



U.S. Citizenship and Immigration Services

Provisional Unlawful Presence Waivers

Beginning March 4, 2013, certain immigrant visa applicants who are spouses, children and parents of U.S. citizens (immediate relatives) can apply for provisional unlawful presence waivers before they leave the United States. The provisional unlawful presence waiver process allows individuals, who only need a waiver of inadmissibility for unlawful presence, to apply for a waiver in the United States and before they depart for their immigrant visa interviews at a U.S. embassy or consulate abroad.

The new process is expected to shorten the time U.S. citizens are separated from their immediate relatives while those family members are obtaining immigrant visas to become lawful permanent residents of the United States.

Under current law, immediate relatives of U.S. citizens who are not eligible to adjust status in the United States must travel abroad and obtain an immigrant visa. Individuals who have accrued more than 180 days of unlawful presence while in the United States must obtain a waiver of inadmissibility to overcome the unlawful presence bars under section 212(a)(9)(B) of the Immigration and Nationality Act before they can return to the United States. Under the existing waiver process, which remains in effect, immediate relatives cannot apply for a waiver until after they have appeared for an immigrant visa interview abroad, and a Department of State (DOS) consular officer has determined that they are inadmissible to the United States. Immediate relatives of U.S. citizens who are eligible for the new provisional unlawful presence waiver can still choose to apply for a waiver using the existing process by filing a [Form I-601, Application for Waiver of Grounds of Inadmissibility](#), after a DOS consular officer has determined that he or she is inadmissible to the United States.

What You Need to Know

- The new provisional unlawful presence waiver process does not change the immigrant visa process. Even if your provisional unlawful presence waiver is approved, you are still required to depart the United States for your immigrant visa interview with a U.S. consular officer abroad.
- If a provisional unlawful presence waiver is approved, it will only take effect after:
 1. You depart the United States and appear for your immigrant visa interview, and
 2. A DOS consular officer determines that you are otherwise admissible to the United States and eligible to receive an immigrant visa. **NOTE:** Do not depart until the National Visa Center (NVC) notifies you of your scheduled immigrant visa interview date and time at the designated U.S. Embassy or Consulate.
- DOS may cancel your immigrant visa application process if you fail to appear at your interview.
- If you are in removal proceedings, you are ineligible for a provisional unlawful presence waiver unless, at the time you file your [Form I-601A](#), your proceedings are administratively closed and have not been put back on the Department of Justice, Executive Office for Immigration Review (EOIR) calendar to continue your removal proceedings.
- While USCIS does not envision placing I-601A applicants in removal proceedings, USCIS will follow current Department of Homeland Security (DHS) and USCIS Notice to Appear (NTA) guidance governing initiation of removal proceedings. For more information on USCIS NTA priorities, see [USCIS Policy Memorandum, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Removable Aliens \(Nov. 7, 2011\)](#).

Eligibility Requirements

To be eligible for a provisional unlawful presence waiver you must fulfill ALL of the following conditions:

1. Be 17 years of age or older.
2. Be an immediate relative of a U.S. citizen (not a preference category immigrant who has a visa available). An immediate relative is an individual who is the spouse, child or parent of a U.S. citizen.
3. Have an approved [Form I-130, Petition for Alien Relative](#), or [Form I-360, Petition for Amerasian, Widow\(er\), or Special Immigrant](#).
4. Have a pending immigrant visa case with DOS for the approved immediate relative petition and have paid the DOS immigrant visa processing fee.
5. Be able to demonstrate that refusal of your admission to the United States will cause extreme hardship to your U.S. citizen spouse or parent.
6. Be physically present in the United States to file your application for a provisional unlawful presence waiver and provide biometrics.
7. Not have been scheduled for an immigrant visa interview by DOS before January 3, 2013.
8. Meet all other requirements for the provisional unlawful presence waiver, as detailed in [8 CFR 212.7\(e\)](#) and the [Form I-601A and its instructions](#).

