



December 10, 2019

PA-2019-10

## Policy Alert

**SUBJECT:** Implementing the Decisions on Driving Under the Influence Convictions on Good Moral Character Determinations and Post-Sentencing Changes

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) regarding how post-sentencing changes to criminal sentences impact convictions for immigration purposes and how two or more driving under the influence (DUI) convictions affects good moral character (GMC) determinations. These updates incorporate two recent decisions issued by the Attorney General (AG).

### Background

Immigration laws outline the criminal acts that have immigration consequences, including acts resulting in convictions. Such criminal activity may render an applicant inadmissible or deportable<sup>1</sup> or ineligible for the immigration benefit being sought. In addition, certain immigration benefits require an applicant to demonstrate that he or she has GMC in order to demonstrate eligibility for the benefit.<sup>2</sup> An alien's convictions can impact this GMC determination.<sup>3</sup>

On October 25, 2019, the AG held in [Matter of Thomas and Thompson](#) that a "term of imprisonment or a sentence"<sup>4</sup> refers to the alien's original criminal sentence without regard to post-sentencing alterations for reasons other than a procedural or substantive defect in the underlying criminal proceeding.<sup>5</sup> On the same day, the AG held in [Matter of Castillo-Perez](#) that evidence of two or more DUI convictions during the relevant statutory period establishes a rebuttable presumption of a lack of GMC.<sup>6</sup>

These policy updates are applicable to any cases filed or pending on or after October 25, 2019 (date of the AG's decisions). These policy updates, contained in Volume 12 of the Policy Manual, are controlling and supersede any prior guidance on the topic.

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<sup>1</sup> See [INA 212\(a\)\(2\)](#) and [INA 237\(a\)](#).

<sup>2</sup> For example, naturalization applicants and Violence Against Women Act (VAWA) self-petitioners must demonstrate GMC. See [INA 316\(a\)](#). See [8 CFR 316.10](#). See Victims of Trafficking and Violence Protection Act (VTVPA), [Pub. L. 106-386](#) (October 28, 2000).

<sup>3</sup> See [INA 101\(f\)](#).

<sup>4</sup> See [INA 101\(a\)\(48\)\(B\)](#).

<sup>5</sup> See 27 I&N Dec. 674 (A.G. 2019).

<sup>6</sup> See 27 I&N Dec. 664 (A.G. 2019).

### **Policy Highlights**

- Incorporates the AG’s decision in [\*Matter of Thomas and Thompson\*](#) with respect to how state court orders altering a sentence impact a conviction for immigration purposes.
- Incorporates the AG’s decision in [\*Matter of Castillo-Perez\*](#) regarding the rebuttable presumption of a lack of GMC for two or more convictions for DUI within the statutory period.

### **Citation**

Volume 12: Citizenship and Naturalization, Part F, Good Moral Character, Chapter 2, Adjudicative Factors [[12 USCIS-PM F.2](#)]; Chapter 5, Conditional Bars for Acts in Statutory Period [[12 USCIS-PM F.5](#)].