

STEP 2: Does My Conviction Make Me Ineligible for Citizenship?

To be eligible for U.S. citizenship you must:

- Be a lawful permanent resident for five years (three years if married to a U.S. citizen);
- Be a person of good moral character; and
- Pass certain tests, like literacy and civics.

Some convictions permanently bar a finding of good moral character and make you permanently ineligible for naturalization. Other convictions are only temporary bars.

Convictions that permanently bar naturalization:

- Aggravated felony conviction on or after November 29, 1990
- Murder conviction at any time

Convictions that bar naturalization for 5 years (3 years if married to a U.S. citizen):

- Controlled substance offense (except for single offense of simple possession of 30 grams or less of marijuana)
- Crime involving moral turpitude
- Two or more offenses of any type and committed at any time for which you received a total (aggregate) sentence of 5 years or more
- Two gambling offenses
- Confinement to jail for 180 days or more.

The Bottom Line

If your conviction bars naturalization, there is no point in your applying for citizenship (you will be **denied**). If your conviction is only a temporary bar, you should **wait** at least until the period of the temporary bar has passed (that is, five years from the date of conviction, or 3 years if married to a U.S. citizen). Most importantly, remember that even if your conviction does not bar naturalization, it **may still make you deportable** — you must **weigh the risk** of deportation against the benefit of obtaining U.S. citizenship **before** submitting a naturalization application.

ABOUT NYSDA IMMIGRANT DEFENSE PROJECT

NYSDA Immigrant Defense Project (IDP) defends the legal, constitutional and human rights of immigrants facing criminal or deportation charges. IDP is the nation's first project founded to respond to the devastating 1996 immigration laws that placed hundreds of thousands of immigrants at risk of mandatory detention and deportation for virtually any interaction with the criminal justice system.

We promote a transformation of the criminal justice and immigration systems, so that they do not result in the exile of immigrants from their homes and families in the United States. We also seek to minimize deportation and detention under current laws for immigrants facing criminal charges or subsequent deportation. In pursuit of these goals, we 1) serve as a legal resource and training center for criminal defense attorneys, criminal justice and immigrant advocates, and immigrants fighting against deportation and detention; 2) support community-based advocacy against unjust immigration laws and their aggressive enforcement; and 3) promote high-impact litigation results in federal court by submitting *amicus* briefs and by recruiting and mentoring *pro bono* attorneys.

This pamphlet is an introductory guide that highlights the unique obstacles to naturalized citizenship faced by immigrants with criminal convictions. It is not intended as a substitute for individualized legal advice. We strongly encourage you to seek assistance from an immigration attorney or other expert before deciding whether to apply for naturalization.

Citizenship Alert For Lawful Permanent Residents with Criminal Records

Questions to Answer Before Applying for Citizenship

Question 1:
**Will my citizenship application
trigger deportation?**

Question 2:
**Does my conviction
bar citizenship?**

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Immigrants with Convictions: Applying for Citizenship May Be Risky!

If you have a criminal conviction, you may be barred from becoming a naturalized U.S. citizen. More importantly, you may also be deportable. This may be true even though you are a lawful permanent resident (greencard holder), and even though your conviction happened a long time ago.

If you were convicted of a crime, consider all of the following before you apply for citizenship:

1. Does my conviction make me deportable?

If yes, then applying for citizenship will almost certainly trigger a removal (deportation) case. You must decide whether to take this risk of applying for citizenship. Depending on your conviction, you may not get a chance to apply for a pardon or other defense to deportation. You may not be allowed to show the immigration judge that you deserve to stay in the U.S. Even if you are allowed to apply for deportation relief, the immigration judge may decide that your application is too weak. If your conviction does not make you deportable, or if you have a good chance of getting relief, then you may decide to apply for citizenship anyway – but seek expert advice to fully assess your risk!

2. Does my conviction make me ineligible to become a naturalized U.S. citizen?

If yes, you may want to wait to apply for citizenship until you do become eligible. Some convictions are only temporary bars to naturalization. Others are permanent bars.

3. Before you apply for citizenship, seek advice from someone who is an expert on naturalization and on crime-related deportation.

**A Know Your Rights! Advisory by
NYSDA Immigrant Defense Project**
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STEP 1: Does My Conviction Make Me Deportable?

If you have a “deportable” conviction and you apply for naturalization, then immigration authorities will almost certainly start proceedings to deport you.

Some people will be able to apply for *Cancellation of Removal*, which is a one-time pardon from deportation. If you committed an offense within 7 years after you were admitted to the U.S., you may be ineligible for this pardon. If your conviction was for an “aggravated felony” (see below), you will be ineligible for this pardon. But if you *pled guilty* before *April 24, 1996*, and have no other offenses, then you may be eligible for a pardon under old laws.

Convictions for the following types of offenses may trigger a deportation case. You cannot always tell if your conviction fits a category just by looking at the name of your offense, so seek expert advice.

Aggravated Felonies

These include, but are not limited to:

- Murder, Rape, or Sexual Abuse of a Minor
- Illicit trafficking in a controlled substance (may include some drug possession crimes)
- Crime of violence offense for which you received a one-year or longer sentence, even if suspended or you served little or no time
- Theft or Burglary offense for which you received a one-year or longer sentence, even if suspended or you served little or no time
- Certain document fraud offenses for which you received a one-year or longer sentence
- Fraud or Deceit offense in which loss to the victim was more than \$10,000
- Certain prostitution business offenses
- Certain “alien smuggling” offenses

If you were convicted of an aggravated felony, you will have a limited chance of avoiding deportation, especially if convicted after April 24, 1996.

Firearm Offenses

Any firearm or destructive device offense.

Controlled Substance Offenses

Any drug offense, other than a single offense of marijuana possession of 30 grams or less for personal use.

Domestic Crimes & Crimes Against Child

- Crimes of domestic violence, stalking, or child abuse, neglect or abandonment
- Certain violations of orders of protection (civil or criminal court)

Applies to convictions or violations of orders of protection on or after Oct. 1, 1996.

Crimes Involving Moral Turpitude (CIMT)

This category of offenses is hard to define and includes many types of offenses. Examples include, but are not limited to:

- Murder
- Rape and many sexual offenses
- Most offenses requiring an intent to steal or defraud (like theft, larceny, robbery)
- Certain assault offenses

You are deportable for a CIMT if:

- You **committed** the CIMT within the first five years after your admission to the U.S., and this is an offense for which a sentence of one year or longer could have been imposed (even if your actual sentence included no jail time); or
- You committed two crimes involving moral turpitude not arising out of a single scheme at **any time** after admission, regardless of the potential or actual conviction.

Other Offenses

Other offenses, including certain national security offenses and certain immigration-related crimes.