

Substance Use, Health-Related Inadmissibility and Waivers

*By Andrew J. Stevenson**

The apprehension in the silence on your client's end of the phone is palpable. His case initially seemed straightforward, even predictable, to you. But then something unexpected happened at the medical examination.

He explains: "Well... um... the doctor really focused in on some questions when I went in. A couple of months back, I was at my neighbor's, and there were some drugs there. When the doctor asked if I had ever done illegal drugs, I said, 'well, not me, but I was at my neighbor's, you know, this party, and I didn't do any but they were there around me. Since I didn't do any, they shouldn't show up on any test, but I was right there, so...' The doctor asked me again if I had ever done any drugs, and I said, 'well, yeah, not that time, but I did just *try* marijuana a couple of times. That was about a year ago, though; since then, never again, and I never got charged or convicted of anything. *Is this going to be a problem for my case???*"

The short answer for this client is: yes, it could be a problem and it may even result in denial of his case. In fact, any applicant for U.S. immigration benefits who has even a minor history of substance use may be subjected to scrutiny upon consular processing of their visa or adjustment of status. This is not only limited to applicants who have a history of drug use, but may also include applicants who have struggled with alcoholism. DOS and USCIS have also recently increased scrutiny on applicants with a history of arrests or convictions for alcohol-related offenses, including Driving Under the Influence (DUI).

This article will focus on how U.S. immigration authorities define and identify substance use as a health-related ground of inadmissibility, and how they determine whether an applicant's substance use actually triggers inadmissibility. It also discusses what appeals of these determinations may be made and what waivers of inadmissibility are available. Understanding this topic is important for practitioners, especially because substance use issues are frequently undisclosed or underreported by clients, and they may arise unexpectedly at critical stages of a case.

HEALTH-RELATED INADMISSIBILITY BASED ON SUBSTANCE USE

An applicant's history of substance use can trigger health-related inadmissibility under two distinct sections of the INA.

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