



LATIN  
AMERICAN  
IMMIGRATION  
ASSOCIATION

UNIENDO FAMILIAS

ESSENTIALS OF IMMIGRATION DOCUMENT PREPARATION COURSE

ADVANCED MODULE: CONSULAR PROCESSING  
AND PROVISIONAL UNLAWFUL PRESENCE WAIVERS

# COMPLEXITY OF COMPLETING CONSULAR PROCESSING

- Length of time between the approval of the I-130 and availability of a Visa #
  - Someone else completed initial forms and client doesn't have copies
- Challenges with obtaining documents and information from abroad
  - Civil Documents
  - Police Certificates
- Confusion surrounding the notices and what is required by the NVC
- Differences between Immigrant and Non-immigrant visa processing
- Need LOTS of additional information that the client may not have readily available





It is possible that a significant amount of the information needed for the Department of State (DS) forms for consular process will need to be obtained from a family member or from abroad. **If your client's relative is consular processing, it is best to give them the questionnaire to complete as soon as possible. This will prevent delays in filing the DS-160 or DS-260.**



# IMMIGRANT VISA CONSULAR PROCESSING



# IMMIGRANT VISA (IV) PROCESSING

- The IV process begins in the U.S. when a USC or LPR files an I-130 for their relative
- The I-130 is usually approved in about 7 – 9 months
- After approval, USCIS I-797, Notice of Action – I-130 Approval Notice
  - I-130 Petition has been approved and the file has been forwarded to the Dept. of State – NVC for further processing; OR
  - I-130 Petition has been approved, but a Visa # is not available and that you will be notified when a Visa # is available (\*\*remember is 20+ years for certain relatives)

OMB No. 1615-0012, Expires 12/31/2015

## I-130, Petition for Alien Relative

LOCK - FOR USCIS OFFICE ONLY	
Fee Stamp	
Petition was filed on: _____ (priority date)	
<input type="checkbox"/> Personal Interview	<input type="checkbox"/> Previously Forwarded



# IMMIGRANT VISA (IV) PROCESSING

Department of Homeland Security  
U.S. Citizenship and Immigration Services

I-797, Notice of Action

UNITED STATES OF AMERICA			
RECEIPT NUMBER MSC-13- 225		CASE TYPE I130 PETITION FOR ALIEN RELATIVE	
RECEIPT DATE March 25, 2013	PRIORITY DATE March 21, 2013	PETITIONER AC	
NOTICE DATE January 2, 2014	PAGE 1 of 1	BENEFICIARY A	
XIN WANG 1428 SOUTH JONES BLVD LAS VEGAS NV 89146		Notice Type: Approval Notice	
<p>The above petition has been approved. We have sent the original visa petition to the Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. NVC will then forward the approved petition to that consulate.</p> <p>The NVC will contact the person for whom you are petitioning (beneficiary) concerning further immigrant visa processing steps.</p>			



# IMMIGRANT VISA (IV) PROCESSING

## VISA # AVAILABLE



30 – 45 Days after a Visa # is available:

NVC sends the following:

Instruction Letter

Document Coversheet/Checklist

Invoices

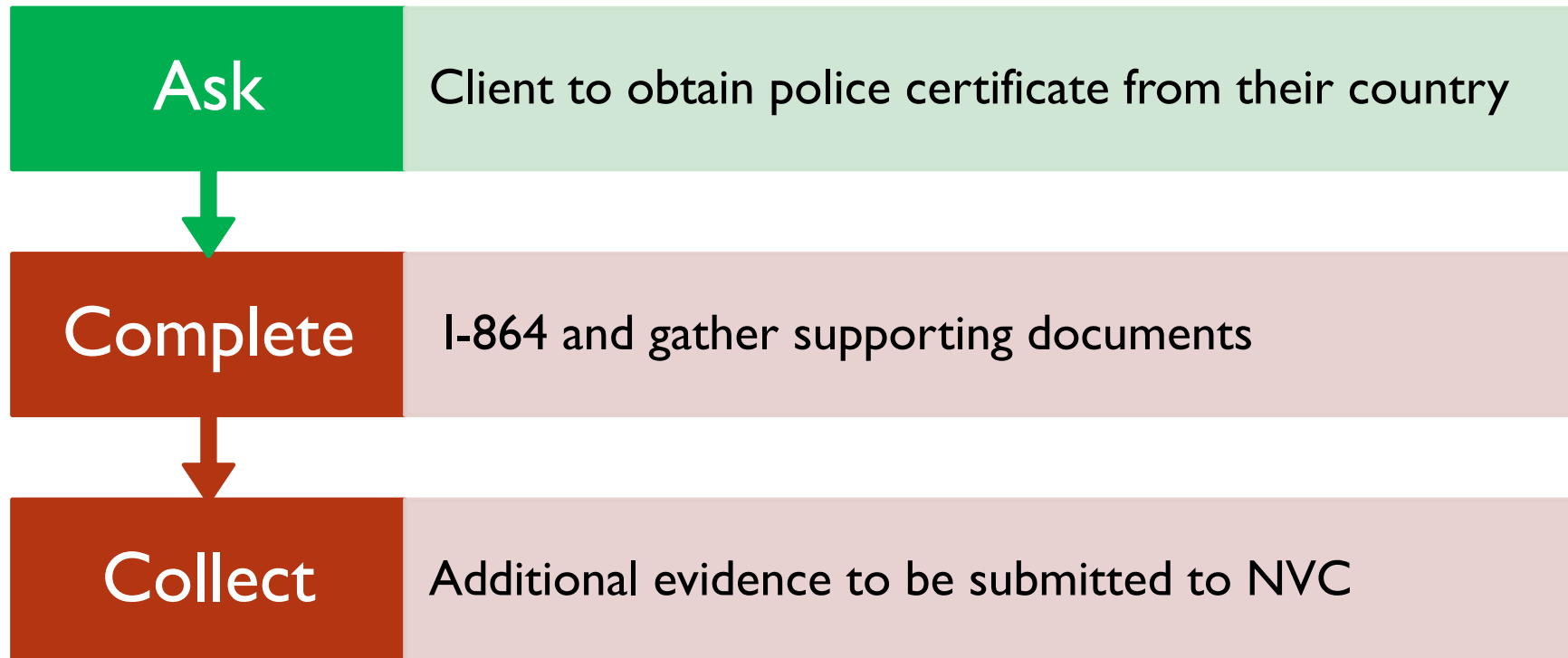
Affidavit of Support (AOS) - \$120

IV Fees - \$325



# IMMIGRANT VISA (IV) PROCESSING

## VISA # AVAILABLE



# IMMIGRANT VISA (IV) PROCESSING

## VISA # AVAILABLE

Pay

AOS and IV Fees with Checking Account

Complete

DS-260 Online [www.ceac.state.gov](http://www.ceac.state.gov)

Submit

I-864 & Supporting Docs, Civil Documents and Police Certificate to NVC – Most Embassies/Consulates are requiring electronic upload

Use

Document Checklist / Coversheet when submitting documents to NVC via mail



September 22, 2015



**Document Cover Sheet**

Please put this document cover sheet on top of your documents when you send them to us. This cover sheet is for case KNG2015604019.

