand that under *Matter of Pickering*, conviction vacatur for reasons other than substantive or procedural deficiencies will not be given effect under the immigration law.<sup>21</sup>

## V. Exceptions vs. waivers

In order to best represent an immigrant survivor in their immigration remedies, it is important to understand the difference between a waiver and an exception.

An **exception** means that the ground of inadmissibility does not apply to the noncitizen. Therefore, there is no need to request a waiver of that ground of inadmissibility. For example, if a noncitizen was convicted of an offense that is classified as a CIMT, but they qualify for an exception, they

---

<sup>18</sup> Cf. INA § 101(a)(43)(G) (depending on how “theft” is defined in the noncitizen’s jurisdiction, this conviction may be an aggravated felony theft offense, even though the offense is a misdemeanor under state law and the client spent no time in prison.); INA § 237(a)(2)(A)(iii) (“any [noncitizen] who is convicted of an aggravated felony at any time after admission is deportable.”).

<sup>19</sup> 559 U.S. 356 (2010). Unfortunately, *Padilla* cannot be applied to convictions that were final before *Padilla* was decided. See *Chaidez v. United States*, 568 U.S. 342, 344 (2013).

<sup>20</sup> See *Pinho v. Gonzales*, 432 F.3d 193, 210 (3d Cir. 2005) (“We therefore begin our analysis with the proposition that an [noncitizen] whose conviction is vacated on collateral attack because the [noncitizen]’s trial counsel was ineffective under the Sixth Amendment, no longer stands “convicted” for immigration purposes.”).

<sup>21</sup> See 23 I&N Dec. 621, 624 (BIA 2003). For a thorough discussion of post-conviction relief, please review the following resources: [Practice Advisory: Overview of California Post-Conviction Relief for Immigrants](#) (ILRC July 2022), [Practice Advisory: Post-Conviction Relief Motions to Reopen](#) (ILRC & NIPNLG June 2022), [Practice Advisory: AG Overturns Sentence Modification Rule: Matter of Thomas & Matter of Thompson](#) (ILRC October 2019), [Practice Advisory: Post-Conviction Relief in Virginia](#) (CAIR Coalition February 2017), [Tooby’s Guide to Criminal Immigration Law Chapter 5: Post-Conviction Procedure](#) (Norton Tooby).

are not inadmissible under the CIMT ground. Thus, there is no need to request a waiver of the CIMT ground. Unlike waivers, exceptions are not discretionary. Both principals and derivatives may be eligible for exceptions.

- **Note on exceptions:** Where a client has no other ground of inadmissibility and meets an exception to an inadmissibility ground, a waiver is not required. Moreover, there is an argument that USCIS may only consider the statutory eligibility requirements in INA §§ 101(a)(15)(U) and 214(p)(7) when adjudicating a standalone I-918.<sup>22</sup> Under this interpretation, USCIS cannot deny a standalone I-918 for reasons that are unrelated to these requirements. Unrelated reasons may include contacts with the criminal-legal system that do not render the noncitizen inadmissible. These contacts may include arrests that do not result in convictions or admissions, juvenile adjudications of delinquency, and CIMTs that meet the petty offense or youthful offender exceptions.

**Waivers** are discretionary, which means the adjudicator is not required to grant the waiver even if it is available to cure the noncitizen's inadmissibility. If a practitioner believes their client is eligible for a waiver, the client must affirmatively apply for it. If the noncitizen is seeking immigration benefits before USCIS, the noncitizen typically applies for a waiver on Form I-192 or Form I-601, depending on the immigration benefit the noncitizen is seeking. Remember that both principals and derivatives must request waiver of their grounds of inadmissibility unless they are eligible for an exception.

---

<sup>22</sup> See INA §§ 101(a)(15)(U) and 214(p) (U eligibility criteria are the noncitizen's qualifying crime victimization, cooperation with law enforcement, provision of a law enforcement certification, and substantial physical or mental abuse. Neither statute requires the noncitizen to be free of criminal contacts that do not render them inadmissible.), 8 C.F.R. § 214.14(c)(5)(i) ("If USCIS determines the petitioner has met the requirements for U-1 nonimmigrant status, USCIS will approve Form I-918.") (the regulation is helpful because "[i]t is a familiar rule of administrative law that an agency must abide by its own regulations." *Fort Stewart Schools v. Fed. Labor Relations Auth.*, 495 U.S. 641 (1990)), *Perez v. Wolf*, 943 F.3d 853, 862 (9th Cir. 2019) ("U visa determinations are governed by 8 U.S.C. § 1101(a)(15)(U) and § 1184(p)."). *But see Hasan v. Wolf*, 550 F. Supp. 3d 1342, 1348 (N.D. Ga. 2021) ("U-Visa petitions are... committed to the discretion of USCIS"), *Mondragon v. United States*, 839 F. Supp. 2d 827, 829 (W.D.N.C. 2012) (mentions "USCIS' discretion to grant or deny U visas"), *Butanda v. Wolf*, 516 F. Supp. 3d 1243, 1248 (D. Colo. 2021) (mentions a "grant of discretion to determine the "time" and "conditions" of admitting U visa applicants").

When applying for a waiver, the practitioner must make two arguments: 1) the client is eligible for the waiver, and 2) USCIS should grant the waiver as a matter of discretion. Practitioners should submit extensive evidence of positive equities, particularly if the client has multiple or particularly serious adverse factors.

Practitioners should always review the [statute](#) (INA § 212), precedent case law in their circuit, and BIA decisions to determine whether a ground of inadmissibility applies to their client, and if a waiver or exception is available.

## **VI. Exceptions to criminal grounds of inadmissibility**

### **A. Petty offense exception to the CIMT ground of inadmissibility**

Under INA § 212(a)(2)(A)(ii)(II), a noncitizen who has been convicted of a CIMT<sup>23</sup> is eligible for this exception if they meet all of the following criteria:

1. The noncitizen committed one CIMT;<sup>24</sup>
2. The maximum possible penalty for the CIMT the noncitizen was convicted of, admitted to committing, or admitted committing acts constituting the essential elements of, is 1 year or less; and
3. The noncitizen was sentenced to 6 months or less imprisonment.<sup>25</sup>

A noncitizen who is eligible for the petty offense exception will not be barred from establishing good moral character under INA § 101(f)(3) because of their CIMT.<sup>26</sup>

---

<sup>23</sup> Unfortunately, there is no petty offense exception to the **controlled substance offense** ground of inadmissibility. See INA § 212(a)(2)(A)(ii) (“Clause (i)(I) [the CIMT ground of inadmissibility] shall not apply to an [noncitizen] who only committed one crime if-”).

<sup>24</sup> See *Matter of Garcia-Hernandez*, 23 I&N Dec. 590, 594 (BIA 2003) (“we construe the “only one crime” proviso as referring to “only one *such* crime,” meaning only one crime involving moral turpitude.”).

<sup>25</sup> The term “sentence” is defined at INA § 101(a)(48)(B). For more information on the definition of “sentence”, please review [N.4 Sentence](#) (ILRC 2013) and [California Sentences and Immigration](#) (ILRC 2020).

