



# U.S. Citizenship and Immigration Services

## Overview of Inadmissibility Grounds &

## Waivers:

## Adjudicating Form I-601A



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# Purpose

To provide an overview of inadmissibility grounds relevant to processing and adjudicating Form I-601A, Provisional Unlawful Presence Waiver



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# Objectives

## Adjudicators will be able to:

- Describe the respective roles of the DOS consular office, the National Benefit Center and USCIS Service Centers in determining inadmissibility and granting waivers, specifically the I-601A provisional unlawful presence waiver;
- Identify grounds of inadmissibility that may apply to I-601A applicants;
- Correctly evaluate inadmissibility issues in order to make an appropriate I-601A determination.



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# USCIS and DOS Roles: Inadmissibility and Waivers



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# Inadmissibility – INA § 212(a)

- Applies to aliens seeking admission at a port-of-entry
- Applies to aliens seeking a visa at a US consulate
- Applies to aliens seeking a benefit within the United States, such as adjustment of status
- Applies to someone paroled into the United States under INA § 212(d)(5)(A)
- Applies to an alien present in the United States without being inspected and admitted or paroled



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# INA § 212 – General Categories

- 212(a)(1) - Health and Medical
- 212(a)(2) - Criminal
- 212(a)(3) - Security
- 212(a)(4) - Public Charge
- 212(a)(5) - Labor Certification
- 212(a)(6) - Illegal Entrants and Immigration Violators
- 212(a)(7) - Documentation Requirements
- 212(a)(8) - Ineligible for Citizenship
- 212(a)(9) - Aliens Previously Removed and Unlawful Presence
- 212(a)(10) - Miscellaneous



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# Consular Process: DOS Determines Inadmissibility at Visa Interview

- An individual who chooses to consular process or who is ineligible for Adjustment of Status may apply for an immigrant visa and attend an immigrant visa interview with a Department of State (DOS) consular officer.
- If the consular officer finds the applicant is subject to any ground of inadmissibility, DOS informs the applicant that he/she may file a waiver application with USCIS if a waiver is authorized for the relevant ground of inadmissibility.



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# Consular Process: USCIS Adjudicates Waivers of Inadmissibility

- Before 2012, waiver applicants located outside the United States who were found inadmissible by a DOS consular officer filed Form I-601 with a USCIS office abroad or with DOS, who forwarded the waiver application to USCIS for adjudication.
- On June 4, 2012, USCIS centralized filing of Form I-601 and as of December 2012, requires all waiver applicants outside the United States to file their I-601 with a USCIS Lockbox for adjudication at the Nebraska Service Center (NSC).



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# Consular Process: Provisional Unlawful Presence Waivers

- The provisional unlawful presence waiver, Form I-601A, allows certain immigrant visa applicants to apply for a waiver of inadmissibility of the unlawful presence bars before leaving the United States to attend the immigrant visa interview.
- If USCIS approves the I-601A, the approval is *provisional* unless, and until, DOS makes a final determination that the applicant is otherwise admissible and eligible for the immigrant visa.



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# Consular Process: Provisional Unlawful Presence Waivers (cont.)

- The DOS consular officer will analyze the applicant's admissibility and make formal findings when making a decision on the immigrant visa application. ISOs will not make any formal findings or decisions regarding the applicant's admissibility to the United States or whether the applicant is subject to other grounds of inadmissibility during adjudication of the Form I-601A.



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# Understanding Inadmissibility Based on Unlawful Presence



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# What is Unlawful Presence?

“...an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the [Secretary] or is present in the United States without being admitted or paroled.” INA 212(a)(9)(B)(ii)



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# When does an Alien Accrue UP?

Nonimmigrants typically begin accruing UP on the date their period of authorized stay expires (usually reflected on the Form I-94), or the date USCIS or the IJ determines they violated their nonimmigrant status, whichever is earlier.

Congress created the UP bars in the Illegal Immigration Reform and Responsibility Act (IIRIRA) on April 1, 1997. Aliens are not subject to the UP bars for any time they were unlawfully present in the United States prior to that date.

An alien does not accrue UP during “a period of stay authorized by the Secretary,” which may be due to the alien’s lawful status, a statutory exception to accrual of unlawful presence or USCIS policy.



