



LATIN
AMERICAN
IMMIGRATION
ASSOCIATION

UNIENDO FAMILIAS

ADVANCED MULTI-MODULE CLASS

FAMILY BASED GREEN CARDS/I-212 WAIVERS/HUMANITARIAN
IMMIGRATION/FOIA REQUESTS

LEGAL DISCLAIMER



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The information in this presentation is not, nor should it be construed as, legal advice. Should you need legal advice, you should contact a licensed attorney for such.





FAMILY BASED GREEN CARDS





Module Objectives

- Obtain Competency in Family Based Green Cards
- Understand Adjustment of Status under 254(1)
- Understand Adjustment of Status for Certain Non-IR
- Understand the Navigation between Preference Categories
- Understand Derivative Beneficiaries and Follow to Join Petitions.
- Understand how to Remove the Conditions on Permanent Residence when a Marriage Dissolves
- Understand Re-entry Permits and Concerns of Traveling with a Green Card
- Understand the Cuban Adjustment Act
- Understand when a TPS Holder can Adjust Status
- Understand Parole in Place for Family Members of Military Personnel

FAMILY PETITIONS AND GREEN CARDS

TWO – FOUR STEP PROCESS



- All green cards start with a Petition (I-130, I-129F, or I-360)
- US Citizens (USC) and Legal Permanent Residents (LPR) may file for certain relatives
- To file for a family member, the USC or LPR files a form I-130, Petition for Alien Relative
- The Petition must prove 2 things:
 - 1) That the petitioner and beneficiary have the required familial relationship
 - 2) That the petitioner has the legal immigration status to file such a petition
- If these elements are proven, USCIS **must** approve the visa petition and step one will be completed
 - *Exceptions: Previous marriage fraud, or a conviction under the Adam Walsh Act (pertaining to harming a minor child)*

STEP 1: THE FAMILY PETITION

STEP 2: THE IMMIGRANT VISA APPLICATION

-
- After the I-130 is approved an Immigrant Visa Application must be submitted to the appropriate entity.
 - The beneficiary now becomes the applicant
 - Certain factors determine where the IV application is filed and what process is used:
 - The applicant's relation to the petitioner
 - Where the applicant currently lives
 - Whether or not the applicant enter the US with inspection (if in the US)

GREEN CARD / IMMIGRANT VISAS



- **Two Processes available to get a green card**
 - **Adjustment of Status**
 - **Consular Processing**



ADJUSTMENT OF STATUS INA §245(A)

- Adjustment of Status for Persons who were inspected upon entry:
- Remember 3 I's
 - Inspected by Immigration
 - Immediate Relative of a USC OR Immediately Available Visa #
 - In the US
- Also – a visa # is available
- INA §245(a) – This is the section of the INA that governs a “regular” adjustment of status.



Adjustment of Status INA 245(a)

➤ Adjustment of Status must meet 3 

➤ ImmEDIATE Relative of USC

➤ Inspected by an Immigration Officer

➤ In the U.S.



➤ Like anything, there are some exceptions

Adjustment of Status under Section 245(i) of the INA

- Adjustment of Status for Certain Persons would not normally be permitted to Adjust Status:
- EWI entry
- Someone who worked without authorization in the US
- Overstayed a Nonimmigrant Visa and is not the IR of a USC
- Another “I” 245(I) - This “I” can replace another missing “I’s” to allow Adjustment of Status.



ADJUSTING STATUS UNDER 245(I)

Adjustment of Status under INA § 245(i) allows certain relatives to adjust status that normally would not be eligible to adjust

- ▶ People who entered without inspection;
- ▶ People who are not immediate relatives of a U.S. citizen and who overstayed a nonimmigrant visa or worked illegally;
- ▶ People who entered in transit without a visa;
- ▶ People who are “alien crewmen.”



REQUIREMENTS FOR ADJUSTING UNDER 245(I)

To adjust under 245(i)

- ▶ Must have had a petition (family or labor) filed before 01/14/1998;OR
- ▶ Had a family petition filed before 04/30/2001 AND were physically present in the U.S. on 12/21/2000

- ▶ It does not matter if it was actually approved –
- ▶ Must have been APPROVABLE at the time of filing
 - ▶ For example: spouses that separate before approval



ADJUSTING UNDER THE SAME PETITION

- Priority date must be current
- Must have a copy of the previous I-130 receipt
- If filed between January 14, 1998 and April 30, 2001 – must also have proof of physical presence on December 21, 2000.
- Still need the petitioner to file I-864
- Will now need form I-944
- Will also need to file form I-485A and pay the \$1000 filing fee in addition to the regular filing fees



ADJUSTING UNDER A DIFFERENT PETITION

Adjusting under a different petition

Example: Lamar, a U.S. citizen, petitioned his brother Teo in 1995. Teo, who entered the United States without inspection, married Lana, a U.S. citizen, in May 2001.

- ▶ Lana then submitted an immediate relative petition for Teo. Although the second I-130 (the one Lana submitted for Teo) was submitted after April 30, 2001, USCIS will allow Teo to adjust in the United States under INA § 245(i) because he had another I-130 pending (the one Lamar filed for Teo) prior to the April 30, 2001 deadline.



ADJUSTING UNDER THE SAME PETITION

- Priority date must be current
- Can file as a one step adjustment of status with the new I-130
- Must have a copy of the original I-130
- If filed between January 14, 1998 and April 30, 2001 – must also have proof of physical presence on December 20, 2000.
- Still need the petitioner to file I-864
- Will now need form I-944
- Will also need to file form I-485A and pay the \$1000 filing fee in addition to the regular filing fees





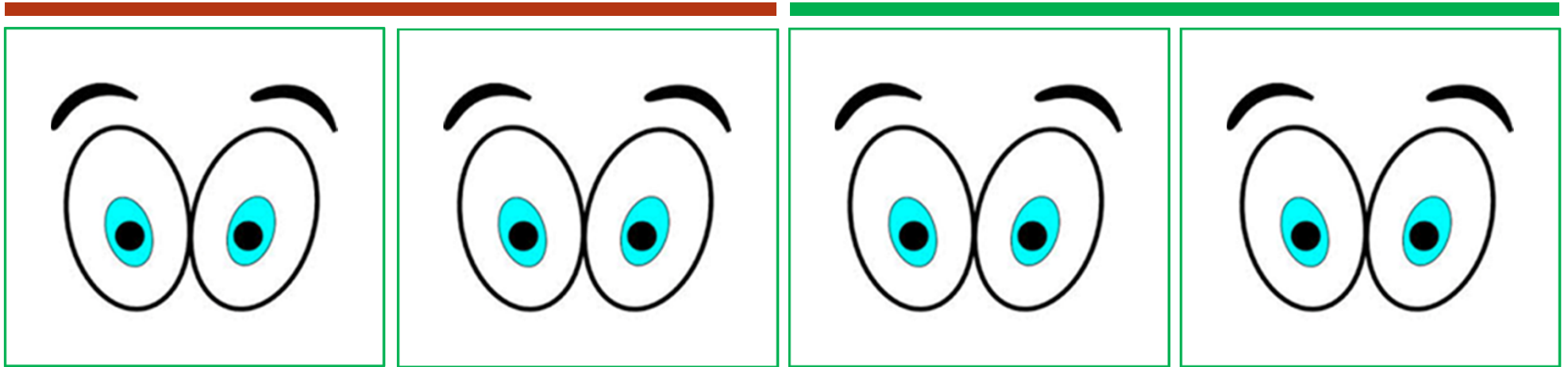
ADJUSTMENT OF
STATUS FOR
NON-IMMEDIATE
RELATIVES

THE 4TH “I”

ADJUSTMENT OF STATUS NON-IMMEDIATE RELATIVES OF USC

- Adjusting Status as the Spouse or Child of an LPR
- Circumstances for this are rare:
 - In the US with legal status
 - They have not been out of status since their arrival
 - They have legal status when their Priority Dates comes current
 - They have not worked without authorization
- Example: Someone in the US on an F-1 Visa:
 - Marries a LPR
 - LPR files the I-130
 - If still in F-1 Status when the priority date comes current, Spouse can adjust status





THE FOUR (4) "I'S"

- **I**mmEDIATE Relative of USC or
ImmEDIATELY Available Visa #
- **I**nspected by an Immigration Officer
- **I**n the U.S.
- **I**n Status When Visa # Becomes Available

CONSULAR PROCESSING

There are 3 instances when a person must Consular Process

- The first is fairly obvious
 - The Beneficiary resides in another country





CONSULAR PROCESSING

There are 3 instances when a person must Consular Process

- The second is anyone who is not an Immediate Relative of a USC
- Don't worry – we are getting there on who is who.



CONSULAR PROCESSING

- No matter how long a person has been in the U.S. if they **ENTERED WITHOUT INSPECTION (EWI)** they must return to their country of origin to process their green card
 - Completes interview, medical and police clearances in their country.
 - Will need a Provisional Unlawful Presence Waiver



OTHER
CIRUCMSTANCES
THAT REQUIRE
CONSULAR
PROCESSING



Non-IR of USC that has worked without authorization in the U.S. (who would have had all 4 I's)



Any alien that enters on a K-1/K-2 visa and the K-1 does not marry the USC within 90 Days



Alien's with deportation orders (will need I-212 approved first and I-601A)

STEP 3 AND STEP 4

- Step 3: Attend an IV interview
 - Not all IV applicants are required to attend an IV Interview (AOS for non spouses)
- Step 4: Enter the United States on IV
 - Step 4 is only required for persons that are consular processing





IMMEDIATE RELATIVES AND DEFINITIONS

HOW IMMIGRANT VISAS ARE ISSUED TO IMMEDIATE RELATIVES OF USC
DEFINITIONS OF FAMILY MEMBERS

LIMITS ON AVAILABLE VISA NUMBERS (GREEN CARDS)

-
- ▶ There is no limit on green cards for the Immediate Relatives (IR) of USC – there is **ALWAYS** a visa number available
 - ▶ There are only 290,000 green cards available to Non-IR's for the entire world
 - ▶ The 1st 50,000 go to the Diversity Lottery – Leaving 240,000
 - ▶ Those 240,000 are divided amongst the 5 family preference categories

Who is an Immediate Relative?

Spouse

Parent

Child

Of a United States Citizen (USC)

For immigration a child is: *an unmarried person under the age of 21 years old.*

WHAT IS AN
IMMEDIATE
RELATIVE?

WHAT IS AN IMMEDIATE RELATIVE?

Example:

- ▶ Alfredo is married to a U.S. citizen. (Spouse)
 - ▶ Laura has a U.S. citizen son who is 30 years old. (Parent)
 - ▶ Kwan is 12, and his father is a U.S. citizen. (Child)
 - ▶ Alfredo, Laura and Kwan all qualify as immediate relatives of U.S. citizens.
-
- ▶ A separate visa petition must be filed for each immediate relative; and immediate relatives cannot include “derivative beneficiaries” in their visa petitions.

WHO IS A CHILD?

