U.S. CITIZENSHIP AND IMMIGRATION SERVICES
National Benefit Center

Standard Operating Procedure for Form I-601A
Application for Provisional Unlawful Presence Waiver

Version 1.1

March 14, 2013

CONTENT **Page Number**

Section 1: Introduction

1.1 Purpose and Scope of the SOP (Return to Table of Contents)

This Standard Operating Procedure (SOP) pertains to the processing and adjudication of Form I-601A, Application for Provisional Unlawful Presence Waiver, at the National Benefit Center (NBC).

Questions or comments related to this SOP should be directed to the Field Operations Directorate (FOD) Program Manager for waivers, through a supervisor or training officer.

1.2 Versions

Numbered versions to this SOP will be issued as required. Electronic copies of the SOP will be modified to reflect changes; the following table lists the version and the associated changed.

Version	Date	Subject	Page
1.0	3/4/13	Initial release	
1.1	3/14/13	Added version history; added TECS cover sheet to ROP order	4, 12

1.3 Background to Provisional Unlawful Presence Waivers

The Department of Homeland Security (DHS) developed the provisional unlawful presence waiver process to address the dilemma certain immediate relatives face when they have accrued unlawful presence in the United States and must proceed abroad to obtain an immigrant visa: They must depart the United States to consular process the immigrant visa petition, but the very act of departing the United States often triggers a 3- or 10-year bar to receiving the immigrant visa due to prior unlawful presence.[1]

DHS developed Form I-601A to allow immediate relatives of U.S. citizens to request a provisional waiver of the unlawful presence grounds of inadmissibility before they depart the United States to attend their immigrant visa interviews with a Department of State (DOS) consular officer. Appendix C contains more detailed information on the background of the provisional unlawful presence waiver program.

[1] INA 212(a)(9)(B)(i)

Section 2: Authority and Resources

2.1 Applicable Statutory and Regulatory Provisions (Return to Table of Contents)

2.1.1 Unlawful Presence Inadmissibility Grounds

The grounds of inadmissibility related to the 3- and 10-year unlawful presence bars are found in section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA). Under INA section 212(a)(9)(B)(i)(I), an alien who was unlawfully present in the United States for more than 180 days but less than 1 year during a single stay, and who then departs voluntarily from the United States before the commencement of removal proceedings, will be inadmissible for 3 years from the date of departure. Under INA section 212(a)(9)(B)(i)(II), an alien who was unlawfully present for 1 year or more during a single stay and then departs before, during, or after removal proceedings, will be inadmissible for 10 years from the date of departure.

For detailed information on unlawful presence, including the statutory and policy exceptions to the accrual of unlawful presence, see Chapter 40.9 of the Adjudicator's Field Manual. Links to the Adjudicator's Field Manual and other useful resources are located in Appendix A of this SOP.

2.1.2 Unlawful Presence Waiver Authority

INA section 212(a)(9)(B)(v) gives the Secretary of Homeland Security (Secretary) the authority to waive the 3- and 10-year unlawful presence bars if the alien is seeking admission as an immigrant and if the alien demonstrates that the denial of his or her admission to the United States would cause "extreme hardship" to the alien's U.S. citizen spouse or parent. Because the granting of a waiver is discretionary, the alien must also establish that he or she merits a favorable exercise of the Secretary's discretion.

2.1.3 Provisional Unlawful Presence Waiver Regulation

The DHS regulation at 8 CFR 212.7(e) outlines specific eligibility requirements for certain immediate relatives of U.S. citizens to receive a provisional unlawful presence waiver prior to departing the United States to complete consular processing of their immigrant visas that are based on an approved immediate relative petition. The eligibility requirements are discussed in detail in section 4 of this SOP.

2.2 Resources (Return to Table of Contents)

Immigration Services Officers (ISOs) should refer to INA section 212(a)(9)(B)(v), 8 CFR 212.7(e), and relevant precedent decisions for guidance while adjudicating Form I-601A. Additionally, when issuing a Request for Evidence (RFE) or denial notice related to any I-601A, ISOs must use RFE and denial standards that have been cleared for use by FOD.

2.2.1 USCIS Policy

Chapter 40.9 of the Adjudicator's Field Manual (AFM) provides detailed guidance related to the unlawful presence grounds of inadmissibility. A link to the AFM is located in Appendix A of this SOP. In addition, USCIS is currently developing a USCIS Policy Manual, which will include chapters on inadmissibility grounds and waivers.

2.2.2 Precedent Decisions

Precedent decisions provide binding rules of decision for later cases involving the same issue(s). Decisions of the Supreme Court of the United States are always precedent decisions. Published decisions of the U.S. Courts of Appeals are binding for cases arising in the same circuit. The Attorney General, the Board of Immigration Appeals, and the USCIS Administrative Appeals Office may also designate one of their decisions as a precedent decision. The Executive Office for Immigration Review (EOIR) maintains copies of most Attorney General and Board of Immigration Appeals (BIA) precedent decisions in their Virtual Law Library. EOIR and AAO precedents are also published in the multi-volume series *Administrative Decisions Under Immigration and Nationality Law of the United States*. In addition, the NBC maintains a summary of relevant precedent decisions related to inadmissibility grounds and waivers on the Enterprise Collaboration Network (ECN) page. Links to the EOIR Virtual Law Library and the NBC ECN page are located in Appendix A of this SOP. USCIS counsel may assist ISOs in identifying and applying precedent decisions.

2.2.3 RFE and Denial Standards

Any RFE or denial notice issued in connection with an I-601A must be based on standards cleared by FOD. Notices based on the approved standards are available on the NBC Letter Generator. In addition, cleared RFE and denial standards are posted on the NBC ECN. Links to the appropriate ECN pages are located in Appendix A of this SOP.

Section 3: Procedural Guidance

This section provides step-by-step instructions for processing and adjudicating a Form I-601A. The column entitled "**SOP**" provides links to related sections of this SOP where more detailed information about the provisional unlawful presence waiver requirements is located.

3.1 Pre-Adjudication (Return to Table of Contents)

3.1.1 Overview of Lockbox Intake

Individuals seeking a provisional unlawful presence waiver must file their Form I-601A at a designated lockbox (LB) facility at the address listed on the USCIS website. Upon receipt, the LB will perform the following actions:

3.1.1	Overview of Lockbox Intake	SOP
1.	• The LB will reject any I-601A filed by an applicant under 17 years of age; • The LB will reject any I-601A if the applicant fails to pay the required filing fee for the provisional unlawful presence waiver; • The LB will reject any I-601A package that does not include: o Correct filing fee payment ($585) for the form; o Completed fields on the form for the applicant's family name and date of birth; o Signature of the applicant; o Domestic home address on the form; o Evidence of an approved I-130 or I-360 (may be Form I-797, but may also be other evidence that will permit USCIS to locate and confirm the approval); o Copy of the DOS fee receipt for the immigrant visa processing fee; and o A response to the question regarding whether the applicant has been scheduled for a visa interview. • The LB will reject an I-601A if the applicant indicates that DOS initially acted before January 3, 2013, to schedule the applicant for a visa interview.	4.1

2.	• The LB will validate any A-number provided on the I-601A **(Part 1, Item Number 1)**. • If no A-number is provided on the form, the LB will assign an A-number for the applicant.	
3.	• The LB will enter the case data into Computer Linked Application Information Management System **(CLAIMS)** via the Enterprise Service Bus **(ESB)**.	
4.	• The LB will place the I-601A and supporting documents on the left-hand side of an A-file in the following order (top to bottom): o G-28, if applicable; o I-601A; o I-797 approval notice for immediate relative petition (or other evidence of approval); o DOS fee receipt for immigrant visa processing fee; o Supporting documents in the order received.	
5.	• The LB will send the A-file to the NBC for adjudication in accordance with the LB Business Requirements.	

3.1.2 Related Immigration Records (Return to Table of Contents)

After receiving an I-601A from the LB, NBC contract personnel will perform the following actions to search for related immigration records:

3.1.2	Related Immigration Records	SOP
1.	• Query the Central Index System (**CIS**) **(9103, 9104 and 9106)** for related A-files by querying the applicant's first and last name (and any aliases) and date of birth (+/- 1-year range) provided on the I-601A (**Part 1, Item Numbers** 3-5). • Query the National File Transfer System (**NFTS**) for related T-files. • Print out the CIS/NFTS screens showing related files (or lack thereof) and place the printouts in the file. • If there are any related A- or T-files, request the related files and place the case on hold for thirty days or until the files are received, whichever is sooner. Contract personnel will not place cases on hold and will remove cases from hold if it is determined that the related files are lost ("Not Found" in CIS and "Lost File" in NFTS). • Consolidate any related A- or T-files received.	4.2

3.1.3 FBI Fingerprint and Name Check (Return to Table of Contents)

NBC contract personnel will perform the following actions related to FBI fingerprint and name checks:

3.1.3	FBI Fingerprint and Name Check	SOP
1.	• If the NBC receives an I-601A from the LB in a yellow folder, this is an indication that the applicant has not yet paid the biometrics fee. • If an applicant did not pay the biometrics fee, place the case on a "bio-fee hold" until the LB notifies the NBC that the fee has been paid.	4.2.2

3.1.3	FBI Fingerprint and Name Check	SOP
2.	• After receiving an I-601A from the LB or notification of biometrics fee payment (if previously placed on "bio-fee hold"), schedule the applicant to appear at an Application Support Center (ASC) for biometrics capture.	
3.	• If an applicant fails to attend the biometrics appointment and has not requested rescheduling of the appointment within 30 days of the missed appointment, OR if the applicant does not pay the biometrics fee within 87 days of notice (if previously placed on "bio-fee hold"), route the case to an ISO to deny the I-601A for abandonment.	4.2.3
4.		4.2.7
5.		

(b)(7)(e)

3.1.4 TECS Check (Return to Table of Contents)

NBC contract personnel will perform the following actions related to Treasury Enforcement Communications System (**TECS**) queries:

3.1.4	TECS Query	SOP
1.		4.2.7

3.1.4	TECS Query	SOP
2.		
3.		
4.		

3.1.5 Route to ISO (Return to Table of Contents)

After completing all pre-adjudication steps listed above, the NBC contractor will perform the following actions before routing the file to an ISO for review:

3.1.5	Route to ISO	SOP
1.	• Verify that the required system checks and security checks were performed and that BCU and FDNS have completed additional vetting and hit resolution, when required.	

3.1.5	Route to ISO	SOP
2.	• Verify that all screen printouts are in the file in the following order (top to bottom): o FDNS/BCU memo, if applicable; o ROIQ, if applicable; o Cover Sheet o TECS/NCIC records, if applicable (TECS); o FBI fingerprint results (FBIQUERY); o FBI name check results (FBIQUERY); o Related A- or T-files (CIS/NFTS).	
3.	• Route the file to an ISO for review.	

