

Provisional Waiver, Form I-601A (for Prior Unlawful Presence in US)

The I-601A Provisional Waiver program became effective March 4, 2013. It may offer significant benefits for some potential applicants. But, it can create significant risks for others.

What is it? It is a change in USCIS procedure that now allows the beneficiary of an immediate relative I-130 immigrant visa petition to apply for a provisional waiver of the consequences of some kinds of prior unlawful presence, without having to first leave the United States. The need for this waiver assumes the beneficiary cannot “adjust status” in the U.S.

Filing Fee: \$585, plus (for those under age 79) an \$85 biometric fee, payable in advance, whether you are approved or not.

What it will Not do?

- Modify the grounds for inadmissibility to the U.S.
- Cover any immigration problem or ground for inadmissibility except previous unlawful presence in the U.S.
- Eliminate the need for the beneficiary ultimately to leave the U.S. in order to get a visa.
- Guarantee that the beneficiary will be given a visa once he or she leaves U.S.
- Do anything for persons, subject to the “Permanent Bar” who re-entered the US illegally after being ordered removed, or after a prior departure following one year or more of unlawful presence.

Basic Requirements for Provisional Waiver:

1. Be at least 17 years old,
2. Be physically present in the U.S.
3. Be the beneficiary of an approved form I-130 immigrant visa application filed by a US citizen spouse, parent or child over 21.
4. The visa case has been transferred by USCIS to the US Department of State’s National Visa Center, and the DOS visa processing fee has been paid.
5. The State Department did not act before January 3, 2013 to schedule you for a visa interview abroad.
6. You are not in currently pending immigration court removal proceedings.
7. You are not inadmissible to the US on some ground other than simple prior unlawful presence. If you are, that problem **may** be subject to waiver as well. But you will have to leave the U.S., file any required waiver application from abroad and remain there while the application is processed.
8. Of **great importance**: you **must** show that being kept out of the United States would cause “**Extreme Hardship**” to your US citizen spouse or parent. Decisions on this issue by USCIS are purely discretionary and are made on the individual facts presented on a case by case basis. **See below**

regarding “hardship.” ****

The new provisional waiver process can really help some families. But it also can be the source of much disappointment and difficulty if not done properly, after a thorough review of the family's immigration situation.

A grant of a provisional waiver is not guaranteed. It is up to the discretion of the Government. **To obtain a visa you will still have to leave the US** and be interviewed at a US consulate abroad. The final decision to issue a visa is made by the US Department of State at that Consulate. A final decision to admit a foreign national to the US is made by US Customs and Border Protection at the time a person appears at the border seeking entry.

****** Hardship to a US citizen child alone does not qualify. In addition, the hardship must be more than just the “normal” hardship to be expected from the separation of family members.**

We all know that the common results of deportation are tragic. But they are not enough legally to prove ‘extreme hardship.’ The uprooting of family and separation from friends are usually viewed by USCIS as just the normal experience and loss of any deported alien.

A non exclusive list of the kinds of things the government **may** consider in finding extreme hardship include: (1) presence of USC's family ties in the U.S.; (2) the qualifying USC's family ties outside the U.S.; (3) conditions in the country of relocation and qualifying relatives there; (4) the financial impact of departure, (4) ties to US v. homeland, (5) significant health conditions particularly when tied to unavailability of suitable medical care in the country of relocation. (6) language problems, (7) special economic loss, loss of home) special emotional issues, and the like.

In some cases, actual hardship to a child may also create legal hardship for a parent, such as a child's diagnosed autism, PTSD, oppositional defiant disorder and ADHS or other condition requiring specialized medical care. If some ‘extreme hardship’ is found, USCIS will balance positive and negative factors in exercising its **discretion** to grant or deny the waiver.

If you want to consider filing for a Provisional Waiver, Avoid ‘notario’ scams! You can access the USCIS website at:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=bc41875decf56310VgnVCM100000082ca60aRCRD&vgnnextchannel=bc41875decf56310VgnVCM100000082ca60aRCRD>

You may want to consult with a qualified immigration lawyer, particularly before ruling out the possibility of adjustment of status within the U.S., for getting help with your form I-601A, before deciding to leave the US. for even the briefest period or other possible options.

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