

Legalized Marijuana, Non-Citizens and Immigration Risks

Labor & Employment Law Update

By Jacqueline Lentini McCullough on August 22, 2019

In May, we reported on Illinois becoming the eleventh state to permit recreational marijuana beginning January 1, 2020. Noncitizens in these eleven states and the District of Columbia may reasonably conclude that using marijuana in accordance with state law will have no bearing on immigration status. Unfortunately, that is a wrong assumption.

Federal law controls immigration, and it remains a federal offense to possess marijuana. For the unsuspecting foreign national, this is a legal distinction that many will not understand. Customs and Border Protection (CBP) Officers at the nation's borders are the first line of defense in preventing illegal importation of narcotics, including marijuana. U.S. federal law prohibits the importation of marijuana and CBP Officers will continue to enforce the law.

For immigrant marijuana users, federal law prohibits the use of federal funds to prosecute state-legal medical cannabis, but allows funds to prosecute state-legal recreational cannabis, thus creating an enforcement distinction. There will also be increased scrutiny relating to travel outside the U.S. for green card and Naturalization applicants.

In some jurisdictions such as Colorado, the U.S. Citizenship and Immigration Service (USCIS) is adding questions to the Adjustment of Status (green card) interview and medical examination process to determine if a foreign national uses marijuana or has in the past.

Naturalization

Naturalization eligibility requires the individual to establish "good moral character," as defined in the Immigration and Nationality Act. A person who engaged in certain conduct as described in the Act is statutorily barred from establishing good moral character. In states such as Washington and Colorado where marijuana has been legal since 2012, the USCIS is aggressively questioning Naturalization applicants regarding marijuana use. For example, a legal permanent resident (LPR) who is applying for Naturalization, and who is in possession of marijuana is barred under federal law from establishing good moral character. The individual will be found to be inadmissible.

Any arriving foreign national who is determined to be a drug abuser or addict or who is convicted of, or admits to committing acts which constitute the essential elements of a violation of any law or regulation of the U.S relating to a controlled substance, is inadmissible to the U.S. Furthermore, a naturalization applicant who has admitted possessing marijuana to a federal government official must not travel outside the U.S. The person may be found inadmissible upon reentry.

There are several legislative efforts afoot in Congress to resolve the complex issues created by the conflict between federal and state cannabis laws. In the meantime, though, noncitizens should take a very conservative approach.

Takeaways for noncitizens living in the U.S.:

- Never discuss conduct regarding marijuana with a government official such as a CBP Officer, USCIS, Embassies/Consulates abroad, et al.;
- If you live in a state that legalized marijuana consumption, do not use it until you are a U.S. citizen;
- Do not carry a medical marijuana card, pot related stickers, T-shirts, or paraphernalia, and delete any mention of marijuana on social media; and
- If you've worked in the marijuana industry, obtain legal counsel before leaving the U.S. or applying for Naturalization

Stay tuned for further developments in this growing area of law.

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