3.2 Adjudication – ISO Review

3.2.1 Reviewing the Record (Return to Table of Contents)

ISOs will perform the following actions while reviewing the record:

3.2.1	Reviewing the Record	SOP
1.	• Review the system printouts in the file. If a printout is missing, check the appropriate system and print the results for the file.	
2.	• If the CIS/NFTS printouts show related files, verify that all related files are present or can be viewed electronically.	
3.	• If a related file is determined to be lost, follow current USCIS policy regarding the adjudication of an application on a T-file.	

3.2.1	Reviewing the Record	SOP
4.	• Review the I-601A, supporting evidence and any related files. The I-601A should list the USCIS receipt number (**Part 2, Item Number 1**) for an approved I-130 or I-360 filed on behalf of the applicant, and the file should contain a copy of the petition approval notice (Form I-797) and the immigrant visa fee payment receipt.	

3.2.2 Verify Basic Eligibility (Return to Table of Contents)

ISOs will perform the following actions to verify that the applicant meets the basic eligibility requirements for a provisional unlawful presence waiver:

3.2.2	Verify Basic Eligibility	SOP
1.	• If the applicant failed to pay the biometrics fee within 87 days of notice and the applicant did not notify USCIS of a change of address, deny the I-601A for abandonment.	4.2.2
2.	• If the applicant failed to: (1) appear at an ASC for the biometrics capture, (2) notify USCIS of a change of address, or (3) ask USCIS to reschedule the ASC appointment, then deny the I-601A for abandonment.	4.2.3
3.	• If an applicant's fingerprints were rejected twice as unclassifiable, issue an RFE for police clearance letters and any other missing evidence.	
4.	• Query the Person Centric Query Service (**PCQS**) or **CLAIMS** for other immigration benefit requests filed by (or on behalf of) the applicant by searching the applicant's name (including any aliases) and DOB provided on the I-601A (**Part 1, Item Numbers 3-5**). • Print the PCQS results or CLAIMS history page for any immigration benefit requests filed by (or on behalf of) the applicant and place the printouts in the file.	4.1.3 4.2.1 4.2.5

3.2.2	Verify Basic Eligibility	SOP
5.	• Compare the results of the PCQS or CLAIMS and queries with **Part 2** of the I-601A, and the I-797 approval notice for the immigrant visa petition (I-130 or I-360). • Verify that the applicant is the beneficiary of an approved I-130 or I-360 (classifying the applicant as the immediate relative of a U.S. citizen), and that the petition has not been revoked. o If the petition was filed by a U.S. citizen parent and the applicant is 21 years of age or older, determine whether the Child Status Protection Act (CSPA) applies. (The notes in Consolidated Consular Database (CCD) should indicate whether the CSPA applies.) o If the petition was filed by a lawful permanent resident (LPR) and the I-797 shows a family preference (F2) visa symbol, check CIS to determine whether the petitioner naturalized (and, as a result, the applicant is now an immediate relative). • If the applicant is not the beneficiary of an approved immediate relative petition OR if the immigrant visa petition was subsequently revoked by USCIS or terminated by DOS, deny the I-601A. • **Do not re-adjudicate the underlying I-130 or I-360.** However, if during your review you find that the record contains strong evidence of relationship fraud or other derogatory information that may not have been available at the time of the I-130 or I-360 adjudication, route the case to FDNS for review. FDNS will determine whether the applicant and petitioner should be interviewed at a local USCIS field office.	4.1.3

3.2.2	Verify Basic Eligibility	SOP
5. (cont.)	• Before sending an I-601A to a field office for interview, prepare a memo to file requesting that the field office conduct an interview. The memo should provide specific details explaining why the ISO is requesting the interview. The memo should also include a request that the field office return the un-adjudicated I-601A back to the NBC along with the results from the interview. • Fully articulated and verified fraud may be considered a negative factor for purposes of the discretionary analysis. ISOs should NOT request that the NVC return the petition to USCIS for revocation; however, the ISO will share the fraud findings via secure email with the NVC Fraud Prevention Unit (FPU) in accordance with local policies.	

3.2.2	Verify Basic Eligibility	SOP
6.	• Query the **CCD** for the immigrant visa beneficiary (IVIS Beneficiary) using the consular case number (NVC Case Number) listed on the I-601A (**Part 2, Item Number 4**). The NVC Case Number is also located on the DOS immigrant visa fee receipt. Also query CCD for the case number listed on the DOS immigrant visa fee receipt if the NVC Case Number listed on the I-601A (**Part 2**) does not match the NVC Case Number located on the DOS fee receipt. • Select the link with the correct NVC Case Number to view the *IV Case Detail* report. • Compare the information on the CCD *IVIS Case Detail* report with information on the I-601A (**Part 2**), the I-797 approval notice for the immigrant visa petition (I-130 or I-360), and the DOS fee receipt. • The *Receipt Number* (I-130/I-360) and *Case Number* (DOS case) listed on the CCD report should match the information provided by the applicant in **Part 2** of the I-601A and/or on the I-797 approval notice and the DOS fee receipt; • The *Visa Symbol* on the CCD report should be for an immediate relative visa category (IR, CR or IW); • The *IV Fee Paid* field on the CCD report should show that the fee was paid; and • The *Interview Scheduled* field on the CCD report should be blank, or if scheduled, the date that the NVC scheduled the appointment should be on or after January 3, 2013. • If the IVIS Beneficiary query does not return a record ("Query Returned No Data"), use the NVC Case Number to query the immigrant visa applicant (IV/DV Applicant Summary) or use the immigrant visa petition number to query IVIS Beneficiary.	4.1.4 4.2.4

3.2.2	Verify Basic Eligibility	SOP
6. (cont.)	• If the Consular Case number and/or the immigrant visa petition that the applicant provided on the I-601A (**Part 2**) does not match the DOS fee receipt and/or the I-797 approval notice, continue with adjudication of the I-601A after verifying that the applicant's DOS fee receipt is associated with an immediate relative visa petition that has not been revoked by USCIS. • If the Consular Case Number associated with the DOS fee receipt is not related to an immediate relative visa petition, deny the I-601A. • If the *Interview Scheduled* field shows that the National Visa Center (NVC) already scheduled the applicant to appear at a U.S. Embassy or consulate for the immigrant visa interview associated with the corresponding Consular Case Number, *and* the NVC scheduled the interview *before* January 3, 2013, deny the I-601A. The case must be denied "even if the interview has since been cancelled or rescheduled *after* January 3, 2013." 8 CFR 212.7(e)(4)(iv).	

3.2.2	Verify Basic Eligibility	SOP
7.	• Query PCQS or the **EOIR** screen in **CIS** for each of the applicant's A-numbers to determine whether the applicant has ever been in removal proceedings. • If the applicant has ever been issued a Notice to Appear (NTA) or Order to Show Cause (OSC), review the Enforcement Alien Removal Module (**EARM**) and any related A- or T-files to determine the outcome of the proceedings. • If an NTA was served on the applicant, but there is no record that the NTA was ever filed with the immigration court (i.e. no hearing scheduled, no data in EOIR, etc.), proceed with adjudication of the I-601A. • If the applicant was previously in removal proceedings that were dismissed or terminated, proceed with adjudication of the I-601A. • Review the section of the I-601A related to removal proceedings (**Part 1, Item Numbers 25 and 26**), and any documents submitted with the I-601A to determine whether the applicant is in removal proceedings (includes being subject to a final removal order, a final order of exclusion or deportation under former INA section 236 or 242 (pre-April 1, 1997), or to a DHS order reinstating a prior removal order). • If the applicant is in removal proceedings but these proceedings were administratively closed and were not recalendared at the time the applicant filed the I-601A, proceed with adjudication of the I-601A.	4.2.6

3.2.2	Verify Basic Eligibility	SOP
7. (cont.)	• Deny the I-601A if the applicant is: o In removal proceedings that are administratively closed but were recalendared at the time the I-601A was filed. o In removal proceedings that have not been administratively closed, terminated or dismissed. o Subject to a final order of removal, deportation, or exclusion; or o Subject to the reinstatement of a prior removal order.	4.2.5

3.2.2	Verify Basic Eligibility	SOP
8.	• Review PCQS or CLAIMS printouts to determine whether the applicant has ever filed a Form I-485, Application to Register Permanent Residence or Adjust Status. • If PCQS or CLAIMS shows that an I-485 is still pending, verify that the I-485 has not been adjudicated or withdrawn. • If the I-485 is pending, deny the I-601A. After adjudicating the I-601A, route the A-file to the appropriate location for continued adjudication of the I-485. If CLAIMS shows that the I-485 is pending, but the I-485 was adjudicated or withdrawn, backend update the I-485 and continue adjudication of the I-601A. • If the A-file containing the I-485 was not requested, or the request for the file was denied, contact the File Control Office (FCO) where that A-file is located to verify the status of the I-485. If the FCO confirms that the I-485 is pending, deny the I-601A.	

3.2.3. Inadmissibility Determination for Unlawful Presence and *Reason to Believe* that Additional INA Section 212(a) Grounds May Apply (Return to Table of Contents)

After verifying that an applicant meets the basic eligibility requirements above, ISOs will perform the following actions to determine whether additional inadmissibility grounds may apply:

3.2.3	**Inadmissibility Determination for Unlawful Presence and *Reason to Believe* Additional INA Section 212(a) Grounds May Apply**	**SOP**
1.	• Review the results of the security checks (FBI fingerprint, FBI name check, and IBIS), the answers in **Part 1** of the I-601A (and any explanation in **Part 5., Additional Information**), and any related A- or T-files. • If there are any national security concerns, route the file to FDNS Operations for review in accordance with local policies.	4.2.7

3.2.3	**Inadmissibility Determination for Unlawful Presence and *Reason to Believe* Additional INA Section 212(a) Grounds May Apply**	**SOP**
2.	• Presume that the applicant will be found inadmissible at the time of the immigrant visa interview for prior unlawful presence under INA section 212(a)(9)(B)(i). o Do not analyze whether the individual has accrued sufficient unlawful presence or whether the individual has triggered the bar in the past; o Do not consider whether possible statutory/policy exceptions apply in the individual's case. The consular officer will determine at the time of the immigrant visa interview whether the individual is inadmissible based on unlawful presence. • Presume that other grounds of inadmissibility apply if, based on the immigration or criminal history records, USCIS has *reason to believe* that another ground of inadmissibility may apply at the time of the immigrant visa interview. o A USCIS finding of *reason to believe* does not involve a complete analysis regarding whether a particular ground of inadmissibility applies, which would require a review of statutory exceptions or case law that may affect interpretation of the provision or a final determination of inadmissibility. The Consular officer will conduct a full admissibility assessment and make a final determination during the applicant's immigrant visa interview. o For grounds of inadmissibility based on health (INA section 212(a)(1)(A)); public charge (INA section 212(a)(4)); aliens present without admission or parole (INA section 212(a)(6)(A)); and documentation requirements (INA section 212(a)(7)), follow the instructions immediately below.	4.2.7

3.2.3	**Inadmissibility Determination for Unlawful Presence and *Reason to Believe* Additional INA Section 212(a) Grounds May Apply**	**SOP**
2. (cont.)	• Do **not** find a *reason to believe* that the following grounds will apply at the time of the immigrant visa interview: o Health-related grounds (INA section 212(a)(1)) unless the record includes mention of a specific medical condition noted in the INA that would render the individual inadmissible under INA section 212(a)(1)(A), o Public Charge (INA section 212(a)(4)), o Present without admission/parole (INA section 212(a)(6)(A)), or o Missing documentation requirements (INA section 212(a)(7)).	

