



I Am an Immediate Relative of a U.S. Citizen

How Do I... File for a Provisional Unlawful Presence Waiver?



U.S. Citizenship
and Immigration
Services

January 2013

The Secretary of the Department of Homeland Security (DHS) has created a new process that will allow certain spouses, children, and parents of a U.S. citizen (immediate relatives) to apply for a provisional unlawful presence waiver while they are still in the United States and before departing for their immigrant visa interviews abroad.

Why did DHS create the Provisional Unlawful Presence Waiver?

Currently certain immediate relatives must travel abroad to obtain an immigrant visa from the Department of State (DOS) before they can return to the United States and be admitted as lawful permanent residents. In many cases, these immediate relatives also must request a waiver of inadmissibility of their unlawful presence in the United States. As a result, these immediate relatives must remain outside of the United States, separated from their U.S. citizen spouses, parents, or children, while U.S. Citizenship and Immigration Services (USCIS) adjudicates their waiver applications. In some cases, waiver application processing can be lengthy, prolonging the separation of these immediate relatives from their U.S. citizen spouses, parents, and children.

USCIS anticipates that this new provisional unlawful presence waiver process will significantly reduce the time that U.S. citizens are separated from their immediate relatives. USCIS approval of a provisional unlawful presence waiver prior to departure also will allow the DOS consular officer to issue an immigrant visa without delay, as long as there are no other grounds of inadmissibility and the immediate relative is otherwise eligible for an immigrant visa. Individuals who may be inadmissible on any other grounds of inadmissibility are not eligible for the provisional unlawful presence waiver process.

How do I know if I am eligible for a provisional unlawful presence waiver?

You may be eligible for a provisional unlawful presence waiver if:

1. You are physically present in the United States;
2. You are at least 17 years of age at the time of filing;

3. You are the beneficiary of an approved immigrant visa petition classifying you as the immediate relative of a U.S. citizen;
4. You have an immigrant visa case pending with the U.S. Department of State (DOS), for which you have already paid the immigrant visa processing fee; and
5. You believe you are, or will be at the time of the immigrant visa interview, inadmissible based on having accrued a certain period of unlawful presence in the United States.
6. You meet all other requirements of the provisional unlawful presence waiver as listed in the regulations, the Form I-601A and its instructions.

How do I know if I am not eligible for a provisional unlawful presence waiver?

You are not eligible for a provisional unlawful presence waiver and your application will be rejected or denied if:

1. You do not meet one or more of the requirements listed above;
2. You have a pending **Form I-485, Application to Register Permanent Residence or Adjust Status**, with USCIS;
3. You are in removal proceedings unless your removal proceedings are administratively closed and have not been re-calendared as of the date of filing of the I-601A;
4. You have been ordered removed, excluded, or deported from the United States;
5. You are subject to reinstatement of a prior removal order;
6. DOS acted to schedule your immigrant visa interview prior to January 3, 2013, even if you failed to appear or you or DOS cancelled or rescheduled the interview on or after January 3, 2013.
7. You do not establish that the refusal of your admission to the United States would result in extreme hardship to your U.S. citizen spouse or parent, or that your application should be approved as a matter of discretion;

8. USCIS has reason to believe that DOS may find you inadmissible at the time of your immigrant visa interview for grounds other than unlawful presence.

How do I apply for the provisional unlawful presence waiver?

To apply for a provisional unlawful presence waiver you must file a **Form I-601A, Application for Provisional Unlawful Presence Waiver**. Make sure your application is complete, signed, and submitted with the correct application and biometric fees. Follow the I-601A application instructions and check the USCIS web site at www.uscis.gov/forms for any updates to the instructions or required fees.

You should notify the Department of State of your intention to file a provisional unlawful presence waiver. See the DOS website at www.state.gov for more information on how to notify DOS.

How do I apply for the provisional unlawful presence waiver if I am in removal proceedings?

Only certain individuals in removal proceedings are eligible to apply for a provisional unlawful presence waiver. Individuals who are immediate relatives of U.S. citizens may apply for a provisional unlawful presence waiver while in removal proceedings, if the removal proceedings:

- Are administratively closed; **and**
- Have not been re-calendared as of the date of filing the I-601A.

You still must meet all the requirements for the provisional unlawful presence waiver, including the requirement that you have an immigrant visa case pending with DOS and have already paid the immigrant visa processing fee. Like individuals who are not in removal proceedings, you should also notify DOS of your intention to file a provisional unlawful presence waiver.

Although you are in removal proceedings, the application for a provisional unlawful presence waiver is filed with USCIS. You should inform the Immigration Judge and the local U.S. Immigration and Customs Enforcement (ICE) counsel that you have applied for a provisional unlawful presence waiver. Promptly notifying the immigration court and ICE counsel will help with the process to have the removal proceedings terminated or dismissed before you depart for your immigrant visa interview.