When you send your documents to us, place them in the order shown below. Mark the checkbox [ X ] under Enclosed if you are sending the document to us. Mark the checkbox [ X ] under Unavailable if you cannot obtain the document. Mark the checkbox [ X ] under Not Applicable if the document is not applicable or not needed for your case.

Order	Document	Enclosed	Unavailable	Not Applicable
1.	Document Cover Sheet.....	[ ]		
2.	Financial Documents:			
	Affidavit of Support.....	[ ]	[ ]	[ ]
	IRS Tax Transcript.....	[ ]	[ ]	[ ]
	Federal Income Tax Returns.....	[ ]	[ ]	[ ]
	Form W2.....	[ ]	[ ]	[ ]
	Evidence of income.....	[ ]	[ ]	[ ]
	Proof of relationship.....	[ ]	[ ]	[ ]
	Proof of U.S. status.....	[ ]	[ ]	[ ]
	Social Security Earnings Statement.....	[ ]	[ ]	[ ]
	Proof of assets.....	[ ]	[ ]	[ ]
3.	Supporting Documents			
	Adoption documentation.....	[ ]	[ ]	[ ]
	Birth certificates.....	[ ]	[ ]	[ ]
	Court and prison record(s).....	[ ]	[ ]	[ ]
	Marriage certificate.....	[ ]	[ ]	[ ]
	Marriage termination documents.....	[ ]	[ ]	[ ]
	Military records.....	[ ]	[ ]	[ ]
	Petitioner documents.....	[ ]	[ ]	[ ]
	Photocopy of valid passport.....	[ ]	[ ]	[ ]
	Photographs.....	[ ]	[ ]	[ ]
	Police Certificate(s).....	[ ]	[ ]	[ ]
	Translations.....	[ ]	[ ]	[ ]
	Photocopies.....	[ ]	[ ]	[ ]
4.	Other Documents.....	[ ]	[ ]	[ ]

F2A

KNG2015604019



# NVC DOCUMENT COVER SHEET



# IMMIGRANT VISA (IV) PROCESSING VISA # AVAILABLE

Timing is VERY IMPORTANT



If the beneficiary is filing an unlawful presence waiver – File the waiver with USCIS as soon as the DS-260 is filed. USCIS will notify the NVC that a waiver application has been filed. The NVC will not schedule an interview until USCIS notifies them that the waiver has been approved.



# IMMIGRANT VISA (IV) PROCESSING

## VISA # AVAILABLE

### ■ Paying IV Fees

- Paid with a Checking Account
  - Can pay with Money Order – delays processing
  - Cannot Use a Credit Card



# IMMIGRANT VISA (IV) PROCESSING

## VISA # AVAILABLE

- Client does not have a bank account
  - ISP can pay fees with their “Trust Account”
    - Separate Business Account Designated to hold CLIENT’S money
    - ISP fees reside until earned - if fees are collected in advance



## NATIONAL POLICE CERTIFICATE

This is to certify that the name of:

Surname:

LIRISTIS

Given Names:

KOSTAS

Date of Birth:

25/11/1969

Does **NOT APPEAR** on the disclosable records of any Australian Police jurisdiction.

This document is valid as at 16/02/2009

Application Number: CR272344

  
per KARL J O'CALLAGHAN  
COMMISSIONER OF POLICE

### Advisory Notes:

1. Disclosable court history are those court outcomes that can be disclosed in compliance with various State and Commonwealth legislation, and/or the policies governing the disclosure of court outcomes by police jurisdictions.
2. There is a time lapse between the recording of court outcomes by courts and the updating of the criminal records databases of police jurisdictions and the national reference system. This certificate only reflects the completeness and accuracy of these records on the date of issue.

# OBTAINING A FOREIGN POLICE CERTIFICATE

# OBTAINING FOREIGN POLICE CERTIFICATES

HTTPS://TRAVEL.STATE.GOV/CONTENT/VISAS/EN/IMMIGRATE/IMMIGRANT-PROCESS/DOCUMENTS/SUPPORTING\_DOCUMENTS.HTML

← → ↻ 🔒 https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process.html

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 **Travel.State.Gov**  
U.S. DEPARTMENT OF STATE — BUREAU OF CONSULAR AFFAIRS

U.S. Passports   International Travel   **U.S. Visas**   Intercountry Adoption   International Parental Child Abduction

Tourism & Visit   Business   Employment   Study & Exchange   **Immigrate**   Other Visa Categories   U.S. Visa: Reciprocity and Civil Documents by Country

[Travel.State.Gov](#) > [U.S. Visas](#) > [Immigrate](#) > The Immigrant Visa Process

## Family Immigration

### The Immigrant Visa Process

Petition

After Your Petition is Approved

Collect and Submit Forms and Documents to the NVC

Interview

### Diversity Visa Program - Entry

Employment-Based Immigrant Visas

Important Announcement

## The Immigrant Visa Process

Petition	After Your Petition is Approved	Collect and Submit Forms and Documents to the NVC	Interview
Submit a Petition	Begin National Visa Center (NVC) Processing	Step 3: Submit Visa Application	Prepare for the Interview
	Consular Electronic Application Center (CEAC) Processing	Step 3: Submit Visa Application Form	Applicant Interview
Step 1: Choose an Agent		Step 4: Collect Financial Documents	
Step 2: Pay Fees		Step 5: Collect Supporting Documents	
		Step 6: Submit Documents to the NVC	

*Foreign citizens who want to live permanently in the United States must first obtain an immigrant visa. This is the first step to becoming a lawful permanent resident.*

Immigrating to the United States is an important and complex decision. In this section, you will learn about who may immigrate to the United States, the different types of immigrant visas, the required forms, and the steps in the immigrant visa process. **Because most immigrants receive visas in the family or employment based visa categories, they are a key focus of this section.** To be eligible to apply for an immigrant visa, a foreign citizen must be sponsored by a U.S. citizen relative, U.S. lawful permanent resident, or a prospective employer, with a few exceptions, explained below. The sponsor begins the immigration process (USCIS).

<https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/collect-and-submit-forms-and-documents-to-the-nvc/step-3-submit-visa-application-form.html>

i-765 (5).pdf

i-130 (4).pdf

i-130 (3).pdf

Unlawful Presence.docx

09091869 (1).pdf

Jamaica 2012 345.jpg

# OBTAINING FOREIGN POLICE CERTIFICATES

[HTTPS://TRAVEL.STATE.GOV/CONTENT/VISAS/EN/IMMIGRATE/IMMIGRANT-PROCESS/DOCUMENTS/SUPPORTING\\_DOCUMENTS.HTML](https://travel.state.gov/content/visas/en/immigrate/immigrant-process/documents/supporting_documents.html)

[https://travel.state.gov/content/visas/en/immigrate/immigrant-process/collect-and-submit-forms-and-documents-to-the-nvc/step-5-collect-supporting-documents.html#docfinder](#)

[Immigrant Visa Process](#) > [Collect and Submit Forms and Documents to the NVC](#) > Step 5: Collect Supporting Documents



## Immigrant Visa Process

Petition	After Your Petition is Approved	Collect and Submit Forms and Documents to the NVC	Interview
Submit a Petition	Begin National Visa Center (NVC) Processing	Step 3: Submit Visa Application Form	Prepare for the Interview
	Consular Electronic Application Center (CEAC) Processing	Step 4: Collect Financial Documents	Applicant Interview
	Step 1: Choose an Agent	<b>Step 5: Collect Supporting Documents</b>	After the Interview
	Step 2: Pay Fees	Step 6: Submit Documents to the NVC	

## Step 5: Collect Supporting Documents

After you collect your financial forms and supporting financial evidence, you and each family member immigrating with you to the United States should collect the civil documents that are required to support your visa application. You need to:

- Gather the documents that apply to you using the information below.
- Send a **photocopy** of all required civil documents to NVC. (see submission instructions in [Step 6](#)).
- Bring the **original** documents (or certified copies) plus a photocopy to your visa interview at the U.S. Embassy or Consulate.

