

TEN COMMANDMENTS FOR CANADIAN TRUCK DRIVERS FACING UNITED STATES INADMISSIBILITY CHARGES AT THE BORDER

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Canada and the United States share the longest undefended border in the world. Both countries' economies are intertwined and thousands of Canadian truck drivers' livelihoods depend on their ability to cross the Canada-U.S. border without the unpleasant surprise of being deemed inadmissible to the U.S. When this happens, the questions arise what to do at the border and when returning to Canada how to effectively solve the problem. This article summarizes the most important issues facing people with a charge of inadmissibility. It details the procedure one can follow from the time of the initial interview with the U.S. immigration official right through the subsequent process of alleviating the effects of previously having a criminal record. The reader must keep in mind that each case is different, despite other seemingly similar cases and the proper solution needs to be tailored to the individual's unique circumstances.

1. Do not assume that the mere passage of time (or the fact of having a Canadian Pardon) seals your prior record. Therefore, **if you have a criminal record, be prepared to explain it at the border.**
2. U.S. Department of Homeland Security most likely knows about your prior Canadian conviction or other criminal records. Therefore, **when asked, be truthful. If you start lying, you may be subject to a separate charge of inadmissibility, this time on the basis of misrepresentation.** U.S. immigration law is clear in this respect, stating that: "Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible."
3. In the case of minor offences and in order to increase your chances of positively explaining your case to the U.S. immigration officer have your court records with you. Keep in mind that **a U.S. immigration officer making the determination at the border makes it based on the conviction record. The facts leading to the conviction are secondary if not irrelevant to the officer.** At the time, the officer will not second guess a ruling made by a court of law. Therefore, **do not make up stories, but rather give them (1) a certified copy of the court record and (2) the current (i.e., less than one year old) copy of an RCMP criminal search report.**
4. It is recommended that you **have a statutory declaration prepared and commissioned by a lawyer in which under oath summarizes the facts of your**

case and which also contains all the necessary exhibits that the U.S. immigration officer needs to see.

5. **A Canadian Pardon and a U.S. Waiver of Inadmissibility are two completely different things. Receiving a Canadian Pardon has little practical effect on the granting of a U.S. Waiver.** Nevertheless, you may start a Pardon application and keep a record of it with you at the border for proof that you intend to resolve the matter properly.
6. **Not all criminal offences automatically make a person inadmissible to the U.S. Therefore, beware of advisers who tell you that you need a waiver without first confirming the relevant U.S. immigration and criminal laws.**
7. **Make sure that the advisor preparing a waiver application for you (1) makes the proper analysis of the U.S. immigration and Canadian criminal law (including with respect to the latter, as at the time of the commission of the offence); (2) attaches the current (i.e., less than one year old) RCMP criminal search report; (3) submits enough evidence showing your rehabilitation; and (4) makes the proper and convincing legal argument based on the U.S. immigration case law.**
8. **If you need a waiver be prepared for a long waiting process. Although the average waiting time is between 5-9 months, there may be a shorter or longer waiting period ahead of you. In the meantime, you may qualify for a Port of Entry Parole (sometimes also called Advance Parole or Humanitarian Parole).**
9. **If you need to apply for a Port of Entry Parole (also referred to as Advance Parole or Humanitarian Parole), follow the particular Port of Entry's procedure.**
10. **Finally, beware of consultants who are not licensed U.S. lawyers who give you advice on U.S. law or procedure.**

The law firm of Malicki & Malicki welcomes Janusz Puzniak, a new lawyer specializing in business, immigration and employment law. Since Mr. Puzniak's arrival, the firm provides full range of services in Canadian and U.S. immigration law, including (1) assistance to individuals from around the world in securing the required immigration documentation to live and work in Canada and the United States, (2) assistance to businesses in obtaining work permits for employees from anywhere in the world, and (3) assistance to investors and entrepreneurs establishing business operations in Canada. The firm also assists individuals with border and consular problems, including obtaining waivers of inadmissibility (U.S.) and temporary resident permits (Canada). At Malicki & Malicki we strongly believe that proper immigration assistance to clients includes developing comprehensive strategies to achieve their needs rather than limiting our work to single applications or submissions.

Mr. Puzniak holds law licenses in Ontario, New York and Missouri and practices all aspects of individual immigration law of Canada and the United States. His immigration

practice encompasses inbound and outbound cases in which he has represented both employers and employees. In individual cases, he has assisted skilled workers, businessmen and professionals secure permanent residence in Canada and the United States, including overcoming issues of inadmissibility and consular refusals. Mr. Puzniak invites difficult situations, where clients either experienced refusals of their applications or where they were faced with instances of unreasonable discretion by the decision makers.

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OUR CANADIAN IMMIGRATION SERVICES INCLUDE:

- **Temporary Visitor Visas**
- **Work Permits with Service Canada confirmation**
- **Work Permits exempt from Service Canada confirmation**
- **Work Permits for Live-in Caregivers**
- **Permanent Residence Applications (Skilled Workers)**
- **Permanent Residence Applications (Provincial Nominees)**
- **Permanent Residence Applications (Family Sponsorships)**
- **Permanent Residence Applications (Investors and Entrepreneurs)**
- **Temporary Resident Permit Applications**
- **Citizenship Applications (including complicated cases)**
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OUR U.S. IMMIGRATION SERVICES INCLUDE:

- **B1/B2 Visitor Visas**
- **TN Work Visas for Canadians**
- **L1A/L1B Work Visas for Intra-company Transferees**
- **H1-B Work Visas for Professionals**
- **E Work Visas for Treaty Investors & Traders**
- **Green Card Applications (Family and Employer Sponsorships)**

- **Waivers of Inadmissibility**
- **Port of Entry Paroles**