Update on Waiver Practice:
Everything You Want to Know and Need to Know About Waivers

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I. A Practical Guide to Consular Processing and Waivers

Because the stateside provisional waiver process is limited in its application, many potential immigrants will continue to process their waiver requests at the consulate abroad. The path to the waiver in either case begins the same: filing of the I-130 at the USCIS National Benefits Center, forwarding approval of the case to the Department of State National Visa Center, and payment of the visa fees. For the immigrant visa (IV) applicant who will process his or her waiver at the consulate, he or she will continue the civil document processing at the NVC. This includes the filing of form DS-230 parts I and II (or electronic form DS-260) and the I-864 Affidavit of Support and all supporting documentation. The IV applicant who will be applying for the waiver abroad will continue with his or her consular processing all the way through to setting up the biometrics and medical appointments in the city of the home consulate, and lastly, the immigrant visa interview.

Practice pointer: Clients can prepare for this step far in advance by gathering multiple copies of original, certified documents such as passports, birth certificates, marriage certificates, divorce decrees and police clearance letters. To maintain sanity, give the NVC what it wants.

The immigrant visa applicant who is not stateside-waiver eligible must attend his or her visa interview before the waiver of inadmissibility can be filed. Although the attorney and client can and should be prepared in advance for a consular request for a waiver of inadmissibility, the consulate must first find the applicant inadmissible on a statutory ground for which a waiver is available, and will then provide the IV applicant instructions about filing the waiver. These instructions may vary amongst the consulates, but the basic concept is the same: the waiver application and supporting documentation package is filed with a USCIS office either abroad or stateside, and the IV applicant must wait abroad until the waiver is processed and approved.

It would appear to be of benefit to the immigrant visa applicant that immigrant visa issuance is a non-discretionary act. If an immigrant visa applicant is otherwise eligible after the approval by USCIS of any waivers for

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statutory grounds of inadmissibility, the immigrant visa must be issued.[2] The issuance of an immigrant visa by the consular office is therefore not a discretionary act, unlike a grant of adjustment of status by USCIS within the states.

If a consular officer has reason to believe that an IV applicant may be inadmissible, the visa may be denied.[3] It is therefore up to the attorney to develop the case. The client must be informed of the risks inherent in the consular and inadmissibility waiver processing abroad, including realistic expectations of the processing timeline. The client must in turn provide, at the attorney's elicitation, the full and true facts about everything in his or her immigration and criminal history, as well as all pertinent information lurking in his or her personal life (marriages and divorces, children, personal drug use, medical history, etc.). To be well prepared at the consulate, detailed information should be gathered along the following lines:

Immigration status and history: The IV applicant should be able to discuss his or her full immigration history, from the distant past to the present. He or she must be able to recount not only each entry to the United States, but any prior attempts to apply for a visa abroad or a benefit stateside, whether successful or not. If unsuccessful, the attorney should know the contents of those prior applications.

Family history: It should be impressed upon the client by the attorney that all prior marriages must be listed, proof of dissolution or existence of all prior and current marriages must be provided, and all children from any partners anywhere in the world must be acknowledged.

Criminal history: As this is usually the most problematic issue, the IV applicant must understand that he or she must speak about his or her criminal record with absolute honesty and plenitude. This includes all arrests, detentions, and convictions, at any time and for any reason, regardless of dismissal or expunction.

Common Grounds of Inadmissibility

The IV applicant can and should walk into the IV interview fully prepared for the waiver application process. Based on the client's information, the attorney should review all the grounds of inadmissibility in INA §212(a)(1) through (10) to check for inadmissibility. The most common grounds of inadmissibility that befall the IV applicant are as follows:

Unlawful presence bars: For the IV applicant previously in the United States, his or her unlawful presence if triggered by the very departure required to complete consular processing. The duration of the bar depends upon the length of the unlawful presence. In some cases, this bar is waivable.[4] In other cases, where unlawful presence is combined with a subsequent entry without inspection or a prior removal order, it is not.[5]

Criminal grounds: Convictions for certain crimes or combination of crimes will require a waiver of inadmissibility, if the IV applicant otherwise qualifies. Crimes involving moral turpitude and simple possession of under 30 grams of marijuana will be waivable offenses. Most controlled substance offenses will not. Not all criminal grounds of inadmissibility require convictions: admission of the essential elements of a crime involving

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[2] INA §221(a).

[3] INA §221(g).

[4] INA §212(a)(6).

