

Waivers of Inadmissibility – Practice Guide

As of March 13, 2007

Prepared by AILA-CBP Liaison Committee

Waivers in immigration law are specific statutory provisions providing relief from the statutory grounds of inadmissibility and removal. Two key procedural issues for waiver processing are the following:

- Where and how (in person or by mail) are waiver applications submitted; and
- Who is involved in the review and adjudication of the application:
 - Customs and Border Protection (“CBP”) offices under the Department of Homeland Security:
 - Port of entry,
 - Field Office,
 - Admissibility Review Office (“ARO”);
 - U.S. Citizenship & Immigration Services (“USCIS”) under the Department of Homeland Security: or
 - The Consulate abroad under the Department of State.

Following is information about the waiver process, focusing on waivers of grounds of inadmissibility for nonimmigrants and returning permanent residents filed by applicants for visas at U.S. consulates abroad and by applicants for admission to the United States at U.S. ports of entry. This information does not address procedures for waiver or similar relief in removal proceedings.

I. Nonimmigrant Waivers -- Procedure

A. Land Ports of Entry (POE)

- The CBP **Seattle** Field Office covers POEs from Port Roberts, Washington on the west to Grand Portage, Minnesota on the east.

1. Submission process

In this area, I-192 applications can be filed in-person filing at any land port of entry, or applications can be mailed-in to the focal facility.

The designated focal facility for receiving I-192s as the following:

Customs and Border Protection
c/o I-192 Application Process
P.O. Box 789
Great Falls, MT 59403-0789

If you mail in the application, CBP will provide instructions to go to the border for fingerprinting.

2. Review and adjudication process

From Great Falls, the case is forwarded to the CBP office at Willow Creek, Montana for review, and then to the CBP office International Falls, Minnesota for final determination.

The Willow Creek Port Director accepts email inquiries at the following address. carl.c.riordan@dhs.gov

Do not make inquiries to attorneyinquiry.waiver.aro@dhs.gov, because the Admissibility Review Office (“ARO”) does not have jurisdiction over waivers filed at POEs.

- The **Detroit** Field Office covers POEs from Sault Ste Marie, MI on the west to Detroit, MI on the east.

1. Submission process

In this area, applications must be mailed-in to the focal facility.

The designated focal facility for receiving I-192s as the following:

Customs and Border Protection
c/o I-192 Application Process
International Bridge Plaza
Sault Sainte Marie, MI 49783-1492

The I-192 unit at SSM will send the applicant fingerprinting instructions.

2. Review and adjudication process

The I-192 unit at SSM makes the final determination.

There is no email inquiry.

- The **Chicago** Field Office is responsible for POEs from Detroit to Buffalo, NY.
 1. **Submission process**

Applicants file I-192s in person at preclearance ports. Fees are receipted and fingerprints are taken at the time of filing.
 2. **Review and adjudication process**

Preclearance ports forward all I-192s to the Admissibility Review Office (“ARO”), located at CBP Headquarters in Washington, D.C.

Inquiries can be made to attorneyinquiry.waiver.aro@dhs.gov.
- The **Buffalo** Field Office is responsible for POEs from Buffalo, NY on the west to Champlain, NY on the east.
 1. **Submission process**

In this area, applications must be filed in person at any land border POE. The application is received, the fee accepted and receipted, fingerprints are taken, and the application is reviewed for completeness.
 2. **Review and adjudication process**

The POE mails the application to the Buffalo Field Office, which forwards the application to the Champlain CBP office for review and adjudication.

There is no email inquiry.
- The **Boston** Field Office is responsible for POEs from Highgate Springs, Vermont to Beecher Falls, Maine.
 1. **Submission process**

In this area, applications must be filed in person at any land border POE. The application is received, the fee accepted and receipted, fingerprints are taken, and the application is reviewed for completeness.
 2. **Review and adjudication process**

The POE mails the application to the Boston Field Office for review and adjudication.

There is no email inquiry.

B. Waiver Process at Preclearance Operations (PCO) Ports of Entry in Canada

1. Submission process

Applicants file I-192s in person at preclearance ports. Fees are receipted and fingerprints are taken at the time of filing.

2. Review and adjudication process

Preclearance ports forward all I-192s to the Admissibility Review Office (“ARO”), located at CBP Headquarters in Washington, D.C.

Inquiries can be made to attorneyinquiry.waiver.aro@dhs.gov.

C. Waiver Process at American Consulates

1. Submission process

Applicants denied a visa due to inadmissibility file a waiver request at the consulate where the nonimmigrant visa application was submitted and denied. There is no application form or fee.

