



**WINNING DESPITE
ALLEGATIONS OF
IMMIGRATION
FRAUD
IN THE UNITED STATES**



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CHAPTER 1: INTRODUCTION TO FRAUD CASES

It is NOT easy to be an undocumented immigrant in the United States, and one of the biggest challenges is being able to lawfully work, to support yourself and your family. Most of my clients immigrated to the United States expecting and hoping to find a better opportunity to support themselves, and once here, they realize that it is incredibly difficult to be able to work or get a stable good job. Many people call our office precisely because they are looking for work permits.

But first, let's explore what immigration fraud is. Imagine the following scenario:

Marta applied for a visa from Mexico to enter the US. On her visa application, she lied and said she was single, when in reality she was married. Her visa was denied. Later, she borrowed a cousin's green card and used it to enter the US. Then, she divorced her husband, and remarried a US citizen solely so that she could get papers.

Question: Where is Marta's fraud? The answer is, potentially everywhere! When we talk about Immigration Fraud, we are most commonly discussing three types of Fraud:

1. Willful Misrepresentations of Material Fact,
 2. False Claims to US Citizenship,
 3. Marriage Fraud
- We will now go through each of these together to make sure they are clear.

CHAPTER 2: WILLFUL MISREPRESENTATIONS OF MATERIAL FACT:

The Immigration Nationality Act (immigration law) make a person "inadmissible" if they ever made a "willful misrepresentation of a material fact." (see INA section 212(a)(6)(C)(i)). In order to find someone inadmissible under there, there must be each of the following:

"Willfulness," - it must be intentional, if what you said was false, but you didn't know that it was false, it cannot be a willful misrepresentation. Similarly, if you were a minor child, or if you had no idea what you were saying (you were just following instructions, not actually trying to deceive), then it should not be "willful."

A "Misrepresentation," the statement must actually be false, and "Materiality." This means that the misrepresentation must have been "material" (it must have mattered in some way) or was relevant to your immigration application or admission. If your misrepresentation was about your favorite sports team made in small talk with the officer, it cannot be said to be a "material" fact to the case.

In order to say that you are “inadmissible” for this, there must be a showing of each of these elements. If one of them is missing, you are not inadmissible under this, and if all of them are present, you are.

To look at the example of Marta above, she will be inadmissible under this because she lied on her application for a visa, saying that she was single, when in truth, she was married. This was a willful misrepresentation, and it was of a material fact, since her marital status can affect further questioning related to her eligibility for the visa status. So, she will be inadmissible under this section.

CHAPTER 3: FALSE CLAIMS TO US CITIZENSHIP

In 1996, immigration laws were amended to add a new inadmissibility for people making “false claims of US citizenship” for any purpose under immigration, federal or local laws. To find inadmissibility under this provision, there must be:

● 1. Willfulness. Similar to the section above, there must be an intentionally statement. If it is not intentional, e.g. if you are a young child and not sure what you are doing, saying or presenting, you may have an argument that this was not willful.

also claim that you “live in the US” or that you “have a green card” that is NOT a claim that you are a “US citizen.”

● 3. After September 30, 1996. The law changed (IIRAIRA was passed) in 1996, and any false claim made before then will not be a “false claim of US citizenship” that would make you inadmissible. (Note that pre-1996 misrepresentations of citizenship will still make a person inadmissible if they were willful misrepresentations of a material fact – see above – but only if they were “material” for an immigration benefit.) If you have each of these elements, you will be inadmissible. If you do not, you are not. In our example above, Marta has no False Claim of US Citizenship because she presented a false green card, not a false US Passport or US birth certificate. Therefore, she is not inadmissible under this provision.
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CHAPTER 4: MARRIAGE FRAUD


Anyone who marries (or “conspires” to marry) “for the purpose of evading immigration laws” will become inadmissible, deportable, ineligible for future immigrant visas, and even subject to criminal penalties. See INA section 204(c).

The government is becoming increasingly strict on alleging and accusing people of marriage fraud, and if you have been charged with marriage fraud, you’ll want to take this very seriously. However, you should not just accept or concede the allegations against you! It is okay to marry if one of the purposes is to gain a green card. That is perfectly normal! However, it becomes marriage fraud if your only purpose for the marriage is the green card. They refer to this as a “sham marriage.”

As such, when a client comes to our office and is facing allegations of marriage fraud, we first need to ask all kinds of details about the person’s relationship. How they met, when and why they decided to get married, and what

happened in the relationship after the marriage. In life, lots of different marital relationships exist, and the law does not require that every marriage be for the purpose of starting a family and owning a stereotypical family home and living together forever until retirement. There are lots of other common marital arrangements, for example, people may marry to make it easier to care for each other as they age, to make it easier to pay taxes together, to do other financial or legal activities together or for other personal reasons. Just because your relationship may not have been based on “love at first sight” does not mean that you have committed marriage fraud!

