

Slide 1

WAIVERS OF  
INADMISSIBILITY

Slide 2

WHAT IS A WAIVER?

- Separate application to request “forgiveness” for inadmissibility. Always involves exercise of discretion, as well as other statutory requirements
- Different than “exception” to inadmissibility

Slide 3

GROUND WE WILL COVER

- Health INA Sec. 212(a)(1)
- Crime (212)(a)(2)
- Fraud 212(a)(6)
- Immigration Violations 212(a)(9)

Slide 4

**HEALTH GROUNDS – WHAT'S WAIVABLE?**

INA Sec. 212(g): Waivable:

- Communicable diseases
- Not meeting vaccination requirements
- Physical or mental disorder with associated harmful behavior

Not waivable: drug abuse or addiction

Slide 5

**212(g) waiver for communicable diseases**

- General waiver – Where applicant is parent, spouse, unmarried son or daughter of USC, LPR or immigrant visa recipient
- VAWA waiver – For VAWA self-petitioner. No qualifying relative required

Slide 6

**ADDITIONAL DISCRETIONARY CONSIDERATIONS FOR HIV+**

- Danger to the public health is minimal
- Possibility of spread of infection is minimal
- No cost incurred by government agency without prior consent of agency

Slide 7

**212(g) waiver for vaccinations**

- 212(g)(2)(A) – Immigrant vaccinated against a disease for which he/she failed to present documentation of previous vaccination
- 212(g)(2)(B) – A civil surgeon certifies that the vaccination would not be “medically appropriate”
- 212(g)(2)(C) – Vaccination would be contrary to religious or moral beliefs. Must show:
  - **He or she is opposed to vaccinations in any form**
  - **Objection based on religious belief or moral convictions**
  - **Religious belief or moral conviction sincere**

Slide 8

**212(g)(3) waiver for certain mental or physical impairments**

- Waiver is available for any alien
  - no family relationship required
  - no extreme hardship required

Slide 9

**CRIME GROUNDS – WHAT'S WAIVABLE?**

INA Sec 212(h):

- Crimes of moral turpitude
- Prostitution
- Multiple criminal offenses
- Possession of 30 grams or less of marijuana

Slide 10

**CRIME GROUNDS – WHAT'S NOT WAIVABLE?**

- Other drug offenses
- Murder
- Torture
- NOTE: Crimes viewed by the AG as "violent or dangerous" require a showing of exceptional and extremely unusual hardship

Slide 11

**212(h) waivers for crimes**

- If applicant is only inadmissible for prostitution, admission not contrary to national welfare/safety of U.S., and applicant is rehabilitated; or
- If crime occurred more than 15 years *before* application for adjustment, admission not contrary to national welfare/safety of U.S., and applicant is rehabilitated; or
- If inadmissible applicant is the spouse, parent, or son/daughter of USC or LPR, and denial of admission would result in "extreme hardship" to USC or LPR spouse, parent, son, or daughter

Slide 12

**FRAUD GROUNDS – WHAT'S WAIVABLE?**

INA Sec. 212(i)

- Fraud, material misrepresentation for immigration benefit

Slide 13

**FRAUD GROUNDS – WHAT'S NOT WAIVABLE?**

- False claim to USC made on or after 9/30/96
- NOTE: Statute provides exception to inadmissibility for alien making false claim where :
  - Alien resided permanently in U.S. before age 16
  - Each parent of alien is or was USC
  - Alien reasonably believed s/he was USC at time misrep made

Slide 14

**212(i) waivers for fraud**

- Extreme hardship
- To USC or LPR spouse or parent – child is not a qualifying relative
- For VAWA self-petitioners, 212(i) waiver available based on extreme hardship to self, or to LPR or qualified alien parent or child
  - Qualified alien = LPRs, asylees, refugees, parolees into the country for at least one year, persons granted withholding deportation/removal, persons granted conditional entry under INA 203(a)(7) prior to 4/1/1980, Cuban/Haitian entrants, approved VAWA self-petitioners, applicants of VAWA cancellation or pending petition with prima facie eligibility

Slide 15

**IMMIGRATION VIOLATIONS – WHAT'S WAIVABLE?**

- Prior orders of expulsion (deportation, exclusion, removal), INA Sec. 212(a)(9)(A)
- Unlawful presence, INA Sec. 212(a)(9)(B)(v)
- Permanent bar, INA Sec. 212(a)(9)(C) for certain VAWA self-petitioners

Slide 16

212(a)(9)(B)(v) waivers for unlawful presence

- Extreme hardship
- To USC or LPR spouse or parent – child is not a qualifying relative

Slide 17

I-212 applications for prior expulsion orders

- No showing of extreme hardship or family ties required
- Need favorable exercise of AG discretion

Slide 18

What do these waivers have in common – when is extreme hardship required?