Note: This procedure does not apply to Ks and Vs.

2. Review and adjudication process

The consulate reviews the waiver request and forwards a recommendation for 212(d)(3) nonimmigrant waivers to the ARO for decision. Exception: certain high profile and national security cases are forwarded to by the post to DOS/CA/VO for consideration prior to referral to ARMC at CBP Headquarters.

Note: Consular officer refers nonimmigrant K and V recommendations to U.S. Citizenship & Immigration Services (USCIS) office overseas.

D. I-212s for Canadian nonimmigrants (except for Ks and Vs) are submitted by the applicant for admission at a port of entry. See 8 CFR 212.2(f). Preclearance ports will forward the I-212 to the ARO. Land border ports will retain jurisdiction in the same way that I-192 decisions are made.

II. Jurisdiction and Procedures for Waivers of Grounds of Inadmissibility

A. Nonimmigrant visas

Although the term “waiver” is used, the InS 212(d)(3)(A) is really not a waiver, but an authorization for visa issuance and admission in spite of a ground of inadmissibility.

1. INA 212(d)(3)(A)

CBP has jurisdiction over nonimmigrant waivers, except for Ks and Vs.

I-192 applications are submitted at ports of entry.

Aliens needing nonimmigrant visas apply at an American consulate through the NIV application process (DS-156).

2. HIV infection

Aliens inadmissible because of HIV infection may be granted nonimmigrant waivers if the applicant can establish that entry into the United States would confer a public benefit which outweighs any risk to the public health.

Generally, waivers may be granted to aliens for these purposes:

Participation in designated events, such as the 2006 Gay Games in Chicago, Illinois.

30 day (or less) stays for academic, health, or business reasons, or to visit close family members.

In-transit travel not to exceed 5 days for the above reasons.

Travel for other purposes may be authorized if: the danger to the public health is minimal, the possibility of spread of infection is minimal, and there will be no cost incurred by any level of government agency in the United States without the prior consent of that agency.

3. INA 212(d)(4)

- Applicants at POEs –

CBP has jurisdiction.
Application is on Form I-193.

- Applicants at consulates –

Policy is evolving in the direction already agreed upon for INA 212(d)(3) waivers.

4. Ks and Vs

USCIS has jurisdiction over waivers for nonimmigrant Ks and Vs. Application is made at a U.S. consulate through the NIV application process.

5. Waiver Renewals

Nonimmigrant waivers may not be renewed or revalidated. A new application and authorization are required.

6. Consent to Reapply

See 8 CFR 212.2 generally.

For Nonimmigrants:

8 CFR 212.2(b) Alien applying to consular officer for nonimmigrant visa or nonresident alien border crossing card. . **This permission shall be requested in the manner prescribed through the consular officer.** Since the alien is an applicant for a nonimmigrant visa, DOS refers all recommendations for waivers to the ARO, except for K and V nonimmigrants.

8 CFR 212.2(f) Applicant for admission at port of entry. **The alien shall file the Form I-212** with the district director having jurisdiction over the port of entry. 8 CFR 1.1(o) includes Director, Field Operations in the definition of the terms “district director” or “director”.

B. Appeals

- I-192s, INA 212(d)(3)(A)(ii) – Appeal is to the Board of Immigration Appeals.
- I-212s – Appeal is to the Administrative Appeals Office
- I-193s – No appeal.
- Consular nonimmigrant waivers (INA 212(d)(3)(A)(i)) – No appeal.
- Consular Passport waivers – (INA 212(d)(4)) – No appeal.

III. NSEERS Registration Waivers – 8 CFR 264.1(f)

Exemption from initial registration requirements may be sought from the Department of State at a consular office abroad.

Once an alien has complied with the NSEERS requirement for initial registration, CBP has jurisdiction to consider relief of further registration requirements, and may waive any or all further registration requirements. The alien must establish that good cause or exigent or unusual circumstances exist and that the alien warrants a favorable exercise of discretion. Decisions are final and not appealable.

Waiver of INA 212(a)(3)(A)(ii) for NSEERS violators – There is no waiver available for an alien inadmissible under INA 212(a)(3)(A)(ii). See INA 212(d)(3)(A)(i).

IV. Waivers for Immigrants – Procedure and Jurisdiction

USCIS has jurisdiction for immigrant waivers for applicants for immigrant visas and applicants for adjustment of status.

A. INA 212(e)

USCIS has jurisdiction for all INA 212(e) waivers.

B. INA 212(k)

CBP has jurisdiction over INA 212(k) applications submitted at ports of entry.