

Immigration Waivers: Overcoming Inadmissibility

A comprehensive guide from EB5 Attorneys

An inadmissibility finding under INA section 212(a) can block a green card, visa, or entry to the United States. Grounds include unlawful presence, criminal convictions, fraud or misrepresentation, health conditions, prior removal orders, and public charge concerns. For many of these grounds, Congress created waiver provisions that allow applicants to overcome the bar by demonstrating extreme hardship to a qualifying U.S. citizen or LPR relative, or by meeting other statutory criteria. This guide covers the most commonly encountered inadmissibility grounds and the waivers available for each.

Contents

1. Unlawful Presence Bars and the I 601A Provisional Waiver
 2. Fraud and Misrepresentation Waiver: Form I 601
 3. Criminal Inadmissibility Waivers
 4. Prior Removal and Illegal Reentry Bars
 5. Health Related Inadmissibility
 6. Filing Strategy and Attorney Involvement
 7. Frequently Asked Questions
-

Unlawful Presence Bars and the I 601A Provisional Waiver

Under INA section 212(a)(9)(B), a foreign national who accrues more than 180 days of unlawful presence in the United States and then departs triggers a 3 year bar on readmission. Accruing more than one year of unlawful presence and departing triggers a 10 year bar. These bars apply regardless of whether the departure was voluntary or through removal.

The provisional unlawful presence waiver (Form I 601A) allows certain applicants to apply for a waiver while still in the United States, before departing for their consular interview. The I 601A filing fee is \$630 as of April 2026. To qualify, the applicant must: be the beneficiary of an approved I 130 or I 140 petition; have an immigrant visa case pending with the Department of State; demonstrate that their U.S. citizen or LPR spouse or parent would suffer extreme hardship if the waiver is not granted; and not be subject to any other ground of inadmissibility that would require a different waiver.

Extreme hardship is evaluated based on factors including: the qualifying relative's health conditions, financial circumstances, educational disruption, separation from family, and conditions in the country where the applicant would be barred from the United States. USCIS uses the guidance in *Matter of Cervantes Gonzalez*, 22 I&N Dec. 560 (BIA 1999) to assess hardship. Hardship to the applicant themselves is not considered; only hardship to the qualifying U.S. citizen or LPR relative matters.

If the I 601A is approved, the applicant departs the United States for the consular interview with the waiver already in hand, significantly reducing the risk of being stranded abroad. If denied, the applicant may refile or remain in the United States without penalty (no deportation consequences result from the denial itself).

Fraud and Misrepresentation Waiver: Form I 601

INA section 212(a)(6)(C)(i) renders inadmissible any foreign national who obtained or sought to obtain a visa, entry, or other immigration benefit by fraud or willful misrepresentation of a material fact. This is a permanent ground of inadmissibility with no time limit; it applies even if the fraud occurred decades ago.

The waiver for fraud or misrepresentation is available under INA section 212(i). The applicant must demonstrate that refusal of admission would result in extreme hardship to the applicant's U.S. citizen or LPR spouse or parent. Children do not qualify as qualifying relatives for this waiver.

The waiver application is Form I 601 (Application for Waiver of Grounds of Inadmissibility), filed either with USCIS (for AOS cases) or at the consulate (for consular processing cases). The filing fee is \$930 as of April 2026.

Common scenarios triggering this ground include: claiming U.S. citizenship when not a citizen, using a fraudulent social security number on immigration applications, filing a fraudulent asylum claim, and misrepresenting employment or educational qualifications on a visa application. The materiality of the misrepresentation is evaluated under the test from Matter of S & B C, 9 I&N Dec. 436 (AG 1961): a misrepresentation is material if it tends to shut off a line of inquiry that is relevant to the applicant's eligibility for the benefit sought.

Criminal Inadmissibility Waivers

Several criminal grounds of inadmissibility exist under INA section 212(a)(2). The most common are:

Crimes involving moral turpitude (CIMT) under INA section 212(a)(2)(A)(i): a single CIMT conviction renders the applicant inadmissible, though the petty offense exception (maximum sentence one year or less and actual sentence six months or less) may apply. Two or more CIMT convictions of any kind, without the petty offense exception, trigger inadmissibility.

Controlled substance violations under INA section 212(a)(2)(A)(i)(II): any conviction or admission of violating a drug law renders the applicant inadmissible. A limited exception exists for a single offense of simple possession of 30 grams or less of marijuana.

The INA section 212(h) waiver is available for CIMT and certain other criminal grounds. For applicants with U.S. citizen or LPR relatives, the waiver requires demonstrating extreme hardship to the qualifying relative. For applicants who committed the crime more than 15 years before the application and can show rehabilitation and that admission would not be contrary to the national welfare, a separate basis exists.

The 212(h) waiver is not available for applicants who have been convicted of murder or criminal acts involving torture, or who have been convicted of an aggravated felony after admission as an LPR.

Prior Removal and Illegal Reentry Bars

INA section 212(a)(9)(A) bars admission for individuals who were previously removed from the United States. A person removed under a formal removal order is barred for 10 years from the date of removal. A person removed after being convicted of an aggravated felony is barred for 20 years. A person removed two or more times is barred for 20 years.

The waiver for prior removal is Form I 212, Application for Permission to Reapply for Admission After Deportation or Removal. The filing fee is \$930 as of April 2026. USCIS considers the basis for the prior removal, the applicant's moral character since removal, the need for the applicant's services in the United States, and any positive equities (U.S. citizen family members, community ties, employment).