[5] INA §212(a)(9).

moral turpitude;[6] suspected drug traffickers and their immediate families;[7] suspected terrorists and those providing material (even minimal) support for terrorism;[8] and assisting another's unlawful entry to the United States, or "alien smuggling"[9] will result in inadmissibility by virtue of conduct alone.

Fraud or misrepresentation: If a consular officer finds that an IV applicant has, by fraud or by willfully misrepresenting a material fact, sought to obtain any immigration benefit, he or she will be found inadmissible.[10] Although the plain text of the statute limits the application of this ground of inadmissibility through *mens rea*, materiality, and type of benefit, in practice, this ground of inadmissibility is broadly applied by consular officers.[11] This ground of inadmissibility includes false claims to U.S. citizenship for any purpose under state or federal law.[12]

Health-related grounds: In addition to inadmissibility for a communicable disease of public health significance or lack of documentation for appropriate vaccinations, an IV applicant with a past or current physical or mental disorder that poses a risk to the safety or property of others, or who is (under HHS regulations) a drug abuser or addict, is inadmissible. This ground of inadmissibility is a favorite in consulates that consider a DUI or DWI to be indicative of alcoholism, and thus presenting a danger to others. Additionally, during the medical examinations in some consulates, detailed questions about past drug use will be asked, and an applicant's admission of even casual, recreational drug use, regardless how long ago, may be taken as evidence of drug addiction. It will then be up to the IV applicant to obtain a substance abuse screen from a qualified health professional to refute the reasonableness of the belief.

"Alien" Smuggling: The statute is specific and requires that one "knowingly" encourage, assist, abet, induce, or aid another to enter the United States in violation of law in order to trigger inadmissibility.[13] Despite the statute's specificity, however, some consulates tend to be overbroad in its application, penalizing the mere accompanying of others as a group in their trek across the border.

Security and related grounds: If the consular officer has reasonable ground to believe that an IV applicant seeks to enter the U.S. to engage in espionage, the overthrow of the government, or "any other unlawful activity," he or she will be inadmissible.[14] While traditionally not a common ground of inadmissibility, this provision is noteworthy in that it has recently be utilized by consulates, Cd. Juarez in particular, to exclude individuals with "gang-related" tattoos, finding reasonable grounds for believing that the individual will engage in illegal gang activity. In practice, this bar has not been limited to gang tattoos and has also affected other persons with body art that the consulate simply believes may be related to gangs. Tattoos are discovered during the medical examination.

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[6] INA §212(a)(2)(A)(I) and (II); *but see* a long line of BIA cases that limit applicability such as *Matter of J-*, 2 I&N Dec. 285 (BIA 1945); *Matter of E-V-*, 5 I&N Dec. 194 (BIA 1953); *Matter of G-*, 7 I&N Dec. 40 (BIA 1955, AG 1956); *Matter of K-*, 7 I&N Dec. Dec. 594 (BIA 1957).

[7] INA §212(a)(2)(C).

[8] INA §212(a)(3)(B).

[9] INA §212(a)(6)(E).

[10] INA §212(a)(6)(C).

[11] *See also Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980) (A misrepresentation is material if the applicant would be inadmissible on the true facts or if the misrepresentation shuts off a line of inquiry that is relevant to the applicant's eligibility and that may have resulted in a proper determination that the application was inadmissible); *Kungys v, United States*, 485 U.S. 759, 772 (1988).

[12] INA §212(a)(6)(C)(ii).

[13] INA §212(a)(6)(E).

[14] INA §212(a)(3).

Practice Pointer: Be aware not only of the obvious statutory grounds of inadmissibility, but the "reason to believe" grounds that may affect your client, such as in the case of applicants with one or more DWIs, a history of drug use, or tattoos. Make sure as well that the client is adequately prepared to answer questions during the interview and during the medical examination about mental health, drug use, crimes involving moral turpitude, and any other conduct-based grounds of inadmissibility.