<sup>26</sup> See *Garcia-Hernandez*, 23 I&N Dec. at 593 (“the respondent cannot be considered, on the basis of his 1997 conviction alone, an [noncitizen] “described in” section 212(a)(2)(A) of the Act for purposes of the good moral character definition in section 101(f)(3). We find that an [noncitizen] is not within the class of [noncitizens] described in section 212(a)(2)(A) if the “petty offense” exception applies to his or her crime.”).

## i. Examples

In the below hypotheticals, assume that the convictions are CIMTs.

Example 1: Sandra was convicted for shoplifting baby formula 2 years ago. The maximum possible sentence for this crime in Sandra’s jurisdiction is 364 days. Sandra received a sentence of 30 days in county jail. Sandra has not committed any other CIMTs. Sandra is eligible for the petty offense exception.

- Sandra wants to apply for a VAWA Self-Petition. VAWA Self-Petitioners must show good moral character during the 3-year period immediately preceding the filing of the self-petition.<sup>27</sup> Even though the shoplifting occurred 2 years ago, it does not bar Sandra from establishing good moral character under INA § 101(f)(3) because she is eligible for the petty offense exception.<sup>28</sup>

Example 2: Miriam was convicted of welfare fraud. The maximum possible sentence for this crime in Miriam’s jurisdiction is 1 year. Miriam was sentenced to 9 months in county jail, all suspended. Miriam has not committed any other CIMTs. Miriam is not eligible for the petty offense exception because she was sentenced to more than 6 months of incarceration (incarceration includes suspended sentences.)<sup>29</sup>

### **B. “Youthful offender” exception to the CIMT ground of inadmissibility**

The “youthful offender” exception primarily helps noncitizens who were convicted in the adult criminal system for conduct that they engaged in when they were under 18 (e.g. a noncitizen who was “convicted as an adult” at 16.) The “youthful offender” exception is distinct from the concept that juvenile adjudications of delinquency are not considered convictions for immigration purposes. A noncitizen is eligible for the “youthful offender

---

<sup>27</sup> Cf. 8 C.F.R. § 204.2(c)(2)(v) (good moral character evidence must be provided for “the 3-year period immediately preceding the filing of the self-petition.”).

<sup>28</sup> See *Garcia-Hernandez*, 23 I&N Dec. at 593.

<sup>29</sup> See INA § 101(a)(48)(B), INA § 212(a)(2)(A)(ii)(II), *Matter of S-S*, 21 I&N Dec. at 902.

exception” to the CIMT<sup>30</sup> ground of inadmissibility if they meet all of the following criteria:

1. The noncitizen committed one CIMT;<sup>31</sup>
2. The noncitizen committed the CIMT when they were under 18; and
3. The noncitizen committed the CIMT (and was released from prison or a correctional institution) more than 5 years before the date of their immigration application or petition.<sup>32</sup>

**Caution:** If the immigration benefit the client is applying for requires good moral character, it is critical for the practitioner to analyze whether the client has an aggravated felony conviction, regardless of the client’s qualification for the youthful offender exception. For further discussion of aggravated felonies, see Part III of this advisory and the resources cited therein.

In the below hypotheticals, assume that the noncitizens were convicted in the adult criminal system and that their convictions are CIMTs.

1. When Alex was a teenager, he lived in a jurisdiction that required children who stole property valued at more than \$500 to go through the adult criminal system. When he was 16, Alex’s friends dared him to shoplift five Walkmans. Alex was arrested, convicted of shoplifting, and sentenced to two years of imprisonment (all suspended). He never served time in a correctional facility. Alex has not committed any other CIMTs. Alex is now 40 years old and wants to apply for U nonimmigrant status. Alex is eligible for the “youthful offender” exception because he committed a CIMT when he was under 18 and more than 5 years have passed between the commission of the crime and the date of his U nonimmigrant petition.
2. Alicia was in an abusive relationship during her high school years. When she was 16, she stabbed her boyfriend to defend herself from potentially lethal abuse. At age 17, Alicia was convicted of aggravated assault. She was released from an adult correctional facility at age 20. Alicia is now 23 years old and wants to apply for U

---

<sup>30</sup> Unfortunately, there is no “youthful offender exception” to the **controlled substance offense** ground of inadmissibility. See INA § 212(a)(2)(A)(ii) (“Clause (i)(I) [the CIMT ground of inadmissibility] shall not apply to an [noncitizen] who only committed one crime if-”).

<sup>31</sup> Cf. *Garcia-Hernandez*, 23 I&N Dec. at 594.

<sup>32</sup> INA § 212(a)(2)(A)(ii)(I).

nonimmigrant status based on the domestic violence she suffered. Alicia has not committed any other CIMTs. Alicia is not yet eligible for the “youthful offender” exception because less than 5 years have passed between her release from a correctional facility and the date of her U nonimmigrant petition.<sup>33</sup> Because of the date of Alicia’s release from a correctional facility, it is irrelevant that more than 5 years have passed since Alicia committed the crime.

For more information on the “youthful offender” exception, please see the Immigrant Legal Resource Center (“ILRC”)’s March 2020 practice advisory, [“What Are the Immigration Consequences of Delinquency?”](#)

---

<sup>33</sup> Alicia may have an aggravated felony “crime of violence” conviction. See INA § 101(a)(43)(F). The determination of whether Alicia has an aggravated felony conviction depends on the elements of the aggravated assault statute in Alicia’s jurisdiction. See, e.g., *Borden v. United States*, 141 S. Ct. 1817, 1830 (2021), *United States v. Gomez*, 23 F. 4<sup>th</sup> 575 (5<sup>th</sup> Cir. 2022). Even if Alicia had an aggravated felony conviction, she would not be *inadmissible* under the *CIMT* ground if she was eligible for the youthful offender exception. However, this exception applies only to CIMTs. See INA § 212(a)(2)(A). Therefore, Alicia would still have an aggravated felony conviction regardless of whether she qualified for the youthful offender exception. Even though an aggravated felony conviction would not bar Alicia from U nonimmigrant status, cf. INA § 212(a)(2)(A)(ii)(I), the seriousness of the aggravated felony conviction would be an adverse discretionary factor in Alicia’s immigration case if discretionary analysis applied. See 8 C.F.R. § 212.17(b)(2). If Alicia was eligible for the youthful offender exception and had no other grounds of inadmissibility, no I-192 would be required. In such a case, Alicia’s representative could argue that USCIS’s adjudication of Alicia’s standalone I-918 should only consider the eligibility factors in the U statutes, none of which include the existence of a criminal history that does not rise to a ground of inadmissibility. See Part V of this Advisory for more information.

**C. Chart: Comparing exceptions to the CIMT ground of inadmissibility**

Exception	Specific sentence required?	Passage of specific time period required?
Petty offense exception	Yes: maximum possible sentence for the crime is 1 year, and (if convicted) the noncitizen's actual sentence to imprisonment is 6 months or less.	No
Youthful offender exception	No	Yes: more than 5 years between the crime's commission and the date of the immigration application/petition. For noncitizens who served time in a correctional facility, more than 5 years between their release and the date of the immigration application/petition.

**VII. The impact of criminal grounds of inadmissibility on specific forms of survivor-based immigration relief**

**A. U nonimmigrant status**

U nonimmigrant petitioners are subject to all grounds of inadmissibility except for public charge.<sup>34</sup> Thus, U nonimmigrant petitioners are subject to the criminal grounds of inadmissibility at INA § 212(a)(2). However, U

---

<sup>34</sup> See INA § 212(a)(4)(E)(ii).

nonimmigrant petitioners are eligible for waiver of many grounds of inadmissibility, including criminal grounds of inadmissibility.