3.2.3	**Inadmissibility Determination for Unlawful Presence and *Reason to Believe* Additional INA Section 212(a) Grounds May Apply**	**SOP**
3.	• **Criminal grounds of inadmissibility (INA section 212(a)(2))**: Find *reason to believe* that INA section 212(a)(2) (criminal grounds) may apply if the record contains evidence that the applicant was charged with an offense or convicted of any crime other than minor traffic citations, such as parking violations, red light/stop sign violations, expired license or registration, and similar offenses or noncriminal immigration violations, regardless of the sentence imposed or whether the offense is a Crime Involving Moral Turpitude (CIMT). • **Fraud and willful misrepresentation (INA section 212(a)(6)(C)(i)), and alien smugglers (INA section 212(a)(6)(E))**: Find *reason to believe* that INA section 212(a)(6)(C)(i) or 212(a)(6)(E) may apply if the applicant answers "Yes" to **Item Numbers 27** or **28**, respectively, and the applicant's explanation in **Part 5., Additional Information,** shows that he or she understood the question. If the explanation in **Part 5., Additional Information,** suggests that the applicant did not understand the question, consult your supervisor before continuing your review of the I-601A. • **Unlawfully present after previous immigration violation (INA section 212(a)(9)(C)(i)(I))**: Find *reason to believe* that INA section 212(a)(9)(C)(i)(I) may apply if the applicant indicates in **Item Number 17** that he or she last entered the United States without inspection and admission or parole, *and* the applicant indicates that prior to his or her last entry the applicant was previously unlawfully present in the United States for more than one year in the aggregate **(Item Numbers 18-24)**.	4.2.7

3.2.3	**Inadmissibility Determination for Unlawful Presence and *Reason to Believe* Additional INA Section 212(a) Grounds May Apply**	**SOP**
4.	• Do not issue an RFE solely to determine whether there is *reason to believe* another inadmissibility ground may apply. • If an applicant fails to answer one or more questions in **Part 1**, but there is no *reason to believe* another inadmissibility ground may apply, based on your review of the record, proceed to the Extreme Hardship and Discretionary analysis. • If the record shows that the applicant has been arrested, but there is no court disposition or other record showing a criminal conviction, proceed to the Extreme Hardship and Discretionary analysis. • **NOTE**: An ISO, in his or her discretion, always has the authority to request additional evidence if the ISO believes that the applicant would ultimately be eligible for the provisional unlawful presence waiver if the applicant provided the additional information. • NOTE: An ISO <u>should</u> request information about immigration or criminal history records as part of the discretionary analysis if the applicant meets all other basic eligibility criteria, and the ISO believes that the applicant would be eligible for a provisional unlawful presence waiver if the applicant provides the missing information. However, the request must be added to the RFE standard for *Discretion.*	4.2.7
5.	• Following the guidance in this section, deny the I-601A if there is *reason to believe* that the applicant *may* be found inadmissible at the time of the immigrant visa interview for any inadmissibility ground other than unlawful presence under INA section 212(a)(9)(B)(i). • Consult with a supervisor if you have any doubt about whether there is *reason to believe* another inadmissibility ground may apply.	4.2.7

3.2.4 Analyze Extreme Hardship and Weigh Discretionary Factors (Return to Table of Contents)

After verifying that an applicant meets the basic eligibility requirements, including that there is no *reason to believe* additional inadmissibility grounds may apply at the time of the immigrant visa interview, ISOs will perform the following actions to determine whether the I-601A should be approved based on the specific factors of the case:

3.2.4	Analyze Extreme Hardship and Weigh Discretionary Factors	SOP
1.	• Review **Parts 3** and **5** of the form. Identify any qualifying relatives (U.S. citizen spouse or parent). • You will presume extreme hardship and proceed to the discretionary analysis if the qualifying relative is the U.S. citizen spouse or parent petitioner who died and the applicant meets the requirements of INA section 204(l) as a surviving relative. Applicants who do not meet the requirements of INA section 204(l) must establish extreme hardship to another qualifying relative (U.S. citizen spouse or parent). • If a qualifying relative is *not* the immigrant visa petitioner, verify that the file contains evidence of the qualifying relative's U.S. citizenship and evidence of the claimed relationship (spouse or parent). If there is insufficient evidence, request the missing evidence using the appropriate RFE standard cleared by FOD. • **NOTE**: An applicant may have *more than one* qualifying relative. The qualifying relative does not need to be the immigrant visa petitioner; however, for purposes of the I-601A, the individual does have to be a U.S. citizen spouse or parent. If the applicant establishes extreme hardship to any *one* qualifying relative, it is not necessary to request evidence related to any other qualifying relatives.	4.3.1
2.	• Review **Parts 4** and **5** of the I-601A and any supporting evidence. Identify each hardship claimed to a qualifying relative.	4.3.2

3.2.4	**Analyze Extreme Hardship and Weigh Discretionary Factors**	**SOP**
3.	• Consider the claimed hardships individually and cumulatively, and consider every factor that may impact the claimed hardships to determine whether the claimed hardships, considered in their totality, rise to the level of "extreme hardship" to a qualifying relative. • The applicant bears the burden of showing that it is more likely than not (preponderance of evidence standard) that the qualifying relative would experience extreme hardship both: o If the qualifying relative would remain in the United States apart from the applicant; and o If the qualifying relative would relocate to join the applicant abroad. • Do not require the applicant to show prospective injury due to the qualifying relative's relocation if it is clear that the applicant cannot relocate, as outlined in the guidance in **Section 4** below. In such cases, consider the second prong of the extreme hardship requirement to have been met (extreme hardship due to relocation) and limit the extreme hardship analysis to the first prong (extreme hardship due to separation).	4.3.2 4.3.3 4.3.4
4.	• If extreme hardship to a qualifying relative is not established, issue an RFE to request additional evidence using the RFE standard for *Extreme Hardship* cleared by FOD. • If there appear to be discretionary issues as well (e.g. possible criminal convictions, fraud/misrepresentation and/or alien smuggling), include, in the RFE, a request for information or documents related to the discretionary analysis using the RFE standard for *Discretion* cleared by FOD. • If the applicant does not show that the qualifying relative would experience extreme hardship, even after the RFE response is considered, deny the I-601A. • If the applicant meets the extreme hardship requirement, proceed to the discretionary analysis.	4.3.3

3.2.4	**Analyze Extreme Hardship and Weigh Discretionary Factors**	**SOP**
5.	• For the discretionary analysis, consider all of the favorable and unfavorable factors of the case. The fact that extreme hardship has been established should have considerable weight as a positive factor when balancing favorable against unfavorable factors. • If there are any significant unfavorable factors, consider whether those factors would render the applicant ineligible for a provisional unlawful presence waiver without having to make a discretionary analysis. If so, deny the I-601A for that reason. For example, if the applicant responds to an RFE with evidence that the applicant was convicted of a crime (other than minor traffic citations, such as parking violations, red light/stop sign violations, expired license or registration, and similar offenses and noncriminal immigration violations), deny the I-601A because there is *reason to believe* the applicant may be found inadmissible on another ground at the time of the immigrant visa interview. • If there are significant unfavorable factors that would not render the applicant ineligible for the provisional unlawful presence waiver but are still relevant for the discretionary determination, weigh the favorable factors (including extreme hardship) against these unfavorable factors.	4.4.1 4.2.7
6.	• If the unfavorable factors outweigh the favorable factors and the I-601A cannot be denied for another reason, deny the I-601A as a matter of discretion. A supervisor must concur with any discretionary denial.	4.4.2
7.	• If the favorable factors outweigh the unfavorable factors, approve the I-601A.	3.3.2

3.3 Adjudication – Decision

3.3.1 Request for Evidence (Return to Table of Contents)

ISOs will perform the following actions to request additional evidence:

3.3.1	Request for Evidence	SOP
1.	• Prepare an RFE if: o The I-601A is missing an original signature (LB should reject an application without an original signature); o Applicant's fingerprints were rejected twice as unclassifiable (need police clearance letters); o Qualifying relative is not the immigrant visa petitioner, and the record does not contain evidence of the qualifying relative's U.S. citizenship status or evidence of the claimed relationship; o Record does not contain sufficient evidence to support a finding of extreme hardship to a qualifying relative; or o Record does not contain sufficient evidence to support a grant of favorable discretion. • When there is evidence of an arrest, an RFE for the court disposition is appropriate to determine if favorable discretion is warranted (if the applicant meets all other basic eligibility criteria). Similarly, an RFE to clarify the applicant's explanation of his/her response(s) to **Item Numbers 27** or **28** is appropriate where the response indicates that the applicant did not understand the question(s), and the applicant meets all other basic eligibility criteria.	
2.	• Use the RFE standards that have been cleared for use by FOD, and explain in the RFE why evidence provided by the applicant was insufficient. • **NOTE**: An ISO may request evidence to support any eligibility criteria if the officer has *reason to believe* that the individual can establish eligibility when given a chance to correct the deficiency. However, the ISO must obtain supervisory concurrence to request something not included in the RFE standards cleared by FOD.	

3.3.1	Request for Evidence	SOP
3.	• Provide the applicant 33 days to respond (30 days plus 3 days mailing time).	
4.	• Route the file to support staff with instructions to hold the case until a response is received or until the response time has elapsed.	
5.	• When a response is received, adjudicate the I-601A based on the merits of the case. • If no response is received within the time allowed, deny the I-601A for abandonment.	3.3.2 3.3.3

3.3.2 Approval (Return to Table of Contents)

An ISO may approve an I-601A if:

- All required background and security checks have been completed and any hits resolved;
- Applicant meets the requirements of 8 CFR 212.7(e)(3)(i)–(vi);
- Applicant shows that the refusal of admission would result in extreme hardship to the applicant's qualifying relative; and
- Favorable exercise of discretion is warranted.

