Adjudicating an I-601

August 2013

Adjudicating I-601

- Do I have all related A-files and T-files?
- Review the application
  - What inadmissibility is listed in CCD (Notes & Refusals)?
  - What inadmissibility do they claim (I-601)?
  - What inadmissibility does the A-file show (if any)?
  - Are they the same? Different?
- Review documentation submitted
- Review systems/screen-prints
- Are there any TRIG issues?

Inadmissibility listed are the same

- Does the inadmissibility have an exception (where a waiver is not needed)?
  - YES- do they meet the exception criteria?
    - NO- go to next question
  - NO – go to next question
- Does the inadmissibility have a waiver available?
  - YES- do they meet the waiver criteria?
  - NO- deny if the inadmissibility does not have a waiver available.

Wavier is available

- What is the waiver criteria for the inadmissibility? (REHAB/EH/HUMANITARIAN)
- Do they need a QFM?
- Look at each inadmissibility to determine if they meet the requirements to approve the waiver.
- If they have more than one inadmissibility then they will have to meet the requirements for each inadmissibility.
- Discretion

Inadmissibility listed are not the same

- Need to resolve with DOS to make sure all issues are addressed by completing a Memo to DOS
  - Add inadmissibility
  - Remove inadmissibility
  - Clarify CCD Notes if they conflict or need interpretation

Need more information?

- Need to determine correct inadmissibility -Contact DOS
- Pending I-290B at AAO – need to resolve that case and get A-file to complete your case- contact AAO
- Pending I-601 in CAMINO – need to get that case and work together.
- Have all the A-files – request them if not with your file
- Need more information from applicant-RFE/NOID

Making a Decision - RFE

- Request for Evidence – update I-601 in CLAIMS/GUI with:
  - "Order Initial and Additional Evidence request not."
- Request for Evidence if sending RFE for I-212 (not I-601) – update I-212 in CLAIMS/GUI with:
  - "Order Initial and Additional Evidence request not."
- Prepare request for evidence letter in ECHO
- Route file to RFE hold (RF0000)

Make a Decision-APPROVAL I-601

- Approval – update I-601 in CLAIMS/GUI with:
  - Consulate receipt number
  - Consulate
  - Benefit Category
  - Inadmissibility waived (include all inadmissibilities)

Make a Decision-APPROVAL I-212

- Approval – update I-212 in CLAIMS/GUI (if there is one)
  - Notify Supervisor/ISO 3 of I-212 Decision with:
    - I-212 receipt number
    - I-601 receipt number
    - Consulate receipt number
    - Applicant Name
    - Date of I-212 decision
    - I-212 decision

Make a Decision- DENIAL

- Prepare denial letter in ECHO
- Route file to supervisor for review
- Letter approved and returned to you from supervisor
- Denial - update I-601 in CLAIMS GUI with:
  - Consulate receipt number
  - Consulate
  - Benefit Category
  - Inadmissibility
  - Denial notice ordered (after letter approved by supervisor in ECHO & returned to you)
- Complete ECHO letter process
- Route file to Denial hold (DN0000)

Make a Decision-ADMIN CLOSE

- Admin Close – update I-601 in CLAIMS/GUI with:
  - Consulate receipt number
  - Consulate
  - Benefit Category
  - Administrative Close
- Prepare Admin Close letter in ECHO
- Route file to Clerical (XE0601) and they will route to Approval hold (HN0000) after they send out letter

Make a Decision-WITHDRAWAL

- Withdrawal – update I-601 in CLAIMS/GUI with:
  - Consulate receipt number
  - Consulate
  - Benefit Category
  - Inadmissibility
  - Denial notice ordered
- Prepare withdrawal letter in ECHO
- Route file to Denial Hold (DN0000)

Why is it IMPORTANT?

- To make sure you update CLAIMS/GUI with:
  - Consulate receipt number
  - Consulate
  - Benefit Category
  - Inadmissibility waived
- To notify Supervisor/ISO3 of I-212 decision
- To notify Supervisor/ISO3 of any changes made to previously approved/denied cases

It is IMPORTANT because:

- That information needs to be recorded in CLAIMS/GUI in order for the report program to accurately pull the information to notify the DOS of our decisions.

- If it is not recorded properly then the DOS will not know that the case was approved/denied and will not be able to complete the Visa process for the applicant.

- CLAIMS/GUI keeps the original decision date if you make corrections. When corrections are made, we will need to know the original decision date so that we can go back to that date and re-run the report or add the information to the report manually.

The panel physician completes a medical and they are the ones that determine if someone has a medical inadmissibility. If it is rated as CLASS A that makes them inadmissible. If it is rated as CLASS B then they are not inadmissible for it.

There are 4 medical inadmissibility charges.

- Communicable Diseases- 212(a)(1)(A)(i)- WAIVER Available – Talk to CDC
- Vaccines – 212 (a)(1)(A)(ii)- WAIVER Available – We make the decision without CDC
- Physical or Mental Disorder – 212(a)(1)(A)(iii)-WAIVER Available – talk to CDC
- Drug Abuser- 212(a)(1)(A)(iv)- **NO WAIVER AVAILABLE**

Who can file:

To be eligible to apply for a waiver under section 212(g)(1) of the INA, the applicant must be:

The spouse, parent, child[1] or unmarried son or daughter of:

- A U.S. citizen,
- An alien lawfully admitted for permanent residence, or
- An alien who has been issued an immigrant visa,
- The K-1 principal beneficiary or K-2 derivative beneficiary of a Form I-129F
- Eligible for classification as a VAWA self-petitioner. [2]

Communicable Diseases-

If they have a communicable disease of public health significance then they are found to be CLASS A and will need a waiver approved to continue the visa process.

We need to do the following:

- Memo to DOS to scan in all medical documents (if they are not already scanned in)
- Letter to CDC asking them to review:
  - I-601 Application
  - Medical Information
- Depending on the response from CDC we can either:
  - Approve- if they recommend approval (unless there are other issues that would render a denial)
  - RFE- for more information that CDC wants
  - Memo DOS for new medical or more information
  - Deny-if they recommend denial

Vaccines-

The panel physician determines that the applicant didn't get all the required vaccines and therefore is inadmissible. There are some blanket waivers available for vaccines that the consular officer can approve if they are medically inappropriate or unavailable. No I-601 is needed for them to issue this blanket waiver (they just notate in IVO Refusal section and case notes).

We need to do the following:

- Memo to DOS to scan in all medical documents (if they are not already scanned in)
- Determine if they are:
  - Opposed to *all* vaccinations in any form,
  - The objection is based on religious beliefs or moral convictions, and
  - The belief or conviction is sincere.
- RFE for the above if not in the file
- Approve if they meet all 3 (unless there are other issues that would render a denial)
- Deny if they don't meet all 3
  - If they don't meet all 3 they can get the vaccine and then the charge no longer applies and can be removed and visa process can continue

Physical or Mental Disorder-

If they have a physical or mental disorder that may cause injury to them or others then they are found to be CLASS A and will need a waiver approved to continue the visa process.

We need to do the following:

- Memo to DOS to scan in all medical documents (if they are not already scanned in)
- Letter to CDC asking them to review:
  - I-601 Application
  - Medical Information
- Depending on the response from CDC we can either:
  - Approve- if they recommend approval (unless there are other issues that would render a denial)
  - RFE- for more information that CDC wants (Form CDC 4.22-1)
  - Memo DOS for new medical or more information

Drug Abuser-

If the panel physician finds them to be a CLASS A drug abuser there is no waiver available for them. They will have to wait one year and then they have the option to get a new medical (they need to initiate it and pay for it) to see if now they could be classified as CLASS B. That is the only way this charge can be removed. If it can't be removed then you deny the I-601.

- We need to do the following:
  - Deny-if it hasn't been a year or if it has been a year but they didn't get a new medical
  - If you can have the charge removed then work I-601 for other charges

MEDICALS

- Valid for 12 months (unless they have Tuberculosis then valid for 4 months)
- Completed by Panel Physician (Overseas) or Civil Surgeon (Domestic)
- Form DS 2053 or 2054 for Overseas and Form I-693 for Domestic cases
- A new medical can be done (after the specified wait period) and they can be found CLASS B and then they are no longer inadmissible and the charge should be removed

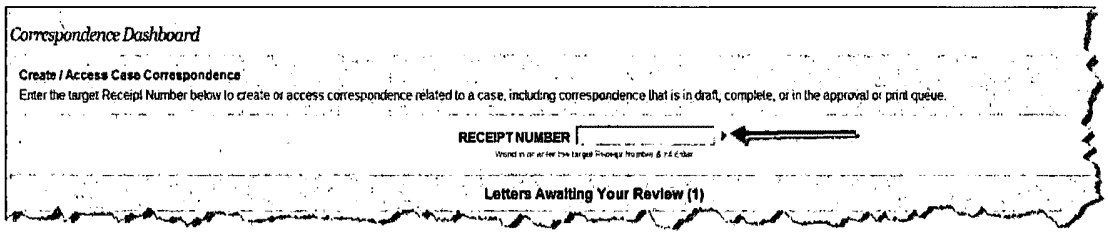
CENTER FOR DISEASE CONTROL (CDC)

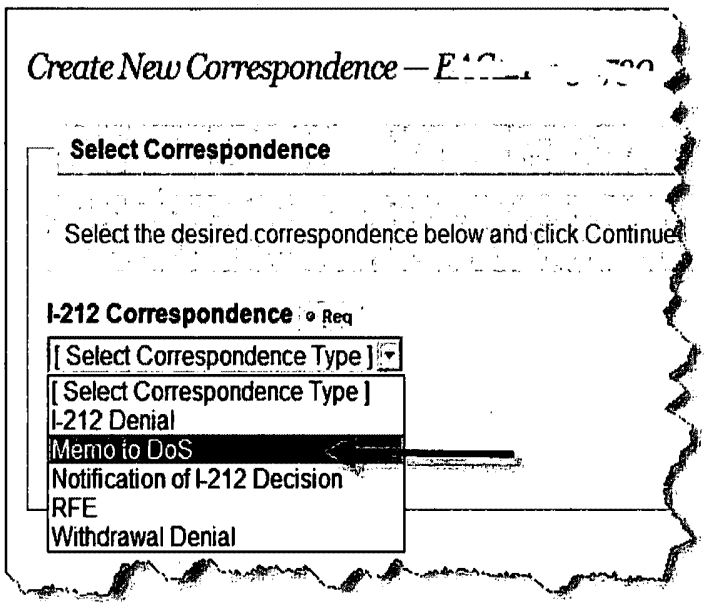
- They provide the guidance to panel physician/civil surgeon to make the CLASS A or CLASS B determinations
- They review the I-601/medicals to determine the following
  - The danger to the public health of the United States created by his or her admission is minimal,
  - The possibility of the spread of the infection created by his or her admission to the United States is minimal , and
  - The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of the cost of the alien's care.
- They may require that Form 4.422-1 be completed to determine the above.
  - RFE applicant to get this completed and then we will need to send to CDC

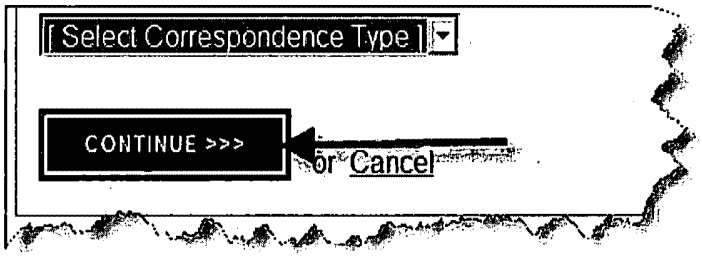
- They will look at expired medicals and they will tell us if we need to get a current medical for them to review.
  - Memo to DOS to get new medical if CDC requests a new medical before they will give us an opinion.
- Their approval letter will usually indicate that a new medical will be needed before visa issuance.
  - This will be handled by DOS before they issue a visa.

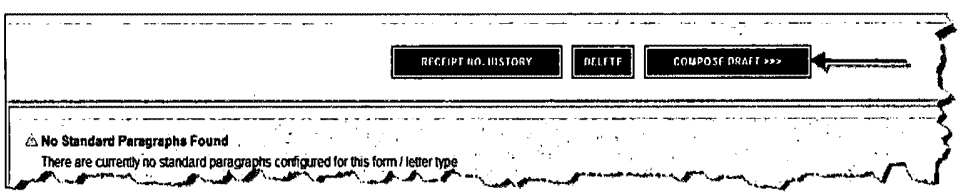
Click on the ECHO ICON:

Enter receipt number and then select Memo to DoS and click the Continue Button. Select the Compose Draft Button.

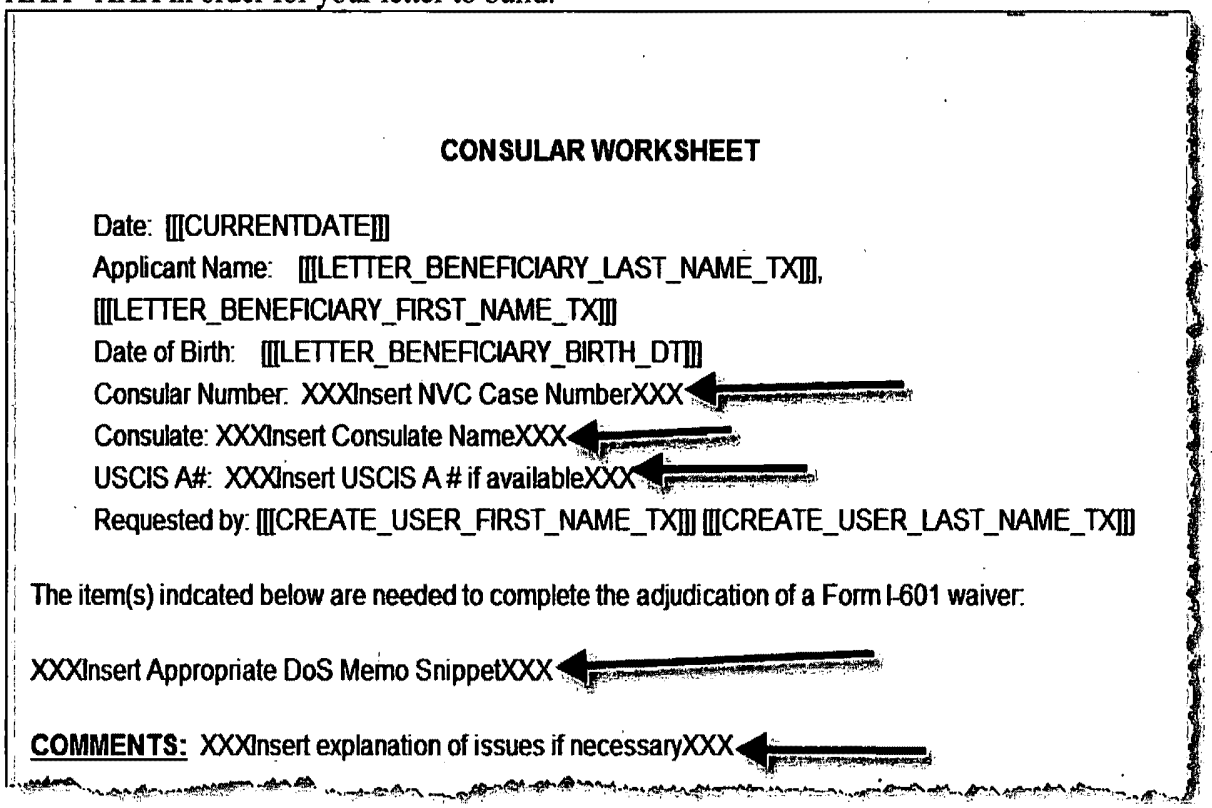




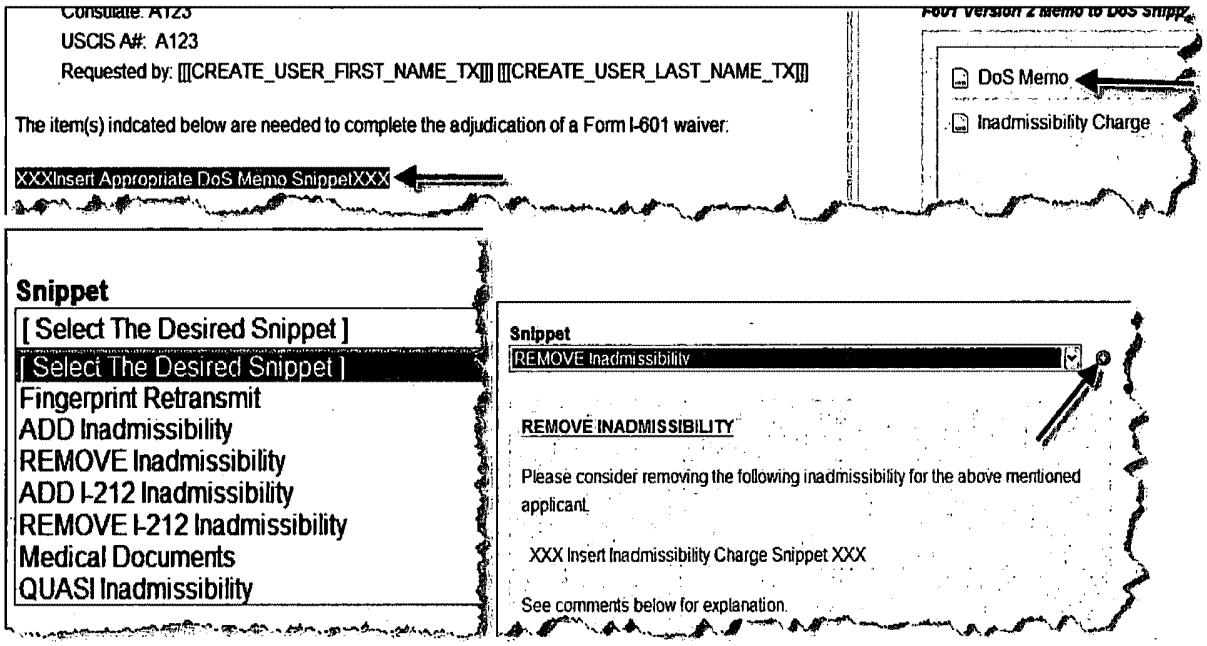




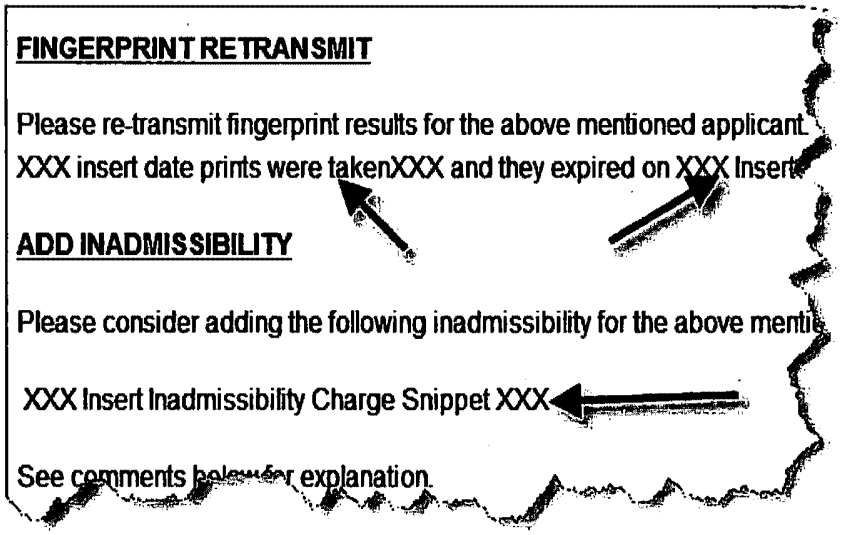
Most information will populate in but you will need to enter the Consulate number, consulate and USCIS A# if there is one. You will also need fill in or delete the information within the XXX XXX in order for your letter to build.



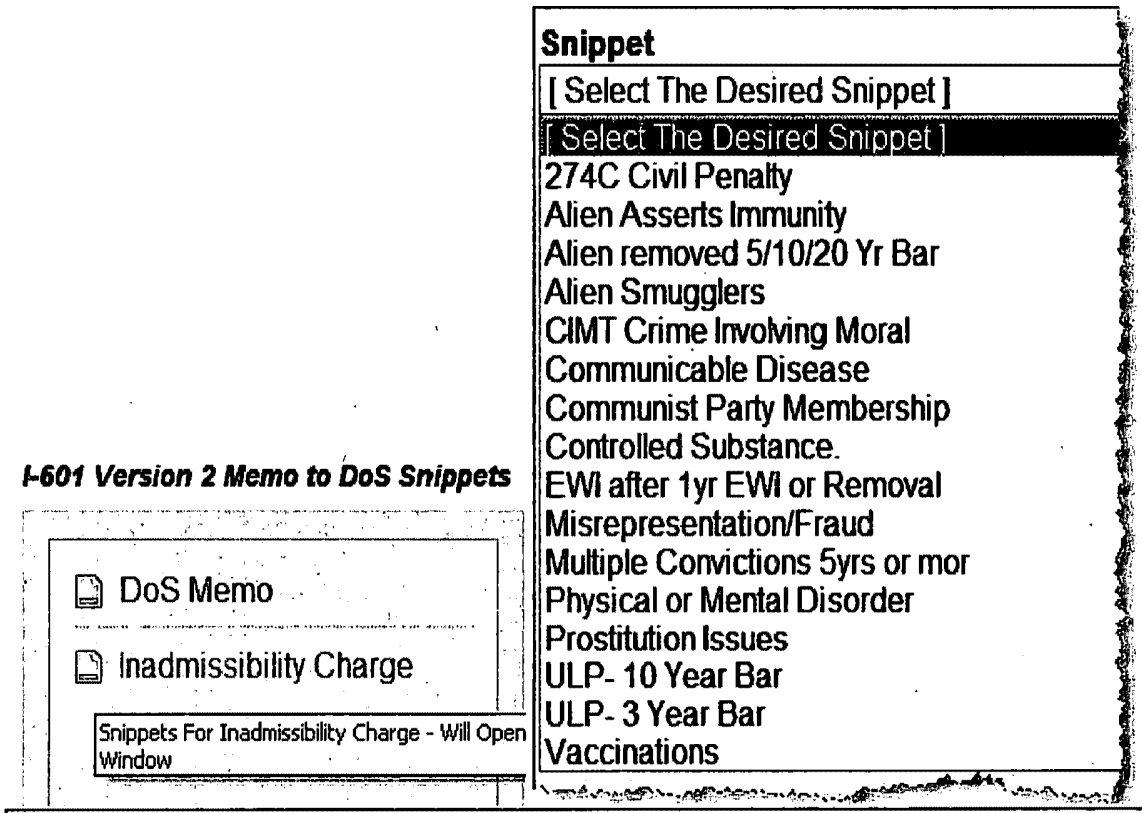
Select to appropriate Snippets for your memo. Highlight then select DoS Memo to the right and then select correct snippet and click on the green button. This will place your snippet into your memo.

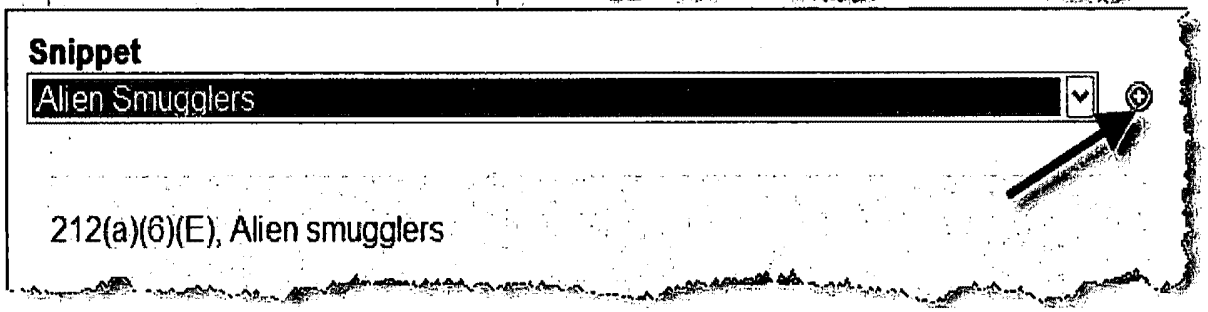


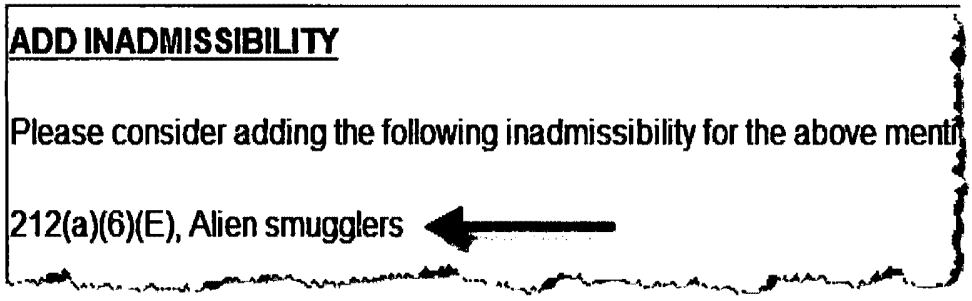
Within the Snippets you will find XXX XXX that require you to insert something or add another snippet.



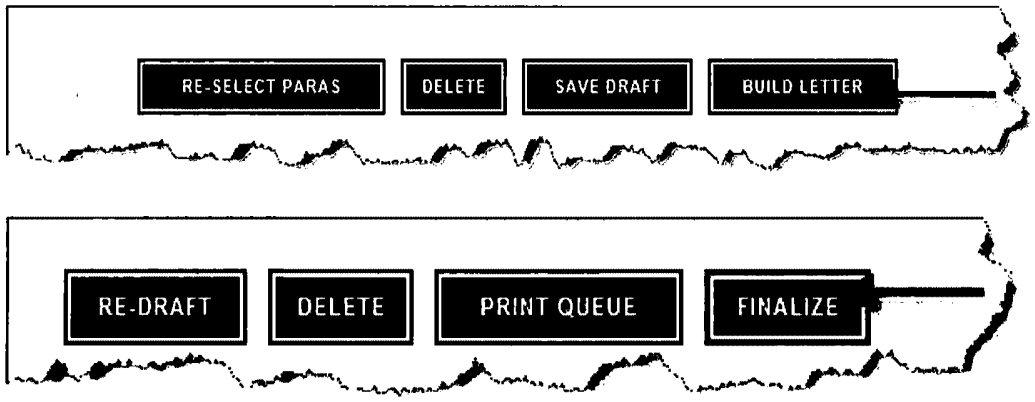
Highlight the XXX Insert Inadmissibility Charge Snippet and select the Snippet category to the right. Select the inadmissibility that you want added/deleted and it will populate into your memo.



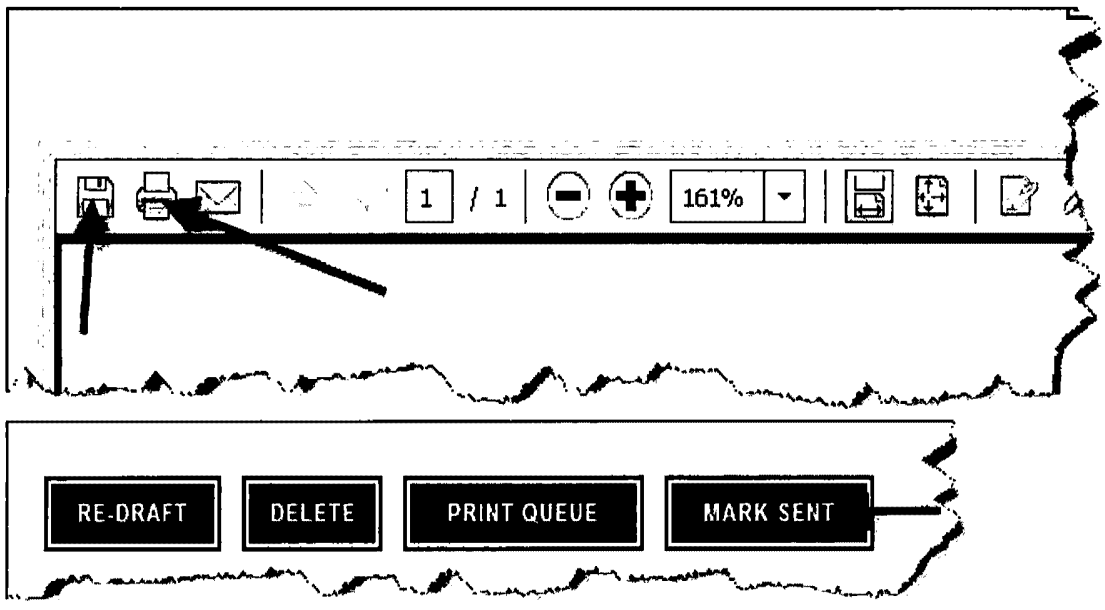




Click on Build Letter Button. Click on the Finalize Button.

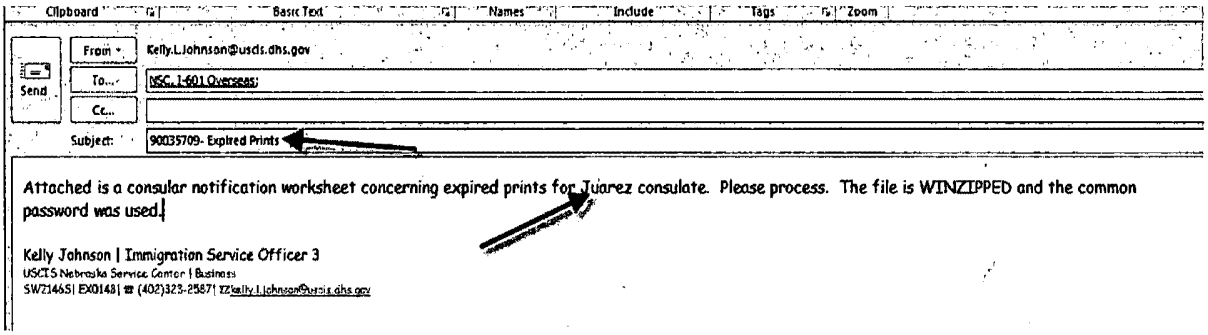


Click on Print ICON button to print a file copy. Click on the Save ICON to save the file to your L drive so that you can WINZIP the file. When saving the file use the following format:last 8 numbers of receipt number. DO NOT USE FULL RECEIPT NUMBER. Click on the Mark Sent Button to update ECHO to show it was sent.



See Encrypting (WINZIP) Files Instructions **on the ECN.**

Send the WINZIPPED file to the shared mailbox: NSC, I-601 Overseas



DO NOT PUT PII information in the subject line as that is not encrypted.

IN THE SUBJECT LINE: You need to put the last 8 numbers of the LIN# and the reason for the request. If you do not, they will be returned to you and deleted from the mailbox so that you can resend.

Indicate in the body of the email which consulate it should be going to and that the common password was used.

Make sure you have your signature block in the email.

WHERE DOES THE FILE GO AFTER MEMO COMPLETE?

- Staple the file copy to the outside of the file and place rubberband around the file.
- NFTS using the AUDIT transaction to XE0002
- Walk file to the DoS memo shelves (located outside Julie Harre's office)
- Place file in correct drop off box according to the reason for the memo. If your memo is asking for more than one thing place in the appropriate box per the following order
    - Revokes
    - Add/Delete I-212
    - Add/Delete Inadmissibility
    - Fingerprints

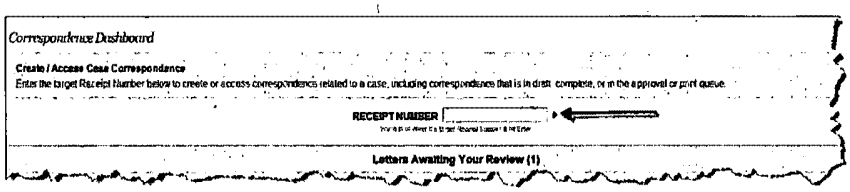
THINGS TO REMEMBER WHEN WRITING MEMO TO DEPARTMENT OF STATE

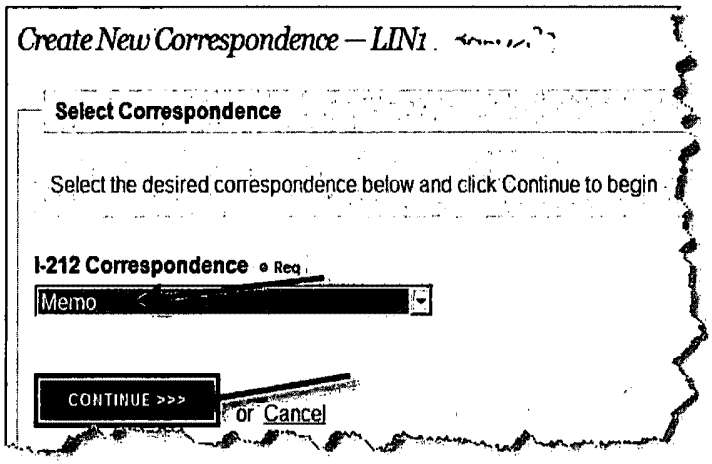
- Be professionial in what you write
- Ask them to **CONSIDER** adding/deleting. **Do not TELL** them what to do.
- If you are asking them to add or delete an inadmissibility based on information you have from the A-file (or other source) you should indicate that in your memo and scan the information to send with your memo. They do not have the A-file when they are doing their interview.

Instructions to Create Relocate Memo in ECHO

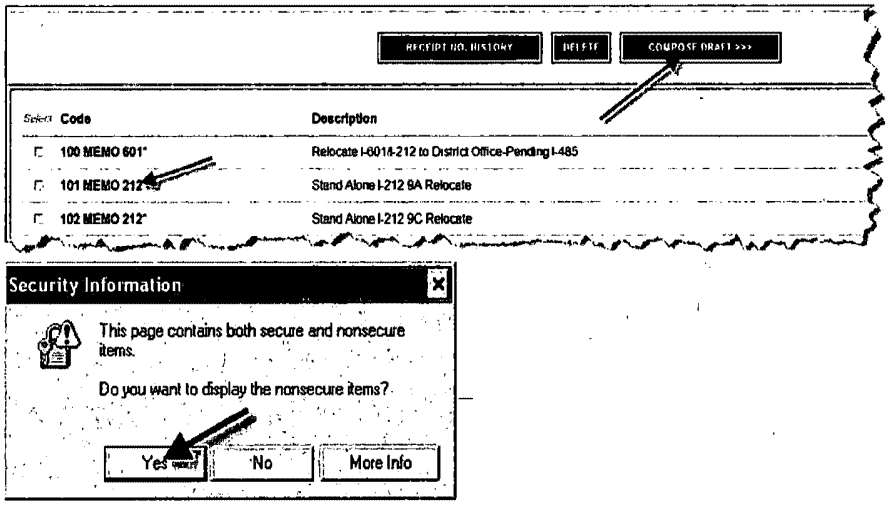
Click on the ECHO ICON:

Enter receipt number and then select Memo and click the Continue Button. Select the Compose Draft Button.

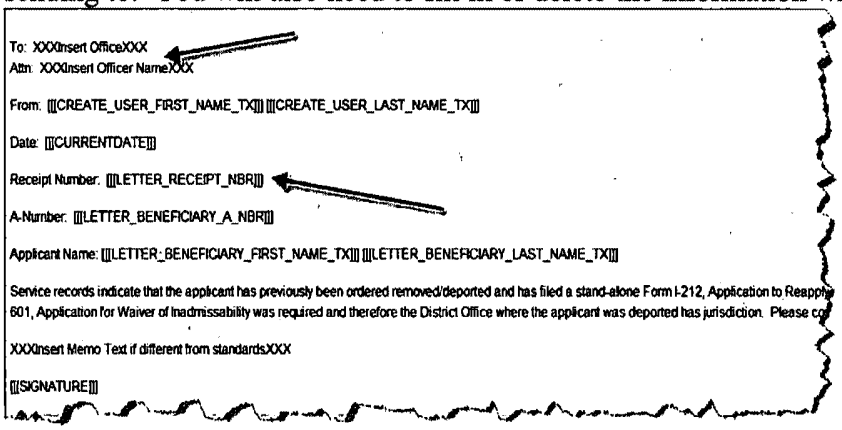




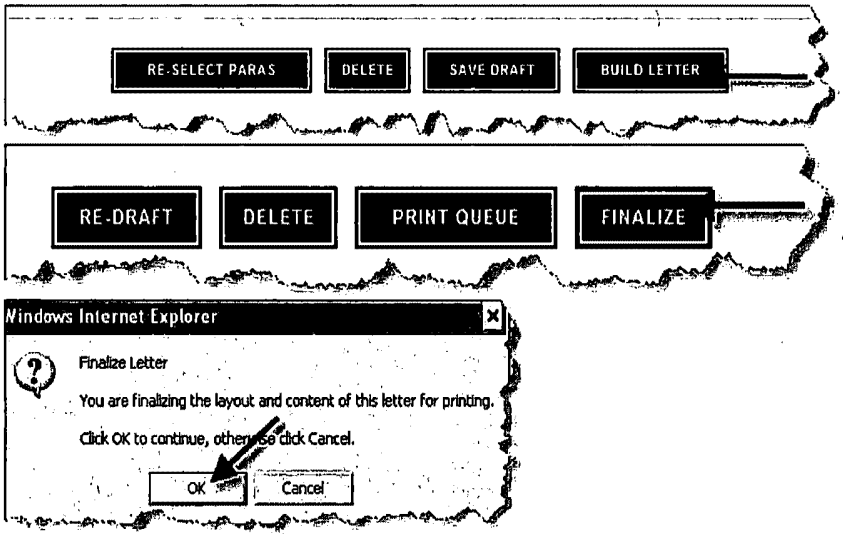
Select the appropriate standard paragraph and then click on the Compose Draft Button and then click on the Yes Button.



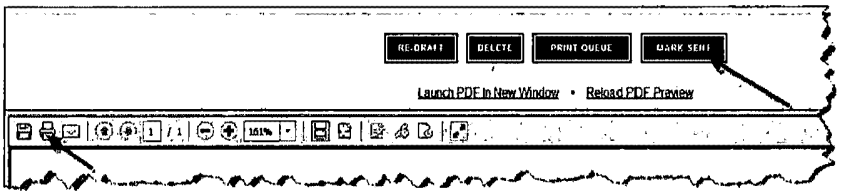
Most information will populate in but you will need to enter the Office and section you are sending to. You will also need to fill in or delete the information within the XXX XXX.



Click on Build Letter Button. Click on the Finalize Button.



Click on Print ICON but to print a file copy. Click on the Mark Sent Button to update ECHO to show it was sent.



NFTS

- NFTS file to LR0025 and send to RELOCATES

G-22

- Take Service Center Complete tickie in G-22

RFE TABLE

100 RFE 601	Unlawful Presence-INA 212 (a)(9)(B)(v) Waiver Requirements	Waiver requirements for Unlawful Presence-Have QFM, Extreme Hardship to QFM and discretion
101 RFE 601	Criminal & Related Grounds-INA 212(h) Waiver Requirements	Waiver requirements for Criminal Issues-rehabilitated or have QFM, Extreme Hardship to QFM and discretion
102 RFE 601	Fraud/Misrepresentation – INA 212(i) Waiver Requirements	Waiver requirements for Fraud/Misrepresentation Issues – Have QFM, Extreme Hardship to QFM or VAWA petitioner and discretion
103 RFE 601	Communicable Disease – INA 212(g)(1) Waiver Requirements	Waiver requirements for Communicable Disease
104 RFE 601	Missing Vaccinations – INA 212(g)(2)(C) Waiver Requirements	Waiver requirements for Missing Vaccinations
105 RFE 601	Physical or Mental Disorder – INA 212(g)(3) Waiver Requirements	Wavier requirements for Physical or Mental disorder
106 RFE 601	Membership in a Totalitarian Party – INA 212(a)(3)(D)(iv) Waiver Requirements	Waiver requirements for Membership in a Totalitarian Party
107 RFE 601	Smuggling – INA 212(d)(11) Waiver Requirements	Waiver requirements for alien smuggling
108 RFE 601	Subject of Civil Penalty – INA 212(d)(12) Waiver Requirements	Waiver requirements for being subject to a final order for violation of sections 274C (document fraud)
109 RFE 601	Applicant Previously Removed - INA 212(a)(9)(A)(iii) Waiver Requirements	Need form I-212 to Reapply for Admission to the US after deportation or removal.
110 RFE 601	No Evidence of Visa Refusal or Pending I-485/I-821	Need evidence of Visa refusal or pending I-485/I-821
111 RFE 601	Missing Signature I-601	Missing Signature on Application I-601
113 RFE 601	Missing Signature I-212	Missing Signature on Application I-212
114 RFE 601	App EWI 1 yr & attempt EWI, INA212(a)(9)(C) Need I-212 (out 10 years)	Need Form I-212 to Reapply for Admission to US after EWI 1 yr and attempt EWI or EWI
200 RFE 601	Qualifying Relationship	Submit evidence of relationship to qualifying spouse or parent

201 RFE 601	Status of Qualifying Relative	Submit evidence of status of the qualifying spouse or parent
202 RFE 601	Extreme Hardship	Submit evidence of extreme hardship to QFM
203 RFE 601	K-Visa Beneficiary	Submit evidence of an approved I-129F
204 RFE 601	Discretion	Submit evidence of favorable factors
300 RFE 601	Criminal History Records	Submit evidence of criminal history
301 RFE 601	Rehabilitation	Submit evidence of rehabilitation
302 RFE 601	Qualifying Relationship-Criminal	Submit evidence of relationship to qualifying spouse, parent, son or daughter
303 RFE 601	Status of Qualifying Relative-criminal	Submit evidence of status of the qualifying spouse, parent, son or daughter
400 RFE 601	Qualifying Relationship-Medical	Submit evidence of relationship to qualifying spouse, parent, unmarried son or daughter or minor unmarried lawfully adopted child
401 RFE 601	Status of Qualifying Relative- Medical	Submit evidence of status of the qualifying spouse, parent, unmarried son or daughter or minor unmarried lawfully adopted child
402 RFE 601	Immigrant Visa for Relative	Submit evidence that your qualifying relative has been issued an immigrant visa.
403 RFE 601	Tuberculosis	Submit Page 6 of Form I-601 after it has been completed according to Form Instructions
404 RFE 601	CDC Consultation-TB	Submit information requested in CDC's letter.
405 RFE 601	Missing Vaccines	Submit statement concerning your objection to getting vaccines.
406 RFE 601	Physical/Mental Disorder - Medical History Report	Submit a complete medical history and report.
407 RFE 601	CDC Consultation-Mental/Physical Disorder	Submit information requested in CDC's letter.
500 RFE 601	Qualifying Relationship - Membership in Totalitarian Party	Submit evidence of qualifying relationship to spouse, parent, son, daughter, brother or sister who is a USC or spouse, son or daughter who is a LPR.
501 RFE 601	Humanitarian, Family Unity, or Public Interest	Submit evidence to grant waiver for Humanitarian, Family Unity or in the Public Interest
600 RFE 601	Relationship at time of Action-Smuggling	Submit evidence of relationship at the time of action for alien smuggling
604 RFE 601	Diversity Program	Diversity Program
700 RFE 601	Relationship at time of Action- Subject to Civil Penalty	Submit evidence of relationship at the time of action for document fraud
800 RFE 601	Immigrant Visa Applicant Not Interviewed	Immigrant Visa Applicant Not Interviewed
801 RFE 601	Immigrant Visa Application	Immigrant Visa Application Closed/Terminated

	Closed/Terminated	
802 RFE 601	Signature of Applicant on G-28	Signature of Applicant on G-28
803 RFE 601	Police Clearance Letters	Police Clearance Letters

The officer will need to pick the appropriate text blocks but then modify them to be specific to the case that they are writing the RFE for. You will need to delete some information and you will need to add your own text to tailor the RFE to the individual case.

