

USCIS adjudication of I-601 applications filed overseas

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USCIS adjudicates Form I-601

- USCIS is responsible for adjudicating all I-601 applications filed overseas regardless of whether there is an USCIS office/presence at the post where it was filed.
 - USCIS will also adjudicate with the I-601 any concurrently filed Form I-212 application
- If there is no USCIS presence at post: DOS sends the application to the USCIS Field Office that has jurisdiction over the country where the application was filed (e.g. I-601s filed in Brazil are adjudicated by the USCIS Lima Field Office)
- CDJ – I-601s received at CDJ and not approved during same day processing (referred) are adjudicated by other USCIS offices in Mexico and several domestic USCIS offices in an effort to promptly adjudicate them

Adjudication of the waiver application

- Confirm that the inadmissibility ground for which the applicant was found inadmissible applies or still applies. Take into account USCIS or other records not available to the Consular Officer at the time of the visa interview
- Assess whether the applicant meets the requirements of the applicable waiver provision including, when necessary, whether the applicant demonstrated extreme hardship (EH) to a qualifying family member (QFM) who is a U.S. Citizen or lawful permanent resident
 - Most waiver provisions require that the applicant establish EH to a qualifying family member
 - What relatives count as a “qualifying family member” depends on the specific waiver provision
 - A USC or LPR child is a QFM for a 212(h) waiver – criminal inadmissibility
 - A USC or LPR child is *not* a QFM for a 212(i) (fraud) or 212(a)(9)(B)(v) (unlawful presence) waiver
- Conduct background security checks
- If the applicant meets the requirements set forth in the waiver provision USCIS then determines whether the I-601 can be approved as a matter of discretion (this requires balancing of positive and negative factors)

Extreme Hardship?

- There is no fixed definition of extreme hardship
- EH has been generally described as **harm greater than** the normal hardships the QFM can be expected to experience if the applicant is denied admission
- USCIS guidance to adjudicators regarding assessing whether EH exists (taken from Board of Immigration Appeals decisions):
 - Each case is considered on its own merits
 - The entire range of factors concerning hardship are to be considered in their totality, cumulatively

Extreme Hardship?

- Waiver cannot be granted based on hardships individuals who are *not* QFMs for purposes of the waiver sought
 - So hardship to USC or LPR child or other relatives does not support approval of 212(i) (fraud) or 212(a)(9)(B)(v) (unlawful presence) waiver
 - But hardship to someone who is not a QFM may be relevant in showing hardship to a QFM
 - Example, spouse (who is a QFM) may premise hardship claim, at least in part, on hardship of having to raise non-QFM children without the applicant
 - But the focus remains on hardship to the spouse, not hardship to the children

What evidence does an applicant need to submit to demonstrate EH?

- Any evidence that supports the assertion that the QFM is suffering or would suffer EH if the applicant is not admitted to the United States
 - Statements from the QFM, financial documents, medical or psychological records, child custody records, relevant country conditions, etc.
 - All USCIS offices can and often do request submission of additional evidence of EH after the application is filed **if** there is insufficient evidence of EH.
 - Although not required by regulation, the applicant is generally given 84 days to submit additional evidence.
 - This is the maximum response time permitted by regulation, so no extension can be granted
 - It is to the applicant's benefit to respond ASAP
 - **NOTE:** failure to submit sufficient evidence of EH can delay the adjudication and can lead to denial of the waiver

Adjudicating the I-601

- Cases are adjudicated in the order in which they are received (FIFO order)
- In compelling cases, USCIS can exercise discretion to expedite a case
- USCIS goal: adjudicate the application within 6 months of USCIS receiving the application (adjusted for any time when USCIS is awaiting evidence)