NOTE: Your removal proceedings should be terminated or dismissed **before** you depart the United States to avoid delays in your immigrant visa processing and to avoid the risk that you may be found inadmissible on other grounds.

Will I have to be fingerprinted or appear for an interview as part of the provisional unlawful presence waiver process?

All provisional unlawful presence waiver applicants will be required to appear at a USCIS Application Support Center (ASC) for biometrics collection. Generally, USCIS will not require provisional unlawful presence waiver applicants to appear for an interview but may schedule an interview for an applicant if the facts in a particular case warrant further inquiry and review.

If I have a pending or approved request for a provisional unlawful presence waiver can I receive interim benefits?

The filing or approval of a provisional unlawful presence waiver will not affect an individual's current immigration status in

the United States. A pending or approved provisional waiver also will NOT:

1. Provide interim benefits such as employment authorization or advance parole;
2. Provide lawful status;
3. Stop the accrual of unlawful presence;
4. Provide protection from removal;
5. Remove the requirement to depart the United States to seek an immigrant visa; or
6. Guarantee immigrant visa issuance or admission to the United States.

What should I do once my provisional unlawful presence waiver is approved?

After your provisional unlawful presence waiver is approved, you will need to depart the United States and attend your immigrant visa interview at the designated U.S. Embassy or consulate abroad. If you fail to depart and attend your immigrant visa interview, the provisional unlawful presence waiver will not take effect and the approval may no longer be valid.

If USCIS denies my request for a provisional unlawful presence waiver, can I file an appeal or a motion to reopen or reconsider?

No. If USCIS denies your request for a provisional unlawful presence waiver, you cannot file an appeal or a motion to reopen or reconsider the denial. USCIS reserves the right to reopen and reconsider, on its own motion, an approval or a denial of a provisional unlawful presence waiver at any time.

What can I do if USCIS denies my request for a provisional unlawful presence waiver or if I withdraw my provisional unlawful presence waiver application?

If USCIS denies your request for a provisional unlawful presence waiver, or if you withdraw your provisional unlawful presence waiver application before USCIS makes a decision, you may file a new Form I-601A, in accordance with the form instructions, with the required fees and any additional documentation that you believe establishes your eligibility for the provisional unlawful presence waiver. You can only file a new provisional unlawful presence waiver application if your immigrant visa case is still pending with DOS. You should notify DOS that you intend to file a new I-601A. See the DOS website – www.state.gov – for more information on how to notify DOS and to find out if your immigrant visa case is still pending with DOS.

Alternatively, you can file a **Form I-601, Application for Waiver of Grounds of Inadmissibility** with the USCIS Lockbox, after you attend your immigrant visa interview and after the DOS consular officer determines that you are inadmissible to the United States.

If USCIS denies my request for a provisional unlawful presence waiver will I be placed in removal proceedings?

USCIS does not envision initiating removal proceedings or referring provisional unlawful presence waiver applicants to ICE when USCIS approves or denies their waiver requests, or the applicant withdraws his or her application for a provisional unlawful presence waiver.

Pursuant to its existing policy governing issuance of Notices to Appear (NTAs) and referrals to ICE, an individual whose request for a provisional unlawful presence waiver is approved or denied

or who withdraws the Form I-601A prior to final adjudication will typically be referred to ICE only if he or she is considered a DHS enforcement priority – that is, if the individual has a criminal history, has committed fraud, or otherwise poses a threat to national security or public safety.

USCIS will follow the DHS NTA issuance policy in effect at the time of the adjudication to determine if removal proceedings should be initiated against a provisional unlawful presence waiver applicant. Furthermore, if USCIS discovers acts, omissions, or post-approval activity that would meet the criteria for NTA issuance or determines that the provisional unlawful presence waiver was granted in error, USCIS may issue an NTA, consistent with DHS's NTA issuance policy, as well as reopen the provisional unlawful presence waiver approval and deny the waiver request.

Key Information

Key USCIS forms referenced in this guide	Form #
Application to Register Permanent Residence or Adjust Status	I-485
Application for Provisional Unlawful Presence Waiver	I-601A
Application for Waiver of Grounds of Inadmissibility	I-601

USCIS

- **On the Internet at: www.uscis.gov**

For more copies of this guide, or information about other citizenship and immigration services, please visit our website. You can also download forms, e-file some applications, check the status of an application, and more. It's a great place to start!

If you don't have Internet access at home or work, try your local library. If you cannot find what you need, please call Customer Service.

- **Customer Service: 1-800-375-5283**

- **Hearing Impaired TDD Customer Service: 1-800-767-1833**

Other U.S. Government Services—Click or Call

General Information about the U.S. Government	www.usa.gov
New Immigrants	www.welcometoUSA.gov
U.S. Department of State	www.state.gov
Immigration and Customs Enforcement (ICE)	www.ice.gov
Executive Office for Immigration Review, Office of the Immigration Judge	http://www.justice.gov/eoir/orginfo.htm
USCIS Notice to Appear Policy	www.uscis.gov/NTA