Full Text

100 RFE 601 – Waiver Requirements for Unlawful Presence – INA 212(a)(9)(B)(v)

You have been found inadmissible to the United States under section 212(a)(9)(B) of the Immigration and Nationality Act (INA) because you had previously been unlawfully present in the United States in excess of either 180 days, or for one year or more.

To be eligible for a waiver under section 212(a)(9)(B)(v) of the INA, you must show that:

- You have a U.S. citizen or lawful permanent resident spouse or parent, or a U.S. citizen fiancé(e) who petitioned for your K visa, who would experience extreme hardship if you were denied admission, and
- Your application should be granted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case.

101 RFE 601 – Waiver Requirements for Criminal & Related Grounds – INA 212(h)

You have been found inadmissible to the United States under section 212(a)(2) of the Immigration and Nationality Act (INA) because of your involvement in: [ISO inserts applicable basis for inadmissibility finding]

- A crime involving moral turpitude (other than purely political offense).
- A controlled substance violation according to the laws and regulations of any country related to a single offense of simple possession of 30 grams or less of marijuana.
- Two or more convictions, other than purely political ones, for which you received sentences of confinement amounting to 5 years or more.
- Prostitution, including having procured others for prostitution or having received the proceeds of prostitution.
- Unlawful commercialized vice whether or not related to prostitution.
- Serious criminal activity but you asserted immunity from prosecution.

This office may approve a waiver of the inadmissibility ground(s) under section 212(h) of the INA, if you can show that either:

- You are only inadmissible for participation in prostitution; and
  - You have been rehabilitated; and
  - Your admission to the United States will not be contrary to the national welfare, safety, or security of the United States; and
  - Your application should be granted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case.
- The criminal activities for which you are inadmissible occurred more than 15 years ago; and
  - You have been rehabilitated; and
  - Your admission to the United States will not be contrary to the national welfare, safety, or security of the United States; and
  - Your application should be granted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case.
- You have a qualifying relative who is a U.S. citizen or lawful permanent resident of the United States; and
  - Your qualifying relative would suffer extreme hardship on account of your ineligibility to immigrate; and
  - Your application should be granted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case.
- You are the fiancé(e) of a K visa petitioner; and
  - The K visa petitioner would suffer extreme hardship on account of your ineligibility to immigrate; and
  - Your application should be granted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case.
- You are a VAWA self-petitioner

In addition to the above requirements, if an applicant has been convicted of a violent or dangerous crime, USCIS will not waive the inadmissibility as a matter of discretion unless the individual can show an extraordinary circumstance, such as:

- One involving national security or policy considerations; or
- If the denial of your admission would result in exceptional and extremely unusual hardship.

102 RFE 601 – Waiver Requirements for Fraud/Misrepresentation – INA 212(i)

You have been found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA) because you sought to procure an immigration benefit by fraud or willfully misrepresenting a material fact.

To be eligible for a waiver under section 212(i) of the INA, you must show that:

- You have a U.S. citizen or lawful permanent resident spouse or parent, or a U.S. citizen fiancé(e) who petitioned for your K visa, who would experience extreme hardship if you were denied admission, or
- You are a VAWA self-petitioner, and that you or your U.S. citizen, lawful permanent resident, or qualified parent or child would experience extreme hardship if you were denied admission; and
- Your application should be granted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case.

103 RFE 601 - Waiver Requirements for Communicable Disease – INA 212(g)(1)

You have been found inadmissible to the United States under section 212(a)(1)(A)(i) of the Immigration and Nationality Act (INA) because you have a medical condition that will not allow you to enter or remain in the United States. USCIS may waive this inadmissibility ground under section 212(g)(1) of the INA as a matter of discretion after consulting with the Centers for Disease Control and Prevention (CDC).

To be eligible for this waiver, you must show that you are one of the following:

- The spouse, parent, unmarried son or daughter, or minor unmarried lawfully adopted child of:
  - A U.S. citizen; or
  - An alien lawfully admitted for permanent residence; or
  - An alien who has been issued an immigrant visa.
- A self petitioner under the Violence Against Women Act (VAWA).
- The fiancé(e) of a U.S. citizen or the fiancé(e)'s child.

104 RFE 601 - Waiver Requirements for Missing Vaccinations – INA 212(g)(2)(C)

You have been found inadmissible to the United States under section 212(a)(1)(A)(ii) of the Immigration and Nationality Act (INA) because you have not received the vaccines required for entry into the United States. USCIS may waive this inadmissibility ground under section 212(g)(2)(C) of the INA as a matter of discretion if you can establish that:

- You are opposing vaccinations in any form (that is, you are not just opposed to one vaccine but that you oppose the practice of vaccination in general); and
- Your objection is based on religious beliefs or your moral convictions; and

Your belief or conviction is sincere (that you actually live according to your belief and conviction, and that you do not just have the belief or conviction because you do not want to be vaccinated).

105VWR - Waiver Requirements for Physical or Mental Disorder – INA 212(g)(3)

You have been found inadmissible to the United States under section 212(a)(1)(A)(iii) of the Immigration and Nationality Act (INA) because you were determined to have a mental or physical disorder that poses or may pose a threat to the property, safety, or welfare of you or others; or because you have a history of a physical or mental disorder and a history of behavior that poses or may pose a threat to the property, safety, or welfare of you or others because the disorder is likely to reoccur.

After consultation with the Centers for Disease Control and Prevention (CDC), USCIS may waive this inadmissibility ground under section 212(g)(3) of the INA as a matter of discretion to ensure that you have arranged for suitable health care in the United States so that your condition will no longer pose a threat to you or others.

106 RFE 601 – Waiver Requirements for Membership in a Totalitarian Party – INA 212(a)(3)(D)(iv)

You have been found inadmissible to the United States under section 212(a)(3)(D) of the Immigration and Nationality Act (INA) because you had been a member of the Communist Party or another totalitarian party (or subdivision or affiliate thereof).

To be eligible for a waiver under section 212(a)(3)(D)(iv) of the INA, you must show that:

- You are:
    - A parent, spouse, son, daughter, brother, or sister of a citizen of the United States, or
    - A spouse, son, or daughter of a lawful permanent resident of the United States; and
- Your application should be granted to serve humanitarian purposes, to assure family unity, or because it is otherwise in the public interest; and
- You are not a threat to the security of the United States; and
- Your application should be granted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case.

107 RFE 601 - Waiver Requirements for Smuggling – INA 212(d)(11)

You have been found inadmissible to the United States under section 212(a)(6)(E) of the Immigration and Nationality Act (INA) because you had engaged in alien smuggling.

To be eligible for a waiver under section 212(d)(11) of the INA, you must show that:

- You are
    - An alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and are otherwise admissible to the United States as a returning resident under section 211(b) of the INA, or
    - Seeking admission or adjustment of status as an immediate relative under section INA 201(b)(2)(A) or as an immigrant under section 203(a) of the INA (first,

second, and third family-based preference, but not fourth preference) or as the fiancé(e) (or child of the fiancé(e)) of a U.S citizen; and

- You have encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was your spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of the law; and
- Your application should be granted to serve humanitarian purposes, to assure family unity, or because it is otherwise in the public interest; and

Your application should be granted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case.

108 RFE 601- Waiver Requirements for Subject of Civil Penalty – INA 212(d)(12)

You have been found inadmissible to the United States under section 212(a)(6)(F) of the Immigration and Nationality Act (INA) because you have been the subject of a final order for violation of section 274C of the INA (Document Fraud).

To be eligible for a waiver under section 212(d)(12) of the INA, you must show that:

- You are
  - An alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under section 211(b) of the INA, or
  - Seeking admission or adjustment of status as an immediate relative under section 201(b)(2)(A) of the INA or as an immigrant under section 203(a) of the INA (first, second, and third family-based preference, but not fourth preference) or as the fiancé(e) (or child of the fiancé(e)) of a U.S. citizen; and
- This is the only civil money penalty order against you under INA 274C; and
- You committed the offense only to assist, aid, or support your spouse or child (and not another individual); and
- Your application should be granted to serve humanitarian purposes, to assure family unity, or because it is otherwise in the public interest; and

Your application should be granted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case.

109 RFE 601 - Applicant Previously Removed – INA 212(a)(9)(A)(iii)

[ISO should add the paragraph below to the Required Missing Evidence section of the RFE]

The record indicates that in addition to the inadmissibility ground for which you have filed Form I-601, you are also inadmissible under section 212(a)(9)(A) of the Immigration and Nationality Act (INA) due to a previous removal or deportation.

An individual who is inadmissible under section 212(a)(9)(A) of the INA may file an Application for Permission to Reapply for Admission to the United States After Deportation or Removal (Form I-212).

Your application is missing evidence that you have filed Form I-212 with USCIS. Please submit a USCIS receipt notice for Form I-212 as evidence that you have filed the required application

110 RFE 601 – No Evidence of Visa Refusal or Pending I-485/I-821

[ISO should add the paragraph below to the Required Missing Evidence section of the RFE]

An individual who is outside the United States may file Form I-601 if he or she has been found inadmissible by a U.S. Consular Officer after having applied for an immigrant visa or a nonimmigrant K or V visa.

An individual who is inside the United States may file Form I-601 along with an Application to Register Permanent Residence or Adjust Status (Form I-485) or an Application for Temporary Protected Status (Form I-821), or while the Form I-485 or Form I-821 is pending.

Your application is missing evidence that your waiver application is based on either:

- An immigrant visa application (or nonimmigrant K or V visa application) filed with the Department of State (DOS), for which you were found ineligible due to an inadmissibility ground; or
- A pending Form I-485 or Form I-821.

Please provide the following evidence to support your application:

- If you are outside the United States, submit evidence that you have a pending immigrant visa application (or nonimmigrant K or V visa application), such as a copy of a DOS notice identifying your Consular Case Number.
- If you are inside the United States and have a pending Form I-485 or Form I-821, submit evidence that you have a pending application, such as a copy of your USCIS receipt notice (Form I-797).

111 RFE 601-Missing Signature Form I-601

According to the Form I-601 Instructions on page 2 under **General Instructions**:

Each application must be properly signed. A photocopy of a signed application or typewritten name in place of a signature is not acceptable.

4. Applicant's Signature. You must sign this application personally, unless one of the following exceptions apply.

- If you are under 14 years of age, your parent or legal guardian may sign the application for you.

- If you are not competent to sign the application, but you are over 14 years of age, a duly appointed legal guardian may sign the application for you or
- If you are filing this application to waive inadmissibility for a communicable disease of public health significance (under INA section 212(g)), and you are not competent to sign the application, a qualified family member listed in **"Specific Instructions, Applicants Seeking A Waiver of Health-Related Grounds of Inadmissibility Under INA Section 212(a)(1). 1. Applicants Seeking a Waiver under INA Section 212(g)() of Inadmissibility Due to Communicable Diseases"** may file and sign the waiver application on your behalf. This qualifying relative may sign the application for you even if that person is not your legal guardian.

Your Form I-601, Application for Waiver of Grounds of Inadmissibility is missing a required signature of the applicant ([[[LETTER_BENEFICIARY_FIRST_NAME_TX]]] [[[LETTER_BENEFICIARY_LAST_NAME_TX]]]). Please sign the enclosed copy and return.

113 RFE 601-Missing Signature Form I-212

According to the Form I-212 Instructions on page 4 under **General Instructions**:

4. Applicant's Signature. Under 8 CFR 103.2(a)(2), you must sign this application personally. A parent or legal guardian may also sign the application for someone under 14 years of age, and a duly appointed legal guardian may sign for an adult who is incompetent to sign the application. A copy of the signed application or a typewritten name in place of a signature is not acceptable.

Your Form I-212, Application for Permission to Reappply for Admission Into the United States After Deporation or Removal is missing a required signature of the applicant ([[[LETTER_BENEFICIARY_FIRST_NAME_TX]]] [[[LETTER_BENEFICIARY_LAST_NAME_TX]]]). Please sign the enclosed copy and return.

114 RFE 601-App EWI 1 yr & attempt EWI – INA 212(a)(9)(C) – Need I-212 (must be out 10 years)

The record indicates that in addition to the inadmissibility ground for which you have filed Form I-601, you are also inadmissible under section 212(a)(9)(C) of the Immigration and Nationality Act (INA) when the alien enters the United States without being admitted (i.e., EWIs), or attempts to enter the United States without being admitted (i.e., tries to EWI) after the alien:

- Has been unlawfully present in the United States for more than one year in the aggregate since April 1, 1997 (i.e., if the total amount of unlawful time since April 1, 1997 amount to 366 or more days) and then EWI'd (or attempted to EWI), or

- Has been ordered removed under section 235(b)(1) (expedited removal), section 240 (regular removal) or any other provision of law and then EWI'd (or attempted to EWI).

An individual who is inadmissible under section 212(a)(9)(C) of the INA may file an Application for Permission to Reapply for Admission to the United States After Deportation or Removal (Form I-212) after the alien has left the United States, and has been abroad continuously for at least 10 years.

Your application is missing evidence that you have filed Form I-212 with USCIS. Please submit a USCIS receipt notice for Form I-212 as evidence that you have filed the required application or file Form I-212 with proper fee with your response to this request for evidence.

200 RFE 601- Qualifying Relationship to spouse or parent

Your application indicates that your qualifying relative (spouse or parent) is a U.S. citizen or lawful permanent resident of the United States. However, the evidence submitted does not establish this relationship.

If USCIS has approved a Petition for Alien Relative (Form I-130), which the qualifying relative filed on your behalf, please submit a copy of the Form I-130 approval notice. If your qualifying relative has not filed a Form I-130 on your behalf, please submit the following evidence to establish the relationship: [ISO inserts the appropriate paragraph]

To your spouse:

- A copy of your marriage certificate.
- If either you or your spouse were previously married, submit copies of documents showing that all prior marriages were legally terminated.

To your mother:

- A copy of your birth certificate showing your name and the name of your mother.

To your father:

- A copy of your birth certificate showing both parents' names.
- A copy of your parents' marriage certificate or other evidence that you were legitimated before reaching 18 years of age.
- A copy of evidence of legal termination of your parents' prior marriages, if any.
- If you were born out of wedlock and were not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and your father before you reached 21 years of age. This may include evidence that your father lived with you, supported you, or otherwise showed continuing parental interest in your welfare.

To your adoptive parent:

- A copy of the final adoption decree listing the individual as your adoptive parent.
- Evidence that your adoption met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that your adoptive parent adopted you before you reached the age specified in section 101(b)(1)(E) of the INA, and that your adoptive parent had legal custody of you and resided with you for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative

For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

201 RFE 601- Status of Qualifying Relative

Your application indicates that your qualifying relative (spouse or parent) is a U.S. citizen or lawful permanent resident of the United States. However, the evidence you submitted does not establish that your relative is a U.S. citizen or lawful permanent resident of the United States. Please submit: [ISO inserts the appropriate paragraph]

Evidence that your relative is a U.S. citizen:

- If your relative was born in the United States, a copy of his or her birth certificate, issued by a civil registrar, vital statistics office, or other civil authority.
- A copy of your relative's naturalization certificate or certificate of citizenship issued by USCIS or the former INS.
- A copy of Form FS-240, Report of Birth Abroad of a Citizen of the United States, issued by a U.S. Embassy or consulate for your relative.
- A copy of the unexpired U.S. passport for your relative.

Evidence that your relative is a lawful permanent resident:

A copy of the front and back of your relative's permanent resident card. If your relative has not yet received the card, submit copies of his or her passport's biographic page and the page showing admission as a permanent resident, or other evidence of permanent resident status issued by USCIS or the former INS.

202 RFE 601 – Extreme Hardship

Your application does not include sufficient evidence that your qualifying relative (spouse, fiancé(e) or parent) would suffer extreme hardship if you are refused admission to the United States.

Factors USCIS considers when determining extreme hardship include, but are not limited to:

- Health - Ongoing or specialized treatment required for a physical or mental condition; availability and quality of such treatment in the country to which removed; anticipated duration of the treatment; chronic vs. acute vs. long or short-term.

- Financial Considerations - Future employability; loss due to sale of home or business or termination of a professional practice; decline in standard of living; ability to recoup short-term losses; cost of extraordinary needs such as special education or training for children; cost of care for family members (elderly and sick parents).
- Education - Loss of opportunity for higher education; lower quality or limited scope of education options; disruption of current program; requirement to be educated in a foreign language or culture with ensuing loss of time or grade; availability of special requirements, such as training programs or internships in specific fields.
- Personal Considerations - Close relatives in the United States and country of removal; separation from spouse/children; ages of involved parties; length of residence and community ties in the United States.
- Special Factors - Cultural, language, religious, and ethnic obstacles; valid fears of persecution, physical harm, or injury; social ostracism or stigma; access to social institutions or structures (official or unofficial) for support, guidance, or protection.

Please submit a statement explaining in detail the hardships your qualifying relative would experience if you are denied admission to the United States. The statement should explain how the hardship is greater than the common results of family separation due to a visa refusal.

Please submit evidence to support the statement. Such evidence may include, but is not limited to:

- Affidavits from the qualifying relative or other individuals with personal knowledge of the claimed hardships
- Expert opinions
- Evidence of employment or business ties, such as payroll records or tax statements
- Evidence of monthly expenditures such as mortgage, rental agreement, bills and invoices, etc.
- Other financial records supporting any claimed financial hardships
- Medical documentation and/or evaluations by medical professionals supporting any claimed medical hardships
- Records of membership in community organizations, volunteer confirmation, and evidence of cultural affiliations
- Birth/marriage/adoption certificates supporting any claimed family ties
- Country condition reports
- Any other evidence you believe supports the claimed hardships

Please note that USCIS will only consider hardships that affect the qualifying relative(s) upon which you are basing your eligibility. If you describe hardship to yourself or another individual, you must also explain how those factors affect the qualifying relative(s).

203 RFE 601- K-Visa Beneficiary

Your application indicates that your fiancé(e) is a U.S. citizen. However, you have not submitted evidence that you are the beneficiary of an approved Petition for Alien Fiance(e) (Form I-129F).

Please submit an approval notice for Form I-129F, which your U.S. citizen fiancé(e) filed on your behalf.

204 RFE 601 - Discretion

Your application does not include sufficient evidence that a favorable exercise of discretion is warranted in your case.

Please submit a statement explaining the favorable factors of your case and why you believe the favorable factors outweigh unfavorable factors in your case (including the initial inadmissibility finding).

Please submit any evidence to support your statement.

Favorable factors may include, but are not limited to:

- Family ties in the United States and the closeness of the underlying relationships
- Unusual hardship to yourself or to U.S. citizen or lawful permanent resident relatives and employers
- Evidence of reformation and rehabilitation
- Length of lawful residence in the United States and status held during that residence (particularly where the applicant began his or her residency at a young age)
- Evidence of respect for law and order, good moral character, and intent to hold family responsibilities (such as affidavits from family, friends, and responsible community representatives)
- Considerable passage of time since the activities occurred, which were the basis of the inadmissibility finding
- The absence of significant undesirable or negative factors

300 RFE 601- Criminal History Records

[ISO inserts paragraph(s) from the appropriate section(s) below. If the applicant submitted evidence with the application, the ISO should explain why the evidence was insufficient]

Criminal History Records
Your application indicates that you have a criminal history record, including:

- [ISO inserts date/place of arrests and convictions, if known]
-

Your application is missing evidence relating to your criminal history. Please submit:

- A certified copy of any judgment and conviction documents related to your arrests, which clearly identify the charges and dispositions; and
- A copy of any pardons, clemency or other expungement records related to your arrests.

If you were convicted of a crime committed outside the United States, please include a copy of the section of law from the penal code of the jurisdiction of the country in which you were arrested showing the charge and maximum possible penalty.

301 RFE 601- Rehabilitation

Your application indicates that the activities for which you were found inadmissible occurred more than 15 years ago or that you are only inadmissible for engaging in prostitution.

Your application is missing sufficient evidence of your rehabilitation. Please submit evidence of your rehabilitation. Such evidence may include, but is not limited to:

- Evidence that you have not had any encounters with law enforcement since, and that you have not been convicted of a crime since.
- Evidence that you complied with the requirements imposed by the judgment.
- Character reference letters from individuals of high standing in your community.
- Evidence of counseling you received.
- Evidence of community service you provided.
- Any other evidence you believe supports your claimed rehabilitation.

302 RFE 601- Qualifying Relationship - Criminal

Your application indicates that your qualifying relative (spouse, parent, son or daughter) is a U.S. citizen or lawful permanent resident of the United States. However, the evidence submitted does not establish this relationship.

If USCIS has approved a Petition for Alien Relative (Form I-130), which the qualifying relative filed on your behalf, please submit a copy of the Form I-130 approval notice. If your qualifying relative has not filed a Form I-130 on your behalf, please submit the following evidence to establish the relationship: [ISO inserts the appropriate paragraph(s)]

To your spouse:

- A copy of your marriage certificate.
- If either you or your spouse were previously married, submit copies of documents showing that all prior marriages were legally terminated.

To your son or daughter:

- A copy of the child's birth certificate showing your name and the name of your child.
- If you are the child's father, include a copy of your marriage certificate (and evidence of legal termination of any prior marriages) or other evidence that the child was legitimated before reaching 18 years of age. If the child was born out of wedlock and was not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and the child before the child reached 21 years of age. This may include evidence that you lived

with the child, supported him or her, or otherwise showed continuing parental interest in the child's welfare.

To your adopted son or daughter:

- A copy of the final adoption decree for the child listing you as his or her adoptive parent.
- Evidence that your adoption of your son or daughter met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that you adopted your son or daughter before your son or daughter reached the age specified in section 101(b)(1)(E) of the INA, and that you had legal custody of your adopted son or daughter and resided with your adopted son or daughter for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative
    - For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

To your mother:

- A copy of your birth certificate showing your name and the name of your mother.

To your father:

- A copy of your birth certificate showing both parents' names.
- A copy of your parents' marriage certificate or other evidence that you were legitimated before reaching 18 years of age.
- A copy of evidence of legal termination of your parents' prior marriages, if any.
- If you were born out of wedlock and were not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and your father before you reached 21 years of age. This may include evidence that your father lived with you, supported you, or otherwise showed continuing parental interest in your welfare.

To your adoptive parent:

- A copy of the final adoption decree listing the individual as your adoptive parent.
- Evidence that your adoption met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that your adoptive parent adopted you before you reached the age specified in section 101(b)(1)(E) of the INA, and that your adoptive parent had legal custody of you and resided with you for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative

For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

303 RFE 601- Status of Qualifying Relative-Criminal

Your application indicates that your qualifying relative (spouse, parent, son or daughter) is a U.S. citizen or lawful permanent resident of the United States. However, the evidence you submitted does not establish that your relative is a U.S. citizen or lawful permanent resident of the United States. Please submit: [ISO inserts the appropriate paragraph]

Evidence that your relative is a U.S. citizen:

- If your relative was born in the United States, a copy of his or her birth certificate, issued by a civil registrar, vital statistics office, or other civil authority.
- A copy of your relative's naturalization certificate or certificate of citizenship issued by USCIS or the former INS.
- A copy of Form FS-240, Report of Birth Abroad of a Citizen of the United States, issued by a U.S. Embassy or consulate for your relative.
- A copy of the unexpired U.S. passport for your relative.

Evidence that your relative is a lawful permanent resident:

A copy of the front and back of your relative's permanent resident card. If your relative has not yet received the card, submit copies of his or her passport's biographic page and the page showing admission as a permanent resident, or other evidence of permanent resident status issued by USCIS or the former INS.

400 RFE 601- Qualifying Relationship -Medical

Your application indicates that you have a qualifying relative (spouse, parent, unmarried son or daughter, or minor unmarried lawfully adopted child) who is a U.S. citizen, lawful permanent resident of the United States, or an immigrant visa holder. However, the evidence submitted does not establish this relationship.

If USCIS has approved a Petition for Alien Relative (Form I-130), which the qualifying relative filed on your behalf, please submit a copy of the Form I-130 approval notice. If your qualifying relative has not filed a Form I-130 on your behalf, please submit the following evidence to establish the relationship: [ISO inserts the appropriate paragraph(s)]

To your spouse:

- A copy of your marriage certificate.
- If either you or your spouse were previously married, submit copies of documents showing that all prior marriages were legally terminated.

To your son or daughter:

- A copy of the child's birth certificate showing your name and the name of your child.
- If you are the child's father, include a copy of your marriage certificate (and evidence of legal termination of any prior marriages) or other evidence that the child was legitimated before reaching 18 years of age. If the child was born out of wedlock and was not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and the child

before the child reached 21 years of age. This may include evidence that you lived with the child, supported him or her, or otherwise showed continuing parental interest in the child's welfare.

To your adopted son or daughter:

- A copy of the final adoption decree for the child listing you as his or her adoptive parent.
- Evidence that your adoption of your son or daughter met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that you adopted your son or daughter before your son or daughter reached the age specified in section 101(b)(1)(E) of the INA, and that you had legal custody of your adopted son or daughter and resided with your adopted son or daughter for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative
    - For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

To your mother:

- A copy of your birth certificate showing your name and the name of your mother.

To your father:

- A copy of your birth certificate showing both parents' names.
- A copy of your parents' marriage certificate or other evidence that you were legitimated before reaching 18 years of age.
- A copy of evidence of legal termination of your parents' prior marriages, if any.
- If you were born out of wedlock and were not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and your father before you reached 21 years of age. This may include evidence that your father lived with you, supported you, or otherwise showed continuing parental interest in your welfare.

To your adoptive parent:

- A copy of the final adoption decree listing the individual as your adoptive parent.
- Evidence that your adoption met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that your adoptive parent adopted you before you reached the age specified in section 101(b)(1)(E) of the INA, and that your adoptive parent had legal custody of you and resided with you for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative

For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

401 RFE 601-Status of Qualifying Relative-Medical

Your application indicates that your qualifying relative (spouse, parent, unmarried son or daughter, or minor unmarried lawfully adopted child) is a U.S. citizen or lawful permanent resident of the United States. However, the evidence you submitted does not establish that your relative is a U.S. citizen or lawful permanent resident of the United States. Please submit: [ISO inserts the appropriate paragraph]

Evidence that your relative is a U.S. citizen:

- If your relative was born in the United States, a copy of his or her birth certificate, issued by a civil registrar, vital statistics office, or other civil authority.
- A copy of your relative's naturalization certificate or certificate of citizenship issued by USCIS or the former INS.
- A copy of Form FS-240, Report of Birth Abroad of a Citizen of the United States, issued by a U.S. Embassy or consulate for your relative.
- A copy of the unexpired U.S. passport for your relative.

Evidence that your relative is a lawful permanent resident:
A copy of the front and back of your relative's permanent resident card. If your relative has not yet received the card, submit copies of his or her passport's biographic page and the page showing admission as a permanent resident, or other evidence of permanent resident status issued by USCIS or the former INS.

402 RFE 601-Immigrant Visa for Relative

Your application indicates that your qualifying relative (spouse, parent, unmarried son or daughter, or minor unmarried lawfully adopted child) has been issued an immigrant visa.

However, your application is missing evidence that your qualifying relative has been issued an immigrant visa. Please submit a copy of your qualifying relative's immigrant visa.

403 RFE 601-Tuberculosis

Your application indicates that you have active Tuberculosis that is communicable. This condition does not allow you to enter the United States under a waiver, unless you have demonstrated that you or your sponsor arranged suitable care in the United States. For this purpose, please submit Page 6 of Form I-601 after it has been completed according to the Form Instructions.

404 RFE 601-CDC Consultation-TB

Your application indicates that you have [ISO enters medical condition that renders the individual inadmissible]. With your application, you submitted initial evidence as outlined in the form's instructions. As required by law, USCIS has forwarded your information to the CDC for consultation. CDC requires additional information to determine whether you have identified a

suitable health care provider in the United States, as outlined in the attached letter from CDC. Please submit the information requested in CDC's letter.

405 RFE 601-Missing Vaccines

Your application is missing sufficient evidence that your objection to the required vaccinations is based on a religious belief or moral conviction. Please submit a signed sworn statement explaining why you are opposed to receiving the required vaccinations. Your statement must include a declaration that you are making the statement under penalty of perjury; however it does not need to be notarized. The statement must state whether:

- You are opposed to vaccinations in any form
- Your opposition to the vaccinations is based on a religious belief or moral conviction
- Your belief or conviction is sincere

Please submit evidence to support your signed statement. Evidence may include, but is not limited to:

- Signed affidavits from religious leaders attesting to the religious objection to vaccinations and/or your personal religious convictions.
- Information about your religious beliefs or moral convictions as they relate to receiving vaccinations.
- Any other evidence establishing that your belief or conviction is sincere.

[If the applicant submitted evidence with the application, the ISO should explain why the evidence was insufficient]

406 RFE 601-Physical/Mental Disorder-Medical History Report

Submit a complete medical history and report. See the Form I-601 Instructions for information that must be included in the report.

407 RFE 601-CDC Consultation-Physical/Mental Disorder

Your application indicates that you have [ISO enters medical condition that renders the individual inadmissible]. With your application, you submitted initial evidence as outlined in the form's instructions. As required by law, USCIS has forwarded your information to the CDC for consultation. CDC requires additional information to determine whether you have identified a suitable health care provider in the United States, as outlined in the attached letter from CDC. Please submit the information requested in CDC's letter.

500 RFE 601-Qualifying Relationship-Membership in Totalitarian Party

Your application indicates that your spouse, parent, son, daughter, brother or sister is a U.S. citizen or that your spouse, son or daughter is lawful permanent resident of the United States.

If USCIS has approved a Petition for Alien Relative (Form I-130), which the qualifying relative filed on your behalf, please submit a copy of the Form I-130 approval notice. If your qualifying

relative has not filed a Form I-130 on your behalf, please submit the following evidence to establish the relationship: [ISO inserts the appropriate paragraph(s)]

To your spouse:

- A copy of your marriage certificate.
- If either you or your spouse were previously married, submit copies of documents showing that all prior marriages were legally terminated.

To your son or daughter:

- A copy of the child's birth certificate showing your name and the name of your child.
- If you are the child's father, include a copy of your marriage certificate (and evidence of legal termination of any prior marriages) or other evidence that the child was legitimated before reaching 18 years of age. If the child was born out of wedlock and was not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and the child before the child reached 21 years of age. This may include evidence that you lived with the child, supported him or her, or otherwise showed continuing parental interest in the child's welfare.

To your adopted son or daughter:

- A copy of the final adoption decree for the child listing you as his or her adoptive parent.
- Evidence that your adoption of your son or daughter met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that you adopted your son or daughter before your son or daughter reached the age specified in section 101(b)(1)(E) of the INA, and that you had legal custody of your adopted son or daughter and resided with your adopted son or daughter for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative
    - For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

To your mother:

- A copy of your birth certificate showing your name and the name of your mother.

To your father:

- A copy of your birth certificate showing both parents' names.
- A copy of your parents' marriage certificate or other evidence that you were legitimated before reaching 18 years of age.
- A copy of evidence of legal termination of your parents' prior marriages, if any.
- If you were born out of wedlock and were not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship

existed between you and your father before you reached 21 years of age. This may include evidence that your father lived with you, supported you, or otherwise showed continuing parental interest in your welfare.

To your adoptive parent:

- A copy of the final adoption decree listing the individual as your adoptive parent.
- Evidence that your adoption met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that your adoptive parent adopted you before you reached the age specified in section 101(b)(1)(E) of the INA, and that your adoptive parent had legal custody of you and resided with you for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative
    - For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

To your brother or sister:

- A copy of your birth certificate.
- A copy of your brother or sister's birth certificate.
- If you and your brother/sister have only a common father, submit:
    - A copy of your parent's marriage certificate.

Evidence of legal termination of your parents' prior marriages, if any

501 RFE 601-Humanitarian, Family Unity or Public Interest

Your application does not include sufficient evidence that granting the waiver would serve humanitarian purposes or family unity, or otherwise be in the public interest. Please submit evidence explaining why granting the waiver would advance these interests.

600 RFE 601 – Relationship at time of Action-Smuggling

Your application for a waiver indicates that the only individual(s) you encouraged, induced, assisted, abetted, or aided to enter the United States in violation of the law was either your spouse, parent, son, or daughter and no other individual. However, your application does not contain sufficient evidence establishing the relationship at the time you engaged in these actions.

If USCIS has approved a Petition for Alien Relative (Form I-130), which the qualifying relative filed on your behalf on or before you engaged in these actions, please submit a copy of the Form I-130 approval notice. If your qualifying relative has not filed a Form I-130 on your behalf, please submit the following evidence to establish the relationship: [ISO inserts the appropriate paragraph(s)]

To your spouse:

- A copy of your marriage certificate.

- If either you or your spouse were previously married, submit copies of documents showing that all prior marriages were legally terminated.

To your son or daughter:

- A copy of the child's birth certificate showing your name and the name of your child.
- If you are the child's father, include a copy of your marriage certificate (and evidence of legal termination of any prior marriages) or other evidence that the child was legitimated before reaching 18 years of age. If the child was born out of wedlock and was not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and the child before the child reached 21 years of age. This may include evidence that you lived with the child, supported him or her, or otherwise showed continuing parental interest in the child's welfare.

To your adopted son or daughter:

- A copy of the final adoption decree for the child listing you as his or her adoptive parent.
- Evidence that your adoption of your son or daughter met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that you adopted your son or daughter before your son or daughter reached the age specified in section 101(b)(1)(E) of the INA, and that you had legal custody of your adopted son or daughter and resided with your adopted son or daughter for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative
    - For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

To your mother:

- A copy of your birth certificate showing your name and the name of your mother.

To your father:

- A copy of your birth certificate showing both parents' names.
- A copy of your parents' marriage certificate or other evidence that you were legitimated before reaching 18 years of age.
- A copy of evidence of legal termination of your parents' prior marriages, if any.
- If you were born out of wedlock and were not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and your father before you reached 21 years of age. This may include evidence that your father lived with you, supported you, or otherwise showed continuing parental interest in your welfare.

To your adoptive parent:

- A copy of the final adoption decree listing the individual as your adoptive parent.

- Evidence that your adoption met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that your adoptive parent adopted you before you reached the age specified in section 101(b)(1)(E) of the INA, and that your adoptive parent had legal custody of you and resided with you for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative

For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

604 RFE 601-Diversity Program

An individual who is outside the United States may file Form I-601 if he or she has been found inadmissible by a U.S. Consular Officer after having applied for an immigrant visa or a nonimmigrant K or V visa.

You previously were refused a visa under the 2012 Diversity Visa Program (DV2012). However, DV2012 ended September 30, 2012 and no additional DV visas for that fiscal year can be issued at this time.

Please submit evidence that you have a pending immigrant visa application (or nonimmigrant K or V visa application) other than the DV2012 application, such as a copy of a Department of State notice identifying your Consular Case Number.

You must also submit evidence of a Department of State visa refusal notice that was issued after XXXinsert dateXXX.

700 RFE 601-Relationship at time of Action-Subject to Civil Penalty

Your application for a waiver indicates that you committed the offense solely to assist, aid, or support your spouse or child and no other individual. However, your application does not contain sufficient evidence establishing the relationship to these individuals at the time you engaged in these actions.

If USCIS has approved a Petition for Alien Relative (Form I-130), which the qualifying relative filed on your behalf on or before you engaged in these actions, please submit a copy of the Form I-130 approval notice. If your qualifying relative has not filed a Form I-130 on your behalf, please submit the following evidence to establish the relationship: [ISO inserts the appropriate paragraph(s)]

To your spouse:

- A copy of your marriage certificate.
- If either you or your spouse were previously married, submit copies of documents showing that all prior marriages were legally terminated.

To your son or daughter:

- A copy of the child's birth certificate showing your name and the name of your child.
- If you are the child's father, include a copy of your marriage certificate (and evidence of legal termination of any prior marriages) or other evidence that the child was legitimated before reaching 18 years of age. If the child was born out of wedlock and was not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and the child before the child reached 21 years of age. This may include evidence that you lived with the child, supported him or her, or otherwise showed continuing parental interest in the child's welfare.

To your adopted son or daughter:

- A copy of the final adoption decree for the child listing you as his or her adoptive parent.
- Evidence that your adoption of your son or daughter met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:
    - For section 101(b)(1)(E) – evidence that you adopted your son or daughter before your son or daughter reached the age specified in section 101(b)(1)(E) of the INA, and that you had legal custody of your adopted son or daughter and resided with your adopted son or daughter for at least two years
    - For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative
    - For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

To your mother:

- A copy of your birth certificate showing your name and the name of your mother.

To your father:

- A copy of your birth certificate showing both parents' names.
- A copy of your parents' marriage certificate or other evidence that you were legitimated before reaching 18 years of age.
- A copy of evidence of legal termination of your parents' prior marriages, if any.
- If you were born out of wedlock and were not legitimated before reaching 18 years of age, you must include copies of evidence that a bona fide parent-child relationship existed between you and your father before you reached 21 years of age. This may include evidence that your father lived with you, supported you, or otherwise showed continuing parental interest in your welfare.

To your adoptive parent:

- A copy of the final adoption decree listing the individual as your adoptive parent.
- Evidence that your adoption met the requirements of section 101(b)(1)(E), (F), or (G) of the INA, as appropriate:

- For section 101(b)(1)(E) – evidence that your adoptive parent adopted you before you reached the age specified in section 101(b)(1)(E) of the INA, and that your adoptive parent had legal custody of you and resided with you for at least two years
- For section 101(b)(1)(F) – submit the approval notice for your Form I-600, Petition to Classify Orphan as Immediate Relative

For section 101(b)(1)(G) – submit the approval notice for your Form I-800, Petition to Classify Convention Adoptee as Immediate Relative

800 RFE 601 – Immigrant Visa Applicant Not Interviewed

An individual who is outside the United States may file Form I-601 only if he or she has been found inadmissible by a U.S. Consular Officer at an immigrant visa or nonimmigrant K or V visa interview.

Department of State (DOS) records show that you have a pending immigrant visa application, but there is no record that you were interviewed by a consular officer and found ineligible for an immigrant visa based on a ground of inadmissibility that can be waived.

Please provide the following to support your application:

- Evidence that you have been interviewed by a DOS consular officer and found to be inadmissible and ineligible for an immigrant visa (or nonimmigrant K or V visa), such as a notice from the consulate showing that you were interviewed and found ineligible for the visa.

801 RFE 601-Immigrant Visa Application Closed/Terminated

An individual who is outside the United States may file Form I-601 if he or she has been found inadmissible by a U.S. Consular Officer at an immigrant visa or nonimmigrant K or V visa interview.

Department of State (DOS) records show that you had a pending visa application (Consular Case Number XXXInsert case numberXXX), but that the visa application was closed or terminated for lack of action.

Therefore, your application is missing evidence that your waiver application is based on a pending immigrant visa application (or nonimmigrant K or V visa application) filed with DOS, for which you were found ineligible due to an inadmissibility ground.

Please provide the following to support your application:

- Evidence that you have a pending immigrant visa application (or nonimmigrant K or V visa application), such as a copy of a DOS notice identifying your new Consular Case Number or;
- A notice from the consulate showing that your previous application has been reopened.

802 RFE 601-Signature of Applicant on G-28

The Form G-28 (Notice of Entry of Appearance as Attorney or Representative) initially submitted with your I-601 application is not recognized by this Service because the applicant did not sign the form. This form must be signed by the applicant for it to be recognized by this Service. Therefore you must resubmit this form with the correct original signature if you wish to be represented in the future. Please note this request for additional evidence was not forwarded to the attorney listed on the G-28.

NOTE: Photocopied signatures and signatures from the Qualifying Family Member are not acceptable.

803 RFE 601-Police Clearance Letters

You must submit a local police clearance certificate for each jurisdiction (city, town, county, or municipality) in which you have resided for six months or more within the past three years. If the police clearance letters are in a foreign language please provide a certified translation.

Please note: The police clearance certificate(s) must be researched by name and date of birth. You must supply the law enforcement agency with all aliases you have used, including maiden name, if applicable. Fingerprint cards are not acceptable evidence of a police clearance certificate.

If any record indicates that you have been arrested, you must provide documentation of each of the following:

a. The final disposition (your sentence, probation, dismissal, etc.) of every charge against you. The charge and disposition must be specifically identified (not merely numeric citations or codes).

b. If you were convicted of any charge, you must also provide evidence showing whether the charge for which you were convicted was classified as a felony or misdemeanor. You may submit a copy of the pertinent statute, sentencing guidelines, and/or statement from the court clerk or police department for this purpose.

EXPEDITE OVERVIEW

Applicant requests expedite with application.

LOCKBOX will identify it and put application in navy blue wrapper.

When navy blue wrapper application arrives at NSC:

- Contractor will put EXPEDITE coversheet on outside of file.
- Contractor will order A-files
- Contractor will create EXPEDITE letter to applicant in the ECHO program
- Contractor will complete their portion of the Expedite worksheet on outside of file
- Contractor will route file to I-601 supervisor

Supervisor will:

- Prepare letter in ECHO and mail
- Complete supervisor portion of the Expedite worksheet on outside of file
- Route file to officer if case is being expedited
- Route file back to WD if case is not being expedited

Officer will:

- Determine if there is a pending case at AAO
    - If yes, then notify AAO and let them know about the expedite issue
- Print needed screen prints from CCD and do necessary system checks
- Prepare RFE if required
- Prepare Approval if warranted
- Prepare Denial if warranted
- Prepare Notification to DOS of decision
- Complete Expedite worksheet and place on the inside of file once case is completed

If request comes after file was received:

Customer Service will:

- Request that file be pulled and routed to I-601 Supervisor with information regarding reason for expedite

Supervisor will:

- Prepare letter in ECHO and mail
- Complete process as listed above.

Officer will:

- Complete process as listed above.

MEDICAL

Q- What do you do if CDC determines that the applicant does not have a CLASS A inadmissibility?