- ▶ **The person must be unmarried and under 21 years of age**
 - ▶ **Example:** A child of a USC or LPR who is 21 years old when the petition is filed is not a child under the INA and cannot be petitioned for as an immediate relative
 - ▶ They may be able to get a green card as a “son or daughter” in the family preference categories
 - ▶ A person who is divorced or widowed at the time the petition is filed is considered unmarried.
 - ▶ **Example:** A married 19-year-old daughter is not a child. But a 19-year-old divorced daughter is a child under the INA.



WHO IS A CHILD

- **Stepchildren.** A stepchild is a child for immigration purposes if the marriage that created the stepparent-stepchild relationship took place before the child became 18 years old. See INA § 101(b)(1)(B).
- **Example:** Gina, a lawful permanent resident, marries Juan. Juan has a 10-year-old daughter, Soledad. Can Gina petition Soledad as her child?
 - Yes. Since Juan and Gina married before Soledad reached the age of 18, Soledad is Gina's child for immigration purposes. Soledad became Gina's stepchild as of the date of Gina and Juan's marriage.
- In cases where the parents are still married, there is no need for the stepparent to establish that he or she has an ongoing relationship with the child.
- **Adopted Children:** Generally the child must have been adopted prior to their 16th birthday. There are exceptions



CHILDREN THAT TURN 21 AFTER A PETITION IS FILED ("AGE OUT")

- ▶ The Child Status Protection Act (CSPA) of 2002 protects children from "aging out" for immigration purposes.
- ▶ Allows some children who turn 21 while a parent's visa petition is pending to immigrate as if they were still children
- ▶ In general:
 - ▶ CSPA protects all children who have a petition filed after August 6, 2002
 - ▶ CSPA protects children who had a petition FILED before August 6, 2002 that was APPROVED after August 6, 2002



WHO IS A PARENT?

- For immigration purposes, a parent is:
 - Biological parent
 - Adopted parent
 - Stepparent – so long as the marriage that created the “step-relationship” occurred prior to the child’s 18th birthday



WHO IS A SPOUSE?

- ▶ All couples, including same sex and opposite sex, who are legally married and have a bona fide marriage relationship are spouses under the INA.
 - ▶ **Same-Sex Spouses.** Same-sex marriage is recognized in the United States, but couples who did not live in a jurisdiction that recognized same-sex marriage (e.g., they lived abroad) need to obtain a lawful marriage in a location that does so.
 - ▶ **Transgender Spouses.** Marriages where one or both partners are transgender are treated the same as other marriage cases, whether same sex or opposite sex. See *USCIS Policy Memorandum, Adjudication of Immigration Benefits for Transgender Individuals (AFM Update AD2-02)*





FAMILY PREFERENCE SYSTEM

HOW VISA ARE ISSUED TO NON-
IMMEDIATE RELATIVES

§ 2.5 The Preference Categories

People who immigrate through a family preference visa petition will fall into one of four categories. These categories are set forth at INA § 201(b). The preference categories are:

PREFERENCE CATEGORY	BENEFICIARIES COVERED BY THIS CATEGORY
First Preference (F1)	Unmarried sons and daughters, 21 years of age or older, of U.S. citizens.
Second Preference	(2A) Spouse and unmarried children (under 21) of LPRs.
	(2B) Unmarried sons and daughters (over 21) of LPRs. If an unmarried son or daughter of an LPR marries, he or she loses eligibility to immigrate as the son or daughter of an LPR.
Third Preference (F3)	Married sons and daughters (of any age) of USC's.
Fourth Preference (F4)	Siblings of USC's, when USC's are over 21. The petitioner must be at least 21 years old. Both siblings must at some time have been the children of one common parent.

FAMILY PREFERENCE CATEGORIES

SOURCE: ILRC § 2.5

CHANGING PREFERENCE CATEGORIES

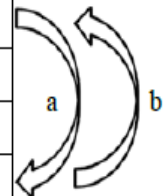
Source: ILRC § 2.5

1. From 1st preference to 3rd preference (and vice versa)

The unmarried daughter of a U.S. citizen marries while waiting for her 1st preference priority date to become current. Because a U.S. citizen can petition for a married daughter in the 3rd preference, the 1st preference petition converts to a 3rd preference petition. If the beneficiary then divorces during the long wait for a current date, the beneficiary again converts—this time back to the 1st preference.

UNMARRIED SON OR DAUGHTER OF A USC MARRIES

Immediate Relative	Spouses, Unmarried Children, & Parents of USC
First (F1)	Unmarried Sons/Daughters of USC
Second (2A)	Spouses & Children of LPR
Second (2B)	Unmarried Sons/Daughters of LPR
Third (F3)	Married Sons/Daughters of USC
Fourth (F4)	Brothers & Sisters of USC's



a: Unmarried Son or Daughter of a USC Marries

b: Married Son or Daughter of a USC Divorces

*Immigrant Legal Resource Center
December 2016*

3. From immediate relative to 3rd preference

The child of a U.S. citizen (an immediate relative) marries, thus converting the immediate relative petition to 3rd preference. The petition is still valid, with the priority date established by the date of filing (receipt by USCIS) of that petition.

UNMARRIED CHILD OF A USC MARRIES

Immediate Relative	Spouses, Unmarried Children, & Parents of USC
First (F1)	Unmarried Sons/Daughters of USC
Second (2A)	Spouses & Children of LPR
Second (2B)	Unmarried Sons/Daughters of LPR
Third (F3)	Married Sons/Daughters of USC
Fourth (F4)	Brothers & Sisters of USC's



CHANGING PREFERENCE CATEGORIES

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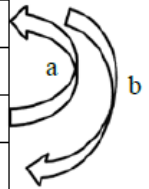
4. From preference 2B to first preference to 3rd preference

The petitioner naturalizes so that the beneficiary is now the son or daughter of a U.S. citizen. A beneficiary could move from 2B to First Preference and then to Third Preference upon getting married after the petitioner has naturalized. See **Practice Tip** below.

WARNING: If the beneficiary marries before the parent naturalizes, the petition is no longer valid! That is because there is no category for married children of LPRs.

LPR PARENT OF UNMARRIED SON OR DAUGHTER NATURALIZES

Immediate Relative	Spouses, Unmarried Children, & Parents of USC
First (F1)	Unmarried Sons/Daughters of USC
Second (2A)	Spouses & Children of LPR
Second (2B)	Unmarried Sons/Daughters of LPR
Third (F3)	Married Sons/Daughters of USC
Fourth (F4)	Brothers & Sisters of USC's



a: LPR Parent of Unmarried Son or Daughter Naturalizes

b: Unmarried Son or Daughter (of now USC) Marries

BENEFICIARIES CAN MOVE THROUGH THE PREFERENCE CATEGORIES WITH 1 EXCEPTION

- Beneficiaries in the F2-B Category must remain unmarried until after they obtain their green card AND enter the United States.
 - If their parent naturalizes PRIOR to a marriage – they will convert to a F-1. Notify USCIS as soon as this happens.
- If they marry while in F2-B, they lose their right to immigrate through the petition their LPR parent filed
 - They will have to start over with their parents when the parent naturalizes
 - Marrying a USC or LPR will be beneficial to a F2-B
 - An adult USC Child will also be beneficial to a F2-B



ADDING DERIVATIVE BENEFICIARIES

- Spouses and children (unmarried & under 21) can immigrate with the primary beneficiary
- For example:
- Diego, a USC, is the father of Luisa who is a Citizen of Spain. Luisa is married and has a 10 – daughter when a visa number becomes available. Luisa is immigrating through the family preference categories in the F-3 Category.
- Luisa’s husband and daughter are able to be added to her immigrant visa petition as derivative beneficiaries and will be allowed to immigrate with Luisa.
 - If for some reason, either of Luisa’s derivatives choose not to immigrate with Luisa, they can come to the US later on a “follow to join” petition.



ADDING DERIVATIVE BENEFICIARIES

- To add a derivative:
 - On the case summary page's status chart, there are two buttons under "Applicant Information."
 - To add or remove a family member from your case, click on the appropriate button.
 - You will have to enter information about the derivative family member, including name, address, email, and relationship to the primary beneficiary.
 - The new derivative visa applicant's name will then appear on the list of applicants and you will have to pay the Immigrant Visa Fee, complete a Form DS-260 application, and upload civil documents for that person.
 - However, it will take approximately one hour after adding a family member before the option to pay the Immigrant Visa Application Fee is active.





FOLLOW TO JOIN

ADDING DERIVATIVE BENEFICIARIES THAT DO NOT IMMIGRATE AT THE SAME TIME AS THE PRIMARY BENEFICIARY



FOLLOW TO JOIN PETITIONS – CONSULAR PROCESSING

If the primary beneficiary was married and/or had children who did not obtain permanent residence at the same time the primary did, they may be eligible for follow-to-join benefits.

- This means that you do not have to submit a separate Form I-130 for the spouse and/or children. In addition, the spouse and/or children will not have to wait any extra time for a visa number to become available.
- In this case, you may simply notify a U.S. consulate that the primary is now a permanent resident so that their spouse and/or children can apply for an immigrant visa.
- The primary's spouse and/or children may be eligible for following-to-join benefits if:
 - The relationship existed at the time the primary became a permanent resident and still exists, AND
 - The primary received an immigrant visa or adjusted status in a preference category.



FOLLOW TO JOIN PETITIONS – ADJUSTMENT OF STATUS

- If the primary's family member falls into the "follow to join" category and you adjusted to permanent residency in the United States, you may submit the following:
 - [Form I-824, Application for Action on an Approved Application or Petition](#)
 - A copy of the original application or petition that was used to apply for immigrant status
 - A copy of Form I-797, Notice of Action, for the original application or petition
 - A copy of the primary's Form I-551 (green card)
- If the primary in the United States and has not yet filed to adjust status to permanent resident, you can file Form I-824 with Form I-485, in which case no supporting documents are needed other than those submitted with Form I-485.



CASE STUDIES

- Trevor is a USC. He marries Violet, who is a Jamaican citizen. Violet has a 6 year son, Neville. Violet and Neville reside in Ocho Rios, Jamaica.
 1. What process will be used to obtain a green card for Violet?
 2. Is Neville eligible to receive a green card – if so, does he need his own I-130?



CASE STUDIES

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 1. What process will be used to obtain a green card for Violet?
 1. Violet will consular process
 2. Is Neville eligible to receive a green card – if so, does he need his own I-130?
 1. Neville can immigrate at the same time as his mother, or without her.
 2. Neville is Trevor's Child for Immigration Purposes because the marriage occurred prior to Neville's 18th birthday – therefore, Neville is an IR.
 3. He will need his own I-130.



CASE STUDY

- Yesnia is a USC who filed an I-130 for her sister, Maria, in Mexico on December 20, 1996.
- Maria entered the United States without inspection on March 3, 2000, and has remained in the US since that time.
- According to the most recent visa bulletin, her priority date has just become current.
- How does Maria get her green card?