ISOs will perform the following actions to approve an I-601A:

3.3.2	Approval	SOP
1.	• During the training period or when otherwise directed by a supervisor, complete the Adjudication Worksheet located in Appendix B.	

3.3.2	Approval	SOP
2.	• If supervisory review is required by local policy (e.g. during a training period), obtain supervisory concurrence before approving the I-601A. • If the record establishes that the applicant is eligible for a provisional unlawful presence waiver and favorable discretion is warranted, place an approval stamp in the action block on the form and sign the approval stamp. • Notify DOS through the appropriate channels that the I-601A has been approved and that DOS may continue the immigrant visa process. Notification procedures are outlined in 3.4.3, below.	
3.	• Place M-175, Record of Proceeding Coversheet, on top of I-601A and route the file to the appropriate support staff for post-adjudication processing.	3.4.1

3.3.3 Denial (Return to Table of Contents)

An ISO must deny an I-601A if:

- Applicant does not meet each of the requirements of 8 CFR 212.7(e);
- Applicant does not show that the refusal of admission would result in extreme hardship to the applicant's qualifying relative; or
- Favorable exercise of discretion is not warranted.

ISOs will perform the following actions to deny an I-601A:

3.3.3	Denial	SOP
1.	• During the training period or when otherwise directed by a supervisor, complete the Adjudication Worksheet located in Appendix B.	

3.3.3	Denial	SOP
2.	• If the record does not establish that the applicant is eligible for a provisional unlawful presence waiver or that he or she does not warrant a favorable exercise of discretion, prepare a denial notice. • Use the denial template and standards that have been cleared for use by the NBC.	
3.	• Obtain supervisory concurrence if denying the I-601A as a matter of discretion or if local policy requires that you obtain supervisory concurrence before you deny the I-601A (e.g., during a training period).	
4.	• Place a denial stamp in the action block on the form and sign the denial stamp. Place M-175, Record of Proceeding Coversheet, on top of I-601A. • Notify DOS through the appropriate channels that the I-601A has been denied. Notification procedures are outlined in 3.4.3, below	
5.	• If under current USCIS policy on the issuance of NTAs the applicant should be issued an NTA, route the file to the BCU for NTA issuance after supervisor review and concurrence.	4.6.3
6.	• If under current USCIS policy, you are not required to issue an NTA in the applicant's case, route the file to the appropriate support staff for post-adjudication processing.	3.4.2

3.3.4 Withdrawal (Return to Table of Contents)

An applicant may withdraw a request for a provisional unlawful presence waiver at any time prior to adjudication. If a written request to withdraw the Form I-601A is received, an ISO will perform the following actions to close the case.

3.3.4	Withdrawal	SOP
1.	• Prepare a withdrawal acknowledgement notice. • Use the template that has been cleared for use by FOD.	

3.3.4	Withdrawal	SOP
2.	• Indicate in the action block of the form that the I-601A has been withdrawn. Place M-175, Record of Proceeding Coversheet, on top of I-601A. • Notify DOS through the appropriate channels that the I-601A has been withdrawn. Notification procedures are outlined in 3.4.3, below.	
3.	• If under current USCIS policy on the issuance of NTAs the applicant should be issued an NTA, route the file to the BCU for NTA issuance. • A supervisor should verify that NTA issuance is appropriate before sending the file to the BCU.	4.6.3
4.	• If under current USCIS policy you are not required to issue an NTA in the applicant's case, route the file to the appropriate support staff for post-adjudication processing.	3.4.2

3.3.5 Service Motion (Return to Table of Contents)

An applicant may *not* file a motion to reopen or reconsider the denial of an I-601A. However, if USCIS determines that the approval or denial of an I-601A was made in error, ISOs will perform the following actions to reopen the case to make a new decision.

3.3.5	Service Motion	SOP
1.	• If supervisory review is required by local policy (e.g., during a training period), obtain supervisory concurrence before reopening the case.	
2.	• Prepare a Service motion to reopen the I-601A, using standard templates. • If the Service motion seeks to reopen the approval of an I-601A, provide the applicant 33 days (30 days plus 3 days mailing time) to respond to the Service motion before denying the I-601A.	4.5.5

3.3.5	Service Motion	SOP
3.	• Approve or deny the I-601A according to the procedures outlined in this SOP.	3.3.2 3.3.3
4.	• Notify the NBC POC who sends decision reports to the NVC that you reopened the I-601A on a Service motion and issued a new decision on the I-601A. The NBC POC will notify DOS of the new decision using the procedures outlined in Section 3.4.3.	3.4.3

3.3.6 Updating CLAIMS (Return to Table of Contents)

CLAIMS must be updated through the CLAIMS 3 Local Area Network (LAN) Graphical User Interface (GUI) to show each action taken during the adjudication process.

Below are specific requirements for updating CLAIMS when an I-601A has been approved, denied or withdrawn.

3.3.6	Updating CLAIMS	SOP
1.	• For all approved, denied and withdrawn cases, verify that the applicant's name, DOB, A-number and NVC Case Number are correctly recorded in CLAIMS GUI. This will ensure that the NVC is properly notified of the decision and that the NVC assigns the correct A-number to the immigrant visa applicant.	

3.3.6	Updating CLAIMS	SOP
2.	• For any denied I-601A, ensure that the proper History Action Code (HAC) is used to indicate the reason for denial. The denial reasons include: o Abandonment; o In Removal Proceedings; o Subject to Final Removal Order; o Pending Adjustment of Status; o Reason to Believe May Be Subject to Additional Ground of Inadmissibility at DOS Visa Interview; o No Approved IR or Widow(er) Petition; o No Qualifying Relative; o DOS Scheduled Visa Interview Prior January 3, 2013; o No Extreme Hardship to Spouse or Parent; o Discretion; o Other.	
3.	• For any withdrawn I-601A, use the HAC for *Withdrawal Acknowledgement* listed under the reasons for denial even though a withdrawal is not the same as a denial in other contexts.	

3.4 Post-Adjudication

3.4.1 Approved Cases (Return to Table of Contents)

The NBC will perform the following actions after updating the decision in CLAIMS:

3.4.1	Approved Cases	SOP
2.	• Route the A-file to the TSC Records Division with the following annotation on the routing slip: **HOLD SHIP**.	

3.4.1	Approved Cases	SOP
3.	• TSC Records will store the A-file until the applicant is admitted as an LPR and the immigrant visa packet is received from CBP.	
4.	• TSC Records will consolidate the immigrant visa packet into the A-file and route the A-file to the National Records Center (NRC) for storage.	
5.	• If the applicant does not immigrate within 2 years, the TSC will route the A-file to the NRC for storage.	

3.4.2 Denied and Withdrawn Cases (Return to Table of Contents)

The NBC will perform the following actions after mailing the denial or withdrawal acknowledgement notice to the applicant and attorney of record (if any) and updating CLAIMS:

3.4.2	Denied and Withdrawn Cases	SOP
1.	• Verify that the I-601A is not pending in CLAIMS (i.e. has been denied or withdrawn).	
2.	• Route the A-file to the NRC for storage.	

3.4.3 Notifying the NVC (Return to Table of Contents)

A designated POC at the NBC will perform the following actions to notify the NVC of the I-601A waiver decisions made at the NBC during a specific period of time:

3.4.3	Notifying the NVC	SOP
1.	• Every Monday, run an I-601A decision report in CLAIMS GUI for cases adjudicated at the NBC during the previous 7 days (For example: if Monday falls on the 14th day of the month, run a decision report using the date-rage for the 7th – 13th). • **NOTE**: If necessary to meet workload demands, the NVC may request the NBC to run decision reports more frequently. If the NVC requests more frequent notification, run decision reports with a date-range as requested by the NVC.	
2.	• Hide the column with the USCIS receipt number as the NVC does not require this number and it is only for USCIS records.	
3.	• Attach the decision report to an encrypted WinZip file (256-bit encryption) using the standard password **601Awaivers[insert year]**, which changes every January 1st with the new calendar year (For example: any decision report sent in 2012 will use the standard password **601Awaivers2012**). • If the POC received notification from an ISO that a case was reopened and approved or denied on a Service motion, write **"Upon Service Motion"** after the decision in the "Decision" column of the report.	

3.4.3	Notifying the NVC	SOP
4.	• Email the encrypted WinZip file to the NVC at nvcwaivers@state.gov. • In the subject line of the email, write "I-601A decision report for [insert NBC abbreviation (MSC) and date-range]." • Do not include the password in the email as the NVC already has the standard password. • **NOTE**: DOS is working on a system that will allow USCIS adjudicators to update CCD with waiver decisions. When this system is available for use, NBC will provide additional guidance to adjudicators and/or the designated POC.	

Section 4: Overview of Provisional Unlawful Presence Waiver Requirements

4.1 Eligibility and Filing Requirements (Return to Table of Contents)

Eligibility to apply for and receive a provisional unlawful presence waiver is described in 8 CFR section 212.7(e)(3), (4), and (5). The LB will reject an I-601A for failure to meet certain eligibility criteria.[2] If the LB rejects an I-601A, the applicant may resubmit the I-601A with the required fees and the missing information, in accordance with the form instructions.

4.1.1 Presence in the United States (8 CFR 212.7(e)(3)(i))

An individual must be physically present in the United States at the time of filing the request for a provisional unlawful presence waiver and appear for his or her biometrics appointment.[3] If an applicant lists a foreign address in the "Home Address" field on the I-601A or leaves the field blank, the LB will reject the I-601A.[4]

4.1.2 At Least 17 Years of Age (8 CFR 212.7(e)(4)(ii))

An individual must be at least 17 years of age to be eligible for a provisional unlawful presence waiver.[5] If an applicant is under the age of 17 at the time of filing, the LB will reject the I-601A.[6]

4.1.3 Approved Immediate Relative Petition (8 CFR 212.7(e)(3)(iv))

To seek a provisional unlawful presence waiver, an individual must be the beneficiary of an approved immigrant visa petition classifying the individual as an immediate relative.[7] An "immediate relative" is the spouse (including widow/widower), parent or child (unmarried and under 21 years of age) of a U.S. citizen. If the U.S. citizen petitions for his or her immediate relative parent, the U.S. citizen petitioner must be at least 21 years of age.[8]

The CSPA permits certain beneficiaries of immigrant visa petitioners to retain classification as a "child" and "immediate relative" even if he or she reached the age of 21. Certain self-petitioners can also be classified as immediate relatives.