A- When the CDC overturns a panel physician's medical finding, the NSC should treat the case the same way we would when we disagree with an inadmissibility finding:

- Contact the IV section to request that the consulate remove the medical ground of inadmissibility based on the CDC's finding (should attach the CDC letter);
- Once the consulate removes the ground, admin close the I-601 if that was the only ground the applicant was seeking to waive. If the applicant had other grounds, adjudicate as appropriate for other grounds.

Q – Does the applicant need to have a QFM/prove extreme hardship for a medical waiver?

A- No, they do not need to have a QFM or prove extreme hardship to the QFM but they do need to...

CRIMINAL

Applicants Inadmissible under 212(a)(2)

If you have an I-601 where the applicant has been found inadmissible under 212(a)(2) for a criminal offense you will need to determine whether that offense was violent and/or dangerous. While some offenses obviously are not violent/dangerous (shoplifting) other offenses are not so easy to determine. For criminal offenses where you are unable to determine whether it is violent or dangerous please see legal for a determination AFTER YOU HAVE MET WITH YOUR SUPERVISOR. You can either email the NSC duty mailbox or see the attorney on their day at the Star Building. If you email the duty attorney please include the A number, name of applicant, specific charge, date of arrest and/or conviction, state and country where crime was committed and disposition if known. Copy your supervisor in on the email if they requested that you do so.

Q- What is the effect of a pardon on a CIMT?

A- **See 22 CFR Part 40.21(a)(5):**

Effect of pardon by appropriate U.S. authorities/foreign states. An alien shall not be considered ineligible under INA 212(a)(2)(A)(i)(I) by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under INA 212(a)(2)(A)(i)(I).

Q- How does discretion come into play for violent/dangerous crimes?

A- The statutory requirements for a criminal waiver (rehabilitation under INA 212(h)(1)(A) or extreme hardship under INA 212(h)(1)(B)) are just the threshold requirements that need to be met before you analyze whether a ground should be waived as a matter of discretion. The heightened discretionary standard is required for cases involving violent/dangerous crimes regardless of whether the applicant is applying for a waiver based on rehabilitation or extreme hardship.

Below are suggested steps for adjudicating a 212(h) waiver for a non-VAWA case.

Step 1 – Does the applicant meet the statutory requirements for a rehabilitation waiver under INA 212(h)(1)(A) (offense more than 15 years ago and applicant rehabilitated)?

- If Yes, go to Step 3
- If No, go to Step 2

Step 2 – Does the applicant meet the statutory requirements for an extreme hardship waiver under INA 212(h)(1)(B) (EH to a USC/LPR spouse, parent or child)?

- If Yes, go to Step 3
- If No, deny the I-601 for not meeting the statutory requirements

Step 3 – Is the inadmissibility the applicant seeks to waive related to a violent or dangerous crime?

- If Yes, go to Step 4
- If No, balance the favorable and unfavorable factors to determine whether favorable discretion is warranted (Rehabilitation or extreme hardship generally outweighs the inadmissibility ground absent other unfavorable factors)

Step 4 – Are there extraordinary circumstances that warrant favorable discretion (foreign policy considerations, national security considerations, or exceptional and extremely unusual hardship)?

- If Yes, go to Step 5
- If No, deny the application as a matter of discretion

Step 5 – Does SCOPS HQ agree (through supervisor/chief chain of command) that favorable discretion is warranted?

- If Yes, approve the application
- If No, deny the application as a matter of discretion

If you deny a 212(h) waiver at Step 2 because the applicant does not show rehabilitation or extreme hardship, then you do not need to make a discretionary decision; you could simply deny the waiver for

failing to meet the statutory requirements. In your case, however, it looks like you are stuck at Step 4. If there were foreign policy or national security considerations, you would probably already know this by reviewing the file (or because a DOS or FBI agent contacted you about the case, etc.). So, at this point you could either deny the application as a matter of discretion or, if you think the applicant does not pose any threat to the United States and you would probably recommend approval if the applicant met the heightened discretionary standard, then you could issue an RFE to give the applicant a chance to show exceptional and extremely unusual hardship. By the way, the regulation does not say that the heightened hardship standard needs to be shown to a qualified family member, so for the discretionary analysis, you could consider hardship to the applicant him/herself or hardship to other individuals affected by the applicant's prolonged absence

Q- The applicant is no longer inadmissible for a CIMT but he is still inadmissible for 9B2. The crime had previously been deemed to be a violent crime. Can we still use the heightened hardship standard?

A- No. The heightened standard regulation only applies to 212(a)(2) criminal grounds of inadmissibility. However, you can use the fact of the conviction and any details you know about it in your discretionary decision for the 212(a)(9)(B) waiver. – E.P. 11/16/12

Q- How does medical marijuana prescriptions/usage fall within in the 30 grams or less exception?

A- Waiting for response from SCOPS on this.

UNLAWFUL PRESENCE

Q- How does having a pending TPS application or approved TPS application affects how ULP is calculated?

A- Refer to the May 6, 2009 ULP Memo in the I-601 training manual or on the ECN. Officers should also remember that aliens granted TPS may have also applied for and been granted travel authorization. An alien who leaves the U.S. with travel authorization will not trigger the 3 or 10 year bar under 212(a)(9)(B). Officers may refer to Matter of Arrabally and Yerrabelly, 25 I&N Dec. 771(BIA 2012)

FRAUD/MISREP

Q- Is the applicant inadmissible if they give a false name when they are encountered by CBP and given Voluntary Return?

A-This answer is from CDJ Waiver Officer:

Conclusion: This case fails to meet the standards of 6C1. Under 6C1, Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

Immigration courts have found that a person, such as this App, who uses another name is doing so to avoid punishment and not seeking a benefit under the INA. What's more, the use of a false name was not necessarily material since the applicant's ten prints were taken and her true identity was later exposed. Juxtapose that against someone who attempts to enter the U.S. as an impostor, this person is seeking to procure a benefit under INA, i.e. entry into the U.S. and is therefore inadmissible under 6C1.

Conclusion: It is our policy that false names used to avoid punishment fail to rise to a 6C1 inadmissibility.

EXTREME HARDSHIP

Q-

A-

GENERAL

Q- What do I do if the I-601 applicant is an LPR and is immigrant visa processing?

A- Answered by NSC Legal Counsel.

The Department of State FAM (9 FAM 42.22 Note 3.1) specifically states that a consular officer may not require a visa applicant to relinquish the Form I-551 card as a condition to issuance of either an immigrant visa or a nonimmigrant visa. In other words, an LPR may be issued another immigrant visa by DoS without having their prior LPR status formally terminated through deportation/exclusion/removal/ or through abandonment. Therefore, you may adjudicate the I-601 application for the new immigrant visa application. There is no need to send a memo DoS to take any action in relation to the applicant's LPR status.

Q- What do I do if I find live I-601 in file that was filed with IJ and IJ granted relief?

A-We will deny the application for jurisdiction and include the correct filing instructions. Working on standard denial for this scenario.

Q-Who has jurisdiction of I-601 if they were overseas for immigrant visa interview but they also have a pending hearing with the Immigration Judge?

A- USCIS has jurisdiction over the I-601 per 8 CFR § 1212.7(a)(1)(i). The IJ would only have jurisdiction to consider a waiver in connection with an adjustment of status application that she filed in proceedings. Reg copied below for reference

(a) General--

(1) Filing procedure--

(i) Immigrant visa or K nonimmigrant visa applicant. An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I–601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I–601 to the Service for decision.

(ii) Adjustment of status applicant. An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I–601 with the director or immigration judge considering the application for adjustment of status.

Q-What do I do if I find live I-601 in file that has a pending I-485?

A- Relocate to district office that has jurisdiction. See relocation instructions.

Q- What is Form DS-221 and what do I do with it?

A- Any request for a nonimmigrant waiver under INA 212(d)(3)(A) is supposed to be accompanied by a recommendation from the consular officer. The DS-221 (Two-Way Visa Action Request and Response) is the form that historically served two functions:

1. For DOS to provide DHS with a recommendation for nonimmigrant waivers; and
2. For DHS to respond with the waiver decision.

DOS and CBP began using the Admissibility Review Information System (ARIS) to communicate both the recommendation and waiver decision, so for a long time the DS-221 was only used for K-1 visa applicants who require both a nonimmigrant waiver (no form) and a conditional immigrant waiver (I-601) from USCIS. However, International Operations wasn't completing the DS-221 because they were using the I-603 (and then later the I-607) to notify DOS of the I-601 decision, and DOS considered USCIS' decision on the I-601 to be DHS' decision for the nonimmigrant waiver as well. Finally, CDJ stopped using the DS-221 all together a couple of years ago, but other posts continued to provide it to USCIS along with the I-601.

The Visa Office asked SCOPS last December whether the form would be necessary after centralization. We agreed that the DS-221 no longer served any purpose because the NSC can review any DOS recommendation in CCD and the consulate can consider the I-601 decision to be sufficient evidence of a decision on the nonimmigrant waiver.

When centralization began, DOS removed the requirement in the FAM that the consulates send USCIS Form DS-221, so you should only see these in older cases where the

application was accepted at post. It is not necessary to complete the DS-221 for those cases. Place on ride side of file.

You may see this in a K or V I-601 application. If they file for any other non-immigrant classification we do not have the jurisdiction to work any other non-immigrant classifications.

Q- What if the QFM signed the Form I-601?

A- Only in cases where the applicant is under 14 or if the applicant isn't capable of signing can the QFM sign. Current form has QR listed where they sign but the instructions indicate when they can sign. New form will say applicant.

Q- What if applicant hasn't been interviewed by the consulate?

A- The revised form instructions indicate that a visa applicant must be interviewed by a consulate and found inadmissible before the individual may file an I-601. When you query CCD for the IV case, you may occasionally find some cases where the applicant has a CCD record showing a pending IV case, but there are no case notes regarding the visa refusal and the Refusal section has not been updated. In this case, check the interview status in CCD to determine whether the applicant was already interviewed. If the applicant has not been interviewed, issue an RFE for evidence that the applicant was already interviewed and found inadmissible by a consular officer. By the time the applicants respond, they will probably have already been interviewed and you can proceed with adjudication. However, if the applicant responds that he/she has not been interviewed or if the applicant fails to respond and CCD still shows that the applicant has not been interviewed, then we will deny the I-601 because the applicant did not file the form according to the form instructions.

Q-What if Visas regress?

A- <u>Visa retrogression</u>

During the public engagement, a caller asked what the NSC would do if an applicant is in a family preference category for which the priority date has regressed and the visa is no longer available. Up until now, a consulate would either wait until after the visa becomes available again to accept the I-601 or, in the case when the visa retrogressed after filing an I-601 overseas, International Operations did not have any written policy and officers would adjudicate these cases on their merits without checking the DOS visa bulletin. With Centralization, the situation is different because the Lockbox will not reject a case simply because a visa is no longer available. After considering the options, SCOPS decided that the NSC should adjudicate the waiver application on its merits without regard to the visa retrogression as long as the applicant was interviewed at the consulate and found inadmissible for a ground that may be waived. An immigrant waiver approval is valid indefinitely, so the consulate will be able to proceed with visa issuance once the visa becomes available again. We informed the Visa Office that this is what we will do in these rare cases.

Q- What do you do if they file I-601 but are 9C and didn't file I-212 or can't file it until after they wait 10 years?

A- We can't prevent people from filing I-601s when they are ineligible for a visa on other grounds that may not be waived, but we also won't approve the waiver. I suggest following the steps below for cases where there is a 9C charge and the applicant is not eligible to request a waiver or consent to reapply.

Step 1. Is the applicant a VAWA self-petitioner? If yes, the 9C charge could be waived using Form I-601 under INA 212(a)(9)(C)(iii). If no, go to step 2.

Step 2. Does the applicant argue that he/she is not ineligible for the 9C charge? If yes, then consider the argument. If it is convincing, then you could inquire with the consulate and ask if they will remove the charge. However, if you agree with the consulate that that the applicant is ineligible for 9C (or if the consulate insists that the applicant is), then go to step 3.

Step 3. Has the applicant been abroad for 10 years? If yes, and you think the applicant is eligible for the waiver (e.g. extreme hardship established and discretion warranted), you may inform the applicant to submit Form I-212 to request consent to reapply for admission and approve the I-601/I-212 together. If no, go to step 4.

Step 4. Deny the I-601 as a matter of discretion using one of the "Addtl Ground Not Waivable" templates. SCOPS is drafting a new template for this scenario.

In your case, since the applicant seeks to waive both 6C1 and 9B2, you can either use the I-601 denial template **601 Misrep – Addtl Ground Not Waivable** or the denial template **601 ULP 10YR – Addtl Ground Not Waivable** and simply list both charges. Then you would indicate that the consulate also found the applicant inadmissible for the 9C charge, and explain that this ground of inadmissibility may not be waived except for VAWA self-petitioners, and that the applicant may overcome the 9C ground of inadmissibility only by requesting consent to reapply for admission on Form I-212 *after* she has waited abroad for 10 years. As you said, you could copy/paste language from the I-212 denial template for convenience.

Q-What do I do if applicant filed I-601 based on I-730 instead of I-130?

A- **For derivative asylees following to join (V92):**

- V92 applicants should never file Form I-601 or Form I-212;
- V92 applicants do not need to establish admissibility under INA section 212(a) to receive the travel document, but only need to establish eligibility for the V92 status under INA section 208(b)(2)(A); and
- If a V92 applicant is inadmissible under INA section 212(a), he or she does not need to request a waiver until seeking adjustment of status in the United States (using Form I-602).

For derivative refugees following to join (V93):

- V93 applicants should never file Form I-601 or Form I-212;
- V93 applicants do need to establish admissibility under INA section 212(a) to receive the travel document; and
- If found inadmissible, a V93 applicant must file Form I-602 with the international USCIS office with jurisdiction over immigration matters in that region (Mexico City Field Office for immigration matters in Canada).

After discussing the case with the consulate, you can administratively close the I-601 and I-212 by using a modified version of the "Admin Close" template. If the applicant paid the fees at the consulate, it will be up to the IV section to decide whether the fees should be refunded.

Q- What to do if they file I-601 concurrently with I-130?

A-The RFE and denial standard for "Immigrant Visa Applicant Not Interviewed" would only be used if there is a CCD record but the applicant was not yet interviewed. If you search CCD and there is no record, and there is also no record in CLAIMS of a pending I-485/I-821, the correct way to proceed is to issue an RFE for "No evidence of visa refusal or pending I-485/I-821" and then use the denial standard for "No underlying application." These standards use broader language.

We told the public that we would generally issue an RFE when the initial filing is missing evidence of eligibility. Absent a specific reason for not wanting to issue an RFE in a particular case, SCOPS recommends issuing an RFE.

Deceased I-130 Petitioner that was also a QFM

After reviewing further and checking with I-130 people, SCOPS has decided that we should NOT make any 204(l) determination on a 601 waiver. We will let the I-130 people make that decision:

1. If you have a case where the petitioner of the underlying I-130 is deceased, before you can use the death of a QFM petitioner as the functional equivalent to EH the I-130 must have been reinstated under 204(l) or 205. How will you know this? If the I-130 was an immediate relative spousal petition it automatically converts to an I-360 widow/widower (and is considered reinstated for our purposes). For other classes, sometimes there will be information in the A-file (as in the example that was passed around at the rap session). Sometimes you'll see it in CCD notes (CCD may mention that the petitioner is deceased but I-130 was reinstated, CCD may mention 204(l) or 205 humanitarian reinstatement specifically. Sometimes you'll have to check where the I-130 is and find out what happened to it (including checking systems like National CLAIMS, NFTS, or calling NVC). Please see your supervisor and/or senior for assistance with this, don't guess. (This will help us compile examples that can be placed on the ECN or in training material.)

2. If the I-130 has not yet been considered for reinstatement we'll need to do a DOS memo asking the consulate to return the I-130 to USCIS for possible automatic revocation and consideration of reinstatement under 204(l) if it applies. (For an I-130 already automatically revoked where the

applicant is now requesting reinstatement through his/her I-601, get with a sup/senior to figure out the best way to contact the office with the I-130; the waiver should be held until the request for I-130 reinstatement is adjudicated.) Either way, the case numbers should be sent to SCOPS so they can expedite the I-130 to help reduce the wait time.

Please note, if the I-130 has received Humanitarian Reinstatement and a new substitute sponsor under section 205, there is no 205 residency requirement so SCOPS interprets that to mean the fact that original petitioner is deceased may be considered the functional equivalent to extreme hardship for a waiver determination if the original petitioner met the relationship requirements for the waiver. Same with an IR spousal petition converted to an I-360 widow/widower. (This does not mean that the waiver is automatically approvable; NSC still has the ability to deny the waiver in discretion if the situation merits, same as with any filling.)

In case you're not familiar with the term "immediate relative spousal petition"... that means that the I-130 petitioner was a United States citizen applying for his/her spouse, not an LPR

REVOKED I-130 BUT APPEAL(BIA) or MOTION PENDING

Response from SCOPS dated December 31, 2013

In situations where the I-130 has been revoked the I-601 should then be denied as well. Although the petitioner has filed an appeal, USCIS has made a decision; since there is no longer a valid pending/approval I-130, the I-601 should be denied. If the BIA upholds the appeal, the decision on the I-601 still remains as it was an appropriate adjudicative decision at the time. The petitioner would need to file a new I-601 waiver. Additionally we don't know how long the appeal will be with the BIA so we might be sitting on the I-601 for a while.

In situations where there is an I-290B, work the I-290B first. This way if you decide to uphold their motion the petitioner does not need to file a new I-601. If the motion is denied and the revocation will stand, then you can go ahead and deny the I-601.

I-601A Applications

All I-601A applications are worked at the National Benefits Center (NBC). We are working on getting I-601As in ECHO and once that is done, then you can complete the relocate memo in ECHO. Until that happens, you will need to follow the old relocate memo process in MSWORD.

DACA TOLLING- Not addressed in the ULP Memo

Response from SCOPS dated March 6, 2014

Regarding the tolling, DACA cases continue to accrue unlawful presence while the I-821D is still pending. Once DACA is granted to an individual, unlawful presence no longer accrues. Upon the expiration of the period of deferred action unlawful presence again continues to accrue. So if there is a gap (a person files late for an additional DACA period) or if a person fails to file then unlawful presence again accrues. A grant of DACA does not cure past or future unlawful presence.

DoS/CCD ISSUES

Q- What does it mean if CCD shows the case is terminated?

Termination of IV case

The Visa Office provided two case numbers so we could see what closed cases look like in CCD. The examples are (1 termination letter sent) and (2 termination letters sent). Below is a description of what the termination letters mean and how you should process waiver applications when CCD shows that the IV case is in the termination process.

If an IV applicant fails to contact the consular section over a 1-year period following a scheduled interview, post will send the applicant a termination 1 letter (term1 letter) notifying the applicant that post has closed the case. After sending the term1 letter, the applicant has an additional year to contact post and request the reinstatement of his or her visa application and petition. If the applicant fails to communicate with post by the end of the 2-two year period, post will send a termination 2 letter (term2 letter) notifying the applicant that post has permanently closed the IV case. When this happens, DOS destroys the underlying immigrant visa petition and the applicant would need to start the process all over again to seek an immigrant visa, beginning with a new immigrant visa petition from the petitioner.

Below are examples of what you will see in CCD under the "Case Summary Status" for applicants whose IV cases have entered termination status at post. If you see this in CCD, you will need to send an RFE to the applicant requesting the applicant to show that the IV case is pending or that the applicant is otherwise eligible to file an I-601 (e.g. based on a pending I-485 or I-821).

1 Termination Letter Sent

In this case, the consulate sent one termination letter and the applicant still has time to contact the consulate to reopen the case.

Case Summary Status

Case Status:	Term1 letter sent	
Provisional?	No	**Derogat**
Post Clearance:	Adverse clearance hit for Principa	
FBI Clearance:	Adverse clearance hit for Principa	
Interview Status:	No show	**Intervie**

2 Termination Letters Sent

In this case, the consulate sent two termination letters and destroyed the I-130. The applicant would need to start all over with a new I-130.

Case Summary Status

Case Status:	Term2 letter sent	
Provisional?	No	**Derog**
Post Clearance:	Not submitted	
FBI Clearance:	No record for Principal Applicant	
Interview Status:	Not eligible	**Intervi**

Q- What is a QUASI refusal and what does it mean when adjudicating an I-601?

A-FROM 9 FAM 40.6 N1 INADMISSIBILITY FINDINGS/REFUSAL CODES AND "QUASI" INELIGIBILITIES/LOOKOUT CODES
(CT:VISA-1739; 10-06-2011)
a. You should only make a formal finding of inadmissibility in the context of a visa application or revocation of an existing visa. A "hard" refusal code entry should only be placed in consular lookout and support system (CLASS) if you are denying or revoking a visa.
b. If you obtain derogatory information outside the context of an application or revocation, you should enter the alien's name in the CLASS lookout system under the appropriate "P" ("quasi-refusal") code corresponding to the suspected or presumed inadmissibility. The alien's eligibility should then be resolved if and when the alien applies for a visa.
c. You may enter a quasi-refusal in only two general cases:
(1) If you obtain derogatory information outside the context of an application or revocation (see 9 FAM 41.122 PN2); or
(2) When the ineligibility determination is pending a fraud investigation, an advisory opinion (AO) or security advisory opinion (SAO) for instance from the Department (3B and some types of 6C1 refusals, for instance, need visa office (VO) concurrence), or pending petition revocation at Department of Homeland Security (DHS). You do not enter a quasi-refusal if you lack the evidence for a "hard" ineligibility under the law (i.e., you cannot refuse an applicant P2a1 if the applicant has committed a crime, but the crime does not rise to the level of moral turpitude.)

NOTE: A quasi-refusal, by definition, is not a refusal. It is not a determination of eligibility. You cannot conclude a case by simply entering a quasi-refusal; you must enter a "hard" refusal. You may not deny or revoke a visa based solely on "quasi-ineligibility." If an alien applies for a visa, the alien's eligibility must be definitively resolved. U.S. Department of State Foreign Affairs Manual Volume 9 - Visas 9 FAM 40.6 Notes Page 2 of 7

d. For instance, if you suspect an applicant may have committed fraud but need an advisory opinion (AO) from the Department to confirm, you must enter the case as both INA P6C1 and 221g. Not entering a hard refusal also affects posts' workload statistics since those cases will not be reported as adjudicated.

If there is a quasi-hit in CCD Refusal section and the record contains evidence that the quasi-hit should actually be a hard hit the officer will draft a memo to the consulate requesting that they enter

the additional ineligibility. The officer should use the "ADD Inadmissibility" and/or the "ADD 212 Inadmissibility" snippet in ECHO. The "QUASI Inadmissibility" snippet will be removed from ECHO snippets.

If there is a quasi-hit in CCD Refusal section and there is no evidence indicating that it should be a hard hit the officer may proceed with the adjudication of the I-601 without sending a memo to the consulate to remove the quasi-hit.

EXAMPLE:

CCD Refusal section contains P6C1 and the record contains evidence that the applicant presented the I-551 of another individual at inspection for admission to the U.S. the officer should memo the consulate to add a 6C1 hit using the "ADD Inadmissibility" snippet in ECHO

EXAMPLE:

CCD Refusal section contains P6C1 but the record does not contain evidence that the applicant has previously been charged by USCIS or DoS with fraud/misrep then the officer may proceed with the adjudication of the waiver and does not need to memo the consulate to remove the quasi-hit

Q-When do I not have to send a memo to DoS?

A- You do not need to send a memo to DoS asking them to remove a 212(a)(4) inadmissibility for a public charge. You can ignore this inadmissibility because it is not waived on an I-601.

B- You do not need to send a memo to DoS asking them to remove a 212(a)(5) inadmissibility for a labor certification/qualification of certain aliens. You can ignore this inadmissibility because it is not waived on an I-601.

C- You do not need to send a memo to DoS asking them to remove a quasi hit if the refusal section also contains a hard hit for the same inadmissibility. i.e. The refusal section has both a 9B2 and P9B2 – you would not memo asking that the P9B2 inadmissibility be removed.

D- "Unlawful presence/alien smuggling" in the case notes. This phrase is used by several consulates and appears in the interview case notes. This phrase does not mean that the applicant has been found inadmissible for ULP or alien smuggling. We believe the phrase just indicates the topic which is being discussed next. i.e. "Clearances:", "Affidavit of Support:", "Unlawful presence/alien smuggling:". See Example below:

Case Note 6:

Date: 27-DEC-2012

Note: interview

Fee: paid Clearances: no problems; some traffic violations in Idaho no CIMT Affidavit of Support: sufficient w/JS Unlawful presence/alien smuggling: 9B2 Subject entered the US without inspection on JUN2006 and did not receive TPS, asylum, or work authorization. Subject reentered El Salvador on SEP2012. Subject was unlawfully present for more than 365 days and is therefore ineligible to receive an immigrant visa until SEP2022 per INA section 212(A)(9)(B)(i)(ii). Med exam: no problems Relationship: Met wife in 2008 after both finished same high school; married 6 months later. Common kid born 2009. BC in file; cred relats. IMBRA Notification: notified and understood; given pamphlet Missing/notes: 9B2 waiver Case status: 9B2

E- You do not have to memo the consulate to remove a refusal if the "Overcome/Waiver?" section of the refusal indicates the applicant has overcome the inadmissibility or a waiver has been granted.

Refusals

Refusal Date				
29-OCT-2010	**Grounds:**	UNLAWFULLY PRESENT 365 DAYS - (WITHIN 10 YEARS)		
	Refusal Code:	9B2	**Section of Law:**	212(A)(9)(B)(II)
	Overcome/Waiver?	Overcome	**Approval Date:**	08-JUN-2011
	Annotation Text:			
08-JUN-2011	**Grounds:**	CRIME INVOLVING MORAL TURPITUDE		
	Refusal Code:	2A1	**Section of Law:**	212(A)(2)(A)(I)(I)
	Overcome/Waiver?		**Approval Date:**	
	Annotation Text:			
08-JUN-2011	**Grounds:**	MISREPRESENTATION		
	Refusal Code:	6C1	**Section of Law:**	212(A)(6)(C)(I)
	Overcome/Waiver?		**Approval Date:**	
	Annotation Text:			

F- You do not have to memo the consulate to remove a refusal if the "Annotation Text" section of the refusal indicates a date a refusal will expire. Examples include "expires December 2012", "Until December 2012", "overcomes in December 2012"

Refusals

Refusal Date				
29-OCT-2010	**Grounds:**	UNLAWFULLY PRESENT 365 DAYS - (WITHIN 10 YEARS)		
	Refusal Code:	9B2	**Section of Law:**	212(A)(9)(B)(II)
	Overcome/Waiver?		**Approval Date:**	
	Annotation Text:	Expires December 2012		
08-JUN-2011	**Grounds:**	CRIME INVOLVING MORAL TURPITUDE		
	Refusal Code:	2A1	**Section of Law:**	212(A)(2)(A)(I)(I)
	Overcome/Waiver?		**Approval Date:**	
	Annotation Text:			
08-JUN-2011	**Grounds:**	MISREPRESENTATION		
	Refusal Code:	6C1	**Section of Law:**	212(A)(6)(C)(I)
	Overcome/Waiver?		**Approval Date:**	
	Annotation Text:			

Q- What does CLOK mean in the Case Notes?

(b)(7)(e)

IAFIS Results

Q-What needs to be done if the results do not post after being sent to FBI?

(b)(7)(e) A-

Q- What needs to be done if the fingerprints are not readable by FBI? (2 unclassifiables)?

A- Waiting for response from SCOPS on this.

I-212

Q- What do you do with stand -alone I-212 applications?

A- See Instructions on ECN on how to handle Stand Alone I-212's.

Q- Why would someone who needs an I-212 not have an A-file?

A- It is possible in a rare circumstance that an I-212 is required for someone who does not have an A-number. If an applicant is inadmissible for entering or attempting to enter the United States without inspection/parole after 1 year of prior unlawful presence, an I-212 is required after the applicant has remained abroad for 10 years. In this case, the applicant may not have an A-number.
For I-212 applicants who do not have an A-number, check CCD to see why the consulate requested the I-212. If the I-212 was not necessary and the consulate withdraws the inadmissibility finding, then the NSC can admin close the I-212. However, if the I-212 is required even though the applicant has no A-number, the NSC should print the CCD notes (if any) and include the printouts in the non-record side

of the file together with a short memo explaining the situation to ensure that the field office does not reject the case.

Q- What happens when alien departs the US while the appeal is pending with BIA?

A. Here's the EOIR regulation that says a departure while an appeal is pending with the BIA constitutes a withdrawal of the appeal. The IJ's order then becomes the final agency decision, as if an appeal was never taken. So someone who was ordered removed by the IJ, appealed to the BIA and then left before the BIA issued its decision would be amenable to a 212(a)(9)(A)(ii)(II) ground of inadmissibility since the IJ's order became final upon the departure and the departure had the legal effect of a self-deportation.

The scenario in this case was different where the applicant departed under a final order while his petition for review of the BIA's decision (affirming the IJ's removal order) was pending with the Circuit Court. I think you guys were ok with the 212(a)(9)(A)(ii)(II) ground State identified in that case and were just wondering about the consequences of a departure while an appeal was pending. But, if there was a different question that I haven't answered please let me know.

8 C.F.R. § 1003.4

➡§ 1003.4 Withdrawal of appeal.

In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office at which the notice of appeal was filed. If the record in the case has not been forwarded to the Board on appeal in accordance with § 1003.5, the decision made in the case shall be final to the same extent as if no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned and the initial decision shall be final to the same extent as if no appeal had been taken. If a decision on the appeal has been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject of deportation proceedings subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken. Departure from the United States of a person who is the subject of deportation or removal proceedings, except for arriving aliens as defined in § 1001.1(q)

of this chapter, subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

TRIG/Frivolous Asylum

Q- How does TRIG and Frivolous Asylum Filings relate to I-601 applications?

A-If you have a case and the A-file contains an asylum application you should review to make sure the asylum was not denied as a frivolous filing (if so, then the I-601 is denied as they cannot obtain any immigration benefit). If when reviewing the file you feel that there may be TRIG issues and you have not been trained on TRIG, please refer that case to a supervisor.

204C

Instructions for Application for Waiver of Grounds of Inadmissibility

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-601
OMB No. 1615-0029
Expires 12/31/2014

What is the Purpose of This Form?

An individual who is ineligible to be admitted to the United States as an immigrant or to adjust status in the United States, and certain nonimmigrant applicants who are inadmissible, must file a Form I-601, Application for Waiver of Grounds of Inadmissibility, to seek a waiver of certain grounds of inadmissibility.

Who May File This Form?

1. An immigrant visa applicant who is outside the United States who has had a visa interview with a consular officer and was found inadmissible;
2. Any applicant for adjustment of status;
3. K-1 or K-2 nonimmigrant visa applicant who is outside the United States who has had a visa interview with a consular officer and was found inadmissible (see section entitled "**Specific Instructions**");
4. K-3, K-4, or V nonimmigrant visa applicant who is outside the United States who has had a visa interview with a consular officer and was found inadmissible;
5. Temporary Protected Status (TPS) applicant;
6. Nicaraguan Adjustment and Central American Relief Act (NACARA) applicant;
7. Haitian Refugee Immigrant Fairness Act (HRIFA) applicant;
8. Violence Against Women Act (VAWA) self-petitioner applying for adjustment of status or an immigrant visa;
9. T nonimmigrant applying for adjustment of status who is inadmissible based on a ground that has not already been waived in connection with the T nonimmigrant status;

and who seeks a waiver of the following grounds of inadmissibility:

- **a.** Health-related grounds (Immigration and Nationality Act (INA) section 212(a)(1));
- **b.** Certain criminal grounds (INA section 212(a)(2));
- **c.** Immigrant Membership in Totalitarian Party (INA section 212(a)(3)(D));
- **d.** Immigration fraud or misrepresentation (INA section 212(a)(6)(C)) **except** that a waiver under INA section 212(i) is not available, if you are inadmissible based on a false claim to be a U.S. citizen (INA section 212(a)(6)(C)(ii)), and if you made your false claim on or after September 30, 1996;
- **e.** Smugglers (INA section 212(a)(6)(E)) and Being Subject of Civil Penalty (INA section 212(a)(6)(F));
- **f.** The 3-year or 10-year bar due to previous unlawful presence in the United States (INA section 212(a)(9)(B));
- **g.** Certain grounds of inadmissibility, if filed by an applicant for TPS (see section of instructions entitled "**TPS Applicants Seeking a Waiver of Grounds of Inadmissibility Under INA Section 244(c)(2)(A)(ii)**");
- **h.** INA section 212(a)(9)(A) (Aliens Previously Removed) and INA section 212(a)(9)(C) (Unlawfully Present After Previous Immigration Violations), if filed by a NACARA or HRIFA adjustment applicant;
- **i.** INA section 212(a)(9)(C) (Unlawfully Present After Previous Immigration Violations) for a VAWA self-petitioner;
- **j.** T nonimmigrant visa status holders applying for adjustment of status may receive a waiver of INA section 212(a)(1) (Public Health) and INA section 212(a)(4) (Public Charge), and any other ground of inadmissibility, with the following exclusions; Grounds that cannot be waived are INA section 212(a)(3) (Security Related Grounds), INA section 212(a)(10)(C) (International Child Abductors), or INA section 212(a)(10)(E) (Former Citizens who Renounced Citizenship to Avoid Taxation).

How Long Is a Waiver Valid?

Except as provided below, if you seek a waiver of grounds of inadmissibility in connection with your application for an immigrant visa or adjustment of status and the waiver is granted, the waiver is valid indefinitely even if you do not obtain your immigrant visa, immigrant admission, or adjustment of status, or if you otherwise lose your legal permanent resident status.

The following waivers are either conditional or limited to certain benefits.

Convention Adoptee. If you obtain a waiver in connection with Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, the approval of your waiver is conditioned upon the final issuance of an immigrant or nonimmigrant visa based on the final approval of the Form I-800.

K Nonimmigrant Visa Applicant. If you obtain a waiver in connection with an application for a K-1 or K-2 nonimmigrant visa, the approval of your waiver is conditioned upon the marriage of the K-1 visa applicant and the K-1 visa petitioner after the K-1 nonimmigrant visa applicant is admitted to the United States.

Conditional Resident. If you obtain a waiver in connection with an application for lawful permanent residence on a conditional basis under INA section 216, the validity of the waiver automatically ceases with the termination of such residence; no separate notification of termination of the waiver is needed, and the termination of the waiver cannot be appealed. However, if the immigration judge determines that you are not removable based on the termination of your conditional resident status, the waiver will become effective again.

TPS Applicant. If you obtain a waiver in connection with a Form I-821, Application for Temporary Protected Status, the waiver is only valid for the TPS application. If granted, the waiver will apply to subsequent TPS re-registration applications, but not to any other immigration benefit applications.

General Instructions

Each application must be properly signed and accompanied by the appropriate fee or a fee waiver request if such a request can be filed for the particular benefit. (See the section of the instructions entitled "**What is the Filing Fee?**".) A photocopy of a signed application or typewritten name in place of a signature is not acceptable.

Evidence. You must submit all required initial evidence along with all the supporting documentation with your application at the time of filing.

Copies. Unless specifically required that an original document be filed with an application or petition, a legible photocopy may be submitted. Original documents submitted when not required may remain a part of the record, and will not be automatically returned to you.

Translations. Any document containing a foreign language submitted to USCIS must be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

How to Fill Out Form I-601

1. Type or print legibly in black ink.
2. If you need additional space to complete any item, proceed to **Part 6, Additional Information** of the form. In order to assist us in reviewing your response, you must identify the Part Number and Item Number to which your answer refers.
3. Answer all questions fully and accurately. If an item is not applicable or the answer is "none," leave the space blank.
4. ***Applicant's Signature.*** You must sign this application personally, unless one of the following exceptions apply:
   a. If you are under 14 years of age, your parent or legal guardian may sign the application for you;
   b. If you are not competent to sign the application, but you are over 14 years of age, a duly appointed legal guardian may sign the application for you; or

c. If you are filing this application to waive inadmissibility for a communicable disease of public health significance (under INA section 212(g)), and you are not competent to sign the application, a qualified family member listed in **"Specific Instructions, Applicants Seeking a Waiver under INA Section 212(g) of Health-Related Grounds of Inadmissibility under INA Section 212(a)(1); 1. Applicants Seeking a Waiver under INA Section 212(g)(1) of Inadmissibility Due to Communicable Diseases"** may file and sign the application on your behalf. This qualifying relative may sign the application for you even if that person is not your legal guardian.

5. ***Preparer's Signature.*** If someone, other than the applicant, prepared this application, that individual must sign and date the application and provide the information requested.

Specific Instructions

NOTE: If this form is approved, the waiver that is granted will apply **only** for those grounds of inadmissibility and those crimes, incidents, events, or conditions that you have included in your application. For this reason, it is important that you disclose all grounds of inadmissibility for which you seek a waiver.

Special Note to K-1 and K-2 Nonimmigrant Visa Applicants

Since you do not have the requisite relationship to a citizen or lawful permanent resident of the United States to qualify for a waiver, you must enter one of the following in **Part 2**:

1. **If you are a fiancé(e) of a U.S. citizen:**
   a. Complete **item numbers 1.a. through 6.** with information regarding the U.S. citizen who filed a fiancé(e) petition on your behalf; and
   b. Write "Prospective Spouse" in the data collection box for **item number 5.** (Relationship to Applicant).

2. **If you are the child of a fiancé(e) of a U.S. citizen and will be less than 18 years of age when your parent marries such person:**
   a. Complete **item numbers 1.a. through 6.** with information regarding the U.S. citizen who filed a fiancé(e) petition on your parent's behalf; and
   b. Write "Prospective Step-child" in the data collection box for **item number 5.** (Relationship to Applicant).

3. **If you are the child of a fiancé(e) of a U.S. citizen, and will be at least 18 years of age but less than 21 years of age when your parent marries such person:**
   a. Complete **item numbers 1.a. through 4.** with information regarding your parent who will marry the U.S. citizen who filed a fiancé(e) petition on your parent's behalf; and
   b. Write "Child" in the data collection box for **item number 5, Part 2.** (Relationship to Applicant); and
   c. Write "Prospective LPR" in the data collection box for **item number 6, Part 2.** (Immigration Status).

If, upon review of your application, USCIS determines that you will be eligible for an immigrant waiver from inadmissibility once you have (or your parent has) celebrated a bona fide marriage to the U.S. citizen who filed the K visa petition, USCIS will conditionally approve the waiver application. The condition imposed on the approval is that you (or your parent) and the U.S. citizen who filed the K visa petition celebrate a bona fide marriage within the statutory time frame of 3 months from the day of your (or your parent's) admission. Despite the conditional approval, USCIS may ultimately deny Form I-601 if you (or your parent) do not marry the U.S. citizen who filed the K visa petition and if you (or your parent) do not seek and receive permanent residence on the basis of that marriage.

Applicants Seeking a Waiver under INA Section 212(g) of Health-Related Grounds of Inadmissibility under INA Section 212(a)(1)

1. Applicants Seeking a Waiver under INA Section 212(g)(1) of Inadmissibility Due to Communicable Diseases

   If you have a communicable disease that has been determined to be of public health significance, you must complete the application and provide the information as requested in the form.

Communicable diseases of public health significance are defined in 42 CFR 34.2(b) and include but are not limited to:

a. Class A Tuberculosis condition, as per U.S. Department of Health and Human Services (HHS) regulations;

b. Chancroid;

c. Gonorrhea;

d. Granuloma inguinale;

e. Lymphogranuloma venereum;

f. Syphilis, infectious stage;

g. Leprosy, infectious;

h. Any other communicable disease as determined by the U.S. Secretary of Health and Human Services and as defined at 42 CFR 34.2(b).

The application may be approved if:

a. You are the spouse, parent, the unmarried son or daughter, or the minor unmarried lawfully adopted child of a U.S. citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or if you are the fiancé(e) of a U.S. citizen or the fiancé(e)'s child; or

b. You are a VAWA self-petitioner.

For specific information pertaining to applicants with a Class A Tuberculosis condition as per HHS regulations, see **item number 2** below.

2. Applicants With Class A Tuberculosis Condition as Per HHS Regulations

If you have been diagnosed with a Class A Tuberculosis condition as per HHS regulations, you and the physician at the local health department in the area where you plan to reside must complete the last 2 pages of this form, entitled **"To Be Completed for Applicants With Class A Tuberculosis Condition."**

3. Applicants Seeking a Waiver under INA Section 212(g)(3) of Inadmissibility Due To Physical or Mental Disorder and Associated Harmful Behavior

If you have a physical or mental disorder and behavior associated with the disorder that poses, may pose, or has posed a threat to the property, safety, or welfare of you or others, you must file this form, and a waiver may be granted under INA section 212(g)(3). You must also submit this form if you have a history of such a physical or mental disorder and a history of behavior associated with the disorder that has posed a threat to your property, safety, or welfare, or the property, safety, or welfare of others, and if the behavior is likely to recur or to lead to other harmful behavior.

In addition to this form, you must submit a complete medical history and a report that addresses the following:

a. Your physical or mental disorder, and the behavior associated with the disorder that poses, has posed, or may pose in the future a threat to the property, safety, or welfare of you or other individuals. The report should also provide details of any hospitalization, institutional care, or any other treatment you may have received in relation to this physical or mental disorder;

b. Findings regarding your current physical condition, including, if applicable, reports of chest X-rays and a serologic test, if you are 15 years of age or older, and other pertinent diagnostic tests;

c. Findings regarding the current mental or physical condition, including a detailed prognosis that should specify, based on a reasonable degree of medical certainty, the possibility that the harmful behavior is likely to recur or that other harmful behavior associated with the disorder is likely to occur; and

d. A recommendation concerning treatment that is reasonably available in the United States and that can reasonably be expected to significantly reduce the likelihood that the physical or mental disorder will result in harmful behavior in the future.

The medical report will be referred to the U.S. Public Health Service for review and, if found acceptable, you will be required to submit such additional assurances as the U.S. Public Health Service may decide are necessary in your particular case.

4. Applicants Seeking a Waiver under INA Section 212(g)(2)(C) of the Vaccination Requirement

   If you seek an exemption from the vaccination requirement because being vaccinated is against your religious beliefs or moral convictions, you must file this form. You must establish with evidence that:

   a. You are opposed to vaccinations in any form;

   b. The objection is based on religious beliefs or moral convictions; and

   c. The belief or conviction is sincere.

Applicants Seeking a Waiver of Certain Criminal Grounds of Inadmissibility and Immigration Fraud or Misrepresentation Under INA Sections 212(h) and (i)

1. Criminal Grounds

   If you are found to be inadmissible based on criminal grounds, you may seek a waiver of inadmissibility for the following:

   a. A crime involving moral turpitude (other than a purely political offense);

   b. A controlled substance violation according to the laws and regulations of any country related to a single offense of simple possession of 30 grams or less of marijuana;

   c. Two or more convictions, other than purely political ones, for which the aggregate sentences to confinement were 5 years or more;

   d. Prostitution;

   e. Unlawful commercialized vice whether or not related to prostitution; and

   f. Certain aliens involved in serious criminal activity who have asserted immunity from prosecution.