CASE STUDY

- Yesnia is a USC who filed an I-130 for her sister, Maria, in Mexico on December 20, 1996.
- Maria entered the United States without inspection on March 3, 2000, and has remained in the US since that time.
- According to the most recent visa bulletin, her priority date has just become current.

- How does Maria get her green card?
 - Maria is eligible to Adjust Status under INA Section 245(i).





PRIORITY DATES

HOW IMMIGRANT VISAS ARE PROCESSED



PRIORITY DATES

- Priority dates tell USCIS what order to process immigrant visas that are subject to the visa cap
- When USCIS accepts an I-130 Petition, they assign the beneficiary a priority date – it is usually the same date they receive it
- When a visa number becomes available
- Petitions are processed in the order that they are received
- Remember, there are only 240,000 visa issued to non-immediate relatives each year



PRIORITY DATES



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

Form I-797C, Notice of Action

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt	NOTICE DATE July 05, 2018
CASE TYPE I-130, Petition for Alien Relative	USCIS ALIEN NUMBER
RECEIPT NUMBER SRC1890578649	RECEIVED DATE June 29, 2018
PRIORITY DATE June 29, 2018	PREFERENCE CLASSIFICATION 201 B INA SPOUSE OF USC
	DATE OF BIRTH 1995
APPLICANT/PETITIONER NAME AND MAILING ADDRESS CHARLOTTE E. REICHARD INGLEWOOD, CA 90002795 9 00002795 Application/Petition Fee: \$535.00 Biometrics Fee: \$0.00 Total Amount Received: \$535.00 Total Balance Due: \$0.00	

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

Form I-797C, Notice of Action

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt	NOTICE DATE July 05, 2018
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APPLICANT/PETITIONER NAME AND MAILING ADDRESS The I-130, Petition for Alien Relative has been received by our office for the following beneficiaries and is in process: Name: SARNEH, ANGELOSE Date of Birth: 985 Country of Birth: GAMBIA Class (If Applicable): Please verify your personal information listed above and immediately notify the USCIS National Customer Service Center at the phone number listed below if there are any changes. Please note that if a priority date is printed on this notice, the priority does not reflect earlier retained priority dates. If you have questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833. Please also refer to the USCIS website: www.uscis.gov . If you have any questions or comments regarding this notice or the status of your case, please contact our customer service number. You will be notified separately about any other case you may have filed.	
USCIS Office Address: USCIS Texas Service Center P.O. Box 851488 Mesquite, TX 75183-1488	USCIS Customer Service Number: (800)375-5283 APPLICANT COPY



B. DATES FOR FILING FAMILY-SPONSORED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart below may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file applications, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 4.A.) this month for filing applications for adjustment of status with USCIS.

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08NOV12	08NOV12	08NOV12	22OCT99	01MAY08
F2A	08MAR19	08MAR19	08MAR19	08MAR19	08MAR19
F2B	15AUG14	15AUG14	15AUG14	22DEC98	01AUG08
F3	08SEP07	08SEP07	08SEP07	08JUL00	01FEB98
F4	15DEC06	15DEC06	22APR05	08DEC98	01JUL98

VISA BULLETIN JULY 2019

DATES FOR FILING

three preferences.

A. **FINAL ACTION DATES** FOR FAMILY-SPONSORED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08MAR12	08MAR12	08MAR12	01AUG96	22AUG07
F2A	C	C	C	C	C
F2B	01SEP13	01SEP13	01SEP13	15APR98	01JAN08
F3	08MAR07	08MAR07	08MAR07	01JUL95	01AUG97
F4	15JUN06	15JUN06	22AUG04	01JAN97	01JAN98

VISA BULLETIN
JULY 2019

FINAL ACTION
DATES



ADJUSTMENT OF STATUS SPECIAL CIRCUMSTANCES

USC SPOUSE PETITIONER BECOMES DECEASED

CONVERTING TO A SELF PETITIONER

- Must have an I-130 pending
- Must Still prove it was a bona fide marriage
- Will require an interview with USCIS
- Self Petitioner completes the pertinent parts of Form I-360 and submits it with:
 - Death Certificate
 - Evidence of Bona Fide Marriage
 - Filing Fees





ADJUSTMENT OF STATUS SPECIAL CIRCUMSTANCES

PAROLE IN PLACE

FAMILY MEMBERS OF MILITARY PERSONNEL

PAROLE-IN-PLACE

- INA §212(d)(5)(A)
 - Case-by-case basis for “urgent humanitarian reasons” or “significant public benefit”
 - Request made to local USCIS District or Field Office for qualified military dependents.
 - If PIP is granted it can eliminate the need for beneficiary to return to home country for consular processing. Important to avoid 3/10 year bars pursuant to INA §§212(a)(9)(B) & (C).
 - Results of Requests = Mixed



PAROLE-IN-PLACE APPLICATION

- Submit to local USCIS Field Office
- Check with local USCIS office on procedure and what is required (some require I-131).
- Signed hardship statement from service member why PIP is necessary.
 - Supporting documents:
 - Service Member's birth certificate and/or proof of citizenship;
 - Family member's birth certificate;
 - Birth certificate for any children;
 - If foreign national is spouse, marriage certificate & bona fides of marriage;
 - Evidence of military membership;
 - 2 passport photos for family member; and
 - Any additional military documents (deployment orders, etc)





ADJUSTMENT OF STATUS

TEMPORARY PROTECTED STATUS HOLDERS

TPS HOLDERS IN THE 6TH AND 9TH CIRCUITS

Due to court decisions, persons who
are current TPS holders may be
permitted to adjust status as long as
they are still in TPS status



TEMPORARY PROTECTED STATUS (TPS)

- The Secretary of Homeland Security may designate a foreign country for TPS when:
 - The country's nationals cannot safely return to that country
 - The country cannot handle the return of its nationals adequately



TEMPORARY PROTECTED STATUS

- A country may be designated due to the following temporary conditions:
 - Ongoing armed conflict
 - An environmental disaster
 - Other extraordinary conditions
- A list of countries currently designated for TPS can be found on pages the USCIS website



TEMPORARY PROTECTED STATUS

-
- Benefits of TPS
 - Not deportable (unless criminal)
 - Even if they have an existing removal order
 - Can obtain employment authorization
 - May be granted permission to travel

TEMPORARY PROTECTED STATUS

- TPS does not lead to a green card – but while in TPS a person can:
 - File for nonimmigrant status
 - File for adjustment of status with a family petition – even if they entered EWI
 - Apply for any other immigration benefit they can qualify for



TEMPORARY PROTECTED STATUS

- Eligibility for TPS
 - Be a national of a country designated for TPS; or
 - Be a person without nationality who last habitually resided in that country
 - File during the initial **registration** period or **re-registration** period
 - Have been continuously present in the US since the date of the more recent **designation** date of their country



ADJUSTMENT OF STATUS WITH TPS

- In their landmark decision in [Ramirez v. Brown, 852 F.3d 954 \(9th Cir. 2017\)](#), the Ninth Circuit held that a grant of Temporary Protected Status (TPS) constitutes an “admission” for purposes of adjustment of status under section 245(a) of the Immigration and Nationality Act (INA).
- This decision followed the Sixth Circuit in [Flores v. USCIS, 718 F.3d 548 \(6th Cir. 2013\)](#).

ADJUSTMENT OF STATUS WITH TPS

Pursuant to these decisions, an individual in TPS status who **initially entered** without inspection (EWI) satisfies the “inspected and admitted or paroled” statutory requirement. INA § 245(a).

- A large number of TPS recipients—though not all TPS recipients—are able to adjust to lawful permanent residence under *Ramirez* and *Flores*. To benefit from these decisions, the individual must:
 - 1) Have entered the United States without inspection prior to receipt of TPS;
 - 2) Currently be in valid TPS status;
 - 3) Be otherwise eligible for adjustment.

This means that:

- – a visa must be immediately available for the person;
- – he or she is not inadmissible; and
- – none of the statutory or regulatory bars to adjustment apply; and
- – live within a state within the jurisdiction of the Sixth or Ninth Circuits.



ADJUSTMENT OF STATUS WITH TPS

- To Adjust Status with TPS, Applicant must:
 - Be currently in TPS status;
 - Are “immediate relatives” of U.S. citizens, i.e. children and spouses of U.S. citizens and the parents of U.S. citizens who are 21 or older, INA § 201(b)(2)(A)(1); and
 - Would be eligible to adjust to lawful permanent resident status but for having entered without inspection. Each of these factors is discussed below.
 - Additionally, this advisory addresses the general categories of family- and employment-based adjustment applicants who benefit from these two decisions and options that may be available to TPS recipients who do not live within these two circuits.



ADJUSTMENT OF STATUS WITH TPS

- 9th Circuit States: Alaska, Washington, Oregon, California, Hawaii, Idaho, Montana, Nevada, Arizona.
- 6th Circuit States: Kentucky, Michigan, Ohio and Tennessee.
- Additionally, applicants in other circuits in the general categories of family- and employment-based adjustment applicants who benefit from these two decisions and options that may be available to TPS recipients who do not live within these two circuits.





CUBAN ADJUSTMENT ACT

SPECIAL RULES FOR CUBAN NATIONALS



CUBAN ADJUSTMENT ACT

- Adjustment of Status under the Cuban Adjustment Act (CAA) 1966:
 - Provides humanitarian relief to Cubans who presumed to refugees and do not have another path to adjust
 - Non-Cuban relatives may be able to derive status as an LPR in many cases



CUBAN ADJUSTMENT ACT

- CAA – Requirements:
 - Must be a native or citizen of Cuba
 - Entered Inspected, admitted or paroled
 - Physically present in the US for more than 1 year
 - Be admissible to the US for LPR
 - The bar under 245 (c) (unauthorized employment) does NOT apply to CAA



CUBAN ADJUSTMENT ACT

- CAA – Requirements:
 - Non-Cuban spouses and children may adjust with the qualifying Cuban Applicant.
 - Marriage can occur before or after Adjustment of Status
 - Dependents cannot adjust before the principal does
 - Dependents can adjust under CAA – even if the Cuban spouse or parent did not adjust under CAA
 - **If the principal has already naturalized – dependents cannot adjust under CAA**



THINGS TO WATCH FOR

PITFALLS TO ADJUSTMENT OF STATUS



NOT ALL INSPECTIONS ARE CONSIDERED INSPECTIONS FOR THE PURPOSES OF ADJUSTING STATUS

- Visa Waivers
 - Visa waivers from most countries are not considered inspection for the purposes of adjusting status
- Paroled In
 - Most of the time “paroled in” does not make a person inspected. They have just been let in for a specific purpose – such as to file for asylum
- Overstayed Nonimmigrant Visas
 - Overstay is forgiven so long as they have not left the U.S. since their last legal entry





CAUTION AND CONSIDERATIONS OF LPRS



RISKS OF LETTING A GREEN CARD EXPIRE

- Application or Renewal of A Driver's License
 - In most of the states, proof that you're a legal resident is often required to renew your driver's license.
 - Without it, an LPR may not be able to carry out the renewal of a driver's license.
 - Another problem is the 4-5 months taken by the renewal process.
 - The wait will significantly affect or hinder your driving privileges within the states for four to five months.
- The various states have different requirements regarding issuing of the driving licenses.
- If a client is suffering from this problem they can contact the DMV see if there is another document that can be provided. They will sometimes accept a USCIS receipt showing that renewal is pending



RISKS OF LETTING A GREEN CARD EXPIRE

Seeking employment with an expired card

- Before you can get employment within the states, you need to prove to the employer that you are permitted to work within the state. The i-9 form (Employment eligibility verification) is one of the proofs required by your potential employer.
 - On the other hand, the green card is a List A document requirement for the authority employment fields. You have an obligation to complete the I-9 form before you can start the job or the first day of your new employment. If the green card you availed is expired, no employer will consider your case.
- A **passport with a temporary I-551 stamp** can once again come to your rescue as a List A document. It is, however, valid for a year hence you need to check if it hasn't expired as well. The problem associated with expired cards and employment regarding the time frame for renewal. Most employers will not be willing to wait for five months as you renew your green card.