There are several red flags that USCIS is looking out for. Common red flags for the officer may include: if the couple has a significant age gap, doesn’t speak the same language, are of different religions, does not live together (or has never lived together), has had multiple divorces, has filed numerous prior petitions, dated for a short period of time, or married while one party is in removal proceedings.



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When USCIS sees this, they may ask for a second interview sometimes called a “Stokes” interview, where they separate the spouses and ask each of them many private questions to make sure the answers match. In some cases, USCIS officers may also visit a couple’s home to confirm that they live together. In the example above, Marta seems to have committed marriage fraud because she divorced her husband and remarried a US citizen solely so that she could gain immigration status.

CHAPTER 5. IF I HAVE RECEIVED THESE ALLEGATIONS, WHAT CAN I DO ABOUT IT?

Now we will discuss what to do about it. Sometimes, the best strategy is to fight against the allegations, and argue that NO, you did NOT commit the fraud they are alleging. Other times, it might be more strategic to concede the fraud and to seek a waiver. Still other times, it might be wise to apply for a different form of immigration relief which can overcome the fraud allegation.



OPTION 1: FIGHTING AGAINST THE ALLEGATIONS!

Do not concede (or accept) the allegations! Speak with your lawyer first, and if you have an argument to deny them, deny them and fight about it. Explain why you didn’t commit a “willful misrepresentation of a material fact,” a “false claim to citizenship” or “marriage fraud.” For example you can say that whatever misrepresentation was not “intentional” or that the marriage wasn’t entered into “solely” for immigration purposes, but for some other reason too. If you can show that, you can successfully contest and fight against the allegations.

OPTION 2: FILE A WAIVER

Another possible option is to file a waiver. A 212(i) waiver can waive a willful misrepresentation of a material fact, if you have a USC spouse or parent who would suffer “extreme hardship” if waiver denied.

A 237(a)(1)(H) waiver, can waive fraud deportability ground if your initial admission was obtained by fraud, you have spouse, parent or child in the US, and you were not deportable for any other reason.

Neither of these can waive a false claim to US citizenship, nor marriage fraud.

OPTION 3: FILE A CASE THAT CAN OVERCOME THE FRAUD!

There are some cases that have the power to overcome a finding of immigration fraud. For example, Cancellation of Removal, Asylum, U-visas and VAWA can each be won even despite immigration fraud. These cases do involve risks and costs, and regardless of the case, your fraud will come up and will count against you. So it will not be automatic, and it will not be easy, but it can be possible!

CHAPTER 4: CONCLUSION

If you are facing allegations of fraud, please don't panic and give up, but do treat them seriously. Know that there is still hope, and it is still in some situations possible to win a case even with allegations of fraud. But know that immigration is very strict on this issue and becoming increasingly stricter. Please seek out professional help by an immigration attorney who has won these cases, and please share all the details with your lawyer so they can help you to the fullest extent possible.

Thank you for reading, and I wish you the very best with your case!

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OAKLAND, CA.

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**Catherine Brady
Attorney**

**Janaina Paris
Attorney**

My name is Otis Landerholm, and I am the founding attorney of Landerholm Immigration, APC. I am honored to be an immigration lawyer! I love immigrants, and I love empowering immigrants to live their best life possible. I lived in five different countries¹ before becoming a lawyer, and I know that it is NOT easy to be in a place other than your home country! As an immigrant, you often face an unfair legal system, discrimination at work, challenges obtaining medical assistance, and challenges accessing financial, banking, educational and other systems in the United States.

However, I want you to know that I believe that you, as an immigrant, are an incredible contribution to our society. I believe that our society is made better and stronger precisely because of immigrants. I love that the U.S. has a history of welcoming immigrants to our shores from the moment our country was founded. I believe our current political leaders have sadly forgotten that important history, but I have not.

Thank you for who you are! I am grateful that you have chosen to immigrate to the United States. And stay healthy! We will get through this crazy time in history, and we'll be stronger on the other side!

Sincerely,

A handwritten signature in black ink that reads "Otis Landerholm". The signature is written in a cursive, flowing style.A portrait of Otis Landerholm, a man with short brown hair, glasses, and a goatee. He is wearing a dark pinstriped suit jacket, a light blue dress shirt, and a yellow patterned tie. He is smiling slightly and has his arms crossed.

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