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Article: Cannabis in California: a trap for non-citizens

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Under Proposition 64, marijuana is now legal in California for those over 21 years old – at least under state law. However, cannabis use is still a crime under federal law and the potential penalties are severe for those who are not U.S. citizens. The Justice Department led by Attorney General Jeff Sessions and the Department of Homeland Security have been clear that they are enforcing all federal drug laws including those prohibiting marijuana use.

This creates a dangerous disconnect for immigrants living in our state: while there is a perception that smoking pot is legal in every way-- one can even buy it in stores--under federal immigration law, one puff can make someone deportable or banned from the country.

Federal law

Laws involving “controlled substances” or drugs are the province of both state and federal law. While possession of marijuana is now decriminalized under California law, federal laws still prohibit possession, cultivation or trafficking (sales) of marijuana. Under the federal Controlled Substances Act, marijuana is classified as a “Schedule 1” drug along with opium, LSD, heroin, Ecstasy, psilocybin and many other drugs.

Moreover, our federal immigration laws make a person ineligible for a green card (permanent residence) on account of marijuana use. If a noncitizen is found to have used marijuana even once, they become inadmissible to the United States. Even a permanent resident risks deportation for the same drug use condoned by state law.

Bar to permanent residence or citizenship.

One way this comes up for immigrants is during the medical exam required of all applicants for a green card. Traces of marijuana may remain in the body for over three months as THC. Persons determined to have used drugs through the mandatory medical exam can be denied permanent residence; if this happens at a foreign consulate, they can also be prohibited from re-entering the U.S. and literally separated from their families indefinitely.

Another way it is typically raised is at the interview with an immigration official, required when one applies to become a permanent resident or a citizen. Because cannabis is a federal Schedule 1 drug, a person can be denied status without any finding that they injured themselves or others. A doctor’s simple diagnosis of substance abuse based on use of a Schedule 1 drug means the person is determined to have a Class A medical condition and they are automatically ineligible for a green card or visa.

Beware at the border.

Also, non-U.S. citizens at a border attempting to enter the U.S. may be asked whether they have ever used drugs, and if they say yes or refuse to answer, they can be barred from entering the country. A recent Washington Post article describes how one Canadian was barred from the U.S. for life just because she admitted to trying marijuana.

Jessica Goldstein was coming across the border from Vancouver with two friends, en route to a concert in Washington. After some standard questions about their reasons for entering the U.S., the border official suddenly asked whether they had ever used drugs.

“We didn’t answer at first, we were so taken aback,” Goldstein recalls. “I mean, really, it’s none of their business.” When the officer insisted on an answer, Goldstein admitted to smoking marijuana in the past. “I mean who hasn’t had a puff of a joint?” she said. The Canadian was banned from the United States for life.

Double standard

Whatever one thinks of the legalization of pot, the dichotomy between federal and state law creates an unfair double standard for immigrants living here. An activity that is legal for citizens and even promoted through advertising can result in deportation or a ban from the country for others. In California, a college student with a green card sharing marijuana with his American-born friends could be deported while his friends won’t even get a ticket. How fair is that?

With the current regime in Washington, it’s unlikely one can expect reform of this aspect of the federal immigration laws. Therefore, it’s quite important that immigrants understand that cannabis legalization doesn’t include them.

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Christopher A. Kerosky of the law firm of KEROSKY PURVES & BOGUE LLP has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine “Super Lawyers” edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C.

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