RISKS OF LETTING A GREEN CARD EXPIRE

Traveling and Re-entry into the US with an overdue green card

- This is also one of the tricky situations associated with an expired green card.
- It begins right from the airlines where **passengers with expired green cards will not be allowed aboard the plane.**
 - Exceptions are usually made by some airlines if you have a notice of action or the Form I-797 to verify that you have filed the Form I-90 for renewal. If this is your case, make sure to bring with you a validated passport.
- During re-entry to the US, the Customs and Border Protection will request for your green card as proof of permanent residence or a citizen.
 - The expired card shows a lack of necessary documentation which may result in an entry denial.
 - It even gets much worse with a re-entry fee of \$584 besides a long delay.



RISKS OF LETTING A GREEN CARD EXPIRE

- **In case a green card expired while in the United States an LPR can use their passport if it has an I-551 stamp.** This passport will act as temporary proof of permanent residence, and it usually lasts a year.
 - To get the I-551 stamp on your passport, make sure to make an appointment to visit your local USCIS office (use [Infopass appointment services](#)). We recommend you to file an I-90 form imminently. You will have to wait for two to three weeks to receive a notice of action or approval of your application by the USCIS.
- **In the case is when your card expires when you are outside the States.** When that happens, prepare the application for a travel document or [Form I-131](#) then take it personally to the US consular office in your vicinity.
 - Here you will be provided with a boarding foil which technically is a permission for re-entry valid if you had been away for a year or less.
 - Once you enter the US, file the I-90 form for renewal of your green card as soon as you can.



DANGER RENEWING FOR SOME LPR'S – CRIMINAL CONVICTIONS

- Types of Crimes That Make a Lawful Permanent Resident Deportable
- Within the Immigration and Nationality Act (I.N.A.) is a long list of types of crimes that make a person with a green card deportable. For example, you can be found deportable for having committed:
 - an aggravated felony
 - a crime of moral turpitude within five years of receiving a green card
 - two deportable crimes at any time
 - a sex crime
 - a drug crime (even an arrest can be problematic)
 - domestic violence
 - a firearms offense, or
 - a fraud-related offense.

This is only an abbreviated list.





RE-ENTRY PERMITS - LPR



RE-ENTRY PERMITS

- A Reentry Permit is a travel document that looks similar to a passport and can function like a passport.
- Lawful permanent residents or conditional permanent residents who plan to travel outside the United States for more than one year, but less than two years, may **AND SHOULD** apply for a Reentry Permit.



RE-ENTRY PERMITS

Reentry Permit has two basic functions:

- A Reentry Permit allows a U.S. permanent resident to reenter the United States after traveling abroad for longer than one year but less than two years.
 - The Reentry Permit can serve as a passport for a U.S. permanent resident if he/she has no passport and cannot obtain it from the country of his/her nationality.
- Without a Reentry Permit, a permanent resident that is outside the country for more than a year will most likely be denied reentry into the U.S. on the ground that he/she has abandoned his or her permanent resident status.
- In most cases - after a one year absence from the United States, a green card is not valid for reentry.
- The permit is intended to prevent this problem.



RE-ENTRY PERMITS

- Obtaining a Reentry Permit doesn't make a permanent resident "immune" from abandonment issues.
- Even with this travel document, permanent residents can be at risk of losing permanent resident status through abandonment.
- Permanent residents must continue to maintain ties to the United States and the travel must be temporary in nature.



SPECIAL CONSIDERATIONS CIRCUMSTANCES

- ▶ J-1 Exchange Visas
 - ▶ Common in the Caribbean, Asia, Eastern Europe & Mexico
 - ▶ Majority of J-1 Visas have a 2 Year Residence Requirement
 - ▶ They have to return to their country for a period of 2 years after training before they can return to the US
- ▶ You can request a waiver of the 2 year residence requirement “212 (3) waiver”
 - ▶ Letter of No Objection
 - ▶ Extreme hardship on applicant and/or US family





REMOVING CONDITIONS ON PERMANENT RESIDENCE





I-751

Petition to Remove Conditions on Residence

Removal of the Condition on Residency if the Marriage Still Exists after Two Years:

The I-751 “Joint Petition”

- Joint Petition to Remove Conditions is filed when the couple is still together
- Joint Petitioner should be filed within 90 days of the conditional residence expiring
 - “Filed” means the petition was actually received by USCIS by the deadline date, not simply postmarked by the deadline.
 - **Example:** Diego married Frida, a U.S. citizen, on July 10, 2013. He entered the United States with his immigrant visa on August 1, 2014. The two-year anniversary of Diego’s receiving conditional residency is August 1, 2016. Diego and Frida must file (USCIS must actually receive) the joint petition between May 3, 2016 and July 31, 2016.
- If the Joint Petition is not received by the deadline, USCIS will automatically terminate the conditional residence and the conditional resident may be placed in removal proceedings
 - Late petitions “may” be accepted if good cause is shown – but good cause is a high standard!

I-751

Petition to Remove Conditions on Residence

Be sure to submit new evidence to support the bona fides of marriage with the I-751:

- Pictures
- New Household Bills
- New Joint Assets
- Birth Certificates of children born since marriage





I-751

Petition to Remove Conditions on Residence

Removal of the Condition on Residency if the Marriage DOES NOT Exist after Two Years: Waiver of the Joint Filing Requirement

- Marriages may end before the 2 years is up
 - Divorce, annulment, or death
- Conditional Resident must still remove conditions if they desire to obtain permanent residency and reside in the United States.

- INA § 216 (c)(4) permits USCIS to grant a waiver of the Joint Filing Requirement on 3 grounds”
 - Marriage was entered into in good faith and has ended - other than death
 - Extreme hardship will result if the Conditional Resident is deported
 - Marriage was entered into in good faith, but was battered or subjected to extreme cruelty

DIFFICULTY OF JOINT FILING WAIVERS



- Waivers of the joint filing requirement are becoming more and more difficult to obtain.
- According to AILA – the number of referrals to immigration court by USCIS had nearly quadrupled since the Trump Administration.
- Use caution when accepting a case like this.
- The risks are too high for clients to take these kinds of risks.





U.S. Citizenship
and Immigration
Services

**FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION
INTO THE UNITED STATES AFTER REMOVAL OR DEPORTATION**

THE "I-212" WAIVER



Learn	Obtain	Learn	Learn	Obtain	Learn	Learn
What is an "I-212" Waiver?"	Knowledge on different types of Removal or Deportation Orders	Who an I-212 waiver can help	How an I-212 may help an alien overcome the permanent bar	Obtain knowledge on how USCIS makes their decision on I-212 Waivers	Risks and Benefits of applying for an I-212 Waiver	How to identify red flags and when someone needs an attorney



WHAT IS THE I-212 WAIVER USED FOR?

The “I-212 Waiver” is technically not a waiver

Form I-212 asks USCIS for Permission to Reapply for Admission to the United States after:

- Being Excluded
- Being Deported or Removed
- Becoming Subject to the Permanent Bar (more about that later)



TYPES OF REMOVAL, DEPORTATION ORDERS AND EXCLUSION



Prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), exclusion was the formal term for denial of an alien's entry into the United States. The decision to exclude an alien was made by an immigration judge after an exclusion hearing.

April 1, 1997, the process of adjudicating **inadmissibility** may take place in either an expedited removal process or in removal proceedings before an immigration judge

WHAT DOES IT MEAN IF SOMEONE IS EXCLUDED?

WHAT IS THE DIFFERENCE BETWEEN A REMOVAL ORDER AND A DEPORTATION ORDER?



DEPORTATION OR REMOVAL ORDER?



Most people use the terms “deportation” and “removal” interchangeably.



They are ostensibly the same thing – they have the same result.



Prior to IIRIRA, if an illegal alien was order to be deported, they were issued a Order of Deportation.



After IIRIRA, if an illegal alien is ordered to be deported, they are issued a Removal Order



Both types of orders mean that the alien is to be returned to their country of origin





UNDERSTANDING THE DIFFERENT TYPES OF REMOVAL ORDERS?



TYPES OF REMOVAL ORDERS

Expedited Order of Removal

Final Administrative Order of Removal

- Can be issued In Absentia – In their absence

Voluntary Order of Removal

Voluntary Departure – is NOT a Removal Order
and carries no immigration consequences



EXPEDITED REMOVAL ORDERS

- Expedited Removal Orders are issued by Customs and Border Protection (CBP)
- Aliens are not afforded the right to see an immigration judge
- Immigration Judges cannot reopen Expedited Removal Orders
- In RARE circumstances, CBP will reopen an Expedited Removal Order
- Previously ERO Could only be issued to someone within 100 miles of a US Border
 - Approximately 2 out of 3 people in the United States lives within 100 Miles of a US Border



**NEARLY 2 OUT OF 3
PEOPLE LIVE WITHIN THE
100-MILE BORDER ZONE**



FINAL ADMINISTRATIVE ORDERS OF REMOVAL

Administrative Orders of Removal are issued by an Immigration Judge

- Administrative Orders of Removal become FINAL when the 30 day appeal period has expired, and the alien has not filed an appeal with the Board of Immigration Appeals (BIA)

If an alien is issued a Notice to Appear (NTA) in Immigration Court and they fail to appear, the Immigration Judge will order them removed in their absence

- The proper legal term for this is: "In Absentia"

Immigration Judges, the BIA and Circuit Courts can reopen Administrative Orders of Removal

- Under the current Administration, Removal Orders are EXTREMELY difficult to reopen



VOLUNTARY REMOVAL ORDERS



A Voluntary Removal Order is actually the same as an Final Administrative Order of Removal



The alien appears in front of an Immigration Judge – usually after being detained by Immigration and Customs Enforcement (ICE)



They may have previous voluntary departures, or a criminal record that makes them ineligible for what is called Voluntary DEPARTURE



The Alien “agrees” to be deported



VOLUNTARY DEPARTURE

- Voluntary Departure – in the context of this class – is when an alien appears in front of an Immigration Judge and is granted the ability to voluntarily depart the United States within a certain period of time – Usually 120 Days
- Generally to be granted Voluntary Departure, the alien must:
 - Be a person of Good Moral Character
 - Does not have any egregious violations of immigration law
 - Must post a \$500 Bond guaranteeing their departure within 10 days
 - Depart timely
 - Provide proof to a US Embassy or Consulate – or directly back to the Immigration Court that they departed the United States
- If they fail to do any of the above, the order granting voluntary departure automatically becomes a Final Administrative Order of Removal



- There are NO immigration consequences...
- When they depart the United States they are only subject to whatever bar they would trigger for unlawful presence
- As long as they do not have any other inadmissibility issues

WHAT IS THE BENEFIT OF VOLUNTARY DEPARTURE?



