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Medical Grounds of Inadmissibility

- Drug Abuse or Drug Addiction

Drug Abuse or Drug Addiction

Applicants who are found to be drug abusers or addicts are inadmissible under INA §212(a)(1)(A)(iv). Drug abuse and drug addiction are current substance-use disorders or substance-induced disorders of a controlled substance listed in Section 202 of the Controlled Substances Act, as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association or by another authoritative source as determined by the Director. See Title II of Pub. L. 91-513 (PDF), 84 Stat. 1242, 1247 (October 27, 1970), as amended, codified at 21 U.S.C. 801 *et. seq.* See 42 CFR 34.2(h) (drug abuse). See 42 CFR 34.2(i) (drug addiction). HHS regulations define Director as the Director of CDC or a designee as approved by the Director or Secretary of HHS. See 42 CFR 34.2(g).

How is this determination Made?

The civil surgeon must check the appropriate findings box on the medical examination report that is done as part of the Adjustment of Status or Visa Interview process (the Form I-693). The finding can also be made based on statements an applicant makes to immigration officers either at a border crossing or during a USCIS interview. Admissions to using illegal drugs, even only an isolated incident, is enough for an officer to make this determination if they believe it to be true under the totality of the circumstances.

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Can Someone Obtain a Visa After Immigration Has Found Them Inadmissible Under INA §212(a)(1)(A)(iv) as a Drug Abuser?

If the applicant is classified as a drug abuser or addict, the applicant can apply again for an immigration benefit if his or her drug abuse or addiction is in remission. Remission is now defined by DSM criteria, and no longer by a set timeframe as it was under previous Technical Instructions. Under the pre-2010 Technical Instructions, an applicant's substance abuse or addiction was in remission if the applicant had not engaged in non-medical use of a controlled substance within the past 3 years, or non-medical use of a non-controlled substance within the past 2 years. In order for an applicant's drug abuse or addiction to be classified as in remission, the applicant must return to a civil surgeon for a new assessment.

Most applicants who are found to be drug abusers or addicts are ineligible for a waiver; the availability depends, however, on the immigration benefit the applicant seeks. Chapter five of the USCIS Policy Manual discusses the possibility and process of requesting a waiver of drug abuse and addiction. In general, the rule is that there is no waiver of this ground of inadmissibility. There are however, specific statutory provisions that permit USCIS to waive this ground, for asylees and refugees seeking adjustment, and Legalization and SAW applicants. These waivers are specific to asylees and refugees. The other waiver available is under INA 212(g).

Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on inadmissibility on account of drug abuse or drug addiction.

Requesting an Advisory Opinion from the CDC

If an officer has a case where there is a question concerning the diagnosis or classification made by the civil surgeon or panel physician, the officer may forward the pertinent documents to CDC and request an advisory opinion.

The request should include the following documents:

- A cover letter indicating the request, reason(s) for the request, and the USCIS office making the request;
- A copy of the medical examination documentation (Form I-693 or Form DS-2053/DS-2054, and its related worksheets);
- A copy of the provided medical report(s) detailing the medical condition for which the advisory opinion is being requested; and
- Copies of all other relevant medical reports, laboratory results, and evaluations connected to the medical condition.

Once the documents are received by CDC, CDC reviews the documents and forwards a response letter with results of the review to the USCIS office that submitted the request.

CDC's usual processing time for review and response back to the requesting USCIS office is approximately 4 weeks.

Upon receipt, the officer should review CDC's response letter to determine next steps.