

McAULEY & PARTNERS

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RE: Rehabilitation for those inadmissible to Canada on grounds of criminality

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A conviction by any court may mean that a visitor to Canada is found to be inadmissible when they attempt to cross the border. In such a case, the visitor may be required to obtain Rehabilitation before being allowed into Canada. Rehabilitation removes the ground of criminal inadmissibility, and means that you live a stable lifestyle, and that you are unlikely to be involved in further criminal activity.

There are two types of Rehabilitation available: Deemed Rehabilitation and Rehabilitation through Application.

Deemed Rehabilitation

Deemed Rehabilitation occurs under s. 18(1) of the *Immigration and Refugee Protection Regulations*. It is best to contact the Canadian Visa Office closest to you in order to ensure that you qualify for Deemed Rehabilitation. The Visa Office in Detroit, Michigan can be reached at:

(313) 567-2085 or www.detroit.gc.ca

In order to qualify for Deemed Rehabilitation under s. 18(2) you would have to have 2 or more summary conviction (minor) offences **or** no more than one offence that, if committed in Canada, would be considered an indictable (serious) offence. DWI/DUI's would be considered an indictable (serious) offence in Canada.

While 1 summary offence will usually be deemed rehabilitated at the border crossing, it is best to confirm this in advance by contacting the nearest border office or the nearest Visa office.

Deemed Rehabilitation for **2 or more summary (minor) offences** occurs if:

- i. It has been at least 5 years since the completion of the sentence imposed;
- ii. The person has not been convicted of an indictable offence in Canada;
- iii. The person had not been convicted of an offence in Canada under an Act of Parliament, other than under the *Contraventions Act* or *Youth Criminal Justice Act*;
- iv. The person has not within the last 5 years been convicted outside of Canada of an offence that that if convicted within Canada would constitute an offence under an Act of Parliament other than the *Contraventions Act* or *Youth Criminal Justice Act*;
- v. The person has not been convicted before the last 5 years of more than one summary conviction offence in Canada under an Act of Parliament other than under the *Contraventions Act* or *Youth Criminal Justice Act*;
- vi. The person has not been convicted of an offence described in paragraph 36(2)(b) of the Act, that if committed in Canada would be an indictable offence; and
- vii. The person has not committed an act described in paragraph 36(2)(c) of the Act.

Deemed Rehabilitations for **no more than one indictable offences** occurs if:

- i. The offence is punishable by a maximum term of imprisonment of 10 years;
- ii. It has been at least 10 years since the completion of the imposed sentence;

- iii. The person has not been convicted of an indictable offence in Canada;
- iv. The person has not been convicted of any summary offences in Canada in the last 10 years or of more than one summary offence before the last 10 years, other than under the *Contraventions Act* or *Youth Criminal Justice Act*;
- v. The person has not been convicted within the last 10 years of an offence outside of Canada that if committed in Canada would be an offence under an Act of Parliament;
- vi. The person has not before the last 10 years been convicted of more than one offence, that if committed in Canada would be a summary conviction offence; and
- vii. The person has not committed an offence described in paragraph 36(2)(c) of the Act. Paragraph 36(2)(c) refers to a foreign national being inadmissible on grounds of criminality for committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.

It is best to contact the Canadian Visa Office closest to you in order to ensure that you qualify for Deemed Rehabilitation. The Visa Office in Detroit, Michigan can be reached at:
(313) 567-2085 or www.detroit.gc.ca

Application for Rehabilitation

An Application for Rehabilitation is made to Citizenship and Immigration Canada.

A person is eligible to apply for rehabilitation if they were convicted outside of Canada and it has been 5 years since the end of the sentence imposed.

In applying for rehabilitation, they will need to describe the events that lead to their committing the offence(s). The description of the events that led to the committing of the offence must be completed in detail. The details required include a description of their actions, an explanation of any weapons, drugs, or alcohol was involved, why they did it, and how their actions affected others, including, if there are any physical or emotional injuries.

They will also be required to explain in detail, why they consider themselves rehabilitated. As such, they should provide as much information as possible. This information may include attendance at any drug rehabilitation program, their employment history, any community service they have performed, or any other involvement they have within the community.

A number of documents will be required to be included in their Application for criminal rehabilitation. These documents include:

- i. a photocopy of their passport showing their name, date of birth, and country of birth, or if America and they do not have a passport, a copy of their Driver's Licence, and USA Birth Certificate;
- ii. a copy of each Court Judgment made against them. It must clearly state the charge, the section of the law under which they were charged, and the verdict of the sentence;
- iii. the foreign or Canadian laws under which they were convicted; and
- iv. any documents relating to the sentence imposed, parole, probation, or pardon. These documents may include court records, Judge's comments, probation or parole reports, certificate of rehabilitation, letter of recommendation from public officials, or respected private citizens, or any other such documents. These documents must clearly show when your sentence was completed.

In addition, they will require original documents including:

- i. a Criminal Clearance Certificate from the police authorities in all countries where they have lived for the past 10 years; and
- ii. a State Certificate, or a letter from a police authority for each state in which they have lived in the past 10 years, and a National FBI Certificate.

The standard Application fee charged by Citizenship and Immigration Canada for the Rehabilitation Application is \$200.00. However, if ministerial approval is required for their rehabilitation, the Application fee increases to \$1,000.00. At the time the Application is submitted all that is required is the \$200.00. If ministerial approval is required for rehabilitation, a request will be sent for the additional \$800.00. The additional monies are required to be paid prior to the Application being submitted for ministerial approval.

The factors that Citizenship and Immigration Canada consider in granting rehabilitation are:

1. The number of offences, including the seriousness and circumstances of each offence;
2. Behaviour since the offences;
3. Explanation of the offences and why they are not likely to re-offend;
4. Any support received from the community;
5. Why they think they are rehabilitated; and
6. Their present circumstances.

It is important to note that Applications for Rehabilitation can take over one year to process. They will be advised in writing by Citizenship and Immigration Canada of the decision made on their Application.

It is possible to use a representative for the process. In that case, there is a Use of a Representative Form that needs to be completed.

For Further Information

For Further Information please contact: Peter Burns at McAuley & Partners

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