All documents not written in English, or in the official language of the country in which you are applying for a visa, must be accompanied by certified translations. The translation must include a statement signed by the translator stating that:

- The translation is accurate, and
- The translator is competent to translate.

Your civil documents must be issued by an appropriate authority in your country. Use the Document Finder tool below to learn about the requirements for each country.

Then review each category of civil documents listed below, and obtain any that apply to you or your immigrating family member. You will submit photocopies of these documents to NVC in [Step 6](#).

### Document Finder

Please go to [U.S. Visa: Reciprocity and Civil Documents by Country](#) and select the country that issued your civil document.

**Important Notice on Missing Documents:** If a required document is unavailable per the country-specific guidelines in the Document Finder tool, you do not need to submit them to NVC. However, if

[Español](#)

[Who's](#)

[National \(NVC\) has them on Contact](#)

[More In](#)

[Country How to S A-Z Index](#)

# OBTAINING FOREIGN POLICE CERTIFICATES

[HTTPS://TRAVEL.STATE.GOV/CONTENT/VISAS/EN/IMMIGRATE/IMMIGRANT-PROCESS/DOCUMENTS/SUPPORTING\\_DOCUMENTS.HTML](https://travel.state.gov/content/travel/en/immigrate/immigrant-process/documents/supporting_documents.html)



[Travel.State.Gov](#) > [U.S. Visas](#) > U.S. Visa: Reciprocity and Civil Documents by Country

- A B C D E F
  - G H I J K L
  - M N O P Q R
  - S T U V W X
  - Y Z All
- Filter Countries
- Afghanistan
  - Albania
  - Algeria
  - Andorra
  - Angola
  - Anguilla
  - Antigua and Barbuda
  - Argentina
  - Armenia**
  - Aruba
  - Australia
  - Austria

## U.S. Visa: Reciprocity and Civil Documents by

### What is Reciprocity?

Nonimmigrant visa applicants from certain countries\*/areas of auth reciprocity: when a foreign government imposes fees on U.S. citizen similar types of visas.

### How Do I Find Out if I Have to Pay a Reciprocity Fee?

To view the Reciprocity Page for your country\* of nationality, select y from the column on the left

### Visa Classifications

A B C D E F G H I J K L M

Visa Classification

- A-1
- A-2
- A-3.1

Select the type of visa you have applied for, such as a B-1/B-2 (temp

### Visa Classifications

# OBTAINING FOREIGN POLICE CERTIFICATES

[HTTPS://TRAVEL.STATE.GOV/CONTENT/VISAS/EN/IMMIGRATE/IMMIGRANT-PROCESS/DOCUMENTS/SUPPORTING\\_DOCUMENTS.HTML](https://travel.state.gov/content/travel/en/immigrate/immigrant-process/documents/supporting_documents.html)

	ALL +/-
General Documents	+
Birth, Death, Burial Certificates	+
Marriage, Divorce Certificates	+
Adoption Certificates	+
Identity Card	+
Police, Court, Prison Records	+
Military Records	+
Passports & Other Travel Documents	+
Other Records	Passports & Other Travel Documents +
Visa Issuing Posts	+
Visa Services	+

# OBTAINING FOREIGN POLICE CERTIFICATES

[HTTPS://TRAVEL.STATE.GOV/CONTENT/VISAS/EN/IMMIGRATE/IMMIGRANT-PROCESS/DOCUMENTS/SUPPORTING\\_DOCUMENTS.HTML](https://travel.state.gov/content/visas/en/immigrate/immigrant-process/documents/supporting_documents.html)

Identity Card +

Police, Court, Prison Records -

## Police Records

### Available

**Fees:** Fees vary depending on location and processing time. Please see the Ministry of National Security's website for further information: <http://www.mns.gov.jm/content/how-obtain-police-record>

**Document Name:** Officially called a police record

**Issuing Authority:** Jamaican Constabulary Force (Jamaican Police)

**Special Seal(s) / Color / Format:** The issued certificate measures 11 x 8.5 inches with a heading of "The Jamaican Constabulary Force." A photograph of the applicant is digitally printed on the left-hand side of the document and a hologram is located on the right-hand side of the document. It is printed on security paper and bears the digital signature of the Assistant Commissioner of Police and/or his/her authorized signing officials.

**Issuing Authority Personnel Title:** There is no issuing authority personnel title

**Registration Criteria:** There is no registration criteria

**Procedure for Obtaining:** Residents of Jamaica should first pay for a police certificate at any Tax Office in Jamaica. They must present a passport, two passport-sized photographs, Taxpayer Registration Number (TRN), and evidence, such as a form letter of instructions to visa applicants, that the Embassy requires them to obtain police certificates for immigration purposes. There are next day, express and regular services available.

After the fee is paid, the applicant should take the receipt and documents to the Technical Services Division of the Criminal Records Office at 34 Duke Street in downtown Kingston, where the applicant is fingerprinted. At the end of the specified return period, applicants should return to 34 Duke Street to collect their police certificate.

Jamaicans living abroad and former residents of Jamaica may also obtain police certificates, but will need someone in Jamaica to act on their behalf. The applicant should furnish the person applying for the record on their behalf with fingerprints (notarized), two passport size photographs, a copy of the biographic page of their passport, and a letter of consent authorizing the application. If the applicant has a TRN number, then the fee can be paid at any Tax Office in Jamaica as described above. If the applicant does not have a TRN number, then the fee should be paid at the Ministry of National Security, 2 Oxford Rd., Kingston 5. After the fee is paid, the documents are to be taken to 34 Duke Street in downtown Kingston for processing.

In the absence of a "clean" police certificate, a Conviction Letter from the Criminal Investigation Branch will outline an applicant's conviction(s), as long as these convictions are not spent or expunged from his/her criminal records.