   With the application, you will have to establish that:

   a. You are inadmissible only because of your participation in prostitution, including having procured others for prostitution or having received the proceeds of prostitution, but that you have been rehabilitated and your admission to the United States will not be contrary to the national welfare, safety, or security of the United States; **or**

   b. At least 15 years have passed since the activity or event that makes you inadmissible, that you have been rehabilitated, and that your admission to the United States or the issuance of the immigrant visa will not be contrary to the national welfare, safety, or security of the United States; **or**

   c. Your qualifying U.S. citizen or lawful permanent resident relative (spouse, son, daughter, parent), or K visa petitioner would experience extreme hardship if you were denied admission; **or**

   d. You are an approved VAWA self-petitioner.

   For information about how you can establish extreme hardship, see the section of the instructions entitled "**What Evidence Should Be Submitted With the Application?**".

   NOTE: If you are convicted of a violent or dangerous crime, the waiver may not be approved unless there is an extraordinary circumstance, such as one involving national security or foreign policy consideration, or if the denial of your admission would result in exceptional and extremely unusual hardship. Even if that standard is met, your waiver may still be denied. See 8 CFR 212.7(d).

2. Immigration Fraud or Misrepresentation

If you are inadmissible because you have sought to procure an immigration benefit by fraud or misrepresenting a material fact (INA section 212(a)(6)(C)(i)), you may seek a waiver by filing this form. This waiver may be approved if you can establish that:

a. Your qualifying U.S. citizen or lawful permanent resident relative (spouse, parent) or the K visa petitioner would experience extreme hardship if you were denied admission; or

b. You are a VAWA self-petitioner, and you or your U.S. citizen, lawful permanent resident, or qualified parent or child may experience extreme hardship if you were denied admission.

For information about how you can establish extreme hardship, see the section of the instructions entitled **"What Evidence Should Be Submitted With the Application?".**

Applicants Seeking a Waiver for Immigrant Membership in a Totalitarian Party Under INA Section 212(a)(3)(D)(i))

If you are inadmissible for having been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof) whether domestic or foreign, you may apply for a waiver pursuant to INA section 212(a)(3)(D)(iv), if you are the parent, spouse, son, daughter, brother, or sister of a U.S. citizen or a spouse, son, or daughter of an alien lawfully admitted for permanent residence, or if you are the fiancé(e) of a U.S. citizen. The waiver may be granted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, if you are not a threat to the security of the United States.

Applicants Seeking a Waiver for Smuggling Under INA Section 212(a)(6)(E) and Being Subject of Civil Penalty Under INA Section 212(a)(6)(F))

If you are inadmissible for having engaged in alien smuggling (INA section 212(a)(6)(E)(i)), you may apply for a waiver under INA section 212(d)(11) that may be granted for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, if you have engaged, induced, assisted, abetted, or aided only an individual who at the time of such action was your spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of the law, and;

1. If you are an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal and who is otherwise admissible to the United States as a returning resident under INA section 211(b); or
2. If you are seeking admission or adjustment of status as an immediate relative under INA section 201(b)(2)(A), as an immigrant under INA section 203(a) (Preference allocation for family-sponsored immigrants based on the first, second, or third preference, but not on the fourth preference) or as the fiancé(e) (or his or her child(ren)) of a U.S. citizen.

If you are inadmissible because you have been the subject of a final order for violation of INA section 274C, you may apply for a waiver under INA section 212(d)(12). A waiver may be granted for humanitarian purposes or to assure family unity, if no previous civil monetary penalty was imposed against you under INA section 274C, and the offense was committed solely to assist, aid, or support your spouse or child (and not another individual); and

1. If you are an alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal and who is otherwise admissible to the United States as a returning resident under INA section 211(b); or
2. If you are seeking admission or adjustment of status as an immediate relative, as an immigrant under INA section 203(a) (preference allocation for family-sponsored immigrants) or as the fiancé(e) (or his or her child(ren)) of a U.S. citizen.

Applicants Seeking a Waiver of Inadmissibility Based on the 3-Year or 10-Year Bar Under INA Section 212(a)(9)(B)(v)

T nonimmigrant visa status holders seeking exemption from only INA section 212(a)(9)(B) do not need to file this form.

If you are inadmissible because you were previously unlawfully present in the United States in excess of either 180 days (3-year bar), or 1 or more years (10-year bar), you may seek a waiver by filing this form.

The waiver may be granted if your qualifying U.S. citizen or lawful permanent resident relative (spouse, parent), or the K visa petitioner would experience extreme hardship if you were denied admission.

For TPS applicants and VAWA self-petitioners, see special instructions below.

For information about how you can establish extreme hardship, see the section of the instructions entitled **"What Evidence Should Be Submitted With the Application?"**.

TPS Applicants Seeking a Waiver of Grounds of Inadmissibility Under INA Section 244(c)(2)(A)(ii)

If you are a TPS applicant applying for a waiver of any relevant grounds of inadmissibility listed in INA section 212, your waiver may be granted for humanitarian purposes, to assure family unity or when such a waiver is in the public interest. In **Part 1** of the form, under the section entitled **"Reason(s) for Inadmissibility,"** item **number 51**, you must provide all information that supports your request for a waiver for one or more of these reasons.

The following grounds of inadmissibility do not apply to TPS applicants. These grounds will not cause you to be found inadmissible for TPS purposes ONLY. You do not need to file this form for the following grounds of inadmissibility if you are a TPS applicant:

1. Public charge (INA section 212(a)(4));
2. Labor Certifications and qualifications for certain immigrants (INA section 212(a)(5));
3. Aliens present without admission or parole (INA section 212(a)(6)(A));
4. Stowaways (INA section 212(a)(6)(D));
5. Student visa violators (INA section 212(a)(6)(G));
6. Documentation requirements for immigrants and nonimmigrants (INA section 212(a)(7));
7. Certain aliens previously removed (INA section 212(a)(9)(A));
8. Aliens unlawfully present (INA section 212(a)(9)(B)); and
9. Aliens unlawfully present after previous immigration violations (INA section 212(a)(9)(C)).

No waiver is available to TPS applicants for the following grounds of inadmissibility:

1. Crimes involving moral turpitude (INA section 212(a)(2)(A)(i)(I)), except purely political offenses, certain juvenile offenses committed under the age of 18, or a single petty offense for which the maximum penalty was 1 year or less and the actual sentence was 6 months or less. You do not need to apply for a waiver on this form if your offense falls within these statutory exceptions.
2. Controlled Substance violations (INA section 212(a)(2)(A)(i)(II)), other than a single offense of simple possession of 30 grams or less of marijuana. You may apply for a waiver on this form if your offense was for such simple possession of marijuana.
3. Multiple criminal convictions (INA section 212(a)(2)(B)), except for purely political offenses.
4. Controlled substance traffickers (INA section 212(a)(2)(C));
5. General security and related grounds (INA section 212(a)(3)(A));
6. Terrorist activities (INA section 212(a)(3)(B));

7. Adverse foreign policy consequences for the U.S. (INA section 212(a)(3)(C));
8. Immigrant membership in totalitarian party (INA section 212(a)(3)(D));
9. Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing (INA section 212(a)(3)(E));

NOTE: Although certain grounds of inadmissibility do not apply to TPS applicants, they may still apply to you if you are seeking an immigration benefit other than TPS in the future. In addition, a waiver granted for TPS is valid only for purposes of your application for TPS. If you seek an immigrant visa or adjustment of status, you may need to apply for an additional waiver at that time.

NACARA and HRIFA Applicants Seeking a Waiver of Inadmissibility Based on Prior Removal Under INA Section 212(a)(9)(A)) or Unlawful Presence After Previous Immigration Violations Under INA Section 212(a)(9)(C))

If you are a NACARA or HRIFA applicant for adjustment of status under section 202 of NACARA or section 902 of HRIFA, who is inadmissible under INA section 212(a)(9)(A) or INA section 212(a)(9)(C), you may apply for a waiver of these grounds of inadmissibility while present in the United States. You seek this waiver by filing Form I-601, rather than Form I-212, Application for Permission to Reapply for Admission into the United Sates after Deportation or Removal, which is used to obtain "Consent to Reapply" under INA section 212(a)(9)(A)(iii) or (C)(ii).

When adjudicating your waiver application, USCIS will consider the same factors that would be considered if you were seeking "Consent to Reapply." Factors that may be considered include but are not limited to:

1. The length of time you have lived in the United States, whether lawfully or unlawfully;
2. Whether you have any criminal records;
3. Your immigration history in the United States;
4. Your family ties to U.S. citizens or to aliens living lawfully in the United States;
5. Whether the denial of your application will impose hardship on you or on these relatives, and the degree of that hardship;
6. Whether granting your waiver application is likely to result in your ability to immigrate lawfully;
7. Your employment history in the United States and the continued need for your services;
8. Whether you are a person of good moral character;
9. Any other factor that you believe USCIS should consider in deciding your case.

In addition to this form, you should submit a brief statement indicating why USCIS should grant your application and any documentary evidence that may be available to support your factual claims. Although hardship to a relative who is a U.S. citizen or an alien who is living lawfully in the United States is not specifically required by statute, this factor can play a significant role in establishing why USCIS should grant your application.

For information about how you can establish hardship, see the section of the instructions entitled "**What Evidence Should Be Submitted With the application?**".

Approved VAWA Self-Petitioner and His or Her Child(ren) Seeking a Waiver of Inadmissibility Under INA Section 212(a)(9)(C)(iii)

The INA provides special forms of relief for an approved VAWA self-petitioner and his or her child(ren) who are applying for adjustment of status or an immigrant visa but who are inadmissible under certain provisions of INA section 212(a)(6)(A)(i), section 212(a)(9)(B)(i), or section 212(a)(9)(C)(i). **You should only file this Form I-601 to seek a waiver of inadmissibility pursuant to INA section 212(a)(9)(C)(i); you do not need to file this form if you are inadmissible under INA sections 212(a)(6)(A)(i) or 212(a)(9)(B)(i), as explained in the "NOTE" below.**

If you are inadmissible under INA section 212(a)(9)(C)(i): USCIS has discretion to waive this ground of inadmissibility under INA section 212(a)(9)(C)(iii) for an approved VAWA self-petitioner and his or her child(ren), if the VAWA self-petitioner can establish a "connection" between the battery or extreme cruelty that is the basis for the VAWA claim, the unlawful presence and departure, or the removal, or his or her subsequent unlawful entry or attempted reentry into the United States. If you seek such a waiver, complete Form I-601 and attach evidence that shows the "connection" between the battery or extreme cruelty and your removal or departure from the United States, or your reentry or reentries into the United States, or attempted reentry into the United States.

NOTE: You do not need to file Form I-601 if you are an approved VAWA self-petitioner (and his or her child(ren)) seeking adjustment of status, and if you are inadmissible under INA section 212(a)(6)(A)(i) (presence in the United States without admission or parole, or arrival in the United States, other than at an open port of entry). According to USCIS policy, you are eligible for adjustment of status under INA section 245(a) regardless of your unlawful entry. Because INA section 212(a)(6)(A)(i) inadmissibility ends when you depart the United States, you also do not have to submit any special documentation with an immigrant visa application.

NOTE: You do not need to file Form I-601 if you are an approved VAWA self-petitioner (and his or her child(ren)) and inadmissible under INA section 212(a)(9)(B)(i) (3-year or 10-year bar to admission). You may be exempt from this inadmissibility if you, the approved VAWA self-petitioner, or your child(ren) can establish a "substantial connection" between the battery or extreme cruelty that is the basis for your VAWA claim and the violation of your prior nonimmigrant admission. You must submit evidence of the "substantial connection" with your Form I-485, Application to Register Permanent Residence or Adjust Status, or your immigrant visa application.

Applicants for Adjustment of Status Based on T Nonimmigrant Status

If you are a T nonimmigrant status holder admitted to the United States and applying for adjustment of status, you may obtain a waiver of almost any ground listed in INA section 212(a).

If you are inadmissible based on public health grounds (INA section 212(a)(1)) or public charge (INA section 212(a)(4)), the waiver may be approved if granting the waiver is in the national interest.

If you are inadmissible based on any other ground of inadmissibility, the waiver may be approved if the activities making you inadmissible were caused by or were incident to your trafficking victimization, and granting the waiver is in the national interest.

No waiver of inadmissibility is available to adjustment of status applicants based on T nonimmigrant status, for the following grounds of inadmissibility:

1. INA section 212(a)(3) (Security Related Grounds);
2. INA section 212(a)(10)(C) (International Child Abductors);
3. INA section 212(a)(10)(E) (Former Citizens who Renounced Citizenship to Avoid Taxation).

NOTE: You do not need to file Form I-601 if you are inadmissible because you have been unlawfully present in the United States and then departed (INA section 212(a)(9)(B)). You may be exempt from the 3-year or 10-year bar if you can establish that your victimization was at least one central reason for your unlawful presence in the United States. You should submit evidence with your Form I-485 to demonstrate that the victimization you suffered was a central reason for the unlawful presence in the United States.

What Evidence Should Be Submitted With the Application?

Pay close attention to the qualifying family relationship that you have to establish if you apply for an extreme hardship waiver. While the relationships appear to be similar, the various waiver provisions contain different qualifying family relationships.

Also, pay close attention to the requirements that need to be established to have a particular ground of inadmissibility waived, as listed in the "Specific Instructions."

In support of your application, you should provide evidence that establishes why you may qualify for a waiver of inadmissibility. In all cases, you must show that the approval of your application is warranted as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case. Depending on the type of waiver, this information and evidence may include but is not limited to:

1. Affidavits from you or other individuals in support of your application;
2. Police reports from any country you lived in;
3. Complete court records regarding any conviction or charge from any country;
4. If applicable, evidence of rehabilitation;
5. Any evidence you may wish to submit to establish that your admission to the United States would not be against national welfare or national security;
6. Medical reports;
7. If you are applying for a waiver because you are the spouse, parent, son, or daughter of a U.S. citizen or an alien lawfully admitted for permanent residence, or the fiancé(e) of a U.S. citizen, you must submit evidence establishing the family relationship (birth certificate, marriage certificate, etc) and attach evidence that demonstrates your denial of admission would result in **extreme hardship** to the U.S. citizen or lawful permanent resident spouse, parent, son, daughter, or your U.S. citizen fiancé(e).

Factors USCIS considers when determining extreme hardship include, but are not limited to:

a. *Health* - For example: Ongoing or specialized treatment required for a physical or mental condition; availability and quality of such treatment in the foreign country; anticipated duration of the treatment; chronic vs. acute vs. long or short-term care.

b. *Financial Considerations* - For example: Future employability; loss due to sale of home or business or termination of a professional practice; decline in standard of living; ability to recoup short-term losses; cost of extraordinary needs such as special education or training for children with special needs; cost of care for family members (elderly and sick parents).

c. *Education* - For example: Loss of opportunity for higher education; lower quality or limited scope of education options; disruption of current program; requirement to be educated in a foreign language or culture with ensuing loss of time or grade; availability of special requirements, such as training programs or internships in specific fields.

d. *Personal Considerations* - For example: Close relatives in the United States and country of birth or citizenship; separation from spouse/children; ages of involved parties; length of residence and community ties in the United States.

e. *Special Factors* - For example: Cultural, language, religious, and ethnic obstacles; valid fears of persecution, physical harm, or injury; social ostracism or stigma; access (or lack of access) to social institutions or structures (official or unofficial) for support, guidance, or protection.

Evidence of extreme hardship may include, but is not limited to:

a. Affidavits from the qualifying relative or other individuals with personal knowledge of the claimed hardships;

b. Expert opinions;

c. Evidence of employment or business ties, such as payroll records or tax statements;

d. Evidence of monthly expenditures such as mortgage, rental agreement, bills and invoices, etc.;

e. Other financial records supporting any claimed financial hardships;

f. Medical documentation and/or evaluations by medical professionals supporting any claimed medical hardships;

g. Records of membership in community organizations, volunteer confirmation, and evidence of cultural affiliations;

h. Birth/marriage/adoption certificates supporting any claimed family ties;

i. Country condition reports; and

j. Any other evidence you believe supports the claimed hardships.

8. If you are a VAWA self-petitioner and you seek a waiver under INA section 212(a)(9)(C)(iii), submit any evidence that you believe establishes a connection between the battery or extreme cruelty that is the basis for the VAWA claim, your unlawful presence and your departure (or your removal) and your unlawful return or attempted unlawful return.

9. If you are a T nonimmigrant status holder seeking a waiver under INA section 212(a)(1) or section 212(a)(4), submit any evidence that demonstrates it is in the national interest to waive these grounds. If you are seeking a waiver under any other INA section 212(a) ground, submit any evidence that demonstrates it is in the national interest to waive such ground and that the activities rendering you inadmissible were caused by or were related to your victimization.

10. If you are a TPS applicant, submit any evidence that demonstrates that the granting of your waiver serves humanitarian purposes, family unity or is in the public interest.

NOTE: Your application should be supported by documentary evidence, or you should have a detailed explanation why such evidence cannot be obtained. Mere assertions will not suffice. Medical assertions should be supported by a medical professional's statement.

What Is the Filing Fee?

All applications must be accompanied by a fee of **$585** unless you are eligible to request a fee waiver. The fee cannot be refunded, regardless of the action taken on the application. **Do not mail cash. All fees must be submitted in the exact amount.**

A fee waiver **may be requested** by a VAWA self-petitioner, a T nonimmigrant applying for adjustment of status, an applicant for Temporary Protected Status, or any applicant who is exempt from the public charge grounds of inadmissibility of INA section 212(a)(4).

If you believe you are eligible for a fee waiver, please complete Form I-912, Request for a Fee Waiver (or a written request), and submit it and any required evidence of your inability to pay the form fee with this form. You can review the fee waiver guidance at **www.uscis.gov**.

NOTE: As stated in the **NOTE** in the section of the instructions entitled "**Specific Instructions**", the approval of a Form I-601 waives only those events and the resulting grounds of inadmissibility that you have specifically identified in the application. You should specify on this Form I-601 every ground of inadmissibility for which you seek a waiver. You may file just one application, and pay just one filing fee, if you request more than one type of waiver or a waiver for more than one event or condition that makes you inadmissible. If you do not include all applicable events or grounds of inadmissibility in your application, you may need to file an additional Form I-601 and pay an additional fee to request any additional waiver(s).

Use the following guidelines when you prepare your check or money order for the Form I-601 fee:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; and
2. Make the check or money order payable to **U.S. Department of Homeland Security**.

   NOTE: Spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

Notice to Those Making Payment by Check. If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep a copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times.

How to Check If the Fees Are Correct

The fee on this form is current as of the edition date appearing in the lower left corner of this page. However, because USCIS fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit the USCIS Web site at **www.uscis.gov**, select "FORMS" and check the appropriate fee; or
2. Telephone the USCIS National Customer Service Center at **1-800-375-5283** and ask for the fee information.

NOTE: If you live outside of the United States please note that you may have to dial an international code to access the National Customer Service Center and that your calls may not be toll free.

Where To File?

Updated Filing Address Information

Please see our Web site at **www.uscis.gov/i-601** or call the USCIS National Customer Service Center at **1-800-375-5283** for the most current information about where to file this benefit request.

E-Notification

If you are filing your Form I-601 at a USCIS Lockbox facility, you may elect to receive an e-mail and/or text message notifying you that your application has been accepted. You must complete Form G-1145, E-Notification of Application/ Petition Acceptance, and clip it to the first page of your application. To download a copy of Form G-1145, including the instructions, refer to **www.uscis.gov** "FORMS." The Form G-1145 is activated after the form has been processed at the Lockbox facility and the receipt notice has been issued.

Address Changes

If you changed your address, you must inform USCIS of your new address. For information on filing a change of address go to the USCIS Web site at **www.uscis.gov/addresschange** or contact the USCIS National Customer Service Center at **1-800-375-5283**.

Processing Information

Initial Processing

Once a Form I-601 has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and USCIS may deny your Form I-601. An application or petition is not considered properly filed until accepted by USCIS.

Requests for More Information, or Interview

We may request more information or evidence, or we may request that you appear at a USCIS office for an interview. We may also request that you submit the originals of any copies submitted with the initial application. We will return these originals when they are no longer required.

Decision

The decision on a Form I-601 involves a determination of whether you have established eligibility for the requested benefit. You will be notified of the decision in writing.

USCIS Forms and Information

You can get USCIS forms and immigration-related information on the USCIS Web site at **www.uscis.gov.** You may order USCIS forms by calling our toll-free number at **1-800-870-3676.** You may also obtain forms and information by telephoning the USCIS National Customer Service Center at **1-800-375-5283.**

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through USCIS Internet-based system, **InfoPass**. To access the system, visit USCIS Web site. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

USCIS Privacy Act Statement

AUTHORITIES: The information requested on this form, and the associated evidence, is collected under the Immigration and Nationality Act, section 101, et seq.

PURPOSE: The primary purpose for providing the requested information on this form is to determine if you have established eligibility for the immigration benefit for which you are filing. The information you provide will be used to grant or deny the benefit sought.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information and any requested evidence may delay a final decision or result in denial of your form.

ROUTINE USES: The information you provide on this form may be shared with other Federal, State, local, and foreign government agencies and authorized organizations following approved routine uses described in the associated published system of records notices [DHS-USCIS-007 - Benefits Information System and DHS-USCIS-001 - Alien File, Index, and National File Tracking System of Records, which can be found at **www.dhs.gov/privacy**]. The information may also be made available, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 90 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140. OMB No. 1615-0029. **Do not mail your completed Form I-601 application to this address.**

Application for Waiver of Grounds of Inadmissibility

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-601
OMB No. 1615-0029
Expires 12/31/2014

For USCIS Use Only	Fee Stamp	Initial Receipt	Resubmitted	Action Block

Benefits Category	Relocated	
☐ Immigrant ☐ Adjustment of Status ☐ TPS ☐ V Nonimmigrant ☐ K Nonimmigrant	Received	Sent

Inadmissible Under

☐ 212(a)(1)_____ ☐ 212(a)(3)_____ ☐ 212(a)(6)_____ ☐ 212(a)(10)_____
☐ 212(a)(2)_____ ☐ 212(a)(4)_____ ☐ 212(a)(9)_____ ☐ Other_____

To Be Completed by an *Attorney or Representative*, if any.

☐ Fill in box if G-28 is attached to represent the applicant.

Attorney State License Number: _____

▶ **START HERE - Type or print in black ink.**

Part 1. Information About Applicant

1. Alien Registration Number (A-Number)

▶ A- [| | | - | | | | | | |]

2. Applicant's U.S. Social Security Number *(optional)*

▶ [| | | | | | | | |]

Your Full Name

3.a. Family Name *(Last Name)*

3.b. Given Name *(First Name)*

3.c. Middle Name

Address

4.a. Street Number and Name

4.b. Apt. ☐ Ste. ☐ Flr. ☐

4.c. City or Town

4.d. State 4.e. Zip Code

4.f. Postal Code

4.g. Province

4.h. Country

Contact Information

5. Daytime Phone Number (if any) Extension

( ) -

6. E-mail Address *(if any)*

Other Information

7. Date of Birth *(mm/dd/yyyy)* ▶

8. City or Town of Birth

9. Province of Birth *(if applicable)*

10. Country of Birth

11. Country of Citizenship

If you are outside the United States and you were already interviewed by a Department of State (DOS) consular officer at a U.S. Embassy or consulate, provide information in **item number 12.a. - 12.c.**

12.a. Date of Visa Application with DOS *(mm/dd/yyyy)* ▶

Part 1. Information About Applicant *(continued)*

12.b. Location of Visa Application with DOS

12.c. Department of State Consular Case Number

13.a. If in the United States: Did you file this application after you have already filed Form I-485 or Form I-821?

☐ Yes ☐ No

13.b. If "Yes", provide USCIS Receipt #

▶

13.c. Filing Location

13.d. Date Filed *(mm/dd/yyyy)* ▶

Reason(s) for Inadmissibility

Mark all of the following grounds that you believe, according to the best of your knowledge, apply to you. Only mark the applicable ground(s) listed under the immigration benefit you are seeking.

In the space provided for item **number 51**, include a statement explaining the acts, convictions, and medical conditions that you believe make you inadmissible.

If you seek a waiver of inadmissibility because you have a Class A Tuberculosis condition (as per HHS regulations), you must complete the last 2 pages of this form. If you seek a waiver of inadmissibility because of a history of physical or mental disorders, you must attach the information requested in the instructions.

A. I am an applicant for an immigrant visa or adjustment of status (other than based on T nonimmigrant status), or for K or V nonimmigrant status, and I believe that I am inadmissible because: (See the form instructions for a detailed explanation of the individual grounds.)

Check all that apply

14. ☐ I have a communicable disease of public health significance, as per HHS regulations (see instructions).

15. ☐ I have, or have had in the past, a physical or mental disorder and behavior associated with the disorder that poses, may pose, or has posed, a threat to the property, safety, or welfare of myself or others (see instructions).

16. ☐ I seek an exemption from the vaccination requirement because it is against my religious beliefs or moral convictions (see instructions).

17. ☐ I have been involved in a crime of moral turpitude (other than a purely political offense) (see instructions).

18. ☐ I have been convicted of 2 or more offenses, other than purely political ones, for which the combined sentences to confinement were 5 years or more (see instructions).

19. ☐ I have been involved in a controlled substance violation according to the laws and regulations of any country that involved a single offense of simple possession of 30 grams or less of marijuana (see instructions).

20. ☐ I have, within the last 10 years, been involved in prostitution, or I am currently involved in prostitution. "Involved in" prostitution means being a prostitute, procuring or attempting to procure others for prostitution, importing other individuals to engage in prostitution, or receiving the proceeds, in full or in part, from prostitution (see instructions).

21. ☐ I am coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution (see instructions).

22. ☐ I have been involved in serious criminal activity and have asserted immunity from prosecution (see instructions).

23. ☐ I have sought to procure an immigration benefit by fraud or by concealing or misrepresenting a material fact (immigration fraud or misrepresentation) (see instructions).

24. ☐ I am or I have been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate of the party), domestic or foreign (see instructions).

25. ☐ I have been engaged in alien smuggling (see instructions).

26. ☐ I am subject to a civil penalty because I have been the subject of a final order for violation of the Immigration and Nationality Act (INA) section 274C (see instructions).

27. ☐ I am subject to the 3-year or the 10-year bar to admissibility because I was previously unlawfully present in the United States in excess of either 180 days or 1 year or more, and subsequently departed the United States (see instructions).

28. ☐ I was previously removed from the United States (see instructions for NACARA and HRIFA applicants only. All other applicants, file Form I-212).

Part 1. Information About Applicant *(continued)*

Reason(s) for Inadmissibility (continued)

29. ☐ I have been ordered removed, or I have been unlawfully present in the United States for more than 1 year, in the aggregate, and I subsequently reentered or attempted to reenter without being admitted (see instructions for NACARA, HRIFA, and the instructions for approved VAWA self-petitioners only. Other applicants, file Form I-212).

30. ☐ Other (specify)

_____

_____

_____

_____

B. I am applying for adjustment of status based on a valid T nonimmigrant status and I believe that I am inadmissible because: (see instructions)

31. ☐ Specify:

_____

_____

_____

_____

C. I am applying for TPS and I believe that I am inadmissible because: (see instructions)

Check all that apply

32. ☐ I have a communicable disease of public health significance. (A list of communicable diseases of public health significance can be found in the instructions).

33. ☐ I have or I had a physical or mental disorder and behavior (or a history of behavior that is likely to recur) associated with the disorder, which has posed or may pose a threat to the property, safety, or welfare of myself or others.

34. ☐ Within the past 10 years, I have engaged in prostitution (including receiving the proceeds of, in full or in part) or procurement of prostitution, or continue to engage in prostitution or procurement of prostitution.

35. ☐ I am or I have been a drug abuser or drug addict as described in Department of Health and Human Services Regulations. See 42 CFR Part 34.

36. ☐ I have been or I intend to be involved in any other commercialized vice.

37. ☐ I have committed a serious criminal offense in the United States and asserted immunity from prosecution.

38. ☐ I am subject to a final order for violation of INA section 274C (producing/using false documentation to unlawfully satisfy a requirement of the INA).

39. ☐ I did not attend or did not remain at a removal proceeding to determine my inadmissibility or deportability.

40. ☐ I practice polygamy.

41. ☐ I am accompanying another alien who is inadmissible after being certified to be helpless under INA section 232(c), and I am inadmissible because that other alien requires my protection or guardianship.

42. ☐ I have detained, retained, or withheld the custody of a child having a lawful claim to U.S. citizenship, outside the United States, from a U.S. citizen granted custody.

43. ☐ I was an unlawful voter who voted in violation of a Federal, State, or local constitutional provision, statute, ordinance, or regulation.

44. ☐ I am a former United States citizen who renounced my citizenship in order to avoid taxation by the United States.

45. ☐ I tried to obtain a visa, other documentation, or admission into the United States or other benefit by fraud or willfully misrepresenting a material fact.

46. ☐ I falsely represented myself as a U.S. citizen.

47. ☐ I have assisted another person to enter the United States in violation of the law.

48. ☐ I am ineligible for U.S. citizenship because I obtained a discharge from the U.S. Armed Forces for the reason that I am an alien OR because I received an exemption from the military draft for the reason that I am an alien.

49. ☐ I have been involved in a single offense of simple possession of 30 grams or less of marijuana.

50. ☐ Other (specify)

_____

_____

_____

_____

Part 1. Information About Applicant *(continued)*

Reason(s) for Inadmissibility (continued)

51.

Statement From Applicant

In the space provided in **number 51**, describe in your own words why you believe that you are inadmissible and all the reasons that you believe support your request for a waiver.

Your statement must explain the acts, convictions, and/or medical conditions that make you inadmissible. Your statement must indicate when you engaged in the acts that you believe make you inadmissible, the date of all convictions, or the date of any medical diagnosis. You must provide this information in **number 51**, even if the information is also in the documents that you submit with your application according to the form instructions.

Your statement must also explain why you believe your application should be approved as a matter of discretion, with the favorable factors outweighing the unfavorable factors in your case. If your application requires the showing of extreme hardship to a qualifying relative, you must explain the hardship that your qualifying relative has or will experience if you are refused the immigration benefit you are seeking.

If you intend to submit a statement in a separate letter, you may do so but you must write into the space in **number 51**, that you are attaching a letter that explains the acts, convictions, or medical conditions that you believe make you inadmissible. The letter must be submitted at the same time as your Form I-601 application.

NOTE: You should include copies of any documents that support your statement, with your Form I-601 application packet. Records of convictions must be certified from the court in which you were convicted; copies will not be sufficient.

NOTE: If you require more space to complete your statement, use the space provided in **Part 6.**

Part 1. Information About Applicant *(continued)*

Applicant was previously in the United States as follows:

52.a. City or Town

52.b. State

52.c. Date From *(mm/dd/yyyy)* ▶

52.d. Date To *(mm/dd/yyyy)* ▶

52.e. Immigration Status

53.a. City or Town

53.b. State

53.c. Date From *(mm/dd/yyyy)* ▶

53.d. Date To *(mm/dd/yyyy)* ▶

53.e Immigration Status

54.a. City or Town

54.b. State

54.c. Date From *(mm/dd/yyyy)* ▶

54.d. Date To *(mm/dd/yyyy)* ▶

54.e. Immigration Status

55.a. City or Town

55.b. State

55.c. Date From *(mm/dd/yyyy)* ▶

55.d. Date To *(mm/dd/yyyy)* ▶

55.e. Immigration Status

Part 2. Information About Relative Through Whom Applicant Claims Eligibility, Where Applicable

1.a. Family Name *(Last Name)*

1.b. Given Name *(First Name)*

1.c. Middle Name

Physical Address

2.a. Street Number and Name

2.b. Apt. ☐ Ste. ☐ Flr. ☐

2.c. City or Town

2.d. State **2.e.** Zip Code

2.f. Postal Code

2.g. Province

2.h. Country

Other Information

3. Daytime Phone Number ( ) - Extension

4. E-mail Address *(if any)*

5. Relationship to Applicant

6. Immigration Status

☐ Check here if the applicant has additional relatives through whom the applicant claims eligibility. Please go to **Part 6** and provide the same information as requested in **Part 2, numbers 1.a. through 6.**

Part 3. Information About Applicant's Other Relatives in the United States

(List only U.S. citizens and permanent residents)

1.a. Family Name *(Last Name)*

1.b. Given Name *(First Name)*

1.c. Middle Name

Physical Address

2.a. Street Number and Name

2.b. Apt. ☐ Ste. ☐ Flr. ☐

2.c. City or Town

2.d. State **2.e.** Zip Code

Other Information

3. Daytime Telephone Number ( ) - Extension

4. E-mail Address *(if any)*

5. Relationship to Applicant

6. Immigration Status

☐ Check here if the applicant has additional relatives in the United States. Please go to **Part 6** and provide the same information as requested in **Part 3, numbers 1.a. through 6.**

Part 4. Signature of Applicant

I certify, under penalty of perjury under the laws of the United States, that this application and the evidence submitted with it are all true and correct to the best of my knowledge and abilities. I authorize the release of any information from my records that U.S. Citizenship and Immigration Services (USCIS) needs to determine my eligibility for this waiver.

I furthermore authorize release of information contained in this form, supporting documents, and my USCIS records to other entities and persons where necessary for the administration of U.S. immigration laws.

1.a. Signature of Applicant (See the instructions)

1.b. Date of Signature *(mm/dd/yyyy)* ▶

Part 5. Signature of Person Preparing This Application, If Other Than the Applicant

NOTE: If you are an attorney or representative, you must submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with this application.

Preparer's Full Name

Provide the following information concerning the preparer:

1.a. Preparer's Family Name *(Last Name)*

1.b. Preparer's Given Name *(First Name)*

2. Preparer's Business or Organization Name

Preparer's Mailing Address

3.a. Street Number and Name

3.b. Apt. ☐ Ste. ☐ Flr. ☐

3.c. City or Town

3.d. State **3.e.** Zip Code

3.f. Postal Code

3.g. Province

3.h. Country

Part 5. Signature of Person Preparing This Application, If Other Than the Applicant *(continued)*

Preparer's Contact Information

4. Preparer's Daytime Phone Number ( ) - Extension

5. Preparer's E-mail Address *(if any)*

Declaration

I declare that this document was prepared by me at the request of the applicant or other individual authorized by the form instructions to sign this application (see the instructions), and it is based on all information of which I have knowledge and/or was provided to me by the above named person in response to the exact questions contained on this form. I have not knowingly withheld any information.

6.a. Signature of Preparer

6.b. Date of Signature *(mm/dd/yyyy)* ▶

Part 6. Additional Information

If you require more space to complete an item, please use the space below. In order to assist us in reviewing your response, you must identify the Part Number and Item Number.

1.

2.

To Be Completed for Applicants With Class A Tuberculosis Condition (As Per HHS Regulations)

Section A. Statement by Applicant

Upon admission to the United States I will:

A. Go directly to the health department named in **Section B**;

B. Present all X-rays used in the visa medical examination to substantiate diagnosis;

C. Submit to such examinations, treatment, isolation, and medical regimen as may be required; and

D. Remain under the prescribed treatment or observation, whether on inpatient or outpatient basis, until discharged.

1.a. Signature of Applicant

1.b. Date of Signature *(mm/dd/yyyy)* ▶

Section B. Statement by Local (City or County) Health Department

NOTE: The physician at the local health department in the area where the alien plans to reside should complete this statement.

I agree to supply any treatment or observation necessary for the proper management and continued care of the alien's tuberculosis condition.

I agree to submit a summary of my initial evaluation of the alien's condition to the State Health Department Official named in **Section D** and to the **Division of Global Migration and Quarantine (E03), Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30333:**

A. Within 30 days of the alien reporting for care, indicating presumptive diagnosis, test results, and plans for future care of the alien; or

B. A report that the alien has not reported within 30 days after receiving notice from the Division of Global Migration and Quarantine, CDC.

Satisfactory financial arrangements have been made. (This statement does not relieve the alien from submitting evidence, as required by a U.S. consulate, to establish that the alien is not likely to become a public charge.)

I represent (enter an "X" in the appropriate box and give the complete name, address, and phone number of the health department below):

1.a. ☐ City Health Department

1.b. ☐ County Health Department

2.a. Name of Health Department (Type or print in black ink)

2.b. Street Number and Name

2.c. Apt. ☐ Ste. ☐ Flr. ☐

2.d. City or Town

2.e. State **2.f.** Zip Code

3.a. Signature of Physician

3.b. Date of Signature *(mm/dd/yyyy)* ▶

3.c. Printed Name of Physician

3.d. Daytime Phone Number Extension

( ) -

3.e. E-mail Address *(if any)*

Section C. Arrangement for Medical Care by the Applicant or His or Her Sponsor

Arrange for medical care (of the applicant) and have the appropriate Health Departments complete **Sections B and D.**

Provide the following information:

Address where you or the applicant plan to reside in the United States:

1.a. Street Number and Name

1.b. Apt. ☐ Ste. ☐ Flr. ☐

1.c. City or Town

1.d. State **1.e.** Zip Code

To Be Completed for Applicants With Class A Tuberculosis Condition (As Per HHS Regulations)

Section D. Endorsement of State Health Department Official

NOTE: The State Health Department Official in the area where the applicant plans to reside should complete this statement.

Endorsement signifies recognition of the local health department that completed **Section B** for the purpose of providing care and treatment of the applicant's tuberculosis condition, and that the local health department is within your jurisdiction. Endorsement also signifies recognition that the applicant will be residing within your State's health jurisdiction.

Endorsed by:

1.a. Signature of State Health Department Official

1.b. Date of Signature *(mm/dd/yyyy)* ▶

2.a. Name of State Health Department (Type or print in black ink)

2.b. Street Number and Name

2.c. Apt. ☐ Ste. ☐ Flr. ☐

2.d. City or Town

2.e. State **2.f.** Zip Code

2.g. Daytime Phone Number ( ) - Extension

2.h. E-mail Address (*if any*)

Note to the Applicant and his or her Sponsor: If you need assistance, contact USCIS at the National Customer Service Center at **1-800-375-5283**. You may also schedule an appointment at the local USCIS office through InfoPass (available through USCIS' Web site at **www.uscis.gov**).

Note to the Applicant: If you are approved for a waiver and after admission to the United States you fail to comply with the terms, conditions, and controls that were imposed with the grant of the waiver, you may be subject to removal under Immigration and Nationality Act (INA) section 237(a).

U.S. Citizenship and Immigration Services
Office of Service Center Operations
Washington, DC 20529
U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

Memorandum:

To: Field Leadership

From: Donald Neufeld
Associate Director, Service Center Operations

Date:

Subject: Discontinuation of the I-601 Fingerprint Refresh Requirement

1.Purpose

(b)(7)(e)

2.Background

(b)(7)(e)

3.Field Guidance

(b)(7)(e)

(b)(7)(e)

4.SOP Update

This memo supersedes any outstanding guidance or Standard Operating Procedures (SOP). Please update any internal SOPs.

5.Use

This memorandum is intended solely for the instruction and guidance of USCIS personnel in performing their duties relative to adjudications. It is not intended to, does not, and may not be relied upon to create any right or benefit, subjective or procedural, enforceable at law or by any individual or other part in removal proceedings, in litigation with the United States, or in any other form or manner.

6.Contact Information

Questions regarding this memorandum may be directed though appropriate supervisory channels to Service Center Operations

Nebraska Service Center

Standard Operating Procedure (SOP)

Application for Waiver of Grounds of Inadmissibility (Form I-601)

July 20, 2013

Table of Contents

General

Purpose

This SOP prescribes procedures for the adjudication and processing of the Application for Waiver of Grounds of Inadmissibility (Form I-601) within the Nebraska Service Center (NSC).

Applicability/ Scope

This SOP is applicable to all NSC adjudicators and clerical personnel performing Form I-601 adjudicative or clerical functions or review of those functions. Personnel performing other duties pertaining to Form I-601 will be similarly bound by the provisions of this SOP that apply to their specific task or duties.

Conflict Resolution

Any provision of the Immigration and Nationality Act (INA) or 8 CFR that conflicts with this SOP will take precedence over the SOP; if you identify a conflict, report the matter immediately to your supervisor or to any SISO.

If any conflict is noted between this SOP and policy or guidance documents issued by HQSCOPS, report the matter through the supervisory chain for resolution.

This SOP supersedes all prior NSC guidance documents, policy memoranda, training packets, or other materials pertaining to Form I-601; these documents should be discarded.

Continued on next page

General, Continued

Revisions

Numbered revisions of this document will be issued as required. All personnel who maintain a printed copy of the document will post the revisions upon receipt.

Electronic copies of the document will be modified to reflect changes as they are issued. A listing of posted revisions will be included in the electronic document to serve as a summary of all revisions. Current revisions will be posted in the beginning of the document and all new changes will be highlighted in yellow. A complete listing of all prior revisions can be found at the end of this document in the Previous Revisions section.

Revision #	Date	Subject	Pages
1	4/4/12	I-601 Centralization SOP	
2	7/20/13	Process Revisions	

Chapter 1: Introduction to Form I-601 Waivers

Form I-601 Overview

Form I-601 Application

Form I-601 is used to apply for certain waivers of inadmissibility, as specified on the Form I-601 instructions. A fee is required per 8 CFR 103.7(b)(1)(i).

There is only limited authority to waive the filing fee based on the applicant's inability to pay the filing fee. .

Under 8 CFR 103.7(c)(3)(xviii), USCIS has discretion to waive the Form I-601 filing fee for:

- A VAWA self-petitioner;
- An applicant for a T or U nonimmigrant visa; and
- An applicant for Temporary Protected Status.

USCIS may also waive the Form I-601 filing fee based on inability to pay if the Form I-601 is filed in conjunction with an application for adjustment of status if, but only if, public charge inadmissibility under section 212(a)(4) of the Act, by statute, does not apply to the alien in determining whether the alien is eligible for adjustment.
The Form I-912, Request for a Fee Waiver, (or a written request), may be submitted.

The current version of Form I-601 was published on June 8, 2011. Previous versions of Form I-601 dated November 23, 2010 and January 6, 2010 are acceptable.

NOTE: Cases filed prior to January 6, 2010 on old revisions of Form I-601 should be adjudicated as properly filed based on the requirements in this document.

Section 212 of the INA

When adjudicating a Form I-601, you must first determine whether the applicant is eligible for the waiver that the applicant is applying for. If the applicant is eligible, you must then determine whether, as a matter of discretion, USCIS should grant the waiver of inadmissibility.

Section 212 of the INA outlines:

- Grounds that serve as a basis for refusing to admit aliens to the United States and for refusal of visa issuance. This list is referred to as "grounds of inadmissibility".
- Several specific waivers that, if granted, permit an alien, who is otherwise ineligible for admission or otherwise ineligible for a visa, can be admitted to the United States. Each waiver applies only to those certain specified grounds of inadmissibility indicated in the waiver provision.

