

CHANGES IN 601/601A WAIVERS

Background, Eligibility, and Process

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Landscape Before Provisional Waivers

- Individuals ineligible for adjustment of status must apply for immigrant visa at U.S. consulate abroad.
- Most common need for waiver: If unlawfully present for more than 180 days, departure from U.S. → inadmissible for unlawful presence
- I-601 Waiver available pursuant to INA section 212(a)(9)(B)(v)
- Former waiver application process abroad – for unlawful presence and all grounds of inadmissibility
- I-601 Centralized filing with USCIS after June 4, 2012

Centralized Filing of I-601 Waivers

- Formerly filed at Consulates abroad and forwarded to USCIS overseas offices for adjudication
- As of June 4, 2012 all I-601 immigrant waivers and I-212 Permission to Reapply applications filed at a USCIS lockbox in Phoenix, adjudicated by USCIS Nebraska Service Center
- Unlike I-601A provisional waivers, applies to all grounds of inadmissibility, and not limited to immediate relatives
- USCIS goal to adjudicate these waivers in 4 months; current processing time of 5 months+

Purpose of the Provisional Waiver

- March 4, 2013 – 8 CFR 212.7(e) became effective
- Allows certain **immediate relatives** to apply for unlawful presence waiver **prior to departure**
- Minimizes family separation
- Increases confidence that applicant will be readmitted as permanent resident

Eligibility for Provisional Waiver

- At least **17 years old**
- **Immediate relative** of U.S. citizen
- **Approved I-130 petition** filed by immediate relative
- **Immigrant visa case pending** with Department of State (DOS) *with visa processing fee paid*
- U.S. citizen spouse or parent would suffer **extreme hardship** if applicant refused admission
- **Unlawful presence** = applicant's **only** ground of inadmissibility

Ineligibility Grounds

- DOS initially acted to schedule the applicant's visa interview prior to January 3, 2013
- Final order of removal
- Subject to reinstatement of prior removal order
- In removal proceedings – *unless administratively closed and not recalendared*
- Pending adjustment of status case before USCIS
- “**Reason to believe**” that applicant may be subject to grounds of inadmissibility other than unlawful presence

Application Process

- Form I-601A
- Filing fee of \$585 – no fee waiver available
- Include evidence of waiver eligibility
- File with Chicago Lockbox
- File then transferred to National Benefits Center
- Processing goal = 6 months

Provisional Waiver Denials

- No appeal process
- Re-file I-601A
- Pursue consular processing and file I-601 waiver through regular process

Provisional Waiver Approvals

- USCIS informs NVC of approval
- Applicant must depart U.S. and attend immigrant visa interview
- Consular officer makes ultimate decision on admissibility
- If visa issued, unlawful presence indefinitely waived

Latest Statistics from the NBC

From March 4 – September 14, 2013:

23,949 applications received by Lockbox

- 75% accepted for adjudication
- 25% rejected

5,892 applications adjudicated by NBC

- 59% approved
- 39% denied
- 2% administratively closed

2,292 applications denied by NBC

- 48% denied due to “reason to believe” inadmissible on other ground
- 41% denied due to failure to establish extreme hardship