**Certified Copies Available:** Certified copies are available

**Alternate Documents:** There are no alternate documents

**Exceptions:** None

**Comments:** More information can be found on the Ministry of National Security's website: <http://www.mns.gov.jm/content/how-obtain-police-record>

## Court/Prison Records

### Available

**Fees:** Fees may vary, depending on the court and the record requested.

# THE INTERVIEW ABROAD



Within 90-120 days of being placed in the interview cue - the Petitioner and Beneficiary receive interview instructions

Date, Time and Place of Interview

Where to get their medical exam

Documents and additional fees to bring to the interview



# THE INTERVIEW ABROAD



- Applicant must prove that he/she is eligible for a green card
- At the conclusion of interview:
  - Green Card is approved
    - New LPR has 6 months to travel to US
  - Contingent approval
    - Submit requested info ASAP
  - No decision is made at that time  
or
  - Green Card is denied



# NON-IMMIGRANT VISA CONSULAR PROCESSING



# NON-IMMIGRANT VISA (NIV) PROCESSING

Begins when a Non-immigrant Petition is Filed by a US Family Member or employer

Approval is 5 – 12+ months depending on the visa

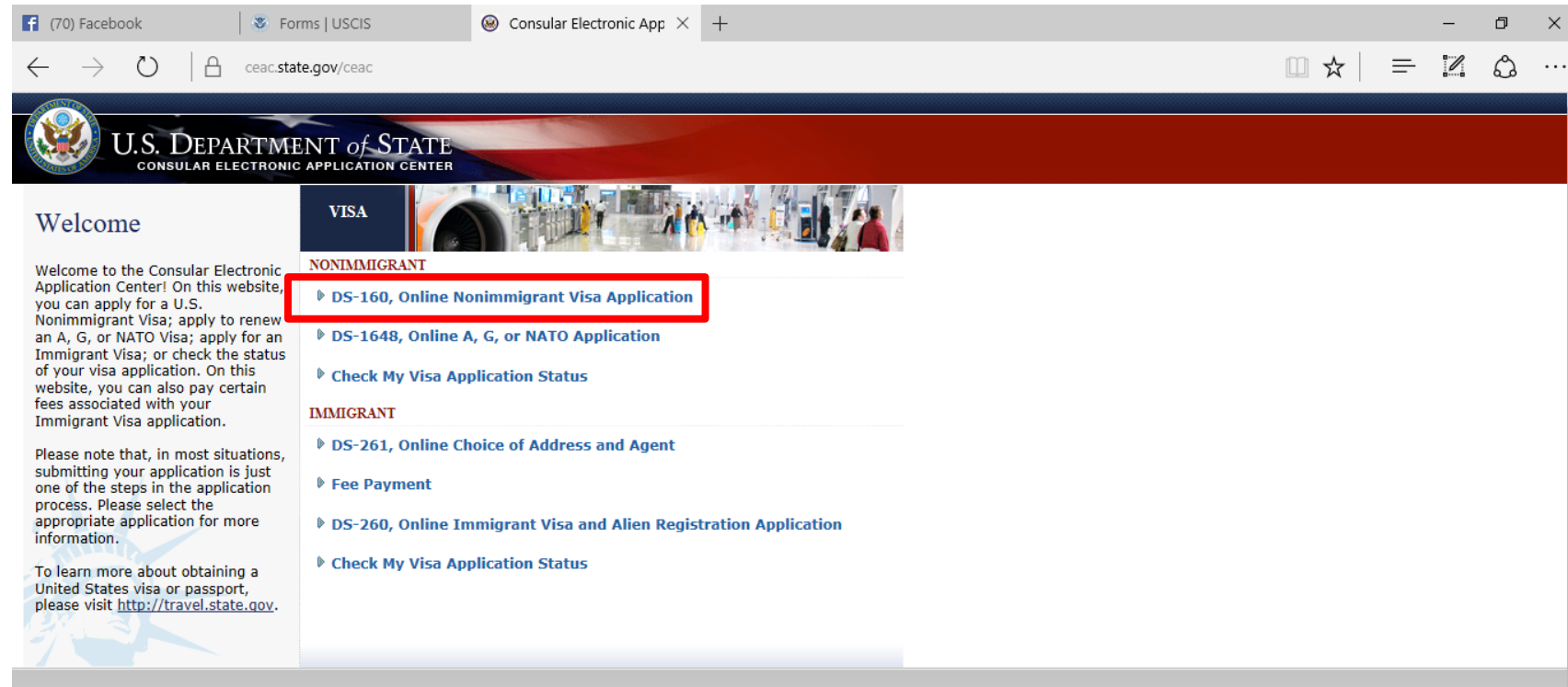
After approval – File DS-160 ASAP ( or within the time frame specified on approval notice – Pay Fees

Submit Form I-134 or I-864, Affidavit of Support (if required)

Beneficiary contacts embassy to make an appointment.



# NON-IMMIGRANT VISA (NIV) PROCESSING



The screenshot shows a web browser window with the URL [ceac.state.gov/ceac](http://ceac.state.gov/ceac). The page header includes the U.S. Department of State logo and the text "U.S. DEPARTMENT of STATE CONSULAR ELECTRONIC APPLICATION CENTER". A navigation menu shows "VISA" selected. The main content area is divided into "NONIMMIGRANT" and "IMMIGRANT" sections. Under "NONIMMIGRANT", the link "DS-160, Online Nonimmigrant Visa Application" is highlighted with a red box. Other links include "DS-1648, Online A, G, or NATO Application" and "Check My Visa Application Status". Under "IMMIGRANT", links include "DS-261, Online Choice of Address and Agent", "Fee Payment", "DS-260, Online Immigrant Visa and Alien Registration Application", and "Check My Visa Application Status". A "Welcome" message is on the left, and a "Please note" section provides additional instructions.

U.S. DEPARTMENT of STATE  
CONSULAR ELECTRONIC APPLICATION CENTER

Welcome

Welcome to the Consular Electronic Application Center! On this website, you can apply for a U.S. Nonimmigrant Visa; apply to renew an A, G, or NATO Visa; apply for an Immigrant Visa; or check the status of your visa application. On this website, you can also pay certain fees associated with your Immigrant Visa application.

Please note that, in most situations, submitting your application is just one of the steps in the application process. Please select the appropriate application for more information.

To learn more about obtaining a United States visa or passport, please visit <http://travel.state.gov>.

VISA

NONIMMIGRANT

- ▶ **DS-160, Online Nonimmigrant Visa Application**
- ▶ DS-1648, Online A, G, or NATO Application
- ▶ Check My Visa Application Status

IMMIGRANT

- ▶ DS-261, Online Choice of Address and Agent
- ▶ Fee Payment
- ▶ DS-260, Online Immigrant Visa and Alien Registration Application
- ▶ Check My Visa Application Status



# NON-IMMIGRANT VISA (NIV) PROCESSING

 U.S. DEPARTMENT of STATE  
CONSULAR ELECTRONIC APPLICATION CENTER

Select Tooltip Language English

## Online Nonimmigrant Visa Application (DS-160)

### Apply For a Nonimmigrant Visa

[FAQs](#)

Tooltip Language: English [\[View Tool Tip Help\]](#)  
Most of this application has been translated. To see the translation point your mouse over any sentence on the page.

**Welcome!**

On this website, you can apply for a U.S. nonimmigrant visa. Filling out the application on our site is the first step in the process. After you submit your application, you can move on to the next steps, such as signing up for an interview.