Two waivers are available to U nonimmigrant status petitioners:

### **1. INA § 212(d)(14): U nonimmigrant waiver or “(d)(14)” waiver**

U nonimmigrant petitioners are eligible to request a waiver of most grounds of inadmissibility under INA § 212(d)(14). This waiver is specific to U nonimmigrant petitioners. This waiver is available if USCIS, in its discretion, determines that granting the waiver is in the public or national interest.<sup>35</sup> The (d)(14) waiver is available for all grounds of inadmissibility except INA § 212(a)(3)(E) (participation in Nazi persecution before and during World War II, genocide, torture, or extrajudicial killing).<sup>36</sup> Thus, U principal petitioners and derivatives who fall within the criminal grounds of inadmissibility at INA § 212(a)(2) are eligible for a waiver of these ground(s) of inadmissibility under INA § 212(d)(14).

The practitioner will need to submit evidence and arguments on why the waiver should be approved as a matter of discretion.

- **Positive discretionary evidence may include:**

- a statement from the client that demonstrates genuine acceptance of responsibility, remorse, and rehabilitation;
- evidence of a connection between the crime(s) and trauma or abuse (if any); a mental health evaluation;
- evidence of the client’s long-term residence in the United States; birth certificates of the client’s U.S. Citizen children;
- custody orders (particularly if children will be transferred to an abuser’s custody upon the client’s deportation);
- evidence of the client’s participation in a drug or alcohol rehabilitation program (if relevant);
- evidence of taxes paid;
- letters of support from individuals who demonstrate full awareness of the client’s criminal history;

---

<sup>35</sup> See § INA 212(d)(14).

<sup>36</sup> See INA § 212(d)(14) (cross-referencing inadmissibility under INA § 212(a)(3)(E) as an exception to the universal waiver).



- o evidence that the client is receiving mental health treatment, medical care, and/or victim services that are not accessible in the client’s home country;
- o evidence that the client’s safety from the abuser or perpetrator will be compromised outside the United States; and
- o evidence of community involvement, volunteering, and/or attendance at a house of worship.

Even with positive discretionary evidence, however, it may be difficult to overcome a ground of inadmissibility that is triggered by a conviction that USCIS deems “violent or dangerous.”<sup>37</sup> USCIS also may not grant the waiver if they believe that the client’s commission of the crime “created a victim” (for example, if the client committed an offense that is deemed a “domestic violence” crime). Even lesser offenses that are unrelated to domestic violence may be difficult to overcome depending on the adjudicator and the balance of positive and negative factors.

## **2. INA §212(d)(3) (“general” nonimmigrant waiver or “(d)(3) waiver”)**

This waiver is primarily useful in removal proceedings in the Fourth, Seventh, and Eleventh circuits.<sup>38</sup> In these circuits, an Immigration Judge (“IJ”) can grant a (d)(3) waiver of inadmissibility for a noncitizen who is in removal proceedings and has applied for U nonimmigrant status with USCIS. The BIA has held that IJs do not have this power,<sup>39</sup> as have some circuits.<sup>40</sup> However, in the Fourth, Seventh, and Eleventh circuits, the IJ should follow circuit precedent.

The (d)(3) waiver is available for criminal grounds of inadmissibility<sup>41</sup>, and may be granted based on purely discretionary considerations. The factors to be considered in the adjudication of this waiver are found in *Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978), and are known as “the *Hranka* factors.” The *Hranka* factors include: 1) “the risk of harm to society if the

<sup>37</sup> See 8 C.F.R. § 212.17(b)(2).

<sup>38</sup> See *Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4<sup>th</sup> Cir. 2021), *Baez-Sanchez v. Barr*, 947 F.3d 1033 (7<sup>th</sup> Cir. 2020), *Baez-Sanchez v. Sessions*, 862 F.3d 638 (7<sup>th</sup> Cir. 2017), *Meridor v. U.S. Attorney Gen.*, 891 F.3d 1302 (11<sup>th</sup> Cir. 2018).

<sup>39</sup> *Matter of Khan*, 26 I&N Dec. 797 (BIA 2016).

<sup>40</sup> *Sunday v. Attorney Gen. U.S.*, 832 F.3d 211 (3<sup>d</sup> Cir. 2016), *Man v. Barr*, 940 F.3d 1354 (9<sup>th</sup> Cir. 2019).

<sup>41</sup> See generally INA § 212(d)(3)(A) (criminal grounds of inadmissibility are not excluded from the (d)(3) waiver).

applicant is admitted”; 2) “the seriousness of the applicant’s prior immigration law, or criminal law, violations, if any”; and 3) “the nature of the applicant’s reasons for wishing to enter the United States.”<sup>42</sup> There is not necessarily a marked difference between the criteria to be considered in (d)(3) and (d)(14) waivers, but practitioners should raise the ameliorative purpose of U nonimmigrant status as an important factor to be considered in favor of granting the (d)(3) waiver.

## **B. U adjustment of status**

With the exception of INA § 212(a)(3)(E) (participation in Nazi persecution before and during World War II, genocide, torture, or extrajudicial killing), no grounds of inadmissibility apply to U nonimmigrants who are applying for adjustment of status (“AOS”) under INA § 245(m).<sup>43</sup> Thus, acquiring a new criminal ground of inadmissibility during U nonimmigrant status is not a statutory bar to adjustment under § 245(m). However, the regulations allow USCIS to consider acts that would “otherwise” render the noncitizen inadmissible when determining whether to grant adjustment of status as a matter of discretion.<sup>44</sup> Thus, a noncitizen who is convicted of a crime during U nonimmigrant status that would otherwise render them inadmissible should be prepared to introduce significant evidence of positive equities when they apply for AOS under § 245(m). In addition, conduct that was waived at the U nonimmigrant stage may lead to denial of U AOS. Practitioners should be prepared to introduce significant evidence of positive equities in these cases as well. The more serious the adverse discretionary factors, the more evidence of positive equities the applicant should present. If the applicant’s adverse discretionary factors are severe, the applicant “may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship.”<sup>45</sup> If the applicant has “committed or been convicted of” serious crimes or “multiple drug-related crimes,” even a showing of “exceptional and extremely unusual hardship” still may not be sufficient.<sup>46</sup> For examples of the types of evidence that may be submitted in this situation, please see Part V, A, 1 of this advisory.

---

<sup>42</sup> See *Hranka*, 16 I&N Dec. at 492.

<sup>43</sup> See INA § 245(m)(1).

<sup>44</sup> See 8 C.F.R. § 245.24(d)(11).

<sup>45</sup> See *id.*

<sup>46</sup> See *id.*

## C. T nonimmigrant status

T nonimmigrant applicants are subject to all grounds of inadmissibility except for public charge.<sup>47</sup> Thus, they are subject to the criminal grounds of inadmissibility at INA § 212(a)(2). However, they are eligible for waivers of the criminal grounds of inadmissibility. There are two waivers of inadmissibility available to applicants for T nonimmigrant status, depending on the circumstances.