You are not eligible for a provisional unlawful presence waiver if any of the following conditions apply to you:

1. You are subject to one or more grounds of inadmissibility other than unlawful presence.
2. DOS initially acted before **January 3, 2013**, to schedule your Immigrant Visa (IV) interview for the approved immediate relative petition upon which your provisional unlawful presence waiver application is based, even if your immigrant visa interview has been canceled, you failed to appear for the interview, or your interview was rescheduled **on or after** Jan. 3, 2013.

Note: The date and time that you are scheduled to appear for your immigrant visa interview at the designated U.S. Embassy or Consulate is not the date USCIS will use to determine if you are eligible to file a Form I-601A. If DOS initially acted before January 3, 2013, to schedule your immigrant visa interview, you are not eligible to file a Form I-601A, even if you failed to appear for your interview or if you or DOS cancelled or rescheduled your interview for a date on or after January 3, 2013.

Instead, you may file a [Form I-601, Application for Waiver of Grounds of Inadmissibility](#), from outside the United States after you have been interviewed for your immigrant visa, and the consular officer has found that you are inadmissible for a ground that may be waived.

3. You are in removal proceedings that have not been administratively closed.
4. At the time of filing, you are in removal proceedings that have been administratively closed **but** have been placed back on the EOIR calendar to continue your removal proceedings.
5. You do not meet one or more of the requirements, as outlined in the [Form I-601A and its instructions](#).

How to Apply

Carefully follow the [Form I-601A instructions](#) and fully complete the application. USCIS will reject any application that is not accompanied by the proper filing and biometric fees **OR** that does not meet the filing criteria specified in [8 CFR 212.7\(e\)\(5\)](#). Use the checklist available on the last page of the form instructions to make sure your application is complete before filing.

Do not concurrently file Form I-601A with any other application or petition.

Please make sure that you follow these steps to prevent your application from being rejected and returned to you:

1. Complete Form I-601A.

Form name	Fee
I-601A, Application for Provisional Unlawful Presence Waiver	<p>The fee is \$585. If you are under 79 years of age, you must also pay the \$85 biometric services fee. If you are 79 years of age or older, you do not have to pay the \$85 biometrics fee.</p> <p>The Form I-601A fees cannot be waived.</p>

Form Filing Tips

- Use black ink only to complete forms. Do NOT use highlighters or red ink when completing forms because entries written with highlighters or red ink do not show up when the forms are scanned. Be sure to sign all of your form(s).
- Complete the entire Form I-601A application, especially these required fields:
 - Family Name
 - Home Address
 - Date of Birth
 - Receipt number for your approved immediate relative petition (i.e. Form I-130 or Form I-360)
 - NVC Case Number
 - Immigrant Visa Interview Status
 - Signature
- Include all required supporting documentation and evidence listed in the form instructions.
- Submit [Form I-601A](#) with the correct fees or USCIS will reject your application.
- If you need to change responses on the form, we recommend that you re-start with a new form. Responses that have been "whited out" or erased can lead to scanning errors.
- USCIS prefers that you download forms from our website, fill them out electronically, and then print your forms prior to submission to USCIS.
- Be sure that you mail all pages of the form.
- If you have any attachments, make sure each attached page has your name and either your A-Number (if available) or your I-130 or I-360 receipt number. You may also number the pages and include the total amount of pages being attached (i.e. "Page 1 of 11").
- If you move after filing your Form I-601A, notify USCIS of your new physical address within 10 days of your move. You should also notify USCIS if your mailing address changes. You may not receive notices from USCIS if you do not notify USCIS that your address has changed.
- You should also include Form G-1145, E-Notification of Application/Petition Acceptance, with your application if you want to receive an email and/or text message notifying you that your form has been accepted by USCIS.

If you have questions call the Customer Service Center at 1-800-375-5283. Do NOT visit a USCIS field office in person.