BARS ASSOCIATED WITH REMOVAL

Aliens who are Removed from the US are typically barred from the US for a period of time

**5 Year Bar
generally
applies when:**

- Alien was removed in an expedited removal proceeding
- Alien was removed as a result of any kind of removal proceeding initiated upon their entry
 - For example: People who present at a US Border and are placed into proceedings

**10 Year Bar
generally
applies when:**

- Alien is otherwise removed after a removal hearing before an Immigration Judge
- Aliens that depart the US while an order of removal is outstanding/unexecuted

**20 Year Bar
generally
applies when:**

- Aliens that have been ordered removed more than once



WHAT EXACTLY DOES THE I-212 WAIVER DO?

“WAIVES” THE
DEPORTATION
ORDER



WHO CAN BENEFIT FROM THE I-212 WAIVER?

Aliens that have previously been removed from the United States by an Immigration Judge and were physically returned to their country

Aliens that have previously been removed from the United States by an Immigration Judge, but failed to depart the United States as Ordered

Aliens that were granted Voluntary Departure, but failed to depart the U.S. as promised – thus converting their VD to an Order of Removal

- Aliens with a grant of VD that depart as promised do NOT need an I-212

Aliens who have been deported via an Expedited Order of Removal



WHO CANNOT APPLY FOR AN I-212

- Aliens that are removed for reasons that make them permanently ineligible to come back to the United States (some exceptions)
 - Drug/Weapons Trafficking
 - Murder
 - Terrorism/Espionage Against the United States
- Aliens who are physically in the US and subject to the Permanent Bar
- Aliens who have departed the US and are subject to the Permanent Bar who have been out of the US less than 10 years



REMEMBER!!!!

- Anyone with a criminal record of ANY kind needs to consult with an Immigration Attorney for Legal Advice prior to a Non-attorney Immigration Services Professional filing any form/application with USCIS or any other immigration agency.



WHAT DO USCIS/CBP/CONSULAR OFFICERS LOOK AT?

HIGHLY DISCRETIONARY APPLICATION



REQUIREMENTS FOR AN I-212

Fall into a category of Alien that requires permission to reapply for entry into the United States:

Aliens with Removal Orders

Aliens subject to the Permanent Bar for 1 year of unlawful presence in aggregate after committing an immigration violation (more about that in a minute)

Be an applicant for a Non-immigrant Visa or a Green Card

Not be a threat to society or national security

WHAT IS NOT REQUIRED FOR AN I- 212

- Qualifying Relative
- However, please take note that someone that needs an I-212 will often also need either an I-601A for unlawful presence; or they will need an I-601 for either unlawful presence or another ground of inadmissibility
 - As you know, those waiver DO require a qualifying relative



FACTORS THAT ARE CONSIDERED BY USCIS/CBP/US CONSULAR OFFICER

The basis of the deportation

Recency of deportation

Length of residence in US

Moral Character of the applicant

Applicant's respect for law and order

Evidence of rehabilitation

Family responsibilities of applicant

Other grounds of inadmissibility

Hardship to the applicant and/or others

The need for the applicant to be in the United States

Any other reasonable criteria





FILING FORM I-212

WHERE TO FILE IS OFTEN MORE COMPLICATED THAN THE FILING ITSELF



**NEW PROCEDURES ALLOW APPLICANTS
PRESENT IN THE U.S. THAT NEED TO CONSULAR
PROCESS TO APPLY FROM THE UNITED STATES**

THIS IS CALLED A “STATESIDE I-212”



File I-212 After I-130 Approval (or 30 days prior to the anticipated approval)

Can File I-212 at the same time as the I-601A

I-212 and I-601A should be approved within 60 – 90 days of each other

Once the I-212 AND the I-601A are approved – the applicant can depart the United States for their Consular Interview

NOTE: Even with a I-601A approval, and applicant may have other grounds of inadmissibility



“STATESIDE” APPLICANTS THAT ARE APPLYING FOR ADJUSTMENT OF STATUS

It is uncommon that someone will be adjusting status and not have an issue of unlawful presence to resolve

File Form I-212 at the **SAME TIME** as the Adjustment of Status Package

File Form I-212 at the **LOCAL FIELD OFFICE** where the I-485 will be adjudicated

If Filing an I-601 for unlawful presence or another ground of inadmissibility – file it **AT THE SAME TIME AS THE I-485**



APPLICANTS WHO ARE NOT IN THE U.S. AND FILING FOR A GREEN CARD

- Green Card Applicants that do NOT require form I-601 to submitted to waive a ground of inadmissibility
 - File the I-212 at the USCIS FIELD OFFICE with jurisdiction over the city and state in which the alien was ordered removed in the United States
 - The same field office retains the jurisdiction over an I-212
 - File the I-212 at any time after filing Form I-130 (due to the time it takes to consular process)



APPLICANTS WHO ARE NOT IN THE U.S. AND FILING FOR A GREEN CARD

- Green Card Applicants that ARE required to submit form I-601 to waive a ground of inadmissibility
 - File BOTH the I-212 and the I-601 concurrently at the Immigrant Visa (Green Card) interview
 - The Consular Officer will forward the applications to the appropriate USCIS office



NONIMMIGRANT VISA APPLICANTS



I-212'S FOR NONIMMIGRANT VISA APPLICANTS



An I-212 may allow a previously deported alien to obtain any nonimmigrant visa that they otherwise qualify for



You will likely encounter this most with B2 and K1/K3 applicants



Note, that K1/K3 Applicants may also need an I-601 depending on other factors



For NIVs – Form I-212 is filed at the US Consulate where the applicant lives



The consular officer does not make the decision

The I-212 is forwarded to the CBP Admissibility Review Office (“ARO”) for a decision



APPLICANTS FROM VISA WAIVER COUNTRIES

Visa Exempt applicants (Visa Waiver (VB/VW) country applicants file form I-212 at their intended Port of Entry (POE) into the United States

CBP then forwards the application to the ARO for adjudication



OVERCOMING THE PERMANENT BAR

UNLAWFUL
PRESENCE - INA
SECTION
212(A)(9)(C)(I)



WHO IS SUBJECT TO THE PERMANENT BAR?

- The permanent bar comes from [Section 212\(a\)\(9\)\(C\)\(i\)](#) of the I.N.A., which makes inadmissible
 - “Any alien who:
 - (I) has been unlawfully present in the United States for an aggregate period of more than 1 year; or
 - (II) has been ordered removed under section 235(b)(1) , section 240 , or any other provision of law, and who enters or attempts to reenter the United States without being admitted.”
- This part of the law came from legislative changes made in 1996, called the Illegal Immigration Reform and Immigrant Responsibility Act or IIRIRA.



REQUIREMENTS TO FILE I-212 TO OVERCOME THE PERMANENT BAR

Applicant **MUST** be **PHYSICALLY** outside the United States for a period of at least 10 years

Must be able to document their 10 years in their country

Must otherwise have favorable factors as discussed above to warrant admission back into the United States

These cases are stronger for Immediate Relatives of USC

I-212's are not impossible for Nonimmigrant Visas – however, the applicant's intent to return to their country as required is **HIGHLY** scrutinized.



IDENTIFYING SCENARIOS THAT NEED AN ATTORNEY



WHEN TO REFER TO AN IMMIGRATION ATTORNEY

- The Red Flags are the Same as all applications to be filed by a non-attorney immigration professional
- Criminal Record of Any Kind
- Does Not Know What they Want to File
- Anyone Seeking an Employment Visa
- Anyone Who has Multiple Illegal Entries
- Anyone that has Another Ground of Inadmissibility
 - Remember – it is HIGHLY likely that a person with a deportation order has at least 1 other ground of inadmissibility





WHO YOU CAN HELP – WITHOUT AN ATTORNEY

COMMON SCENARIOS THAT DO NOT NEED AN ATTORNEY



ALIENS THAT ARE PRESENT IN THE US AND APPLYING FOR A GREEN CARD

- Alien's with old Removal Order – or a Voluntary Departure that turned into a Removal Order – that has not departed the US
- Alien's with an old In Absentia Removal Order that have not departed
- Alien's with an Expedited Order of Removal – who reentered BEFORE April 1, 1997 (so they are NOT subject to the permanent bar)
 - Needs to Consular Process with an I-601A Waiver
 - Please remember that LAIA recommends an attorney consult for all waivers



ALIENS THAT ARE NOT PRESENT IN THE US AND ARE APPLYING FOR A GREEN CARD OR A NONIMMIGRANT VISA

- Aliens that have been issued a Removal/Deportation Order of ANY kind
- Are not subject to the permanent bar – or have been physically outside of the US for more than 10 years
- Will consular process in their country
 - Alien's may also need an I-601 Waiver for Unlawful Presence, or another ground of inadmissibility
 - Such Aliens should consult with an immigration attorney prior to filing



FINAL THOUGHTS

- I-212's can be a good way for people with deportation orders to return to the United States or to obtain a Green Card
- Utilize your LAIA Membership
- Utilize your Attorney Network when needed

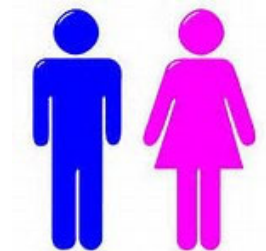




INA § 245 (a) as amended by:
Title IV, sec. 40001-40703 of the Violent Crime Control and Law
Enforcement Act, H.R. 3355) signed as Pub.L. 103-322 by
President Bill Clinton on September 13, 1994 (codified in part at
42 U.S.C. sections 13701 through 14040

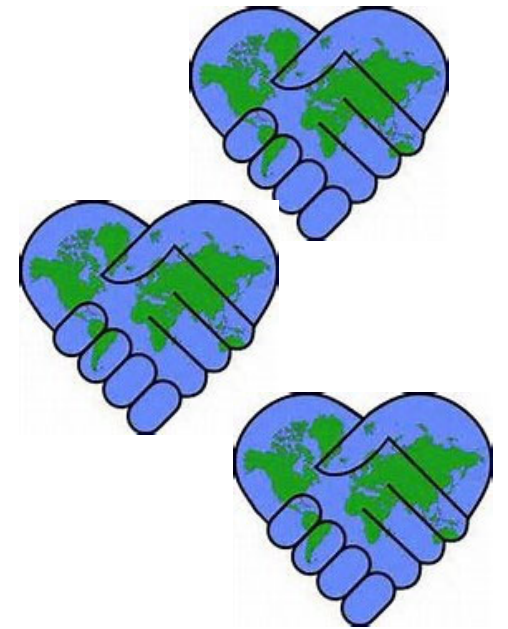
ADJUSTMENT OF STATUS UNDEVAWAS

- The Violence Against Women Act (VAWA) amended Section 245 (a) of the INA in 1996
 - Applies equally to men and women
 - Allows certain abused relatives of USCIs and LPRs to apply for a green card without their abusers knowledge
 - Abused becomes a “Self- Petitioner”