References

References for the adjudication of a Form I-601 include:

- INA (Statute provided by Congress)
- 8 CFR
- Precedent decisions
- Recommendations from other agencies
- Officer discretion

Continued on next page

Parts of Section 212

Section 212 of the INA is divided into subsections, from 212(a) to 212(t). The table below outlines a brief description of each subsection of section 212 of the INA.

Section of 212	Description
212(a)	A list of about 10 classes of inadmissible aliens. Those classes include aliens with medical conditions, criminal records, aliens without a visa, etc. The authority to approve a waiver for certain section 212(a) grounds of inadmissibility is contained in section 212(a) itself. The authority to approve waivers of certain other section 212(a) grounds of inadmissibility is found outside of section 212(a).
212(b)	Generally, if an alien is determined to be inadmissible under section 212(a), the alien is to be provided with an explanation of his/her inadmissibility, with a few exceptions.
212(c)	This repealed provision gave the Attorney General very broad authority to approve waivers of inadmissibility to lawfully admitted permanent residents who have been LPRs for at least 7 years. By judicial and administrative interpretation, this relief also became available for certain grounds of deportability. Section 212(c) was repealed by IIRAIRA effective April 1, 1997, but the Supreme Court held that the repeal did not apply to certain aliens convicted of certain crimes before that repeal. This relief is *not* sought by filing Form I-601.
212(d)	Contains a number of waiver and other provisions relating to S non-immigrants coming to testify in criminal proceedings; waiver provisions for non-immigrants generally; the authority to parole aliens into the U.S.; authority to waive inadmissibility for having aided certain relatives to enter the U.S. illegally; and a few other miscellaneous provisions.
212(e)	Imposes the foreign-residence requirement for J-1 exchange visitors and gives the DHS Secretary the authority to approve a waiver of the foreign-residence requirement.

Form I-601 Overview, Continued

Parts of Section 212 (continued)

Section of 212	Description
212(f)	Gives the President the authority to suspend, by proclamation, the admission of any class of aliens into the United States if he determines that those aliens' entry would be detrimental to the United States. In addition, section 212(f) gives the Secretary of Homeland Security (the Secretary) the authority to penalize airlines that do not comply with regulations relating to fraudulent documents used by aliens.
212(g)	Gives the Secretary the authority to approve waivers of inadmissibility for certain aliens who are inadmissible for medical reasons under section 212(a)(1).
212(h)	Gives the Secretary the authority to approve waivers of inadmissibility for certain aliens who are inadmissible for criminal and related reasons under section 212(a)(2).
212(i)	Gives the Secretary the authority to approve waivers of inadmissibility for certain aliens who are inadmissible for misrepresentation in immigration matters under section 212(a)(6)(C).
212(j)	Contains the special rules and requirements for J-1 and H-1B physicians, including the various tests that such physicians are required to pass.
212(k)	Gives the Secretary the authority to admit an alien in possession of an immigrant visa, even if the alien is inadmissible for lack of a labor certification under section 212(a)(5)(A), or inadmissible for a deficient immigrant visa under section 212(a)(7)(A)(i).
212(l)	Gives the Secretary the authority to approve a waiver of inadmissibility for lack of a nonimmigrant visa under section 212(a)(7)(B), for certain aliens applying for admission to Guam for business or pleasure.
212(m)	Contains the special rules and requirements for the expired program for H-1C registered nurses.
212(n)	Contains special requirements for the approval of H-1B petitions, including the requirement for a labor condition application.
212(p)	Compilation of prevailing wage level.
212(q)	Authority for B non-immigrant to accept certain honorarium payments
212(r)	Exception to 212(a)(5)(C) for certain nurses.
212(s)	Public charge exception for battered alien.
212(t)	Restrictions on Q-2 non-immigrant and new labor regulation for H1Bs.

Form I-601 Overview, Continued

Sections of 212 NSC Adjudicates Regularly

NSC regularly deals with cases that involve the application of:

- Section 212(a)
- Section 212(g)
- Section 212(h)
- Section 212(i)

Section 212(a) of the INA

Section 212(a) Applicants for adjustment of status and applicants for immigrant visas use the Application for Waiver of Grounds of Inadmissibility (Form I-601) to request a waiver of the following grounds of inadmissibility:

Inadmissibility Section of the INA	Description of Related Ground
212(a)(1)	**Health related grounds**
212(a)(2)	**Criminal and related grounds**
212(a)(3)(D)	**Membership in a totalitarian party**
212(a)(6)(C)	**Fraud / misrepresentation**
212(a)(6)(E)	**Smugglers**
212(a)(6)(F)	**Subject to civil penalty**
212(a)(9)(B)	**Unlawful presence (in the United States for at least 180 days, beginning on or after April 1, 1997, followed by departure from the United States.)**

NOTE: Form I-601 is also used for:

- K and V non-immigrants intending to immigrate to the United States;
- VAWA self-petitioners seeking to waive INA 212(a)(9)(C) for unlawful presence after a previous immigration violation;
- NACARA and HRIFA applicants seeking to waive INA 212(a)(9)(A) for a prior removal or INA 212(a)(9)(C) for unlawful return after a previous immigration violation;
- T nonimmigrant status holders seeking to waive grounds of inadmissibility for the purpose of adjusting status; and
- TPS applicants seeking to waive grounds of inadmissibility only for the purpose of obtaining TPS status.

Waiver Authorities

The authority of CIS to grant waivers of grounds of inadmissibility for immigrant visa applicants and nonimmigrant K and V visa applicants is found in different parts of section 212 of the INA.

The authority to approve a waiver of inadmissibility for section…	Is found in section…
212(a)(1)(A),	**212(a)(1)(B) and 212(g).**
212(a)(2),	**212(a)(2)(F) and 212(h).**
212(a)(3)(D),	**212(a)(3)(D)(iv)**
212(a)(6)(C),	**212(a)(6)(iii) and 212(i).**
212(a)(6)(E),	**212(d)(11).**
212(a)(6)(F),	**212(d)(12)**
212(a)(9)(B),	**212(a)(9)(B)(v).**

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Qualifying Family Member

For the waivers of inadmissibility under sections **212(g)(1), (h)(1)(B), 212(i), or 212(a)(9)(B)(v)** of the INA, the applicant generally must have a qualifying relative in order to apply for the waiver. The qualifying relatives are:

- For section 212(g)(1): A U.S. citizen or LPR spouse, child, son or daughter or parent;
- For section 212(h)(1)(B): A U.S. citizen or LPR spouse, child, son or daughter, or parent
- For section 212(i): A U.S. citizen or LPR spouse or parent (*not* a child, son or daughter)
- For section 212(a)(9)(B)(v): A U.S. citizen or LPR spouse or parent (*not* a child, son or daughter.

Note: A VAWA self-petitioner does not need to have a qualifying relative in order to apply for a waiver under section 212(g)(1), (h)(1)(B), or (i).

Note: In the case of an alien seeking a K-1 or K-2 nonimmigrant visa, the U.S. citizen *fiancé(e)* petitioner is treated for purposes of the Form I-601 as the qualifying relative. But any waiver that may be granted is conditioned on the K-1's marriage to the fiancé(e) petitioner.

Extreme Hardship

For waivers under section 212(h)(1)(B), (i), and 212(a)(9)(B)(v), the applicant must show that denial of his or her admission will impose "extreme hardship" on the qualifying relative. Congress has declined to specifically define extreme hardship. Whether extreme hardship exists is, in itself, largely a discretionary issue that can be resolved only in the context of the facts of a particular case. The section of this SOP on "Extreme Hardship" discusses the factors to be considered in determining whether extreme hardship is established in a given case.

Jurisdiction

Introduction

Regardless of the type of waiver the Form I-601 is requesting, jurisdiction is usually the first issue to address. The guidance on jurisdiction, i.e., where to file the Form I-601 and where it is to be adjudicated, is found in the form instructions, the USCIS Web site, and in NSC local policy.

Immigrant Visa Applicants

An alien applying for an immigrant visa or "K" or "V" non-immigrant visas at a U.S. Consulate office must file the Form I-601 at the Phoenix Lockbox when a waiver is needed under:

- 212(h) for criminal or related grounds
- 212(i) for fraud and/or misrepresentation
- 212(a)(9)(B)(v) for previous unlawful presence
- 212(g) for health-related grounds
- 212(a)(3)(D)(i) for membership in a totalitarian party
- 212(a)(6)(E) for smuggling
- 212(a)(6)(F) for being the subject of a civil penalty

Consulate Notification of Inadmissibility and Eligibility to File Form I-601

After the consular office has determined that the alien is admissible except for the grounds covered by the Form I-601, the consular office will instruct the applicant to file Form I-601 with USCIS if a waiver is available. The reason(s) for refusal will be available for review in the CCD program to show why the alien is inadmissible.

No USCIS Review of Consular Finding of Inadmissibility

This SOP provides an overview of various grounds of inadmissibility. It is important to keep in mind, however, that in adjudicating a waiver application, USCIS has authority to decide only whether the applicant is eligible for the waiver and whether the waiver should be granted, as a matter of discretion. USCIS does not "review" the actual finding of inadmissibility. See Chapter 3 of this SOP about liaison with the consular officer, if USCIS believes that the applicant may not actually be inadmissible.

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Adjustment of Status Applicants

An applicant for adjustment of status who needs a waiver under section 212(g), (h), 212(i), or 212(a)(9)(B)(v) of the INA must file the Form I-601 with the USCIS office considering the adjustment of status application, or with the immigration judge considering the adjustment of status application. Generally, the Form I-601 waiver and the Form I-485 application will be sent to the District Office for adjudication.

Filing Location Determined by Applicant's Residence

Refer to the table below to see where the applicant must file his or her Form I-601 based on residence.

If the applicant resides...	Then the waiver must be filed at
Outside the United States,	The VSC for VAWA cases. The Phoenix Lockbox for all other applicants.
Inside the United States,	The appropriate Lockbox corresponding to the I-485 receipt number for adjustment of status applicants. The VSC for VAWA and T visa applicants. The Service Center adjudicating the I-821 for TPS applicants.

Waivers Received at NSC

The NSC should only adjudicate waivers for overseas cases and for applicants with TPS. Refer to the following table for processing instructions for all other waivers received by the NSC.

If the waiver is ...	Then...
For a TPS or adjustment of status applicant and the I-821 or I-485 is not pending at the NSC,	Relocate to the appropriate service center or field office.
For a VAWA adjustment case or T nonimmigrant case,	Relocate to the VSC.
For I-730 applicant	Consult with consulate and then ADMIN CLOSE the case as it is not necessary.
For applicant in proceedings	Reject application and refund the fee. Provide the instructions for filing certain applications with the Immigration Court. Prepare rejection/refund letter in ECHO.

Health Related Waivers Under 212(g)

Physician's certification needed to establish inadmissibility

An alien may be found to be inadmissible under section 212(a)(1) *only if* a a panel physician (designated by DOS for overseas medical examinations) or a civil surgeon (designated by USCIS for stateside medical examinations) that the alien has a "Class A" medical condition.

212(a)(1)(A)(i) Communicable Disease

An alien is inadmissible under section 212(a)(1)(A)(i) if the panel physician or civil surgeon certifies that the alien has a communicable disease of public health significance, as defined by the Secretary of Health and Human Services (HHS).

Each disease that has been designated a "communicable disease of public health significance" is listed at 42 CFR 34.2(b). As of February 2012, the list includes:

- Chancroid;
- Communicable diseases as listed under Section 361(b) of the Public Health Service Act. The revised list of quarantinable communicable diseases is available at the CDC, Centers for Disease Control, Public Health Service Web site;
- Communicable diseases that may pose a public health emergency of international concern if it meets one or more of the listed factors in 42 CFR 34.3(d);
- Gonorrhea;
- Granuloma inguinale;
- Hansen's disease (Leprosy) infectious;
- Lymphogranuloma venereum;
- Syphilis, infectious stage;
- Tuberculosis, active.

Health Related Waivers Under 212(g), continued

212(a)(1)(A)(ii) Vaccinations

The alien is inadmissible under section 212(a)(1)(A)(ii) of the alien seeks admission with an immigrant visa, or applies for adjustment of status, and the panel physician or civil surgeon has certified that the alien has not presented documentation of having been vaccinated against vaccine-preventable diseases.

Vaccine preventable diseases may include:

- Hepatitis A
- Hepatitis B
- Influenza
- Influenza type b (Hib)
- Measles
- Meningococcal
- Mumps
- Pneumococcal
- Pertussis
- Polio
- Rotavirus
- Rubella
- Tetanus and diphtheria toxoids
- Varicella
- Any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices.

EXCEPTION: Adopted children under age 10 applying for immigrant visas under section 201(b) of the INA provided certain requirements are met.

212(a)(1)(A)(iii) (I) & (II) Physical or Mental Disorder

The alien is inadmissible under section 212(a)(1)(A)(iii) of the panel physician or civil surgeon certifies that the alien:

- Currently has a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or
- Has had a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others.

NOTE: DWI/DUI convictions and other offenses where a non-controlled substance was a factor may fall under section 212(a)(1)(A)(iii) of the INA.

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Health Related Waivers Under 212(g), continued

212(a)(1)(A)(iv) Drug Abuser or Addict

The alien is inadmissible under section 212(a)(1)(A)(iv) if the panel physician or civil surgeon certifies that the alien is a drug abuser or addict.

212(g) Waiver Provision

Section 212(g) permits USCIS to waive some, but not all, of the 212(a)(1) grounds of inadmissibility.

Communicable Disease Waiver

The waiver of a communicable disease inadmissibility may be approved under section 212(g)(1) of the INA for an alien who:

(A) Is the spouse, parent, unmarried son or daughter, or the minor unmarried lawfully adopted child of a U.S. citizen, LPR, or alien lawfully admitted for permanent residence or issued an immigrant visa; or
(B) Qualifies for classification under VAWA.

IMPORTANT: This waiver may be approved only after consultation with the Secretary of HHS.
IMPORTANT: Section 212(g)(1) does not require a showing of extreme hardship.

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Health Related Waivers Under 212(g), continued

Determining Eligibility

To be eligible to apply for a waiver under section 212(g)(1) of the INA, the applicant must be:

- The spouse, parent, child[1] or unmarried son or daughter of:
  - A U.S. citizen,
  - An alien lawfully admitted for permanent residence, or
  - An alien who has been issued an immigrant visa,
- The K-1 principal beneficiary or K-2 derivative beneficiary of a Form I-129F
- Eligible for classification as a VAWA self-petitioner. [2]

[1]USCIS interprets the phrase "minor unmarried lawfully adopted child" in section 212(g)(1)(A) as a clarifying, not as a restricting provision. Therefore, an alien is eligible to apply for this waiver if the alien qualifies as the "child" of a citizen or permanent resident (or an alien who has received an immigrant visa) under any of the adoption-related provisions of section 101(b)(1) of the Act. If the parent is an LPR, this means any adopted child who meets the immigration requirements in section 101(b)(1)(E) of the Act. If the parent is a citizen, this includes, in addition to section 101(b)(1)(E), any children adopted abroad who will seek to be admitted in class IR3 or IH3and children whose adoption will be finalized in the United States who will seek to be admitted in class IR4 or IH4.

[2] Evidence of the qualifying relationship must be in the file to include a birth certificate, marriage certificate, divorce decree, etc. Ordinarily, this evidence would have been submitted in support of the visa petition.

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Health Related Waivers Under 212(g), continued

Required Evidence

Under section 212(a)(1)(A)(i) of the INA, if an applicant is found inadmissible and he or she submits a waiver application with documentation establishing the waiver requirements, you must consider the additional evidence requirements below before adjudicating the waiver.

The applicant must submit:

- The page(s) of Form I-601 for applicants with TB; and
- A medical exam completed by a Panel Physician (DS-2053 for overseas cases) or designated civil surgeon (Form I-693 for domestic cases). For overseas cases this form will be downloaded from CCD. If the medical exam is not in CCD, a senior/supervisor will contact the appropriate consulate to request a copy of the form and any related medical records.

Evidence required to support a waiver of section 212(a)(1)(A)(i) of the INA consists of documentation to establish that:

- The danger to the public health of the United States created by his or her admission is minimal,
- The possibility of the spread of the infection created by his or her admission to the United States is minimal , and
- The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of the cost of the alien's care.

NOTE: This waiver may be approved only <u>after</u> consultation with the Secretary of HHS. The NSC must send a copy of the Form I-601, DS-2053 (or I-693) with all supporting documents to the CDC and obtain a favorable recommendation from CDC before the case may be approved. See CDC process.

Supporting Evidence

Examples of the evidence considered sufficient to meet the danger to public health and the possibility of spreading the infection requirements include, but are not limited to:

- Evidence that the applicant has arranged for medical treatment in the United States,
- The applicant's awareness of the nature and severity of his or her medical condition,
- Evidence of counseling,
- The applicant's willingness to attend educational seminars and counseling sessions, and
- The applicant's knowledge of the modes of transmission of the disease.

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Health Related Waivers Under 212(g), continued Evidence of financial arrangements

To establish that adequate arrangements exist for covering the cost of care, , applicants may submit evidence of:

- Private insurance,
- Personal financial resources,
- Proof that a hospital, research organization, other type of facility that will provide care at no cost to the government, or
- Any other evidence establishing the ability to cover the cost of medical treatment.

Vaccination Waiver

A waiver of a inadmissibility due to the lack of a required vaccination may be approved under section 212(g)(2) of the INA if:

- The alien receives the needed vaccination against the vaccine-preventable disease or diseases for which the alien has failed to present documentation of previous vaccination,
- A civil surgeon, medical officer, or panel physician, as those terms are defined in 42 CFR 34.2, certifies that vaccination would not be medically appropriate, or
- The Attorney General determines that requiring vaccination would be contrary to the alien's religious beliefs or moral convictions.*

***IMPORTANT:** If an alien seeks an exemption because a vaccination is against his or her religious beliefs or moral convictions, he/she must establish with evidence that:

- He or she is opposed to *all* vaccinations in any form,
- The objection is based on religious beliefs or moral convictions, and
- The belief or conviction is sincere.

NOTE: USCIS does not need to consult with the CDC for Vaccination Waivers.

Health Related Waivers Under 212(g), continued

Physical or Mental Disorder Waiver

A waiver of physical or mental disorder inadmissibility may be approved under section 212(g)(3) of the INA.

Evidence required:

- A medical exam completed by a Panel Physician (DS-2053 for overseas cases) or designated civil surgeon (Form I-693 for domestic cases). This will be downloaded from CCD for overseas cases. If the medical exam is not in CCD, a senior/supervisor will contact the appropriate consulate to request a copy of the form and any related medical records.
- Complete medical history and report addressing the physical or mental disorder and the behavior associated with the disorder that poses, may pose, or has posed a threat to the property, safety, or welfare of the alien or others;
- Details of hospitalization, institutional care, or other treatment received;
- Current findings regarding physical condition;
- Detailed prognosis specifying, based on a reasonable degree of medical certainty, possibility that harmful behavior is likely to recur or that other harmful behavior associated with the disorder is likely to occur (CDC 4,422-1 (Interim Form) is acceptable for this purpose); and
- A recommendation concerning treatment that is reasonably available in the United States and that can reasonably be expected to significantly reduce the likelihood that the physical or mental disorder will result in harmful behavior in the future.

IMPORTANT: This waiver may be approved only <u>after</u> consultation with the Secretary of HHS. The NSC must send a copy of the Form I-601, DS-2053 (or I-693) with all supporting documents to the CDC and obtain a favorable recommendation from CDC before the case may be approved. See CDC process.

Health Related Waivers Under 212(g), continued

Drug Abuser or Addict Exception

There is no provision in section 212(g) of the INA for the grant of a waiver to an alien who is found inadmissible under section 212(a)(1)(A)(iv) of the INA because of drug abuse or addiction. A waiver for nonimmigrant purposes is available under section 212(d)(3) of the INA.

An applicant who has been found inadmissible under section 212(a)(1)(A)(iv) of the INA is not precluded from undergoing a reexamination at a later date at his or her own cost.

REMISSION EXCEPTION:
If upon reexamination the civil surgeon or panel physician certifies, per the applicable HHS regulations and CDC's Technical Instructions, that the individual is in remission, the ground of inadmissibility under section 212(a)(1)(A)(iv) of the INA no longer applies.

Human Immunodeficiency Virus (HIV)

New HIV Regulation

Effective January 4, 2010, Human Immunodeficiency Virus (HIV) infection no longer makes an alien (or their HIV-positive spouse or child) inadmissible under section 212(a)(1)(A)(i) of the INA for any immigration benefit adjudicated on or after January 4, 2010, even if the immigration benefit was filed before January 4, 2010.

NSC HIV Adjudication Guidance

In any case decided on or after January 4, 2010, a diagnosis of HIV infection will not be considered when determining inadmissibility under section 212(a)(1)(A)(i) of the INA. If NSC receives a waiver based solely on HIV infection, the waiver application may be administratively closed. Follow the instructions in Chapter 4, Additional or Incorrect Inadmissibility, to notify the DOS and the applicant. Update the waiver in CLAIMS as ADMIN CLOSE

Medical Documentation

The panel physician or civil surgeon must complete the medical examination according to the CDC guidance at: http://www.cdc.gov/immigrantrefugeehealth/exams/ti/hiv-guidance-panel-civil.html.

Under this guidance, HIV infection may still be listed as a Class B Other condition on the DS 2053/2054 and/or Form I-693, Report of Medical Examination and Vaccination Record.

IMPORTANT: A Class B condition does not make the alien inadmissible on medical grounds.

NOTE: If the civil surgeon or panel physician omitted the results of the HIV testing on any medical examination documentation prior to January 4, 2010, but the case is adjudicated on or after January 4, 2010, then disregard the lack of HIV testing.

Filing Fee for Motion

If an application was denied solely based on HIV infection on or after July 2, 2009 (the date of the proposed HHS rule), USCIS will waive the 30 day filing deadline and accept the filing of the motion to reopen or reconsider. Unless the applicant was eligible under 8 CFR 103.5(c)(5)(ii) for a waiver of the Form I-485 filing fee, a motion to reopen must be accompanied by the appropriate fee.

The Centers for Disease Control

Introduction

USCIS may grant the waiver of INA 212(a)(1)(A)(i) or (iii)* in accordance with the terms, conditions, and controls considered necessary after consulting with the Secretary of Health and Human Services (HHS). Therefore, before USCIS makes a final determination on the waiver application, the Centers for Disease Control and Prevention (CDC) must first review the waiver application and supporting documentation. CDC will provide a response letter regarding review of the waiver, and if applicable, will provide an endorsement of the identified health care provider in the United States. .

* USCIS does not need to consult with CDC for a Vaccination Waiver under INA 212(a)(1)(A)(ii).

NOTE: There are variations to the procedures for working through CDC, depending on whether the individual is applying for admission as: a refugee, for an immigrant visa, or for adjustment of status in the United States.

Purpose of CDC Endorsement

CDC's review does not constitute waiver approval. Rather, the purpose for CDC's review is to verify that the applicant has been appropriately diagnosed with an inadmissible health-related condition and that the applicant (or person assuming responsibility on his or her behalf) has identified an appropriate health care provider in the United States that has agreed to provide treatment or observation necessary for the proper management and continued care of the applicant.

This health care provider is required to submit to CDC, within 30 days of the date the applicant is admitted on an immigrant visa or granted adjustment of status, a summary of the initial medical evaluation. In addition, the applicant (or person assuming responsibility on his or her behalf) must formally agree to submit to all further examinations or treatment as may be required.

Referrals to the CDC

Once all necessary evidence has been gathered, flag the documents below in the file for clerical to copy.

Form I-601 or I-602 with all required signatures (without supporting documents),
Form DS-2053 or DS-2054 and supporting worksheets(overseas cases) or I-693 (domestic cases), and
All other medical reports, laboratory results, and evaluations. Prepare letter to CDC.

CLAIMS GUI Update

Follow the steps below to update CLAIMS GUI.

Step	Action
1	Access GUI Adjudication ICON
2	Wand in the receipt number
3	Press [F10] and Select: • Case Review • Place in Suspense • Non-USCIS Advisory Opinion Requested
4	Route file to the "CDC letter to be faxed" drop off.
5	Refer to the table below when a reply from the CDC is received.

If the CDC recommends...	Then...
Approval,	Approve.
Request Form 4.422-1	Prepare RFE to applicant to have Form 4.422-1 completed.
Denial,	Deny using denial template in ECHO Program. Use language from the CDC recommendation.

CDC Address

Letter and supporting documents will be faxed or mailed to the following:

Centers for Disease Control and Prevention (CDC)
Division of Global Migration and Quarantine(DGMQ)

1600 Clifton Road, Mailstop E 03
Atlanta, Georgia 30333

ATTN: Quality Assessment Program (QAP)/Waivers

Note: Do not send original documents to CDC.

CDC visa fax to: 404-639-4441 or via email to cdcqap@cdc.gov If sent via email, the documents should be sent in password protected file(s). If sent via fax, an email should also be sent to cdcqap@cdc.gov indicating a request was sent via fax.

Waivers based on Class A Tuberculosis for those applicants outside of the United States.

Regarding waivers for Class A Tuberculosis (TB), as indicated in the Cultures and Directly Observed Therapy (DOT) TB Technical Instructions (TI's), in exceptional medical situations, applicants may apply for a waiver under Section 212(g) of the Immigration and Nationality Act (INA), which allows applicants undergoing pulmonary tuberculosis treatment to petition for a Class A waiver.

As reference, the Cultures and DOT TB TI's are available at http://www.cdc.gov/immigrantrefugeehealth/pdf/tuberculosis-ti-2009.pdf See page 16 for information regarding waivers.

Prior to the final decision being made on the waiver, the USCIS office should forward the following documents CDC:

- a copy of the I-601 or I-602 waiver application and supporting documents including the TB attachment to the I-601
- a copy of the DS 2053 or DS-2054 medical examination forms, supporting worksheets, and supporting medical documentation
- a copy of supporting letter from the United States health care provider(s) that completed and signed the TB attachment, if applicable

Due to the time sensitive nature of Class A TB waivers, the documents may be faxed to CDC at 404-639-4441, **Attn: Quality Assessment Program (QAP)/Waivers** or sent via secure files to cdcqap@cdc.gov

Once the documents are received, CDC will review the waiver application and supporting documentation to ensure that the applicant has been appropriately evaluated, diagnosed, and if applicable, treated, based on the TB TIs.

CDC will also review the waiver to ensure it is accompanied by identification of the U.S. health care provider accepting responsibility for the applicant's continued care and treatment and the U.S. health department with jurisdiction.

CDC will also review the TB attachment to the I-601 to ensure it is completed in entirety as follows: Part A and Part C completed by the applicant and/or applicant's sponsor. Part B completed and signed by an appropriate U.S. health care provider.

Note: For TB waivers, in most cases, the U.S. health care provider will be the local health department where the applicant will be residing in the United States. If that is the case, Part D should be completed and signed by the state level health department official. If Part B is not completed by a local health department, then Part D should be completed and signed by both the local and state level health department official.

CDC will also accept supporting letters from the health department officials to satisfy the requirements of completing Part D. The supporting letter should be on health department letterhead and signed by the appropriate health department official.

Once CDC completes review, CDC will forward a response letter with the results of review to the requesting USCIS office.

Waivers based on a mental disorder with associated harmful behavior

If CDC's review concurs that the applicant is Class A for a mental disorder with associated harmful behavior, CDC will issue CDC 4.422-1 forms, "Statements in Support of Application for Waiver of Inadmissibility Under Section 212(a)(1)(A)(iii)(I) or 212(a)(1)(A)(iii)(II), INA, for the applicant and return the CDC 4.422-1 forms with the CDC response letter to the requesting USCIS office.

The CDC 4.422-1 forms should be provided to the applicant or applicant's sponsor to identify an appropriate U.S. health care provider for the applicant. The forms must be completed and returned to CDC. Once CDC received the completed forms, CDC will review them and if an appropriate U.S. health care provider has completed the forms, will endorse them, and return the endorsed forms back to the requesting USCIS office.

Once the USCIS office receives the endorsed CDC 4.422-1 forms, that office can then make a decision on the waiver.

Criminal and Related Inadmissibility Provisions

General

Criminality Issues

When evaluating a waiver application filed by an applicant with a criminal conviction, you must first determine whether the crime is a CIMT.

What constitutes a "conviction"

Section 101(a)(48) of the INA defines conviction as a formal judgment of guilt.

Section 101(a)(48) also provides, however, that, if the court withholds the formal judgment of guilt, a conviction still exists for immigration purposes if:

- a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and
- the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Evidence of Conviction

Evidence of conviction must be contained in the record if the applicant has a criminal history. Section 240©(3)(B) of the Act specifies the different types of *official* records of a conviction sufficient to prove a conviction. If there is no official record, you must issue an RFE.

EXCEPTION: Evidence contained outside an alien's record of conviction may properly be considered in determining whether the alien has been convicted of a CIMT **only** where the conviction record itself does not conclusively demonstrate whether the alien was convicted for engaging in conduct that constitutes a CIMT.

Matter of Ahortalejo-Guzman, 25 I&N Dec. 465 (BIA 2011)

NOTE: The ability to rely on evidence other than the official conviction records is an issue that the Courts of Appeals have disagreed on. But since USCIS does not review the consular officer's finding of inadmissibility, this litigation should not affect waiver applications filed by aliens who are overseas applying for visas. Consult your local USCIS counsel if you have any questions.

"Admission" of a criminal offense

An alien need not actually be *convicted* of a crime in order to be inadmissible under section 212(a)(2). The alien may also be inadmissible if the alien "admits" having committed the offense, or "admits committing acts which constitutes the essential elements" of the offense. But the Board of Immigration Appeals has established strict criteria for determining that the alien has "admitted" to an offense for which the alien has not been convicted.

The alien must:

- Have been provided with adequate legal definition of the offense,
- Have the definition explained in understandable terms; , and
- Admit to having committed the acts that are essential elements of the offense.

Matter of K, 7 I.&N. Dec 594 (BIA 1957)

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Expungement or State or foreign Pardon

A conviction that has been expunged will generally remain a conviction for immigration purposes. If you are not sure, check with USCIS Counsel for a determination on whether the conviction still provides an inadmissibility ground.

IMPORTANT: Unlike INA section 237(a)(2), INA section 212(a)(2) does not relieve an alien of inadmissibility on the basis of a pardon. For this reason, an alien who has been convicted of a State or foreign offense remains inadmissible even if the alien has obtained a pardon under the relevant State or foreign law.

SEE:
Irabor v. U.S., 219 Fed. Appx. 964 (11th Cir. 2007);
Balogun v. Attorney General, 425 F.3d 1356 (11th Cir. 2005);
Matter of Pedro Aguilera-Montero, 2006 WL 1647442 (BIA May 15, 2006);

Presidential Pardon

A *Presidential* pardon (not a foreign) exercised under the pardon authority in the U.S. Constitution, Art. II, Section 2, *does* relieve the alien of inadmissibility on the basis of the conviction. See Effects of a Presidential Pardon, 19 Op. Off. Legal Counsel No. 160, 1995 WL 861618 (June 19, 1995).

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Vacated Convictions

Unlike expungement, if a court vacates a conviction on the merits or for a constitutional or statutory defect, then there may be no conviction for immigration purposes (though the applicant may still be inadmissible if the applicant admits to having committed acts that constitute inadmissibility grounds).

SEE: *Matter of Sirhan*, 13 I&N Dec. 592. Check with counsel if it appears that the conviction was vacated solely to relieve the alien of the immigration consequences of the conviction.

Suspended Sentences

Section 101(a)(48)(B) of the INA states:

> Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

This provision was added in 1996 with IIRIRA. Therefore, if a court provides a sentence but subsequently suspends the sentence the subsequently suspended sentence is a sentence actually imposed for purposes of section 212(a)(2) of the INA.

SEE: *Matter of S-S-* 21 I&N Dec. 900 (BIA 1997), and
Pre-IIRIRA case: *Matter of Esposito,* 21 I&N Dec. 1 (BIA 1995)

Youthful Offenders

An adjudication of juvenile delinquency is *never* a conviction for immigration purposes. Refer to the table below for general adjudication guidance for youthful offenders between the ages of 16 and 18.

IMPORTANT: If the alien is between the age of 16 and 18, refer to the Youthful Offenders Exception to see if he or she is eligible for an exception.

If an alien is Age 15, 16, or 17 when a single ...	**And...**	**Then the alien is...**
Non-violent offense was committed,	---	Admissible; No waiver required. NOTE: Considered juvenile delinquency under the FJDA.
Violent CIMT was committed,	The alien was tried and convicted as an adult,	Inadmissible, waiver required. NOTE: NOT considered juvenile delinquency under the FJDA.

212(a)(2) Criminal and Related Grounds

212(a)(2)(A)(i)(I) & (II) Criminal Activity

The alien has been convicted of, admits having committed, or admits committing acts which constitute the essential elements of:

- A crime involving moral turpitude (CIMT) or an attempt or conspiracy to commit such crime, or
- A violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 USC 802)).

212(a)(2)(B) Multiple Convictions

An alien is inadmissible under section 212(a)(2)(B) of the INA if he or she has been convicted of 2 or more offenses (other than purely political offenses), regardless of whether the offenses involved moral turpitude, for which the combined aggregate sentences to imprisonment were 5 years or more.

If an alien has been convicted of two or more crimes, not involving moral turpitude (and not involving prostitution), and the alien was sentenced to less than 5 years of imprisonment, the alien is admissible.

212(a)(2)(C) Controlled Substance Traffickers

An alien is inadmissible if he or she is known or reasonably believed to be, or to have been:

- an illicit trafficker in any controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act (21 USC 802)); or
- a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any controlled substance or listed chemical, or endeavored to do so.

Additionally, the spouse, son or daughter of controlled substance trafficker is also inadmissible if the spouse, son, or daughter:

- obtained any financial, or other benefit from the illicit activity of the alien within the previous 5 years, and
- knew or reasonably should have known that the financial or other benefit was the product of such illicit activity.

NOTE: No waiver is available for this ground of inadmissibility.

Continued on next page

212(a)(2) Criminal and Related Grounds, Continued

212(a)(2)(D) Prostitution

An alien is inadmissible if he or she:

- Is coming to the United States solely, principally, or incidentally to engage in prostitution,
- Has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,
- Directly or indirectly procures or attempts to procure or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure, prostitutes, or persons for the purpose of prostitution;
- Directly or indirectly imports prostitutes, or persons for the purpose of prostitution, or
- Directly or indirectly receives or within such 10-year period has received, in whole or in part, the proceeds of prostitution, or
- Is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution.

NOTE: Inadmissibility for involvement with prostitution involves a 10-year bar. If these acts occurred more than 10 years ago, a waiver is not required.

IMPORTANT: A single act of soliciting prostitution on one's own behalf does not fall within section 212(a)(2)(D)(ii) of the INA.

212(a)(2)(E) Diplomatic Immunity

An alien is inadmissible if he or she:

- Committed a serious criminal offense (as defined in section 101(h) of the INA) in the United States,
- Asserted diplomatic immunity to avoid prosecution,
- Left the United States (as a consequence of the crime and exercise of immunity), and
- Has not subsequently submitted fully to the jurisdiction of the U.S. court having jurisdiction over the crime.

212(a)(2)(G) Serving Foreign Government

An alien is inadmissible if he or she, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 USC 6402).

NOTE: No waiver is available for this ground of inadmissibility.

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212(a)(2) Criminal and Related Grounds, Continued

212(a)(2)(H) Trafficker in Persons

An alien who is listed in a report submitted pursuant to section 111(b) of the Trafficking Victims Protection Act of 2000 [22 USC 7108(b)] or who the consular officer or Attorney General knows or has reason to believe is, or has been, a knowing aider, abettor, assistor, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons as defined in section 103 of such act.

NOTE: No waiver is available for this ground of inadmissibility.

212(a)(2)(I) Money Laundering

An alien is inadmissible if the consular officer or Attorney General:

- Believes, or has reason to believe he or she has engaged, is engaging, or seeks to enter the United States to engage in an offense described in section 1956 or 1957 of 18 USC (relating to laundering of monetary instruments), or
- Knows the alien is, or has been, a knowing aider, abettor, assister, conspirator or colluder with others in an offense described in this section.

NOTE: No waiver is available for this ground of inadmissibility.

Criminal Exceptions

Under Age 15 Exception

Pursuant to 22 CFR 40.21, an alien is NOT inadmissible for a CIMT by reason of any offense if committed prior to age 15. Children under age 15 are ALWAYS considered juveniles.

Youthful Offender Exception

Pursuant to section 212 (a)(2)(A)(ii)(I) of the INA, an alien is NOT inadmissible if the alien has a single CIMT conviction for an offense that was committed:

- While alien was under the age of 18, and
- More than 5 years prior to application for visa/entry.

NOTE: If imprisoned, the alien must be released more than 5 years prior to application for visa/entry.

Petty Offense Exception

Pursuant to section 212 (a)(2)(A)(ii)(II) of the INA, an alien is NOT inadmissible if a single CIMT was committed and:

- The maximum possible penalty for which the alien was convicted (or admits to having committed) does not exceed imprisonment for over 1 year, and
- If the alien was convicted, the sentence for imprisonment was 6 months or less (regardless of the extent to which sentence is executed (imposed, not served)).

Purely Political Offense Exception

Pursuant to *Matter of O'Cealleagh*, 23 I.&N. Dec 276 (BIA 2006), an alien is NOT inadmissible under section 212(a)(2)(A)(i)(I) of the INA, based on a conviction for a CIMT, if the offense is completely or totally "political."

A purely political offense is defined in 22 CFR 40.21(a)(6) as an offense that has resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

Crimes Involving Moral Turpitude (CIMT)

Moral Turpitude Defined

The term "moral turpitude" is not a precise term. The various USCIS precedent decisions relating to moral turpitude use some of the following language in trying to define moral turpitude:

- Morally reprehensible and intrinsically wrong,
- Conduct which is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between human beings, or
- Vicious motive or corrupt mind.

Black's Law Dictionary Definition

Black's Law Dictionary contains the following definition of moral turpitude:

[A]ct of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man....Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others....The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita.

Determining if a Crime is a CIMT

To determine whether a conviction is a CIMT, check the CIMT Online Reference Document. (Refer to the Online CIMT References section of this SOP.) While murder, bank robbery, and rape, in terms of the scope of moral turpitude quoted above, seem to be obvious CIMTs, there are some less serious crimes that are CIMTs.

For example:

Petty larceny and tax evasion may be crimes involving moral turpitude. Similarly, other offenses, depending on the circumstances, may or may not be crimes involving moral turpitude; Sometimes manslaughter and assault are crimes involving moral turpitude, and sometimes they are not.

If further clarification is needed you must look to the statute of conviction, precedent decisions or the FAM. You may also examine the record of conviction, including documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. If the record of conviction is still inconclusive, consider any additional evidence deemed necessary.

If you are not sure, you may request an opinion from local Counsel on whether the crime involves moral turpitude.

Continued on next page

Crimes Involving Moral Turpitude (CIMT), Continued

Committed Only One Crime

The decision as to whether a crime does or does not involve moral turpitude is particularly important if an alien has committed only one crime.

If the alien has committed only one crime AND the Petty Offense Exception does not apply, and if the crime...	**Then the alien is...**
Involves moral turpitude,	Inadmissible.
Does not involve moral turpitude,	Admissible (unless the crime involved prostitution, 10 year bar).

Online CIMT References

If an alien has been convicted of a crime, and there is uncertainty whether the crime involves moral turpitude, use the sources below for additional guidance.

Source	Link
NSC Intranet - CIMT Online Reference Document NOTE: Always check the CIMT reference document before researching other sources.	Access the CIMT online reference document by: • Clicking on ILINKS (Inserts) Icon in Center Applications • Select Bookshelf • Select Crimes Involving Moral Turpitude folder
Precedent Decisions	Appendix B of the I-601 SOP lists precedent decisions relating to Moral Turpitude.
The Foreign Affairs Manual (FAM) 9 FAM 40.21(a)	http://www.state.gov/m/a/dir/regs/fam/index.htm .

Criminal and Related Waivers Under 212(h)

212(h) Waiver Provision

A waiver for criminal and related inadmissibility grounds under section 212(a)(2)(A), (B), (D), and (E) of the INA is authorized under section 212(h) of the INA.

212(h)(1)(A) Waiver Without a Qualifying Family Member

Section 212(h) of the INA allows for a waiver of section 212(a)(2)(A)(i)(I),(II),(B), (D), and (E)of the INA without a qualifying relationship if certain conditions are met.

See: Sections 212(h)(I)(A),(i),(ii), and (iii) of the INA.

A waiver may be granted without a qualifying relationship if the applicant is inadmissible pursuant to...	**And...**
• 212(a)(2)(D)(i) engaged in prostitution or • 212(a)(2)(D) (ii) procured or attempted to procure prostitution,	• Admission is not contrary to national welfare, safety, or security • Alien has been rehabilitated
• 212(a)(2)(A)(i)(I) CIMT, • 212(a)(2)(A)(i)(II) and less than 30 grams leaf or 6 grams resin (marijuana)*,**, • 212(a)(2)(B) multiple criminal convictions, • 212(a)(2)(D)(iii) commercialized vice, or • 212(a)(2)(E) asserted immunity,	• Activities occurred more than 15 years ago, • Admission is not contrary to national welfare, safety, or security, and • Alien has been rehabilitated,

***NOTE:** The section 212(h) waiver for an alien convicted of a single offense of simple possession of 30 grams or less of marijuana does not apply to an alien whose conviction was enhanced by virtue of his possession of marijuana in a "drug-free zone," where the enhancement factor increased the maximum penalty for the underlying offense and had to be proved beyond a reasonable doubt to a jury under the law of the convicting jurisdiction. See *Matter of Martinez-Zapata*, 24 I. & N. Dec. 424 (BIA 2008)

****NOTE:** An alien who is inadmissible under section 212(a)(2)(A)(i)(II) of the INA based on a drug paraphernalia offense may qualify for a waiver of inadmissibility under section 212(h) of the INA if that offense "relates to a single offense of simple possession of 30 grams or less of marijuana". See *Matter of Martinez Espinoza* 25 I&N Dec. 118 (BIA 2009).

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212(h)(1)(B) Waiver With a Qualifying Family Member

A waiver of criminal grounds may be granted if the alien can demonstrate extreme hardship to a qualifying relative and that the approval of the waiver is warranted as a matter of discretion*.

- The qualifying relative must be the USC or LPR **spouse, parent, son, or daughter** of the applicant; and
- It must be established that denying the alien admission to the United States would result in **extreme hardship** to the qualifying relative.
- Applicants may claim both actual and/or prospective hardship to the qualifying family member.

NOTE: There is no requirement for the passage of time subsequent to the commission of the crime (unlike the 15-year requirement for a waiver without a qualifying family member). An applicant having a qualifying relationship with a U.S. citizen or LPR enjoys a substantial advantage in applying for a section 212(h) waiver.

