

PART F – GOOD MORAL CHARACTER

Chapter 1: Purpose and Background

A. Purpose

One of the general requirements for naturalization is good moral character (GMC). GMC means character which measures up to the standards of average citizens of the community in which the applicant resides.¹ In general, an applicant must show that he or she has been and continues to be a person of GMC during the statutory period prior to filing and up to the time of the Oath of Allegiance.²

The applicable naturalization provision under which the applicant files determines the period during which the applicant must demonstrate GMC.³ The applicant's conduct outside the GMC period may also impact whether he or she meets the GMC requirement.⁴

While USCIS determines whether an applicant has met the GMC requirement on a case-by-case basis, certain types of criminal conduct automatically preclude applicants from establishing GMC and may make the applicant subject to removal proceedings.⁵ An applicant may also be found to lack GMC for other types of criminal conduct (or unlawful acts).

An officer's assessment of whether an applicant meets the GMC requirement includes an officer's review of:

- The applicant's record;
- Statements provided in the naturalization application; and
- Oral testimony provided during the interview.

There may be cases that are affected by specific jurisdictional case law. The officer should rely on local USCIS counsel in cases where there is a question about whether a particular offense rises to the level of precluding an applicant from establishing GMC. In addition, the offenses and conduct which affect the GMC determination may also render an applicant removable.

B. Background

The Naturalization Act of 1790 introduced the long-standing GMC requirement for naturalization. Any conduct or act that offends the accepted moral character standards of the community in which the applicant resides should be considered without regard to whether the applicant has been arrested or convicted of an offense.

In general, an applicant for naturalization must establish GMC throughout the requisite periods of continuous residence in the United States. In prescribing specific periods during which GMC must be established, Congress

¹ See [8 CFR 316.10\(a\)\(2\)](#). See [INA 101\(f\)](#). See *In re Mogus*, 73 F. Supp. 150 (1947) (Moral standard of average citizen).

² See [INA 316\(a\)](#). See [8 CFR 316.10\(a\)\(1\)](#).

³ See [Chapter 2, Adjudicative Factors, Section A, Applicable Statutory Period](#).

⁴ See [INA 316\(e\)](#). See [8 CFR 316.10\(a\)\(2\)](#).

⁵ See [INA 101\(f\)](#).

generally intended to make provision for the reformation and eventual naturalization of persons who were guilty of certain past misconduct.

C. Legal Authorities

- [INA 101\(f\)](#) – Good moral character definition
- [INA 316](#); [8 CFR 316](#) – General naturalization requirements
- [INA 316\(e\)](#); [8 CFR 316.10](#) – Good moral character requirement
- [INA 318](#) – Prerequisite to Naturalization, burden of proof

Chapter 2: Adjudicative Factors

A. Applicable Statutory Period

The applicable period during which an applicant must show that he or she has been a person of GMC depends on the corresponding naturalization provision.⁶ In general, the statutory period for GMC for an applicant filing under the general naturalization provision starts five years prior to the date of filing.⁷

The statutory period starts three years prior to the date of filing for certain spouses of U.S. citizens.⁸ The period during which certain service members or veterans must show GMC starts one or five years from the date of filing depending on the military provision.⁹

In all cases, the applicant must also show that he or she continues to be a person of GMC until the time of his or her naturalization.¹⁰

B. Conduct Outside of the Statutory Period

USCIS is not limited to reviewing the applicant's conduct only during the applicable GMC period. An applicant's conduct prior to the GMC period may affect the applicant's ability to establish GMC if the applicant's present conduct does not reflect a reformation of character or the earlier conduct is relevant to the applicant's present moral character.¹¹

⁶ See the relevant [Volume 12](#) part for the specific statutory period pertaining to each naturalization provision.

⁷ See [Part D, General Naturalization Requirements, Chapter 1, Purpose and Background, Section B, General Eligibility Requirements](#). See [INA 316\(a\)](#). See [8 CFR 316.2\(a\)\(7\)](#).

⁸ See [Part G, Spouses of U.S. Citizens, Chapter 1, Purpose and Background, Section C, Table of General Provisions](#). See [INA 319\(a\)](#) and [8 CFR 319.1\(a\)\(7\)](#).

⁹ See [Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members](#). See [INA 328\(c\)](#) and [INA 329](#). See [8 CFR 328.2\(d\)](#) and [8 CFR 329.2\(d\)](#).

¹⁰ See [8 CFR 316.10\(a\)\(1\)](#).

¹¹ See [INA 316\(e\)](#). See [8 CFR 316.10\(a\)\(2\)](#).

In general, an officer must consider the totality of the circumstances and weigh all factors, favorable and unfavorable, when considering reformation of character in conjunction with GMC within the relevant period.¹² The following factors may be relevant in assessing an applicant's current moral character and reformation of character:

- Family ties and background
- Absence or presence of other criminal history
- Education
- Employment history
- Other law-abiding behavior (meeting financial obligations, paying taxes, etc.)
- Community involvement
- Credibility of the applicant
- Compliance with probation
- Length of time in United States

C. Definition of Conviction

1. Statutory Definition of Conviction for Immigration Purposes

Most of the criminal offenses that preclude a finding of GMC require a conviction for the disqualifying offense or arrest. A "conviction" for immigration purposes means a formal judgment of guilt entered by the court. A conviction for immigration purposes also exists in cases where the adjudication of guilt is withheld if the following conditions are met:

- A judge or jury has found the alien guilty or the alien entered a plea of guilty or *nolo contendere*¹³ or has admitted sufficient facts to warrant a finding of guilt; and
- The judge has ordered some form of punishment, penalty, or imposed a restraint on the alien's liberty.¹⁴

It is not always clear if the outcome of the arrest resulted in a conviction. Various states have provisions for diminishing the effects of a conviction. In some states, adjudication may be deferred upon a finding or confession of guilt. Some states have a pretrial diversion program whereby the case is removed from the normal criminal proceedings. This way the person may enter into a counseling or treatment program and potentially avoid criminal prosecution.

If the accused is directed to attend a pre-trial diversion or intervention program, where no admission or finding of guilt is required, the order may not count as a conviction for immigration purposes.¹⁵

¹² See *Ralich v. U.S.*, 185 F.2d 784 (1950) (Provided false testimony within the statutory period and operated a house of prostitution prior to the statutory period). See *Marcantonio v. U.S.*, 185 F.2d 934 (1950) (Applicant had rehabilitated his character after multiple arrests before statutory period).

¹³ The term "nolo contendere" is Latin for "I do not wish to contest."

¹⁴ See [INA 101\(a\)\(48\)\(A\)](#).

¹⁵ See *Matter of Grullon*, 20 I&N Dec. 12 (BIA 1989).

2. Juvenile Convictions

In general, a guilty verdict, ruling, or judgment in a juvenile court does not constitute a conviction for immigration purposes.¹⁶ A conviction for a person who is under 18 years of age and who was charged as an adult constitutes a conviction for immigration purposes.

3. Court Martial Convictions

A general “court martial” is defined as a criminal proceeding under the governing laws of the U.S. armed forces. A judgment of guilt by a court martial has the same force and effect as a conviction by a criminal court.¹⁷ However, disciplinary actions in lieu of a court martial are not convictions for immigration purposes.