Adjustment of Status under VAWA

- Humanitarian Elements of VAWA
 - Self-Petitioners are able to get a green card so long as they can prove the familial relationship, and the abuse
 - EWI Self-Petitioners of IR does not have to leave the US to consular process
 - Self –Petitioners of LPR’s do not have to consular process, but they do have to wait for their priority date becomes current
 - The first work permit is “usually” received in 30 days (rapid processing)



Adjustment of Status under VAWA

- Who is eligible to file?
 - The abused Spouse, Child or Parent of a USC
 - The abused Spouse or Child of a LPR
 - A child may file for themselves if they are under 21 and unmarried
(some cases 25)



Adjustment of Status under VAWA

- Eligibility Requirements for a Spouse
 - Married to a USC or LPR abuser
 - Self-Petitioner has suffered battery or extreme cruelty by their USC/LPR spouse
 - Self-Petitioner's child has suffered battery or extreme cruelty by their USC/LPR spouse
 - Self-Petitioner entered into the marriage in good faith
 - **Must still prove bona fides of marriage**
 - Self-Petitioner resided with their spouse
 - Self-Petitioner is a person of good moral character



Adjustment of Status under VAWA

- Eligibility Requirements for a Child
 - Self-Petitioner is the child of a USC or LPR abuser
 - Self-Petitioner has suffered battery or extreme cruelty by their USC/LPR parent
 - Self-Petitioner resided with their abusive parent
 - Self-Petitioner is a person of good moral character



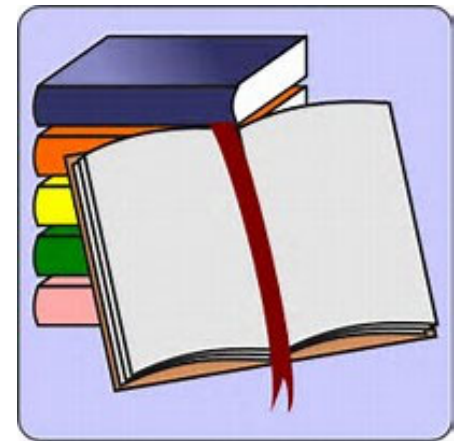
Adjustment of Status under VAWA

- Eligibility Requirements for a Parent
 - Self-Petitioner is the parent of a USC son or daughter who is 21 when the petition is filed
 - Self-Petitioner has suffered battery or extreme cruelty by their USC son or daughter
 - Self-Petitioner resided with their abusive son or daughter
 - Self-Petitioner is a person of good moral character



Adjustment of Status under VAWA

- What is Considered Abuse for VAWA?
 - Battery or Physical Violence
 - Threats of Harm to Others
 - Intimidation and Degradation
 - Economic Abuse
 - Social Isolation or Forced Detention
 - Sexual Abuse
 - Immigration Control
 - Jealousy and Harassment
 - Verbal Abuse



Adjustment of Status under VAWA

- Common Challenges with VAWA?
 - Lack of tangible evidence
 - Immigrants are not familiar with U.S. law and their rights – this lack of knowledge prevents them from acting
 - Cultural differences may prevent them from acting
 - Fear of deportation
 - Financial reasons – especially when children are involved
 - May not have access to a camera or smart phone because their abuser is too controlling
 - Affidavits may be challenging because their abuser does not allow them to have friends



Adjustment of Status under VAWA

- Common Challenges with VAWA?
 - Examples of evidence
 - Affidavits are usually **CRITICAL** pieces of evidence
 - Pictures of bruises, cuts, etc.
 - Notes, emails, text messages, etc
 - Medical records
 - Comprehensive Psychological exam

If nothing exists - your client most likely needs extensive legal advice to continue with their case.



Adjustment of Status under VAWA

- Comprehensive Psychological Examination
 - Valuable KEY Evidence in VAWA
- Evaluation is given the same weight as “EXPERT WITNESS TESTIMONY” (like in court)
- Through the intake/counseling session the Psychologist corroborates and proves the Self-Petitioner’s abuse and emotional suffering



Adjustment of Status under VAWA

- Filing a VAWA Petition
 - Filed on Form I-360 (this form is used for many things – be sure to read the form instructions carefully)
 - Should be filed as a 1 – Step Adjustment of Status
 - I-360 replaces the I-130
 - Many VAWA petitioners will qualify for a fee waiver.
 - Filed at the Vermont Serviced Center



Adjustment of Status under VAWA

- Inadmissibility Issues with VAWA
 - Most Humanitarian Immigration Benefits will waive a ground of inadmissibility.
 - Some will still need additional waivers
 - Cannot adjust if she made a false claim to US Citizenship there is no waiver available





U - VISA

NONIMMIGRANT STATUS FOR VICTIMS OF CERTAIN CRIMES

U-Visa

- U Nonimmigrant Status (U-Visa) is set aside for the victims of certain crimes
- Must meet certain criteria to be eligible
- Certain family members are eligible to derive U Nonimmigrant status from primary U-Visa
- Only 10,000 U-Visas are available each year
- Consult with an Immigration Attorney when a client considering a U-Visa Petition



U-Visa

- U-Visa Eligibility
 - Victim of qualifying crime
 - Suffered substantial physical or mental abuse/harm as a result of the crime
 - Have information about the crime
 - Have been helpful or are likely to be helpful to law enforcement in the investigation
 - Crime occurred in the U.S. or violated U.S. law
 - Must be otherwise admissible to the U.S.





OTHER TYPES OF VICTIMS



INDIRECT VICTIMS / BYSTANDER VICTIMS

Indirect / Bystander victims may include:

- Parents
- Spouses
- Children
- Sometimes Significant others

Crimes that may lead to an indirect victim U-Visa

- Murder / Manslaughter
- Rape (of a child)
- Abduction
- Kidnapping
- Torture



QUALIFYING CRIMES

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felony Assault
- Fraud in Foreign Labor Contracting

- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape

- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes*†

*Includes any similar activity where the elements of the crime are substantially similar.

†Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.



U-Visa

- Filing for a U-Visa
 - Form I-918, Petition for U Nonimmigrant Status
 - Form I-918, Supplement B, U Nonimmigrant Status Cert.
 - No I-918B - No U-Visa
 - Personal Statement describing the criminal activity, the effect it has had on their life and how they have been helpful in the investigation
 - Evidence to establish each eligibility requirement (refer to form instructions or USCIS website)
 - Filed at the Vermont Service Center



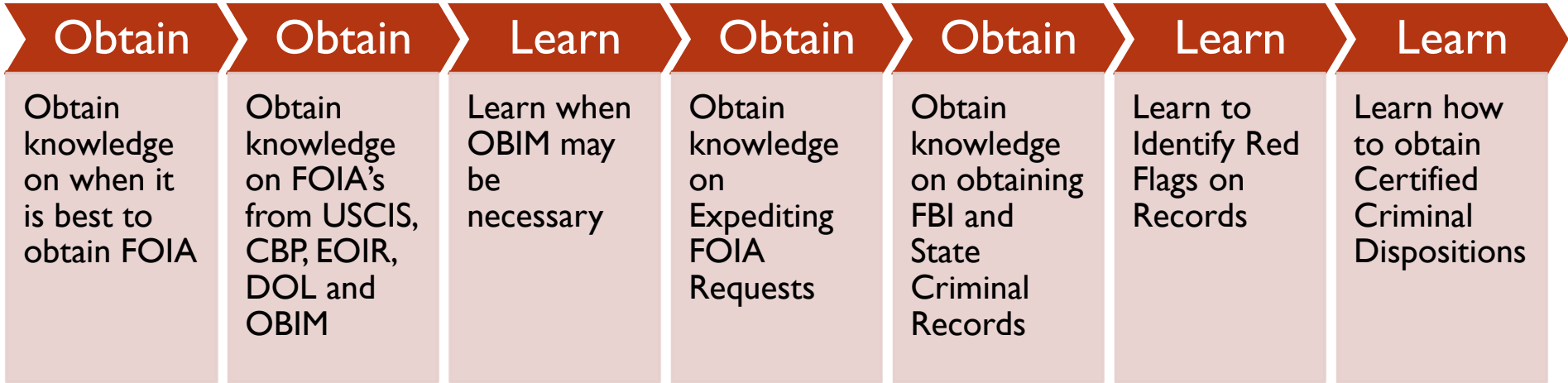
U-Visa

- Filing for a U-Visa
 - If there are derivative beneficiaries of a U-Visa, complete Form I-918, Supplement A for each family member
 - If there is an inadmissibility issue you must also file Form I-192, Application for Advance Permission to Enter as a Nonimmigrant



WHAT IS FOIA?





FREEDOM OF INFORMATION ACT (FOIA)

The freedom of information act (FOIA) generally provides that any person has the right to request access to federal agency records or information except to the extent the records are protected from disclosure by any of **nine exemptions** contained in the law or by one of **three special law enforcement record exclusions**.



EXEMPTIONS

The nine exemption categories that authorize government agencies to withhold information are:

1. classified information for national defense or foreign policy
2. internal personnel rules and practices
3. information that is exempt under other laws
4. trade secrets and confidential business information
5. inter-agency or intra-agency memoranda or letters that are protected by legal privileges
6. personnel and medical files
7. law enforcement records or information
8. information concerning bank supervision
9. geological and geophysical information



EXCLUSIONS

- Congress provided special protection in the FOIA for three narrow categories of law enforcement and national security records.
- The **first exclusion** protects the existence of an ongoing criminal law enforcement investigation when the subject of the investigation is unaware that it is pending and disclosure could reasonably be expected to interfere with enforcement proceedings.
- The **second exclusion** is limited to criminal law enforcement agencies and protects the existence of informant records when the informant's status has not been officially confirmed.
- The **third exclusion** is limited to the FBI and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified. Records falling within exclusion are not subject to the requirements of the FOIA.



FOIA REQUEST FOR IMMIGRATION CLIENTS

WHEN AND WHY TO UTILIZE FOIA REQUESTS



WHY SHOULD YOU UTILIZE FOIA REQUESTS FOR YOUR CLIENTS?