[2] 8 CFR 212.7(e)(5)(ii)
[3] 8 CFR 212.7(e)(3)(i)
[4] 8 CFR 212.7(e)(5)(ii)(C)
[5] 8 CFR 212.7(e)(4)(ii)
[6] 8 CFR 212.7(e)(5)(ii)(D)
[7] 8 CFR 212.7(e)(3)(iii)
[8] INA 201(b)(2)(A)(i)

Immigrant visa petitions used to establish immediate relative status include Form I-130, Petition for Alien Relative, and Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

An applicant should provide information about the approved I-130 or I-360 in **Part 2** of the I-601A and include a copy of the approval notice (Form I-797). If an applicant does not provide information about the approved I-130 or I-360 on the I-601A or submit a copy of the petition approval notice, and the LB is unable to verify this information in DHS systems, then the LB will reject the I-601A.[9]

NBC ISOs will not re-adjudicate the approved I-130 or I-360. However, if the record contains strong evidence of relationship fraud or any other derogatory information which may not have been known at the time of the I-130 or I-360 adjudication, USCIS may require the applicant and petitioner to appear at a local USCIS field office for an interview.[10] If fraud is fully articulated and verified by either FDNS or by the local USCIS field office, the ISO will notify the NVC FPU in accordance with local policies. The ISO will NOT request that the NVC return the petition to USCIS for revocation.

4.1.4 Consular Processing the Immediate Relative Petition (8 CFR 212.7(e)(3)(v))

To qualify for a provisional unlawful presence waiver, an individual must have an immigrant visa case pending with DOS based on an approved immediate relative visa petition.[11] An applicant should provide the DOS consular case number in **Part 2** of the I-601A and provide a copy of the DOS immigrant visa processing fee receipt as evidence that the applicant has a pending immigrant visa case. If an applicant does not submit a copy of the DOS immigrant visa processing fee receipt, the LB will reject the I-601A.[12]

4.1.5 Other Rejection Criteria

In addition to the rejection criteria listed above, the LB will reject any I-601A that is not signed, does not include the filing fee for the form, or does not include the applicant's family name or date of birth.[13] The LB will also reject an I-601A if the applicant indicates on the form that DOS acted to schedule the applicant to appear at a U.S. Embassy or consulate abroad for an interview in connection with the immigrant

[9] 8 CFR 212.7(e)(5)(ii)(E)
[10] 8 CFR 212.7(e)(8)
[11] 8 CFR 212.7(e)(3)(v) and (4)(iii)
[12] 8 CFR 212.7(e)(5)(ii)(F)
[13] 8 CFR 212.7(e)(5)(ii)(A), (B) and (C)

visa case upon which the provisional unlawful presence waiver is based prior to January 3, 2013.[14] This restriction applies even if the interview is cancelled or rescheduled after January 3, 2013.

4.2 Ineligibility Factors (Return to Table of Contents)

Certain ineligibility factors are not known until the I-601A has been accepted at the LB and an ISO has reviewed the form. An ISO must review the results of all required system and background checks and the contents of any related A- or T-files prior to adjudicating an I-601A. Upon review, if USCIS determines that an applicant is ineligible to receive a provisional unlawful presence waiver, then USCIS may deny the I-601A without issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID).[15]

4.2.1 Failure to Pay the Biometrics Fee (8 CFR 103.17(b))

An individual is required to pay the biometrics fee when applying for a provisional unlawful presence waiver if he or she is under 79 years of age.[16] USCIS cannot waive this fee.[17] However, the LB is not able to reject an I-601A for failure to submit the biometrics fee. In such cases, the LB will request the fee from the applicant and send the I-601A to the NBC in a yellow folder, signaling to the NBC that the case should be placed on a "bio-fee" hold.

The LB will notify the NBC when the fee has been received. Once the biometrics fee has been paid, the NBC will schedule the applicant to appear at an ASC for biometrics capture. If the applicant does not pay the fee within 87 days from the date the notice was sent, USCIS will deny the I-601A for abandonment.

4.2.2 Failure to Appear at an ASC for Biometrics Capture (8 CFR 212.7(e)(6)(ii))

An applicant is considered to have abandoned his or her I-601A if the applicant fails to appear at an ASC for biometrics capture.[18]

After receiving an I-601A from the LB, USCIS will schedule the applicant, if he or she is under 79 years of age, to appear at an ASC. If the applicant does not appear for the scheduled appointment, USCIS will query DHS systems to determine whether the

[14] 8 CFR 212.7(e)(5)(ii)(G)
[15] 8 CFR 212.7(e)(8)
[16] 8 CFR 103.17(b)
[17] 8 CFR 103.7(c)(3)(i).
[18] 8 CFR 212.7(e)(6)(ii)

applicant notified USCIS of a change of address or asked USCIS to reschedule the appointment. If the applicant has not, USCIS will deny the I-601A.

4.2.3 NVC Acted prior to January 3, 2013 to Schedule Immigrant Visa Interview (8 CFR 212.7(e)(4)(iv))

An individual is not eligible to receive a provisional unlawful presence waiver if the NVC acted before January 3, 2013, to schedule the applicant to appear at a U.S. Embassy or consulate abroad for the immigrant visa interview.[19] The LB will reject an I-601A if the applicant indicates on the form that DOS acted to schedule the immigrant visa interview for the I-130 or I-360 upon which the provisional unlawful presence waiver is based prior to January 3, 2013.

If an applicant indicates on his or her I-601A that DOS did not act to schedule the immigrant visa interview and the LB accepts the I-601A, USCIS will check CCD to verify that the NVC did not act prior to January 3, 2013 to schedule the immigrant visa interview. If CCD shows that the NVC case number for the applicant's case was scheduled prior to January 3, 2013 for interview (even if the actual interview date was on or after January 3, 2012), USCIS will deny the I-601A.

USCIS will notify the NVC when an applicant files an I-601A through the lockbox. The NVC will place a processing hold on an individual's immigrant visa case; the processing hold will remain in place until USCIS makes a decision on the I-601A. The NVC will wait 30 days before removing the processing hold in case the individual intends to file a new I-601A. If an applicant does not file a new I-601A, the NVC will remove the processing hold and schedule the applicant to appear at a U.S. Embassy or consulate abroad for an immigrant visa interview. An applicant who files the new I-601A after the 30 day period has expired or who does not notify the NVC of his or her intent to file a new I-601A risks being scheduled for his or her immigrant visa interview before USCIS completes adjudication of the I-601A.

USCIS generally will not expedite the I-601A adjudication for scheduling reasons alone unless there are urgent humanitarian circumstances warranting expedited processing.

4.2.4 Pending Adjustment of Status Application (8 CFR 212.7(e)(4)(viii))

An individual is not eligible to receive a provisional unlawful presence waiver if the individual has an I-485 pending with USCIS.[20]

[19] 8 CFR 212.7(e)(4)(iv)
[20] 8 CFR 212.7(e)(4)(viii)

After receiving an I-601A from the LB, USCIS will check DHS systems to determine whether the applicant has a pending I-485. If DHS systems shows that the applicant has a pending I-485, USCIS will verify whether the I-485 is still pending. If the I-485 is still pending, USCIS will deny the I-601A.

This restriction applies *even if* the applicant has filed a written withdrawal of the Form I-485, unless the pre-adjudication systems check shows that USCIS has acknowledged the applicant's withdrawal of the Form I-485.

4.2.5 Removal Proceedings (8 CFR 212.7(e)(4)(v) – (vii))

An individual is not eligible to receive a provisional unlawful presence waiver if the individual is in removal proceedings unless the removal proceedings are administratively closed and have not been re-calendared at the time of filing the I-601A.[21] In addition, an individual is not eligible to receive a provisional unlawful presence waiver if the individual is subject to a final order of removal, exclusion or deportation,[22] or subject to the reinstatement of a prior removal order.[23]

After receiving an I-601A from the LB, the NBC will schedule the applicant to appear at an ASC for biometrics capture and query DHS and DOS systems for related immigration and/or criminal history records. (Biometrics capture is required for I-601A applicants who are under 79 years of age.)

If the system checks reveal that the applicant is or has been in removal proceedings, the NBC will determine whether the applicant has ever been ordered removed or if removal proceedings are still pending. If an NTA was issued but never served on the immigration court, the applicant is not in removal proceedings, and the restriction does not apply. If an NTA was issued and served on the immigration court, USCIS will determine whether the proceedings have been dismissed or terminated. If the applicant is in removal proceedings, USCIS will determine whether the proceedings are administratively closed.

If after reviewing all systems and/or any related files USCIS determines that the applicant is in removal proceedings, and the case was not administratively closed, USCIS will deny the I-601A. If the individual's case was administratively closed but

[21] 8 CFR 212.7(e)(4)(v)
[22] 8 CFR 212.7(e)(4)(vi)
[23] 8 CFR 212.7(e)(4)(vii)

had been recalendared at the time of filing the I-601A, USCIS will also deny the I-601A. Additionally, if USCIS determines that the applicant is subject to a final order of removal, exclusion, or deportation or to the reinstatement of a prior removal order (regardless of whether or not the order has actually been reinstated),[24] USCIS will deny the I-601A.

4.2.6 Reason to Believe Other INA 212(a) Grounds May Apply (8 CFR 212.7(e)(4)(i))

An individual is not eligible to receive a provisional unlawful presence waiver if there is *reason to believe* the individual may be found inadmissible at the time of his or her immigrant visa interview for any ground other than prior unlawful presence.[25] The consular officer will determine whether the individual is inadmissible based on the 3- or 10-year unlawful presence bar or any other grounds of inadmissibility.

Presumption of Unlawful Presence

The ISO should presume the applicant is inadmissible based on the 3- or 10-year unlawful presence bar; the adjudicator will not count the unlawful presence that the individual may have accrued; determine whether the individual would be subject to any exceptions from the accrual of unlawful presence; or determine whether the applicant may have already triggered the 3- or 10-year bar.

Inapplicable Grounds of Inadmissibility

The ISO does not need to consider grounds of inadmissibility that will not apply at the time of the immigrant visa interview or for which DOS will require additional information to establish, such as:

- INA 212(a)(1) (medical ground – requires review of medical exam) unless the record includes mention of a specific medical condition noted in the INA that would render the individual inadmissible under INA section 212(a)(1)(A), in which case the ISO should deny the I-601A because there would be *reason to believe* that the individual may be inadmissible based on medical grounds of inadmissibility.
- INA 212(a)(4) (public charge – requires review of affidavit of support)

[24] If the individual is subject to reinstatement, the individual is also inadmissible for unlawful reentry after prior removal (INA 212(a)(9)(C)), and therefore, also ineligible for a provisional unlawful presence waiver based on that ground of inadmissibility.