4. Deferrals of Adjudication

In cases where adjudication is deferred, the original finding or confession of guilt and imposition of punishment is sufficient to establish a conviction for immigration purposes because both conditions establishing a conviction are met. If the court does not impose some form of punishment, then it is not considered a conviction even with a finding or confession of guilt. A decision or ruling of *nolle prosequi*¹⁸ does not meet the definition of conviction.

5. Vacated Judgments

If a judgment is vacated for cause due to Constitutional defects, statutory defects, or pre-conviction errors affecting guilt, it is not considered a conviction for immigration purposes. The judgment is considered a conviction for immigration purposes if it was dismissed for any other reason, such as completion of a rehabilitative period (rather than on its merits) or to avoid adverse immigration consequences.¹⁹

A conviction vacated where a criminal court failed to advise a defendant of the immigration consequences of a plea, which resulted from a defect in the underlying criminal proceeding, is not a conviction for immigration purposes.²⁰

6. Foreign Convictions

USCIS considers a foreign conviction to be a “conviction” in the immigration context if the conviction was the result of an offense deemed to be criminal by United States standards.²¹ In addition, federal United States standards on sentencing govern the determination of whether the offense is a felony or a misdemeanor

¹⁶ See *Matter of Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000).

¹⁷ See *Matter of Rivera-Valencia*, 24 I&N Dec. 484 (BIA 2008).

¹⁸ The term “*nolle prosequi*” is Latin for “we shall no longer prosecute.”

¹⁹ See *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006).

²⁰ See *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). See *Alim v. Gonzales*, 446 F.3d 1239 (11th Cir 2006).

²¹ See *Matter of Squires*, 17 I&N Dec. 561 (BIA 1980). See *Matter of McNaughton*, 16 I&N Dec. 569 (BIA 1978).

regardless of the punishment imposed by the foreign jurisdiction.²² The officer may consult with local USCIS counsel in cases involving foreign convictions.

7. Pardons

An applicant who has received a full and unconditional executive pardon²³ prior to the start of the statutory period may establish GMC if the applicant shows that he or she has been reformed and rehabilitated prior to the statutory period.²⁴ If the applicant received a pardon during the statutory period, the applicant may establish GMC if he or she shows evidence of extenuating or exonerating circumstances that would establish his or her GMC.²⁵

Foreign pardons do not eliminate a conviction for immigration purposes.²⁶

8. Expunged Records

Expunged Records and the Underlying Conviction

A record of conviction that has been expunged does not remove the underlying conviction.²⁷ For example, an expunged record of conviction for a controlled substance violation²⁸ or any crime involving Moral turpitude (CIMT) does not relieve the applicant from the conviction in the immigration context.²⁹ In addition, foreign expungements are still considered convictions for immigration purposes.³⁰

The Board of Immigration Appeals (BIA) has held that a state court action to “expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute” has no effect on removing the underlying conviction for immigration purposes.³¹

The officer may require the applicant to submit evidence of a conviction regardless of whether the record of the conviction has been expunged. It remains the applicant’s responsibility to obtain his or her records regardless of whether they have been expunged or sealed by the court. USCIS may file a motion with the court to obtain a copy of the record in states where the applicant is unable to obtain the record.

²² See *Lennon v. INS*, 527 F.2d 187 (2nd Cir. 1975).

²³ Executive pardons are given by the President or a governor of the United States.

²⁴ See [8 CFR 316.10\(c\)\(2\)\(i\)](#).

²⁵ See [8 CFR 316.10\(c\)\(2\)\(ii\)](#).

²⁶ See *Marino v. INS*, 537 F.2d 686 (2nd Cir. 1976). See *Mullen-Cofee v. INS*, 976 F.2d 1375 (11th Cir. 1992). See *Matter of B-*, 7 I&N Dec. 166 (BIA 1956) (Referring to amnesty).

²⁷ See *Matter of Marroquin*, 23 I&N Dec. 705 (AG 2005).

²⁸ For cases arising in the Ninth Circuit involving state law convictions for simple possession of a controlled substance, please consult local counsel as the date of the conviction may affect whether possible treatment under the Federal First Offender Act renders the conviction invalid for immigration purposes. See *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir 2011).

²⁹ See [8 CFR 316.10\(c\)\(3\)\(i\) and \(ii\)](#).

³⁰ See *Danso v. Gonzales*, 489 F.3d 709 (5th Cir. 2007). See *Elkins v. Comfort*, 392 F.3d 1159 (10th Cir. 2004).

³¹ See *In re Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999).

D. Effect of Probation

An officer may not approve a naturalization application while the applicant is on probation, parole, or under a suspended sentence.³² However, an applicant who has satisfactorily completed probation, parole, or a suspended sentence during the relevant statutory period is not automatically precluded from establishing GMC. The fact that an applicant was on probation, parole, or under a suspended sentence during the statutory period, however, may affect the overall GMC determination.

E. Admission of Certain Criminal Acts

An applicant may be unable to establish GMC if he or she admits committing certain offenses even if the applicant has never been formally charged, indicted, arrested or convicted.³³ This applies to offenses involving “moral turpitude” or any violation of, or a conspiracy or attempt to violate, any law or regulation relating to a controlled substance.³⁴ When determining whether an applicant committed a particular offense, the officer must review the relevant statute in the jurisdiction where it is alleged to have been committed.

The officer must provide the applicant with a full explanation of the purpose of the questioning stemming from the applicant’s declaration that he or she committed an offense. In order for the applicant’s declaration to be considered an “admission,” it must meet the long held requirements for a valid “admission” of an offense:³⁵

- The officer must provide the applicant the text of the specific law from the jurisdiction where the offense was committed;
- The officer must provide an explanation of the offense and its essential elements in “ordinary” language; and
- The applicant must voluntarily admit to having committed the particular elements of the offense under oath.³⁶

The officer must ensure that the applicant is under oath when taking the sworn statement to record the admission. The sworn statement must cover the requirements for a valid admission, to include the specifics of the act or acts that may prevent the applicant from establishing GMC. The officer may consult with his or her supervisor to ensure that sufficient written testimony has been received from the applicant prior to making a decision on the application.

F. “Purely Political Offense” Exception

³² See [8 CFR 316.10\(c\)\(1\)](#).

³³ See [8 CFR 316.10\(b\)\(2\)\(iv\)](#).

³⁴ See [Chapter 5, Conditional Bars for Acts in Statutory Period](#). See [8 CFR 316.10\(b\)\(2\)\(i\)](#) (Offenses involving “moral turpitude”). See [8 CFR 316.10\(b\)\(2\)\(iii\)](#) (Violation of controlled substance law).

³⁵ See *Matter of K-*, 7 I&N Dec. 594 (BIA 1957).

³⁶ See *Matter of J-*, 2 I&N Dec. 285 (BIA 1945).

There is an exception to certain conditional bars to GMC in cases where the offense was a “purely political offense” that resulted in conviction, or in conviction and imprisonment, outside of the United States.³⁷ Purely political offenses are generally offenses that “resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious or political minorities.”³⁸

The “purely political offense” exception applies to the following conditional bars to GMC:³⁹

- Conviction for one or more crimes involving moral turpitude (CIMTs);⁴⁰
- Conviction of two or more offenses with a combined sentence of five years or more;⁴¹ and
- Incarceration for a total period of 180 days or more.⁴²

These conditional bars to GMC do not apply if the underlying conviction was for a “purely political offense” abroad. The officer should rely on local USCIS counsel in cases where there is a question about whether a particular offense should be considered a “purely political offense.”

