



U.S. Citizenship and Immigration Services

Provisional Unlawful Presence Waiver, Form I-601A

- Overview -



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I-601A Program Timeline

January 6, 2012 – Notice of intent posted in the Federal Register.

April 2, 2012 - Proposed rule published in the Federal Register at 77 FR 19902 providing 60 days for public comment.

June 1, 2012 – Formal public comment period closed.

January 3, 2013 – Final rule amending 8 CFR 212.7 published in the Federal Register at 78 FR 53601.

March 4, 2013 – Effective date of final rule. USCIS published Form I-601A and instructions on www.uscis.gov.

March 13, 2013 – Form I-601As received at the NBC for adjudication.



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Policy Objectives

- Facilitate the legal immigration process
- Reduce long periods of separation between American citizens and their immediate relatives
- Create greater efficiencies for the US government
- Reduce the degree of interchange between USCIS and DOS



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Key Points of the Provisional Unlawful Presence Waiver Process

- Eligible applicants may apply for a provisional unlawful presence waiver while still in the United States and before leaving to attend their immigrant visa interviews abroad.
- DOS consular officer will be able to issue the immigrant visa without delay, in light of the approved waiver, if the immediate relative is admissible and eligible for an immigrant visa.



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Key Points of the Provisional Unlawful Presence Waiver Process (cont.)

The filing or approval of an I-601A:

- Does not confer any lawful immigration status
- Does not protect against the accrual of additional unlawful presence
- Does not authorize an alien to enter the United States without securing a visa or other appropriate entry document
- Does not convey any interim benefits (e.g., employment authorization, parole, or advance parole)
- Does not extend any authorized period of stay
- Does not protect aliens from removal or law enforcement action



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Key Points of the Provisional Unlawful Presence Waiver Process (cont.)

The filing or approval of an I-601A:

- Does not change the requirement that the alien must depart the US to obtain an immigrant visa
- Does not guarantee that DOS will find the alien inadmissible only for unlawful presence
- Does not guarantee that DOS will issue an immigrant visa
- Does not guarantee that CBP will admit the alien to the US as a lawful permanent resident



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Who is eligible to file the I-601A?

Individuals who...

- Are physically present in the United States;
- Are at least 17 years old;
- Have an approved immediate relative petition [I-130 or I-360];
- Have a case pending with DOS based on the approved petition;
- Have paid the immigrant visa processing fee;
- Have not had their immigrant visa interview scheduled by the NVC before January 3, 2013; and
- Have paid all required fees and otherwise complied with all requirements as outlined in the regulations and form instructions.



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Grant of Provisional Unlawful Presence Waiver Does NOT Take Effect Unless...

1. the individual departs from the United States, and
2. appears for his or her immigrant visa interview, and
3. a U.S. Department of State (DOS) consular officer determines that, in light of the approved unlawful presence waiver, the individual is otherwise admissible to the United States and eligible to receive an immigrant visa.

A grant of a provisional unlawful presence waiver does not become fully effective until all of these conditions are met.



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What is required for the NBC to grant a provisional unlawful presence waiver?

- Applicant meets basic eligibility criteria for the provisional unlawful presence waiver;
- Applicant has complied with any requests for biometrics collection and additional evidence (RFE);
- Applicant has not provided USCIS with a *reason to believe* that other grounds of inadmissibility may be found at the time of his/her consular interview;
- Applicant has a qualifying U.S. citizen spouse or parent for purposes of extreme hardship;
- Applicant has established extreme hardship to the qualifying relative; and
- Applicant has established he/she warrants a favorable grant of discretion.



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What about aliens with current or prior EOIR proceedings?

An alien may participate in the I-601A waiver process if:

- He/she was previously in removal proceedings that were terminated or dismissed.
- He/she is currently in removal proceedings that have been administratively closed and have not been recalendared at the time of filing the I-601A.



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How does the NBC find *reason to believe* another ground of inadmissibility may be found at the interview?

- Applicant's response to questions on the I-601A about his/her criminal and immigration history
- Applicant's explanation of his/her responses to questions about his/her criminal and immigration history
- Results of background and security checks



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What Happens When the NBC Makes a Decision on the I-601A?

- **Written notification of an adverse decision on the I-601A to the applicant and representative, if any.** The Notice of Decision will specify the reason(s) for the denial.
- **Notification of approval.** A system-generated Notice of Action (I-797) advises aliens to contact DOS and DOJ for more information about how to proceed with their immigrant visa case.
- **Electronic notification of I-601A decision to the NVC.** The NBC sends a weekly report to the NVC.
- **Shipment of A-files to Texas Service Center.** A-files containing approved I-601As are stored at TSC until the applicant is admitted to the US as an LPR.



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Can the approval of an I-601A be revoked?

The approval will be *automatically* revoked if:

- ▣ DOS determines that the applicant is inadmissible on grounds other than prior UP;
- ▣ The immigrant visa petition approval is revoked, withdrawn, or rendered invalid, and not otherwise reinstated for humanitarian reasons or converted to a widow/widower petition;
- ▣ DOS terminates the immigrant visa registration in accordance with INA 203(g); or
- ▣ The applicant, at any time, reenters or attempts to reenter the United States without being inspected and admitted or paroled.



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What about motions and appeals?

- There is no administrative appeal from a denial.
- Applicant may not file a motion to reopen or reconsider a denial.
- USCIS reserves authority to reopen and reconsider, on its own motion, an approval or denial of a provisional unlawful presence waiver.
- If USCIS reopens an approved provisional unlawful presence waiver, USCIS will issue a notice and provide the applicant with 30 days to respond before making a final decision.



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What evidence might be submitted to establish extreme hardship?

- Affidavits
- Expert opinions
- Medical documentation
- Financial documentation
- Membership records (community, religious, educational organizations)
- Financial records
- Country condition reports



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When is a favorable exercise of discretion warranted?

Discretion is warranted when favorable factors outweigh unfavorable factors.



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What might be considered a favorable factor?

- Family ties to U.S.
- Length of lawful residence in the United States
- Evidence of good moral character
- Absence of significant undesirable or negative factors



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What might be considered an unfavorable factor?

- Nature of inadmissibility
- Significant violations of US immigration law
- Existence of criminal record
- Previous instances of fraud or false testimony



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Any Questions?



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