The current immigration environment demands that you have full knowledge of your clients situation



Protects your client



Protects you



Clients may not understand what has occurred with an encounter with an immigration official

Border:

- Permitted to withdraw application for admission
- Expedited Removal Orders
- Jurisdiction to issue an Expedited Removal Order (No IJ Required)

Immigration and Customs Enforcement (ICE)

- Briefly detained – but placed in Removal Proceedings
- Did not realize that they would be required to appear in court
- Maybe gave fake name or address
- Removed In Absentia



EXISTING REMOVAL ORDERS



PERSONS SUBJECT TO THE PERMANENT BAR

Many clients may not understand that they are subject to the permanent bar

Permanent Bar = 1 year of unlawful presence in the US after an immigration violation – including exit and reentry.

Many may think that immigration does not have record of their entries and exits

- Again – may not understand what actually happened at a border
- Technology is catching up with the past
- People who gave false names, but were fingerprinted, can now be found via biometrics appointments



PERMANENT BAR

Client cannot leave the US without being stuck in their country permanently

No Waiver is available

Can Apply to reenter ONLY after spending 10 years outside the US

Cannot adjust status in the US

If something is filed with USCIS:

I-130 is approved – but ultimately cannot be used

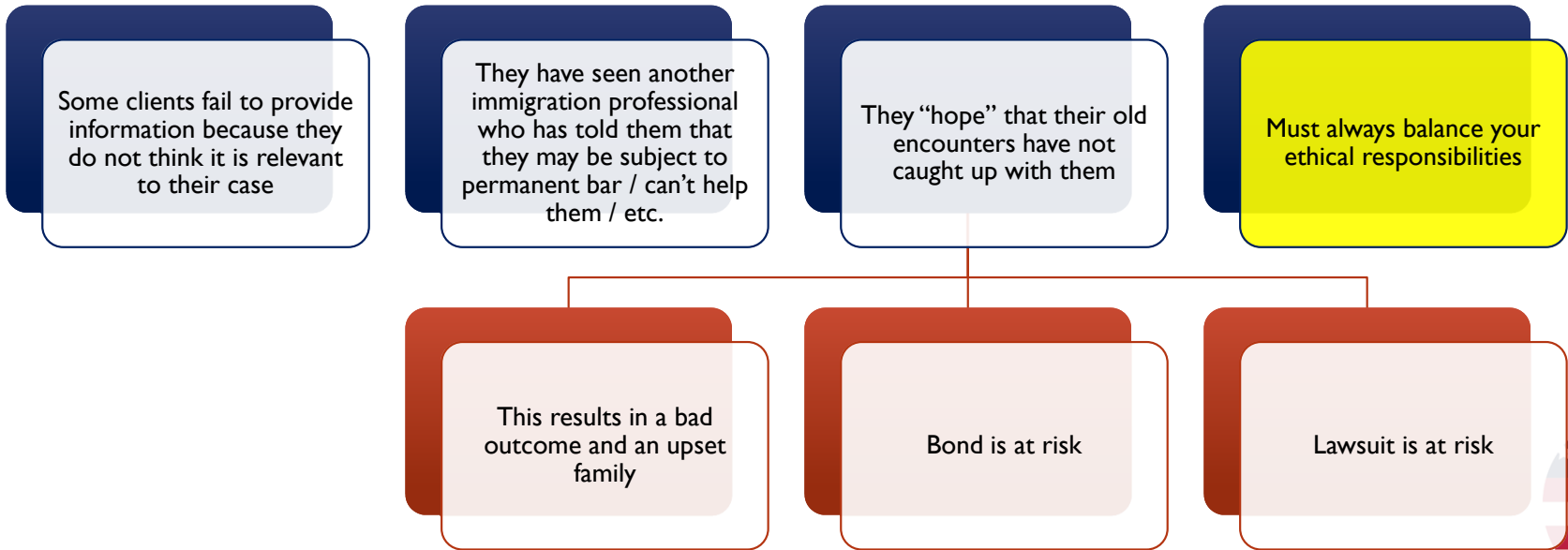
I-601A is approved – but ultimately cannot be used

Applications are denied – client is placed in removal proceedings

May or may not have relief in court – faces imminent deportation



CLIENTS ARE NOT ALWAYS HONEST



OTHER REASONS TO USE FOIA REQUESTS



OBTAIN COPIES OF PREVIOUS IMMIGRATION FILINGS

Old Files to obtain necessary immigration filings

To see what has been filed for a client by another professional

Find an old I-130 or Labor Petition for AOS under 245(i)

Copies of Parents Naturalization Certificates to prove acquired or derived citizenship

Copy of previously submitted bona fides of marriage for a new VAWA claim

Copies of files to ensure consistency in applications / correct inaccurate information

Copy of a Person's Naturalization or Certificate of Citizenship for other Reasons

with the applicable requirements under the FOIA and the Privacy Act.

▶ **START HERE - Type or print in black ink.**

Part 1. Type of Request

Select **only one** box.

NOTE: If you are filing this request on behalf of another individual, respond as it would apply to that individual.

1.a. Freedom of Information Act (FOIA)/Privacy Act (PA)

1.b. Amendment of Record (PA only)

Part 2. Requestor Information

1. Are you the Subject of Record for this request?
 Yes No

If you answered "No" to **Item Number 1.**, provide the information requested in **Part 2.** If you answered "Yes" to **Item Number 1.**, skip to **Part 3.**

Requestor's Full Name

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

Requestor's Mailing Address

3.a. In Care Of Name (if any)

3.b. Street Number and Name

3.c. Apt. Ste. Flr.

3.d. City or Town

Requestor's Contact Information

4. Requestor's Daytime Telephone Number

5. Requestor's Mobile Telephone Number (if any)

6. Requestor's Email Address (if any)

Requestor's Certification

By my signature, I consent to pay all costs incurred for search, duplication, and review of documents up to \$25. (See Form G-639 Instructions for more information.)

7.a. Requestor's Signature

7.b. Date of Signature (mm/dd/yyyy)

Part 3. Description of Records Requested

NOTE: While you are not required to respond to every item in **Part 3.**, failure to provide complete and specific information may delay processing of your request or create an inability for U.S. Citizenship and Immigration Services (USCIS) to locate the records or information requested.

1. **Purpose (Optional):** You are not required to state the purpose of your request. However, providing this information may assist USCIS in locating the records needed to respond to your request.

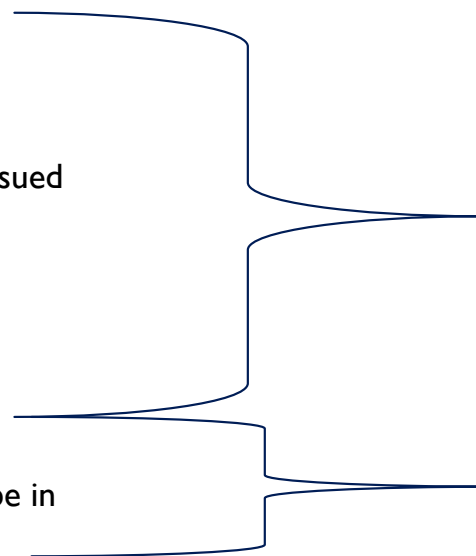
Protect your clients address by:
 Dedicated PO Box
 Protects your office and your client
 Your Office

Use office address or dedicated PO Box for mailing address

Create email for FOIA Request for Client this will be helpful for CBP Request Account Later



- ▶ Specify the request is for URGENT review to obtain information
- ▶ Possibly state that Client has been issued a NTA
- ▶ Possibly state that file is needed for review to determine eligibility for an Immigrant Visa or 245(I) eligibility
- ▶ Use the name that the records will be in



Part 3. Description of Records Requested

NOTE: While you are not required to respond to every item in **Part 3.**, failure to provide complete and specific information may delay processing of your request or create an inability for U.S. Citizenship and Immigration Services (USCIS) to locate the records or information requested.

1. **Purpose (Optional:** You are not required to state the purpose of your request. However, providing this information may assist USCIS in locating the records needed to respond to your request.)

Full Name of the Subject of Record

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name



Part 3. Description of Records Requested
(continued)

Other Names Used by the Subject of Record (if any)

Provide all other names you have ever used, including aliases, maiden name, and nicknames. If you need extra space to complete this section, use the space provided in **Part 5. Additional Information.**

Additional Information.

- 3.a. Family Name (Last Name)
- 3.b. Given Name (First Name)
- 3.c. Middle Name

Full Name of the Subject of Record at Time of Entry into the United States

- 4.a. Family Name (Last Name)
- 4.b. Given Name (First Name)
- 4.c. Middle Name

Other Information About the Subject of Record

5. Form I-94 Number Arrival-Departure Record
▶
6. Alien Registration Number (A-Number) (if any)
▶ A-
7. USCIS Online Account Number (if any)
▶
8. Application, Petition, or Request Receipt Number
▶

Information About Family Members that May Appear on Requested Records

For example, provide the requested information about a spouse or children. If you need extra space to complete this section, use the space provided in **Part 5. Additional Information.**

Family Member 1

- 9.a. Family Name (Last Name)
- 9.b. Given Name (First Name)
- 9.c. Middle Name
10. Relationship

Family Member 2

- 11.a. Family Name (Last Name)
- 11.b. Given Name (First Name)
- 11.c. Middle Name
12. Relationship

Parents' Names for the Subject of Record

Father

- 13.a. Family Name (Last Name)
- 13.b. Given Name (First Name)
- 13.c. Middle Name

Mother

- 4.a. Family Name (Last Name)
- 4.b. Given Name (First Name)
- 4.c. Middle Name
- 4.d. Maiden Name (if applicable)

Part 4. Verification of Identity and Subject of Record Consent

NOTE: Complete all applicable **Item Numbers**. In addition, the Subject of Record **MUST** sign **Part 4.** of this request.

Full Name of the Subject of Record

- a. Family Name (Last Name)
- b. Given Name (First Name)
- c. Middle Name

VERY IMPORTANT

- Specific Docs
- Not Natz Cert
- Complete
- Alien File



Part 4. Verification of Identity and Subject of Record Consent (continued)

Mailing Address for the Subject of Record

2.a. In Care Of Name (if any)

2.b. Street Number and Name

2.c. Apt. Ste. Flr.

2.d. City or Town

2.e. State 2.f. ZIP Code

2.g. Province

2.h. Postal Code

2.i. Country

Other Information for the Subject of Record

3. Date of Birth (mm/dd/yyyy)

4. Country of Birth

Contact Information for the Subject of Record

Providing this information is optional.

5. Daytime Telephone Number

6. Mobile Telephone Number (if any)

7. Email Address (if any)

Part 4. Verification of Identity and Subject of Record Consent (continued)

Mailing Address for the Subject of Record

2.a. In Care Of Name (if any)

2.b. Street Number and Name

2.c. Apt. Ste. Flr.

2.d. City or Town

2.e. State 2.f. ZIP Code

2.g. Province

2.h. Postal Code

2.i. Country

Other Information for the Subject of Record

3. Date of Birth (mm/dd/yyyy)

4. Country of Birth

Contact Information for the Subject of Record

Providing this information is optional.

5. Daytime Telephone Number

6. Mobile Telephone Number (if any)

7. Email Address (if any)

Signature and Notarized Affidavit or Declaration of the Subject of Record

Select **only one** box.

