



**VISASERVE**  
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# Inadmissibility Basics & Extreme Hardship Waivers.

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# Why Waiver?

- § 245 Problem: Not able to *Adjust Status* in the United States.
- Consular Post Problem: Found *Inadmissible* at the Consular Post abroad.

# Top Non-Criminal Inadmissibility Issues

## INA § 212(a)(9)(B): Unlawful Presence Bars

**Definition:** ULP is defined as presence after the expiry of the period of stay authorized by the Secretary of Homeland Security or any presence without being admitted or paroled.

# Top Non-Criminal Inadmissibility Issues

- **Three-Year Bar**
  - >180 days<1 Year of ULP; & Voluntarily *departed* U.S. prior to commencement of Removal proceedings.
- **Ten-Year Bar**
  - >1 Year of ULP; & *either* Voluntarily departed U.S. or have been removed from the U.S.
  - Applies even if the individual leaves after the commencement of removal proceedings.

# Top Non-Criminal Inadmissibility Issues

- INA § 212(a)(6)(C): Fraud & Misrep.
  - Fraud or willfully misrepresenting a *material* fact.
  - Seeks to procure/has sought to procure/has procured
  - Visa/Documentation/ Admission into U.S/ other benefits provided under this Act.

## Examples:

Using false name/LPR card/passport to gain entry;  
Providing false birth certificates to obtain visa; false statement to DOS officer; B-2 to F-1 within 60 days, etc.

# “Extreme Hardship” Waiver (I-601 Waiver)

- Applies to Fraud & Misrepresentation; and Unlawful Presence Inadmissibility grounds.
- Till recently No standard definition ‘EH’ in Statute/Regulations/ Memos OR provided by Federal Courts.
- For more than one and half decade practitioners have been following the factors laid down by the BIA in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999).

# Cervantes-Gonzalez Factors

Factors include, but not limited to:

- Applicant's Family Ties in the U.S.
- QR's Family Ties outside the U.S.
- Financial Impact of Departure: *Jobs/Business/Professional licenses.*
- Medical/Psychological Condition(s): *Quality Care/Insurance/Pre-existing Conditions.*
- Educational/Environmental Factor(s).
- Country Conditions (or local Conditions?)

# USCIS FACTORS:

USCIS issued policy guidance in the USCIS policy manual on determinations of extreme hardship effective December 5, 2016.

## **Factors include:**

- Family ties and impact
- Social and cultural impact
- Economic impact
- Health Conditions & Care
- Country Conditions

## **Particularly Significant Factors:**

- Qualifying Relative granted Iraqi or Afghan special immigration status, T or Asylum status
- Qualifying Relatives or related Family Member's Disability
- Qualifying Relative's Military service
- DOS Travel Warnings
- Substantial Displacement of Care of Applicant's children



# Extreme Hardship to Qualifying Relative(s)

- Applicant's U.S. Citizen/LPR spouse or parent.
- Not Children.
- Can funnel hardship of children through Qualifying Relative (s).
- VAWA Exception: Applicable only for Fraud & Misrep.
- Approved VAWA self-petitioner can demonstrate extreme hardship to *herself* or her USC/LPR parent or *child*.

# Basic Mantra for Extreme Hardship Waivers

- Can't *LIVE* in the United States & Can't *LEAVE* the United States.
- Discuss BOTH for each factor analyzed.
- Discuss balancing test (favorable Vs. Unfavorable factors).

# Provisional Unlawful Presence Waiver: *Why “Provisional”?*

Because the Waiver does not take effect until after:

- the applicant departs the United States;
- appears for his or her immigrant visa interview; and
- is determined by the DOS Consular Officer to be otherwise admissible to the United States.

# *Can Waive...*

- ONLY Unlawful Presence (3/10 Year Bar) triggered *upon departure* from the U.S. (INA § 212 (a)(9)(B)(i)(I) & (II)).
- Cannot take advantage if one requires multiple waivers.

# Earlier Limited to...

Immediate Relatives (spouses, *children* and parents of U.S. citizens) ONLY.

# Expansion to Include...

- Principal Beneficiary, derivative spouse or child of an approved I-130, I-140, or I-360;
- DV lottery applicant;
- Must demonstrate extreme hardship to U.S. Citizen or LPR spouse or parent.

# Burden of Proof

- Applicant must establish eligibility for a waiver by a preponderance of the evidence
- Evidence that leads officer to believe that it is “more likely that not” that the assertion the applicant seeks to prove is true.

# Questions?

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