2. **Mail your application to the USCIS Chicago Lockbox.**

If U.S. Postal Service

USCIS
P.O. Box 4599
Chicago, IL 60680

If USPS Express Mail/Courier

USCIS
Attn: I-601A
131 S. Dearborn, 3rd Floor
Chicago, IL 60603-5517

3. **Visit an Application Support Center (ASC) to provide biometrics.** After USCIS receives your Form I-601A application with fees, we will send you a notice scheduling you to visit an ASC to provide your biometric and biographic information.

Approval of Form I-601A

The USCIS National Benefits Center will adjudicate all Form I-601A applications.

Having a pending application for a provisional unlawful presence waiver or an approval of such a waiver will **NOT**:

- Grant you any benefit or protect you from being removed from the United States.
- Allow you to apply for interim immigration benefits such as work authorization or advance parole.
- Guarantee you will be issued an immigrant visa.
- Guarantee your admission into the United States by U.S. Customs and Border Protection.
- Give you a legal immigration status.
- Change the requirement that you must depart the United States in order to obtain an immigrant visa.

NOTE: Until your approved unlawful presence waiver takes full effect, USCIS may reopen or reconsider its decision on the Form I-601A at any time.

Reasons Your Provisional Waiver May Be Revoked

Your approved provisional unlawful presence waiver is automatically revoked if:

- DOS ends the immigrant visa application process.
- USCIS revokes the underlying approved immigrant visa petition (Form I-130 or Form I-360).
- The consular officer at the U.S. embassy or consulate determines that you are inadmissible on grounds of inadmissibility other than unlawful presence.
- You reenter or attempt to reenter the United States without being inspected and admitted or paroled, before or after your provisional unlawful presence waiver is approved or before your immigrant visa is issued.

If You Are in Removal Proceedings

If USCIS approves your [Form I-601A](#), you and/or your legal representative should take steps immediately to have your removal proceedings formally terminated or dismissed by EOIR before you depart the United States to attend your immigrant visa interview. If you leave the United States before your removal proceeding is terminated or dismissed, you may experience delays in the processing of your immigrant visa or risk becoming ineligible for an immigrant visa based on another ground of inadmissibility.

After you receive the approval notice for your Form I-601A, you and/or your legal representative should contact the Office of the Principal Legal Advisor at U.S. Immigration and Customs Enforcement (ICE) to make arrangements to have those proceedings dismissed. Do not contact ICE until after USCIS approves your Form I-601A. A list of the ICE Chief Counsel phone numbers is available on the internet at: <http://www.ice.gov/contact/opla/>. When you contact ICE, you should have a copy of the approval notice available for ICE's review.

Denial of Form I-601A or Withdrawal of Form I-601A

If USCIS denies your provisional unlawful presence waiver, you cannot file an administrative appeal or a motion to reopen or reconsider.

However, if your provisional unlawful presence waiver request is denied or if you withdraw your provisional unlawful presence waiver application before USCIS makes a final decision, you may file a new [Form I-601A](#), in accordance with the form instructions and with the required fees. Your immigrant visa case must also be pending with DOS. In the case of a withdrawn Form I-601A, USCIS will not refund the filing fees because USCIS has already taken steps to adjudicate the case.

Alternatively, if USCIS denies your Form I-601A or you withdraw your Form I-601A before USCIS makes a final decision, you can apply for a traditional waiver using the existing process and [Form I-601, Application for Waiver of Grounds of Inadmissibility](#). You cannot apply for a Form I-601 until **after** you attend your immigrant visa interview and after DOS determines that you are subject to other grounds of inadmissibility. If you decide to file Form I-601 after the interview abroad, you must file the Form I-601 in accordance with its instructions and with the required fees.

Avoid Immigration Scams

Please be aware that some unauthorized practitioners may try to take advantage of you by claiming they can file a provisional unlawful presence waiver. These same individuals may ask that you pay them to file such forms. To learn the facts about how to protect yourself and your family from scams, please visit www.uscis.gov/avoidscams.

This page can be found at: <http://www.uscis.gov/provisionalwaiver>

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[Plug-ins](#)