



Tip of the Month MARCH 2024

MN Cannabis Law & Immigration

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In August 2023, Minnesota legalized the recreational use of cannabis for those aged 21 or older. It also made possession and home growth, under certain amounts, legal in the state. The sale of marijuana or cannabis¹ products will also be legal once the new Minnesota Office of Cannabis Management establishes requisite rulemaking and licensing frameworks. The law also creates automatic expungement procedures for certain categories of prior convictions.

This purpose of this Tip of the Month is to address the impact Minnesota's new cannabis law has on immigration.

CANNABIS IN FEDERAL AND IMMIGRATION LAW

Despite Minnesota's new law, cannabis possession, sale, and use remain illegal under federal law. Under the federal Controlled Substances Act ("CSA"), cannabis is a Schedule I substance, and is categorized at the highest level of danger and addictiveness. Any manufacturing, distribution, dispensation, and possession of a Schedule I substance is illegal under the CSA. Though these crimes are selectively prosecuted by federal authorities, the fact that it is still a crime can create devastating consequences for noncitizens in the United States, even in states that have legalized these acts.

The Immigration and Nationality Act includes grounds under which a noncitizen may be found ineligible to remain or be admitted into the United States. These make up two distinct lists known as the grounds of inadmissibility and grounds of removability (also "deportability"). The grounds of inadmissibility and deportability apply to noncitizens in different scenarios, but, crucially, the use, possession, or sale of cannabis can trigger grounds on either list, because it is still a federal crime.

¹For brevity, the word "cannabis" will be used to refer to marijuana, cannabis, and marijuana or cannabis products.

To be admissible to the United States, a noncitizen must be able to establish “good moral character”. There are both permanent and conditional bars that may prevent an individual from establishing good moral character.² Thus, in immigration cases in which inadmissibility grounds apply, a noncitizen could be barred from establishing good moral character if they simply admit to having used, possessed, or sold cannabis—even if it was legal under state law and no conviction resulted from it. This is because it would be an admission of a federal crime, and the any unlawful act can be a conditional bar to establishing good moral character.

Though cannabis is now legal in Minnesota, prior convictions for it can have immigration consequences, as convictions can trigger both inadmissibility and removability grounds. The precise consequences of a conviction depend on the text of a law a noncitizen was convicted under and the number of convictions, among other factors. Further, even if a conviction is expunged under Minnesota’s new law, it may remain a conviction for immigration purposes. Immigration law’s definition of “conviction” means mass expungements of cannabis convictions laid out in state laws may still count as convictions for immigration purposes. Noncitizens with any prior convictions should consult with an immigration attorney, especially those with convictions that may now be expunged automatically.³

COMMON SCENARIOS

1. Applying to Adjust Status or Naturalize

Applicants for both permanent residence (green card) and naturalization (citizenship) must establish good moral character. Consider, for example, an applicant is applying for either of these immigration benefits and regularly uses cannabis and is employed by a legal (according to Minnesota) cannabis business.

In an adjustment application, this applicant is likely to be asked questions by an interviewing officer to determine if they are admissible, which must be answered truthfully under oath. While inadmissibility waivers could be available, any admission of use, possession, or sale can result in a finding of inadmissibility for lacking good moral character. Any refusal to answer the questions or falsely answering them can also result in a denied application.

In a naturalization application, this applicant will likely not establish the required good moral character for the last five years. Reportedly, officers have questioned applicants heavily on cannabis use in states that have legalized its use. If our applicant admits to what they understood to be perfectly legal conduct, they will likely be unable to establish good moral

² Conditional and permanent bars to good moral character are complicated areas of immigration law fraught with potential waivers, fact dependent scenarios, and judgment calls to be made by USCIS – especially regarding cannabis. These nuances are beyond the scope of this Tip, however, if you need more information the [USCIS Policy Manual, Volume 12, Part F](#) is a good place to start.

³ When the automatic expungement process takes place, records may be sealed and thus harder to obtain in the future. Criminal history records will be needed to report to immigration agencies so noncitizens in this situation should obtain records from the [Bureau of Criminal Apprehension](#).

character until they have gone five consecutive years without possessing, selling, or using cannabis. Even more, if this applicant for naturalization leaves the United States before they become a citizen and then tries to re-enter the country, they may be deemed inadmissible for cannabis use or even as a “drug trafficker” for their employment in the state-sanctioned cannabis business.

2. In Removal Proceedings

Consider the same applicant as above, but now they are in removal proceedings rather than affirmatively applying for an immigration benefit. If this person is determined to be removable in immigration court (regardless of how this determination was made), there are still defensive applications for relief from removal available. However, for some options—such as cancellation of removal—the applicant needs to prove good moral character for the last *ten* years. Knowing this, government attorneys are likely to ask questions to elicit admissions of cannabis use while the applicant is on the stand. Though an admission of this on the stand will not cause removability, it can bar a noncitizen from receiving those other relief options if determined to be removable on other grounds.

3. Arriving at the Border/Applying for Non-Permanent Statuses

Finally, consider a person who is arriving at a port of entry (air, land, or sea) or is applying for non-permanent statuses such as Temporary Protected Status or a Non-Immigrant Visa. In either scenario, the noncitizen must show that they are admissible to enter the country and obtain the applied for benefit.

At a port of entry, anyone may be subject to questioning by a border official, even if they are arriving with a valid visa or a green card because officials are charged with making admissibility determinations at a border. Therefore, if an individual admits to cannabis use, sale, or possession, they can be denied admission to the country.

In applying for a non-permanent status, an applicant will be asked questions—either on an application form or by a consular officer—relating to good moral character. An admission of cannabis use or a failure to respond to a question may again result in a finding of inadmissibility.

WHAT’S THE TL;DR?

Noncitizens are not able to take advantage of Minnesota’s new cannabis law without risking severe immigration consequences. Many noncitizens are likely unaware of this, as one may assume that legalization by the state allows use of cannabis without committing a federal crime. Any noncitizen with a history of cannabis recreational or medical use or convictions should consult with an immigration attorney. Noncitizens should be advised not to use, possess, or sell cannabis in any way without first consulting an immigration attorney.