

9 FAM APPENDIX N, 400 BENEFITS UNDER INA 212(H) AND (I)

*(CT:VISA-1195; 04-16-2009)
(Office of Origin: CA/VO/L/R)*

9 FAM APPENDIX N, 401 WAIVER APPLICATION AND INTERVIEW

(CT:VISA-1195; 04-16-2009)

- a. When a consular officer refuses an immigrant visa to an applicant who is eligible to apply for the benefits of a waiver under INA 212(h) or (i), the officer should expand the interview to elicit information required by *U.S. Citizenship and Immigration Services (USCIS)* in order to determine whether the waiver of ineligibility should be granted (see 9 FAM Appendix N, Exhibit VII). The record of the interview should be typewritten or otherwise printed legibly.
- b. The officer should request the alien to complete Form I-601, Application for Waiver of Grounds of *Inadmissibility*, or, if it is not practical for the alien to complete the form at the time of the interview, to complete, sign, and mail the form to the consular office.
- c. The officer should then forward the completed and signed Form I-601, the record of the interview, *the results of the Federal Bureau of Investigation (FBI) clearance (normally either no record or RAP sheet)*, and the unclassified portion of the applicant's visa file, including any visa petition, to the appropriate *Department of Homeland Security (DHS)* office. *The officer must enter a case note in the case file to indicate that the applicant's criminal history record was forwarded to DHS with the Form I-601.*

9 FAM Appendix N, 401.1 Applicant in United States After Age 14

(CT:VISA-1195; 04-16-2009)

If the applicant has been in the United States after reaching age 14, *you* must send *an electronic* fingerprint *clearance to the FBI*.

9 FAM Appendix N, 401.2 Interviewing Applicant's Relatives

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- a. If the applicant's spouse is present in the consular district, *you* should also interview the spouse to determine the degree of hardship which s/he would suffer if the applicant is not permitted to immigrate, and the spouse's knowledge, if any, of the applicant's activity which resulted in the refusal of a visa.
- b. If the applicant's eligibility for the benefits of a waiver under INA 212(h) or (i) depends upon the relationship to a parent, son, or daughter present in the consular district, *you* should also interview that relative to determine the degree of hardship which would be imposed on the relative by the inability of the applicant to obtain a visa.

9 FAM APPENDIX N, 402 WHEN USCIS PERMISSION TO REAPPLY AFTER DEPORTATION OR REMOVAL NEEDED

(CT:VISA-1195; 04-16-2009)

An alien who has been ordered removed under INA 235(b)(1) or at the end of proceedings under INA 240 initiated upon the alien's arrival in the United States, and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal, or at any time in the case of an alien convicted of an aggravated felony), is inadmissible.

9 FAM APPENDIX N, 403 PRE-PROCESSING CASE OF ALIEN IN THE UNITED STATES

(CT:VISA-1195; 04-16-2009)

If an immigrant visa case that has been accepted for pre-processing includes an application on Form I-601, the required interview may be conducted by the consular officer abroad or, at the alien's request, by a *USCIS* officer in the United States. If the alien requests the latter procedure, the consular officer shall advise the applicant to communicate directly with the *USCIS* district office having jurisdiction over the alien's place of residence in the United States.