Some grounds of inadmissibility are un-waivable, making their early issue-spotting an absolute necessity in cases where an applicant is travelling abroad specifically to consular process. These particularly serious red flags include: False claims to U.S. Citizenship, with one very narrow exception;[15] Unlawful voting, with a similarly limited exception;[16] Determined by the consular officer to be a drug abuser or addict;[17] the infamous "Permanent Bar," for "aliens unlawfully present after previous immigration violations";[18] Controlled substance offenses, with one exception;[19] Public charge grounds, although a bond may be paid;[20] and "Alien" smugglers, if the smuggled were not certain family members.[21]

After the consular officer makes the determination of inadmissibility, if an IV applicant appears eligible for a waiver, he or she will be given the appropriate instructions for filing the waiver with USCIS. Most waivers of inadmissibility are filed on form I-601 and are filed at the USCIS Lockbox in Phoenix, Arizona. In the case of compelling and exceptional circumstances, such as medical emergencies, threats to personal safety, or risk of aging-out, the international USCIS Field Office Director may accept form I-601 (and even Form I-212) for adjudication.[22] Under the current application process, it is the IV applicant, not the qualifying relative, who signs the I-601. The fee for Form I-601 is currently $930. The fee for the I-601A Provisional Waiver is currently $630, plus an $85 biometrics fee for persons younger than 79 years of age.

Eligibility Standard for a waiver

With the required form and fee, the IV applicant must submit all evidence of eligibility for the waiver. Note that the eligibility standards for the various waivers differ:

Unlawful presence waiver under INA §212(a)(9)(B)(iii)(v): The IV applicant must show extreme hardship to his or her USC/LPR spouse or parent in the event admission is refused.

Waiver for smuggling under INA §212(d)(12)(B): The IV applicant must demonstrate that he or she only smuggled or assisted his or her spouse or child and no one else, and also show that his or her admission is for the purposes of family unity or humanitarian reasons.

Waiver of criminal grounds under INA §212(h): The IV applicant must show extreme hardship to his or her USC/LPR spouse, parent, *son or daughter* in the event admission is refused. If at least 15 years have passed

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[15] INA §212(a)(6)(C)(ii)(II).

[16] INA §212(a)(10)(D).

[17] INA §212(a)(1)(a)(iv).

[18] INA §212(a)(9)(C).

[19] INA §212(a)(2)(A)(i)(II).

[20] INA §212(a)(4).

[21] INA §212(a)(6)(E).

[22] *See* USCIS Interim Memo, "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 Office," 05-31-2012 (PM-602-0062).

since the criminal conviction or conduct, the IV applicant may in the alternative show that he or she has been rehabilitated, and that his or her admission is not contrary to the safety and security of the United States.

Waiver for fraud or misrepresentation under INA §212(i): The IV applicant must show extreme hardship to his or her USC/LPR spouse or parent in the event admission is refused.

Proving Extreme Hardship

Waivers requiring a showing of extreme hardship are the most common but also require the highest showing of proof. Cases requiring a showing of extreme hardship are dependent upon the individual circumstances of the case and examined on a case-by-case basis.[23] The totality of the circumstances of the case must be considered when determining extreme hardship, and all relevant factors, even if not extreme in themselves, must be considered in the aggregate to determine if extreme hardship exists.[24] Much of waiver briefing involves story-telling in order to show how the hardship to the qualifying relative would exceed that which is usual or expected.

USCIS recently updated its policy manual to include guidance regarding waiver adjudication and the extreme hardship standard.[25] As a matter of practice, practitioners should always argue that hardship would result from either separation or relocation and that the approval of the waiver is the only solution to that hardship. However, in briefing waiver cases, practitioners should cite new guidance that although an applicant may show hardship resulting from both separation and relocation, "an applicant is not required to show extreme hardship under both scenarios."[26] Specifically, USCIS guidance indicates that "[a]n applicant may submit evidence demonstrating which of the 2 scenarios would result from a denial of admission and may establish extreme hardship to one or more qualifying relatives by showing that either relocation or separation would result in extreme hardship."[27] USCIS also includes a section regarding extreme hardship considerations, along with certain factors that are considered particularly significant, including DOS Travel warnings, substantial displacement of care of the applicant's children, military service of the qualifying relative, disability of the qualifying relative or a related family member, or where the qualifying relative was previously granted certain types of Asylum or Refugee Status, T Nonimmigrant Status, or Iraqi or Afghan Special Immigrant Status.[28]

Although practitioners should certainly cite the USCIS Policy Manual sections that are helpful to a particular case, ultimately the law is still the law. Thus, practitioners should know but not be bound by what the USCIS Policy Manual lists as particularly significant, common, or that hypothetically may or may not support an extreme hardship finding. The Board of Immigration Appeals has provided a non-exclusive list of relevant factors to be considered in determining extreme hardship:[29]

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country of relocation: medical problems of the qualifying relative being one of the most persuasive factors in an extreme hardship waiver case, carefully document the health conditions of not only the qualifying relative, but any family members in the qualifying relative's care, such as minor children or elderly parents. This does include mental health conditions of the qualifying relative.