**Important: Before You Start**

1. [Learn about Types of Visas](#)
2. [List of Documents and Information you will need](#)
3. [Browser Requirements](#)
4. [How to complete the application](#)

Other people can assist you with your visa application. Note that under U.S. law (22 C.F.R. 41.103) you must electronically sign and submit your own application unless you qualify for an exemption. Even if someone else helped you complete the application, you (the applicant) must click the "Sign Application" button, or your application may not be accepted.

**\*\*Please be patient as you use this form. Download times may vary depending on your**

**Get Started**

Select a location where you will be applying for this visa

 - SELECT ONE -

Enter the code as shown:



Select a location and make sure you have the documents and information you will need.

[START AN APPLICATION](#)

Select a location then select an application that you previously saved on your computer.

[UPLOAD AN APPLICATION](#)

You will be asked for your application ID and answer a security question.

[RETRIEVE AN APPLICATION](#)



# NON-IMMIGRANT VISA (NIV) PROCESSING



## Online Nonimmigrant Visa Application (DS-160)

### Application Information

#### Please record your Application ID in a safe and secure place.

If there are technical issues with the system, or you want to complete your application some other time, you can save your work and later, start where you left off. In order to access your application later, however, you will need: (1) your Application ID, and (2) the answer to the security question that you will choose on this page.

To choose a security question, pick the one you like the best from the dropdown list, type your answer to that question in the box below, and click "Continue." Remember: In order to access your application later, you will need to know the answer **exactly as you wrote it on this page.**

You can also use your Application ID and security question to retrieve your Confirmation Page after you have submitted your application, or to use your previously provided application information to complete a new application at a later date.

If you do not plan to complete your application within the next 30 days, download your application to your computer by



Illustration 5 – Immigrant Visa Flow Chart for Consular Processing

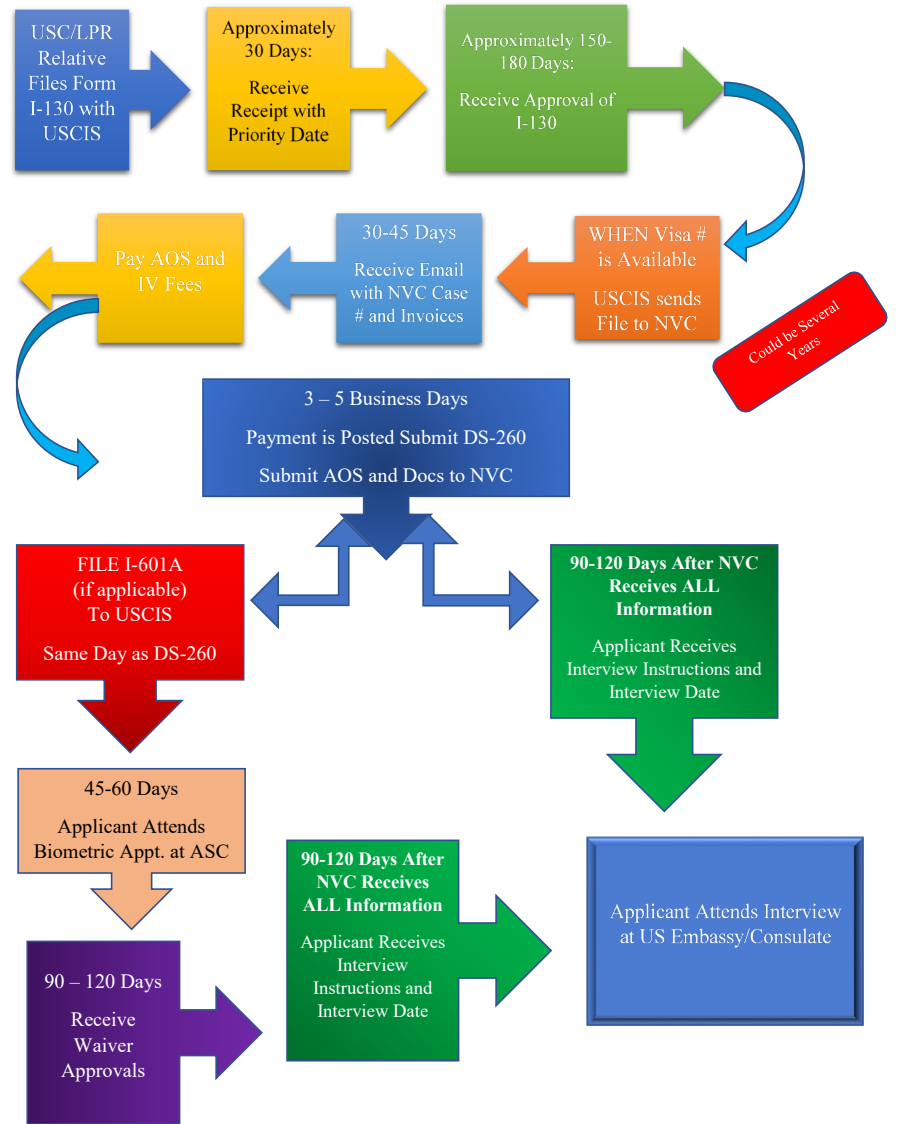
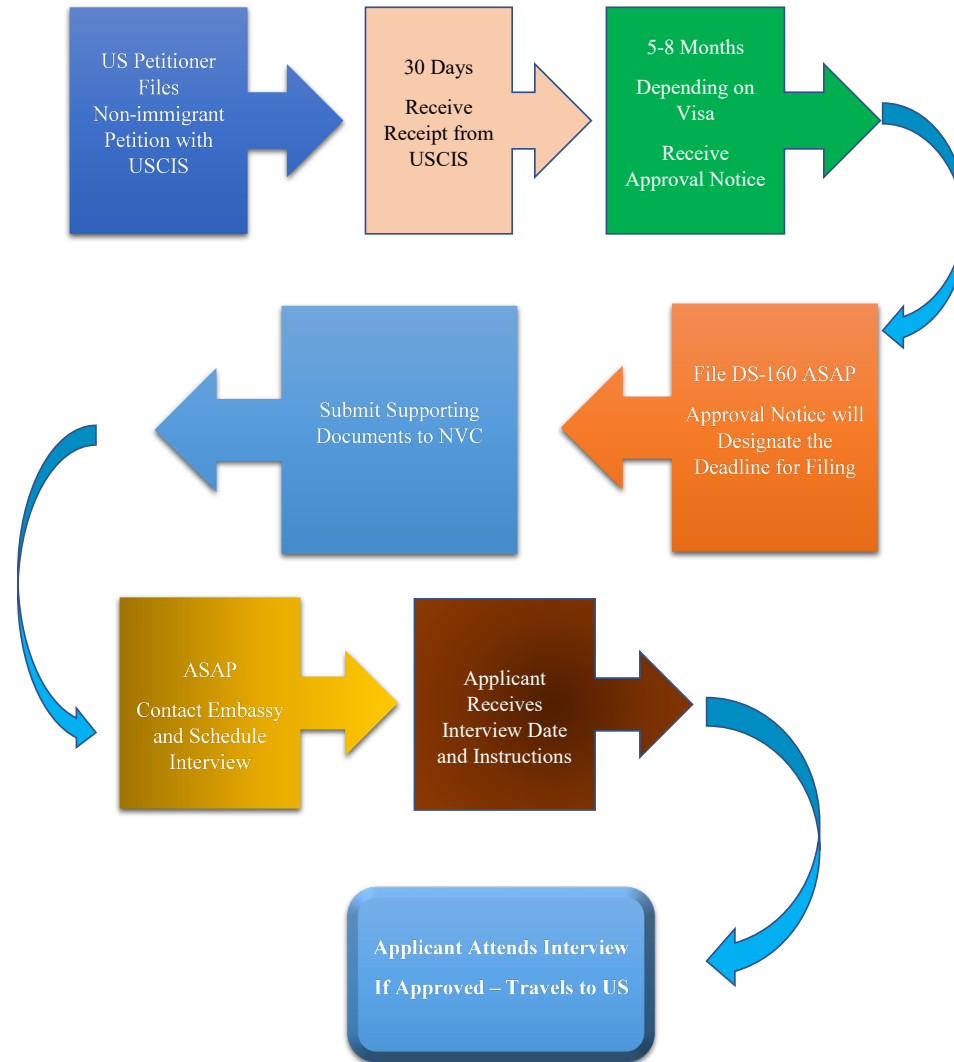