### 1. Waivers of inadmissibility for T nonimmigrant applicants

#### i. INA § 212(d)(3) waiver

Applicants for T nonimmigrant status who have criminal ground(s) of inadmissibility can apply for the (d)(3) waiver directly with USCIS.<sup>48</sup> The waiver is purely discretionary, and there is no requirement that the ground of inadmissibility is connected to the trafficking. Thus, a T nonimmigrant applicant who has criminal ground(s) of inadmissibility under INA § 212(a)(2) that are not connected to the trafficking can still apply for a waiver of these ground(s) under (d)(3), with the *Hranka* factors<sup>49</sup> guiding USCIS's adjudication of the waiver. If the case involves a crime that USCIS deems "violent or dangerous" and the crime was not "caused by" or "incident to" the trafficking victimization, USCIS "will only exercise favorable discretion in extraordinary circumstances".<sup>50</sup>

#### ii. INA § 212(d)(13) waiver

Congress created a special waiver for T nonimmigrant applicants that is distinct from the (d)(3) waiver. This is the INA § 212(d)(13) waiver. A T nonimmigrant applicant with criminal ground(s) of inadmissibility must meet two requirements in order to be eligible for the (d)(13) waiver:

---

<sup>47</sup> See INA § 212(d)(13)(A) ("The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 1101(a)(15)(T) of this title, except that the ground for inadmissibility described in subsection (a)(4) [public charge] shall not apply with respect to such a nonimmigrant.")

<sup>48</sup> Cf. INA § 212(d)(13)(B) ("In addition to any other waiver that may be available under this section..." (the (d)(3) waiver is available under § 212).

<sup>49</sup> *Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978). See Part V, A, 2 of this advisory for an enumeration of the *Hranka* factors.

<sup>50</sup> See 8 C.F.R. § 212.16(b)(3).

1. The activities that rendered the noncitizen inadmissible were caused by, or incident to, the trafficking victimization; and
2. Granting the waiver is in the national interest.<sup>51</sup>

In addition, the noncitizen must show that they merit a favorable exercise of discretion. Thus, the noncitizen should present evidence of two things: 1) the connection between the inadmissibility ground and the trafficking, and 2) positive equities. The more serious the criminal ground(s) of inadmissibility, the more evidence of positive equities the noncitizen should present. For examples of the types of evidence to present in this situation, please see Part V, A, 1 of this advisory.

### **1. Examples**

For the purpose of these hypotheticals, assume that all convictions are CIMTs.

Example 1: Mario is a survivor of trafficking and wants to apply for T nonimmigrant status. He has a conviction that has no connection to his trafficking victimization. He may seek a waiver of the CIMT ground of inadmissibility under INA § 212(d)(3). He cannot seek a waiver of the CIMT ground under INA § 212(d)(13) because his CIMT conviction was not caused by or incident to his trafficking victimization.

Example 2: Alina wants to apply for T nonimmigrant status. Alina's boyfriend threatened to call ICE on her if she refused to have sex for money. Alina has three convictions for prostitution, all of which she incurred during the time that her boyfriend forced her to have sex for money. Alina may be eligible for a waiver of the CIMT ground of inadmissibility (and the prostitution ground) under INA § 212(d)(13) because there is an argument that her CIMT convictions were caused by or incident to trafficking victimization. Alina and her representative should present evidence of the connection between the CIMT inadmissibility ground and the trafficking with Alina's Form I-192.

---

<sup>51</sup> The statute does not define "national interest." However, the USCIS Policy Manual contains guidance on factors USCIS may consider when deciding whether the grant of a waiver is in the national interest. See 9 USCIS-PM O.3(B).

## 2. Chart: Waivers for T nonimmigrant applicants with criminal ground(s) of inadmissibility

Waiver provision	Waiver available for criminal grounds of inadmissibility at INA § 212(a)(2)?	Waiver criteria	Connection to trafficking required for criminal grounds of inadmissibility?
INA § 212(d)(3)	Yes	Purely discretionary ( <i>Hranka</i> factors)	No
INA § 212(d)(13)	Yes	Grant of the waiver is in the national interest	Yes

### D. T adjustment of status

#### 1. Inadmissibility

Unlike U-based AOS under INA § 245(m), inadmissibility applies to T-based AOS under INA § 245(l). Inadmissibility applies to T AOS when the noncitizen is inadmissible for a ground that has not previously been waived under INA § 212.<sup>52</sup> Here is how this rule impacts T AOS clients who have criminal ground(s) of inadmissibility and want to adjust status under § 245(l):

1. Noncitizens who disclosed and received waivers of all criminal ground(s) of inadmissibility at the T nonimmigrant stage and have not acquired any new criminal ground(s) of inadmissibility while they were

<sup>52</sup> See INA § 245(l)(2) (“Paragraph (1) shall not apply to an [noncitizen] admitted under section 1101(a)(15)(T) of this title who is inadmissible to the United States by reason of a ground that has not been waived under section 1182 of this title...”).

in T nonimmigrant status are not statutorily barred from adjustment of status under § 245(l) for criminal ground(s) of inadmissibility.

2. Noncitizens who were inadmissible for criminal ground(s) at the time of their T nonimmigrant application but did not disclose and request waiver of those ground(s) of inadmissibility will be statutorily barred from adjustment under § 245(l) unless they receive a waiver.
3. Noncitizens who became inadmissible because of offenses triggering new or additional criminal ground(s) during T nonimmigrant status will be statutorily barred from adjustment under § 245(l) unless they receive a waiver.

Noncitizens with criminal ground(s) of inadmissibility under INA § 212(a)(2) who would have been statutorily barred from adjustment under INA § 245(l) may be eligible for a waiver under INA § 245(l)(2)(B) if they meet certain criteria.<sup>53</sup> To be eligible for the waiver, the noncitizen must meet all of the following criteria:

1. The activities that rendered the noncitizen inadmissible were caused by, or incident to, their trafficking victimization; and
2. Granting the waiver is in the national interest<sup>54</sup>

A noncitizen who is applying for T AOS and is eligible for the § 245(l)(2)(B) waiver must disclose the ground(s) of inadmissibility and request waiver of those ground(s) by submitting Form I-601 with their Form I-485 application. They must submit evidence of the connection between the inadmissibility ground and the trafficking, in addition to evidence that supports granting the waiver in the exercise of discretion. For examples of such evidence, please see Part V, A, 1 of this advisory.

### **i. Examples**

Example 1: Paul currently holds T nonimmigrant status. He began self-medicating with marijuana while he was trafficked. Paul is no longer being trafficked, but he continues to suffer from trafficking-related PTSD.

---

<sup>53</sup> T AOS applicants with certain criminal ground(s) of inadmissibility that have not been waived may also be eligible for an INA § 212(h) immigrant waiver. However, for noncitizens who are not VAWA Self-Petitioners, the criteria for this waiver are very stringent. For a § 212(h) waiver, there is no requirement that the conduct giving rise to the ground(s) of inadmissibility is connected to the trafficking. See INA §§ 212(h)(1)(A)-(B) and (h)(2).

<sup>54</sup> See INA § 245(l)(2)(B).