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[23] *Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1997).

[24] *Mater of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

[25] USCIS Policy Manual, Volume 9, Waivers, *available at* https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume9.html (last accessed Mar. 31, 2017).

[26] USCIS Policy Manual, Volume 9, Waivers, Part B, Chapter 4.

[27] *Id.*

[28] USCIS Policy Manual, Volume 9, Waivers, Part B, Chapter 5.

[29] *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999).

Presence of family ties to the United States: show family ties above and beyond the qualifying relatives, and if possible, a corresponding lack of family ties to the country of origin;

The qualifying relative's family ties outside of the United States: provide evidence of a lack of family support of the qualifying relative in the country of origin of the IV applicant;

The conditions in the country to which the qualifying relative would relocate: include evidence of country conditions, lower standard of living, human rights violations, generalized violence, societal discrimination, lack of educational opportunities, poor health care delivery, etc.;

The financial impact of departure from this country: prepare a household economic report showing all debts and liabilities, and demonstrate how the refusal of admission of the IV applicant would affect income and the ability to meet household expenses;

Practice Pointer: Demonstrate extreme hardship not only in the event of relocation, but also in the event of separation. Do not limit hardship to only the qualifying relative; while only extreme hardship to the qualifying relative is considered, hardships to the non-qualifying relative may be relevant to the extent that they cause hardship to the qualifying relative.

The IV applicant must wait outside the United States regardless of the processing time until a favorable decision is reached on the waiver. If approved, the IV applicant will then continue his or her IV processing, returning to the consular post to submit his or her passport and receive the passport and entry documentation by DHL.

II. PRACTICAL GUIDE TOWARDS THE I-601A FILING PROCESS

Acceptance of provisional waivers began on March 4, 2013, and USCIS expanded eligibility for the provisional waiver program to all individuals who are statutorily eligible for a waiver of the unlawful presence ground of inadmissibility under INA §212(a)(9)(B)(v), effective August 29, 2016.[30] Thus, extreme hardship may be now be shown to a spouse or parent who is either a U.S. citizen or lawful permanent resident.[31] Notably, the qualifying relative for the waiver need not be the same person as the petitioner. Applicants must be present in the United States when filing the petition and appear for biometrics.

One of the hottest topics of the new 2016 provisional waiver expansion relates to removal orders. Pursuant to the new 8 C.F.R. §212.7(e)(4)(iv), persons with an unexecuted final removal, deportation, or exclusion order can now seek a provisional waiver if they have previously obtained permission to reapply for admission through an approved Form I-212 under 8 C.F.R. §212.2(j).[32] However, the Form I-601A and I-212 cannot be filed concurrently. Instead, applicants must first file Form I-212 with the local USCIS office that has jurisdiction over their residence. After approval of the Form I-212, the applicant may then file the Form I-601A with the Form I-212 approval.[33]

The new regulations also eliminate the ground for denial based upon "reason to believe" an applicant is subject to another ground of inadmissibility in addition to INA §212(a)(9)(B).[34] However, if some other ground of inadmissibility is discovered by the consulate at the visa interview, the provisional waiver will be automatically revoked, and the applicant will need to file an I-601 for unlawful presence, along with a waiver of the additional

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[30] Expansion of Provisional Unlawful Presence Waivers of Inadmissibility, 81 Fed. Reg. 50,244 (July 29, 2016), available at https://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17934.pdf.

[31] 81 Fed. Reg. at 50,249.

[32] *Id.*

[33] 81 Fed. Reg. at 50,256, 50,259, 50,262.

[34] 81 Fed. Reg. at 50,253, 50,254, 50,262.

ground of inadmissibility.[35] While the end of "reason to believe" denials does help in eliminating erroneous denials, it also eliminates any pre-screening of additional inadmissibility grounds. Thus, any additional inadmissibility grounds would first be raised at the consular interview after the applicant has already departed the United States.

Because of the risks of additional inadmissibility grounds, there are several steps that a representative should consider before filing an I-601A waiver and sending a client to an immigrant visa interview.

[35] 8 C.F.R. §212.7(e)(14)(i).