G. Extenuating Circumstances

Certain conditional bars to GMC should not adversely affect the GMC determination if the applicant shows extenuating circumstances.⁴³ The extenuating circumstance must precede or be contemporaneous with the commission of the offense. USCIS does not consider any conduct or equity (including evidence of reformation or rehabilitation) subsequent to the commission of the offense as an extenuating circumstance.

The “extenuating circumstances” provision applies to the following conditional bars to GMC:⁴⁴

- Failure to support dependents⁴⁵
- Adultery⁴⁶
- Unlawful acts⁴⁷

These conditional bars to GMC do not apply if the applicant shows extenuating circumstances. The officer should provide the applicant with an opportunity during the interview to provide evidence and testimony of extenuating circumstances in relevant cases.

³⁷ See *In re O’Calleagh*, 23 I. & N. Dec. 976 (BIA 2006) (finding that a CIMT offense must be completely or totally political for “purely political offense” exception to apply).

³⁸ See [22 CFR 40.21\(a\)\(6\)](#).

³⁹ See [Chapter 5, Conditional Bars for Acts in Statutory Period](#), for further guidance on each bar to GMC.

⁴⁰ See [Chapter 5, Conditional Bars for Acts in Statutory Period, Section A, One or More Crimes Involving Moral Turpitude](#).

⁴¹ See [Chapter 5, Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More](#).

⁴² See [Chapter 5, Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More](#).

⁴³ See [8 CFR 316.10\(b\)\(3\)](#).

⁴⁴ See [Chapter 5, Conditional Bars for Acts in Statutory Period](#), for further guidance on extenuating circumstances.

⁴⁵ See [Chapter 5, Conditional Bars for Acts in Statutory Period, Section K, Failure to Support Dependents](#).

⁴⁶ See [Chapter 5, Conditional Bars for Acts in Statutory Period, Section L, Adultery](#).

⁴⁷ See [Chapter 5, Conditional Bars for Acts in Statutory Period, Section M, Unlawful Acts](#).

H. Removability and GMC

Certain permanent and conditional bars to GMC may warrant a recommendation that the applicant be placed in removal proceedings.⁴⁸ This depends on various factors specific to each case. Not all applicants who are found to lack GMC are removable. An applicant may be found to lack GMC and have his or her naturalization application denied under those grounds without necessitating a recommendation for removal proceedings. USCIS will not make a decision on any naturalization application from an applicant who is in removal proceedings.⁴⁹

Chapter 3: Evidence and the Record

A. Applicant Testimony

Issues relevant to the GMC requirement may arise at any time during the naturalization interview. The officer's questions during the interview should elicit a complete record of any criminal, unlawful, or questionable activity in which the applicant has ever engaged regardless of whether that information eventually proves to be material to the GMC determination.

The officer should take into consideration the education level of the applicant and his or her knowledge of the English language. The officer may rephrase questions and supplement the inquiry with additional questions to better ensure that the applicant understands the proceedings.⁵⁰

The officer must take a sworn statement from an applicant when the applicant admits committing an offense for which the applicant has never been formally charged, indicted, arrested or convicted.⁵¹

B. Court Dispositions

In general, an officer has the authority to request the applicant to provide a court disposition for any criminal offense committed in the United States or abroad to properly determine whether the applicant meets the GMC requirement. USCIS requires applicants to provide court dispositions for any offense committed during the statutory period. In addition, USCIS may request any additional evidence that may affect a determination regarding the applicant's GMC. The burden is on the applicant to show that an offense does not prevent him or her from establishing GMC.⁵²

In cases where a court disposition or police record is not available, the applicant must provide original or certified confirmation that the record is not available from the applicable law enforcement agency or court.

⁴⁸ See [INA 237](#) ("General classes of deportable aliens").

⁴⁹ See [INA 318](#). See [Part B, Naturalization Examination, Chapter 3, Naturalization Interview, Section B, Preliminary Review of Application](#).

⁵⁰ See [Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing](#), for guidance on rephrasing questions.

⁵¹ See [8 CFR 316.10\(b\)\(2\)\(iv\)](#). See [Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts](#).

⁵² See [8 CFR 316.10\(a\)\(1\)](#).

C. Failure to Respond to Request for Evidence

In cases where the initial naturalization examination has already been conducted, the officer should adjudicate the naturalization application on the merits where the applicant fails to respond to a request for additional evidence.⁵³ The officer should not deny the application for lack of prosecution after the initial naturalization examination.⁵⁴

Chapter 4: Permanent Bars to GMC

A. Murder

An applicant who has been convicted of murder at any time is permanently barred from establishing GMC for naturalization.⁵⁵

B. Aggravated Felony

In 1996, Congress expanded the definition and type of offense considered an “aggravated felony” in the immigration context.⁵⁶ An applicant who has been convicted of an “aggravated felony” on or after November 29, 1990, is permanently barred from establishing GMC for naturalization.⁵⁷

While an applicant who has been convicted of an aggravated felony prior to November 29, 1990, is not permanently barred from naturalization, the officer should consider the seriousness of the underlying offense (aggravated felony) along with the applicant's present moral character in determining whether the applicant meets the GMC requirement. If the applicant's actions during the statutory period do not reflect a reform of his or her character, then the applicant may not be able to establish GMC.⁵⁸

Some offenses require a minimum term of imprisonment of one year to qualify as an aggravated felony in the immigration context. The term of imprisonment is the period of confinement ordered by the court regardless of whether the court suspended the sentence.⁵⁹ For example, an offense involving theft or a crime of violence is considered an aggravated felony if the term of imprisonment ordered by the court is one year or more, even if the court suspended the entire sentence.⁶⁰

The table below serves as a quick reference guide listing aggravated felonies in the immigration context. The officer should review the specific statutory language for further information.

⁵³ See [Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination](#), for guidance on decisions on the application, to include cases where the applicant fails to respond.

⁵⁴ See [INA 335\(e\)](#). See [8 CFR 335.7](#).

⁵⁵ See [8 CFR 316.10\(b\)\(1\)\(i\)](#).

⁵⁶ See [INA 101\(a\)\(43\)](#). See the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009-546 (September 30, 1996).

⁵⁷ See [8 CFR 316.10\(b\)\(1\)\(iii\)](#).

⁵⁸ See [8 CFR 316.10\(a\)\(2\)](#).

⁵⁹ See [INA 101\(a\)\(48\)\(B\)](#). See *Matter of S-S-*, 21 I&N Dec. 900 (BIA 1997).

⁶⁰ See [INA 101\(a\)\(43\)\(F\) and \(G\)](#).