Marijuana helps Paul cope with his PTSD symptoms. Paul was convicted of possession of marijuana while he was in T nonimmigrant status. Assume that Paul's conviction is a controlled substance offense that renders him inadmissible under INA § 212(a)(2)(A)(i)(II). Even though Paul accrued a criminal ground of inadmissibility while he was in T nonimmigrant status, he may be eligible for the waiver under INA § 245(l)(2)(B) because there is an argument that the acts that gave rise to this ground of inadmissibility were caused by or incident to his trafficking victimization. With his I-601, Paul should submit evidence of the connection between his trafficking victimization and his controlled substance offense, as well as evidence that supports a favorable exercise of discretion. For examples of such evidence, please see Part V, A, 1 of this advisory.

Example 2: Lily holds T nonimmigrant status and wants to adjust status. She was convicted of shoplifting when she was 18 years old, before she was trafficked. Assume this conviction is a CIMT and that Lily is not eligible for any exceptions. Lily did not disclose this conviction when she applied for T nonimmigrant status, she did not request a waiver of the CIMT ground of inadmissibility, and this ground has never been waived for Lily in any other immigration proceeding. Assume that there is no connection between the trafficking and Lily's shoplifting conviction. Unless she can obtain a § 212(h) waiver, Lily is statutorily barred from adjustment under INA § 245(l) because she is subject to a criminal ground of inadmissibility that was not waived and the acts that gave rise to the inadmissibility ground were not caused by or incident to the trafficking.

## 2. Good Moral Character

An applicant for adjustment of status under INA § 245(l) must show that they have been a person of good moral character during the time that they were in T nonimmigrant status.<sup>55</sup> This is distinct from U adjustment of status under INA § 245(m), which has no GMC requirement.<sup>56</sup> Remember that aggravated felonies are a *permanent* bar to GMC.<sup>57</sup> Thus, practitioners who

---

<sup>55</sup> INA § 245(l)(1)(B) ("subject to paragraph (6), has, throughout such period, been a person of good moral character") (the statute refers to a "nonimmigrant admitted into the United States under section 1101(a)(15)(T)(i) of this title," indicating that "throughout such period" means throughout the period that the AOS applicant is a nonimmigrant admitted in T status).

<sup>56</sup> See INA § 245(m) (contains no good moral character requirement for adjustment of status).

<sup>57</sup> See INA § 101(f)(8) ("one who **at any time** has been convicted of an aggravated felony (as defined in subsection (a)(43))." (emphasis added)).

are representing T AOS clients with criminal conviction(s) must evaluate whether any of the conviction(s) qualify as aggravated felonies, even if the conviction(s) occurred before the client held T nonimmigrant status.

An additional bar to good moral character includes inadmissibility under some of the criminal grounds at INA § 212(a)(2), including CIMT, controlled substance offense, and multiple criminal convictions with aggregate sentences to confinement of 5 years or more.<sup>58</sup> Therefore, a noncitizen who becomes inadmissible for criminal ground(s) *while* they are in T nonimmigrant status will likely have a GMC problem as well as an inadmissibility problem. However, the petty offense exception and/or the GMC waiver in INA § 245(l) may be helpful for some of these noncitizens.

Remember that a noncitizen who qualifies for the petty offense exception for a CIMT committed while they were in T nonimmigrant status is not inadmissible for a CIMT, and also will not be barred from showing good moral character under INA § 101(f)(3) because of the CIMT.<sup>59</sup>

#### **i. Good moral character waiver for T AOS applicants**

A T AOS applicant who would be barred from showing GMC may have this bar waived if they can show that the conviction triggering the bar “was caused by, or incident to, the trafficking.”<sup>60</sup> The evidence that is required to establish eligibility for a waiver of inadmissibility at the T AOS stage is similar to the evidence that is required to establish eligibility for the GMC waiver. When a T AOS client has inadmissibility **and** GMC problems, practitioners should ensure that they are requesting waiver of the client’s ground(s) of inadmissibility and *a/so* requesting waiver from the bar to GMC for criminal conduct that occurred while the client was in T nonimmigrant status.

#### **a. Example:**

---

<sup>58</sup> See INA § 101(f)(3) (“A member of one of the classes of persons, whether inadmissible or not, described in...subparagraphs (A) [CIMT and controlled substance offense] and (B) [multiple criminal convictions] of section 1182(a)(2) of this title...(except as such paragraphs relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period”).

<sup>59</sup> See *Garcia-Hernandez*, 23 I&N Dec. at 593.

<sup>60</sup> INA § 245(l)(6).



Let's reconsider Paul's case, previously featured in Part V, D, 1 of this advisory. Assume that Paul's marijuana conviction does not qualify for the GMC exception for a single offense of simple possession of 30 grams or less of marijuana.<sup>61</sup> Paul likely has a GMC problem because he incurred inadmissibility for a controlled substance offense during the period GMC is considered.<sup>62</sup> However, Paul may still be able to establish eligibility for AOS under INA § 245(I) if he can show, with evidence, that his bar to good moral character was caused by or incident to his trafficking victimization.

### **3. Discretion**

All T AOS applicants must show that their AOS application should be granted as a matter of discretion.<sup>63</sup> T AOS applicants are encouraged to submit evidence of positive equities if there are negative discretionary factors. The more serious the adverse discretionary factors, the more evidence of positive equities the applicant should present. If the applicant's adverse discretionary factors are severe, they "may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship."<sup>64</sup> If the applicant has "committed or been convicted of" serious crimes or "multiple drug-related crimes," even a showing of "exceptional and extremely unusual hardship" still may not be sufficient.<sup>65</sup> For examples of evidence that supports granting the waiver in the exercise of discretion, please see Part V, A, 1 of this advisory.

### **4. Chart: impact of criminal ground(s) of inadmissibility incurred *during* T nonimmigrant status**

---

<sup>61</sup> See INA § 101(f)(3) ("except as such paragraph relates to a single offense of simple possession of 30 grams or less of marijuana").

<sup>62</sup> Cf. INA § 101(f)(3) (noncitizen who is inadmissible under INA § 212(a)(2)(A)(i)(II) during the period during which GMC must be established is barred from establishing GMC) and INA § 245(I)(1)(B) (noncitizen applying for T AOS must be a person of GMC during their period of admission in T nonimmigrant status).

<sup>63</sup> See 8 C.F.R. § 245.23(e)(3).

<sup>64</sup> See 8 C.F.R. § 245.23(e)(3).