Illustration 6 – Non-immigrant Visa Flow Chart for Consular Processing





# I-601 A - UNLAWFUL PRESENCE WAIVERS

ADVANCED TRAINING MODULE

# Definitions for This Module

- **Admitted for Permanent Residence** = the person has been granted Legal Permanent Residence )(LPR/Green Card Holder
- **Admissible** = able to receive status as LPR or get a “green card” to admit(enter the US) them
- **Unlawful Presence** = Physical presence in the U.S. without any legal status – including expired visas.
- **EWI** = Entered the U.S. without inspection (being inspected by an immigration officer



# Background

- Prior to April 1997 - There were no penalties for Unlawful Presence
- The “accrual” of time and the rules were implemented on April 13, 1997 and the 3yr/10yr/Permanent Bar was born
- In 2013, in an effort to facilitate family unity, President Obama signed an Executive Order that permitted certain relatives of USC to apply for a waiver of the 3yr/10yr bar that is triggered when a person leaves the US for a green card interview



# The “Old Rule”

- In 2013, the only relatives that could apply for a UPW were:
  - Immediate Relatives of USC
- In addition, the applicant was required to show extreme hardship to a qualifying relative (QR) if the applicant is denied the waiver
  - QR had to be the petitioner



# The “New Rule” Update

- Key Changes to I-601 A Waiver
  - Available to eligible beneficiaries of ANY type of family petition.
    - IR of USC can apply
    - Non-IR of USC can apply
    - Spouses and Unmarried Children of LPR’s can apply
  - Qualifying relative can be USC or LPR (Does Not Have to be the Petitioner)
- **NOW UPW** are available to applicant’s with prior removal order or pending removal proceedings (needs attorney)



# Unlawful Presence Waiver

- Provisional Unlawful Presence Waiver (UPW)
  - USCIS policy - *NOT law*
  - Known as “601A Waiver”
- What exactly does the UPW waive?
  - Bars under INA § 212(a)(9)(B)
    - 3 Year Bar (180-364 days UP)
    - 10 Year Bar (365 or more days UP)



# Who Needs a Waiver?

🦋 Anyone who accrues unlawful presence as defined in INA § 212(a)(9)(B)(v) and then needs to leave the United States to consular process.

🦋 Bar for admittance is triggered once a person DEPARTS the U.S. after a period of unlawful presence.

🦋 3 Year bar = 180 - 364 days

🦋 10 Year bar = 365 or more days



# Who Needs a Waiver?

- All Persons that are required to Consular Process and Accrue ULP
  - Not Eligible to Adjust Status
  - EWI
  - Relatives of LPR's



# Who Does NOT Need a Waiver?

- Anyone present in the U.S. since their first entry and are eligible to adjust status
  - Remember 3 I's
    - ImmEDIATE Relative of USC
    - INSPECTED by immigration upon entry
    - INSIDE the US
- Those who left the country, but did not trigger a bar.
  - People who left and reentered with advanced parole
  - People who entered legally and left without being out of status



# Who Needs a Waiver?

Bars are triggered by DEPARTURE from the US after ULP.



# Unlawful Presence and Advanced Parole

- Departure with **Advanced Parole** is **NOT** considered a “departure” that will trigger the unlawful presence bar.
  - See Matter of Arrabally and Yerrabelly, 25 I&N Dec. 771 (BIA 2012)/



# Understanding the Permanent Bar

- Permanent Bars to Enter the U.S.
  - If a person commits an immigration violation, and remains unlawfully in the United States for a period of 1 year or more (in the aggregate), they are subject to the permanent bar.
  - Example: Maria entered the U.S. in 1989, then left on December 5, 2005, triggering the 10 year bar.
    - She reentered the United States EWI on February 3, 2006 - Reentering before her 10 years has lapsed, is an immigration violation.
    - Feb 3, 2007 - she remained in the US for 1 year AFTER committing an immigration violation - she is now subject to the



No entry



# Calculating the time of ULP?



- Does not have to be consecutive time period
- Can be multiple visits that add up to 180 days or more.
- Can be accumulated over several years



# Calculating the time of ULP?

- There are no penalties for less than 180 days of ULP
- Be sure to calculate the period of Lawful Presence when applicable



For Example:

- Maria enters the US on a B2 Visitor's Visa on 2/05/17. The date that she is authorized to stay until 08/04/17.
- She leaves the US on 10/02/17
- Did she accrue ULP?
- Did she trigger a bar when she left?



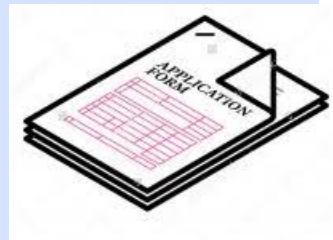
# Calculating the time of ULP?

- Maria enters the US on a B2 Visitor's Visa on 2/05/17. The date that she is authorized to stay until 08/04/17.
- She leaves the US on 10/02/17
  - Did she accrue ULP? - **YES**
  - Did she trigger a bar when she left? NO. She accrued only 58 days of ULP.
- She had to accrue at least 180 days of ULP to trigger a bar



# Exceptions to the 3/10 Bar

- Children under 18
- Pending Asylum Applicants
- Beneficiary of Family Unity
- Victim of Domestic Violence (VAWA)
- Victim of Trafficking
- Non-frivolous application for change or extension of status (120 days)





## ELIGIBILITY TO RECEIVE A PROVISIONAL UNLAWFUL PRESENCE WAIVER



# Basic Requirements of a Waiver of the 3/10 Year Bar

- 1<sup>st</sup> Requirement **MUST** have an approved I-130 Petition
- 2<sup>nd</sup> Requirement - Have a **Qualifying Relative (QR)**
  - USC or LPR spouse or parent
- 3<sup>rd</sup> Requirement - QR will suffer extreme hardship if USCIS denies the waiver.