[25] 8 CFR 212.7(e)(4)(i)

- INA 212(a)(6)(A) (present in United States without admission or parole – will not apply once the alien leaves the United States)
- INA 212(a)(7) (missing required documents – will be verified by CBP at the port of entry or would no longer apply when the alien leaves the United States)

Reentry After Prior Removal or Prior Period of Unlawful Presence

To find "*reason to believe*" that the individual may be inadmissible for unlawful reentry after previous immigration violation (INA section 212(a)(9)(C)), the ISO should review:

- The Arrival/Departure Record information the applicant provided in **Part 1, Item Numbers 18-24,** of the form to determine whether the applicant had prior unlawful presence for more than 1 year in the aggregate (not including any current period of unlawful presence),
- DHS systems to determine whether the individual had been in removal proceedings before and had departed under a final order of removal.

If the applicant was unlawfully present for 1 year or more in the aggregate prior to his or her last entry, or had departed under a final order of removal, and the applicant indicated in **Item Number 17** that he or she last entered the United States without inspection, then there is *reason to believe* the applicant may be found inadmissible at the time of the immigrant visa interview under INA section 212(a)(9)(C).[26] In this case, USCIS will deny the I-601A.

Immigration and Criminal History

The questions in **Part 1, Item Numbers 27-30,** do not address every possible ground of inadmissibility, nor does answering "Yes" to any one of these questions mean that the applicant will definitely be found inadmissible at the time of the immigrant visa interview. These questions are only meant to give the applicant an opportunity to explain any immigration or criminal history records that USCIS may uncover during the background and security checks, and to alert the ISO to a possible ground of inadmissibility that may apply at the time of the immigrant visa interview.

[26] INA 212(a)(9)(C)(i). Any alien who was unlawfully present in the United States for a year or more and enters or attempts to reenter the United States without being admitted is inadmissible. Inadmissibility under INA section 212(a)(9)(C)(i) cannot be waived in most instances. Generally, an applicant subject to this ground of inadmissibility must seek consent to reapply to overcome this ground of inadmissibility but cannot seek consent to reapply for admission to the United States until after the applicant has remained abroad for at least 10 years.

USCIS will not pre-adjudicate immigrant visa eligibility during the provisional unlawful presence waiver process by making any formal findings or decisions regarding the applicant's admissibility to the United States. USCIS will presume that the applicant may be found inadmissible for grounds other than unlawful presence if the applicant answers "Yes" to **Item Numbers 27 or 28** and the explanation in **Part 5., Additional Information,** is consistent with the answer, or if the applicant was convicted of any crime other than minor traffic citations such as parking violations, red light/stop sign violations, expired license or registration, and similar offenses or noncriminal immigration violations. In such cases, USCIS will deny the I-601A without analyzing whether the offense is a crime involving moral turpitude (CIMT), whether multiple convictions resulted in an aggregate sentence of 5 years or more, or whether a single petty offense exception may apply in cases involving CIMTs. This type of in-depth analysis will be reserved for the DOS consular officer who adjudicates the immigrant visa application.

USCIS will not request additional information to determine possible inadmissibility if background and security checks reveal an undisclosed immigration or criminal history record, nor will USCIS request additional information to determine possible inadmissibility if the applicant answered "Yes" to questions in **Part 1, Item Numbers 27-30,** but did not explain the answer in **Part 5, Additional Information,** or provide related court records. However, in such cases, if the ISO believes the applicant meets all other basic eligibility requirements and the I-601A may be approvable if the applicant submits the missing evidence, the ISO can and should request missing evidence related to the applicant's prior immigration or criminal history (e.g. court records or disposition documents for an arrest or conviction) in order to determine whether favorable discretion is warranted.

If there is no *reason to believe* the applicant may be found inadmissible at the time of his or her immigrant visa interview on any ground other than unlawful presence, the ISO should consider the extreme hardship and discretionary factors to determine whether the I-601A should be approved based on the specific factors of the case.

4.3 Extreme Hardship (Return to Table of Contents)

ISOs should consider the applicant's claim of extreme hardship to a qualifying relative before determining whether a favorable exercise of discretion is warranted for the particular case.

Effect of Petitioner's Death on Eligibility for the Provisional UP Waiver

A. Widows/Widowers of U.S. Citizens

1. Applicants with Pending or Approved I-130s

In cases where the applicant is the widow(er) of a U.S. citizen, USCIS will only presume extreme hardship under section 204(l) if the petition was originally filed as a Form I-130 while the U.S. citizen spouse was still alive. If the applicant was the spouse of a U.S. citizen petitioner who filed an I-130 on the applicant's behalf but subsequently died, the applicant's pending or approved I-130 would be converted automatically to a widow/widower petition (I-360). In such cases, and if the petition is approved, the qualifying relative for I-601A purposes is the deceased U.S. citizen spouse petitioner. The applicant does not need to make an extreme hardship assessment showing if the applicant meets all requirements of INA section 204 (l) because extreme hardship is presumed for this category of applicants. Because extreme hardship is presumed, you may skip the extreme hardship analysis and proceed to the discretionary analysis.

2. Applicants Self-Petitioning as Widow/Widowers (I-360)

A widow or widower who was not the beneficiary of a pending or approved spousal I-130, but who filed a Form I-360 only after the citizen spouse's death, does not qualify for this presumption of extreme hardship under section 204(l). The widow or widower may still qualify for a waiver based on a showing of extreme hardship to another qualifying relative, such as a citizen parent. But the widow(er) must present evidence to establish the hardship claim. Recall, also, that a widow or widower who has remarried is no longer eligible to immigrate as a widow(er). Thus, a new citizen spouse would have to file a new Form I-130, and the new Form I-130 would have to be approved, before the former widow(er) could obtain a provisional waiver based on a claim of extreme hardship to the new spouse.

B. Children of U.S. Citizens

In the case of a Form I-130 that a citizen filed for his or her child, INA section 204(l) may give USCIS discretion to approve the petition, or leave an approval in place, despite the death of the citizen petitioner. The child would be eligible for this consideration if the child was residing in the United States when the petitioner died, and continues to reside in the United States. If a petition is approved, or an approval is reinstated, under INA section 204(l), this provision may also make it possible to grant a provisional waiver to the child, despite the petitioner's death. The child does not need to show extreme hardship to the deceased parent, if INA section 204(l) applies, because extreme hardship is presumed in such a case. Because extreme hardship is presumed, you may proceed to the discretionary analysis.

C. Parents of U.S. Citizens

INA section 204(l) may also permit USCIS to approve, or reinstate the approval of, a Form I-130 filed for the parent of a U.S. citizen who has died, if the parent was residing in the United States when the petitioner died, and continues to reside in the United States. But the parent of a U.S. citizen cannot obtain a waiver of inadmissibility for unlawful presence based on a claim of hardship to a U.S. citizen child, or to a U.S. citizen adult son or daughter. Therefore, the presumption of extreme hardship that would apply in a case involving the widow(er) or child of a U.S. citizen does not apply to a waiver application filed by the parent of a deceased U.S. citizen petitioner. The individual would have to show extreme hardship to another qualifying relative (i.e., to a living U.S. citizen spouse or the parent's own living U.S. citizen parent) to obtain a provisional unlawful presence waiver.

4.3.1 Qualifying Relative

An individual seeking a provisional unlawful presence waiver must show that his or her U.S. citizen spouse or parent (qualifying relative) would experience extreme hardship if the applicant were refused admission to the United States.

The qualifying relative does not need to be the immigrant visa petitioner. In addition, the applicant may claim extreme hardship to more than one qualifying relative, but only needs to establish extreme hardship to one qualifying relative to be eligible for the provisional unlawful presence waiver. For purposes of the I-601A, the qualifying relative has to be a U.S. citizen spouse or parent.

ISOs must carefully review **Parts 3** and **5** of the I-601A to identify the qualifying relative(s). If the qualifying relative is the I-130 petitioner, then the ISO only needs to verify that the I-130 was approved; the ISO does not need to verify the claimed relationship or citizenship of the petitioner as this was already done when the I-130 was approved. If the qualifying relative is someone other than the I-130 petitioner, the ISO must verify the claimed relationship and citizenship status of the qualifying relative by reviewing the supporting evidence.

If the applicant claims extreme hardship to a qualifying relative other than the I-130 petitioner, but does not submit sufficient evidence of the claimed relationship or the citizenship status of the relative, the ISO should request the missing evidence, but only if the I-601A does not establish eligibility based on extreme hardship to another qualifying relative.

4.3.2 Severity of Claimed Hardship

An individual seeking a provisional unlawful presence waiver must show that his or her qualifying relative would experience "extreme hardship" if the applicant were refused admission.[27]

The INA does not define the term "extreme hardship," but the ISO should consider the following guiding principles established by case law:

- Extreme hardship is *greater than common results* of the bar to admission, i.e. separation, financial difficulties, etc.[28]
- Extreme hardship *does not need to be unique or unusual* and should not be confused with the higher standard of "exceptional and extremely unusual hardship" used in cancellation of removal proceedings.[29]
- Determinations of extreme hardship should be made *based on the factors, arguments, and evidence* submitted by the applicant.[30]
- Adjudicators must assess claimed hardships *individually and collectively.* Hardship that is a common consequence of inadmissibility, by itself, generally will not lead to a finding of extreme hardship. However, when assessed cumulatively, common consequences may lead to a finding of extreme hardship.[31]
- Extreme hardship can be based on *actual or prospective injury*, but claims of prospective injury must be realistic and foreseeable.[32]

When analyzing extreme hardship claims, an ISO should be familiar with:

- The *common consequences* of inadmissibility; and
- *Factors to consider* when determining whether the claimed hardships are more severe than the common consequences of inadmissibility.

Common consequences of an applicant's inadmissibility or removal include family separation, economic detriment, difficulties of readjusting to life in the new country, the

[27] INA 212(a)(9)(B)(v)

[28] *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984); *referring to Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968); *Matter of W-*, 9 I&N Dec. 1 (BIA 1960); *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999); *Perez v INS*, 96 F.3d 390 (9th Cir. 1996).

[29] INA 240A(b)(1)(D); *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 322 (BIA 2002); *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

[30] *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996); *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999).

[31] *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

[32] *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1960).

disparate quality and availability of educational opportunities abroad, and disparate quality and availability of medical services and/or facilities.

