

Canadians Involved with Cannabis Economy At Risk at U.S. Borders

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A senior official for the U.S. Customs and Border Protection (CBP) Office of Field Operations has stated that people who invest or work in or with the marijuana industry in Canada—even once retail marijuana sales become legal in Canada—risk permanent inadmissibility to the U.S., as reported by Politico.com.

This statement—made by Todd Owen, Executive Assistant Commissioner for the Office of Field Operations—is one of the first public statements from an official within the CBP about whether CBP plans to adjust its current policies in light of Canada’s passage of Canadian Bill C-45 (the Cannabis Act) earlier this year, and signals the agency’s intention to continue to use any involvement with the legal marijuana industry as grounds to render people inadmissible to the U.S. The retail sale of marijuana in Canada will become legal in October. Ontario’s government has signaled that initial sales will be online only, with the province’s first bricks-and-mortar stores expected to open in April 2019, while other provinces like Alberta will open privately-run stores to facilitate the sale of marijuana. Quebec plans to sell through its government-run alcohol agency. Legal sales are expected to reach \$4.9 billion by 2022, according to a report published by U.S. cannabis research firms Arcview Market Research and BDS Analytics.

CBP has historically used involvement with the marijuana industry as a grounds to deny admission and permanently bar certain individuals attempting to enter the U.S. Marijuana is listed as a Schedule 1 controlled substance under the U.S. Controlled Substances Act, alongside other dangerous drugs such as heroin, LSD, and Ecstasy. According to the U.S. Department of Justice Drug Enforcement Administration (Diversion Control Division) website, the controlled substances listed in Schedule 1 “have no currently accepted medical use in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse.” As such, U.S. federal law and policies hold marijuana trafficking, importing/exporting and manufacturing as serious offenses meriting a lifetime bar for those who admit to or have been convicted of offenses. In addition, those who have assisted, abetted, conspired with or colluded with those trafficking in controlled substances may also be inadmissible to the U.S.

While foreign individuals and businesspeople working in or with, or investing in, the U.S. cannabis industry have clearly been at risk for a long time, prior policy recently appears to have been extended to include anyone investing in or working in or with the marijuana industry anywhere—even where only doing so in Canada and/or other jurisdictions where it is legal. Several Canadian businesspeople with links to the industry have recently been deemed inadmissible to the U.S.—including the CEO of an equipment manufacturing company in Canada, whose only nexus to the cannabis industry is that some of his company’s machines are used by cannabis producers.

The statement by Owen to Politico confirms that CBP intends to continue to view the marijuana business as illegal in its entirety, despite national legalization. Non-U.S. citizens working in, investing in or otherwise benefitting from the cannabis economy should be prepared for the possible risks and consequences when seeking admission to the United States.

Please feel free to reach out to any of our experienced U.S. immigration lawyers to discuss how you or your business might be impacted by the current law and policies of the U.S. government, based on your cannabis industry involvement.

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