“Aggravated Felonies” in the Immigration Context	
Aggravated Felony	Citation
Murder, Rape, or Sexual Abuse of a Minor	INA 101(a)(43)(A)
Illicit Trafficking in Controlled Substance	INA 101(a)(43)(B)
Illicit Trafficking in Firearms or Destructive Devices	INA 101(a)(43)(C)
Money Laundering Offenses (over \$10,000)	INA 101(a)(43)(D)
Explosive Materials and Firearms Offenses	INA 101(a)(43)(E)(i)–(iii)
Crime of Violence (imprisonment term of at least 1 yr)	INA 101(a)(43)(F)
Theft Offense (imprisonment term of at least 1 yr)	INA 101(a)(43)(G)
Demand for or Receipt of Ransom	INA 101(a)(43)(H)
Child Pornography Offense	INA 101(a)(43)(I)
Racketeering, Gambling (imprisonment term of at least 1 yr)	INA 101(a)(43)(J)
Prostitution Offenses (managing, transporting, trafficking)	INA 101(a)(43)(K)(i)–(iii)
Gathering or Transmitting Classified Information	INA 101(a)(43)(L)(i)–(iii)
Fraud or Deceit Offenses or Tax Evasion (over \$10,000)	INA 101(a)(43)(M)(i), (ii)
Alien Smuggling	INA 101(a)(43)(N)
Illegal Entry or Reentry by Removed Aggravated Felon	INA 101(a)(43)(O)

“Aggravated Felonies” in the Immigration Context	
Aggravated Felony	Citation
Passport, Document Fraud (imprisonment term of at least 1 yr)	INA 101(a)(43)(P)
Failure to Appear Sentence (offense punishable by at least 5 yrs)	INA 101(a)(43)(Q)
Bribery, Counterfeiting, Forgery, or Trafficking in Vehicles	INA 101(a)(43)(R)
Obstruction of Justice, Perjury, Bribery of Witness	INA 101(a)(43)(S)
Failure to Appear to Court (offense punishable by at least 2 yrs)	INA 101(a)(43)(T)
Attempt or Conspiracy to Commit an Aggravated Felony	INA 101(a)(43)(U)

C. Persecution, Genocide, Torture, or Severe Violations of Religious Freedom

The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in any of the activities addressed in this section.

1. Nazi Persecutions

An applicant who ordered, incited, assisted, or otherwise participated in the persecution of any person or persons in association with the Nazi Government of Germany or any government in an area occupied by or allied with the Nazi government of Germany is permanently barred from establishing GMC for naturalization.⁶¹

2. Genocide

An applicant who has ordered, incited, assisted, or otherwise participated in genocide, at any time is permanently barred from establishing GMC for naturalization.⁶² The criminal offense of “genocide” includes any of the following acts committed in time of peace or time of war with the specific intent to destroy in whole or in substantial part a national, ethnic, racial, or religious group as such:

- Killing members of that group;
- Causing serious bodily injury to members of that group;

⁶¹ See [INA 101\(f\)\(9\)](#) and [INA 212\(a\)\(3\)\(E\)](#).

⁶² See [INA 101\(f\)\(9\)](#) and [INA 212\(a\)\(3\)\(E\)](#). See [18 U.S.C. 2340](#) and [18 U.S.C. 1091\(a\)](#).

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- Causing the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
- Subjecting the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
- Imposing measures intended to prevent births within the group; or
- Transferring by force children of the group to another group.⁶³

3. Torture or Extrajudicial Killings

An applicant who has committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture or under color of law of any foreign nation any extrajudicial killing is permanently barred from establishing GMC for naturalization.⁶⁴

“Torture” is defined as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his or her custody or physical control.⁶⁵

An “extrajudicial killing” is defined as a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized peoples.⁶⁶

4. Particularly Severe Violations of Religious Freedom

An applicant who was responsible for, or directly carried out, particularly severe violations of religious freedom while serving as a foreign government official at any time is not able to establish GMC.⁶⁷ “Particularly severe violations of religious freedom” are defined as systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to life, liberty, or the security of persons.⁶⁸

Chapter 5: Conditional Bars for Acts in Statutory Period

In addition to the permanent bars to GMC, the [INA](#) and corresponding regulations include bars to GMC that are not permanent in nature. USCIS refers to these bars as “conditional bars.” These bars are triggered by specific

⁶³ See [18 U.S.C. 1091](#). See Article II of the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (78 U.N.T.S. 278 [Dec. 9, 1948]).

⁶⁴ See [INA 101\(f\)\(9\)](#) and [INA 212\(a\)\(3\)\(E\)](#).

⁶⁵ See [18 U.S.C. 2340](#).

⁶⁶ See [28 U.S.C. 1350 \(Note\)](#). See Section 3(a) of the Torture Victim Protection Act of 1991.

⁶⁷ See [INA 101\(f\)\(9\)](#) and [INA 212\(a\)\(2\)\(G\)](#).

⁶⁸ See [22 U.S.C. 6402](#).

acts, offenses, activities, circumstances, or convictions within the statutory period for naturalization, including the period prior to filing and up to the time of the Oath of Allegiance.⁶⁹ An offense that does not fall within a permanent or conditional bar to GMC may nonetheless affect an applicant’s ability to establish GMC.⁷⁰

With regard to bars to GMC requiring a conviction, the officer reviews the relevant federal or state law or regulation of the United States, or law or regulation of any foreign country to determine whether the applicant can establish GMC.

The table below serves as a quick reference guide on the general conditional bars to establishing GMC for acts occurring during the statutory period. The sections and paragraphs that follow the table provide further guidance on each bar and offense.

Conditional Bars to GMC for Acts Committed in Statutory Period		
Offense	Citation	Description
One or More CIMTs	8 CFR 316.10(b)(2)(i), (iv) INA 101(f)(3)	Conviction or admission of one or more CIMTs (other than political offense), except for one petty offense
Aggregate Sentence of Five Yrs or More	8 CFR 316.10(b)(2)(ii), (iv) INA 101(f)(3)	Conviction of two or more offenses with combined sentence of five years or more (other than political offense)
Controlled Substance Violation	8 CFR 316.10(b)(2)(iii), (iv) INA 101(f)(3)	Violation of any law on controlled substances, except for simple possession of 30g or less of marijuana
Incarceration for 180 Days	8 CFR 316.10(b)(2)(v) INA 101(f)(7)	Incarceration for a total period of 180 days or more, except political offense and ensuing confinement abroad
False Testimony under Oath	8 CFR 316.10(b)(2)(vi) INA 101(f)(6)	False testimony for the purpose of obtaining any immigration benefit
Prostitution Offenses	8 CFR 316.10(b)(2)(vii) INA 101(f)(3)	Engaged in prostitution, attempted or procured to import prostitution, or received proceeds from prostitution
Smuggling of a Person	8 CFR 316.10(b)(2)(viii) INA 101(f)(3)	Involved in smuggling of a person to enter or try to enter the United States in violation of law
Polygamy	8 CFR 316.10(b)(2)(ix) INA 101(f)(3)	Practiced or is practicing polygamy (the custom of having more than one spouse at the same time)

⁶⁹ See [INA 316\(a\)](#). See [8 CFR 316.10](#).

⁷⁰ See [INA 101\(f\)](#). See [Chapter 1, Purpose and Background](#).