**No waiver for hardship on USC/LPR Children**

USCIS  
Form I-130  
OMB No. 1615-0012  
Expires 07/31/2018

s

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# I-601 A Eligibility

- You cannot apply until:
  - Paid the IV fees (AOS and DS-260)
  - Have a pending IV Applications (DS-260)
    - Refer to your Day I Reader from your immigration consultants course
  - USCIS will notify the NVC that there is a waiver pending and tell them not to schedule and interview



# Approved I-601 A

- Neither Filing or Having an Approval will:
  - Give legal status
  - Stop the accrual of ULP
  - Give permission to work
  - Give permission to travel (except for interview)
    - NOT the same as Advanced Parole
  - Protect the applicant from deportation



# Other Grounds of Inadmissibility

- I-601 A will not cure ANY other ground of inadmissibility
  - Criminal
  - Health
  - Other
- ALL waivers need an attorney consult





# Approved I-601 A

- Does not guarantee the issuance of a green card
  - Approval is “provisional” because the bar has not been triggered yet
- Applicants still undergo the normal consular process including the medical exam, police clearance and interview

# RISKS OF Approved I-601 A

- Even if the Waiver is granted, there could still be potential issues
- If applicant is otherwise inadmissible, the waiver is revoked
  - Applicant could be in his/her home country and will then be subject to the bar
  - Will be “stuck” in their country for 3/10 years – Or PERMANENTLY!



# Automatic Revocation of Waiver

- Green Card is denied at the interview
- The I-130 is revoked, withdrawn or rendered invalid
- EWI entry:
  - After filing, but before approval; or
  - After approval, but before Green Card is issued



# Unlawful Presence Examples

Jorge entered the US in 2008 EWI and then left in 2012.

- Is he inadmissible for ULP?
- Does he trigger a bar?
- If he triggers a bar – for how long is he barred?



# Unlawful Presence Examples

Jorge entered the US in 2008 EWI and then left in 2012.

- Is he inadmissible for ULP?
  - Yes
- Does he trigger a bar?
  - Yes
- If he triggers a bar – for how long is he barred?
  - 10 Years – he is able to return in 2022



# Unlawful Presence Examples

Maria entered the US in 2008 EWI and has been here ever since.

- Is she inadmissible for ULP?
- Has she triggered a bar?
- If she triggers a bar – for how long is she barred?

# Unlawful Presence Examples

Maria entered the US in 2008 EWI and has been here ever since.

- Is she inadmissible for ULP?
  - Yes
- Has she triggered a bar?
  - No. She has not triggered a bar yet. The bar is not triggered unless she leaves the US.
- If she triggers a bar – for how long is she barred?
  - If she leaves the US without a UPW, she will trigger a 10 year bar.



# Unlawful Presence Examples

Silvia entered the US EWI in 2009. She left in 2011. In 2014, she re-entered the US on a Visitor Visa. She married a USC in 2015 and now wants to adjust status.

Is she inadmissible for ULP?



# Unlawful Presence Examples

Silvia entered the US EWI in 2009. She left in 2011. In 2014, she re-entered the US on a Visitor Visa. She married a USC in 2015 and now wants to adjust status.

- Is she inadmissible for ULP?
  - Technically yes.
    - But it is likely that her previous entry in 2009 went unnoticed by immigration officials.



# Unlawful Presence Examples

Anthony Coke entered the US on a F-1 Visa on June 30, 2010. His status expired on May 1, 2019— 60 days after he graduated college. He married a Cynthia Facey who is a LPR from Jamaica.

- Is he inadmissible for ULP?
- Does he trigger a bar?
- If he triggers a bar – for how long is he barred?

# Unlawful Presence Examples

Anthony Coke entered the US on a F-1 Visa on June 30, 2010. His status expired on May 1, 2019 – 60 days after he graduated college. He married a Cynthia Facey who is a LPR from Jamaica.

- Is he inadmissible for ULP?
  - No, no yet he has not accrued 180 days of ULP
- Does he trigger a bar?
  - No, he has not left yet

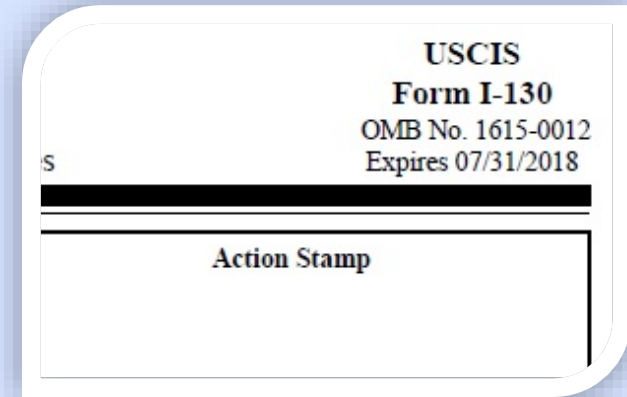


# HOW USCIS WEIGHS THE DECISION

# Basic Requirements of a Waiver of the 3/10 Year Bar

- 1<sup>st</sup> Requirement **MUST** have an approved I-130 Petition
- 2<sup>nd</sup> Requirement - Have a **Qualifying Relative (QR)**
  - USC or LPR spouse or parent
- 3<sup>rd</sup> Requirement - QR will suffer extreme hardship if USCIS denies the waiver.

**No waiver for hardship on USC/LPR Children**



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# Extreme Hardship

- USCIS recognizes that at least some degree of hardship to the qualifying relative exists in most, if not all, cases in which the principal immigrant is denied admission.
- To be considered “extreme,” the hardship must **exceed** that which is usual or expected.



# Extreme Hardship

- Must show what “extreme hardships” exist for the QR if the QR remained in the U.S.
- Must also show what “extreme hardships” exist for QR if the QR relocated to the Applicant’s country of origin

# Extreme Hardship

- 🇺🇸 Current factors for extreme hardship:
  - 🇺🇸 Presence of LPR or USC parent or spouse
  - 🇺🇸 Family ties outside of the QR
  - 🇺🇸 Country conditions
  - 🇺🇸 Family ties (or lack of) in their country
  - 🇺🇸 Financial impact of leaving US
  - 🇺🇸 Medical/health conditions
  - 🇺🇸 Availability/quality of medical care in their country
  - 🇺🇸 Lack of Educational Opportunities
  - 🇺🇸 Religious Persecution
  - 🇺🇸 Other factors
    - 🇺🇸 See *Matter of Cervantes – Gonzalez*

# Extreme Hardship

Strong cases link “abstract hardship factors” that impact everyone (poor health care, economic conditions, crime, etc) to specific hardships.

- Abstract Hardship Factor Examples:
  - Country “B” has worse pollution than US
  - QR will be separated from their family
- Linking them to Specifics Examples
  - Country B has excessive smog that will negatively effect the QR who has asthma if forced to relocate
  - QR has psych. instability that will be exacerbated by separation.



# Extreme Hardship

Strong cases also link the hardship of other family members to the QR.

- QR is a USC spouse
- QR has extensive family in U.S.
- QR and Applicant have a special needs child
  - QR suffers extreme hardship because they cannot provide adequate care alone
  - Can also link to financial hardship because QR cannot afford a full time caregiver to assist caring for the child



# Extreme Hardship

Strong cases link more than one hardship to the QR.