NOTE: The Subject of Record **MUST** provide a signature in **Item Number 8.a. Notarized Affidavit of Identity OR Item Number 8.b. Declaration Under Penalty of Perjury**. If the Subject of Record is deceased, read **Item Number 8.c. Deceased Subject of Record** and attach proof of death.

8.a. **Notarized Affidavit of Identity**

(Do **NOT** sign and date below until the notary public provides instructions to you.)

By my signature, I consent to USCIS releasing the requested records to the requestor (if applicable) named in **Part 2**. I also consent to pay all costs incurred for search, duplication, and review of documents up to **\$25** (if filing this request for myself).

Signature of Subject of Record

Date of Signature (mm/dd/yyyy)

Subscribed and sworn to before me on this _____ day of _____ in the year _____.

Daytime Telephone Number _____

Signature of Notary

My Commission Expires on (mm/dd/yyyy)

8.b. **Declaration Under Penalty of Perjury**

By my signature, I consent to USCIS releasing the requested records to the requestor (if applicable) named in **Part 2**. I also consent to pay all costs incurred for search, duplication, and review of documents up to **\$25** (if filing this request for myself).

I certify, swear, or affirm, under penalty of perjury under the laws of the United States of America, that the information in this request is complete, true, and correct.

Signature of Subject of Record

Date of Signature (mm/dd/yyyy)

8.c. **Deceased Subject of Record**

(NOTE: You **MUST** attach an obituary, death certificate, or other proof of death.)



FILING A FOIA REQUEST USCIS



- Email:
 - Form G-639 only
 - uscis.foia@uscis.dhs.gov
- Online:
 - <https://www.dhs.gov/dhs-foia-privacy-act-request-submission-form>
- Request will come on CD in mail



Purpose:

New Online Service: FIRST

You can [submit a FOIA request online](#) using our new Freedom of Information Act Records System (FIRST) to request:

- Your own immigration record, or
- Non-A-file information such as policies, data, or communications

Using [FIRST](#) eliminates the time and expense associated with mail-in requests.

Stay tuned for more online services coming soon!

Make a Request Using the Paper G-639

Use [Form G-639](#) to request access to information under the Freedom of Information and Privacy Acts (FOIA/PA).



FILING A FOIA REQUEST USCIS

FILING A FOIA REQUEST ICE




- Email:
- Form G-639 only
- ICE-FOIA@dhs.gov
- Online:
- <https://www.ice.gov/webform/foia-request-form#wcm-survey-target-id>
- Request will come on CD in mail
 - May receive a letter saying that the records have been sent to USCIS





FILING A FOIA REQUEST EOIR (IMMIGRATION COURT)

- Email
 - G-639
 - DOJ-361, Certification of Identity
 - EOIR.FOIARequests@usdoj.gov
 - Requests will come on CD and/or Cassette Tape
- 

FILING A FOIA REQUEST CBP

- Important for 99% of Clients
- Filed online
- <https://foiaonline.gov/foiaonline/action/public/request>
- Only an Attorney can have an account for multiple applicants
 - Create a specific formatted email address for each client
 - CBP.FirstName.LastName@gmail.com
 - Give email address and password to client
 - Obtain permission in writing to do this



The screenshot shows the FOIAonline.gov website interface. At the top, there is a navigation bar with the FOIAonline logo, a search bar, and links for 'Log In' and 'Create Account'. A left sidebar contains navigation options: 'Submit a Request', 'Search Requests', 'Run a Report', and 'Create an Account'. The main content area is titled 'New Request' and includes a brief explanation of the Freedom of Information Act (FOIA). Below this, there are three main sections: 'Agency Selection', 'Request Type', and 'Contact Information'. The 'Agency Selection' section has a dropdown menu labeled 'Select an agency'. The 'Request Type' section has a dropdown menu with 'FOIA' selected. The 'Contact Information' section is divided into two columns of fields: the left column includes Salutation, First Name, Middle Initial, Last Name, Email Address, Organization, and Phone Number; the right column includes Mailing Address Location (set to 'United States/US Territories'), Address Line 1, Address Line 2, City, State/Province, and Zip Code/Postal Code. A Windows taskbar is visible at the bottom of the browser window, showing the time as 9:46 PM on 2/27/2019.

FILING A FOIA REQUEST CBP

FILING A FOIA REQUEST

DOL

- The Department of Labor does not require a special form in order to make a FOIA request. Requests must be in writing and be submitted by fax, courier service or postal mail. You may also submit your request via e-mail to foiarequests@dol.gov.
 - Your request must reasonably describe the records you seek.
 - You do not have to give the record's name or title, but the more specific you are, the more likely it will be that the record you seek can be located.



FILING A FOIA REQUEST DOL

Mail

If you choose to submit your FOIA request via postal mail, and do not know which component has the records you are seeking, please mark the outside of the envelope, "Freedom of Information Request" and mail to:

Office of the Solicitor
Division of Management and
Administrative Legal Services
200 Constitution Avenue, N.W.,
Room N-2420
Washington, D.C. 20210

Fax

You may fax a FOIA request to "**FOIA Staff**" at
(202) 693-5389

E-mail

You may also submit a FOIA request addressed to any DOL agency component by sending an e-mail to foiarequests@dol.gov.

To ensure that your FOIA request is forwarded to the correct Department component, you must identify which agency you believe has the records you are seeking.

FOIA requests sent to any other DOL e-mail addresses will not be accepted as a properly submitted request.



OFFICE OF BIOMETRIC IDENTITY MANAGEMENT (OBIM)

- OBIM requests may be submitted by letter request; Form G-639 by mail, fax, or email; or electronically through the DHS Online Request Form. ***They should include an original fingerprint card or A-number.***
- OBIM FOIA Officer
Department of Homeland Security
Washington, D.C. 20598-0628
Phone: 202-295-5454
Fax: 202-298-5201
E-Mail: OBIM-FOIA@ice.dhs.gov



WHY AND WHEN TO USE OBIM

Why OBIM

- Biometrics are unique physical characteristics, such as fingerprints, that can be used for automated recognition. Biometrics form the foundation of OBIM's identification services because they are reliable, convenient and virtually impossible to forge.
 - Biometrics collected by OBIM and linked to specific biographic information enable a person's identity to be established, then verified, by the U.S. government. With each encounter, from applying for a visa to seeking immigration benefits to entering the United States, OBIM:
 - Checks a person's biometrics against a watch list of known or suspected terrorists, criminals and immigration violators
 - Checks against the entire database of all of the fingerprints the Department of Homeland Security has collected since OBIM began to determine if a person is using an alias and attempting to use fraudulent identification.
 - Checks a person's biometrics against those associated with the identification document presented to ensure that the document belongs to the person presenting it and not someone else.

When OBIM

- client is sure that they have encountered an immigration official, but no records are returned through traditional FOIA Requests



OTHER FOIA

Please print the IRLC FOIA Handout sent in email for additional information on requesting information under the FOIA





FBI AND STATE BACKGROUND CHECKS

CRIMINAL BACKGROUND CHECKS

Important to identify Crimes that will put clients at risk for deportation

FBI Check can often catch a CBP or ICE encounter

LPR's can be placed into removal proceedings when filing for naturalization for committing certain crimes

Some benefits cannot be applied for while on probation

Applications that require good moral character for a specified period – make sure that a crime has not been committed within the qualifying period

Mistakes on criminal records

Keep in mind that information can be attached to a person by a similar name and date of birth accidentally



FBI RECORDS

- Most common and most efficient manner is a request via LIVESCAN
- Request records for “personal record review”
 - Must be done at a licensed LIVESCAN provider or Police
 - In California – there are many independent providers
 - Not all states allow that – for example New York and New Jersey must use a company called IdentiGO or the police.
- Can make request via mail with a paper fingerprint card and \$18 fee
 - Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843
Fax: (540) 868-4391/4997
- Can make a request online
 - <https://efoia.fbi.gov/#home>





U.S. Department of Justice
Federal Bureau of Investigation
Criminal Justice Information Services Division
Clarksburg, WV 26306

DATE: 07-04-2013

[REDACTED]

The Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation has completed the following fingerprint submission:

Subject Name

[REDACTED]

Search Completed Result

07-04-2013

A SEARCH OF THE FINGERPRINTS
PROVIDED BY THIS INDIVIDUAL
HAS REVEALED NO PRIOR ARREST
DATA AT THE FBI.

STATE DEPARTMENT OF JUSTICE RECORDS



Most common and efficient is LIVESCAN



Request Record for “Personal Record Review”



Fingerprint card procedures vary from state to state – Check your state for specific instructions



KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF CRIMINAL INFORMATION AND ANALYSIS
P.O. Box 903417
SACRAMENTO, CA 94203-4170

August 6, 2015

RE: California Criminal History Information

Dear Applicant:

This is in response to your Visa/Immigration record check concerning the existence of a California criminal history record maintained in the files of the Department of Justice's Bureau of Criminal Information and Analysis. As of the date of this letter, your fingerprints did not identify with any criminal history record maintained by this Bureau.

Pursuant to California Penal Code section 11105 (c) (9), the purpose of a Visa/Immigration record check is to provide an individual with a copy of their record if needed in conjunction with an application to enter the United States or any foreign nation.

Sincerely,

ANTHONY MOLINA, Criminal Identification
Specialist I
Applicant Processing Program
Bureau of Criminal Information & Analysis

For *KAMALA D. HARRIS*
Attorney General



“Illegal
Entry”

Arrests or
Convictions

Warrants



OBTAINING CERTIFIED CRIMINAL DISPOSITIONS



WHO NEEDS CERTIFIED CRIMINAL DISPOSITIONS



Anyone with a criminal record that is applying for an immigration benefit



Of course they have already consulted with an attorney



Original Certified Records **MUST** be submitted to USCIS – cannot submit photocopies



01

Obtain form from the
Court Records
Department

02

Exact Procedures
will vary by state –
and sometimes
county

03

In California –
records are
electronic – can go
to any court in the
county where the
case was heard

04

When in doubt, go
directly to the
courthouse that the
case was heard in



WHO CAN GET CERTIFIED DISPOS?



ANYONE



Criminal Records are Public Record



It does not hurt to have a letter of authorization from your client – Just in case your court has a specific policy



There may or may not be a charge



In counties where the procedure requires a request in writing and to made by mail – make sure to include a self addressed stamped envelope for return of the records



FINAL THOUGHTS



TIMES HAVE CHANGED



In this immigration landscape, having the full story is more important than ever



DHS has specific direction from the Attorney General and the Secretary of Homeland Security to aggressively pursue undocumented immigrants and deport them



Clients do not always understand what has happened in their history and may accidentally put them at risk



Protect YOU and your clients



Utilize your attorney network and LAIA Membership





THANK YOU FOR
ATTENDING THIS
WEBINAR!!

WE HOPE TO SEE YOU
AGAIN SOON IN A LIVE
CLASS OR LIVE WEBINAR