Conditional Bars to GMC for Acts Committed in Statutory Period		
Offense	Citation	Description
Gambling Offenses	8 CFR 316.10(b)(2)(x)-(xi) INA 101(f)(4)-(5)	Two or more gambling offenses or derives income principally from illegal gambling activities
Habitual Drunkard	8 CFR 316.10(b)(2)(xii) INA 101(f)(1)	Is or was a habitual drunkard
Failure to Support Dependents	8 CFR 316.10(b)(3)(i) INA 101(f)	Willful failure or refusal to support dependents, unless extenuating circumstances are established
Adultery	8 CFR 316.10(b)(3)(ii) INA 101(f)	Extramarital affair tending to destroy existing marriage, unless extenuating circumstances are established
Unlawful Acts	8 CFR 316.10(b)(3)(iii) INA 101(f)	Unlawful act that adversely reflect upon GMC, unless extenuating circumstances are established

A. One or More Crimes Involving Moral Turpitude

1. Crime Involving Moral Turpitude (CIMT)

“Crime involving moral turpitude” (CIMT) is a term used in the immigration context that has no statutory definition. Extensive case law, however, has provided sufficient guidance on whether an offense rises to the level of a CIMT. The courts have held that moral turpitude “refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general.”⁷¹

Whether an offense is a CIMT is largely based on whether the offense involves willful conduct that is morally reprehensible and intrinsically wrong, the essence of which is a reckless, evil or malicious intent. The Attorney General has decreed that a finding of “moral turpitude” requires that the perpetrator committed a reprehensible act with some form of guilty knowledge.⁷²

The officer should consider the nature of the offense in determining whether it is a CIMT.⁷³ In many cases, the CIMT determination depends on whether the relevant state statute includes one of the elements that involves moral turpitude. For example, an offense or crime may be a CIMT in one state, but a similarly named crime in

⁷¹ See *Medina v. United States*, 259 F.3d 220, 227 (4th Cir. 2001) quoting *Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988). See *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618 (BIA 1992). See *Matter of Flores*, 17 I&N Dec. 225 (BIA 1980) (and cases cited therein).

⁷² See *Matter of Silva-Trevino*, 24 I&N Dec. 687, 688, 706 (A.G. 2008).

⁷³ See *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979).

another state may not be a CIMT because of differences in the definition of the crime or offense. The officer may rely on local USCIS counsel in cases where there is a question about whether a particular offense is a CIMT.

The table below serves as a quick reference guide on the general categories of CIMTs and their respective elements or determining factors. The paragraphs that follow the table provide further guidance on each category.

General Categories of Crimes Involving Moral Turpitude (CIMTs)	
CIMT Category	Elements of Crime
Crimes against a person	Criminal intent or recklessness, or is defined as morally reprehensible by state (may include statutory rape)
Crimes against property	Involving fraud against the government or an individual (may include theft, forgery, robbery)
Sexual and family crimes	No one set of principles or elements; see further explanation below (may include spousal or child abuse)
Crimes against authority of the Government	Presence of fraud is the main determining factor (may include offering a bribe, counterfeiting)

Crimes Against a Person

Crimes against a person involve moral turpitude when the offense contains criminal intent or recklessness or when the crime is defined as morally reprehensible by state statute. Criminal intent or recklessness may be inferred from the presence of unjustified violence or the use of a dangerous weapon. For example, aggravated battery is usually, if not always, a CIMT. Simple assault and battery is not usually considered a CIMT.

Crimes Against Property

Moral turpitude attaches to any crime against property which involves fraud, whether it entails fraud against the government or against an individual. Certain crimes against property may require guilty knowledge or intent to permanently take property. Petty theft, grand theft, forgery, and robbery are CIMTs in some states.

Sexual and Family Crimes

It is difficult to discern a distinguishing set of principles that the courts apply to determine whether a particular offense involving sexual and family crimes is a CIMT. In some cases, the presence or absence of violence seems to be an important factor. The presence or absence of criminal intent may also be a determining factor. The

CIMT determination depends upon state statutes and the controlling case law and must be considered on a case-by-case basis.

Offenses such as spousal or child abuse may rise to the level of a CIMT, while an offense involving a domestic simple assault generally does not. An offense relating to indecent exposure or abandonment of a minor child may or may not rise to the level of a CIMT. In general, if the person knew or should have known that the victim was a minor, any intentional sexual contact with a child involves moral turpitude.⁷⁴

Crimes Against the Authority of the Government

The presence of fraud primarily determines the presence of moral turpitude in crimes against the authority of the government. Offering a bribe to a government official and offenses relating to counterfeiting are generally CIMTs. Offenses relating to possession of counterfeit securities without intent and contempt of court, however, are not generally CIMTs.

2. Committing One or More CIMTs in Statutory Period

An applicant who is convicted of or admits to committing one or more CIMTs during the statutory period cannot establish GMC for naturalization.⁷⁵ If the applicant has only been convicted of (or admits to) one CIMT, the CIMT must have been committed within the statutory period as well. In cases of multiple CIMTs, only the commission and conviction (or admission) of one CIMT needs to be within the statutory period.

Petty Offense Exception

An applicant who has committed only one CIMT that is considered a “petty offense,” such as petty theft, may be eligible for an exception if all of the following conditions are met:

- The “petty offense” is the only CIMT the applicant has ever committed;
- The sentence imposed for the offense was six months or less; and
- The maximum possible sentence for the offense does not exceed one year.⁷⁶

The petty offense exception does not apply to an applicant who has been convicted of or who admits to committing more than one CIMT even if only one of the CIMTs was committed during the statutory period. An applicant who has committed more than one petty offense of which only one is a CIMT may be eligible for the petty offense exception.⁷⁷

Purely Political Offense Exception

⁷⁴ See *Matter of Silva-Trevino*, 24 I&N Dec. 687 (AG 2008).

⁷⁵ See [INA 101\(f\)\(3\)](#). See [8 CFR 316.10\(b\)\(2\)\(i\)](#).

⁷⁶ See [INA 212\(a\)\(2\)\(A\)\(ii\)\(II\)](#).

⁷⁷ See *Matter of Garcia-Hernandez*, 23 I&N Dec. 590, 594-95 (BIA 2003).

This bar to GMC does not apply to a conviction for a CIMT occurring outside of the United States for a purely political offense committed abroad.⁷⁸

B. Aggregate Sentence of Five Years or More

An applicant may not establish GMC if he or she has been convicted of two or more offenses during the statutory period for which the combined, imposed sentence was five years or more.⁷⁹ The underlying offenses must have been committed within the statutory period.

Purely Political Offense Exception

The GMC bar for having two or more convictions does not apply if the convictions and resulting sentence or imprisonment of five years or more occurred outside of the United States for purely political offenses committed abroad.⁸⁰

C. Controlled Substance Violation

An applicant cannot establish GMC if he or she has been convicted of or admits to having violated any controlled substance-related federal or state law or regulation of the United States or law or regulation of any foreign country during the statutory period.⁸¹ This bar to establishing GMC also applies to an admission to committing acts which constitute the essential elements of any controlled substance violation.

Exception for Single Offense of Simple Possession

The conditional bar to GMC for a controlled substance violation does not apply if the violation was for a single offense of simple possession of 30 grams or less of marijuana.⁸²

D. Imprisonment for 180 Days or More

An applicant cannot establish GMC if he or she is or was imprisoned for an aggregate period of 180 days or more during the statutory period based on a conviction.⁸³ This bar to GMC does not apply if the conviction resulted only in a sentence to a period of probation with no sentence of incarceration for 180 days or more. This bar applies regardless of the reason for the conviction. For example, this bar still applies if the term of imprisonment results from a violation of probation rather than from the original sentence.⁸⁴

⁷⁸ See [Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception](#).

⁷⁹ See [8 CFR 316.10\(b\)\(2\)\(ii\)](#).