Specific factors of the case might impact and exacerbate these common consequences of inadmissibility and make them rise to the level of extreme hardship to the qualifying relative. Examples of factors the ISO should consider include, but are not limited to:

- Health considerations. For example: Ongoing or specialized treatment required for a physical or mental condition; Availability and quality of such treatment in the foreign country; Anticipated duration of the treatment; Chronic vs. acute or long vs. short-term care.
- Financial considerations. For example: Future employability; Loss due to sale of home or business or termination of a professional practice; Decline in standard of living; Ability to recoup short-term losses; Cost of extraordinary needs such as special education or training for children with special needs; Cost of care for family members (elderly and sick parents).
- Educational considerations. For example: Loss of opportunity for higher education; Lower quality or limited scope of education options; Disruption of current program; Requirement to be educated in a foreign language or culture with ensuing loss of time or grade; Availability of special requirements, such as training programs or internships in specific fields.
- Personal considerations. For example: Close relatives in the United States, if any; Close relatives in the applicant's country of birth or citizenship, if any; Possible separation from spouse/children; Ages of involved parties; Length of residence and community ties in the United States.
- Special factors. For example: Cultural, language, religious, and ethnic obstacles; Credible fears of persecution, physical harm, or injury; Social ostracism or stigma; Access (or lack of access) to social institutions or structures (official or unofficial) for support, guidance, or protection.

The ISO should consider all evidence submitted by the applicant. Examples of evidence the ISO should consider may include, but are not limited to:

- Affidavits from the qualifying relative or other individuals with personal knowledge of the claimed hardships;
- Expert opinions;
- Evidence of employment or business ties, such as payroll records or tax statements;
- Evidence of monthly expenditures such as mortgage statements, rental agreement, bills and invoices, etc.;

- Other financial records supporting any claimed financial hardships;
- Medical documentation and/or evaluations by medical professionals supporting any claimed medical hardships;
- Records of membership in community organizations, volunteer confirmation, and evidence of cultural affiliations;
- Birth/marriage/adoption certificates supporting any claimed family ties;
- Country condition reports; and
- Any other evidence the applicant believes supports the claimed hardships.

Summary: The ISO must carefully review **Parts 4** and **5** of the I-601A and consider each claimed hardship individually and cumulatively to determine whether it amounts to extreme hardship. In addition, the ISO should consider any attachments or supporting evidence provided by the applicant. The applicant does not need to show that the claimed hardships are unique or unusual, but that the specific factors of the case are such that the hardships the qualifying relative would experience are greater than the common consequences of the bar to admission, i.e. separation, financial difficulties, etc.

4.3.3 Standard of Proof

If the I-601A and supporting evidence establish that it is "probably true" or "more likely than not" that a qualifying relative would experience extreme hardship, the applicant has met his or her burden of proof (preponderance of evidence standard)[33] and the ISO may move to the next step of the adjudication process to determine whether the I-601A should be approved as a matter of discretion.

The ISO must not require the applicant to meet a higher standard of proof than is necessary, such as the "clear and convincing evidence" standard; nor should the ISO require the applicant to show a higher hardship standard than is necessary, such as the "exceptional and extremely unusual hardship" standard used in cancellation of removal proceedings.

There is no specific amount of evidence required to support any particular extreme hardship claim. In some cases, credible testimony alone (detailed, consistent, and plausible) may be sufficient to support the truth of a particular claimed extreme hardship. However, for most extreme hardship assertions, and especially in cases where applicants claim financial or medical hardships, an affidavit alone will not be sufficient to support the truth of the extreme hardship assertion.

[33] INA 291

The ISO should use sound judgment to determine whether the evidence provided with the I-601A is sufficient to meet the "preponderance of evidence" standard. The ISO should consider the quality of the evidence provided, the connection between the evidence and the extreme hardship claimed, and the degree to which the evidence supports the truth of the applicant's extreme hardship assertions.

If the I-601A and supporting evidence do not establish that it is "more likely than not" or "probably" true that a qualifying relative would experience extreme hardship, the ISO should issue an RFE to give the applicant an opportunity to submit additional evidence.

The RFE must explain why the evidence submitted with the I-601A was insufficient, and the ISO must use RFE standards that have been cleared by FOD. For purposes of the provisional unlawful presence waiver process, USCIS is limiting the period for an applicant's response to 30 days, plus 3 days for mailing.

If an applicant does not respond to an RFE within the required time period, USCIS will deny the I-601A for abandonment. If the applicant responds to an RFE, the ISO will review the response and carefully consider any new claims of extreme hardship and supporting evidence before making a decision based on the record.

4.3.4 Burden of Proof

The applicant bears the burden of showing that the qualifying relative would experience extreme hardship if the qualifying relative were to:

- Remain in the United States without the applicant (extreme hardship due to separation); and
- Depart the United States to join the applicant abroad (extreme hardship due to relocation).

However, it has been held that any prospective claim of injury must be realistic and foreseeable.[34] USCIS should not require an applicant to establish *prospective effects* of a qualifying relative's relocation if the *prospective relocation itself* is beyond the control of the qualifying relative or because relocation should not be expected for humanitarian reasons.

In these situations, the ISO should consider the applicant to have met the second prong of the extreme hardship requirement (extreme hardship due to relocation) and only

[34] *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1960).

require the applicant to show extreme hardship due to separation. Below is a non-exhaustive list of situations when relocation may not be possible for a qualifying relative:

- The qualifying relative is serving in the U.S. Armed Forces (relocation is not realistic because the qualifying relative is not at liberty to relocate);
- The qualifying relative immigrated to the United States as a refugee from the applicant's home country (i.e. relocation is not realistic for humanitarian reasons);
- The qualifying relative has a medical condition or physical disability such that the travel and movement related to relocation would be detrimental to the qualifying relative's health and safety (relocation is not realistic for humanitarian reasons).

4.4 Discretion (Return to Table of Contents)

An individual seeking a provisional unlawful presence waiver must show that the favorable exercise of discretion is warranted in that particular case.[35] Generally, an ISO should only proceed to the discretionary analysis if the applicant has met all of the requirements for the provisional unlawful presence waiver listed above, including that the applicant's qualifying relative would experience extreme hardship if the applicant were refused admission to the United States. If the applicant has not met each of the requirements listed above, the ISO should deny the I-601A and should not conduct a discretionary analysis.

4.4.1 Weighing Favorable and Unfavorable Factors

The ISO must consider any favorable factors presented by the applicant, and weigh those factors against any unfavorable factors in the case, to determine whether approval of the I-601A is warranted as a matter of discretion.

If there are significant negative factors in the case, the ISO should first determine whether the negative factors render the applicant ineligible for failure to meet one of the other requirements listed above. For example, if the applicant has been convicted of a crime (other than minor traffic citations such as parking violations, red light/stop sign violations, expired license or registration, and similar offenses or noncriminal immigration violations), the I-601A should not be denied as a matter of discretion, but should be denied because there is *reason to believe* the applicant may be found inadmissible at the time of the immigrant visa interview for a ground other than unlawful presence.

[35] 8 CFR 212.7(e)(7)

Extreme hardship to a qualifying relative is a significant favorable factor that the ISO must take into consideration as part of the discretionary analysis, and should be given significant weight. However, a finding of extreme hardship permits, but never compels, a favorable exercise of discretion. Still, if the ISO has found extreme hardship, the ISO generally should not deny an I-601A as a matter of discretion unless there are significant unfavorable factors.

The ground of inadmissibility, itself, is properly considered an adverse factor.[36] For this reason, the applicant's unlawful presence (presumed based on the filing of the I-601A) is an unfavorable factor that the ISO must take into consideration. Besides the applicant's unlawful presence, other unfavorable factors may include, but are not limited to:

- The presence of additional significant violations of U.S. criminal, civil and/or immigration laws; and
- Evidence of poor character or undesirability as a permanent resident of this country (e.g. willful failure to pay alimony, child support or taxes).

Favorable factors include:

- Family ties in the United States;
- Residence of long duration in the United States (particularly when the applicant began residency at a young age);
- Evidence of extreme hardship to the applicant and his or her family if the applicant is found inadmissible and refused admission;
- Service in the U.S. Armed Forces;
- A history of stable employment;
- The existence of property ownership or business ties in the United States;
- Evidence of value and service to the community; and
- Other evidence attesting to the applicant's good character (e.g., affidavits from family, friends, and responsible community representatives).

4.4.2 Consistency in Discretionary Decisions

Most significant negative factors (e.g. a criminal conviction) would result in ineligibility for another reason. Therefore, USCIS should rarely deny an I-601A as a

[36] *See INS. Yang*, 519 U.S.26 (1996).

matter of discretion. To ensure consistency in the use of discretion, an ISO must obtain supervisory concurrence before denying an I-601A as a matter of discretion.

4.5 Limitations, Conditions and Validity of Approval (Return to Table of Contents)

The approval of a provisional unlawful presence waiver is subject to the limitations, conditions and validity outlined in 8 CFR 212.7(e).

4.5.1 Limitations of a Provisional Unlawful Presence Waiver

The pendency of the application for or the approval of a provisional unlawful presence waiver *DOES NOT*:

- Address any other grounds of inadmissibility besides unlawful presence (e.g., criminal history, fraud/misrepresentation, prior removals);
- Change the requirement that applicants must depart the United States to obtain an immigrant visa at a U.S. Embassy or consulate abroad;
- Give applicants any legal immigration status or allow applicants to obtain a legal status in the United States;[37]
- Create a period of stay authorized by the Secretary for purposes of INA 212(a)(9)(B);[38]
- Protect applicants from removal proceedings or confer any stay of removal;
- Allow applicants to work in the United States;[39]
- Entitle the individual to the issuance of any other interim immigration benefits such as advance parole or a travel document;[40]
- Guarantee issuance of an immigrant visa by DOS;
- Guarantee admission to the United States by U.S. Customs and Border Protection (CBP); or
- Authorize parole or advance parole to return to the United States without an immigrant visa.

4.5.2 Conditions of a Provisional Unlawful Presence Waiver Approval

[37] 8 CFR 212.7(e)(2)(i)
[38] 8 CFR 212.7(e)(2)(i)
[39] 8 CFR 212.7(e)(2)(ii); A request for a work authorization received with a Form I-601A must be rejected.
[40] 8 CFR 212.7(e)(2)(ii); A request for a travel document or advance parole received with a Form I-601A must be rejected.

The approval of an I-601A will not take effect unless and until each of the following requirements are met:[41]

- The applicant has left the United States;
- The applicant has appeared at a U.S. Embassy or consulate for an interview in connection with an application for an immigrant visa based on an approved immediate relative visa petition; and
- A U.S. consular officer has determined that, in light of the approval of the provisional unlawful presence waiver, the applicant is otherwise eligible for an immigrant visa and admissible to the United States.