* See section entitled **Discretion** for specific information about weighing criminal offenses against favorable factors in the case.

Required Evidence

The documentation needed to establish that an applicant has such a qualifying relationship with a U.S. citizen or LPR is generally the same sort of evidence that would be needed in support of a Form I-130 relative visa petition. If the applicant is the beneficiary of an approved Form I-130 petition filed by the qualifying relative, the approval notice is sufficient evidence of the qualifying relationship. If the applicant seeks the waiver based on extreme hardship to a qualifying relative other than the Form I-130 petitioner, and the file does not contain evidence of the qualifying relationship or of the qualifying relative's citizenship or immigration status, send an RFE to obtain any missing evidence or documents.

Examine the record to be certain that the applicant is inadmissible on the claimed grounds, and to be certain that a waiver exists for the claimed inadmissibility. If necessary, send an RFE to obtain any missing evidence or documents.

NOTE: Read the requirements each time you are adjudicating a section 212(h) waiver application.

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Criminal and Related Waivers Under 212(h), Continued

212(h)(1)(C) Waiver for a VAWA self-petitioner

A VAWA self-petitioner may seek a waiver of criminal inadmissibility.

NOTE: There is no requirement for the passage of time subsequent to the commission of the crime (unlike the 15-year requirement for a waiver without a qualifying family member). Nor must the VAWA self-petitioner show extreme hardship to a qualifying relative.

* See section entitled **Discretion** for specific information about weighing criminal offenses against favorable factors in the case.

Weighing the Evidence

Assess the application's approvability for a waiver under section 212(h) of the INA using the following as guidance:

- The statute,
- The relating precedent decisions,
- Any comments the U.S. Consulate may have in CCD,
- USCIS policy,
- How recent the crime was,
- The circumstances surrounding the crime, rehabilitation, whether the crime is one of moral turpitude, hardship that will be created for involved parties if the waiver application is denied, or
- The welfare of the community where the applicant would live, etc.

Waiver NOT Available

A waiver under section 212(h) of the INA is not available to:

- An alien who is inadmissible for murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture,
- An LPR who has been convicted of an aggravated felony as defined in section 101(a)(43) of the INA,
- An alien inadmissible under:
  - Section 212(a)(2)(C) of the INA - involvement in controlled-substance trafficking, or for violating law relating to controlled substances, except an alien who is inadmissible for a single offense of simple possession of 30 grams or less of marijuana.
  - Section 212(a)(2)(G) of the INA - foreign government officials who have committed severe violations of religious freedom;
  - Section 212(a)(2)(H) of the INA - significant trafficking in persons; and
  - Section 212(a)(2)(I) of the INA - money laundering.

Fraud and Misrepresentation Inadmissibility Provisions

212(a)(6)(C) Misrepresentation

212 (a)(6)(C)(i) Fraud or Willful Misrepresentation of Material Fact

An alien is inadmissible if he or she by fraud or willfully misrepresenting a material fact, seeks to procure, sought to procure, or has procured, a visa, other documentation , or admission to the United States or any other benefit provided under the INA, to include false claims to U.S. citizenship made prior to September 30 1996. False claims to citizenship on or after September 30, 1996, make an alien inadmissible under section 212(a)(6)(C)(ii), not section 212(a)(6)(C)(i). There is no waiver for inadmissibility based on a false claim to citizenship that was made on or after September 30, 1996.

---

212 (a)(6)(C)(i) Inadmissibility Considerations

The following must be taken into consideration when determining inadmissibility under section 212(a)(6)(C)(i) of the INA:

- The fraud or willful misrepresentation must have been made to a U.S. government official;
- Misrepresentation must be related to a material fact; and
- Misrepresentation must have been made to obtain a visa, other documentation, or admission to the United States (such as reentry permit, border crossing cards, U.S. passports), or other benefits provided under the INA.

---

212 (a)(6)(C)(ii)(I) & (II) False Claim to U.S. Citizenship

Section 212(a)(6)(C)(ii)(I) of the INA
An alien is inadmissible if after September 30, 1996, he or she falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under the INA (including section 274A or any other federal or state law).

EXCEPTION: Section 212(a)(6)(C)(ii)(II) of the INA
The alien shall not be considered to be inadmissible based on section 212(a)(6)(C)(ii)(I) of the INA if:

- Each natural or adoptive parent of the alien is or was a citizen (by birth or naturalization),
- The alien permanently resided in the United States prior to age 16, and
- The alien reasonably believed at the time of making such representation that he or she was a citizen.

See: HQ policy memo date March 3, 2009, Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators.

212 (a)(6)(C)(ii) Inadmissibility Considerations

The following must be taken into consideration when determining inadmissibility under section 212(a)(6)(C)(ii) of the INA:

- Only applies to false claims to U.S. citizenship made on or after 9/30/96.
- Covers false claims made to a State or Federal official for *ANY* State or Federal benefit. Not limited to immigration benefits.
- Covers false claims made to U.S. government or to private individuals, such as an employer (because INA 274A covers the verification of employment eligibility, and statements made during the I-9 process can be made to a private or a Government employer).
- The claim can be in writing, oral, under oath, or not under oath.

False Claim to be a Non-Citizen National of the United States

Claiming falsely to be a non-citizen national of the United States does not render an individual inadmissible under section 212(a)(6)(C)(ii)(I) of the INA. A false claim to be a non-citizen national, whether made on, before, or after September 30, 1996, could make the alien inadmissible under section 212(a)(6)(C)(i) of the INA, if all requirements are met.

No Conviction Needed

Although falsely claiming to be a citizen could result in a civil penalty under section 274C of the INA or a criminal conviction under 18 USC 911, no such conviction is necessary to be inadmissible under section 212(a)(6)(C)(ii) of the INA. If an individual was convicted of such an offense or penalty, then clearly the record is sufficient to find inadmissibility under section 212(a)(6)(C)(ii) of the INA. However, the ground of inadmissibility applies when evidence indicates that the alien knowingly made the false claim in order to obtain the benefit, regardless of whether there is a conviction.

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Defense of Timely Retraction

While there is a statutory waiver available for this charge, the alien may also use as a defense to this charge the fact that he or she timely retracted the misrepresentation. If the alien timely retracts the statement, the individual is not in need of a waiver. The retraction of the fraud or of the concealment or misrepresentation of a material fact has to be voluntary to work as a defense; that is, the alien must correct his or her testimony voluntarily prior to being exposed by the adjudicator [**See:** *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949)]. Admitting to the fraud or misrepresentation after DOS or USCIS has challenged the veracity of the claim is not a timely retraction.

If the alien timely retracted the misrepresentation, the alien is not in need of a Form I-601 waiver; properly document the timely retraction.

Test of Materiality

Generally, a misrepresentation is material if it enabled (if acted upon) or would have enabled the alien to receive a benefit for which he or she would not otherwise have been eligible. *See Kungys v. United States*, 485 US 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998).

Determine whether the evidence in the record supports a finding that the alien was inadmissible on the true facts and refer to the table below.

<table>
<tr><th>If a finding is...</th><th>Then...</th></tr>
<tr><td>Supported,</td><td>The misrepresentation is material.</td></tr>
<tr><td>Not supported,</td><td>Consider whether the misrepresentation tended to shut off a line of inquiry that was relevant to the alien's eligibility.
<table>
<tr><th>If ...</th><th>Then ...</th></tr>
<tr><td>Yes,</td><td>Consider whether the inquiry might have resulted in a proper determination of inadmissibility. (Matter of S- and B-C-, 9 I&N Dec. 436, at 447-449 BIA 1960, AG 1961). If yes, then the misrepresentation was material.</td></tr>
<tr><td>No,</td><td>The misrepresentation is not material.</td></tr>
</table></td></tr>
</table>

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212(a)(6)(C) Misrepresentation, Continued

Burden of Proof

There must be some evidentiary basis for a USCIS conclusion that an alien is inadmissible under section 212(a)(6)(C)(i) of the INA. If there is no evidence that the applicant obtained or sought to obtain some benefit under the INA, you should not find inadmissibility under section 212(a)(6)(C)(i) of the INA.

If there is any evidence that would permit a reasonable person to conclude that the alien may be inadmissible under section 212(a)(6)(C)(i) of the INA, then the alien has the burden of establishing at least one of the following facts:

- That there was no fraud or misrepresentation,
- That any fraud was not intentional or with the intent to deceive, or that the misrepresentation was not willful,
- That any fraud or any concealed or misrepresented fact was not material, or
- That the fraud or misrepresentation or concealment was not made to procure a visa, admission, or some other benefit.

Minors

There is no specific age requirement for determining whether fraud/misrepresentation applies.

Definitions

Other Documentation

Pursuant to the FAM, the "other documentation" in addition to visas, refers to documents required at the time of an alien's application for admission. These documents may include:

- Reentry permits,
- Border crossing identification cards,
- U.S. Coast Guard identity cards, or
- U.S. passports.

NOTE: Although the FAM suggests that an application for an advance parole is not an application for a travel or entry document, the DHS position is that an advance parole document *is* a travel document. Such documents as applications for extensions of stay are not considered to be applications for entry documents under section 212(a)(6)(C)(i) of the INA, but are considered applications for some "other benefit."

Other types of documents, such as Form I-20, *Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students,* petitions, and labor certification forms are documents in support of a visa application. Consular officers judge these documents in the light of their effect on a visa application, but do not consider them, to be "other documentation" within the meaning of section 212(a)(6)(C)(i) of the INA.

See: 9 FAM 40.63, N9.1

Other Benefit

According to the FAM, the term "other benefit" refers to any immigration benefit or entitlement provided for by the INA and may include:

- Requests for extension of stay, change of NIV status, permission to re-enter, waiver of section 212(e) of the INA requirement, alien employment certification, advance authorization to re-enter, voluntary departure, adjustment of status, stay of deportation;
- Application for Forms I-20, *Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students,* and DS- 2019, *Certificate of Eligibility for Exchange Visitor (J-1) Status;* and
- All petitions applicable only to misrepresentations made by the petition's beneficiary or by an agent representing such beneficiary.

See: 9 FAM 40.63, N9.2

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Fraud

According to the Board of Immigration Appeals (BIA), a finding of "fraud" requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive a consular or immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). (This is not required for "misrepresentation," see below.)

Misrepresentation

A misrepresentation is an assertion or manifestation that is not in accordance with the facts. A material misrepresentation includes a false misrepresentation concerning a fact that is relevant to the alien's entitlement. It is not necessary that there was intent to deceive or that the officer believed and acted upon the false representation. *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

A misrepresentation requires an affirmative act taken by the alien, which can be in the form of oral false statements during an interview, written false statements on an application or petition, or the submission of evidence containing false information. *Matter of L-L-*, 9 I&N Dec. 324(BIA 1961); *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994).

Fraud vs. Misrepresentation

The distinction between "fraud" and "misrepresentation" is not greatly significant. If the evidence shows that the alien made the misrepresentation with intent to deceive, and that the officer believed and acted upon the misrepresentation, then, under *Matter of G-G-*, the alien is inadmissible on the fraud theory. But even assuming there is no intent to deceive or the officer did not believe the alien or act upon the representation, *Matter of Kai Hing Hui* makes clear that the alien is still inadmissible, if the misrepresentation was willful and material.

If the individual was successful in obtaining the immigration benefit, the fraud finding depends on findings both that the individual intended to deceive the Government official and that the Government official believed and acted upon the misrepresentation. However, the fact that the individual was successful would ordinarily support a finding that both elements are met. .

First, the fact that "intent to deceive" is an element of fraud does not mean that there must be independent direct evidence of this intent. Ordinarily, proof that an individual knew that some factual claim the individual made was false is enough to support the inference that the individual intended to deceive. *See Claflin v. Commonwealth Ins. Co,* 110 U.S. 81, 95 (1884). For this reason, if the evidence shows that the individual knew that any material factual claim that the individual made was false, the officer can properly infer that the individual intended to deceive.

Second, the fact that the Government official approved the benefit application would support the inference that the Government official believed the fraudulent claim to be true.

Willfully

The term "willfully" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in a good faith belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161(BIA 1956).

False

The term "false" means that something is not true. For example: The applicant knowingly misrepresents that he or she is a citizen of the United States when he or she is actually not a citizen.

Material

The test whether a misrepresentation is material is derived from the Supreme Court decision of *Kungys v. U.S.*, 485 U.S. 759 (1988), and in the context of a proceeding to revoke naturalization. According to this decision, a statement is material if it has been shown to be predictably capable of affecting the decision of the decision making body.

A misrepresentation made in connection with an application for a visa or other document, or in connection with an entry into the United States, has a natural tendency to influence the decision on the person's case, if either:

- The alien is inadmissible/removable/on the true facts; or
- The misrepresentation tends to cut off a line of inquiry, which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he or she is inadmissible. *Matter of S-and B-C-*, 9 I&N Dec. 439 (BIA 1961).

Fraud / Misrepresentation Waivers Under 212(i)

212(i) Waiver Provision

In the discretion of the Attorney General, the application of section 212(a)(6)(C)(i) of the INA may be waived under section 212(i) of the INA if:

- The applicant establishes that the refusal of admission would result in extreme hardship to the U.S. citizen or LPR spouse or parent through whom the applicant qualifies to file the waiver, and
- A waiver is warranted as a matter of discretion.

NOTE: There is no provision for a waiver under section 212(i) of the INA for immigrant purposes, for an alien who is inadmissible under section 212(a)(6)(C)(ii) of the INA for falsely representing himself or herself to be a U.S. citizen on or after September 30, 1996. The case will be a statutory denial.

NOTE: For a VAWA self-petitioner, the waiver may be based on extreme hardship to the VAWA self-petitioner himself or herself, as well as to a parent or child of the VAWA self-petitioner, if the parent or child is a citizen, an LPR, or a "qualified alien" as defined in section 431 of Public Law 104-193, as amended, 8 U.S.C. 1641.

Determining Eligibility

To be eligible to apply for a waiver under section 212(i) of the INA, the applicant who is not a VAWA self-petitioner must be the spouse, son or daughter of:

- A U.S. citizen, or
- A lawful permanent resident.

IMPORTANT: The applicant's U.S. citizen or LPR **child** is not a qualifying relative for the purpose of a waiver under section 212(i) of the INA.

Required Evidence

The evidence of a qualifying relationship with a U.S. citizen or LPR is generally the same evidence that would be required in support of a Petition for Alien Relative (Form I-130). If the applicant is the beneficiary of an approved Form I-130 petition filed by the qualifying relative, the approval notice is sufficient evidence of the qualifying relationship. If the applicant claims extreme hardship to a qualifying relative who is not the Form I-130 petitioner, and the file does not contain evidence of the qualifying relationship and the qualifying relative's citizenship or immigration status, send an RFE to obtain any missing evidence or documents.

Unlawful Presence Inadmissibility Provisions

212(a)(9)(B)

212 (a)(9)(B) Previous Unlawful Presence

An alien may be found inadmissible to the United States for a limited period of time (3 years or 10 years) if the alien departs the United States after accruing a certain amount of unlawful presence during a single stay.

IMPORTANT: Unlawful presence under section 212(a)(9)(B) of the INA **is not** counted in the aggregate. This means that an adjudicator may not add periods of unlawful presence from more than one period of stay to find an individual inadmissible for the 3- or 10-year bar. However, different periods of unlawful presence during the same period of stay are added together to determine the total amount of unlawful presence during that period.

NOTE: An alien is not inadmissible under section 212(a)(9)(B) of the INA if he or she has accrued the requisite amount of unlawful presence but never departs the United States.

212 (a)(9)(B)(i)(I) Three Year Bar

An alien is inadmissible under section 212(a)(9)(B)(i)(I) of the INA for a period of 3 years from the date of his or her departure if he or she:

- Resided unlawfully in the United States for more than 180 days but less than 1 year during a single stay,
- Voluntarily departed prior to the initiation of removal proceedings, and
- Remained outside the United States for less than 3 years since the date of departure.

NOTE: If removal proceedings are initiated and the alien leaves pursuant to a grant of voluntary departure, but before the alien has been unlawfully present for more than one year, then the alien is not subject to the 3-year bar.

Effect of Removal Proceedings under 212 (a)(9)(B)(i)(I)

If the alien leaves after removal proceedings are initiated (i.e., the NTA is filed with EOIR and served on the applicant), section 212(a)(9)(B)(i)(I) of the INA no longer applies. However, in this case, there is a chance that the alien is inadmissible for failure to attend a removal proceeding without reasonable cause (Section 212(a)(6)(B) of the INA) and may also be inadmissible based on an in absentia order of removal (Section 212(a)(9)(A) of the INA). In this case, carefully check whether other grounds of inadmissibility may apply.

See: 9 FAM 40.92 N2.1, section 212(a)(9)(B)(i)(I) of the INA Departure Prior to Commencement of Proceedings Required.

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212 (a)(9)(B)(i)(II) Ten Year Bar

An alien is inadmissible under section 212(a)(9)(B)(i)(II) of the INA for a period of 10 years from the date of his or her departure or removal if he or she:

- Resided unlawfully in the United States for one year or more during a single stay,
- Voluntarily departed or was removed from the United States, and
- Remained outside the United States for less than 10 years since the date of departure.

NOTE: Section 212(a)(9)(B)(i)(II) of the INA does *not* include the "prior to the initiation of removal proceedings" language that is included in section 212(a)(9)(B)(i)(I) of the INA. If the alien has been unlawfully present for one year or more, the 10-year bar of inadmissibility applies whether or not removal proceedings were ever initiated against the alien, and even if the alien left once the proceedings were initiated.

Determining Unlawful Presence

"Tolling"

Section 212(a)(9)(B) of the INA uses the terms "tolling" and "tolled" in the discussion of unlawful presence. To toll is to suspend or stop the counting of days of unlawful presence.

Determining Unlawful Presence

An alien is determined to be unlawfully present in the United States if the alien is present in the United States:

- after the expiration of the period of stay authorized or
- without being admitted or paroled.

The period of unlawful presence must be during a single stay and the alien must have departed from the United States following the specified period of unlawful presence in order for the alien to become inadmissible under section 212(a)(9)(B) of the INA.

Example:
If an alien:

1. spent 90 days unlawfully in the United States,
2. departed from the United States,
3. spent 2 weeks abroad,
4. returned to the United States,
5. spent 100 days unlawfully in the United States, and
6. departed from the United States,

Then the alien would not be inadmissible under section 212(a)(9)(B) of the INA.

Despite having 190 days of unlawful presence, the alien did not have at least 181 continuous days of unlawful presence during a single stay.

Calculating Unlawful Presence Website

The below link is a website you can use to assist in calculating number of days of unlawful presence.

http://www.timeanddate.com/date/duration.html

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Intervening Period of Authorized Stay

An intervening period of authorized stay (such as an alien's time in lawful TPS status) is not considered an interruption if it is during a single stay.

Example:
An alien enters the United States unlawfully and after 90 days of unlawful presence applies for and is granted TPS. The alien loses his TPS status two years later. The alien reverts back to his prior "status" and continues to accrue unlawful presence. For purposes of the 3- and the 10-year bars, the intervening period of authorized stay does not count as an interruption of presence that starts the clock over again. That is, the adjudicator may add the 90 days of unlawful presence prior to the alien's TPS status with the period of unlawful presence accrued after the alien's TPS status terminated, as long as this was all during a single stay.

Additional References

Further guidance on determining unlawful presence may be found in the policy memo dated May 6, 2009, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the INA*.

Additionally, guidance concerning unlawful presence and the sections of inadmissibility listed above can be found in AFM 40.9.

Time Counted as Unlawful Presence

General

Unlawful presence includes any time spent in the United States after April 1, 1997 after the alien's authorized stay expires, and any time spent in the United States after April 1, 1997, following entry without admission or parole, unless one of the exceptions noted in section 3 below applies.

Duration of Status

Non-immigrants admitted for duration of status accrue unlawful presence only after DHS or an immigration judge finds a status violation. (See discussion of violation of status, below).

Since Canadian non-immigrant visitors generally are not issued Forms I-94, USCIS treats these aliens as admitted for duration of status, and they accrue unlawful presence only after DHS or an immigration judge finds a status violation. CBP will often refer to electronic arrival/departure records to determine whether a Canadian previously overstayed his or her nonimmigrant status. If CBP finds that an alien is inadmissible based on electronic arrival/departure records, then we will defer to CBP's finding.

Pendency of Application

With the exception of certain applications, the filing of a petition or application does not grant an alien a period of stay authorized. Unless specifically noted, an alien will continue to accrue unlawful presence during the pendency of the petition or application.

Refer to the Present in Legal Immigration Status section for a list of petitions and applications that grant an authorized stay in the United States.

Expired Status

In general, and unless otherwise protected, an alien will commence to accrue unlawful presence after his or her status (as evidenced on Form I-94, Arrival/Departure Record) expires.

Violation of Status

If USCIS has determined, during the adjudication of an immigration benefits petition or application, the individual will start to accrue unlawful presence the day after the determination of having violated his or her status, if this determination was made prior to the expiration of the Form I-94. If an immigration judge finds, in a removal proceeding, that the individual violated his status before the expiration of the Form I-94, the individual will accrue unlawful presence from the day after the entry of a final removal order or the day after the Form I-94 expires, whichever is *earlier.*

NOTE: Although an alien may become removable because of the status violation, unlawful presence does not begin to accrue on the date of the violation (or when removal proceedings are initiated based on the violation).

Time Counted as Unlawful Presence, Continued

Removal Proceedings	The initiation of a removal proceeding has no affect, either to the alien's benefit or to the alien's detriment, on the accrual of unlawful presence; however, the initiation of removal proceeding may impact whether an alien is inadmissible under section 212(a)(9)(B)(i)(I) of the INA [the 3-year bar]. If the alien was already accruing unlawful presence when the removal proceeding was initiated, the alien will continue to accrue unlawful presence, unless the alien comes to be protected from the accrual of unlawful presence (such as by renewing an adjustment or asylum application, or receiving a grant of voluntary departure or TPS). If the alien was not accruing unlawful presence when the removal proceeding began, the alien will continue to be protected from the accrual of unlawful presence, until the expiration date on a date-certain Form I-94 or until the immigration judge (or the Board, on appeal) holds that the alien has violated his or her immigrant or nonimmigrant status, whichever is earlier.
Order of Supervision	If an alien is under an order of supervision, the individual is not in a period of stay authorized.

Time NOT Counted as Unlawful Presence

Prior to April 1, 1997

Any presence in the United States prior to the effective date of the IIRIRA unlawful presence provisions on April 1, 1997, is not counted as "unlawful presence" for purposes of determining admissibility under section 212(a)(9)(B) of the INA.

Present in Legal Immigration Status

An individual never accrues unlawful *presence* if he or she is actually present in a lawful *status* Examples include any individual:

- Admitted as an LPR, including a conditional LPR
- Granted nonimmigrant status (note that an applicant in Duration of Status (D/S) will not accrue unlawful presence unless there is a determination of status violation) Refugee status
- Asylee status
- Granted TPS

Present in an Unlawful status

Even if the individual's person's actual *status* may be unlawful, the individual may be protected from unlawful *presence* based on the statute itself (section 212(a)(9)(B)(iii) or on USCIS policy. Examples include any individual who is::

- Included in one of the categories identified in section 212(a)(9)(B)(iii);
- Granted voluntary departure
- Granted withholding of removal
- Under deferred action
- Who has a specific benefit application pending, if USCIS policy indicates that unlawful presence does not accrue while the application is pending

Under Age 18

Time spent by a child while under age 18 in the United States is not counted as unlawful presence.

See: Section 212(a)(9)(B)(iii)(I) of the INA.

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Time NOT Counted as Unlawful Presence, Continued

CSPA

Any derivative beneficiary child who is in an "authorized period of stay" due to a pending application or petition does not accrue unlawful presence merely because of his or her "aging-out", provided the requirements and conditions of the CSPA are met. For more information on the applicability of the CSPA, see the AFM sections describing individual types of immigration benefits and Chapter 21.2(e).

CSPA applies only to those benefits expressly specified by the statute. Nothing in CSPA provides protection for nonimmigrant visa holders (K or V classifications), or to NACARA, HRIFA, Family Unity, Cuban Adjustment Act, and Special Immigrant Juvenile Applicants, and/or derivatives.

NOTE: There may be special coverage for K-2 and K-4s. See AFM Chapter 21.2(e).

Asylum Applicants

Time during which a bona fide asylum application is pending (including any appeals) is not counted as unlawful presence, unless the alien works without authorization during the period of time that the application is pending.

NOTE: The denial or abandonment of an asylum claim is not determinative of whether the application was bona fide. If it appears an asylum application was not bona fide, the HQ Asylum Division should be consulted to make the determination.

See: Section 212(a)(9)(B)(iii)(II) of the INA.

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Time NOT Counted as Unlawful Presence, Continued

Pending COS or EOS

An alien who was lawfully admitted or paroled will not accrue unlawful presence during the pendency of a timely filed application for change or extension of status.

Each of following requirements must be met:

- The alien has been previously lawfully admitted or paroled into the United States;
- The application was timely filed;
- The application is not frivolous (has an arguable basis in law and fact); and
- The applicant has not engaged in any unauthorized employment before or during the pendency of the application.

The statutory provision allows for the tolling of the unlawful presence for up to 120 days, for purposes of the 3 year bar ***only***. USCIS extended this tolling of unlawful presence by policy. The unlawful presence period is tolled not only for purposes of the 3-year bar, but also for the 10-year bar, and may be tolled beyond the 120 day period and extending to the date a decision is issued, as long as the requirements above are met.

See: Section 212(a)(9)(B)(iv) of the INA and the March 3, 2000 Office of Field Operations memorandum, *Period of stay authorized by the Attorney General after 120-day tolling period for purposes of section 212(a)(9)(B) of the Immigration and Nationality Act* (AD 00-07).

COS or EOS Denied

If the application is **denied**, the individual will commence to accrue unlawful presence the day after the denial. If the denial is based on the fact that the application was frivolous, not bona fide, or because the alien had worked without authorization, the alien is deemed to have accrued unlawful presence the day after his or her status expired (as evidenced on Form I-94, Arrival/Departure Record). If the application was filed untimely, and is ultimately denied, unlawful presence begins to accrue on the date the request is denied.

If the application is **approved**, whether filed timely or untimely, the individual is not deemed to have accrued any unlawful presence.

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Time NOT Counted as Unlawful Presence, Continued

Pending Adjustment of Status

An alien who has properly filed an affirmative application for adjustment of status application with USCIS under section 245 of the INA will be considered lawfully present from the time of the acceptance of the filing. If the application is denied and there is a legal basis to renew the application before the immigration judge, the alien does not accrue unlawful presence through any administrative stages of review.

NOTE: If the alien files for adjustment of status only after being placed in removal proceedings as a form of relief from removal (filing the adjustment application defensively), the alien **will** continue to accrue unlawful presence. **See**: AFM 30.1(d)(2).

Parolee

Parole, is not an admission, but a parolee is deemed, for immigration purposes, to still be an applicant for admission. A parolee does not accrue unlawful presence while the parole status continues. If the alien was paroled into the United States at a port-of-entry under section 212(d)(5)(A) of the INA, after having accrued unlawful presence in excess of one year or after having been removed, the parole is not a return "without admission." For this reason, being paroled at the port-of-entry does not make the alien inadmissible under section 212(a)(9)(C) of the INA.. The alien may, however, be inadmissible based on some other entry or attempted entry without admission.

Pending Legalization Application or Special Legislation for Adjustment of Status

Unlawful presence does not accrue while the following applications are pending:

- Application for legalization, special agricultural worker and lawful temporary residence (pending includes through administrative appeal process, if any)
- Application for temporary and permanent residence by Cuban-Haitian entrants under section 202(b) of Public Law 99-603 (pending includes through administrative appeal process, if any)
- Application for adjustment of status under NACARA and HRIFA, whether filed affirmatively with USCIS or defensively with EOIR
- Application for Registry under section 249 of the INA.

Deferred Action Status

An alien granted deferred action status is in a period of stay authorized and will not accrue unlawful presence.

Unlawful Presence Waivers Under 212(a)(9)(B)(v)

212(a)(9)(B)(v) Waiver Provision

A waiver of unlawful presence inadmissibility may be approved under section 212(a)(9)(B)(v) of the INA.

An alien does not become inadmissible under section 212(a)(9)(B) of the INA unless the alien departs from the United States following the specified period of unlawful presence.

Determining Eligibility

To be eligible for a waiver of unlawful presence inadmissibility under section 212(a)(9)(B)(v) of the INA, the applicant must be the spouse, son or daughter of:

- A U.S. citizen, or
- An alien lawfully admitted for permanent residence

Additionally, the record must establish that the refusal of admission would result in extreme hardship to the U.S. citizen or LPR relative, and that the Secretary's discretion to approve the waiver is warranted because the favorable factors outweigh the unfavorable factors in the case.

IMPORTANT: The applicant's U.S. citizen or LPR child is not a qualifying relative for the purpose of seeking a waiver under section 212(a)(9)(B)(v) of the INA.

Required Evidence

The evidence to establish that an applicant has a qualifying relationship with a U.S. citizen or LPR is generally the same evidence that would be required in support of a Form I-130 relative visa petition. If the applicant is the beneficiary of an approved Form I-130 petition filed by the qualifying relative, the approval notice is sufficient evidence of the qualifying relationship. If the applicant claims extreme hardship to a qualifying relative who is not the Form I-130 petitioner, and the file does not contain evidence of the qualifying relationship and the qualifying relative's citizenship or immigration status, send an RFE to obtain any missing evidence or documents.

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Unlawful Presence Waivers Under 212(a)(9)(B)(v), Continued

Issues to Watch For

You must watch for the following inadmissibility issues when determining eligibility for a waiver under section 212(a)(9)(B)(v) of the INA:

- Inadmissibility under section 212(a)(9)(C) of the INA
- Inadmissibility under section 212(a)(6)(B) of the INA

212(a)(9)(C)

Individuals who accrued unlawful presence in the United States may also be inadmissible under section 212(a)(9)(C) of the INA, for which there is no waiver (other than for VAWA self-petitioners) and for which consent to reapply for admission may be required.

Aliens who are inadmissible under section 212(a)(9)(C)(i)of the INA cannot obtain approval for consent to reapply under section 212(a)(9)(C)(ii) of the INA unless they have been abroad for at least 10 years since their last departure from the United States.

212(a)(6)(B)

Some individuals who accrued unlawful presence in the United States may have been placed in removal proceedings and failed to attend those proceedings. Unless the alien can establish that there was reasonable cause for the failure to attend the proceedings, he or she is inadmissible for 5 years from the date of departure or removal and there is no waiver available for that 5-year inadmissibility period.

Note that whether the alien had reasonable cause not to attend would ordinarily be determined by the consular officer who adjudicates the immigrant visa application. Jurisdiction to adjudicate a Form I-601 for other grounds of inadmissibility does not give USCIS authority to review the consular officer's determination that the alien is inadmissible under section 212(a)(6)(B).

See: Memorandum dated June 17, 1997, from *Paul Virtue, Acting Executive Associate Commissioner, Additional Guidance for Implementing Sections 212(a)(6)(B) and 212(a)(9)(B) of the INA.*

Illegal Entrants and Immigration Violators Inadmissibility Provisions

212(a)(6)(E)

212(a)(6)(E)(i) Smuggling	Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the United States is inadmissible.
212(a)(6)(E)(ii) Smuggling Exception	Exception for family reunification. If the alien encouraged, induced, assisted, abetted or aided, only their spouse, parent son or daughter to enter the United States prior to May 5, 1988, in violation of the law, then clause (i) does not apply if the alien: • Is eligible as an immigrant (as defined in section 301(b)(1) of IMMACT90), • Was physically present in the United States on May 5, 1988, and • Is seeking admission as an immediate relative.
212(a)(6)(E)(iii) Waiver Provision	Waiver authorized for section 212(a)(6)(E)(iii) and 212(d)(11) of the INA. To be eligible for a waiver under section 212(d)(11) of the INA, the applicant must show that he or she: • Is seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) of the INA (other than paragraph (4) of section 203(a)), • Encouraged, induced, assisted, abetted, or aided ONLY an individual who at the time of the offense was the alien's spouse, parent, son or daughter (and no other individual) to enter the United States in violation of law, • Warrants favorable discretion based on humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. **NOTE:** This waiver does not require a showing of extreme hardship.

212(a)(6)(F)

212(a)(6)(F) 274C Civil Penalty

An alien who is the subject of a final order for violation of section 274C [8 USCS 1324c] is inadmissible.

INA 274C relates to any person who is involved in forgery, counterfeiting, or using, accepting or receiving any immigration related document.

212(a)(6)(F) Waiver Provision

Waiver authorized for section 212(a)(6)(F)(ii) and 212(d)(12) of the INA.

To be eligible for a waiver under section 212(d)(12) of the INA, the applicant must show that he or she:

- Warrants favorable discretion based on humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.
- There are no previous violations of 274C.
- Offense was solely to aid or support the alien's spouse or child.

NOTE: This waiver does not require a showing of extreme hardship.

Chapter 2: Adjudication

Eligibility and Required Evidence

Evidence

There is no specific requirement for the amount of evidence necessary to establish eligibility for a waiver. This section provides some guidelines on the types of evidence to be aware of and consider in regards to eligibility.

Order All Related A-Files

Order all A-files for the applicant, and examine the record to determine whether the applicant is inadmissible on the claimed grounds that the consular officer identified and that the applicant listed on the application.

Qualifying Family Member (QFM)

If the "qualifying family member" (QFM) is the same relative who petitioned for the applicant to immigrate, then you have already determined that the relationship exists and that decision does not need to be revisited. However, if there is evidence that the relationship does not exist, you should take that into account and notify DOS so that they can return the petition to USCIS (through the NVC) for possible revocation. The I-601 will be held in abeyance until a decision is made on the revocation.

If the QFM whom the applicant claims will experience hardship is different from the relative who filed the Form I-130, the applicant must provide credible documentation establishing the existence of the relationship. If the LPR or U.S. citizen status of the QFM cannot be established through USCIS systems checks, then the applicant should be asked to provide such evidence.

Extreme Hardship

The application and letter explaining hardship or other grounds for eligibility, where applicable, may be sufficient to support eligibility for the waiver if detailed and credible. In most cases, the applicant will need to provide supporting documentary evidence when claiming specific hardships (e.g., medical records, if the hardship claim is based on medical evidence; financial records if the hardship claim is based on financial considerations) to establish eligibility. If you determine that the applicant has failed to provide sufficient supporting evidence, you may issue an RFE for supporting documentation.

Once extreme hardship is established, it becomes a factor of the discretionary determination for approval of the waiver. See the ***Extreme Hardship*** section of the SOP.

Discretion

The discretionary determination of eligibility is the last step in the adjudication of the application. See the ***Discretion*** section of the SOP.

Extreme Hardship

General

Eligibility for certain immigrant waivers requires a showing of extreme hardship to a qualified relative. These include immigrant waivers under section 212(h) of the INA (criminal-related waivers other than those based on rehabilitation), section 212(i) of the INA (fraud/misrepresentation waivers), or section 212(a)(9)(B)(v) of the INA (unlawful presence waivers) A showing of extreme hardship to a QFM is not required for any other waiver. The "extreme hardship" standard is always the same, whether it is used for a waiver of unlawful presence, misrepresentation, or a criminal-related ground.

If a showing of extreme hardship is required, the applicant must show that it is probably true (the preponderance of evidence standard) that a QFM would experience extreme hardship if the applicant were refused admission to the United States. The officer does not need to be absolutely, 100% certain that a QFM would experience extreme hardship or require that the QFM is already experiencing extreme hardship, but only that it is probably true, or more likely than not, that a QFM would experience extreme hardship if the applicant were refused admission.

To show that a QFM would experience extreme hardship, an applicant may describe actual hardships that a QFM has already experienced OR prospective hardships that the applicant believes a QFM would experience in the future if the applicant were refused admission. The officer should consider both actual and prospective claims of hardship when determining whether a QFM would experience "extreme hardship."

Officers should not confuse extreme hardship with the more stringent "exceptional and extremely unusual hardship" standard for cancellation of removal proceedings. While "extreme hardship" is something different and more severe than a single, common hardship experienced by all QFMs (e.g. missing a relative, reduced income, etc), the claimed hardships do not need to be rare or unusual to be considered. For example, "reduced income" is common to all cases, but a loss of income may lead to a finding of extreme hardship in an individual case if there are other factors that exacerbate the hardship, such as the potential loss of a home, the inability to pay for required medical care, etc. So while some claimed hardships may not, in and of themselves, rise to the level of extreme hardship, an officer should consider every factor of the case and consider the claimed hardships cumulatively to determine whether the totality of the claimed hardships would result in extreme hardship to the QFM.

Establishing extreme hardship to a QFM is only the first step in determining whether a waiver should be approved under INA sections 212(h), 212(i), or 212(a)(9)(B)(v). There may be stronger negative factors to consider in the analysis of discretion in cases involving criminal activity or misrepresentation.

See the section entitled **Discretion** for more information.

For a waiver of a criminal-related inadmissibility, the extreme hardship may be not only to a USC or LPR parent or spouse, but also to a USC or LPR son or daughter. You must pay close attention to who can qualify as a QFM. If hardship is claimed to an individual other than a qualified relative, such as hardship to the applicant or to other relatives, the information may be considered, but only to the extent that such hardship results in hardship to the QFM.* For example, a child is not a QFM for the purpose of showing extreme hardship for a waiver of unlawful presence, but if the QFM is the applicant's spouse, the officer should consider any affect the claimed hardships to their child would have on the applicant's spouse.

Because the term extreme hardship is not defined, and is intended to be flexible, you must look at each application and evaluate it on a case-by-case basis. All relevant factors should be considered and addressed in the decision. If the applicant fails to establish extreme hardship, then the application must be denied and discretion need not be considered.

***NOTE:** Hardship to QFMs, other relatives, or the alien may be considered as part of your discretionary analysis after extreme hardship to a QFM has been established.

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Waiver Authority for Extreme Hardship

Refer to the table below to determine the applicable waiver authority for hardship for each QFM.

NOTE: VAWA self-petitioners do not require a 212(a)(9)(B)(v) waiver if there is a connection between the unlawful presence and their victimization, and VAWA self-petitioners do not need to show extreme hardship to receive a 212(h) waiver. For 212(i) waivers, the qualifying relative is different for VAWA self-petitioners. Also, a VAWA self-petitioner is not required to show extreme hardship when seeking a waiver under 212(h)(1)(C).

WAIVER PROVISION	EXTREME HARDSHIP MAY BE CLAIMED TO				
	ALIEN	USC/LPR SPOUSE	USC/LPR PARENT	USC/LPR CHILD	USC/LPR SON OR DAUGHTER
212(a)(9)(B)(v)		X	X		
212(h)(1)(B)		X	X	X	X
212(i) [Non-VAWA]		X	X		
212(i) [VAWA]	X		X	X	X

Matter of Cervantes-Gonzalez; Hardship Factors

The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* stated that "Extreme hardship is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is dependent upon the facts and circumstances of each case."

The BIA also listed the factors, relating to the applicant's QFM, that it considers relevant in determining whether an applicant has established extreme hardship, which include:

- the presence of a lawful permanent resident or U.S. citizen spouse or parent in this country,
- the QFM's family ties outside the United States,
- the conditions in the country or countries to which the QFM would relocate and the extent of the QFM's ties in such countries,
- the financial impact of departure from this country, and
- significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the QFM would relocate.

Matter of O-J-O; Hardship Factors Considered in Aggregate

In *Matter of O-J-O-*, 21 I&N Dec. 381 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Matter of Monreal; Different and More Severe

When an individual is removed or refused admission, his or her U.S. citizen or LPR family members are perceived as suffering hardship to some degree.

Appellate authorities have been consistent in requiring that extreme hardship must be *different* and *more severe* than that suffered by the relatives of any individual who is removed from the United States or refused admission to the United States. [*Perez v INS*, 96 F.3d 390 (9th Cir. 1996) and *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001)]

Other Case Law

In other cases of extreme hardship, it has been found that the mere loss of employment, the inability to maintain one's present standard of living or to pursue a chosen profession, or separation of a family member or cultural readjustment, in and of themselves, do not constitute extreme hardship. However, these factors in aggregate, could establish extreme hardship in some cases.

See:
Matter of Pilch, (BIA Interim Decision #3298);
Marquez-Medina v INS, 765 F.2d 673 (7th Cir. 1985);
Bueno-Carillo v. Landon, 682 F2d 143 (7th Cir. 1982);
Chokloikaew v INS, 601 F.2d 216 (5th Cir. 1979),
Banks v INS, 594 F.2d 760 (9th Cir. 1979;
Matter of Kojoory, 12 I&N Dec. 215 (BIA 1967).

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Recurring Extreme Hardship Factors

Recurring extreme hardship factors must be taken into consideration in the adjudication process. Although certain waiver provisions do not allow the alien to claim his or her U.S. citizen or LPR children as a QFM, the children may be considered as a discretionary factor in evaluating extreme hardship.

The following is a list of some extreme hardship factors to consider:

Health - Ongoing or specialized treatment required for a physical or mental condition; availability and quality of such treatment in the country to which removed; anticipated duration of the treatment; chronic vs. acute vs. long or short-term care.

Financial Considerations - Future employability; loss due to sale of home or business or termination of a professional practice; decline in standard of living; ability to recoup short-term losses; cost of extraordinary needs such as special education or training for children with special needs; cost of care for family members (elderly and sick parents).

Education - Loss of opportunity for higher education; lower quality or limited scope of education options; disruption of current program; requirement to be educated in a foreign language or culture with ensuing loss of time or grade; availability of special requirements, such as training programs or internships in specific fields.

Personal Considerations - Close relatives in the United States and country of removal; separation from spouse/children; ages of involved parties; length of residence and community ties in the United States.

Special Factors - Cultural, language, religious, and ethnic obstacles; valid fears of persecution, physical harm, or injury; social ostracism or stigma; access (or lack of access) to social institutions or structures (official or unofficial) for support, guidance, or protection.

Discretion

Discretion

If extreme hardship is established (or, for some waivers, if extreme hardship is not required), you must consider whether the application should be approved or denied. The applicant must establish that the favorable factors outweigh the unfavorable ones. Upon review of the record as a whole, you should balance the equities and adverse factors to determine whether exercise of discretion should be favorably exercised. In *Matter of Mendez-Morales*, the BIA held that the adjudicator must evaluate the evidence presented as a whole and explain why discretion is or is not exercised in favor of the applicant. Whether discretion can be exercised favorably depends on each case and the nature and circumstances surrounding the case. When there are serious negative factors, the applicant should be required to introduce offsetting favorable evidence.

The finding of extreme hardship is not only a requirement that must be met before the issue of discretion is considered for certain waivers, but once found, it is a significant favorable discretionary factor. Any fraud or criminal activity that led to the inadmissibility finding is a negative factor that may warrant denial as a matter of discretion, even if there is extreme hardship. Also, take into account the underlying significance of the adverse and favorable factors.