⁸⁰ See [Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception](#).

⁸¹ See [INA 101\(f\)\(3\)](#) and [INA 212\(a\)\(2\)\(A\)\(i\)\(II\)](#). See [8 CFR 316.10\(b\)\(2\)\(iii\) and \(iv\)](#). See [Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts](#).

⁸² See [INA 101\(f\)\(3\)](#). See [8 CFR 316.10\(b\)\(2\)\(iii\)](#). While an offense for simple possession of 30 grams or less of marijuana is excluded from [INA 101\(f\)\(3\)](#), it may nonetheless affect GMC under the residual clause of the GMC definition. See [INA 101\(f\)](#). See [8 CFR 316.10\(a\)\(2\)](#).

⁸³ See [INA 101\(f\)\(7\)](#). See [8 CFR 316.10\(b\)\(2\)\(v\)](#).

⁸⁴ See *Matter of Piroglu*, 17 I&N Dec. 578 (BIA 1980).

The commission of the offense resulting in conviction and confinement does not need to have occurred during the statutory period for this bar to apply. Only the confinement needs to be within the statutory period for the applicant to be precluded from establishing GMC.

Purely Political Offense Exception

This bar to GMC does not apply to a conviction and resulting confinement of 180 days or more occurring outside of the United States for a purely political offense committed abroad.⁸⁵

E. False Testimony

1. False Testimony in Statutory Period

An applicant who gives false testimony to obtain any immigration benefit during the statutory period cannot establish GMC.⁸⁶ False testimony occurs when the applicant deliberately intends to deceive the U.S. Government while under oath in order to obtain an immigration benefit. This holds true regardless of whether the information provided in the false testimony would have impacted the applicant's eligibility. The statute does not require that the benefit be obtained, only that the false testimony is given in an attempt to obtain the benefit.⁸⁷

While the most common occurrence of false testimony is failure to disclose a criminal or other adverse record, false testimony can occur in other areas. False testimony may include, but is not limited to, facts about lawful admission, absences, residence, marital status or infidelity, employment, organizational membership, or tax filing information.

2. Three Elements of False Testimony

There are three elements of false testimony established by the Supreme Court that must exist for a naturalization application to be denied on false testimony grounds:⁸⁸

Oral Statements

The "testimony" must be oral. False statements in a written application and falsified documents, whether or not under oath, do not constitute "testimony."⁸⁹ However, false information provided orally under oath to an officer in a question-and-answer statement relating to a written application is "testimony."⁹⁰ The oral statement must also be an affirmative misrepresentation. The Court makes it clear that there is no "false testimony" if facts are merely concealed, to include incomplete but otherwise truthful answers.

⁸⁵ See [Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception](#).

⁸⁶ See [INA 101\(f\)\(6\)](#). See [8 CFR 316.10\(b\)\(2\)\(vi\)](#).

⁸⁷ See *Matter of R-S-J*, 22 I&N Dec. 863 (BIA 1999).

⁸⁸ See *Kungys v. United States*, 485 U.S. 759, 780-81 (1988).

⁸⁹ See *Matter of L-D-E*, 8 I&N Dec. 399 (BIA 1959).

⁹⁰ See *Matter of Ngan*, 10 I&N Dec. 725 (BIA 1964). See *Matter of G-L-T*, 8 I&N Dec. 403 (BIA 1959).

Oath

The oral statement must be made under oath in order to constitute false testimony.⁹¹ Oral statements to officers that are not under oath do not constitute false testimony.

Subjective Intent to Obtain an Immigration Benefit

The applicant must be providing the false testimony in order to obtain an immigration benefit. False testimony for any other reason does not preclude the applicant from establishing GMC.

F. Prostitution

An applicant may not establish GMC if he or she has engaged in prostitution, procured or attempted to procure or to import prostitutes or persons for the purpose of prostitution, or received proceeds from prostitution during the statutory period.⁹² The BIA has held that to “engage in” prostitution, one must have engaged in a regular pattern of behavior or conduct.⁹³ The BIA has also determined that a single act of soliciting prostitution on one’s own behalf is not the same as procurement.⁹⁴

G. Smuggling of a Person

An applicant is prohibited from establishing GMC if he or she is or was involved in the smuggling of a person or persons by encouraging, inducing, assisting, abetting or aiding any alien to enter or try to enter the United States in violation of law during the statutory period.⁹⁵

Family Reunification Exception

This bar to GMC does not apply in certain cases where the applicant was involved in the smuggling of his or her spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law before May 5, 1988.⁹⁶

H. Polygamy

An applicant who has practiced or is practicing polygamy during the statutory period is precluded from establishing GMC.⁹⁷ Polygamy is the custom of having more than one spouse at the same time.⁹⁸ The officer should review documents in the file and any documents the applicant brings to the interview for information

⁹¹ See *Matter of G-*, 6 I&N Dec. 208 (BIA 1954).

⁹² See [INA 101\(f\)\(3\)](#) and [INA 212\(a\)\(2\)\(D\)\(i\) and \(ii\)](#). See [8 CFR 316.10\(b\)\(2\)\(vii\)](#).

⁹³ See *Matter of T*, 6 I&N Dec. 474 (BIA 1955).

⁹⁴ See *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008).

⁹⁵ See [INA 101\(f\)\(3\)](#) and [INA 212\(a\)\(6\)\(E\)](#). See [8 CFR 316.10\(b\)\(2\)\(viii\)](#).

⁹⁶ See [INA 212\(a\)\(6\)\(E\)\(ii\)](#). See Sec. 301 of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649 (November 29, 1990).

⁹⁷ See [INA 101\(f\)\(3\)](#) and [INA 212\(a\)\(10\)\(A\)](#). See [8 CFR 316.10\(b\)\(2\)\(ix\)](#).

⁹⁸ Polygamy is not the same as bigamy. Bigamy is the crime of marrying a person while being legally married to someone else. An applicant who has committed bigamy may be susceptible to a denial under the “unlawful acts” provision.

about the applicant's marital history, to include any visa petitions or applications, marriage and divorce certificates, and birth certificates of children.

I. Gambling

An applicant who has been convicted of committing two or more gambling offenses or who derives his or her income principally from illegal gambling activities during the statutory period is precluded from establishing GMC.⁹⁹ The gambling offenses must have been committed within the statutory period.

J. Habitual Drunkard

An applicant who is or was a habitual drunkard during the statutory period is precluded from establishing GMC.¹⁰⁰ Certain documents may reveal habitual drunkenness, to include divorce decrees, employment records, and arrest records. In addition, termination of employment, unexplained periods of unemployment, and arrests or multiple convictions for public intoxication or driving under the influence may be indicators that the applicant is or was a habitual drunkard.

K. Failure to Support Dependents

An applicant who willfully failed or refused to support his or her dependents during the statutory period cannot establish GMC unless the applicant establishes extenuating circumstances.¹⁰¹ The GMC determination for failure to support dependents includes consideration of whether the applicant has complied with his or her child support obligations abroad in cases where it is relevant.¹⁰²

Even if there is no court-ordered child support, the courts have concluded that parents have a moral and legal obligation to provide support for their minor children, and a willful failure to provide such support demonstrates that the individual lacks GMC.¹⁰³

An applicant who fails to support dependents may lack GMC if he or she:

- Deserts a minor child;¹⁰⁴
- Fails to pay any support;¹⁰⁵ or
- Obviously pays an insufficient amount.¹⁰⁶

⁹⁹ See [INA 101\(f\)\(5\)](#). See [8 CFR 316.10\(b\)\(2\)\(x\) and \(xi\)](#).