INA section 212(a)(9)(C) imposes a permanent bar on individuals who accrued more than one year of unlawful presence in the aggregate and then reentered or attempted to reenter the United States without inspection. This bar requires the applicant to remain outside the United States for 10 years before applying for consent to reapply. Even after 10 years, the waiver is discretionary and requires demonstrating it is in the public interest.

Health Related Inadmissibility

INA section 212(a)(1) covers health related grounds of inadmissibility, including communicable diseases of public health significance, failure to present documentation of required vaccinations, physical or mental disorders with associated harmful behavior, and drug abuse or addiction.

The vaccination requirement applies to all immigrant visa and AOS applicants. Required vaccinations include those recommended by the Advisory Committee on Immunization Practices (ACIP) and deemed medically appropriate by the CDC. As of April 2026, required vaccinations include measles, mumps, rubella, polio, tetanus/diphtheria, pertussis, hepatitis A, hepatitis B, rotavirus, influenza, varicella, pneumococcal, and COVID 19.

A waiver for health related inadmissibility is available under INA section 212(g). For communicable diseases, the waiver requires demonstrating that the danger to public health is minimal, that the possibility of spread is minimal, and that no cost will be incurred by any government entity. For vaccination deficiencies, an applicant may request an exemption based on sincere religious or moral beliefs or a medical contraindication.

The civil surgeon or panel physician who conducts the immigration medical examination (Form I 693) identifies any health related inadmissibility grounds. Applicants should disclose all medical conditions and bring vaccination records to the medical exam.

Filing Strategy and Attorney Involvement

Waiver applications are among the most consequential filings in immigration law because denial means the inadmissibility ground stands and the applicant cannot receive the visa or green card. Attorney involvement is strongly advisable for any waiver application.

Key strategic considerations include:

Identify all applicable grounds of inadmissibility before filing. An applicant may be subject to multiple grounds (for example, unlawful presence and fraud), each requiring a separate waiver or a combined waiver application. Missing a ground and having it discovered at the interview can derail the entire case.

Build the extreme hardship case thoroughly. Hardship declarations from the qualifying relative should address every relevant factor: medical conditions (with supporting medical records), financial dependence (tax returns, bank statements, employment records), family separation impact (statements from family members, counselors), country conditions if the relative would relocate (State Department reports, news articles), and educational disruption for children.

Consider timing. The I 601A provisional waiver allows applicants to remain in the United States during adjudication, which typically takes 12 to 24 months. Filing the I 601A before departing for a consular interview eliminates the risk of being stuck abroad with a denied waiver.

Document rehabilitation. For criminal inadmissibility waivers, evidence of rehabilitation since the offense (completion of any sentence, community service, stable employment, letters from community members, completion of treatment programs) strengthens the discretionary case.

Frequently Asked Questions

1. What is extreme hardship and how is it different from ordinary hardship?

Extreme hardship is a legal standard higher than the hardship that would normally result from deportation or denial of admission. USCIS evaluates factors including the qualifying relative's health, financial situation, educational disruption, personal considerations (close relatives in the U.S., length of residence), and country conditions. The applicant must show hardship beyond what would ordinarily be expected from the separation. A qualifying relative's U.S. citizen children, medical needs, and financial dependence are among the strongest hardship factors.

2. Who counts as a qualifying relative for waiver purposes?

For most waiver provisions (I 601A, I 601, 212(h)), the qualifying relative is the applicant's U.S. citizen or lawful permanent resident spouse or parent. Children (even U.S. citizen children) are generally not qualifying relatives for waiver purposes, though hardship to children can be considered as part of the hardship to the qualifying parent. The specific qualifying relationships vary by waiver type, so check the statute applicable to your ground of inadmissibility.

3. How long does a waiver application take to process?

Processing times vary by waiver type and filing location. The I 601A provisional unlawful presence waiver currently takes approximately 12 to 24 months at USCIS. The I 601 waiver filed at a consulate is typically adjudicated within 4 to 8 months. The I 212 application for permission to reapply takes approximately 6 to 12 months. These timeframes are estimates as of April 2026 and are subject to change.

4. Can I apply for a waiver if I have a drug conviction?

It depends on the specific offense. The INA section 212(h) waiver is available for some drug related inadmissibility grounds, but controlled substance trafficking offenses are generally not waivable. A single offense of simple possession of 30 grams or less of marijuana may fall under a statutory exception to inadmissibility entirely, requiring no waiver at all. Multiple drug offenses or trafficking convictions create permanent bars that are extremely difficult or impossible to waive.

5. What happens if my waiver is denied?

If an I 601A provisional waiver is denied, you remain in the United States with no penalty; you may refile with additional evidence or pursue other options. If an I 601 waiver is denied at the consulate, the visa application is refused and you remain abroad subject to the inadmissibility bar. You may request reconsideration by the consulate or refile the waiver with additional evidence. There is no formal appeal process for waiver denials, but motions to reopen or reconsider may be available depending on the context.

6. Do I need a waiver for a dismissed or expunged criminal charge?

Potentially, yes. USCIS and consular officers evaluate the underlying conduct, not just the disposition. Under the immigration definition at INA section 101(a)(48), a conviction includes cases where the court ordered some form of punishment, penalty, or restraint on liberty, even if the conviction was later vacated for rehabilitative purposes. Expungements and dismissals under state rehabilitative statutes (such as deferred adjudication) may still be treated as convictions for immigration purposes. Disclosure of all arrests and charges is required regardless of outcome.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

© 2026 EB5 Attorneys. All rights reserved.

Source: <https://eb5attorneys.com/guides/immigration-waivers-inadmissibility>