

Aggravated Felony Defined

a. Pub. L. 101-649 was signed into law on November 29, 1990. The law addresses the definition of the term “aggravated felony” in INA 101(a)(43). The changes apply to all offenses committed on or after November 29, 1990, except for the language addressing illicit trafficking in any controlled substances and the proviso relating to offenses “...in violation of federal or state law ”or“...in violation of foreign law.”

b. Pub. L. 103-416 greatly expanded the list of offenses and was applicable to convictions entered on or after October 25, 1994.

c. Pub. L. 104-208 further expanded the list of offenses and made it clear that the new definition applies to offenses which occurred before, on, or after the date of the law’s enactment.

d. An aggravated felony offenses include:

- (1) Murder, rape or sexual abuse of a minor;
- (2) Illicit trafficking in any controlled substance;
- (3) Illicit trafficking in any firearms, destructive devices, or explosive material;
- (4) Money laundering or engagement in monetary transaction in property derived from specified unlawful activity if the amount of funds exceeds \$10,000;
- (5) Certain offenses relating to explosive materials or firearms;
- (6) Crimes of violence (not including purely political offenses) in violation of Federal or State law (or attempt or conspiracy to commit such act) for which a term of imprisonment was at least 1 year; and
- (7) Theft and burglary (including receipt of stolen property) for which a term of imprisonment was at least 1 year;
- (8) Demand for or receipt of ransom;
- (9) Child pornography;
- (10) Offenses relating to racketeer influenced corrupt organizations for which a sentence of 1 or more years is imposed;

(11) Offenses relating to controlling, managing, or supervising of the prostitution business, if committed for commercial advantage;

(12) Offenses relating to peonage, slavery or involuntary servitude;

(13) Offenses relating to disclosure of classified information, sabotage or treason;

(14) Offenses relating to the protecting the identity of undercover agents;

(15) Fraud or deceit resulting in loss exceeding \$10,000;

(16) Tax evasion in which revenue loss exceeds \$10,000;

(17) Alien smuggling for commercial advantage, except a first offense involving the alien's spouse, child or parent, [see also 9 FAM 40.65 Notes];

(18) Document fraud, except a first offense involving the alien's spouse, child or parent, for which the term of imprisonment is at least 12 months;

(19) Defendant's failure to appear for service of sentence if offense is punishable by imprisonment of more than 5 years;

(20) Commercial bribery, counterfeiting, forgery, or trafficking in vehicles with altered identification numbers if imprisonment was for at least 1 year;

(21) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness if offense is punishable by imprisonment of more than 5 years;

(22) Failure to appear before a court to answer to or dispose of a charge of felony if offense is punishable by imprisonment of more than 2 years;

(23) Attempt or conspiracy to commit an offense in violation of Federal or State law or violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years.

e. See also 9 FAM 40.91 Notes.

9 FAM 40.1 N10 “Actually Imposed” Defined

(TL:VISA-162; 2-24-97)

The phrase “actually imposed” refers to the actual length of the

sentence meted out by the court and not the period of imprisonment actually served.

9 FAM 40.1 N11 “Conviction” Defined

(TL:VISA-162; 2-24-97)

INA 101(A)(48) defines “conviction” as:

- (1) A formal judgment of guilt entered by a court; or
- (2) A finding of guilty by judge or jury;
- (3) A plea of guilty or *nolo contendere* by the alien;
- (4) An admission of sufficient facts to warrant a finding of guilt; or
- (5) The imposition of some form of punishment, penalty or restraint of liberty by a judge.