Conduct your own background checks

For both stateside processing and provisional waivers, filing FOIA requests whenever the suspicion or knowledge arises that your client has ever encountered DHS or DOS at any time is best practice. Depending upon the agency that may have encountered an applicant will depend on the location and procedure for requesting the FOIA.[36] This chart lists most of the agencies, filing addresses and information for FOIAs' dealing with immigration matters: https://www.dhs.gov/foia-contact-information. An applicant may also request records of any biometric captures and records regarding entries and exits from the Office of Biometric Identity Management (OBIM), which was formerly known as U.S. Visit. OBIM records may be requested at *OBIM-FOIA@ice.dhs.gov* or OBIM, 245 Murray Lane, STOP-0628, Washington, DC 20528-0675. A fingerprint card or A number is required for an OBIM FOIA. Oftentimes when filing a FOIA (especially in the case with CBP FOIAs) the initial response reveals no information on file or the response states that no records have been located. An appeal of the negative response will oftentimes result in the records that "did not exist" magically materialize especially when dealing with prior border apprehensions.

Practice Pointer: FOIA requests take time, so file the FOIA requests either before or at least concurrently with the I-130 relative petition. If there is any concern regarding an outstanding removal order, practitioners should file FBI and FOIA requests before submitting the Form I-130. Practitioners should file FBI and FOIA requests using the address of the attorney and not list the client's address.

Be familiar with the standards for issuing NTAs

It is imperative to review all criminal and immigration records carefully. Previously, where an I-601A was denied, USCIS indicated that it would follow the guidance set forth in the November 7, 2011 Policy Memorandum PM-602-0050 on NTA issuance.[37] However, that memorandum has now been rescinded to the extent that it conflicts with John Kelly Memorandum Regarding Enforcement of the Immigration Laws to Serve the National Interest, issued on February 20, 2017.[38] When encountering criminal history or other similar negative facts in the applicant's background, practitioners need to carefully consider and inform the applicant of the potential risks in continuing the process.

Provide all pertinent documents when there is a criminal history

There have been waiver denials based on the reason to believe ground when there is a criminal history regardless of the outcome. However, the NBC committee has had reports of approved waivers involving simple misdemeanors when the evidence surrounding the criminal incident has been included in the original submission of the waiver packet. The criminal information should contain results from an FBI print request, a judgment and conviction document as well as any sentence imposed or received.[39]

Include in your packet a short memo on the proper standard of review and why your client in not inadmissible

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[36] *See* AILA Doc. No. 13080645

[37] *See* "Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens." AILA InfoNet Doc. No. 11110830 (*posted* 11/8/11).

[38] John Kelly Memorandum, Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017), *available at* https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

[39] *See* INA §101(a)(48)(A) (defining conviction); *Heider v Keisler* 506 F.3d388 (5th Cir. 2007); *see Descamps v U.S.*, 133 S. Ct. 2276 (2013).

USCIS has stated that it will conduct a "limited review" of the waiver application to determine if the individual has self-reported a ground of inadmissibility, or the results of the background checks reveal conduct or actions that potentially would make the applicant ineligible for provisional unlawful presence waiver, an immigrant visa, or could impact the exercise of discretion.[40] This "limited review" should include an assessment of all evidence submitted relating to eligibility for the provisional waiver and must be based on more than mere conjecture and speculation. It is therefore prudent to remind them of this fact when submitting your application if there is any ground whatsoever that could lead to a simple "suspicion" of inadmissibility. Further, reminding USCIS of its own duties in the issuance of RFE's is a good idea as well.[41]

Use citations within your memo when addressing the reason to believe standard

It seems there are many new adjudicators within the waiver review process. Since this is likely the case it does not hurt to include within a short memo the proper approach to determine whether a reason to believe a ground of inadmissibility exists. In *Matter of U-H-*, the BIA equated the "reasonable grounds to believe" standard with the "probable cause" standard.[42] This interpretation is in line with the Department of State's interpretation of "reason to believe."[43] According to the Foreign Affairs Manual (FAM), "the essence of the [reason to believe] standard is that the consular officer must have more than a mere suspicion—there must exist a probability, supported by evidence that the alien is or has been engaged in trafficking" in the context of INA §212(a)(2)(C).[44] Moreover, "[the officer] must assess all evidence relating to a finding of inadmissibility."[45] 'Reason to Believe' must be more than mere conjecture or speculation—there must exist the probability, supported by evidence, that the alien is not entitled to status."[46] In addition, an individual has a right to present evidence rebutting a "reason to believe" charge.[47] In sum, in assessing whether a person is inadmissible for trafficking, the officer must review all of the evidence relating to the incident in question and provide the individual with the opportunity to rebut the charge. Only if it is then determined that there is a probability that the person is inadmissible is the "reason to believe" standard met. A mere suspicion is not enough.