Violent or Dangerous Crimes

Regulations provide that, in general, discretion will not be exercised favorably in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or when an alien clearly demonstrates that denial of the application would result in "exceptional and extremely unusual hardship."

Depending on the gravity of the underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion. See 8 CFR 212.7(d). If you believe that discretion should be exercised favorably in a case involving violent or dangerous crime, concurrence must be provided in writing by the Associate Director or Deputy Associate Director of Service Center Operations before the application is approved. Any such request should be made through the SCOPS HQ I-601 SME and only after the ACD has agreed to the request.

IMPORTANT: Consult with the Form I-601 SISO POC before proceeding.

Continued on next page

Examples for Evaluating Discretionary Factors

Example 1:
If an alien has a relative in the United States, the qualifying relationship must be evaluated. The equity of a marriage and the weight given to any hardship to the spouse may be diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien may be deported. On the other hand, a lengthy and stable marriage should not only be given weight in evaluating extreme hardship, but also is a positive equity in evaluating discretion. Similarly, if the alien has a history of employment, it is important to consider the type of employment and its length and stability.

Example 2:
When looking at an alien's presence in the United States, the nature of his or her presence during this period must be evaluated. A period of residency marked by imprisonment may diminish the significance of the period of residency significantly.

Favorable Discretionary Factors

Some favorable factors found in case law are:

- Family ties in the United States and the closeness of the underlying relationship
- Unusual hardship to the applicant or to the LPR or U.S. citizens, or relatives and employers
- Evidence of reformation and rehabilitation
- Length of lawful residence in the United States and status held during that residence (particularly where the alien began his or her residency at young age)
- Evidence of respect for law and order, good moral character, and intent to hold family responsibilities (such as affidavits from family, friends, and responsible community representatives)
- Considerable passage of time since the event that rendered the alien inadmissible
- Absence of significant undesirable or negative factors
- Eligibility for waiver of other grounds of inadmissibility

Continued on next page

Unfavorable Factors

Some unfavorable factors to consider are:

- The actual ground of inadmissibility that applies to the alien
- Evidence of moral depravity, or criminal tendencies reflected by an ongoing or continuing police record, the nature, how recent and seriousness of the criminal violations, if any
- Repeated violations of immigration laws, willful disregard for other laws
- Previous instances of fraud in dealings with service or false testimony
- Mandatory grounds of inadmissibility for which no waiver exists or for which the alien is not eligible
- Absence of close family ties or hardships
- Sham marriage to a U.S. citizen for the purpose of gaining an immigration benefit
- Serious violations of immigration laws which evidence a callous attitude without hint of reformation of character
- Nature and underlying circumstances of the inadmissibility ground at issue
- The presence of other evidence indicative of an alien's poor moral character or undesirability as a permanent resident of this country

Adjudicating Form I-601

Form I-601 Signature

In general, Form I-601 must be signed by the applicant. Exceptions include:

- A parent or legal guardian may sign for a child under the age of 14.
- A legal guardian may sign for anyone not competent to sign the application, regardless of age.
- A qualifying family member may sign for an applicant who is inadmissible for a communicable disease and is not competent to sign, even if the QFM is not a legal guardian.

A-files

All Form I-601s should come to you consolidated into an A-file (if one exists).

If the A-file...	Then ...
Exists and the Form I-601 is in a T-file,	Request the A-file through CIS or NFTS.
Is digitized,	Refer to the EDMS User Guide.*
Does not exist,	The Form I-601 may be adjudicated in the receipt file. The A-file creation will take place if the final decision results in a denial.

***NOTE:** Notate "Contents of Digitized A-file reviewed" in the "For USCIS Use Only" section of the I-601.

IMPORTANT: You must obtain all associated A-files for the applicant prior to adjudication to determine whether the applicant is inadmissible on the claimed grounds.

Required Systems Checks

The following systems checks are required:

System	Summary of Check
TECS	(b)(7)(e)
CLAIMS 3/ CLAIMS GUI/ National CLAIMS	Check for other pending applications or to verify the approval of an I-130 to establish a qualifying relationship.
CIS	Determine if additional files or records exist for the applicant.

(b)(7)(e)

CAMINO	Review CAMINO to determine if there are other pending/approved applications
NFTS	Determine if any other A or T-files exist for the applicant.
CCD*	(b)(7)(e)
EARM	
FD-258	The fingerprint response must be current and the name check response must be completed. The fingerprint response will be in CCD for overseas cases. Note: FBI name check is not required for overseas cases.

(b)(7)(e)

Continued on next page

Adjudicating Form I-601, Continued

FBI Name/DOB Check

(b)(7)(e)

Fingerprints

No Fingerprints or Expired Non-IDENT/IDENT Fingerprints

Adjudicating Form I-601, Continued

TECS Checks

(b)(7)(e)

Non-Ident and Derogatory Information

MEMO for 212(a)(2) Cases

For every decision you make on a 212(a)(2) case you must complete a memo for the file that needs to be signed off by supervisor. If approving a case that involves a violent or dangerous crime the memo must be signed off by SCOPS thru chain of command.

Adjudicating Form I-601, Continued

Determine If a Waiver Is Available

Once all inadmissibility grounds have been identified, determine if a waiver is available. If a waiver is available for each inadmissibility ground identified, then determine if the applicant meets all of the waiver requirements and merits a favorable exercise of discretion.

Evidence of Conviction

Evidence of a conviction for a crime is normally in the form of a documentary record from the court where the conviction occurred.

- If an alien is inadmissible for commission of a crime for which he or she was not convicted, the alien's admission would be the evidence of such inadmissibility.
- If there is no discrepancy between what the consulate is charging them with; what the applicant stated on the application and what is found in the A-file (if one exists); we do not need to go out and request the documents.

If documents are needed, first we would memo the DoS and ask them to scan them in and if they aren't available from DoS then RFE applicant for them.

Adjudication Considerations

The questions below will help guide you through the adjudication process:

- Have all A-Files been obtained? If not, has an electronic version been reviewed?
- Is the alien inadmissible? On what grounds?
- If health waiver, is there a recommendation from CDC (not required for Vaccination Waiver)?
- If criminal, is evidence of a conviction (or sufficiently detailed admission) in the record?
- If unlawful presence, has the alien departed the United States and have all possible exceptions been considered?
- If necessary, is there a qualifying relationship and is the hardship extreme to that relative?
- Does the applicant need to file a Form I-212?

IMPORTANT: Decisions on waiver applications remain discretionary, and must be adjudicated only after a careful review of all positive and negative factors.

Chapter 3: OVERSEAS Waivers

General

Applicants for: Immigrant Visa K or V Nonimmigrant Visa

All I-601s filed by Department of State visa applicants (overseas waivers) will be adjudicated by the Nebraska Service Center. The cases that would normally be filed at the consulate in Ciudad Juarez (CDJ) will have two options for filing during the first six months. The first option is for them to file directly with the USCIS office at the consulate in CDJ. The CDJ officer will review the case and if it is clearly approvable then the CDJ officer will approve the case and notify the DOS of the approval. If the case is not clearly approvable, then the CDJ office will send the application to the Phoenix Lockbox to be keyed into CLAIMS 3 and sent to the Nebraska Service Center to be worked. The second option is for them to file directly with the Phoenix Lockbox to be keyed into CLAIMS 3 and sent to the Nebraska Service Center to be worked.

During the period where they can file under either option (and while there are still pending cases with the consulates, the NSC officer will need to check CAMINO to determine if the applicant has other I-601's filed. If they have multiple I-601's pending we need to make sure that they are making a consistent decision if the information is the same. Please follow instructions on how to get duplicate filings together.

If you are searching CAMINO you can search by A-number (if applicable) and consular number. If you are searching in NFTS you will need to use CJS instead of CDJ and then the rest of the receipt number.

I-730 Applicants

For derivative asylees following to join (V92):

- V92 applicants should never file Form I-601 or Form I-212;
- V92 applicants do not need to establish admissibility under INA section 212(a) to receive the travel document, but only need to establish eligibility for the V92 status under INA section 208(b)(2)(A); and
- If a V92 applicant is inadmissible under INA section 212(a), he or she does not need to request a waiver until seeking adjustment of status in the United States (using Form I-602).

For derivative refugees following to join (V93):

- V93 applicants should never file Form I-601 or Form I-212;
- V93 applicants do need to establish admissibility under INA section 212(a) to receive the travel document; and
- If found inadmissible, a V93 applicant must file Form I-602 with the international USCIS office with jurisdiction over immigration matters in that region (Mexico City Field Office for immigration matters in Canada).

After discussing the case with the consulate (via Memo to DoS), you can administratively close the I-601 and I-212 by using the "Admin Close" template.

Valid Form G-28 or G-28I

All correspondence must be sent to the applicant's attorney or representative if he or she has a valid G-28 or G-28I (for overseas representatives) on file.

Waiver Correction

Consulates will notify us of waiver corrections via the shared mailbox (NSC, I-601 Overseas). When a correction is sent back you will need to get the file and make the corrections.

NOTE: When you make a correction you will need to notify the Supervisor/ISO 3 of the change(s) made. This notification should include the following:

- USCIS receipt number
- NVC receipt number
- Applicant name and DOB
- Date of original of approval/denial
- Date of new approval/denial
- What the changes were

You will need to notify supervisor/ISO 3 of any corrections made after original approval/denial date so that it can be picked up on the report to DOS.

Additional or Incorrect Inadmissibility

Additional Inadmissibility Grounds Identified

If you identify an inadmissibility ground that was missed by the consular officer, you may add it to the Form I-601. Complete Consular worksheet and follow instructions on how to notify consulate of issues.

Check the Consolidated Consular Database (CCD) to see if the ground is on the consular officer refusal sheet or in the consular notes, and refer to the table below for next steps.

(b)(7)(e)

If the inadmissibility ground is...	And the Form I-601 is...	Then ...

An officer should not send the memo directly to the consulate or discuss cases directly with a consular officer. All such memos should be sent by a supervisor (or a senior officer designated by the supervisor) after they have concurred with the additional inadmissibility finding.

Consulate Identified Incorrect Inadmissibility Ground

A consular officer's decision that a visa applicant is inadmissible is not subject to review. For this reason, USCIS will *not* purport to reverse or overrule a consular officer's finding of inadmissibility. The CDJ FOD must liaison with DOS to determine whether or not a Consular officer identified the inadmissibility ground in error. In some cases this may be resolved by email. For more complex cases, it may require that the case be relocated back to CDJ for review.

If you disagree with an inadmissibility ground identified by the Consulate, please contact the Form I-601 SISO. If the consular officer is persuaded that the alien is not actually inadmissible, USCIS can administratively close the Form I-601. But if the consular officer still concludes that the alien is inadmissible, USCIS will accede to that finding and decide the Form I-601 on the merits.

Applicant Needs a Form I-212

If an applicant has been found inadmissible under 212(a)(9)(A) or (C) but has not filed the Form I-212 we will send an RFE requesting that the applicant file a Form I-212 with fee with their RFE response to the Nebraska Service Center. The Nebraska Service Center will key the application into CLAIMS and route it to the officer.

(b)(7)(e)

If an applicant appears to be inadmissible under 212(a)(9)(C) but the applicant has not been outside the U.S. for 10 years DO NOT request the applicant to file an I-212 application.

ROP

Use the following ROP as a guideline:
Left Side:

- Valid G-28, if applicable
- I-212 Denial notice-if applicable
- Form I-212 (with proper stamp/signature)-if applicable
- I-212 RFE Response-if applicable
- I-601 Denial notice -if applicable
- Form I-601 application (with proper stamp/signature)
- Original supporting documentation/evidence
- I-601 RFE Response- if applicable

Right Side:

- ROIT(Resolution Memo/ROIT/supporting documents)
- 212(a)(2)(A) Memo- if applicable
- DOS Notes and correspondence includes all DOS screen prints(in no particular order)
- All other documents including National screen prints (in no particular order)
- Invalid G-28 (if applicable)

Researching Country Conditions

RAIO Research Unit	The RAIO Research Unit maintains an online database for storing country of origin information reports. To research country conditions, go to http://10.60.44.112:8080/docushare/dsweb/View/Collection-767.
Department of State Human Rights Reports	This comprehensive report covers a wide range of topics including arbitrary arrests, crimes, abuse against women, human trafficking, and discrimination against people with disabilities.
Newsbank	The link to Newsbank is: http://infoweb.newsbank.com/ The internet source Newsbank is a database that contains more current information and provides coverage of local and world issues. You can conduct searches for specific country conditions or set up searches to have articles pertaining to specific subjects forwarded to you on a regular basis. Registering is not required for one time searches but is required to set up recurring searches. These articles are particularly helpful to highlight the levels of violence throughout the country, especially as they relate to the drug cartels.
Other Sources	Other good sources of information for country conditions include: Refworld and Open Source (a news database for use by U.S. government agencies - requires registering). If you have questions about a specific country condition or a specific region and are having trouble finding information, you may submit a request to the RAIO Research Unit at RAIOResearch@dhs.gov.

Decision Processing

When to issue an RFE or NOID

After reviewing the file you will prepare an RFE to request additional information needed to complete the adjudication process or prepare a NOID if there is derogatory information that the applicant may not be aware of.

RFE Processing

All Overseas I-601 RFE's will be prepared in ECHO letter generator system (See ECHO instructions).

- The amount of time the applicant has to respond to the request for evidence is 84 days with 14 days for mail for a total of 98 days.
- The RFE will be addressed to the attorney listed on the G-28/G-28I, if applicable, or to the applicant as listed in Part 1 (foreign address or in care of address if listed on Part 1).

CDC Letter

Follow the steps below to prepare a letter for the CDC.

Step	Action
1	Prepare CDC letter in ECHO
2	Copy or flag documents to be scanned: • I-601 • DS2053 • Any supporting medical documentation
3	Route to "CDC letters to be faxed" drop off
4	The file will be shelved in the I-601 hold to await response.

Approvals Follow the steps below for I-601 approvals.

Step	Action
1	Update CLAIMS GUI with approval (See CLAIMS GUI step by step instructions)
2	If printing approval notice by batch queue, place VETS I-601 routing sheet on the file and NFTS to HN0000.
3	If having clerical print the approval notice, place VETS I-601 routing sheet on file and then place clerical routing sheet on top of that routing sheet and NFTS to XE0601

RFE's Follow the steps below for I-601 request for evidence letters

Step	Action
1	Prepare RFE in ECHO (See ECHO instructions)
2	Update CLAIMS/GUI to show, Order Initial and Additional Evidence request not.
3	If sending to contractor print queue then route and NFTS to RFE hold (RF0000). Use routing sheet from ECHO.
4	If sending to clerical print queue then route and NFTS to clerical (XE0601). Use clerical routing sheet.

Withdrawals Follow the steps below for I-601 withdrawals

Step	Action
1	If I-601 is not already in an A-file send receipt file to FH0999 to have an A-file created and returned to you.
2	Prepare withdrawal letter in ECHO (See ECHO instructions)
3	Update CLAIMS/GUI to show, denial notice ordered
4	NFTS and route files to DN0000.
5	Place VETS routing sheet on file and mark Denied files,

Denials Follow the steps below to process denials for I-601 waivers.

Step	Action
1	If I-601 is not already in an A-file send receipt file to FH0999 to have an A-file created and returned to you.
2	Prepare denial in ECHO (see ECHO instructions)
3	Send to review queue for supervisor approval and NFTS/route file to supervisor.
4	Supervisor approves in ECHO and returns to officer (electronically and physically).

5	Update letter date, finalize, print file copy and send to contractor print queue.
6	Officer updates CLAIMS GUI with NVC #, consulate, benefit category, inadmissibility waived and update as Denial Notice Ordered.
7	Stamp application with denial stamp and sign
8	NFTS and route files to DN0000.
9	Place VETS routing sheet on file and mark Denied files, DN0000.

Motions and Appeals

All I-601 waiver Motions and Appeals should be issued a LIN receipt number.

If you receive a Form I-290B in a T-file without the original waiver, you can determine the Form I-601 receipt number by:

- Turning to Page 2 of the Notice of Appeal or Motion (Form I-290B) application and looking at the "Application/petition form#:" field (provided it is filled out).

Prior to Updating Motions and Appeals

Prior to making a decision on the motion and appeal, you must check the Consolidated Consular Database (CCD) and CAMINO to see if another Form I-601 has been subsequently filed.

If CCD shows a subsequent Form I-601 filing is...	Then...
(b)(7)(e)	

Updating Motions and Appeals

Motions and Appeals must be updated in CLAIMS and the letters will be prepared in ECHO. Please see ECHO instructions.

IMPORTANT: Remember to do the correct CLAIMS updates per the Motion and Appeals SOP if the readjudicated Form I-601 is in CLAIMS.

Chapter 5: Appendices

Appendix A: Statutory Authority

Statute

The INA sections of law that apply to Form I-601 are listed below:

- Section 212(a)(1)
- Section 212(a)(2)
- Section 212(a)(3)(D)
- Section 212(a)(6)(C), (E) and (F)
- Section 212(a)(9)
- Section 212(g)
- Section 212(h)
- Section 212(i)
- Section 244
- Section 101(a)(43)

Regulations

The regulations that apply to Form I-601 are listed below:

- 8 CFR 212.7(a)
- 8 CFR 212.7(b)

Adjudicator's Field Manual

Chapter 41 of the Adjudicator's Field Manual applies to Form I-601.

Appendix B: Documents to Review in A-File

Documents to Review

Review the following documents if they are found in the A-file:

Form	Description
I-205	Warrant of Removal
I-210	Notice of Action – voluntary departure
I-213	Record of Deportable/Inadmissible Alien
I-246	Application for Stay of Removal
I-259	Notice to detain, deport, remove, or present alien
I-261	Additional charges of removability
I-275	Withdrawal of Application for Admission/Consular Notification
I-296	Notice to alien ordered removed
I-851	Notice of intent to issue final deportation order
I-851A	Final administrative removal order
I-860	Notice and Order of Expedited Removal
I-862	Notice to Appear or Order to Show Cause
I-867AB	Record of Sworn Statement
I-881	Application for suspension of deportation or cancellation of removal
I-130	Petition for immediate relative
I-485	Application for adjustment of status
I-291 or I-292	Decisions on above mentioned I-130 and I-485
G-170	Alien Smuggler Data Input Sheet
EOIR 40	Application of Suspension and/or decision made by the IJ on the Application
IJ Decisions	Decisions by Immigration Judge (i.e.-order of deportation and decision on Motion to Reopen proceedings)
BIA Decisions	Any appeal decisions by the Board of Immigration Appeals (BIA)
Other	Any other documents that may assist in making a qualifying decision.

Appendix C: Precedent Decisions

Overview

Precedent Decisions

This Appendix lists the precedent decisions that apply to the adjudication of Form I-601. Each case is hyperlinked to the full BIA decision posted on the EOIR's Virtual Law Library (VLL) and contains a brief case summary (to the right).

The internet address for researching precedent decisions on the VLL is: http://www.justice.gov/eoir/vll/intdec/lib_indecitnet.html

Select the appropriate volume (to the right) and search for a specific decision using Interim Decision (ID) number.

EXAMPLE:
Matter of Perez-Contreras, **20** I&N Dec. **615** (BIA 1992)
Number 20 is the volume number.

Extreme Hardship Established

The following precedent decisions apply to establishing extreme hardship:

Decision	Summary
Matter of Alonzo, 17 I&N Dec 292 (Comm 1979)	• The birth of a USC child, whether or not born during a lawful stay of the parents in the US, is a favorable factor and must accorded considerable weight in the adjudication of an application for the relief of a waiver of grounds of excludability under section 212(i) of the INA. • The section 212(i) waiver should be granted in the exercise of discretion, where favorable factors are present, and there is an absence of countervailing adverse factors. • No statutory or other requirement that extreme hardship be shown in a section 212(i) waiver case. • Applicant sought waiver of excludability for obtaining visas by fraud and misrepresentation. The violation was not held as an adverse factor action because it was the violation for which the alien seeks to be forgiven.
Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1996)	Outlines hardship factors to consider in determining whether an alien has established extreme hardship pursuant to section 212(i) of the INA.

Continued on next page

Extreme Hardship Decisions (continued)

Decision	Summary
Matter of Da Silva, 17 I&N Dec 288 (Comm 1979)	• A discretionary decision must be based on the weight factors present in the case, both adverse and favorable. Questionable factors should not be considered at all, or should be resolved in favor of the applicant. • A waiver application under section 212(i) of the INA will be approved in the interest of family reunification where the requisite relationship exists and the favorable factors outweigh the unfavorable factors.
Matter of H-, 14 I&N Dec 185 (RC 1972) – sec. 212(h)	Extreme hardship within the meaning of section 212(h) of the INA is established where the applicant's spouse is 81 years old and has already endured a 15-year exile from the US to reside with the applicant in Mexico. The applicant established complete reformation from the activities that rendered her excludable and the stability between her USC spouse was satisfactorily demonstrated; Therefore, a waiver pursuant to 212(h) was granted.
Matter of Loo, 15 I&N Dec. 601 (BIA 1976)	Applicant has 25 years residence in the US, a LPR daughter, and a small investment in a US business in which he was employed. Extreme hardship met.

Continued on next page

Extreme Hardship Decisions (continued)

Decision	Summary
Matter of Leong, 10 I&N Dec 274 (BIA 1963)	Respondent has US military service with a service connected disability (30%), is a US high school graduate, employed, and most of his adult years were spent in the US. Earning ability has been impaired by the service connected disability. Extreme hardship met.
Matter of Louie, 10 I&N Dec. 223 (BIA 1963)	Elderly USC father with no other relatives in the US. Respondent takes him to weekly doctors' appointments. In view of the father's advanced age and physical condition it would be extremely harsh, to both the respondent and his father, to deport the respondent from the US. Extreme hardship met.
Matter of Ngai, 19 I&N Dec 245 (Comm. 1984)	The approval of an application for a waiver pursuant to section 212(h) of the INA is dependent in part upon showing of extreme hardship, and thus only in cases of great actual or prospective injury to the qualifying family member will the bar be removed.
Matter of Piggott, 15 I&N Dec. 129 (BIA 1974)	IJ finding that the respondents would not be able to provide for their own necessities in Antigua and that their children would suffer as a result of the parents' inability to provide them with proper food, living facilities, and education in that country. Youngest child has rheumatic fever. She is being treated in the US, and equal medical is not available in Antigua. Extreme hardship requirement met.

Extreme Hardship NOT Established

Extreme Hardship NOT Established

The following precedent decisions apply to extreme hardship not established:

Decision	Summary
Matter of Anderson, 16 I&N Dec. 596 (BIA 1978)	While political and economic conditions in an alien's homeland are relevant factors in determining extreme hardship under section 244(a)(1) of the INA, they do not justify a grant of relief unless other factors such as advanced age, severe illness, family ties, etc. combine with economic detriment to make deportation extremely hard on the alien or the citizen or permanent resident members of his family.
Matter of Chumpitazi, 16 I&N Dec. 629 (BIA 1978)	The loss of a job and the financial loss incurred is not "extreme hardship" within the meaning of section 211 of the INA, despite an 11-year stay in the US.
Matter of Gibson, 16 I&N Dec. 58 (BIA 1976)	Even though the alien meets the physical presence and GMC requirements of the statute, suspension of deportation was ordered denied because economic detriment which may result from deportation does not meet the test of extreme hardship within the contemplation of section 244(a)(1) of the INA. Alien was employed as a custodian and should have no difficulty in finding suitable employment abroad. No relatives in the US.
Matter of Ige, 20 I&N Dec. 880 (BIA 1994)	Assuming a United States citizen child would not suffer extreme hardship if he accompanies his parent abroad, any hardship the child might face if left in the United States is the result of parental choice, not of the parent's deportation.

Continued on next page

Extreme Hardship Decisions (continued)

Decision	Summary
Matter of Kim, 15 I&N Dec. 88 (BIA 1974)	Suspension of deportation under section 244(a)(1) of the INA based on 7 years physical presence in the US will not be granted on a claim of extreme hardship, where the only facts presented tended to show better economic and educational opportunities for her US citizen children in the US than in Korea.
Matter of Kojoory, 12 I&N Dec 215 (BIA 1967)	Extreme hardship not established in relation to applicant's claim of fear of persecution if returned to Iran, limited economic opportunities, lack of opportunities in his own field, and difficulty adjusting to the standard of living.
Matter of Liao; 11 I&N Dec. 113 (BIA 1965)	Hardship claim of fear of persecution and diminished employment opportunities. Applicant did not establish that his deportation would result in extreme hardship because he refused to return to that country after completing the program of military training for which he entered the US and expressed political views which are not looked up with favor by the Nationalist Government of China on Formosa.

Continued on next page

Extreme Hardship Decisions (continued)

Decision	Summary
Matter of Lopez-Monzon, 17 I&N Dec 280 (Comm 1979)	• Eligibility under section 212(i) of the INA to apply for a waiver of grounds of excludability is limited to aliens who are spouses, parents or children of US citizens or LPRs. Congressional intent was to provide for the unification of families and avoid the hardship of separation. • U.S. Citizen child did not reside in the US. The father (who resided in Guatemala) had custody of the child. No evidence was presented to indicate applicant would obtain custody of the child and no persuasive evidence that the applicant intended to bring the child to reside in the US. Approval of the waiver would not have reunited a family; favorable exercise of discretion was not granted.
Matter of Pilch, 21 I&N Dec. 627 (BIA 1996)	• The term "extreme hardship" refers to hardship that is unusual or beyond that which would normally be expected upon deportation; the common results of deportation and exclusion are not sufficient to prove extreme hardship. • Emotional hardship caused by the severing of family and community ties is a common result of deportation and does not constitute extreme hardship. • To endure the hardship of either separation when it can be avoided by joining the applicant abroad, or of relocation when it can be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility.

Continued on next page

Extreme Hardship Decisions (continued)

Decision	Summary
Matter of Saekow, 17 I&N Dec. 138 (BIA 1979)	In reference to applicant's suspension of deportation, the IJ determined that the respondent failed to demonstrate that his deportation would result in extreme hardship to himself or to a specified family member.
Matter of Sangster, 11 I&N Dec 309 (BIA 1965)	Economic detriment, in absence of other substantial equities, does not establish extreme hardship. No evidence that suitable employment was unavailable.
Matter of Uy, 11 I&N Dec. 159 (BIA 1965)	Applicant did not establish his deportation would result in extreme hardship, merely because he would suffer some economic hardship due to limited opportunities in his field of training.

Moral Turpitude

The following precedent decisions apply to moral turpitude:

Decision	Summary
Matter of Abreu-Semino, 12 I&N Dec. 775, 777 (BIA 1968)	Classification of a crime as a felony or misdemeanor does not control whether a crime is a CIMT.
Matter of Ahortalejo-Guzman, 25 I&N Dec 465 (BIA 2011)	Evidence outside of an alien's record of conviction may properly be considered in determining whether the alien has been convicted of a crime involving moral turpitude only where the conviction record itself does not conclusively demonstrate whether the alien was convicted of engaging in conduct that constitutes a crime involving moral turpitude.
Matter of Caudillo-Villalobos, 11 I&N Dec 259 (BIA 1965)	• A LPR alien who, following arrest and conviction for a CIMT in Mexico, thereafter on numerous occasions departed to Mexico on short visits to appear before the clerk of court of that county and to sign the bond book, had made upon his returns from Mexico following such departures entries into the US within the meaning of section 101(a)(13) of the INA upon which to predicate a ground of deportation. • Application for a waiver *nunc pro tunc* under section 212(g) of the INA, as an alien convicted of a CIMT was denied.
Matter of Danesh, 19 I&N Dec. 669 (BIA 1988)	An aggravated assault against a peace officer, which results in bodily harm to the victim and which involves knowledge by the offender that his force is directed to an officer who is performing an official duty, constitutes a CIMT.

Continued on next page

Moral Turpitude Decisions (continued)

Decision	Summary
Matter of Fernandez, 14 I&N Dec 24 (BIA 1972)	• Conviction of transporting forged securities in interstate commerce is a CIMT. • A 3-year sentence to imprisonment on each of two counts of an offense, with the sentences to run concurrently, does not constitute "aggregate sentences to confinement actually imposed" of "5 years or more" within the meaning of section 212(a)(10) of the INA. • Refusal to entertain section 212(h) of the INA application for a waiver of excludability because the applicant was still in prison was not improper.
Matter of Franklin, 20 I&N Dec. 867 (BIA 1994)	A conviction for involuntary manslaughter pursuant to sections 562.016(4) and 565.024(1) of the Missouri Revised Statutes constitutes a CIMT within the meaning of section 241(a)(2)(A)(i) of the INA, where Missouri law requires that the convicted person must have consciously disregarded a substantial and unjustifiable risk, and that such disregard constituted a gross deviation from the standard of care that a reasonable person would exercise in the situation.

Continued on next page

Moral Turpitude Decisions (continued)

Decision	Summary
Matter of Garcia-Hernandez, 23 I&N Dec. 590 (BIA 2003)	• An alien who has committed more than one petty offense is not ineligible for the "petty offense" exception if "only one crime" is a CIMT. • An alien who has committed a CIMT that falls within the "petty offense" exception is not ineligible for cancellation of removal under section 240A(b)(1)(B) of the INA, because commission of a petty offense does not bar the offender from establishing good moral character under section 101(f)(3) of the INA. • The respondent, who was convicted of a CIMT that qualifies as a petty offense, was not rendered ineligible for cancellation of removal under section 240A(b)(1) of the INA by either his conviction or his commission of another offense that is not a CIMT.

Continued on next page

Moral Turpitude Decisions (continued)

Decision	Summary
Matter of McNaughton, 16 I&N Dec. 569 (BIA 1978)	• A foreign conviction, to be the basis for a finding of inadmissibility, must be for conduct deemed criminal by US standards. • If the conviction is for conspiracy, moral turpitude is present if the substantive offense to be committed pursuant to the conspiracy involves moral turpitude. • A crime, a necessary element of which is intent to defraud the investing public, involves moral turpitude, and the motivation for the crime does not bear on the nature of the offense.
Matter of Perez-Contreras, 20 I&N Dec. 615 (BIA 1992)	• Crimes involving negligent conduct, where the offender failed to be aware of a substantial risk involved in the conduct, are generally not found to involve moral turpitude. • A conviction for assault in the third degree under section A.36.031(1)(f) of the Revised Code of Washington is not a firearm offense where use of a firearm is not an element of the offense. • The Board withdraws from *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974), to the extent it holds that assault in the third degree resulting in great bodily harm is a CIMT without regard to the existence of intentional or reckless conduct.

Continued on next page

Moral Turpitude Decisions (continued)

Decision	Summary
Matter of Serna, 20 I&N Dec. 579 (BIA 1992)	• Neither the seriousness of a criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. • A conviction under 18 U.S.C. 1546 (1982) for possession of an altered immigration document with knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a conviction for a CIMT.
Matter of Short, 20 I&N Dec. 136 (BIA 1989)	• Statute, not actual conduct controls whether a crime is a CIMT. • If the underlying or substantive CIMT, then a conviction for aiding in the commission of the crime or for otherwise acting as an accessory before the fact is also a conviction for a CIMT. *Matter of F-*, 6 I&N Dec. 783 (BIA 1955), followed. • The BIA withdraws from *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974), to the extent that it holds that an assault with intent to commit a felony is per se a CIMT without regard to whether the underlying felony involves moral turpitude; there must be a finding that the felony intended as a result of the assault involves moral turpitude.
Matter of Wojikow, 18 I&N Dec. 111 (BIA 1981)	Reckless conduct or a conscious disregard of substantial risk can equal moral turpitude.

Criminal and Related Grounds

The following precedent decisions apply to criminal and related grounds:

Decision	Summary
Matter of Barnes, 10 I&N Dec 755 (RC 1964)	Application for waiver, pursuant to section 212(g) of the INA, of excludability under section 212(a)(9) of the INA is denied, in the exercise of discretion, in the case of an alien who is at liberty under a sentence-imposed, 3-year good behavior bond, without prejudice to reconsideration upon the expiration date of the bond required by the sentence imposed.
Matter of Bernabella, 13 I&N Dec 42 (BIA 1968)	• An applicant, whose marriage to a USC occurred subsequent to his last admission to the US as a nonimmigrant, is ineligible for a *nunc pro tunc* section 212(h) waiver of the criminal inadmissibility grounds that existing at entry. • Applicant is also ineligible at the present time for section 212(h) waiver in current deportation proceedings; Section 212(h) of the INA benefits only available in deportation proceedings in conjunction with adjustment of status under section 245 or 249 of the INA (of which the applicant was ineligible).

Continued on next page

Criminal and Related Grounds Decisions (continued)

Decision	Summary
Matter of Parodi, 17 I&N Dec 608 (BIA 1980)	• An alien convicted on August 2, 1977, for passing counterfeit Federal Reserve notes, and sentenced to six years imprisonment, who was also convicted for the same acts on June 30, 1978 of conspiring to commit offenses against the US (in connection with which conviction the judge recommended against deportation), is deportable under the first part of section 241(a)(4) of the INA for the 1977 conviction, despite the fact the convictions arose out of a single scheme of criminal misconduct. • An alien granted recommendation against deportation by a judge in one criminal proceeding, is not protected by that recommendation from deportation if convicted in another, separate criminal proceeding, in a different court and under a different charge, for the same underlying criminal misconduct, unless the second court also issues a recommendation against deportation. • 212(h) waiver may be obtained in deportation proceedings by an alien deportable under 241(a)(4) if it is granted *nunc pro tunc* or in conjunction with adjustment of status.

Continued on next page

Criminal and Related Grounds Decisions (continued)

Decision	Summary
Matter of Haller, 12 I&N Dec 319 (BIA 1967) – sec. 212(h)	• An applicant, who was separated from wife for 7 years, was declared eligible for section 212(g) of the INA waiver of criminal inadmissibility grounds, as hardship to his wife and children (who relied on him for monetary support) would result from his deportation. • Applicant was only eligible under non-preference quota and required to present a labor certification. Applicant was determined to be excludable under section 212(a)(14) of the INA and statutorily ineligible for benefits under section 245 of the INA.
Matter of Ramirez-Rivero, 18 I&N, Dec. 135 (BIA 1981)	• FJDA defines a juvenile as a person who has not yet reached age 18, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not reached age 21. • FJDA defines juvenile delinquency as the violation of a United States law committed by a person prior to age 18 which would have been a crime if committed by an adult. • Pursuant to the FJDA, an act of juvenile delinquency while under rage 16 is not subject to prosecution as an adult, regardless of the nature of the offense or potential punishment, and is entitled to benefit from the protective and rehabilitative provisions of the FJDA.
Matter of T, 6 I&N Dec. 474 (BIA 1955)	To "engage in" prostitution, one must have engaged in a regular pattern of behavior and conduct.

Continued on next page

Criminal and Related Grounds Decisions (continued)

Decision	Summary
Matter of Sanchez, 17 I&N Dec. 218 (BIA 1980)	• A crime committed by an alien within 5 years of entry can form the basis for deportation. • While an alien coming into the US under custody did not make an entry, as he was not "free from actual or constructive restraint", an entry was made at the time he was released from custody. • In order for an alien to establish "domicile" in for section 212(c) purposes, he must have the intention of making the US his home for the indefinite future; that an alien is an LPR does not necessarily mean he is domiciled in the US. • An alien residing with his family abroad, who commuted to work in the US, but had no home here is unable to satisfy the 7 years relinquished domicile requirement for 212(c), despite having a US drivers license, paying taxes and registering for the Selective Service. • Relief under section 212(h) may be granted *nunc pro tunc* in deportation proceedings in order to cure a ground of inadmissibility at the time of entry.
Matter of Vaccarello, 11 I&N Dec 21 (OIC 1964)	In the absence of persuasive, appealing factors, the application for waiver of inadmissibility on criminal grounds, is denied in discretion, in the case of an alien convicted in Italy in 1948 for continued extortion, in association with 14 other men in an operation bearing a strong resemblance to the activities of an organized criminal band.

Fraud / Misrepresentation

The following precedent decisions apply to fraud / misrepresentation:

Decision	Summary
Matter of R-R-, 10 I&N Dec 696 (OIC 1963)	Section 212(h) waiver of inadmissibility under section 212(a)(19) (now 212(a)(6)(C)(i)) is granted to an applicant who has evidenced complete reformation and rehabilitation since his misrepresentations in securing a border crossing card in 1980; whose exclusion would result in serious hardship to his US citizen dependent wife and child, and whose admission would not be contrary to the welfare, safety or security of the US.

Unlawful Presence

The following precedent decisions apply to unlawful presence:

Decision	Summary
Matter of Briones, 24 I&N Dec. 355 (BIA 2007)	• Section 212(a)(9)(C)(i)(I) covers recidivist immigration violators, so to be inadmissible under that section, an alien must depart the United States after accruing an aggregate period of "unlawful presence" of more than 1 year and thereafter reenter, or attempt to reenter, the United States without being admitted. • Adjustment of status under section 245(i) is not available to an alien who is inadmissible under section 212(a)(9)(C)(i)(I).
Diaz-Castaneda & Lopez Diaz, 25 I&N Dec.188 (BIA 2010)	An alien who is inadmissible under section 212(a)(9)(C)(i) is ineligible for adjustment of status under section 245(i). Matter of Briones, 24 I&N Dec. 355 (BIA 2007), reaffirmed.
Matter of Lemus-Losa, 24 I& N Dec. 373 (BIA 2007)	• An alien who is unlawfully present in the United States for a period of 1 year, departs the country, and then seeks admission within 10 years of the date of his departure from the United States, is inadmissible under section 212(a)(9)(B)(i)(II), even if the alien's departure was not made pursuant to an order of removal and was not a voluntary departure in lieu of being subject to removal proceedings or at the conclusion of removal proceedings. • Adjustment of status under section 245(i), is unavailable to an alien who is inadmissible under section 212(a)(9)(B)(i)(II).

Expanded Table of Contents

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I-601 Overview

October 2014

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Old I-601 Process

- Applicant had a current priority date and they were not eligible to adjust their status in the US so they would go to the consulate to visa process.
- Applicant would go to the appointment for the consular interview at an overseas office.

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Old I-601 Process

- Department of State (DoS) Consular Officer determined if the applicant had any issues that would make them inadmissible.
  - Health
  - Criminal
  - Unlawful presence
  - Previously removed
  - Other
- If they determined that they had an inadmissibility the Consular Officer would determine if there was a waiver available for them.

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Old I-601 Process

- If a waiver was available they would give the applicant a refusal notice and the waiver instructions.
- Applicant would then need to schedule an appointment with the USCIS office located at the consulate to file their I-601 application. This would take 1-2 months for them to get an appointment.
- Processing time for the USCIS office overseas to work the case was 14 months after they received I-601 application.

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Old I-601 Process

- USCIS office would then notify the Department of State (DoS) of the decision by sending them the I-601 packet with approval notices.
- DoS would then call the applicant back in for another interview or schedule them to pick up their paperwork and grant their visa.
- Once visa was approved they could then enter the country as a Legal Permanent Resident.

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Background on How We Got the I-601s

- June 2011 NSC agreed to work 1,000 backlog cases from the Juarez Consulate
- Completed the 1,000 cases by September 30, 2011
- Juarez works 75% of all overseas I-601s and the rest of the cases are from the rest of the consulates world-wide. 146 consulates
- The yearly average of I-601's is 23,000 cases per year and Juarez had a backlog of about 10,000 cases
- To reduce the backlog and the 14 + month processing time SCOPS began working on centralizing the Overseas I-601's at the Nebraska Service Center
- June 4, 2012 we went live with the Overseas I-601's being filed at the Phoenix Lockbox

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New I-601 Process

- Still the same process through the DoS consular interview
- After the Consular Officer determines that the applicant is inadmissible and that a waiver is available the applicant will file the I-601 at the Phoenix Lockbox
- Lockbox will route the file to the NSC
- NSC will work the I-601 and we notify DoS electronically of the decision

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New I-601 Process

- DoS will call applicant back in and complete visa process for them to enter as a LPR
- Some exceptions to the new process
  - For the 1st 6 months (June 4, 2012 to December 3, 2012) applicants at Juarez and could choose to file the old way or the new way
  - For emergent needs they can still file locally if there is a USCIS office co-located with the consulate
    - Example: No Direct Mail: Cubans may elect to file with Havana Consulate or through an attorney at the Lockbox

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Differences Between Old and New Process

Old Process

- Applicant had to wait outside the US for approx. 14 months for a decision
- USCIS notified DoS with decision by giving them the I-601 package

New Process

- Applicant has to wait outside the US for approx. 4 months for a decision
- USCIS notifies DoS with decision electronically, no physical file given
  - DoS receives decision sooner and we have reduced costs with less file movement

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Differences Between Old and New Process

Old Process

- Qualified Family Member (QFM) was allowed to sign application and receive information
- All correspondence was sent to address of QFM if no G-28 was attached.

New Process

- Applicant is required to sign application and eligible to receive information
- All correspondence is sent to address listed in Part 1 if no G-28 is attached.

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Differences Between Old and New Process

Old Process

- QFM was allowed to sign G-28

New Process

- Applicant is required to sign G-28
- If G-28 is signed by the QFM it will be removed electronically from the record and any correspondence sent will go to the applicant at the address listed in Part 1 of the I-601 application

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Adjudicating I-601 Application

- Have all inadmissibilities been identified
  - If not, send memo to DOS
    - These will go on the DOS Memo hold shelves until we get resolution
      - If adding a 3B charge, they can take a year to resolve
- Should we consider revoking the underlying I-130
  - If we have information that the I-130 adjudicator may not have been aware of that may warrant looking at revoking the I-130
    - These will go on the I-130 Revoke shelf until we get resolution
- Does Inadmissibility have a waiver available

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Adjudicating I-601 Application

- Does the applicant meet the waiver requirements
  - The requirements are not all the same
    - Criminal-Rehab or Extreme Hardship to QFM
    - Health- CDC opinion
    - Unlawful Presence- Extreme Hardship to QFM
    - Alien Smuggling – Family Unity
- Do they have a Qualifying Family Member
  - The QFM is not same for every charge
- Should it be approved in discretion
- Notify the consulate of our decision

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Questions?

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Extreme Hardship & Discretion:

Adjudicating Form I-601

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I-601 Centralization Project [SCOPS], April 2012

Overview

Purpose

To provide specific training for Adjudicating Form I-601

- Extreme hardship analysis for certain waivers
- Discretionary analysis for all waivers

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Overview (cont.)

Content

Training includes guidance on the following issues:

- Is Extreme Hardship Required?
- Is there a Qualifying Relative?
- Would the Qualifying Relative Experience Extreme Hardship?
- Is Favorable Discretion Warranted?
- How should the adjudicator document and articulate their decision for the record?

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Is Extreme Hardship Required?

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Many Types of Waivers

- Form I-601 is used by individuals to apply for **many types of waivers**.