¹⁰⁰ See [INA 101\(f\)\(1\)](#). See [8 CFR 316.10\(b\)\(2\)\(xii\)](#).

¹⁰¹ See [8 CFR 316.10\(b\)\(3\)\(i\)](#). See [Hague Convention on the International Recovery of Child Support](#).

¹⁰² See Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

¹⁰³ See *Brukiewicz v. Savoretti*, 211 F.2d 541 (5th Cir. 1954). See *Petition of Perdiak*, 162 F. Supp. 76 (S.D. Cal. 1958). See *Petition of Dobric*, 189 F. Supp. 638 (D. Minn. 1960). See *In re Malaschenko*, 204 F. Supp. 744 (D.N.J. 1962) (and cases cited). See *Petition of Dobric*, 189 F. Supp. 638 (D. Minn. 1960). See *In re Huymaier*, 345 F. Supp. 339 (E.D. Pa. 1972). See *In re Valad*, 465 F. Supp. 120 (E.D. Va. 1979).

¹⁰⁴ See *U.S. v. Harrison*, 180 F.2d 981 (9th Cir. 1950).

¹⁰⁵ See *In re Malaschenko*, 204 F. Supp. 744 (D.N.J. 1962). See *In re Mogus*, 73 F. Supp. 150 (W.D. Pa. 1947).

¹⁰⁶ See *In re Halas*, 274 F. Supp. 604 (E.D. Pa. 1967). See *Petition of Dobric*, 189 F. Supp. 638 (D. Minn. 1960).

If the applicant has not complied with court-ordered child support and is in arrears, the applicant must identify the length of time of non-payment and the circumstances for the non-payment. An officer should review all court records regarding child support, and non-payment if applicable, in order to determine whether the applicant established GMC.¹⁰⁷

Extenuating Circumstances

If the applicant shows extenuating circumstances, a failure to support dependents should not adversely affect the GMC determination.¹⁰⁸

The officer should consider the following circumstances:

- An applicant's unemployment and financial inability to pay the child support;¹⁰⁹
- Cause of the unemployment and financial inability to support dependents;
- Evidence of a good-faith effort to reasonably provide for the support of the child;¹¹⁰
- Whether the nonpayment was due to an honest but mistaken belief that the duty to support a minor child had terminated;¹¹¹ and
- Whether the nonpayment was due to a miscalculation of the court-ordered arrears.¹¹²

L. Adultery

An applicant who has an extramarital affair during the statutory period that tended to destroy an existing marriage is precluded from establishing GMC.¹¹³

Extenuating Circumstances

If the applicant shows extenuating circumstances, an offense of adultery should not adversely affect the GMC determination.¹¹⁴ Extenuating circumstances may include instances where the applicant divorced his or her spouse but later the divorce was deemed invalid or the applicant and the spouse mutually separated and they were unable to obtain a divorce.¹¹⁵

M. Unlawful Acts

¹⁰⁷ See [8 CFR 316.10\(b\)\(3\)\(i\)](#).

¹⁰⁸ See [Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances](#).

¹⁰⁹ See *In re Huymaier*, 345 F. Supp. 339 (E.D. Pa. 1972).

¹¹⁰ See *Petition of Perdiak*, 162 F. Supp. 76 (S.D. Cal. 1958).

¹¹¹ See *In re Valad*, 465 F. Supp. 120 (E.D. Va. 1979).

¹¹² See *Etape v. Napolitano*, 664 F.Supp.2d 498, 517 (D Md 2009).

¹¹³ See [8 CFR 316.10\(b\)\(3\)\(ii\)](#).

¹¹⁴ See [Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances](#).

¹¹⁵ See *In re Petition of Schroers*, 336 F. Supp. 1348 (S.D.N.Y. 1971). See *In re Petition of Russo*, 259 F. Supp. 230 (S.D.N.Y. 1966). See *Dickhoff v. Shaughnessy*, 142 F. Supp. 535 (SDNY 1956).

An applicant who has committed, was convicted, or imprisoned for an unlawful act or acts during the GMC period may be found to lack GMC.¹¹⁶ This provision may apply to cases where an offense is not specifically listed in the other relevant GMC provisions but rises to the level of preventing the applicant from establishing GMC.¹¹⁷ This provision does not require the applicant to have been charged or convicted of the offense.

An “unlawful act” includes any act that is against the law, illegal or against moral or ethical standards of the community. The fact that an act is a crime makes any commission thereof an unlawful act.¹¹⁸

Considering Extenuating Circumstances for Unlawful Acts

If the applicant shows extenuating circumstances, the commission of an unlawful act¹¹⁹ or acts should not adversely affect the GMC determination.¹²⁰ An extenuating circumstance must pertain to the unlawful act and must precede or be contemporaneous with the commission of the unlawful act.¹²¹

An officer may not consider conduct or equities (including evidence of reformation or rehabilitation) subsequent to the commission of the unlawful act as an extenuating circumstance. Consequences after the fact and future hardship are not considered extenuating circumstances.¹²² If a jury or a court acquitted the applicant, he or she has not committed an unlawful act.

The factors considered in the determination are included in the denial notices in cases that result in an unfavorable determination.

Examples of Unlawful Acts

The following are examples of offenses that may be considered under the unlawful acts regulation. Each GMC determination is made on a case-by-case basis, to include determinations involving an “unlawful act” consideration.

1. Unlawful Voting and False Claim to U.S. Citizenship for Voting

An applicant may fail to show GMC if he or she engaged in unlawful voting or falsely claimed U.S. citizenship for voting.¹²³ In September 1996, Congress enacted legislation to address unlawful voting and false claims to U.S. citizenship for purposes of registering to vote or voting.¹²⁴

¹¹⁶ See [INA 101\(f\)](#). See [8 CFR 316.10\(b\)\(3\)\(iii\)](#).

¹¹⁷ See [8 CFR 316.10\(b\)\(1\) and \(2\)](#) (Other relevant GMC regulations).

¹¹⁸ See *U.S. v. Lekarczyk*, 354 F. Supp. 2d 883 (W.D. Wis. 2005). See *Jean-Baptiste v. United States*, 395 F.3d 1190 (11th Cir.2005).

Collateral estoppel bars a defendant who is convicted in a criminal trial from contesting this conviction in a subsequent civil action with respect to issues necessarily decided in the criminal trial. See *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 157 (1963).

¹¹⁹ See [8 CFR 316.10\(b\)\(3\)\(iii\)](#).

¹²⁰ See [INA 101\(f\)](#). See [8 CFR 316.10\(b\)\(3\)\(iii\)](#). See [Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances](#).

¹²¹ See *Jean-Baptiste v. United States*, 395 F.3d 1190 (11th Cir.2005) citing *Rico v. INS*, 262 F. Supp.2d 6 (E.D.N.Y.2003).

¹²² See *Jean-Baptiste v. United States*, 395 F.3d 1190 (11th Cir.2005).

¹²³ See [18 U.S.C. 611](#) (Voting by aliens). See [18 U.S.C. 1015\(f\)](#) (False claim to U.S. citizenship).