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# Statutory Exceptions to Accrual of UP

INA 212(a)(9)(B)(iii) provides exceptions to unlawful presence for certain types of aliens:

- Minors (under 18 years of age)
- Asylees
- Family unity beneficiaries
- Battered women and children
- Victims of trafficking in persons



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# Unlawful Presence - INA §212(a)(9)(B)(i)

- The ONLY ground of inadmissibility that can be waived through the I-601A provisional waiver
- Commonly-referred to as the “3-year” and “10-year” bars to admission
- The length of the inadmissibility bar depends on the period of unlawful presence (UP) an individual accrues during a single stay in the United States.
- The alien’s departure from the United States triggers the bar.
- Once the bar is triggered, the alien is inadmissible for a period of either 3 or 10 years.



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## Unlawful Presence - INA §212(a)(9)(B)(i)(cont.)

- The length of time for which the alien is inadmissible (3 or 10 years) is immaterial for purposes of adjudicating the I-601A waiver.
- ISOs should presume inadmissibility based on UP



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## Unlawful Presence - INA §212(a)(9)(B)(i) (cont.)

- Waiver for inadmissibility based on UP - INA § 212(a)(9)(B)(v)
- Generally required to establish extreme hardship to USC/LPR spouse or parent.
- For the provisional unlawful presence waiver process, the qualifying relative is limited to the applicant's USC spouse or parent.
- Waiver is granted as a matter of discretion.
- Legal analysis and standards for extreme hardship are the same for the I-601 and the I-601A provisional waiver.



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# Grounds of Inadmissibility Not Waived by I-601A



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# Approved I-601A Waives Only Unlawful Presence

An individual is not eligible to receive a provisional unlawful presence waiver if there is a *reason to believe* the individual may be found inadmissible at the time of his or her immigrant visa interview on another ground of inadmissibility.



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# Approved I-601A Waives Only Unlawful Presence (cont.)

The ISO must review the applicant's responses on the I-601A, all related immigration records, and the results of the background and security checks to determine if there are other grounds of inadmissibility that may apply to the applicant.



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# Approved I-601A Waives Only Unlawful Presence

The officer should not issue an RFE to determine whether there is *reason to believe* the individual may be inadmissible on a ground other than UP, even if the record indicates a potential criminal inadmissibility concern but the evidence is not clear. RFEs should only be issued for purposes of the EH determination or discretionary analysis.



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# Health/Medical - INA 212(a)(1)

- 212(a)(1)(A)(i) - Communicable disease of public health significance
  - 212(a)(1)(A)(ii) - Immigrants lacking proof of all of the required vaccinations
  - 212(a)(1)(A)(iii)(I), (II) - Current and past physical or mental disorders with associated harmful behavior
  - 212(a)(1)(A)(iv) - Drug abuse and drug addiction
- ISOs will find “*reason to believe*” this ground of inadmissibility may apply if evidence specifically mentions a condition that would be a health-related ground of inadmissibility.



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# Criminal Grounds – INA § 212(a)(2)

- 212(a)(2)(A)(i)(I) – Crimes Involving Moral Turpitude
- 212(a)(2)(A)(i)(II) – Controlled Substance Violations
- 212(a)(2)(B) – Multiple Criminal Convictions
- 212(a)(2)(C) – Drug Trafficking
- 212(a)(2)(D)(i) – Prostitution
- 212(a)(2)(D)(ii) – Procurement/Proceeds of Prostitution
- 212(a)(2)(D)(iii) – Commercialized Vice
- 212(a)(2)(E) – Criminal Aliens Who Have Asserted Immunity  
from Prosecution
- 212(a)(2)(G) – Religious Freedom Violators
- 212(a)(2)(H) – Trafficking in Persons
- 212(a)(2)(I) – Money Laundering



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## Criminal Grounds – INA § 212(a)(2) (cont.)

- ISOs will find “*reason to believe*” this ground of inadmissibility may apply if the applicant was convicted of ANY crime other than minor traffic citations or noncriminal immigration violations.
- ISOs will not conduct further research or any extensive analysis of the criminal history beyond what is available in the record and in the background check results.
- ISOs will not research convictions to determine whether the offense is a crime involving moral turpitude (CIMT) or whether a statutory exception could apply.



