



The Evolution of the I-601A Provisional Waiver



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I-601A Waiver

- Proof of relationship between applicant and all QRs
- Proof of family relationships (ties) in the U.S.
- Detailed letter from QR explaining hardship of either moving to applicant's country or staying in the US without the applicant
- Proof of benefit to community—employer, friend, Pastor letters
- Psychosocial determination from expert concerning emotional hardship to QR

I-601A Waiver

- Medical records of any family members in US (how will the applicant's absence affect medical issues of family?)
- Educational level of QR and applicant—what kind of opportunities are available in the US that may not be available in applicant's home country?
- Benefits and opportunities available to QR and family in US that may not be available in country of applicant (educational, medical, financial, etc.)
- Proof of financial contribution of applicant to QR and family—how will the loss of this contribution affect the family?
- Scholarly articles, news articles explaining any of your various points: Income disparity, standard of living, educational situation in applicant's country, medical situation in applicant's country, effects of parental separation from children, etc.

I-601A Waiver

- Check DOS country conditions/travel alerts. You can refer to them in your brief, but probably don't include them in the packet.
- Any news articles showing danger in place where applicant will have to reside.
- Any letters from family in place where applicant will have to reside explaining danger. Give specific examples.
- Pictures of applicant, QR, family, living conditions in US and in the place where applicant will have to live in home country.

RFE-responses

- See issuance of the RFE as an opportunity to obtain approval
 - 2 Types of RFEs
 1. great points-they read the legal brief
 2. RFE issued without reading it
- Be clear on your answer-answer each issue raised in the order it appears in the RFE/be timely with the response/do not miss deadlines/be creative
- If they request something you already have provided-provide it again and clarify; if you have additional evidence on the issue, submit it (do not use condescending language “we already sent this”...etc.)

I-601A Potential-Case Already Before EOIR

- Consider potential court outcome/the difficulty of the case/ (poor withholding; poor 42B etc. before seeking *Termination of Proceedings in Court*)
- Termination vs. Administrative Closure in Court
- If Termination not available seek Admin. Closure, then seek Termination upon receipt of waiver approval notice

Hardship Waivers - Background

- Several INA provisions authorize discretionary waivers of particular inadmissibility grounds for those who demonstrate “extreme hardship” to a qualifying relative, such as U.S. Citizen or LPR family members
- The standard for “extreme hardship” has been undefined and consequentially, inconsistently applied
- USCIS issued a draft guidance to clarify what constitutes “extreme hardship” for purposes of an immigration waiver.
- This was issued as a component of the Administration’s Executive Action of November 2014.
- Right now, its only a draft, seeking public feedback until November 2015, and then a final version of the guidance will be issued.

Hardship Waivers - Analysis

Qualifying Relatives

- Extreme hardship to a person other than the qualifying relative can be considered extreme hardship to the qualifying relative.
- Can also aggregate

Extreme Hardship

- Extreme hardship must exceed that which is usual or expected, but the hardship need not be unique, nor is it as demanding as “exceptional and extremely unusual

Special Circumstances

- The Draft does NOT list circumstances that automatically qualify a finding of extreme hardship. However, they do have a list of special circumstances that strongly suggest extreme hardship
- Special circumstances include:

Hardship Waivers

Adjudication Steps for Waivers Requiring Extreme Hardship source Draft USCIS Policy Manual

Step 1

- Confirm the waiver provision requires a showing of extreme hardship to a qualifying relative.

Step 2

- Identify each qualifying relative whose hardship would be relevant under the applicable waiver provision, and determine whether the applicant has established the family relationship(s) to them

Step 3

- Determine whether, if the waiver application were denied, either location OR separation (or both) is/are reasonably foreseeable for each of the qualifying relatives you have identified

Step 4

- Based on the determination in step three and the evidence submitted, evaluate the present and future hardships that each qualifying relative would more likely than not experience if the waiver request were denied

Step 5

- Determine whether it is more likely than not that, in the aggregate, the hardships to the qualifying relatives add up to extreme hardship

Step 6

- If extreme hardship is not found, deny the application. If extreme hardship is found, exercise further discretion to determine whether, based on the totality of the facts of the individual case, the waiver should be granted

Questions