- A noncitizen who is convicted of unlawful voting may be fined, imprisoned up to one year, or both, and subject to removal.¹²⁵
- A noncitizen who is convicted of making a false claim to U.S. citizenship to register to vote or vote may be fined, imprisoned up to five years, or both, and subject to removal.¹²⁶

The officer may request the applicant to provide a sworn statement regarding his or her testimony on illegal voting or false claim to citizenship for voting. The officer may also require an applicant to obtain any relevant evidence, such as the voter registration card, applicable voter registration form, and voting record from the relevant board of elections commission.

The table below serves as a quick reference guide on the effect on GMC determinations by unlawful voting or for false claims to U.S. citizenship. Further guidance is provided below.

Effect on GMC by Unlawful Voting or False Claim to U.S. Citizenship in Statutory Period				
Offense	Penalty <i>if Convicted</i>	Effect on GMC		
		<i>If Convicted</i>	<i>If Imprisoned</i>	<i>If Not Convicted</i>
Unlawful Voting 18 U.S.C. 611	May be fined or imprisoned up to 1 yr, or both	Unlikely a CIMT and will not bar GMC by itself	Bars GMC if incarcerated for 180 days or more, or if sentence from convictions total 5 yrs or more	May bar GMC depending on totality of the circumstances, and on whether exceptions apply
False Claim to Citizenship 18 U.S.C. 1015(f)	May be fined or imprisoned up to 5 yrs, or both	CIMT and will bar GMC (may be a felony)		

Offenses without Convictions

An officer may find the applicant to lack GMC if the applicant was not convicted of unlawful voting or false claim to citizenship for voting. The officer should consider the totality of the circumstances and weigh all favorable and unfavorable factors of each case, to include whether the applicant qualifies for an exception.

An applicant may only have engaged in unlawful voting if his or her conduct was unlawful under the relevant federal, state, or local election law. The officer should consider the controlling statutes in cases involving

¹²⁴ See [INA 212\(a\)\(10\)\(D\)\(i\)](#) and [INA 237\(a\)\(6\)\(A\)](#) (Addressing unlawful voting). See [INA 212\(a\)\(6\)\(C\)\(ii\)\(I\)](#) and [INA 237\(a\)\(3\)\(D\)\(i\)](#) (Addressing false claims to U.S. citizenship). These provisions were added by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208 (September 30, 1996).

¹²⁵ See [18 U.S.C. 611](#) (Voting by aliens).

¹²⁶ See [18 U.S.C. 1015\(f\)](#) (False claim to U.S. citizenship).

potential unlawful voting offenses, because some local municipalities permit lawful permanent residents (LPRs) or other noncitizens to vote in municipal elections.

The officer does not need to focus on the underlying election law for false claims to U.S. citizenship. An applicant may be considered to have made a false claim to U.S. citizenship if the following conditions have been met on or after September 30, 1996.

- The applicant actually falsely represented himself or herself as a U.S. citizen; and
- The applicant made such misrepresentation in order to register to vote or for voting.

Convictions

A conviction for unlawful voting, by itself, generally should not bar an applicant from establishing GMC because the conviction is unlikely to be a CIMT.¹²⁷ On the other hand, making a false claim to U.S. citizenship in order to register to vote or to vote is a CIMT. An applicant who is convicted of a CIMT is generally precluded from establishing GMC.

A conviction for making a false claim to U.S. citizenship in order to register to vote or for voting is a felony and prevents an applicant from showing GMC unless an exception applies.¹²⁸

Imprisonment

Unless an applicant qualifies for an exception, the applicant is barred from establishing GMC if:

- The applicant was convicted and imprisoned for 180 days or more during the statutory period for unlawful voting or for making a false claim to U.S. citizenship;¹²⁹ or
- The applicant has multiple convictions with an aggregate sentence of five years or more, which include conviction(s) for unlawful voting or making a false claim to U.S. citizenship.¹³⁰

Exceptions

In 2000, Congress added exceptions for GMC determinations and removal of noncitizens for unlawful voting and false claims to U.S. citizenship.¹³¹ The exceptions only apply to convictions that became final on or after October 30, 2000.¹³²

¹²⁷ See [18 U.S.C. 611](#) (Voting by noncitizens). See [8 U.S.C. 1015\(f\)](#) (False claim to U.S. citizenship).

¹²⁸ See [INA 101\(f\)\(3\)](#).

¹²⁹ See [Chapter 5 Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More](#). See [INA 101\(f\)\(7\)](#).

¹³⁰ See [Chapter 5 Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More](#). See [INA 101\(f\)\(3\)](#).

¹³¹ See [INA 212\(a\)\(10\)\(D\)\(ii\)](#) and [INA 237\(a\)\(6\)\(B\)](#) (Unlawful voting exception). See [INA 212\(a\)\(6\)\(C\)\(ii\)\(I\)](#) and [INA 237\(a\)\(3\)\(D\)\(i\)](#) (False claims to U.S. citizenship exception). These provisions were added by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395 (October 30, 2000).

¹³² See Section 201(d)(3) of the CCA, Pub. L. 106-395.

An applicant qualifies for an exception if the following conditions are met:

- The applicant’s natural or adoptive parents are or were U.S. citizens at the time of the violation;¹³³
- The applicant permanently resided in the United States prior to reaching the age of 16 years; and
- The applicant “reasonably believed” at the time of the violation that he or she was a U.S. citizen.

To assess whether the applicant “reasonably believed” that he or she was a U.S. citizen at the time of the violation, the officer must consider the totality of the circumstances in the case, weighing such factors as the length of time the applicant resided in the United States and the age when the applicant became an LPR.

2. Failure to File Tax Returns or Pay Taxes

An applicant who fails to file tax returns or pay his or her taxes may be precluded from establishing GMC. LPRs are generally taxed in the same way as U.S. citizens. This means that their worldwide income may be subject to U.S. tax and may need to be reported on their U.S. tax return. The income of LPRs is subject to the same graduated tax rates that apply to U.S. citizens.¹³⁴

An applicant who did not originally file tax returns or did not pay the appropriate taxes may be able to establish GMC by submitting a letter from the tax authority indicating that:

- The applicant has filed the appropriate forms and returns; and
- The applicant has paid the required taxes, or has made arrangements for payment.

If the officer uncovers inconsistencies in facts submitted on the application for naturalization and material elements on the applicant’s tax return, such as marital status, number of children, and employment, the applicant may be precluded from establishing GMC due to an attempt to defraud the Internal Revenue Service (IRS) by avoiding taxes.¹³⁵

¹³³ As a matter of policy, USCIS has determined that the applicant’s parents had to be U.S. citizens at the time of the illegal voting or false claim to U.S. citizenship in order to meet the first prong of this exception.

¹³⁴ See [IRS Publication 519, U.S. Tax Guide for Aliens](#).

¹³⁵ The following involve defrauding the United States by avoiding taxes (a CIMT). See *Matter of M-*, 8 I&N Dec. 535 (BIA 1960). See *Matter of E-*, 9 I&N Dec. 421 (BIA 1961). See *Carty v. Ashcroft*, 395 F.3d 1081 (9th Cir. 2005) (State failure to pay taxes; evasion is same as fraud). See *Wittgenstein v. INS*, 124 F.3d 1244 (10th Cir. 1997) (State crime).