

The ABC'S Of Immigration: Health-Related Grounds Of Inadmissibility

by
Gregory Siskind

Section 212 of the Immigration and Naturalization Act designates the health-related grounds that render an applicant for a visa, admission, or adjustment of status inadmissible. The medical grounds are determined according to the regulations published by the Department of Health and Human Services and include having communicable diseases, physical or mental disorders, drug abuse or addiction problems as well as failing to demonstrate vaccination against certain vaccine-preventable diseases.

The following communicable diseases render a person inadmissible:

1. chancroid
2. gonorrhea
3. granuloma inguinale
4. acquired immune deficiency syndrome (HIV/AIDS)
5. Hansen's disease (infectious leprosy)
6. lymphogranuloma venereum
7. infectious state syphilis
8. infectious tuberculosis (TB) (clinically active)

The following vaccinations are required of all immigrant visa and adjustment applicants:

1. mumps
2. measles
3. rubella
4. polio
5. tetanus and diphtheria toxoids
6. pertussis
7. Haemophilus influenzae type b
8. hepatitis B

Note: The Advisory Committee on Immunization Practices may recommend additional vaccinations for the following diseases (though they are not yet required):

9. varicella
10. influenza
11. pneumococcal

Physical or mental disorders which render one inadmissible include the following:

1. Current physical or mental disorders, with harmful behavior associated with the disorder.
2. Past physical or mental disorders with associated harmful behavior that is likely to recur or lead to other harmful behavior.

Harmful behavior is behavior that may pose, or has posed, a threat to the property, safety or welfare of the applicant or others. A person who is mentally retarded is no longer inadmissible unless there is a determination that the applicant is exhibiting or has exhibited in the past, associated harmful behavior.

According to the Secretary of Health and Human Services, alcohol abuse or dependence resulting in alcohol impaired driving may serve as a basis for determining whether an immigrant has a mental disorder associated with harmful behavior. Section 212(a)(1)(A)(iii) of the Immigration and Nationality Act discusses the inadmissibility in cases where an applicant for an immigration benefit has a significant record of alcohol-related driving incidents. According to the Centers for Disease Control and Prevention (CDC), alcohol-impaired driving is a significant health and safety issue that results in over 17,000 deaths, over 500,000 injuries and over \$51 billion in property damages each year. As a result, Associate Director for Operations for the Department of Homeland Security William R. Yates issued a memorandum on January 16, 2004 requiring that applicants for immigration benefits who have a history of alcohol-related driving incidents be re-examined by a civil surgeon to ensure that they are not inadmissible on health-related grounds.

A re-examination is required by the Department of Homeland Security when the criminal record of an applicant for immigration benefits reveals a significant history of alcohol-related driving incidents. A significant criminal record of alcohol-related driving incidents includes:

1. One or more arrests or convictions for alcohol-related driving (DUI/DWI) while the driver's license was suspended, revoked or restricted at the time of the incident(s).
2. One or more arrests or convictions for alcohol-related driving where personal injury or death resulted from the incident(s).
3. One or more conviction for alcohol-related driving where the conviction was a felony in the jurisdiction where the incident occurred or where a sentence of incarceration was actually imposed.
4. Two or more arrests or convictions for alcohol-related driving with the preceding two years.
5. Three or more arrests or convictions for alcohol-related driving where one arrest or conviction occurred within the preceding two years.

Only applicants with a significant criminal record of alcohol-related driving incidents that were not considered by the civil surgeon during the original medical exam are referred for re-examination. The re-examination would be limited to a mental status evaluation specifically addressing the immigrant's record of alcohol-related driving incidents.

Drug Abuse or Addiction

Drug abuse or addiction applies to the nonmedical use of a psychoactive substance that is part of a pattern of abuse. There is an exception for experimentation. Clinical judgment is

used to determine abuse or experimentation when the applicant's medical records indicate past nonmedical use of a psychoactive substance.

Medical Exams

Information about the health of an applicant for a visa is acquired through a medical examination by an authorized civil surgeon who must perform the exam according to the specific guidelines published by the Center for Disease Control and Prevention. An applicant's own admission is not sufficient to uphold a finding of inadmissibility on medical grounds. The determination must be based on the medical examination that is required by certain persons seeking admission into the United States.

