

Cannabis Legalization and Travel to the United States

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Cannabis Act Comes Into Force

- The Canadian *Cannabis Act* is effective as of October 17, 2018.
- Interaction between the *Cannabis Act* and the U.S. *Immigration and Nationality Act* can cause unintended consequences.
- Many Canadians (and foreign nationals residing in Canada) may be unexpectedly barred from the United States because they are not aware of the issues.

Marijuana Use/Possession After Legalization

- Individuals who have been convicted of, or who admit to having committed the essential elements of, a controlled substance offense are permanently barred [INA §212(a)(2)(A)(i)(II)].
- As of October 17, 2018, marijuana use/possession (at least in accordance with the *Cannabis Act*) will not be prosecuted as a criminal offence. However, it is still possible for an individual to be charged with a controlled substance offence after October 17, 2018.

Marijuana Use/Possession After Legalization

- For example, it is a criminal offence under the *Cannabis Act* for an individual:
 - Who is 18 years of age or older to possess more than 30 grams of dried cannabis (or the equivalent) in a public place; and
 - Who is 18 years of age or older to possess any cannabis that they know is illicit cannabis (i.e. not obtained through authorized sources).
- These controlled substance offenses (and others) could still result in a permanent bar to the United States.

Marijuana Use/Possession After Legalization

- Simply making an admission to a USCBP officer (or to certain other officials) may also result in finding of inadmissibility. However, the act performed must have been considered a crime in the jurisdiction where it was committed, at the time that it was committed.
- Admitting to any lawful marijuana use/possession (in accordance with the Cannabis Act) after October 17, 2018, would not be a criminal offence in Canada.
- Therefore, it should not result in a bar under INA §212(a)(2)(A)(i)(II).

Marijuana Use/Possession After Legalization

- Unfortunately, lawful marijuana use after legalization could still result in a bar under one of these alternate grounds of inadmissibility:
 - An individual is inadmissible if they have been determined to have a physical or mental disorder and a history of harmful behavior [INA §212(a)(1)(A)(iii)].
 - A person is inadmissible if they are determined to be a drug abuser or drug addict. However, lawful use of controlled substances for medical purposes is not considered substance abuse.

Marijuana Use/Possession After Legalization

- For either of these grounds to apply, a USCBP officer will need to refer the individual to an approved Panel Physician.
- If found to be a drug abuser or addict by a Panel Physician, they will be barred from the United States.
- They will cease to be barred if their drug abuse or addiction is later found to be in “remission.” However, this requires another medical assessment from an approved Panel Physician.

Marijuana Convictions Prior to Legalization

- Legalization does not affect prior convictions for marijuana possession.
- Plan recently announced plans to offer expedited Pardons/Record Suspensions to individuals who were previously convicted of simple possession of marijuana in Canada.
- Unfortunately, Pardons/Record Suspensions do not erase the fact that an individual was convicted of an offence. So they have no effect under U.S. immigration law.

Admissions to Marijuana Use/Possession Prior to Legalization

- Merely admitting to marijuana use/possession, which occurred prior to legalization, should result in a bar under INA §212(a)(2)(A)(i)(II).
- This is because it would have been a criminal offence at the time that it occurred.
- The bar would apply even if the actual admission was not made to a USCBP officer until after October 17, 2018.

Admissions to Marijuana Use/Possession Prior to Legalization

- USCBP previously suggested that officers would not ask every traveler whether they previously used marijuana, after it became legal in Canada. Unfortunately, there have already been several incidents involving Canadians being randomly asked about their prior marijuana use.
- INA §212(a)(2)(A)(i)(II) does not apply to individuals who legally used/possessed marijuana for medical purposes, in accordance with Canadian laws. Lawful medical marijuana use would not have been a criminal offence in Canada, even prior to October 17, 2018.

Admissions to Marijuana Use/Possession Prior to Legalization

- INA §212(a)(1)(A)(iv) [drug abuser or defect] would not apply since medical marijuana use is not considered substance abuse.
- INA §212(a)(1)(A)(iii) [mental defect] also would not apply in the absence of associated harmful behavior.
- Unfortunately, admitting to legal use of medicinal marijuana, pursuant to a valid prescription, could prompt a USCBP officer to ask if the individual ever illegally used marijuana before obtaining the prescription. If they admit to doing so, they can be barred for the illegal use.

Employees and Investors of Legal Cannabis Companies

- Initially, USCBP took the position that merely being an employee (or an investor) of a legal cannabis business in Canada could result in inadmissibility under INA §212(a)(2)(C) [controlled substance trafficking].
- Reported cases of employees (and at least one investor) of Canadian cannabis businesses receiving lifetime bans.
- In September 2018, a senior USCBP official told Politico that merely working in the industry would result in a bar.
- On October 9, 2018, USCBP revised its policy.

Employees and Investors of Legal Cannabis Companies

- The revised policy now confirms that employees of Canadian cannabis companies should be admissible if their reasons for coming to the United States are “unrelated to the marijuana industry.” Clearly, tourism should be okay.
- Does not refer to investors but should include passive investors who do not enter the U.S. on behalf of the company (i.e. officer, board member, etc.).
- Unfortunately, meaning of “unrelated to the marijuana industry” is still uncertain.

Employees and Investors of Legal Cannabis Companies

- Could someone be barred for attending a marijuana conference in the U.S. or visiting a U.S. investor of their Canadian cannabis company? This is still unknown.
- On October 25, 2018, the Canadian Press reported that another senior USCBP official stated in an email that attending a marijuana conference in the United States could make someone inadmissible.
- There is now greater uncertainty for employees of Canadian cannabis companies, who may wish to enter the U.S. as business visitors on behalf of those companies.