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## Security and Related Grounds – INA 212(a)(3)

- 212(a)(3)(A)(i) – Espionage, sabotage, prohibited exports
- 212(a)(3)(A)(ii) – Unlawful activity
- 212(a)(3)(A)(iii) – Overthrow of U.S. Government
- 212(a)(3)(B)(i) – Terrorist activity
- 212(a)(3)(C) – Activities that could cause adverse foreign policy consequences for the US
- 212(a)(3)(D) – Immigrant communist
- 212(a)(3)(E) – Nazi persecution, Genocide
- 212(a)(3)(F) – Association with Terrorist Organization
- 212(a)(3)(G) – Recruitment or Use of Child Soldiers



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## Security and Related Grounds – INA 212(a)(3)

(cont.)

- ISOs will find “*reason to believe*” this ground of inadmissibility may apply if there are indicators that the case has potential national security (NS) concerns.
- ISOs should follow local procedures for notifying their supervisor and other appropriate personnel [i.e. OCC, BCU, FDNS, etc.].
- ISOs should forward the case for appropriate review and follow-up to ensure U.S. interests and public safety are protected.



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## Public Charge – INA 212(a)(4)

- ISOs will not find “*reason to believe*” this ground of inadmissibility may apply, even if there is an indication that this ground would apply.



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# Labor Certification and Qualifications– INA

## 212(a)(5)

- 212(a)(5)(A) – Labor Certification
  - 212(a)(5)(B) – Unqualified Physicians
  - 212(a)(5)(C) – Uncertified Foreign Health-Care Workers
- 
- ISOs will not find “*reason to believe*” this ground of inadmissibility may apply.



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# Illegal Entrants/Immigration Violators – INA § 212(a)(6)

- 212(a)(6)(B) - Failure to attend removal proceedings
- 212(a)(6)(C)(i) – Fraud/willful misrepresentation
- 212(a)(6)(C)(ii) – False claim to U.S. Citizenship
- 212(a)(6)(D) – Stowaway
- 212(a)(6)(E) – Smuggling
- 212(a)(6)(F) – Subject of civil penalties for  
document fraud



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# Illegal Entrants/Immigration Violators – INA § 212(a)(6) (cont.)

ISOs will find *reason to believe* this ground of inadmissibility may apply if...

- the applicant answers “**Yes**” to Item Number 27 (provided false or misleading information to U.S. government official for immigration benefit), or
- the applicant answers “**Yes**” to Item Number 28 (knowingly assisted the entry of someone into the United States without a valid travel document) of the I-601A form, and
- the explanation in Part 5 of the form is consistent with the answer.



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# Documentation Requirements – INA § 212(a)(7)

- 212(a)(7)(A)(i)(I) – Failure to Possess Valid Entry Document
  - 212(a)(7)(A)(i)(II) – Immigrant Visa
  - 212(a)(7)(B) – Improperly Issued Visas
- 
- ISOs will not find “*reason to believe*” this ground of inadmissibility may apply.



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## Ineligible for Citizenship – INA § 212(a)(8)

- 212(a)(8)(A) – Ineligible for Citizenship
- 212(a)(8)(B) – Draft Evaders

• ISOs will not find “*reason to believe*” this ground of inadmissibility may apply unless the record shows that the applicant was convicted of desertion, or the alien admits that he evaded the draft or deserted the U.S. Armed Forces.



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## Aliens Previously Removed - INA §212(a)(9)

- 212(a)(9)(A) – Certain Aliens Previously Removed

ISOs will find “*reason to believe*” this ground of inadmissibility may apply if an applicant:

- was previously removed;
- is subject to a final order of removal, exclusion or deportation; or
- departed the US while an order of removal was outstanding.



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# Aliens Previously Removed - INA §212(a)(9) (cont.)

- 212(a)(9)(C) – Aliens Unlawfully Present after Previous Immigration Violations

ISOs will find “*reason to believe*” this ground of inadmissibility may apply if an applicant appears to have entered or attempted to enter the US illegally, and

- he/she had accrued more than one year of UP in the aggregate prior to his/her last entry; or
- was previously removed; or
- is subject to reinstatement of a prior removal order.