- For fraud
- For certain crime waivers
- For unlawful presence

Slide 19

What do these waivers have in common – when are family ties required?

- Certain 212(h) waivers (crimes)
- 212(i) (misrepresentation)
- 212(a)(9)(B) (unlawful presence)
- 212(g)(1) (communicable disease)

Slide 20

What do these waivers have in common – when is a favorable exercise of discretion required?

ALWAYS!

Slide 21

EXTREME HARDSHIP – IS THE DEFINITION IN THE STATUTE?

No.

The meaning of extreme hardship developed through case law.

- *Matter of Anderson*
- Hardship depends on the facts and circumstances of each case.
- Regulations issued on hardship for Nacara.

Slide 22

**EXTREME HARDSHIP – WHAT IS IT?**

**GENERAL HARDSHIP FACTORS INCLUDE:**

- AGE
- TIME IN U.S.
- FAMILY IN US AND ABROAD
- HEALTH FACTORS, INCLUDING PSYCHOLOGICAL IMPACT
- POLITICAL, ECON. AND LEGAL CONDITIONS AT HOME
- FINANCIAL IMPACT
- IMMIGRATION HISTORY
- LANGUAGE ABILITY
- CHILDREN'S DEVELOPMENT, EDUCATION, AND OPPORTUNITIES
- ABUSE-RELATED FACTORS WHERE RELEVANT
- CONTRIBUTION AND TIES TO COMMUNITY

Slide 23

**PRACTICE TIP**

- Why did client come to US?
- What's in U.S. that's not in her country?
- How would her life be changed if she returned?
- Has she asked her family about current situation?
- Has she tried to find a job in home country?
- **NOTE – EXTREME HARDSHIP ASSESSED CUMULATIVELY**

Slide 24

**EXTREME HARDSHIP – HOW DO YOU SHOW IT? EVIDENCE INCLUDES:**

- **AFFIDAVITS**
- **BIRTH CERTIFICATES FOR CHILDREN**
- **MEDICAL RECORDS, DOCTOR'S LETTER**
- **POLICE AND COURT DOCUMENTS**
- **CHILDREN LETTERS**
- **PHOTOS**
- **COUNTRY CONDITIONS**
- **LETTERS FROM COMMUNITY, SCHOOLS, CHURCH**
- **LETTERS FROM HOME**
- **EXPERT AFFIDAVITS AND TESTIMONY**



Slide 25

**FAVORABLE EXERCISE OF DISCRETION**

- USCIS has discretionary authority
- Weigh all favorable and unfavorable factors
- May be denied even if have shown extreme hardship if unfavorable factors – **extreme hardship is viewed as “threshold factor” – doesn’t mandate approval of waiver**

Slide 26

**FILING WAIVERS WITH ADJUSTMENT APPLICATIONS**

- Note regulatory authority to file waiver without fee where filed concurrently with application for adjustment of status – 8 CFR Sec. 245.1(f)

Slide 27

**FILING WAIVERS AT THE CONSULATE**

- Other than standalone I-212, file waiver at consulate, not in advance.
- CDJ – special procedures for requesting interview for submission of waiver. Use CALL CENTER to schedule appointment 1-900-476-12 from U.S. (\$1.25 per minute)  
If paying by credit card, call 1-800-919-1754 (\$7.00 per call)

Slide 28

### IF YOU LOSE...APPEALS OF WAIVER DENIALS

- Who appeal is to
  - USCIS Administrative Appeals Office
- Timeframe for filing the appeal
  - Must file appeal within 30 days of date of denial letter (or 33 days if denial letter was mailed instead of given live)
- Where to file appeal
  - To the office denying the waiver – the waiver denial letter will have the address

Slide 29

### APPEALS OF WAIVER DENIALS

- What to File
  - Form G-28
  - Form I-290B – must identify error of law or fact or both, or face summary dismissal
  - As of July 30, 2007, fee is \$ 585 (check the waiver denial letter for acceptable payment methods; e.g., appeals for CDJ waivers require a U.S. Postal Money Order only, payable to the "U.S. Treasury")
  - Supporting evidence and/or brief: can file with notice or w/ 30 days, or otherwise request additional time to file

Slide 30

### PRACTICE TIPS

- Make it personal
- Tell a story
- Get to know your clients
- Develop a theory
- Find an expert
- Document everything
- Acknowledge wrongdoing
- Remember the kids
- Read the cases
- Organize the waiver packet