



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

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The Secretary of the Department of Homeland Security (DHS) has created a new process that will allow certain spouses, children, and parents of U.S. citizens (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?

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;
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; and
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 placed back on EOIR's calendar to continue your removal proceedings as of the date of filing of the I-601A;
4. You are subject to an administrative final order of removal, exclusion, or deportation from the United States;
5. You are subject to reinstatement of a prior final order of removal;
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.

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 placed back on EOIR's calendar to continue the removal proceedings 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.

Although you are in removal proceedings, the application for a provisional unlawful presence waiver is filed with USCIS.

NOTE:

*If your I-601A is approved, 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.*

After you receive an approval notice for your provisional unlawful presence waiver, you and/or your legal representative should contact the Principal Legal Advisor for the Office of the Chief Counsel at U.S. Immigration and Customs Enforcement (ICE) to make arrangements to have your removal proceedings terminated or 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 your I-601A approval notice available for ICE's review.

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 a decision is made on my provisional unlawful presence waiver?

USCIS will notify the National Visa Center (NVC) of its decision on your provisional unlawful presence waiver. Once the NVC is notified, DOS will resume processing your immigrant visa case. If the NVC has received the required forms and documents from you, the immigrant visa interview is scheduled at the U.S. embassy or consulate, and you are notified of your interview appointment date. Next, if you are in removal proceedings, review the information above about having your removal proceedings terminated or dismissed prior to your departure. If you are not in removal proceedings or your removal proceedings have already been terminated or dismissed, you will need to depart the United States and attend your immigrant visa interview as directed by DOS. 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. For more information, see the DOS webpage at www.immigrantvisas.state.gov.

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

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- **Customer Service: 1-800-375-5283**
- Hearing Impaired TDD Customer Service: 1-800-767-1833

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Executive Office for Immigration Review	www.justice.gov/eoir/orginfo.htm
USCIS Notice to Appear Policy	www.uscis.gov/NTA

Disclaimer: This guide provides basic information to help you become generally familiar with our rules and procedures. For more information, or the law and regulations, please visit our website. Immigration law can be complex, and it is impossible to describe every aspect of every process. You may wish to be represented by a licensed attorney or by a nonprofit agency accredited by the Board of Immigration Appeals.