4.5.3 Validity of a Provisional Unlawful Presence Waiver Approval

After the conditions of the I-601A approval have been met, the unlawful presence ground of inadmissibility is waived indefinitely subject to paragraph 8 CFR 212.7(a)(4).[42]

4.5.4 Automatic Revocation

The approval of an I-601A will be automatically revoked in the following circumstances:[43]

- The consular officer determines at the time of the immigrant visa interview that the applicant is inadmissible on grounds other than prior unlawful presence. In this case, the applicant will have to file a Form I-601, Application for Waiver of Grounds of Inadmissibility, based on all applicable inadmissibility grounds including inadmissibility based on the unlawful presence bars (INA section 212(a)(9)(B));
- The immigrant visa petition approval associated with the I-601A is at any time revoked, withdrawn, or rendered invalid and not otherwise reinstated for humanitarian reasons or converted to a widow/widower petition;
- DOS terminates the immigrant visa registration in accordance with INA section 203(g), and has not reinstated the immigrant visa registration; or
- The applicant, at any time before or after approval of the I-601A or before an immigrant visa is issued, reenters or attempts to reenter the United States without being inspected and admitted or paroled.

[41] 8 CFR 212.7(e)(12)
[42] 8 CFR 212.7(e)(13)
[43] 8 CFR 212.7(e)(14)

4.5.5 Service Motion to Reopen/Reconsider

USCIS may reopen and reconsider the decision on an I-601A if USCIS later determines that the decision was made in error.[44] If USCIS reopens an approved I-601A, USCIS will provide the applicant 30 days to respond with a brief before rendering a new decision on the I-601A.[45]

4.6 Results of Provisional Unlawful Presence Waiver Denial or Withdrawal (Return to Table of Contents)

If USCIS denies an I-601A, or the applicant withdraws an I-601A, DOS will schedule the applicant to appear for his or her immigrant visa interview unless the applicant has filed a new I-601A or notifies DOS of his or her intent to file a new I-601A.

4.6.1 May Not File Motion/Appeal

An applicant may not file a motion to reopen/reconsider the denial of an I-601A or file an appeal to seek administrative review of the decision.[46]

4.6.2 May File New I-601A

An applicant may file a new I-601A if USCIS denies the I-601A, or if the applicant withdraws his or her I-601A before USCIS makes a decision on his or her application.[47]

4.6.3 May Seek I-601, Application for Waiver of Grounds of Inadmissibility after the Consular Interview.

An applicant who is ineligible to receive a provisional unlawful presence waiver may still seek a waiver of inadmissibility after the immigrant visa interview if the consular officer finds that the individual is inadmissible for a ground that may be waived. The form used for this purpose is Form I-601, Application for Waiver of Grounds of Inadmissibility.

The denial of Form I-601A will not affect the adjudication of an I-601 that is later filed after the immigrant visa interview.

4.6.4 Notice to Appear

[44] 8 CFR 212.7(a)(4)(v); 8 CFR 212.7(e)(13)
[45] 8 CFR 103.5(a)(5)(ii)
[46] 8 CFR 212.7(e)(11)
[47] 8 CFR 212.7(e)(9); 8 CFR 212.7(e)(10)

An applicant whose I-601A is denied or withdrawn is subject to current USCIS policy governing issuance of a NTA.

Appendix A: Helpful Links (Return to Table of Contents)

Immigration and Nationality Act

INA 212(a)(9)(B)

Title 8, Code of Federal Regulations

8 CFR 212.7(e)

USCIS Adjudicator's Field Manual

40.9 Section 212(a)(9) of the Act - Aliens Unlawfully Present after Previous Immigration Violations

Precedent Decisions

Attorney General and BIA Precedent Decisions: EOIR Virtual Law Library

Summary of Precedent Decisions Relating to Extreme Hardship: NBC Division 1 ECN Page

RFE and Denial Standards

I-601A RFE Standards: NBC Division 1 ECN Page

I-601A Denial Standards: NBC Division 1 ECN Page

Information about Consular Processing

Immigrant Visa Processing - The National Visa Center (NVC)

Appendix B: I-601A Adjudication Worksheet

Application Information		
A #:	**Receipt #:**	**NVC Case #:**
ISO Initials: _____	**Decision Date:** ☐ Approve ☐ Deny	**SISO Review Date:** SISO Initials _____

Security/System Checks Reviewed				
Security Checks				
	Date	Initials	Results	
IBIS / TECS			☐ No record	☐ Record (Results attached)
Fingerprints			☐ No record	☐ Record (Results attached)
FBI Name Check			☐ No record	☐ Record (Results attached)
System Checks				
	Date	Initials	Results	
CIS				
NFTS				
EOIR				
CCD				
CLAIMS				
Other (identify):				

1. Is the applicant the beneficiary of an approved immediate relative petition (I-130 or I-360)?

☐ **Yes**: (circle one) CR-1, CR-2, IR-1, IR-2, IR-5, IW-1. **Go to step 2.**

☐ **No**: Deny the I-601A.

2. Did the applicant pay the DOS immigrant visa processing fee?

☐ **Yes**: Copy of DOS IV fee receipt is in file or CCD report shows fee paid. **Go to step 3.**

☐ **No**: Deny the I-601A.

3. Did the NVC act to schedule the immigrant visa interview before January 3, 2013?

☐ **Yes**: Verify in CCD and deny the I-601A.

☐ **No: Go to step 4.**

4. Was the applicant ever in removal/exclusion/deportation proceedings?

☐ **Yes: Go to step 5.**

☐ **No: Go to step 7.**

5. Is the applicant subject to a final order of removal/deportation/exclusion or to the reinstatement of a prior removal order?

☐ **Yes:** Deny the I-601A.

☐ **No: Go to step 6.**

6. Is the applicant currently in removal proceedings (not dismissed or terminated) that are not administratively closed, or were administratively closed but have since been re-calendared?

☐ **Yes:** Deny the I-601A.

☐ **No: Go to step 7.**

7. Does the applicant have a pending I-485?

☐ **Yes**: Verify with FCO or through file review and deny the I-601A.

☐ **No: Go to step 8.**

8. Is there *reason to believe* the applicant may be found inadmissible at the time of his/her immigrant visa interview for any INA 212(a) ground other than unlawful presence?

☐ **Yes**: (circle one) fraud or misrepresentation / alien smuggling / criminal / prior deport / other
Deny the I-601A.

☐ **No: Go to step 10.**

9. Was a qualifying relationship established?

☐ **Yes**: (circle one) U.S. Citizen spouse / U.S. Citizen parent. **Go to step 11.**

☐ **No**: Issue RFE or deny the I-601A.

10. Was extreme hardship to a qualifying relative established?

☐ **Yes:** List factors below; or ☐ **Yes**: Surviving relative and meets INA 204(l). **Go to step 12.**

☐ **No:** Issue RFE or deny the I-601A (will generally issue RFE when initial evidence is insufficient).

Health/Medical Considerations	
Financial Considerations	
Educational Considerations	
Personal Considerations	

Special Factors	

11. Is favorable discretion warranted?

☐ **Yes**: Favorable factors outweigh unfavorable factors. **Approve** the I-601A.

☐ **No**: Unfavorable factors outweigh favorable factors (attach explanation). Obtain supervisory concurrence and deny the I-601A.

Favorable factors (list):

Unfavorable factors (list):

Appendix C: Background Information for Form I-601A (Return to Table of Contents)

Immediate Relative Petition

If a U.S. citizen wishes to sponsor an alien spouse, parent, or child to immigrate to the United States as a lawful permanent resident, he or she must first file Form I-130, Petition for Alien Relative. USCIS determines if an alien qualifies for classification as an immediate relative of the U.S. citizen.[48]

Consular Immigrant Visa Process

If USCIS approves the I-130 (or I-360), USCIS forwards the approved petition to the NVC for consular immigrant visa processing unless the petitioner indicates that the beneficiary will seek adjustment of status in the United States. The NVC initiates the immigrant visa process and schedules the alien for an immigrant visa interview with a DOS consular officer at a U.S. Embassy or consulate abroad. During the immigrant visa interview, a consular officer determines whether the alien is subject to any ground of inadmissibility under INA section 212(a) and whether the alien is otherwise eligible for the immigrant visa.

Inadmissibility Waiver Post-departure Adjudication

If the consular officer finds that the alien is subject to any ground of inadmissibility, the consular officer advises the alien that he or she may file Form I-601, Application for Waiver of Grounds of Inadmissibility directly with USCIS if a waiver is authorized for the relevant ground of inadmissibility. The alien must remain abroad while USCIS adjudicates the I-601 request for a waiver.

As of June 2012, USCIS adjudicates Forms I-601 filed by immigrant visa applicants at the Nebraska Service Center.[49] If USCIS approves the waiver, the consulate may issue the immigrant visa. If the waiver is denied, the alien may appeal the decision to the USCIS Administrative Appeals Office (AAO).

If the AAO affirms the denial, and the alien is only inadmissible for prior unlawful presence in the United States, the alien must remain outside of the United States for 3- or 10 years from the date of his or her last departure, depending on the length of unlawful presence. The denial of a waiver is made without prejudice to the filing of a new waiver request in the future.

[48] Certain immediate relatives, including widows/widowers of deceased U.S. citizens, can self-petition by using Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant.*

[49] USCIS international offices may accept and adjudicate Form I-601 in extraordinary circumstances for urgent humanitarian reasons.

Difficulty with Post-Departure Adjudication of Waiver

The 3- and 10-year unlawful presence bars under INA section 212(a)(9)(B)(i) do not apply unless and until the alien departs from the United States. At the same time, many aliens who would trigger these bars if they departed from the United States are, for other reasons, statutorily ineligible to apply for adjustment of status to lawful permanent residence while in the United States.[50] Consequently, these aliens must depart the United States to seek permanent resident status by applying for immigrant visas at a U.S. Embassy or consulate abroad. Thus, the very action required to obtain an immigrant visa, departure from the United States, also triggers a 3- or 10-year bar that renders the applicant ineligible for an immigrant visa unless the bar can be waived.

Provisional Unlawful Presence Waiver Solution

On January 3, 2013, DHS published a final rule in the Federal Register to amend 8 CFR section 212.7 to allow for provisional unlawful presence waivers. This rule, which added a new paragraph (e), became effective on March 4, 2013.

The provisional unlawful presence waiver process is designed to facilitate immigrant visa issuance immediately after the applicant's consular interview if the applicant is otherwise eligible for the requested visa. This process change should reduce the overall visa processing time, the period of separation of U.S. citizens from their immediate relatives, and the financial and emotional impact of the immediate relatives' absence from the United States on U.S. citizen relatives and their families. It also may encourage immediate relatives who are unlawfully present in the United States to take affirmative steps to seek immigrant visas.

[50] For example, unless eligible under INA 245(i), an immediate relative may not adjust status if he or she entered without inspection, as a crewman (D-1), or as a fiancée (K-1) who is not seeking adjustment based on marriage to the I-129F petitioner.