

## WAIVERS

An Application for a Waiver of Inadmissibility is an application for legal entry to the United States made by an individual who is otherwise inadmissible on one or more grounds. The application is submitted to U.S. Citizenship and Immigration Services (USCIS), a Bureau of the U.S. Department of Homeland Security (DHS). There are several circumstances under which illegal entrants and immigration violators may apply for a Waiver of Inadmissibility (**grounds**):

- Persons who enter the U.S. without being admitted or paroled at a port of entry or who overstay a valid visa, or the period of authorized stay expires.
- If the applicant is inadmissible because they have been unlawfully present in the United States for more than 180 days (3-year bar) or one year (10-year bar) and have voluntarily left the United States (including voluntary departure), they may apply for a Waiver of Ground of Inadmissibility on Form I-601.
- Persons who knowingly or willfully made misrepresentations or committed fraud in order to obtain an immigration benefit or benefit under the INA, may apply for a Waiver of Ground of Inadmissibility on Form I-601
- Persons previously deported or given expedited removal must also file Form I-212, Application for Permission to Reapply for Admission (if eligible).
- Persons unlawfully present in the United States for an aggregate period of one (1) year who have exited the United States and re-entered without inspection (EWI) are not eligible to file Form I-601 to waive their unlawful presence.
- An applicant's petition may be approved if they are the spouse, parent, unmarried son or daughter, or the minor unmarried lawfully adopted child of a U.S. citizen or legal permanent resident, or of an alien who has been issued an immigrant visa, or the fiancé(e) of a U.S. citizen or the fiancé(e)'s child.

## TYPES OF WAIVERS

**Inadmissibility Waiver for an intending immigrant (601 Waiver)** – Green card applicants (and those applying for a K-1 or K-3 visa) who are denied the visa either when applying at a U.S. Embassy or Consulate abroad or when adjusting status in the U.S. will be given the chance to file a 601 waiver if their ground of inadmissibility may be waived.

Typical grounds of inadmissibility that can be waived with a 601 waiver include a 212(a)(9) bar for a visa overstay (or for entering without inspection EWI). The overstay waiver can be used for both the 3 year bar (visa overstay of less than a year but more than six months) and a 10 year bar (visa overstay of more than a year). Certain criminal grounds of inadmissibility that can be waived with a 601 waiver, pursuant to INA 212(h), including some crimes involving moral turpitude (CIMT) and multiple criminal convictions.

**Inadmissibility waiver for a temporary worker or visitor (212(d)(3) Waiver)**- non-immigrants are subject to the same grounds of inadmissibility, non-immigrants do not file their waiver on form I-601. Instead, they file a 212(d)(3) nonimmigrant waiver either at a US Embassy or Consulate abroad or with a port of entry in the United States, depending on the situation. The 212(d)(3) waiver will either be filed informally or on form I-192.

**Deportation Waiver (I-212)** – depending on the length of time that has passed, a prior deportation order may make a person inadmissible, a deportation waiver is usually filed on form I-212 for all applicants, whether they are applying for the deportation waiver along with an immigrant visa or nonimmigrant visa.

**J1 Waiver** – The J1 cultural exchange visa program allows nonimmigrants to live and work in the United States for a short period of time (usually 12 – 18 months) in order to experience the American way of life and share their knowledge with fellow countrymen when they return home. Thus, as a general rule, J1 visa holders must return to their home country for at least 2 years after the J1 program ends. However, certain individuals can apply for a J1 waiver, which would eliminate the 2 year foreign residency requirement and allow them to remain in or return to the US.

**Fraud Waiver** –God forbid, if someone is charged with misrepresentation or fraud, they face a lifetime bar UNLESS they win the INA 212(i) Fraud Waiver.

**BUT NOTE:** There are some situations where there is no waiver available. These include:

- (a) Criminal offenses: murder, torture or conspiracy to commit murder or torture, a previously admitted lawful permanent resident who committed an aggravated felony after becoming a lawful permanent resident;
- (b) Security related grounds: terrorist activity;
- (c) Document fraud;
- (d) Frivolous Asylum application.

To find out more about the procedural steps involved and an estimate of fees, call or email us today for your free in-depth consultation!