

The background is a solid red color with a pattern of faint, darker red leaves scattered across it. The leaves are of various shapes and sizes, some resembling maple leaves and others more like simple ovals.

Convictions

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Crimes of Moral Turpitude

# Our Dear Friend Jose

Jose, a Spanish citizen, green card holder in the U.S., has been living in Newark, New Jersey for over 20 years. He supports his family in the U.S. with a restaurant business. One time, he used marijuana with some friends. But the police found his group and everyone including Jose was arrested and charged with drug possession. Jose hired a criminal attorney and it seemed that the case was solved. Unfortunately, his attorney was not aware of the consequences of criminal conviction on his immigration status. The attorney treated Jose just like his American clients and told Jose that he was proud because he did a great job. Three years later, Jose decided to visit his family in Spain. When he returned to Newark Airport, Jose was suddenly overcome with anxiety, he's stressed that the criminal ways of his past will prevent him from gaining readmission to the U.S.

# Poor Jose

INA Sec. 212. [8 U.S.C. 1182]

(a) Classes of Aliens Ineligible for Visas or Admission.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United State

(2) Criminal and related grounds.-

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

# But Was Jose Convicted?

- The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—
  - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
  - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty, to be imposed.
- (B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.
- A conviction can result from a trial or plea of guilty or no contest.
- A state or federal conviction can trigger this ground.
- A finding of guilt followed by commitment to a state mental hospital is considered a conviction, as is a finding of guilt followed by commitment to another institution or agency.

# Jose, your so puerile!

- What if Jose was a Juvenile?
- What about an Expungement?
- Will it make a difference if the conviction is Vacated?
- Can he seek Protection under the First Offender Act?

# Does Jose have a CIMT conviction?

- INA § 237 (a) (2) – Crime involving moral turpitude
- Black's Law: A crime that is inherently base, vile, or depraved, and contrary to accepted rules of morality and duties owed between persons or to society in general.
- Silva-Trevino court in 2008 add "specific intent" or some level of scienter to the definition along with much added confusion for immigration law professionals everywhere.
- Hm...this could present a problem, what exactly does that mean for Jose?
- Look to the statute the alien has been charged under – and then make your argument.

# A cheat sheet may help...

What is and what isn't NORMALLY a CIMT?

...it is (generally)	... it isn't (generally)
Theft – even petit larceny	Simple Assault
Assault	Contributing to delinquency of a minor
Child Abuse	Simple DUI (only one)
Disorderly Conduct	Involuntary Manslaughter (sometimes)
Domestic Violence (see federal crime of violence section)	Military Desertion
Driving under influence on suspended license	Perjury (about 50% of the time)
Providing False Statements to US official	
Forgery	
Manslaughter & Homicide	
Fraud	
Receiving Stolen Goods	
Most Sex Offenses	
Prostitution	

# This is what Jose was charged under:

- New Jersey Statute for possession of marijuana
- 2C:35-10 Possession, use or being under the influence, or failure to make lawful disposition.
- 2C:35-10. Possession, Use or Being Under the Influence, or Failure to Make Lawful Disposition.
- a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this section with respect to:
  - ... (4) Possession of 50 grams or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish is a disorderly person.
  - Any person who commits any offense defined in this section while on any property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of any such school property or a school bus, or while on any school bus, and who is not sentenced to a term of imprisonment, shall, in addition to any other sentence which the court may impose, be required to perform not less than 100 hours of community service.
  - b. Any person who uses or who is under the influence of any controlled dangerous substance, or its analog, for a purpose other than the treatment of sickness or injury as lawfully prescribed or administered by a physician is a disorderly person.
  - In a prosecution under this subsection, it shall not be necessary for the State to prove that the accused did use or was under the influence of any specific drug, but it shall be sufficient for a conviction under this subsection for the State to prove that the accused did use or was under the influence of some controlled dangerous substance, counterfeit controlled dangerous substance, or controlled substance analog, by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any controlled dangerous substance or controlled substance analog.
  - c. Any person who knowingly obtains or possesses a controlled dangerous substance or controlled substance analog in violation of subsection a. of this section and who fails to voluntarily deliver the substance to the nearest law enforcement officer is guilty of a disorderly persons offense. Nothing in this subsection shall be construed to preclude a prosecution or conviction for any other offense defined in this title or any other statute.

# Jose's saving grace....

- To deport someone who has committed a CIMT the conviction must have occurred within 5 years after admission to the US AND the conviction was for a crime for which a sentence of one year or longer MAY be imposed.
- OR if the NJSA didn't give him relief then...
- The Petty Offense Exception may apply...
- POE excuses the inadmissibility on account of a conviction of 1 CIMT if there is only 1 conviction AND he was not sentenced to a term of imprisonment in excess of 6 months AND the offense convicted of carries a max sentence of 1 year or less.

You are....

- WELCOME TO COME BACK JOSE – no more marijuana though.....