

Five Things You Should Know – Cannabis and Travel to the US

R. Oliver Branch JD and Jeff Hergott (Partner, Wildeboer Dellelce)
August 9, 2018

It's no secret that perceptions and laws regarding cannabis have changed significantly in recent years, with medicinal and adult use becoming legal in some form or another in Canada and many states in the US.

While travel to the US a couple of decades ago was easily accomplished with a Canadian driver's license, the level of scrutiny and culture at the border have changed significantly. It is imperative, now more than ever, that travelers to the US obtain qualified legal advice to ensure that all risks specific to the traveler are addressed proactively.

Below are five things you should know regarding cannabis and travel to the US:

Canada and the United States Treat Cannabis Differently

Although medicinal and/or adult use of cannabis has been legalized in many jurisdictions for a number of years, a marked growing disparity exists in the treatment of cannabis users and cannabis-related business owners and investors by authorities in Canada and the US.

While medicinal cannabis has been legalized in Canada since July 2001, adult use of cannabis will not become legal in Canada until October 17, 2018. Furthermore, although Canadian agencies currently have the authority to pursue criminal charges against recreational cannabis users, neither federal or provincial agencies have prioritized such criminal charges.

In the US, a sharp distinction exists between the treatment by the federal government and various state governments of cannabis use. Under US Federal law, cannabis use and/or possession is illegal for any purpose and is considered a Schedule 1 substance under the *US Controlled Substances Act of 1970*, along with heroin and ecstasy. Interestingly, cocaine, opium, and methamphetamines are considered Schedule 2 substances.

State laws in the US vary greatly regarding medicinal and recreational cannabis use and possession, with 31 states permitting medicinal use and 22 states that have either legalized recreational cannabis use or have decriminalized recreational use. Commercial distribution of cannabis is permitted by the state governments in all states where cannabis has been legalized.

With cannabis legalization on the rise, those seeking admission to the US must be aware that the issue is far from settled between Canada and the US and is a hot topic for US Customs and Border Protection (CBP) at the border.

CBP has Access to US and Canadian Criminal Records

Prior charges for cannabis or other drug or alcohol violations can make someone inadmissible to the US,

even if the charges did not result in a conviction. While, generally, a single DUI will not make one inadmissible to the US, multiple DUI's or a DUI paired with other misdemeanors can result in inadmissibility. Furthermore, if CBP has reason to believe that someone with a single DUI continues to consume cannabis, it is within CBP's discretion to deny an individual admission to the US without first obtaining a waiver of inadmissibility.

After the 9/11 attacks in the US, many in the government, media, and other stakeholders criticized the lack of communication and information sharing between security agencies in North America. Since 2001, there's been more information sharing between agencies, with CBP now having access to both US and Canadian criminal and tax records.

As a result, we've seen an increase in clients calling us with stories like the following: *"I have never had an issue entering the US, but I was just denied entry based on a DUI from 20 years ago."*

While you cannot prevent CBP from finding you inadmissible for a prior DUI, you can prevent CBP from finding you permanently inadmissible for committing fraud and misrepresentation by denying that you have a prior DUI or another criminal charge for which CBP is already aware due to the information sharing discussed above.

CBP has the Ability to Search Mobile Devices and Personal Belongings

When preparing clients for travel to the US, it should be understood that CBP has the authority to search an individual's personal belongings, including all mobile devices. Indeed, CBP often requests the passwords for traveler's mobile devices and reviews the content of the mobile device.

CBP has very broad discretion in interpreting data derived from mobile devices and travelers should be conscious of photos or other data on their mobile devices that could be interpreted by CBP as evidence that an individual has previously or intends to commit a criminal act, including cannabis use, production or distribution.

Investors and Executives in the Cannabis Industry Facing Greater Scrutiny

Over the past few months, certain individuals who have invested in the cannabis industry or who are executives in the cannabis industry have faced difficulties at the border. Indeed, an increasing number of cannabis investors and executives have faced denial of admission to the US and even a permanent bar from admission to the US because of active and passive investments.

CBP recently confirmed the policy that involvement in the cannabis industry, including investment and serving in executive roles with cannabis companies, may be deemed as participation in international criminal organizations. This risk is even greater for Canadian individuals who have invested in US cannabis-related businesses, even if the US cannabis-related business operates only in states where cannabis has been legalized.

Social media profiles, including LinkedIn profiles, for applicants for admission to the US are often examined by CBP and can lead to a finding of inadmissibility if the social media profile leads the CBP officer to believe the traveler has been involved or intends to be involved in cannabis use or in the cannabis industry at large.

Cannabis Users Beware

What if an individual does not have a DUI or any prior criminal issue pertaining to cannabis, but is currently or previously has consumed cannabis? Recently, as was reported by certain media outlets, a Canadian traveler was denied admission to the US after answering affirmatively the following question by CBP: *"Have you ever smoked weed?"* After a six-hour interrogation, the traveler's admission to smoking weed resulted in a ban from the US.

This new line of questioning by CBP is the result of direct guidance from the White House and is in response to Canada's legalization of cannabis. Authorities from the US and Canada are currently working together to reach some sort of resolution that would keep many Canadians from becoming inadmissible to the US for activities that are or will be legal in Canada. However, for the time being, all travelers should be aware of the current questioning by CBP and the consequences of answering in the affirmative.