- The waiver requirements depend on the statute authorizing the waiver.

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Which of These Waivers Require Extreme Hardship?

Inadmissibility	Waiver Authority
Totalitarian party membership	INA 212(a)(3)(D)
Unlawful presence	INA 212(a)(9)(B)(v)
Illegal entry after prior violations	INA 212(a)(9)(C)(iii)
Alien smuggling	INA 212(d)(11)
Subject to civil penalty	INA 212(d)(12)
Medical grounds	INA 212(g)
Criminal grounds	INA 212(h)
Fraud or misrepresentation	INA 212(i)
General – TPS applicants	INA 244(c)(2)

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Waivers Requiring a Showing of Extreme Hardship

Only **3 types of waivers** require a showing of extreme hardship to a qualifying relative:

1. Unlawful presence waivers – INA 212(a)(9)(B)(v)

2. Certain Criminal waivers – INA 212(h)(1)(B)
   - Not for criminal waivers based on rehabilitation – INA 212(h)(1)(A)
   - Not for criminal waivers filed by a VAWA self-petitioner – INA 212(h)(1)(C)

3. Fraud/Misrepresentation Waivers – INA 212(i)

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Is There a Qualifying Relative?

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Who is a Qualifying Relative?

- A qualifying relative must be a U.S. citizen (USC) or a lawful permanent resident (LPR),
  - with the exception of 212(i) waivers for VAWA self-petitioners, who may also show extreme hardship to themselves or to a qualified alien.

- The applicant must show that a qualifying relative would experience extreme hardship if the applicant were refused admission to the United States.

- An officer may consider hardship to another individual, but only to the extent that the claimed hardship would lead to extreme hardship to the qualifying relative.

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The Qualifying Relationship is Determined by the Waiver Authority

WAIVER PROVISION	EXTREME HARDSHIP MAY BE CLAIMED TO:					
	ALIEN	USC/LPR SPOUSE	USC/LPR PARENT	USC/LPR CHILD	USC/LPR SON OR DAUGHTER	ALIEN'S "VAWA QUALIFIED" PARENT OR CHILD IF A QUALIFIED ALIEN
INA 212(a)(9)(B)(v)		X	X			
INA 212(h)(1)(B)		X	X	X	X	
INA 212(i) [Non-VAWA]		X	X			
INA 212(i) [VAWA]	X		X	X		X

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Evidence of Relationship and USC/LPR Status

- An applicant may have more than one qualifying relative, but only needs to show extreme hardship to one.
- If the qualifying relative is the visa petitioner...
  - Verify the petition approval only
- If the qualifying relative is not the visa petitioner...
  - Verify the claimed relationship
  - Verify the USC/LPR status of the qualifying relative

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Surviving Relatives

- USCIS will consider the death of a qualifying family member to be the functional equivalent of extreme hardship for a waiver applicant if:

1. The applicant is
   -- the beneficiary or derivative beneficiary of an approved visa petition filed by the QFM before he or she died; OR
   -- the widow(er) of a USC who filed a Form I-130 that was converted to a Form I-360 on the USC's death
   and,
2. The applicant resided in the United States at the time of the death of the QFM; and,

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Surviving Relatives

- The applicant continued to reside in the United States;
- 4. The deceased qualifying family member was the original petitioner or principal beneficiary.
    - This "functional equivalent" provision does NOT apply to a widow(er) who filed his or her own I-360 only *after* the death of the USC.

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Would the Qualifying Relative Experience Extreme Hardship?

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Making the Determination if QR Would Experience Extreme Hardship?

- What is Extreme Hardship?
- Consider the Severity of the Claimed Hardship
- Consider the Totality of Facts and Circumstances
- Assess Claimed Hardships Individually and Cumulatively
- Consider Actual or Prospective Claims of Extreme Hardship
- Consider Extreme Hardship Due to Relocation or Remaining in the United States

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What is Extreme Hardship?

- The term "extreme hardship" is **not defined** in the INA.

- Case law and USCIS policy provide **guiding principles** for adjudicators.

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Guidance Provided Through Case Law and USCIS Policy

- Case law: precedent decisions include case law from,
  - the Attorney General,
  - the Board of Immigration Appeals (BIA),
  - Administrative Appeals Office (AAO),
  - the Supreme Court and other Federal courts

- Policy: USCIS Policy Manual under development

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Consider the Severity of the Claimed Hardship

Extreme hardship is hardship that is greater than common consequences of inadmissibility.

See, *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984); *referring to Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968); *Matter of W-*, 9 I&N Dec. 1 (BIA 1960); *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999).

Appellate authorities have been consistent in requiring that extreme hardship must be different and more severe than that suffered by the relatives of any individual who is removed from the United States or refused admission to the United States.

Perez v INS, 96 F.3d 390 (9th Cir. 1996) and *Matter of Monreal*, 23 I. & N. Dec. 56 (BIA 2001)

However, extreme hardship does not need to be unique or unusual and should not be confused with the higher standard of "exceptional and extremely unusual hardship" used in cancellation of removal proceedings.

See, INA 240A(b)(1)(D); *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 322 (BIA 2002); *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

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Consider the Totality of Facts and Circumstances

USCIS adjudicators must make extreme hardship determinations based on the factors, arguments, and evidence submitted by the applicant.

- See *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996); *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). See *also Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999).

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Assess Claimed Hardships Individually and Cumulatively

- USCIS adjudicators must assess claimed hardships individually and collectively.
- Hardship that is a common consequence of inadmissibility, by itself, will not generally lead to a finding of extreme hardship.
- However, when assessed cumulatively, common consequences may lead to a finding of extreme hardship.
  - See *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

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Consider Actual or Prospective Claims of Extreme Hardship

- Extreme hardship can be based on actual or prospective injury.

- If the applicant claims extreme hardship that the qualifying relative may experience in the future, it must be realistic and foreseeable.

See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999); *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996); *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1960).

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Consider Extreme Hardship Due to Relocation or Remaining in the United States

Question?

In addition to considering Extreme Hardship that the QR might incur if the QR remains in the United States...

When, if ever, should the adjudicator consider possible Extreme Hardship to the QR if they were to relocate with the alien in the foreign country?

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EH based on the QR Relocating

Because claims of prospective injury must be realistic and foreseeable, if the qualifying relative is currently residing in the United States, the applicant must show that it is more likely than not that the qualifying relative would attempt to relocate if the extreme hardship claim is based on relocation.

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Analyzing Extreme Hardship Claims

When analyzing extreme hardship claims, USCIS adjudicators should become familiar with:

- The *common consequences* of inadmissibility; and
- *Factors to consider* when determining whether the claimed hardships are more severe than the common consequences of inadmissibility.

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Common Consequences

Courts have held that common consequences of an applicant's inadmissibility or removal include the following:

- Family separation
- Economic detriment
- Difficulties of readjusting to life in the new country
- The quality and availability of educational opportunities abroad
- Inferior quality of medical services and/or facilities

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Factors to Consider

The adjudicator should consider how other factors of the case impact and might exacerbate any claimed hardships in order to determine whether the claimed hardships are more severe than the common consequences of inadmissibility.

Some factors to consider include:

- Health considerations
- Financial considerations
- Educational considerations
- Personal considerations
- Special factors

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Health Considerations

Health Considerations might include:

- Ongoing or specialized treatment required for a physical or mental condition
- Availability and quality of such treatment in the foreign country
- Anticipated duration of the treatment
- Chronic vs. acute vs. long or short-term care

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Financial Considerations

Financial Considerations might include:

- Future employability
- Loss due to sale of home or business or termination of a professional practice
- Decline in standard of living
- Ability to recoup short-term losses
- Cost of extraordinary needs such as special education or training for children with special needs
- Cost of care for family members (elderly and sick parents)

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Educational Considerations

Educational Considerations might include:

- Loss of opportunity for higher education
- Lower quality or limited scope of education options
- Disruption of current program
- Requirement to be educated in a foreign language or culture with ensuing loss of time or grade
- Availability of special requirements, such as training programs or internships in specific fields

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Personal Considerations

- Close relatives in the United States and country of birth or citizenship
- Separation from spouse/children
- Ages of involved parties
- Length of residence and community ties in the United States

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Special Factors

- Cultural, language, religious, and ethnic obstacles
- Credible fears of persecution, physical harm, or injury
- Social ostracism or stigma
- Access (or lack of access) to social institutions or structures (official or unofficial) for support, guidance, or protection

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Reviewing the Evidence

The adjudicator should consider all claimed hardships and evidence submitted to support any claims.

Evidence may include, but is not limited to:

- Affidavits from the qualifying relative or other individuals with personal knowledge of the claimed hardships;
- Expert opinions;
- Evidence of employment or business ties, such as payroll records or tax statements;
- Evidence of monthly expenditures such as mortgage, rental agreement, bills and invoices, etc.;

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Reviewing the Evidence [cont.]

Evidence might also include:

- Other financial records supporting any claimed financial hardships;
- Medical documentation and/or evaluations by medical professionals supporting any claimed medical hardships;
- Records of membership in community organizations, volunteer confirmation, and evidence of cultural affiliations;
- Birth/marriage/adoption certificates supporting any claimed family ties;
- Country condition reports; and
- Any other evidence the applicant believes supports the claimed hardships.

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Standard of Proof

- The applicant must meet the "preponderance of evidence" standard of proof.

- This means that the applicant must show that it is "probably true" or that it is "more likely than not" that the qualifying relative would experience extreme hardship if the applicant were refused admission.

  - See INA 291; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010); *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).

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Standard of Proof [cont.]

- The adjudicator should consider:
  - The quality of the evidence provided;
  - The connection between the evidence and the hardship assertion; and
  - The degree to which the evidence supports the truth of a hardship assertion.
- There is no specific amount of evidence required to support any hardship claim.
- The adjudicator must use sound judgment when deciding whether the applicant provided sufficient evidence.
- The adjudicator may request additional evidence, if necessary, to support any claimed hardship.

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The EH Standard is not variable

The analysis / application of the extreme hardship standard does not change according to the inadmissibility. The standard is applied in the same manner for all waivers requiring EH (e.g. unlawful presence, misrepresentation or a criminal ground waiver)

Do not confuse the extreme hardship with discretion. There may be negative factors to consider in analyzing discretion (e.g. for criminal activity or misrepresentation) but these may not be part of the extreme hardship analysis

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EH alone does not equal eligibility

I-601 application approval is a discretionary benefit.

Adjudicators need to evaluate whether a waiver is warranted as a matter of discretion even when the applicant establishes extreme hardship or, in the case of criminal inadmissibility, rehabilitation.

EH and rehabilitation are important determinations but only threshold determinations.

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Is Favorable Discretion Warranted?

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Consider ALL Known Factors

When analyzing whether favorable discretion is warranted, the adjudicator should review all known factors, evidence and circumstances, both favorable and unfavorable before making a final determination.

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Favorable Factors

Positive Factors that might support a favorable exercise of discretion include:

- applicant established EH to a qualifying relative,
- community involvement,
- responsible provider to family,
- compliance with any court orders,
- has U.S. ties,
- amount of time that has passed since incident(s) that relate to inadmissibility.

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Unfavorable Factors

Negative factors that might support an unfavorable exercise of discretion include:

- the underlying basis for inadmissibility,
- nature of the criminal conduct,
- repeated criminal acts,
- evidence of lack of rehabilitation,
- other instances of fraud in U.S., etc.

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Discretion Requires Balancing

In analyzing discretion a balancing of positive and negative factors is required:

> *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), ["Upon review of the record as a whole, the Immigration Judge is required to balance the equities and adverse matters to determine whether discretion should be favorably exercised."]

In general, a favorable exercise of discretion is warranted when, looking at the full record, the positive factors outweigh the negative factors

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Discretion [cont.]

In evaluating whether relief is warranted in the exercise of discretion,

- **the factors adverse to the applicant include:**
  - the nature and underlying circumstances of the exclusion ground at issue,
  - the presence of additional significant violations of this country's immigration laws,
  - the existence of a criminal record and, if so, its nature, recency and seriousness, and,
  - the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country.

- **The favorable considerations include:**
  - family ties in the United States,
  - residence of long duration in this country (particularly where the alien began his residency at a young age),
  - evidence of hardship to the alien and his family if he is excluded and deported,
  - service in this country's Armed Forces,
  - a history of stable employment,
  - the existence of property or business ties,
  - evidence of value and service to the community,
  - evidence of genuine rehabilitation if a criminal record exists, and,
  - other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)."

See, Matter of Mendez-Morales, 21 I&N Dec. 296 (BIA 1996)

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Violent or Dangerous Crimes

Except in extraordinary circumstances, USCIS will NOT approve a waiver when the applicant is inadmissible for an offense related to a violent or dangerous crime. 8 CFR 212.7(d)

Extraordinary circumstances include:

- National security or foreign policy considerations
- Exceptional and extremely unusual hardship

Approval requires HQSCOPS concurrence

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How Does the Adjudicator Document and Articulate the Decision for the Record?

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Approvals

Extreme Hardship Determination

- During the training period or when otherwise directed by a supervisor, the adjudicator should summarize all of the statements and documents submitted by the applicant and/or petitioner to support the extreme hardship claim.

Discretion Determination

- During the training period or when otherwise directed by a supervisor, the adjudicator should summarize both the favorable and the unfavorable factors the adjudicator considered to determine that favorable discretion is warranted.

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Denials

Denial Notices Should Include a Detailed Analysis

- If the applicant does not establish that the QR would experience extreme hardship or that favorable discretion is warranted, the denial notice must explain in detail why extreme hardship was not established or why favorable discretion was not warranted.
- If evidence presented was discounted or given less weight, the denial notice should explain how the adjudicator came to this conclusion.
- The denial notice should cite case law, if applicable, to support the adjudicator's analysis.

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Any Questions?

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Sample Fact Patterns

- Using sample fact patterns provided, identify any relevant information and appropriately analyze, including answering the following adjudication issues:
  - Is a showing of EH required? Why or Why Not?
  - Who is the QR, if any?
  - What evidence might supports a favorable EH determination?
  - What evidence might support an unfavorable EH determination?
  - Is there any additional evidence that you might request from the applicant?
  - In your analysis, do you think the applicant established EH?
  - Assume that EH is found. What relevant evidence should be analyzed regarding whether or not the applicant warrants a favorable grant of discretion?
  - Are there any other issues or concerns regarding this fact pattern?

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For additional information or if you have questions about the material covered in this training, please forward your inquiries to your supervisor, local OCC counsel, or to:

SCOPS HQ

- Jerry Rigdon, Branch Chief, Family & Status, SCOPS,
- Matthew Mumper, Project Manager, Family & Status, SCOPS, or
- Margaret "Peggy" O'Dowd, Project Manager, Family & Status, SCOPS

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INTERIM MEMO FOR COMMENT
Posted: 05-31-2012
Comment Period Ends: 06-13-2012
This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

PM-602-0062

Policy Memorandum

SUBJECT: Exceptions for Permitting the Filing of Form I-601, *Application for Waiver of Grounds of Inadmissibility*, and Any Associated Form I-212, *Application for Permission to Reapply for Admission into the United States After Deportation or Removal*, at International USCIS Offices

Purpose
This policy memorandum (PM) provides guidance and procedures regarding the circumstances when it is permissible for international USCIS managers to allow the filing of a Form I-601 and any associated Form I-212.

Scope
This PM applies to all USCIS employees.

Authority
8 CFR 212.2 and 212.7 and the instructions for Form I-601 and Form I-212

Background
Historically, waiver applicants located outside the United States filed Form I-601, Application for Waiver of Grounds of Inadmissibility, as well as any associated Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, with USCIS by submitting the applications to United States Embassies or Consulates. The Embassy or Consulate then forwarded the applications to the international USCIS office with jurisdiction for decision. Applications filed by applicants outside of the United States were adjudicated by the international USCIS office having jurisdiction over the country where the application was filed. In 2011, there was an interim change to the historical filing process in that international USCIS offices co-located with American Consulates and Embassies began to receive the filing of Form I-601 and Form I-212 applications at their respective locations.

On June 4, 2012, USCIS will implement a comprehensive change to the filing process for waiver applicants located outside the United States requiring the filing of Form I-601 applications and associated Form I-212 applications with a USCIS Lockbox for adjudication by the Nebraska Service Center (NSC). For the first six months of this change in process, Form I-601 waiver applicants located in Mexico will have the option of filing their applications either with the USCIS Lockbox or with the USCIS Ciudad Juarez Field Office.

USCIS recognizes that, in some situations, Lockbox filing may not be feasible. For example, there is no direct mail service between the United States and Cuba. Even in cases in which direct mail service is available, there may be cases that involve exceptional and compelling circumstances that require the immediate filing of the application, because even expedited processing by the NSC would be insufficient to address the urgency of the circumstances.

Policy

Applicants residing in Cuba
Any applicants residing in Cuba may continue to file Form I-601 and associated Form I-212 with the USCIS Havana Field Office. The Havana Field Office will continue to adjudicate all applications filed with that office.

If an applicant who is residing in Cuba has an authorized attorney or other representative in the United States, the applicant may elect to file Form I-601 or Form I-212 *either* with the Lockbox in the United States *or* with the Havana Field Office.

Applicants in countries other than Cuba
An international USCIS Field Office Director (FOD) is authorized to accept the filing of, and also adjudicate, any Form I-601 and any associated Form I-212 filed by an applicant who is in that country at the time of filing, if the FOD finds the existence of exceptional and compelling circumstances that require the immediate filing of the application, because even expedited processing by the NSC would be insufficient to address the urgency of the circumstances. Whether the applicant resides in that country or is merely present there is a factor that the FOD can properly consider in assessing whether exceptional and compelling circumstances exist. This authorization should be very rare and applies only in countries where a USCIS office is located. If the Form I-601 or Form I-212 are accepted for filing overseas, the USCIS international office will also accept any Form I-290B, Notice of Appeal or Motion, associated with a denial of a Form I-601 or Form I-212. If Form I-290B is filed as a motion, the international office will adjudicate the motion. If Form I-290B is filed as an appeal, the international office will forward the record to the Administrative Appeals Office for adjudication of the appeal.

The following are some examples of time sensitive, compelling, and exceptional circumstances:

- *Medical emergencies:* The applicant or qualifying family member is facing a medical emergency that requires immediate travel. This includes the situation where a petitioner or beneficiary is pregnant and delaying travel for the time it would take for expedited NSC adjudication may create a medical risk or extreme hardship for the mother or child.
- *Threats to personal safety:* The waiver applicant or the qualifying family member is facing an imminent threat to personal safety.
- *Close to aging out:* A beneficiary is within a few weeks of aging out of visa eligibility.
- *Adoption of a child:* A petitioner who has adopted a child locally and has an imminent need to depart the country.

This is not an exhaustive list of examples. FODs have discretion to accept and adjudicate Forms I-601 and I-212 when there are exceptional and compelling humanitarian reasons. If necessary, FODs should consult with their District Director or Deputy District Director when they have questions about whether to authorize the local filing of waiver applications.

If the FOD determines that an applicant should not be permitted to file the application with the international office, the FOD should inform the applicant that he or she may provide a written request for expedited adjudication when they file the Form I-601 or Form I-212 with the Lockbox. The request should contain a clear explanation of the reason for the request and any available supporting documentation for the need to expedite.

The FOD in an international office is not authorized to accept the filing of, or adjudicate, any Form I-601 and Form I-212 if, at the time of filing, the applicant is not in the country in which the USCIS international office is located. Applicants in countries where USCIS is not present must file their applications with the USCIS Lockbox. Further, the FOD of an international office is not authorized to review or consider requests to expedite the adjudication of waiver applications filed with a USCIS Lockbox. Waiver applicants who have already filed a waiver application domestically must make requests for expedited adjudication to the NSC. Information on contacting the NSC can be found at www.uscis.gov/contact.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to International Operations Division, Refugee, Asylum, and International Operations Directorate.

Inadmissibility, I-601 Waivers and Extreme Hardship

OCC-012-01-INWV

August 2012

U.S. Citizenship and Immigration Services

Overview

- Distinguishing between inadmissibility and deportability
- Grounds of inadmissibility
- Overview of waiver types
- Considerations in adjudicating waivers

Inadmissibility – INA § 212(a)

- Applies to aliens seeking admission at a port-of-entry
- Applies to aliens seeking a benefit within the United States, such as adjustment of status
- Applies to someone paroled into the United States under INA § 212(d)(5)(A)
- As a result of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), also applies to an alien present in the United States without being admitted or paroled (formerly entry without inspection)

Deportability – INA § 237

- Used when an alien has been admitted to the U.S. and thereafter commits an offense, is no longer eligible for the status previously accorded, or was never eligible for the status
- In the USCIS context, typically seen with:
  - Application for adjustment of status where applicant was admitted in a nonimmigrant status, does not qualify for adjustment and no longer qualifies for nonimmigrant classification
  - Naturalization applications if it is determined that the person after admission as an LPR commits an offense or it is discovered that the person was never lawfully admitted as an LPR

INA § 212 – General Categories

- 212(a)(1) - Health and Medical
- 212(a)(2) - Criminal
- 212(a)(3) - Security
- 212(a)(4) - Public Charge
- 212(a)(5) - Labor Certification
- 212(a)(6) - Illegal Entrants and Immigration Violators
- 212(a)(7) - Documentation Requirements
- 212(a)(8) - Ineligible for Citizenship
- 212(a)(9) - Aliens Previously Removed and Unlawful Presence
- 212(a)(10) - Miscellaneous

Health/Medical – INA 212(a)(1)

- 212(a)(1)(A)(i) - Communicable disease of public health significance
- 212(a)(1)(A)(ii) - Immigrants lacking proof of all of the required vaccinations
- 212(a)(1)(A)(iii)(I), (II) - Physical or mental disorders with associated harmful behavior (current disorder or past disorder that is likely to recur or lead to other harmful behavior)
- 212(a)(1)(A)(iv) - Drug abuse and drug addiction
- Immigrant waiver: INA 212(g), except not for 212(a)(1)(A)(iv)

Required Medical Exam

- Immigrant visa applicants
- Refugees applying for admission under INA 207
- Adjustment applicants
- K and V nonimmigrants
- All other nonimmigrants and applicants for admission (who have not already had a medical exam) may be required to undergo a medical exam if there are reasons to believe they may be inadmissible on medical grounds

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Effect of Medical Notifications

- Only Class A medical conditions render an alien inadmissible under INA 212(a)(1)(A)
  - That Class A medical condition must be certified on the medical report signed by the panel physician or civil surgeon
  - Medical report is *conclusive* evidence of an alien's inadmissibility
  - Applies to communicable diseases of public health significance or a physical or mental disorder associated with harmful behavior or drug abuse/addiction

Class B Certificate

- Class B medical conditions do not render an alien inadmissible on medical grounds under INA 212(a)(1)(A), but they can possibly raise questions of inadmissibility on other grounds
- A Class B condition is a physical or mental defect, disease, or disability serious in degree or permanent in nature that is a substantial departure from normal physical or mental well-being

Communicable Disease – INA 212(a)(1)(A)(i)

- 212(a)(1)(A)(i) -- Communicable disease of public health significance
  - Defined at 42 C.F.R. § 34.2(b) which lists 8 medical conditions
  - HIV removed from list, effective January 4, 2010
- Immigrant Waiver: INA § 212(g)(1)
- Unless otherwise noted, waiver applications are filed on the Form I-601

Vaccinations - INA 212(a)(1)(A)(ii)

- 212(a)(1)(A)(ii) -- Immigrants lacking proof of all of the required vaccinations
  - See 9 FAM 40.11 N7.3 for required vaccination list and updates and Advisory Committee on Immunization Practices (ACIP)
  - INA lists mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B, plus any recommended by ACIP
  - Exception under INA § 212(a)(1)(C) for orphans 10 years or younger applying for immigrant visa under INA § 201(b) (IR3 and IR4)
  - Vaccination requirements only apply to immigrant visa applications on or after 09/30/96
- Immigrant Waiver: INA § 212(g)(2)

Physical/Mental Disorder – INA 212(a)(1)(A)(iii)

- 212(a)(1)(A)(iii)(I), (II) -- Current and past physical or mental disorders with associated harmful behavior
  - Current disorder that may pose or has posed threat to property, safety or welfare of alien or others
  - Past disorder with history of behavior that posed threat and which is likely to recur or lead to other harmful behavior
- Immigrant Waiver: INA § 212(g)(3)

Drug Abuse/Addiction – INA 212(a)(1)(A)(iv)

- 212(a)(1)(A)(iv) -- Drug abuse and drug addiction
  - Based on CDC technical instructions, there must be a finding that the person is a current drug abuser or drug addict in order for a Class A certificate to issue
  - Remains inadmissible until it is determined that the drug abuse or addiction is in remission
- Immigrant Waiver: None

Criminal Grounds – INA § 212(a)(2)

- 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude
- 212(a)(2)(A)(i)(II) – Controlled Substance violations
- 212(a)(2)(B) – Multiple Criminal Convictions
- 212(a)(2)(C) – Drug Trafficking
- 212(a)(2)(D)(i) – Prostitution
- 212(a)(2)(D)(ii) – Procurement/Proceeds of Prostitution
- 212(a)(2)(D)(iii) – Commercialized vice

Criminal Grounds (cont'd)

- 212(a)(2)(E) – Asserted immunity
- 212(a)(2)(G) – Religious Freedom Violators
- 212(a)(2)(H) – Trafficking in Persons
- 212(a)(2)(I) – Money Laundering

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Special Note About Criminal Grounds

- Generally two ways to establish inadmissibility
  - Conviction
    - See INA § 101(a)(48)(A) for definition of conviction
    - Consult USCIS Office of Chief Counsel
  - Alien admits to having committed acts constituting essential elements of the crime
    - Officer must provide the alien with a definition of the crime (found in relevant criminal code)
    - Officer must explain the definition in understandable terms
    - Alien must admit to each element of the crime
    - Admission must be knowing; sworn statement recommended

Crimes Involving Moral Turpitude (CIMT) – INA 212(a)(2)(A)(i)(I)

- Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.
- Three exceptions
- Immigrant waiver: INA 212(h)

Exception 1: Purely Political Offense

- INA 212(a)(2)(A)(i)(I):
  - ". . . (other than a purely political offense) . . . ."
- Purely political offense:
  - Defined in DOS regulations at 22 C.F.R. 40.21(a)(6).
  - Includes offenses that resulted in a conviction obviously based on fabricated charges or predicated on repressive measures against racial, religious, or political minorities.

Exception 2: Youthful Offense

- INA 212(a)(2)(A)(ii)(I):
  - Alien committed only 1 crime,
  - CIMT was committed while alien was under age 18,

  and
  - The CIMT was committed, and the alien was released from confinement (if sentenced), more than 5 years before the date of application for a visa, admission, or adjustment of status.

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Exception 3: Petty Offense

- INA 212(a)(2)(A)(ii)(II):
  - Alien committed only 1 crime,
  - The maximum penalty possible did not exceed 1 year imprisonment,

  and

  - If convicted, the alien was not sentenced to a term of imprisonment in excess of 6 months regardless of the extent to which the sentence was ultimately executed.

CIMT Defined

- There is no statutory definition of what constitutes a CIMT, only court interpretations.
- A CIMT is determined by the nature of the offense and the mental state of the offender.
- Nature of offense: Moral Turpitude refers to conduct which "shocks the public conscience as being inherently base, vile or depraved, contrary to the rules of morality."

Matter of Silva-Trevino

- Attorney General issued decision in *Matter of Silva-Trevino* on November 7, 2008 [24 I&N Dec. 687 (BIA 2008)]
- Recognized that there is no definition of what constitutes a CIMT, resulting in disparate treatment, depending on the jurisdiction
- Attorney General found that a CIMT is a crime that is reprehensible in nature and has some degree of "scienter" – whether specific intent, deliberateness, willfulness, or recklessness

Three-Prong Approach to CIMT

- Categorical analysis – Is there a "realistic probability" that the statute would reach conduct that isn't a CIMT?
- Modified categorical approach – if the statute doesn't resolve the question, do the conviction records establish that the crime is a CIMT? [information/indictment, plea, judgment, sentence, and related transcripts]
- If first two steps do not resolve the issue, it is permissible to go beyond the conviction records to determine whether the offense was a CIMT
- Note: Consult OCC regarding analysis of crimes as CIMTs

Example of Categorical CIMT

- *Matter of Louissaint*, 24 I&N Dec. 754 (BIA 2009). Burglary of an occupied dwelling in violation of Florida law is categorically a CIMT, applying the analysis of *Silva-Trevino*
- Statute requires unauthorized entry onto property of another with the intent to commit an offense therein
- Court found that this statute categorically describes morally reprehensible conduct with scienter (knowledge)

Scienter and Intent

- Recklessness
  - Generally involves a conscious disregard of a substantial risk involved in the conduct
  - May constitute a CIMT, and is referenced in *Silva-Trevino*
- Negligence
  - When the offender failed to be aware of a substantial risk involved in the conduct, then generally this is found *not* to be a CIMT

Continuing Validity of *Silva-Trevino*

- *Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465 (BIA 2011) [BIA clarified that you only reach third step IF conviction records are inconclusive]
- *Prudencio v. Holder*, _ F.3d _, 2012 WL 256061 (4th Cir. 2012) [Court found that CIMT provisions are not ambiguous and that the 3-prong approach to CIMTs was not an authorized exercise of the Attorney General's discretion]
- *Fajardo v. U.S. Atty. General*, 659 F.3d 1301, (11th Cir. 2011) [categorical and modified categorical approach to CIMTs is sufficient; not proper to reach third step, citing *Jean-Louis v. Attorney General*, 582 F.3d 462 (3d Cir. 2009) and *Guardado-Garcia v. Holder*, 615 F.3d 900 (8th Cir. 2010)]

Examples of CIMTs

- Crimes against the person: Murder, voluntary manslaughter, rape, aggravated assault, kidnapping
- Crimes against property: robbery, burglary, theft, extortion, blackmail
- Crimes against the Government: counterfeiting, perjury, tax evasion, welfare fraud, using the mails to defraud
- An outline regarding CIMTs is found on the Adjudicator's Toolbox

Examples of Crimes Generally Not Found to be CIMTs

- Driving under the Influence (DUI), non-aggravated
- Involuntary manslaughter, negligent homicide
- Joyriding
- Disorderly conduct
- Trespassing
- Simple battery

Hypothetical

Sam is an adjustment applicant who is currently 21 years old. When he was 17, he was arrested for stealing a cow. He was convicted and sentenced to 60 days in jail for the offense.

In his country, stealing a cow can be punished by up to 2 years in jail. He has no other criminal record.

When asked about the offense, he said that yes, he took the cow, but the only reason he was convicted was because it was the mayor's cow. Is he inadmissible for a CIMT? Why or why not?

Answer

- Is stealing a cow a CIMT? Yes. Theft offenses are generally CIMTs.
- Does an exception apply?
  - Political offense? No, it doesn't seem to be.
  - Youthful offense? No. Under 18 when it happened, but it's only been 4 years since the offense. For exception to apply it must have been at least 5 years prior to the application for admission.
  - Petty offense? No. Although only one crime, and sentenced to only 60 days, the maximum possible sentence was 2 years.

Controlled Substance Violation – INA § 212(a)(2)(A)(i)(II)

- Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a violation of (or conspiracy or attempt to violate) *any law or regulation* of a state, the United States, or a foreign country relating to a *controlled substance* . . . .
- Immigrant waiver: INA 212(h), ONLY for single, simple possession of 30 grams or less of marijuana; no other controlled substance offense can be waived by INA 212(h)

"Relating to a Controlled Substance"

- Includes possession of drug paraphernalia. *Matter of Martinez-Espinoza*, 25 I&N Dec. 118 (BIA 2009)
- Depending on the drug paraphernalia involved, a waiver under INA 212(h) *may be available*
  - If the paraphernalia involved reasonably relates to simple possession for one's own use of 30 grams or less of marijuana
  - In *Martinez-Espinoza*, the BIA found that possession of a marijuana pipe could be waived under INA 212(h)
- Includes solicitation to deliver a controlled substance. *Matter of Zorilla-Vidal*, 24 I&N Dec. 768 (BIA 2009) [except in the Ninth Circuit where *Coronado-Durazo v. INS*, 123 F.3d 1322 (9th Cir. 1997) is controlling]

Multiple Criminal Convictions – INA § 212(a)(2)(B)

- Any alien convicted of *2 or more offenses*, regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were *5 years or more* . . . .
- Immigrant waiver: INA 212(h)

Drug Trafficking – INA § 212(a)(2)(C)(i)

Any alien who the consular officer or immigration officer *knows or has reason to believe* is or has been an *illicit trafficker in any such controlled substance*, or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking of such controlled substances . . . .

- Immigrant waiver: None

Drug Trafficking

- No conviction or admission required. *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977)
- 21 U.S.C. § 812 - List of controlled substances.
- Statute not impermissibly vague; person of ordinary intelligence would know negotiating purchase of 5 kilos of cocaine would give rise to a reason to believe. *Rojas-Garcia v. Ashcroft*, 339 F.3d 814 (9th Cir. 2003)

Relatives of Drug Traffickers

- INA § 212(a)(2)(C)(ii) provides that the spouse, son or daughter of an alien inadmissible under INA § 212(a)(2)(C)(i) is also inadmissible
- Spouse, son, or daughter is inadmissible if s/he obtained any financial or other benefit from the illegal activity within the prior 5 years
- Must show that the spouse/son/daughter knew or reasonably should have known that the benefit was the product of illegal activity

Prostitution – INA § 212(a)(2)(D)

- (i) Any alien who is coming to the U.S. solely, principally, or incidentally to engage in prostitution, or has engaged in *prostitution* within 10 years of the date of application for a visa, admission, or adjustment of status.
- (ii) Any alien who directly or indirectly procures or attempts to procure, or (within the past 10 years) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or received (within the past 10 years) proceeds related to prostitution . . .
- (iii) Any alien who is coming to the United States to engage in any other *unlawful commercialized vice*, is inadmissible.
- Immigrant waiver: INA 212(h)

Asserted Immunity – INA § 212(a)(2)(E)

- Any alien who has committed in the United States at any time a serious criminal offense, for whom *immunity from criminal jurisdiction* was exercised with respect to that offense, who as a consequence of the offense and exercise of immunity has departed from the U.S., and who has not subsequently submitted fully to the jurisdiction of the court in the U.S. having jurisdiction with respect to the offense . . . .
- Immigrant waiver: INA 212(h)

Violations of Religious Freedom – INA § 212(a)(2)(G)

- Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in Section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible.
- Immigrant waiver: None

Particularly Severe Violations of Religious Freedom

- Systematic, ongoing, egregious violations of religious freedom:
  - Torture or cruel, inhuman, or degrading treatment or punishment.
  - Prolonged detention without charges.
  - Causing the disappearance of persons.
  - Flagrant denial of the right to life, liberty, or the security of persons.

Significant Traffickers in Persons – INA § 212(a)(2)(H)

"Any alien who commits or conspires to commit human trafficking offenses in the United States or outside the United States, or who the consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 7102 of Title 22, is inadmissible."

- Immigrant waiver: None

Trafficking in Persons - Defined

- Severe forms of trafficking in persons means:
  - Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or
  - The person induced to perform the act is under age 18, or
  - Recruiting, harboring, transporting, providing, or obtaining of a person for labor or services, through force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt, bondage, or slavery.

Beneficiaries of Trafficking

INA § 212(a)(2)(H)(ii)

- Includes the spouse, son, or daughter of a trafficker who has received any benefit from the trafficking within the previous 5 years.
- Knew or should have reasonably known the benefit was the result of trafficking in persons.
- Exception: if son or daughter was a "child" when benefit was received (INA § 212(a)(2)(H)(iii))

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Money Laundering – INA § 212(a)(2)(I)

Any alien who a consular officer or the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the U.S. to engage in an offense relating to laundering of monetary instruments; or who is or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense of money laundering . . . .

- Immigrant waiver: None

Security and Related – INA 212(a)(3)

- 212(a)(3)(A)(i) – Espionage, sabotage, export
- 212(a)(3)(A)(ii) – Unlawful activity
- 212(a)(3)(A)(iii) – Overthrow of U.S. government
- 212(a)(3)(B)(i) – Terrorist activity
- Immigrant waiver: None

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Security and Related (cont'd)

- 212(a)(3)(C) – Adverse foreign policy
- 212(a)(3)(D) – Immigrant communist
- 212(a)(3)(E) – Nazi persecution, Genocide
- 212(a)(3)(F) – Association w/Terrorist Organization
- 212(a)(3)(G) – Recruitment or Use of Child Soldiers
- Immigrant Waiver: None, except INA § 212(a)(3)(D)(iv) for inadmissibility under INA 212(a)(3)(D)

Security and Related Grounds

- The terrorist related grounds of inadmissibility under INA 212(a)(3)(B), 212(a)(3)(F) are covered separately in courses labeled as "TRIG"
- You are encouraged to immediately consult with USCIS Office of the Chief Counsel if you encounter potential inadmissibility under any of the grounds listed in INA 212(a)(3)

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INA § 212(a)(3)(D)(i)

- Inadmissible if a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), whether domestic or foreign
- Exceptions at INA §§ 212(a)(3)(D)(ii)-(iii)
  - Involuntary past or present membership
  - Under 16 and required by law or for purposes of necessity OR
  - Not a threat to national security and past membership terminated at least two years before date of application or membership terminated at least 5 years before date of application, in case membership part of party controlling government . . .
- Immigrant Waiver: INA § 212(a)(3)(D)(iv). Note: if exception applies then person is not inadmissible and therefore needs no waiver

Public Charge – INA § 212(a)(4)

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the [Secretary] at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

- Immigrant waiver: None

Public Charge Applicability

- Immigrant visa or adjustment of status applicants:
  - Immediate Relatives
  - Family-based immigrants (except for battered spouses and children and widows/widowers)
  - Employment based immigrants, if relative filed the petition or has a significant ownership interest in the company that filed the petition

Public Charge Inapplicable to:

- Refugees seeking admission under INA § 207
- Refugees and asylees adjusting under INA § 209
- Amerasians
- Applicants for adjustment under the Cuban Adjustment Act, NACARA or HRIFA
- Special Immigrant Juveniles
- Lautenberg parolees
- Applicants for registry under INA § 249

Labor Certification – INA § 212(a)(5)

- INA § 212(a)(5)(A) – Labor Certification
  - Aliens seeking to enter the United States to perform skilled or unskilled labor must have a certification from the Department of Labor
- INA § 212(a)(5)(B) – Unqualified Physicians
- INA § 212(a)(5)(C) – Uncertified Foreign Health-Care Workers
- Immigrant waiver: INA 212(k) for INA 212(a)(5)(A) only

Illegal Entrants/Immigration Violators – INA § 212(a)(6)

- 212(a)(6)(A) – Present without admission/parole (PWI)
- 212(a)(6)(B) - Failure to attend 240 proceedings
- 212(a)(6)(C)(i) – Fraud/willful misrepresentation
- 212(a)(6)(C)(ii) – False claim to U.S.C.
- 212(a)(6)(D) – Stowaway
- 212(a)(6)(E) – Smuggling
- 212(a)(6)(F) – Civil document fraud
- 212(a)(6)(G) – Student visa abuser

Present Without Admission or Parole (PWI) – INA § 212(a)(6)(A)

- An alien present in the United States without being admitted or paroled, or who arrives in the U.S. at any time other than as designated by the [Secretary of Homeland Security] . . .
  - Aliens who are in the U.S. and did not undergo inspection are inadmissible.
  - Exception: does not apply to NACARA 202, HRIFA 902, and change of status to V nonimmigrant
- Immigrant waiver: None

Exceptions for Battered Spouses

- These exceptions are under INA § 212(a)(6)(A)(ii).
- Generally speaking, the exceptions cover self-petitioning spouses and derivative beneficiaries who were:
  - Battered or subject to extreme cruelty by spouse or parent, and;
  - There was a substantial connection between the battery and the unlawful entry
- By policy, USCIS does not enforce the nexus requirement between the battery/cruelty and the unlawful entry

Failed to Attend Removal Proceeding – INA § 212(a)(6)(B)

- Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine his/her admissibility or deportability and who seeks admission to the United States within 5 years of the subsequent departure or removal . . . .
- Immigrant waiver: None

Fraud/Material Misrepresentation – INA § 212(a)(6)(C)(i)

- Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit under this Act . . . .
- Elements:
  - Fraud/misrepresentation made to a U.S. Gov't official
  - Misrepresentation is related to a material fact
  - To obtain an immigration benefit
- Includes false claims to U.S. citizenship made before September 30, 1996
- Immigrant waiver: INA 212(i)

False Claim to US Citizenship – INA § 212(a)(6)(C)(ii)

- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or state law . . . .
- Applies to representations made on or after September 30, 1996
- Includes convictions for violations of 18 U.S.C. 911, 1542. *Matter of Barcenas-Barrera*, 25 I&N Dec. 40 (BIA 2009)
- Immigrant waiver: None

Exception to INA § 212(a)(6)(C)(ii)

- INA § 212(a)(6)(C)(ii)(II) provides an exception to inadmissibility if:
  - each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of an alien) is or was a citizen (whether by birth or naturalization), and
  - the alien permanently resided in the United States prior to attaining the age of 16, and
  - the alien reasonably believed at the time of making such representation that he or she was a citizen,

Then the alien shall not be considered to be inadmissible under any provision of the subsection based on such representation.

False Claims Prior to 9/30/96

- A false claim to U.S. citizenship made before September 30, 1996, may still fall under INA 212(a)(6)(C)(i) relating to fraud or willful misrepresentation of a material fact.

  - It must have been made to a U.S. Government official to procure an immigration benefit under the Act. Examples include, but are not limited to, false claims made to a State Department official to obtain a U.S. passport, or a false claim to an inspector at the POE.

False Claims Made on or After 9/30/96

- INA 212(a)(6)(C)(ii) covers false claims made to a State or Federal official for *ANY* State or Federal Benefit. Not limited to immigration benefits.

- INA 212(a)(6)(C)(ii) covers false claims made to a private individual, because INA 274A covers the verification of employment eligibility and statements made during the I-9 process can be made to a private or a Government employer.

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Availability of INA 212(i) Waiver

- INA § 212(a)(6)(C)(i) can be waived by INA § 212(i)
- INA § 212(a)(6)(C)(ii) can **not** be waived by INA § 212(i)

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Alien Smugglers – INA § 212(a)(6)(E)

- Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the United States in violation of law is inadmissible.

  ELEMENTS:

  - Knowledge and
  - Violation of law.

- Not necessarily for monetary or other gain.

- Immigrant waiver: INA 212(d)(11), under limited circumstances

Civil Penalty/Document Fraud – INA § 212(a)(6)(F)

- An alien who is the subject of a final order for violation of section 274C is inadmissible.
  - INA 274C relates to any person who is involved in forgery, counterfeiting, or using, accepting or receiving any immigration related document.
  - Can be fined up to $2000 per document.
- Immigrant Waiver: INA 212(d)(12)