

The waiver packet forwarded to USCIS will usually include a questionnaire and may include a recommendation from the consular officer. The U.S. Consulate's IV Section should have advised the applicant why a waiver is needed. It is not uncommon for an applicant to have several grounds of inadmissibility and need more than one type of waiver. The FAM procedural notes provide detailed guidance on what documents the DOS should provide when transferring the Form I-601 packet to USCIS. See e.g., 9 FAM 40.21(A) PN2 *Waiver of Ineligibility under INA 212(h)*.

If the applicant has been excluded, deported or removed from the United States and seeks admission again, the applicant may also need to file Form I-212, *Application for Permission to Reapply for Admission into the United States After Deportation or Removal*. See 8 CFR 212.7(a)(i). If the applicant has already been granted permission to reapply for admission by a domestic office, the applicant is not required to file another Form I-212 with the Form I-601.

V. USCIS Receipt of Waiver

A. USCIS Reviews Application for Completeness and Fingerprint Checks

When the application is received, USCIS staff reviews it to confirm that it was properly signed by the applicant or a qualifying family member and that there is evidence that the fee was paid. If it was not signed the application is returned to DOS. If there is no evidence the fee was paid USCIS staff should contact DOS to verify if the fee was paid and if not DOS should contact the applicant to pay the appropriate fee and submit evidence to the overseas office. If no response has been received within 10 (ten) working days the application will be returned to DOS. USCIS staff will also notify the applicant of the action taken. (See Appendix 5 for sample notification letter)

The application packet should also include a set of fingerprints or results of the fingerprint check conducted by the FBI after submission of the prints by DOS. If the fingerprints have not been taken, DOS must be contacted and have the applicant fingerprinted. If no response has been received within 10(ten), USCIS staff will return the application to DOS and notify the applicant of the action. See Appendix 5 for sample notification letter. If hard copy fingerprints are in the packet, USCIS forwards them to the Nebraska Service Center at the following address:

**Department of Homeland Security
Nebraska Service Center –NSC
P.O. Box 87258
Lincoln, NE 68501-2521**

The following address should be used for cases where a courier/express delivery company is used:

**Nebraska Service Center
Department of Homeland Security
Fingerprint Clearance Coordination Center
850 S Street
Lincoln, NE 68508**

NOTE: Fingerprints are not required with an application for a waiver of a ground of inadmissibility under INA 212(g) (8 U.S.C. 1182(g)). However, if the applicant has been previously in the United States or in any case where there is reason to believe that a prior criminal record may exist, staff may request that DOS submits a set of the applicant's fingerprints along with the waiver application.

If there is evidence of an arrest or conviction for criminal activity, staff review the packet to determine whether court dispositions, or a DOS explanation as to why there are no conviction records are attached. If neither are there, the Field Office Director determines whether to return the packet to DOS, to issue a Request for Evidence (RFE) to the applicant, or to process the application without the court dispositions in those cases where access to the court dispositions would not impact the decision (e.g., for immigration violations or criminal activity that would not present an inadmissibility ground). A full English translation must be submitted with a document in a language other than English that is submitted in support of the waiver application. In addition, there must be a certification from the translator attesting to his or her competence as a translator and certifying that the translation is complete and accurate. See 8 CFR 103.2(b)(3).

Notify the applicant that the I-601 and I-212 applications were received from post. See Appendix 5 for sample notification letter.

B. USCIS Updates Database

Staff input information regarding the application into the local District Office database. If the application has been returned to DOS as incomplete, note in the database that the application was rejected, the date it was returned to DOS, and the reason why.

C. Background Checks

1. DHS database checks

Prior to adjudication of the waiver, USCIS staff research the Central Index System (CIS) to determine whether an A-file exists for the applicant. If there is a record of an A-number, staff will note the A-number on the Form I-601 and also:

- Review the EOIR screen through RAPS, EARM, or CIS to determine whether the applicant has been previously placed in removal/deportation proceedings before EOIR;
- Review CIS, CLAIMS, the EOIR screen and, where appropriate, RAPS to determine whether the applicant has applied for asylum or adjustment of status and, if so, note the dates the applications were pending;
- Review EARM for any information regarding prior deportations;
- Review CIS for NAILS record(s). If CIS indicates that there is a NAILS record IBIS must be queried to determine the nature of the NAILS record, even though some of the information may already be contained in results of a CLASS check. Events that result in the NAILS hit may have occurred between the IV application/CLASS check and the time the waiver is adjudicated.

Where appropriate, staff may also access ADIS and/or USVisit to determine whether there is

evidence of prior entries into and exits from the United States.

Generally, there is no need to check IBIS because DOS will have completed a CLASS check. See memo dated 3/23/05 entitled *Discontinuation of IBIS Alias Name Checks for Petitions and Applications When the Beneficiary and Dependents are not Physically Present in the United States* (appendix 8). However, if a review of the record indicates that the applicant has used an alias name that was not checked in CLASS, USCIS staff must conduct an IBIS check of the alias and document the results on the Adjudication Worksheet.

The above mentioned systems checks are not the only systems available to the officer. Any system may be checked if deemed necessary.

2. Fingerprint checks

Normally, DOS obtains electronic fingerprints from the applicant, forwards them to the FBI, receives the FBI response and includes it in the waiver packet provided to USCIS for adjudication. There may be some cases where USCIS receives hard copies of the fingerprints. In those cases, USCIS sends the fingerprint cards to the Nebraska Service Center as noted in section V.A. above. If USCIS submits the fingerprints to the FBI, the response will be uploaded into FBI Query and USCIS staff can check FBI Query for the response.

If the FBI response is provided by DOS and there is a hit indicating a crime involving moral turpitude, the RAP sheet should also be included in the waiver packet along with court dispositions or an explanation as to why court dispositions are not available, per guidance in the FAM. See 9 FAM 40.21(A) PN2.3. If USCIS submitted the fingerprints to the FBI and finds an IDENT hit in FBI Query, USCIS staff should retrieve the RAP sheet from BBSS and, where the hit appears to relate to criminal activity that could be a grounds for inadmissibility, request from the applicant a disposition for any criminal activity, if such has not already been provided by DOS (see section V.A).

If the fingerprints are rejected by the FBI, USCIS staff arrange for the applicant to be fingerprinted a second time, either by requesting the applicant to return to the USCIS overseas office, or by coordinating with the DOS embassy or consulate where the applicant resides to re-take the prints. If the fingerprints are rejected a second time, the applicant must provide the rejected fingerprint sworn statement, a "no record" statement from the police department in each locality where he or she has resided during the last five (5) years and provide any records relating to an arrest or conviction.

D. Requesting the A-file

If an A-file exists, staff may request the A-file from the File Control Office (FCO) holding the file or request that relevant documents that may be included in the A-file be sent to the office. There may be information in the file that will indicate other grounds of inadmissibility or other evidence relevant to the waiver determination, including evidence that assists the adjudicator in determining inadmissibility grounds, eligibility for the waiver, and whether discretion should be exercised in the applicant's favor. If the applicant is statutorily ineligible and the officer can make this determination from the systems and documentation, the A file does not need to be requested.