<sup>65</sup> See *id.*

AOS problem	Options?	Do the solutions require a connection to trafficking?
Criminal conduct that causes inadmissibility incurred during T nonimmigrant status	<p>Exception:</p> <ul style="list-style-type: none"> <li>• Petty offense exception (CIMT only)</li> </ul> <p>Waiver:</p> <ul style="list-style-type: none"> <li>• § 245(l)(2)(B): ground of inadmissibility was caused by or incident to trafficking.</li> <li>• § 212(h): check statute</li> </ul>	<p>Exception:</p> <ul style="list-style-type: none"> <li>• No</li> </ul> <p>Waivers:</p> <ul style="list-style-type: none"> <li>• § 245(l)(2)(B): Yes</li> <li>• § 212(h): No</li> </ul>
Criminal conduct that bars GMC incurred during T nonimmigrant status	<p>Exceptions:</p> <ul style="list-style-type: none"> <li>• Petty offense exception (CIMT only)</li> <li>• Single offense of simple possession of 30 grams or less of marijuana</li> </ul> <p>Waiver:</p> <ul style="list-style-type: none"> <li>• Available if GMC bar was caused by or incident to trafficking.</li> </ul> <p><b>Caution:</b></p> <ul style="list-style-type: none"> <li>• Aggravated felony is permanent GMC bar<sup>66</sup></li> </ul>	<p>Exceptions:</p> <ul style="list-style-type: none"> <li>• No</li> </ul> <p>Waiver:</p> <ul style="list-style-type: none"> <li>• Yes</li> </ul>

## E. VAWA Self-Petition

<sup>66</sup> The statutory GMC waiver language at INA § 245(l)(6) is broad and contains no express restriction on waiving the aggravated felony GMC bar. **However, it is unclear whether USCIS interprets the statute in this broad manner.** Chapter 23 of USCIS’s [Adjudicator’s Field Manual](#) (“AFM”), which has been retired, contained no express restriction on USCIS’s waiver authority if the GMC bar was an aggravated felony conviction (“USCIS may waive consideration of a disqualification from good moral character, including the bars to making a good moral character determination found at INA § 101(f), if the disqualification was caused by, or incident to, the acts of trafficking that formed the basis of the underlying application for T nonimmigrant status. INA § 245(l)(6).”). *Id.* at 20. The aggravated felony bar is one of the bars “found at INA § 101(f)”. It is unclear whether this interpretation is still in place, since the T AOS section of the USCIS Policy Manual has not been released yet. If your T AOS client has an aggravated felony conviction that was caused by or incident to trafficking, we recommend contacting the Coalition to Abolish Slavery and Trafficking (“CAST”) or ASISTA for technical assistance.

VAWA Self-Petitioners must show good moral character<sup>67</sup> for three years immediately preceding the filing of the self-petition.<sup>68</sup> VAWA Self-Petitioners are not required to establish admissibility. However, certain criminal grounds of inadmissibility may be relevant to a noncitizen's eligibility for a VAWA Self-Petition. This is because certain criminal grounds of inadmissibility are a bar to good moral character if they occurred during the period in which good moral character must be established.<sup>69</sup> Practitioners must also consider whether their VAWA client has been convicted of an aggravated felony, which is a permanent bar to GMC.<sup>70</sup>

In addition to the petty offense exception and the exception for a single offense of simple possession of 30 grams or less of marijuana, there is also a VAWA-specific waiver for certain GMC bars. According to the statute, the waiver applies if **all** of the following are true:

- 1) The bar to GMC is waivable with respect to the petitioner, for the purposes of determining the petitioner's admissibility under INA § 212(a) or deportability under INA § 237(a);
- 2) The petitioner is a spouse/intended spouse or child of an abusive USC or LPR<sup>71</sup>; *and*
- 3) The bar to good moral character is "connected to" the battery or extreme cruelty.<sup>72</sup>

The self-petitioner must submit evidence demonstrating that a waiver is available for the bar to GMC.<sup>73</sup> USCIS does not need to consider whether a waiver would be *granted*.<sup>74</sup>

---

<sup>67</sup> INA § 204(a)(1)(A)(iii)(II)(bb) (spouse/intended spouse of abusive USC), INA § 204(a)(1)(A)(iv) (child of abusive USC), INA § 204(a)(1)(a)(vii)(II) (parent of abusive USC), INA § 204(a)(1)(B)(ii)(II)(bb) (spouse/intended spouse of abusive LPR), INA § 204(a)(1)(B)(iii) (child of abusive LPR).

<sup>68</sup> Cf. 8 C.F.R. § 204.2(c)(2)(v) (requires GMC evidence for the 3-year period immediately preceding the filing of the self-petition), 3 USCIS-PM D.2(G)(1) ("USCIS generally looks at the 3-year period immediately preceding the date the self-petition is filed...").

<sup>69</sup> See INA § 101(f)(3).

<sup>70</sup> Cf. INA § 101(f)(8).

<sup>71</sup> The *statutory* waiver does not apply to parents of abusive USCs, see INA § 204(a)(1)(C), but USCIS's discussion of the waiver in the Policy Manual simply mentions waivers that are available to "self-petitioners," without any indication that certain self-petitioners are excluded from the waiver. See *generally* 3 USCIS-PM D.2(G)(3).

<sup>72</sup> See INA § 204(a)(1)(C).

<sup>73</sup> See 3 USCIS-PM D.2(G)(4)

<sup>74</sup> See *id.*

The Third Circuit has held that the phrase “connected to” “means “having a causal or logical relationship.””<sup>75</sup> USCIS has adopted this definition of “connected to” nationwide.<sup>76</sup> For an excellent discussion of how this interpretation of the good moral character waiver may benefit survivors, see ILRC’s section of the [VAWA Self-Petition Policy Manual Updates Practice Advisory](#) (beginning on page 24.)

### 1. Chart: Criminal grounds of inadmissibility and VAWA Self-Petitions

Bar to eligibility?	Options?	Must the option be connected to the abuse?
---------------------	----------	--

<sup>75</sup> *Da Silva v. Attorney Gen.*, 948 F.3d 629, 636 (3d Cir. 2020).

<sup>76</sup> See 3 USCIS-PM D.2(G)(4), USCIS Policy Alert: Violence Against Women Act Self-Petitions (Feb. 10, 2022) at 2, n.4, available at

<https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220210-VAWA.pdf>.

<p>Generally yes,<sup>77</sup> if the noncitizen incurred the criminal ground of inadmissibility within 3 years immediately preceding the filing of the self-petition</p>	<p>Exceptions:</p> <ol style="list-style-type: none"> <li>1) Petty offense (CIMT only)</li> <li>2) Single offense of simple possession of 30 grams or less of marijuana</li> </ol> <p>Waiver:</p> <ol style="list-style-type: none"> <li>1) Conduct is waivable with respect to the petitioner (under INA § 212(a) or INA § 237(a));</li> <li>2) Required family relationship to abuser<sup>78</sup>; and</li> <li>3) GMC bar is “connected to” the battery or extreme cruelty.</li> </ol> <p><b>Caution:</b></p> <ul style="list-style-type: none"> <li>• Aggravated felony conviction is a permanent bar.</li> </ul>	<p>Exceptions:</p> <ul style="list-style-type: none"> <li>• No</li> </ul> <p>Waiver:</p> <ul style="list-style-type: none"> <li>• Yes</li> </ul>
---	--	--

## F. VAWA Adjustment of Status

A VAWA Self-Petitioner who wants to apply for adjustment of status based on their approved VAWA Self-Petition must apply for adjustment of status under INA § 245(a).<sup>79</sup> Note that this is a different statute—with different requirements—than the statutes for adjustment based on U and T nonimmigrant status. Admissibility is required for adjustment under §

<sup>77</sup> If the acts were committed within the applicable period, inadmissibility for CIMT, controlled substance offense, and multiple criminal convictions with an aggregate sentence to confinement of 5 years or more are bars to establishing GMC. See INA § 101(f)(3). The only criminal grounds of inadmissibility that are not bars to establishing GMC are INA §§ 212(a)(2)(E) (noncitizens involved in serious criminal activity who have asserted immunity from prosecution), 212(a)(2)(H) (human traffickers), and 212(a)(2)(I) (money launderers.) Note that some human traffickers and money launderers may have aggravated felony convictions that permanently bar them from establishing GMC. See INA §§ 101(a)(43)(D) and (K).