Four groups of people are required to get medical examinations under the immigration laws. They include the following:

1. immigrant visa applicants
2. refugees applying for admission under Section 207 of the Act who are not eligible for a waiver
3. adjustment of status applicants (including asylees)
4. nonimmigrants in the following circumstances:
 - i. a consular officer may require an applicant to submit to an examination prior to issuance of a nonimmigrant visa; or
 - ii. a USCIS officer at ports-of-entry may require a nonimmigrant (arriving with or without a visa) to submit to a medical examination.
 - iii. K or V visa applicants outside the United States must undergo a medical exam as part of the visa application process.
 - iv. V visa applicants inside the United States must submit with their application a medical exam report.

An authorized civil surgeon must endorse the Form I-693, Medical Examination of Aliens Seeking Adjustment of Status and an accompanying vaccination supplement. That form can be found on the USCIS web site at www.uscis.gov. To obtain names and telephone numbers of the designated civil surgeons in a particular area, one can call the USCIS National Customer Service Center at 1-800-375-5283. The caller will be asked to provide a zip code and will then have to write down the contact information for the doctor. Many USCIS offices will also distribute the list upon request or post the list at the USCIS office.

Generally, the Form I-693 is normally valid for a period of 1 year from the date it was endorsed by the civil surgeon. The US Citizenship and Immigration Services has taken a relaxed approach in accepting a medical evaluation as valid because it has been taking well

over one year to complete the application process. An adjudicating officer may accept a medical exam report that is more than 1 year old if it was initially filed with an adjustment of status application and there is no medical condition noted that would render the applicant inadmissible.

In addition to being signed by a designated civil surgeon, the Form I-693 must be completed legibly in English. The surgeon must clearly indicate that all required tests were performed and the results. The form must be sealed in an envelope by the civil surgeon and must have no evidence of tampering.

The evaluation includes a general physical examination and a mental status evaluation. Applicants 2 years and older must have a tuberculin skin test (TST). A chest X-ray is required only when the reaction to the TST is 5 millimeters or more. Serologic (blood) tests are required of all applicants 15 years of age and older to see if an applicant has syphilis or a human immunodeficiency (HIV) infection. Other tests may be required depending on the applicant's age and/or possible exposure to a particular disease.

Vaccinations

The following people must be vaccinated:

1. adjustment of status and immigrant visa applicants
2. refugees applying for adjustment of status under Section 209 of the Act
3. asylees applying for adjustment under Section 209 of the Act
4. K and V visa applicants outside the United States, but will not be refused admission solely because the requirement has not been met
5. K and V nonimmigrants that adjust their status to lawful permanent resident
6. internationally adopted children within 30 days of admission

Civil surgeons are required to document that the applicant has the necessary vaccinations by including a special supplement form with the I-693 form. The vaccination form is not available on the Internet. However, the Centers for Disease Control and Prevention (CDC) has sent the vaccination supplement directly to the civil surgeons for them to photocopy, fill out on behalf of each applicant, and attach to Form I-693 for submission to USCIS.

When a person is found to be inadmissible for health reasons, it does not definitively prevent the person from being issued a visa or entering the United States. A physical or mental condition can be corrected or one can prove that they do not fall into the categories. Waivers are also available for most of the medical grounds of inadmissibility. See <http://www.visalaw.com/03apr1/2apr103.html> for an article on waivers for health-related grounds of inadmissibility.

Gregory Siskind (gsiskind@visalaw.com) is a partner in the law firm of Siskind, Susser, Haas and Devine (www.visalaw.com), which has offices in the United States and around the world. He is an active member of the American Immigration Lawyers Association (AILA). He is a member of the American Bar Association (ABA), where he currently serves as Chairman of the Law Practice Management Publishing Board and on the Governing Council of the Law Practice

Management Section. He was one of the first lawyers in the country (and the very first immigration lawyer) to set up a website for his practice and he was the first attorney in the world to distribute a firm newsletter via e-mail listserv. He is a co-author of *The J Visa Guidebook* published by LexisNexis Matthew Bender, and the author of *The Lawyer's Guide to Marketing on the Internet*, published by the ABA. He graduated magna cum laude from Vanderbilt University and received his law degree from the University of Chicago.