Follow the guidelines in submitting your packet in accordance NBC preferred filing method

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[40] 78 Fed. Reg. at 546-47.

[41] DHS states that it is "committed to issuing RFEs when critical information is missing related to extreme hardship or when critical information is missing related to discretion."

[42] 23 I&N Dec. 355, 356 (BIA 2002). In addition, in the removal context, courts have held that the determination of whether there is "reason to believe" must be based on reasonable, substantial, and probative evidence. *Garces v. Att'y General of the U.S.,* 611 F.3d 1337, 1346 (11th Cir. 2010); *Alarcon-Serrano v. INS,* 220 F.3d 1116, 1119 (9th Cir. 2000).

[43] *See* 9 FAM 40.31 PN 1.2.

[44] 9 FAM 40.23 N2.

[45] *Id*.

[46] 9 FAM 42.43 N2.1.

[47] *See e.g., Pronsivakulchai v. Gonzales*, 461 F.3d 903 (7th Cir. 2006).

NBC Liaison Committee practice pointer providing tips for packaging applications for provisional unlawful presence waivers (Forms I-601A), which might help you avoid a "boilerplate" request for evidence seeking hardship documents.[48]

[48] See AILA Doc. No. 13072740; Tips for Filing Petitions and Applications to the National Benefits Center, *available at* http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=72a927c382f39110VgnVCM1000004718190aRCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD.

Present proper proof of extreme hardship

The requirement of proving extreme hardship to the qualifying relative is the same in the I-601A provisional waiver adjudication process as that found in the adjudications of other unlawful presence waivers.[49] Reports have been received that some cases have been denied based upon lack of extreme hardship without even the benefit of a RFE to supplement or clarify evidence. Taking this trend into account a representative should be very familiar with the extreme hardship standard as set forth through experience and case precedent.[50]

When in Removal proceedings

Cases in removal proceedings where the respondent is eligible for consular processing with a stateside waiver may be considered for administrative closure. Representatives who come across this situation should try and provide an approved I-130 to the Office of the Chief Counsel and request administrative closure based on prosecutorial discretion as well as alternative relief available outside of immigration court proceedings. Most local offices will have their own joint motion to administratively close proceedings, so communication with the trial counsel is important. If the Office of Chief Counsel declines to join based upon new enforcement priorities, submit a Motion to Administratively Close Proceedings to the Immigration Judge pursuant to *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012). Once a case is administratively closed the waiver can then be filed. Assuming the waiver is eventually approved, a motion to recalendar for the purpose of termination should be filed with the court prior to leaving the United States for the consular interview.[51]

Denials and Revocations

According to the regulations there is no process to appeal a denied I-601A nor do the regulations allow an applicant to file a motion to reopen.[52] Encountering a denial leaves the applicant with a few different options. The applicant can re-file the I-601A application for a new adjudication and must again pay the filing fee. The case must remain active with DOS, and notification that the applicant will apply for another provisional waiver must also be sent to DOS again. There is no numerical limitation on the number of filings allowed.[53] The other option involves proceeding with regular consular processing and filing an I-601 waiver application after the initial consular interview.[54] The applicant and his or her family at this point should be well informed of their options and the time frame and risks involving both.

After approval of the I-601A

Once the I-601A provisional waiver has been approved, the NVC will be notified. The NVC will then send the IV packet to the appropriate consular post to schedule an interview. The intended goal is to schedule the IV appointment within about 30-45 days from the approval of the waiver. Unless other grounds of inadmissibility are discovered by the consular officer at the interview then the visa should issue without delay. However it is best to give the client warning that visa issuance can sometimes take days and in some cases weeks. Also, it is important to keep in mind that the DOS has the ultimate say on admissibility and the issuance of the visa. Therefore, it is important to warn your client of this fact especially if there is anything in the applicant's background that might warrant the dreaded "administrative processing" delay on the issuance of a visa.

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[49] 78 Fed Reg. 551.

[50] *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999).

[51] 78 Fed Reg 556.

[52] *See* 78 Fed Reg 554.

[53] *See* 78 Fed Reg. 553.

[54] *See id.*