<sup>78</sup> *But see generally* 3 USCIS-PM D.2(G)(3).

<sup>79</sup> *Cf.* INA § 245(a) (“The status of...any other [noncitizen] having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General...”).

245(a).<sup>80</sup> Thus, VAWA adjustment applicants with criminal ground(s) of inadmissibility are barred from § 245(a) adjustment unless they are eligible for an exception or a waiver.

Unlike U and T nonimmigrant status, there is no general waiver for VAWA adjustment of status. Instead, practitioners must review each criminal ground of inadmissibility at INA § 212(a)(2) to determine whether a waiver is available for VAWA Self-Petitioners who are applying for adjustment under § 245(a).

A waiver of inadmissibility is available for VAWA Self-Petitioners under INA § 212(h)(1)(C) for the following criminal grounds of inadmissibility:

- CIMT;
- Controlled substance offense, but only if the controlled substance offense is a single offense of simple possession of 30 grams or less of marijuana;
- Multiple criminal convictions with aggregate sentences to confinement of 5 years or more;
- Prostitution and commercialized vice; and/or
- Noncitizens who were involved in serious criminal activity and asserted immunity from prosecution.<sup>81</sup>

The criteria for the § 212(h)(1)(C) waiver are:

- 1) The noncitizen is a VAWA self-petitioner; and
- 2) The Attorney General, as a matter of discretion, “has consented to” the noncitizen applying for a visa or adjustment of status.<sup>82</sup>

### **Exclusions:**

Regardless of the above, a waiver under INA § 212(h) is not available for the following:

- Conviction of, or admission to acts that constitute, murder, including attempt or conspiracy to commit murder.

---

<sup>80</sup> One of the criteria for adjustment under § 245(a) is that the noncitizen “is admissible to the United States for permanent residence.” INA § 245(a).

<sup>81</sup> INA § 212(h) (cross-referencing various grounds of inadmissibility).

<sup>82</sup> See INA § 212(h)(1)(C)-(h)(2)

- Conviction of, or admission to acts that constitute, criminal acts involving torture, including attempt or conspiracy to commit a criminal act involving torture.
- Noncitizens who have previously been lawfully admitted to the U.S. for permanent residence if either:
  - 1) “since the date of such admission” the noncitizen was convicted of an aggravated felony, or
  - 2) the noncitizen “has not lawfully resided continuously in the United States for” at least 7 years immediately preceding the date of initiation of proceedings to remove the noncitizen from the U.S.

A noncitizen who is eligible for a § 212(h)(1)(C) waiver must disclose and request waiver of the ground(s) of inadmissibility by filing Form I-601 with their Form I-485 application. **For this waiver, there is no requirement that the criminal ground of inadmissibility is connected to the abuse.** However, if the ground of inadmissibility *is* connected to the abuse, practitioners are encouraged to submit evidence of the connection, as the connection may be a favorable discretionary factor. It is critical that noncitizens who are applying for a waiver of inadmissibility under INA § 212(h)(1)(C) submit extensive evidence of positive equities. For examples of the types of evidence to submit in this situation, please see Part V, A, 1 of this advisory.

**1. Chart: Options for VAWA AOS applicants with criminal ground(s) of Inadmissibility**

<b><u>Solution</u></b>	<b><u>When is this solution unavailable?</u></b>	<b><u>Required connection to abuse?</u></b>	<b><u>Discretionary?</u></b>	<b><u>Waiver form required?</u></b>
Petty offense exception	See Part VI, A.	No	No	No

Youthful offender exception	See Part VI, B.	No	No	No
INA § 212(h)(1)(C) waiver	<ul style="list-style-type: none"> <li>• Many controlled substance offenses.</li> <li>• Conviction of, or admission to, certain serious crimes.</li> <li>• Certain restrictions for noncitizens who were previously lawfully admitted for permanent residence.</li> </ul>	No	Yes	Yes, Form I-601

## G. VAWA Cancellation of Removal

Noncitizens with criminal grounds of inadmissibility may be ineligible for VAWA cancellation of removal. To be eligible for VAWA cancellation, a noncitizen cannot be inadmissible under any criminal grounds in INA § 212(a)(2)<sup>83</sup>, cannot have been convicted of an aggravated felony<sup>84</sup>, and must have been a person of good moral character for 3 years immediately

<sup>83</sup> See INA § 240A(b)(2)(A)(iv) (“The [noncitizen] is not inadmissible under paragraph (2)...of section 1182(a) of this title...”).

<sup>84</sup> *Id.*



preceding the filing of the cancellation application.<sup>85</sup> Noncitizens with criminal ground(s) of inadmissibility during the statutory period may be unable to establish good moral character.<sup>86</sup>

A noncitizen must have continuous physical presence in the U.S. for 3 years immediately preceding the filing of the VAWA cancellation application.<sup>87</sup> Any period of continuous physical presence in the U.S. ends when the noncitizen *commits* an offense that is:

- 1) “Referred to in” INA § 212(a)(2); and
- 2) “Renders” the noncitizen inadmissible under INA § 212(a)(2) or deportable under INA §§ 237(a)(2) or (a)(4).<sup>88</sup>

This is called the “stop-time rule.” The recent Supreme Court case *Barton v. Barr*<sup>89</sup> may have implications for cancellation of removal eligibility. For more information, please see the [May 2020 practice alert](#) and [June 2020 practice advisory](#), both of which were written by ILRC, the Immigrant Defense Project (“IDP”), and the National Immigration Project of the National Lawyers Guild (“NIPNLG”).

## **1. The effect of the inadmissibility exceptions on VAWA cancellation**

### **a. Petty offense exception**

- i. **Inadmissibility**: A noncitizen who is eligible for the petty offense exception is not inadmissible for a CIMT. Thus, the noncitizen should not be barred from VAWA cancellation because of CIMT inadmissibility.
- ii. **Good moral character**: A noncitizen who is eligible for the petty offense exception is not barred, because of their

---

<sup>85</sup> See INA § 240A(b)(2)(A)(iii) (“the [noncitizen] has been a person of good moral character during such period, subject to the provisions of subparagraph (C)...”) (“such period” refers to the immediately preceding roman numeral, which contains the 3-year physical presence requirement).

<sup>86</sup> See INA § 101(f)(3).

<sup>87</sup> INA § 240A(b)(2)(A)(ii).

<sup>88</sup> See INA § 240A(d)(1).

<sup>89</sup> 140 S. Ct. 1442 (2020).

CIMT, from establishing good moral character under INA § 101(f)(3).<sup>90</sup>

- iii. **Stop-time rule:** Because the CIMT definition at INA § 212(a)(2) does not include convictions that qualify for the petty offense exception, a conviction that meets the petty offense exception will not stop time for the purpose of VAWA Cancellation. For more information on the intersection between the petty offense exception and the stop-time rule in light of *Barton v. Barr*, please see the [practice alert](#) and the [practice advisory](#), both by ILRC, NIPLNG, and IDP.