- Medical/Health is easily linked to:
  - Financial
  - Poor care in the other country
  - Lack of medical insurance in other country to help costs



# Extreme Hardship

The reason we suggest an attorney consult to assist the client in identifying their hardships.

- Immigration Consultant cannot “create” the hardships
- Clients may have difficulty identifying hardships
- Immigration Consultant can link hardships together.



# Case Study

- Robert is a 45 year old USC who is married to Yuba who is a Citizen of India. Yuba entered the US in December 2009 EWI. Both of her parents, and 5 siblings all live in the U.S. and are all either USCs or LPRs. Yuba and Robert have a 10 year old USC daughter. Robert has a 19 year old son who attends UCLA and he pays approximately 18,000 of his son's tuition and college costs.
- Robert has type 2 diabetes, high blood pressure and is beginning to experience depression and anxiety about his wife's green card and that she might be stuck in India for 10 years.
- Robert goes to school at night to work on his Masters Degree at UCLA
- Robert is a Restaurant Manager for Chili's. He makes approximately \$55,000 per year and has medical insurance through his employer; Yuba owns her own business teaching tennis makes approximately \$75,000 per year.

# CASE STUDY

## ■ Health

- HBP and Diabetes become uncontrolled
- Exacerbated by all other factors

## ■ Financial

- Missing work
- Paying for day care
- Increased medical bills
- Not being able to be promoted

## ■ Emotional

- Yuba is the love of his life
- Depression
- Robert and Son cannot reach their dreams of high degrees at UCLA

## ■ Deprivation of Education

- Robert and Son have to drop out of school

## ■ Health

- HBP and Diabetes become uncontrolled
- Cannot get treatment – Life threatening
- Exacerbated by all other factors

## ■ Financial

- Cant find work
- Paying for day care
- Increased medical bills
- Live in Poverty

## ■ Emotional

- Depression from missing family
- Emotional Suffering of Daughter

## ■ Significantly lower standard of living

## ■ Deprivation of Education

- Robert and Son have to drop out of school
- Daughter likely wont get to go to school  
– language, need to work, etc



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# Scenarios



# Scenarios

**Scenario # 1:** Miguel has lived continuously in the United States since entering without inspection 7 years ago. He and his U.S. citizen wife have been married for 4 years. If Miguel is refused admission, it is reasonably foreseeable that his wife would relocate with him. His wife is a sales clerk. A similar job in the country of relocation would pay far less.

In addition, she does not speak the language of the relocation country, lacks experience in the country, and lacks the ties that would facilitate social and cultural integration and opportunities for employment. Miguel himself is an unskilled laborer who similarly would command a much lower salary in the country of relocation. The couple has no children.



# Scenarios

*Analysis:* These facts alone generally would not favor a finding of extreme hardship. The hardships to the qualifying relative, even when aggregated, include only common consequences of relocation – economic loss and the social and cultural difficulties arising mainly from her inability to speak the language.



# Scenarios

**Scenario # 2:** The facts are the same as in Scenario # 1 except that now the couple has a 9-year-old U.S. citizen daughter who would relocate with them if Miguel is refused admission. The child was born in the United States and has lived here her entire life.

Miguel's wife and daughter both have close relationships with the wife's U.S. citizen sister and brother-in-law, who are the child's aunt and uncle, and this couple's U.S. citizen children, who are the child's cousins, as well as other members of the family.

They all live in close proximity with one another, have close emotional bonds, and visit each other frequently, and the aunt and uncle help care for the child.

# Scenarios

## Scenario #2

Neither Miguel's wife's family nor (for this particular waiver) the child are qualifying relatives, but Miguel's wife, who is a qualifying relative, would suffer significant emotional hardship from seeing the suffering of both her young child and her sister's family (the child's aunt, uncle and cousins), all separated from one another, --- as well as separated from other family members, and from losing the emotional bonds she and her child have with her sister's family and other family members, and financial benefit she receives from the care that her sister and brother-in-law provide. In addition, the child (like her mother) does not speak the language of the relocation country.

Generally, the added suffering of the child, and the wife's family would be enough to tip the scales in favor of extreme hardship.

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# Scenarios

**Scenario # 3:** Again the facts are the same as in Scenario # 1, except this time Miguel himself has LPR parents who live in the United States and who would suffer significant emotional hardship as a result of separation from their son and their daughter-in-law, with whom they have close family relationships.





# Scenarios

*Analysis:* Depending on the totality of the evidence, the addition of these facts would generally favor a finding of extreme hardship. There are now 3 qualifying relatives – Miguel’s wife and both his parents. Although the aggregated hardships to Miguel’s wife alone (under Scenario # 1) include only the common consequences of a refusal of admission, further aggregating them with the emotional hardships suffered by the two LPR parents would generally tip the balance in favor of a finding of extreme hardship, depending, again, on the totality of the evidence.

# Evidence of Extreme Hardship

## Supporting Documentation

- Letter/Memo Summarizing Case
- QR Personal Statement
- Statements from Family Members/Friends
- Country Condition Reports
- Articles about the Specific Hardships
  - Poor health care system
  - How homosexuals are treated
  - How stress effects blood pressure
- Medical Records
- Comprehensive Psychological Exams

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# Comprehensive Psychological Examination

- Comprehensive Psychological Examination
  - Valuable KEY Evidence in Waivers
  - Evaluation is given the same weight as “EXPERT WITNESS TESTIMONY” (like in court)
  - Through the intake/counseling session the Psychologist corroborates and proves the extreme emotional hardship and suffering



# Comprehensive Psychological Examination

- Comprehensive Psychological Examination
  - You cannot “ADVISE” a client to obtain a CPE
  - You can tell them this the USCIS website lists a CPE on their websites on the list of documents that can be submitted in support of their application
  - You cannot evaluate the CPE for content
  - Evaluation can be done by an attorney for the 2<sup>nd</sup> consult



# Comprehensive Psychological Examination

- Comprehensive Psychological Examination
  - An attorney may refer your client to someone that they use
  - Client should find an evaluator that specializes in immigration evaluations
    - They know the requirements for the various filings
    - They know the “immigration language” that needs to be in the evaluation
- Prevents the temptation of the ISP to questions the contents and accidentally engage in the practice of law.



# Assistance with Waivers

- LAIA Member Pricing
- Initial Form and Evidence Consultation - \$100 up to one hour
- Review of completed package with feedback - \$200
- Assistance with research and assembling the packaging - \$500





# Assistance with Waivers

- If you need to refer to an attorney, our network attorneys will charge between \$3500 - \$5000 for our consultants (Normally \$7500-\$15000)
- Many Non-profits can offer low cost services for families in need.

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# Final Thoughts

- Always consult with an attorney
- Remember that the waiver can be revoked if the applicant is found otherwise inadmissible
- If green card is denied at the interview, the waiver is automatically revoked and the applicant triggers the bar – they are now stuck in their country of origin.



Thank you for your participation  
We hope to see you in a future class  
And  
Good Luck!