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## Miscellaneous – INA § 212(a)(10)

- 212(a)(10)(A) – Immigrant Polygamists
- 212(a)(10)(B) – Guardian/Helpless Alien
- 212(a)(10)(C) – International Child Abductor
- 212(a)(10)(D) – Unlawful Voter
- 212(a)(10)(E) – Avoiding Taxation

ISOs will not find “*reason to believe*” this ground of inadmissibility may apply unless the applicant admits to engaging in the disqualifying activity (e.g., the alien admits that he/she practices polygamy or has unlawfully voted. )



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## Recap of Key Issues of Inadmissibility Review for I-601A Adjudications

- USCIS *does NOT* make any inadmissibility determination during adjudication of the I-601A. DOS makes the final determination on UP and any other possible inadmissibility grounds during the immigrant visa interview.
- USCIS *does* review to see if there are any other potential inadmissibility grounds. Evidence that reasonably indicates that grounds of inadmissibility other than UP may apply is sufficient to deny the I-601A.
- Consult your supervisor before entering a final decision if you have any questions about evidence of other potential inadmissibility grounds that might make the applicant ineligible for an I-601A.



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## Recap of Key Issues of Inadmissibility Review for I-601A Adjudications (cont.)

- USCIS will not find “*reason to believe*” the applicant is potentially inadmissible :
  - § 212(a)(4) - Public Charge;
  - § 212(a)(5) - Labor Certification; or
  - § 212(a)(7) - Documentation Requirements.



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## Recap of Key Issues of Inadmissibility Review for I-601A Adjudications (cont.)

- USCIS will not find “*reason to believe*” the applicant is potentially inadmissible :
  - § 212(a)(1) – Medical
    - Unless the evidence specifically mentions a condition that would be a health-related ground of inadmissibility.
  - § 212(a)(8) – Ineligible for Citizenship
    - Unless the applicant was convicted of desertion from the U.S. Armed Forces or admits to evading the draft.
  - § 212(a)(10) – Miscellaneous
    - Unless the applicant admits to engaging in the disqualifying activity (e.g., the alien admits that he/she practices polygamy or has unlawfully voted.



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## Recap of Key Issues of Inadmissibility Review for I-601A Adjudications (cont.)

- USCIS will find “*reason to believe*” the applicant is potentially inadmissible:
  - § 212(a)(2) – Criminal
    - If the applicant was convicted of ANY crime other than a traffic violation and noncriminal immigration violations. Aside from determining whether or not the conviction was for a traffic violation, the I-601A adjudicator will not conduct further research or any extensive analysis of the criminal history beyond what is available in the record and background check results.



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## Recap of Key Issues of Inadmissibility Review for I-601A Adjudications (cont.)

- USCIS will find “*reason to believe*” the applicant is potentially inadmissible:
  - § 212(a)(3) – Security and related grounds
    - If the case indicates NS concerns. Any case indicating NS concerns should be elevated to ensure appropriate review and follow-up.
  - § 212(a)(6) – Illegal Entrants and Immigration Violators {other than 212(a)(6)(A)(i)}
    - If the applicant answered “**YES**” on questions 27 and/or 28 of the I-601A, and it is clear that he/she understood the question.



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## Recap of Key Issues of Inadmissibility Review

### for I-601A Adjudications (cont.)

- USCIS will find "reason to believe" the applicant is potentially inadmissible:

- §212(a)(9)(A) – Certain Aliens Previously Removed
  - If the applicant was ordered removed, is subject to an order of removal, deportation or exclusion or departed the US while an order of removal was outstanding.

- §212(a)(9)(C) – Aliens Unlawfully Present After Previous Immigration Violations

- If the applicant appears to have entered or attempted to enter illegally after a having been unlawfully present for more than 1 year in the aggregate or after having been ordered removed.



# Any Questions?



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For additional information about inadmissibility grounds, waivers or the I-601A program or if you have specific questions about the material covered in this training, please forward your inquiries to your supervisor.



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