## b. “Youthful offender” exception

i. **Inadmissibility:** A noncitizen who is eligible for the “youthful offender” exception is not inadmissible for CIMT. Thus, the noncitizen should not be barred from VAWA cancellation because of CIMT inadmissibility.

ii. **Good moral character:** Remember that the “youthful offender” exception requires that the criminal offense was committed more than 5 years before the immigration application.<sup>91</sup> Therefore, it is unlikely that a noncitizen who is eligible for this exception will be subject, for VAWA cancellation purposes, to a conditional GMC bar because of *CIMT* inadmissibility. This is because the statutory GMC period for VAWA cancellation is 3 years immediately preceding the filing of the cancellation application.<sup>92</sup>

1. **Caution:** There is a possibility that a noncitizen who is eligible for the youthful offender exception may have an aggravated felony conviction or another offense that renders them inadmissible. Practitioners should analyze their clients’ convictions accordingly. For further discussion of

---

<sup>90</sup> *Garcia-Hernandez*, 23 I&N Dec. at 593.

<sup>91</sup> See § INA 212(a)(2)(A)(ii)(I).

<sup>92</sup> See INA § 240A(b)(2)(A)(iii).

aggravated felonies, see Part III of this advisory and the resources cited therein.

**iii. Stop-time rule:** Because the CIMT definition at INA § 212(a)(2) does not include convictions that qualify for the youthful offender exception, a conviction that meets the youthful offender exception will not stop time for the purpose of VAWA Cancellation. For more information on the intersection between the “youthful offender” exception and the stop-time rule in light of *Barton v. Barr*, please see the [practice alert](#) and the [practice advisory](#), both by ILRC, NIPLNG, and IDP.

## **2. Waivers for VAWA cancellation applicants**

### **a. The BIA has held that an INA § 212(h) waiver is not an option**

The BIA held that an applicant for VAWA cancellation is not eligible for a § 212(h) waiver of inadmissibility.<sup>93</sup> The Ninth<sup>94</sup> and the Eleventh<sup>95</sup> circuits have upheld the BIA’s interpretation.

### **b. Inadmissibility**

The VAWA cancellation statute bars eligibility for noncitizens who are deportable or inadmissible under certain grounds, “subject to paragraph (5).”<sup>96</sup> Paragraph (5) of the cancellation statute, titled “Application of Domestic Violence Waiver Authority”, states that the authority at INA § 237(a)(7) applies to paragraph (2)(A)(iv) of the VAWA cancellation statute (the paragraph that bars VAWA cancellation eligibility for noncitizens with criminal grounds of inadmissibility or deportability, as well as aggravated felonies.)<sup>97</sup> INA § 237(a)(7) allows a noncitizen who was subjected to battery or extreme cruelty, and “who is not and was not the primary perpetrator of violence in the relationship” to receive a waiver of deportability for crimes of domestic violence, stalking, and violation of a domestic violence protection order, if they meet certain conditions

---

<sup>93</sup> See *Matter of Y-N-P*, 26 I&N Dec. 10, 16 (BIA 2012).

<sup>94</sup> See *Garcia-Mendez v. Lynch*, 788 F.3d 1058, 1060 (9<sup>th</sup> Cir. 2015).

<sup>95</sup> See *Arevalo v. U.S. Attorney Gen.*, 872 F.3d 1184, 1197 (11<sup>th</sup> Cir. 2017).

<sup>96</sup> INA § 240A(b)(2)(A)(iv).

<sup>97</sup> See INA § 240A(b)(5) (cross-referencing INA § 240A(b)(iv)).

enumerated in INA § 237(a)(7)(A)(i).<sup>98</sup> The Ninth Circuit held that the domestic violence waiver in the cancellation statute “only incorporates the authority provided under” INA § 237(a)(7)(A) rather than allowing for waiver of all the criminal grounds of inadmissibility and deportability that are listed in the VAWA cancellation statute.<sup>99</sup> The Fifth Circuit has held similarly.<sup>100</sup>

In all other circuits, it is an open question whether INA § 240A(b)(5) should be interpreted to allow VAWA cancellation applicants to request waiver of *any* criminal ground of inadmissibility, as long as the conditions at INA § 237(a)(7)(A)(i) are met with respect to the criminal ground of inadmissibility.

### **c. Good moral character**

The VAWA cancellation statute allows for waiver of a bar to good moral character if all of the following are true:

1) The bar to good moral character does not prevent the Attorney General from granting relief under “subparagraph (A)(iv)” of the VAWA cancellation statute (the subparagraph that bars noncitizens who are inadmissible or deportable under criminal and other grounds or have aggravated felony convictions from VAWA cancellation);

2) The “act or conviction” is “connected to” the battery or extreme cruelty; and

3) The Attorney General “determines that a waiver is otherwise warranted.”<sup>101</sup>

The Third Circuit held that “connected to” “means “having a causal or logical relationship.””<sup>102</sup> USCIS has adopted this definition nationwide for the purpose of VAWA Self-Petitions.<sup>103</sup> For an excellent discussion of how this interpretation of the good moral character waiver may benefit survivors, see ILRC’s section of the [VAWA Self-Petition Policy Manual Updates Practice Advisory](#) (ILRC’s section begins on page 24.)

---

<sup>98</sup> See INA § 237(a)(7) (cross-referencing INA § 237(a)(2)(E)(i)-(ii), with respect to crimes of domestic violence, stalking, and violation of a protection order).

<sup>99</sup> See *Jaimes-Cardenas v. Barr*, 973 F.3d 940, 944-45 (9th Cir. 2020).

<sup>100</sup> See *Rodriguez-Benitez v. Holder*, 763 F.3d 404, 407-08 (5th Cir. 2014).

<sup>101</sup> See INA § 240A(b)(2)(C).

<sup>102</sup> *Da Silva*, 948 F.3d at 636.

<sup>103</sup> USCIS Policy Alert: Violence Against Women Act Self-Petitions (Feb. 10, 2022) at 2, n.4, available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220210-VAWA.pdf>.

**Caution:** While *USCIS* has adopted *Da Silva* nationwide for the purpose of the good moral character waiver for *VAWA Self-Petitions*<sup>104</sup>, an Immigration Judge—not USCIS—adjudicates a VAWA cancellation of removal application. An Immigration Judge is bound by the case law in their circuit. They are not bound by USCIS’s nationwide adoption of *Da Silva*. Thus, it is unknown how Immigration Courts outside the Third Circuit will interpret the phrase “connected to” for the purpose of VAWA cancellation. Practitioners outside the Third Circuit with VAWA cancellation clients whose good moral character bars are connected to the abuse may wish make similar arguments for a similar interpretation of “connected to” in their circuit but should advise clients accordingly.

## Conclusion

Criminal grounds of inadmissibility may impact a noncitizen’s eligibility for survivor-based relief. However, exceptions and waivers to some criminal grounds of inadmissibility are available. The exceptions are categorical, while the available waivers depend on the type of relief the noncitizen is seeking and their particular ground(s) of inadmissibility. Practitioners who encounter criminal grounds of inadmissibility in survivor-based cases are encouraged to review the resources and consult experts, stay updated on BIA decisions and circuit law, and contact ASISTA for technical assistance.

This project was supported by Grant No. 15JOVW-21-GK-02240-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.

---

<sup>104</sup> USCIS Policy Alert: Violence Against Women Act Self-Petitions (Feb. 10, 2022) at 2, n.4, available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220210-VAWA.pdf>.