



# Removal Defense

## Online Course

American Immigration Lawyers Association

### Module 4: Criminal Removability with the Categorical and Modified Categorical Approach

### Sample Client Letter in Layperson Terms: Technical vs. Discretionary

[letterhead]

[date]

[client name]  
[address]  
[city, state zip code]

[via (email, USPS mail, etc.)]

**RE: Explanation of Technical Eligibility vs. Discretionary Factors**

Dear [client name]:

Based on our conversation on [day] and your background check regarding your criminal history, I wanted to fully explain the impact of your criminal convictions for any potential forms of immigration relief. There are some criminal convictions that by law make you ineligible for any forms of immigration relief and protections or make these options even more limiting.

#### **Technical Bars to Relief**

Aggravated felonies, crimes of violence, some drug convictions, and crimes involving moral turpitude can all put you in immigration court. There are some criminal convictions that automatically prevent you from immigration relief and results in your removal from the United States. You may be able to apply for protections from being removed from the United States if you fear return under limited circumstances. If this is the situation for you, we can discuss this further so that my office can investigate this possibility.

Congress lists crimes considered “aggravated felonies” in the Immigration and Nationality Act. This list includes, but is not limited to, murder, rape, drug trafficking, etc. A federal and state conviction can be considered an aggravated felony. Your conviction [is/is not] considered an aggravated felony. [Unfortunately, this means you are ineligible for any forms of immigration relief to prevent your removal from the United States.]



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### **Discretionary Factors**

Other criminal convictions may be eligible for immigration relief such as cancellation of removal. Often, people describe this as a waiver or “pardon” from your conviction. You typically get this opportunity only once in your life. These cases mean that we must demonstrate everything favorable about your life since your conviction proving you are rehabilitated. The immigration judge will then decide if you should be given this “second chance” opportunity.

Another argument for your case is that the criminal conviction is not “technically” a crime that should put you in immigration court to be removed from the United States or is not a “conviction” for immigration purposes.

Your criminal conviction of [crime] [may/may not] be argued in your favor to take you out of immigration court. This is a complicated matter requiring my office to further analyze the case and conviction.

If this information is still unclear to you, please do not hesitate to contact me so that I can explain your case in more detail.

Sincerely,

Attorney Name  
Phone  
Email