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Article: Immigration Effects of Drugs and Alcohol Part 2: Marijuana legal for US citizens

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Under last year's new California State law (Prop 64), the Control, Regulate and Tax Adult Use of Marijuana Act ("the Adult Use of Marijuana Act"), marijuana is now legal in California for those over 21 years old. Laws will be established to regulate marijuana cultivation, distribution, sale and use, and will protect Californians and the environment from potential dangers. The Act will establish the Bureau of Marijuana Control within the California Department of Consumer Affairs to regulate and license the marijuana industry. This change effectively decriminalizes marijuana under California state law for many California residents. However, the problem of federal law remains and the rules are different for non-US citizens ("noncitizen").

Federal law

As many of our readers are aware, our immigration and naturalization laws are federal laws. Under the US Constitution, the states are not permitted to enact immigration laws. Laws involving the "controlled substances" or drugs, on the other hand, can be both state and federal. Under federal law, specifically the United States Controlled Substances Act, marijuana is classified as a "Schedule 1" drug along with opium, LSD, heroin, Ecstasy, psilocybin and many other drugs. As far as I know, there is no federal law prohibiting the use of marijuana. Federal laws do prohibit possession, cultivation or trafficking (sales). In contrast, "under the influence" offenses are usually state laws and usage of marijuana does not necessarily mean that the person is "under the influence" of pot, unless of course there was a conviction involved. But even if using marijuana is not a criminal ground of inadmissibility, it can still make a person ineligible for a green card under a medical ground.

If a noncitizen is found to have used marijuana (other than a simple single abuse for experimental use), and this could come up during a medical required to become a green card holder (note that traces of marijuana may remain in the body for over three months as THC, the psycho active element in marijuana, is not water soluble) or during an interview to become a green card holder or an interview for naturalization. Because cannabis is a Schedule I drug, no determination of harmful behavior is required. 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.

As much as I loath to quote Ronnie or Nancy, the Reagans' advice is most apt: if you are a noncitizen you need to "just say no" even though under California law smoking pot is now legal (if you are a US citizen).

A green card holder who has lived in the US for many years can have their green card taken away and be deported for a single marijuana conviction. Note there is a sole exception for a

single conviction for possession of 30 grams or less of marijuana but even that exception involves obtaining a waiver. So, if you have a green card and have been putting off applying for naturalization, this is another reason to apply! Note the new fees go up December 23, so applying before then will save you \$45 which you can use to buy some celebratory pot after you are sworn in.

A person who has overstayed the visa waiver program and who marries a US citizen is not eligible to obtain a green card if they have a marijuana conviction. Again, there is a sole exception for a single conviction for possession of 30 grams or less of marijuana, with a waiver showing extreme hardship to specific legal family members.

From the Immigrant Legal Resource Center, ilrc.org/crimes:

For immigrants, the disproportionate impacts of a marijuana conviction are far more damaging than for most citizens because the immigration consequences that flow from any drug conviction (including marijuana possession) are some of the most punitive, unforgiving penalties under federal law, often with no recourse. These consequences can include: detention by immigration authorities for months or years; loss of current "green card" or other lawful immigration status; ineligibility to apply for lawful immigration status; and deportation that causes permanent family separation, often with no consideration of humanitarian factors.

The effects of these harsh federal laws are compounded by record number of deportations in the U.S. over the last eight years and the frequency by which the federal government deports immigrants for drug offenses. Possession of a drug, in particular marijuana, is one of the most common bases for deportation based on a criminal conviction. A report released in 2015 by Human Rights Watch found that deportations based on drug possession increased 43% from 2007 through 2012. During that period more than 260,000 people were deported for a drug offense and though these statistics are incomplete, at least 38% or over 100,000 such cases involved possession of drugs for personal use.

While there are some legal defenses available, such as whether a California infraction is the same as a conviction under federal law, and/or whether all the elements of the 1957 Matter of K case are found, it is much safer to just say no until you are sworn in as a US citizen.

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Best wishes to all our readers and your families for a very Happy Christmas, Happy Chanukah, & a prosperous and healthy New Year! Thanks a million for your support this past year. Chris and I and Wilson and all our team, look forward to advising you on all your immigration matters in the coming year.