

## INA SECTION §212(h) WAIVER / FORM I-601

This “waiver” allows an immigration judge or immigration official to excuse certain criminal convictions that otherwise prevent someone from getting lawful permanent residency (a green card) or cause someone to lose their lawful permanent resident status.

### Which crimes *can* be excused by the 212(h) waiver?

- You *might* be able to use a 212(h) waiver if the immigration judge found you removable based upon:
  - One or more crimes of “moral turpitude” (except murder or torture);
  - Two or more crimes with a total jail time of five years or more;
  - Prostitution; or
  - One offense of simple possession of less than 30 grams of marijuana.

### Which crimes *cannot* be excused by the 212(h) waiver?

- Any drug crime except one offense of simple possession of less than 30 grams of marijuana;
- Firearm offenses;
- An “aggravated felony” *sometimes* cannot be waived. See the answer to the question “Who does not qualify for a 212(h) waiver?”
- If you have some crimes that can be waived under 212(h) and some that cannot, you might qualify to combine the 212(h) waiver with a different waiver or relief from removal.

### Who qualifies for the 212(h) waiver?

- There are four (4) ways to qualify for a 212(h) waiver. Either:
  - #1, You are the husband, wife, parent, daughter or son of a U.S. citizen or lawful permanent resident who would suffer “**extreme hardship**” if you were deported;
  - #2, It has been at least 15 years since you committed the crime;
  - #3, The crime you are seeking to excuse is for prostitution; or
  - #4, You are a Violence Against Women Act (VAWA) self-petitioner (see [Form I-360](#)).

## Who does *not* qualify for a 212(h) waiver?

- People who were approved for their lawful permanent residency card (green card) at a U.S. consulate (for example, in their home countries) and who have *either*
  - lived continuously less than seven (7) years in legal status in the United States before immigration officials started removal (deportation) proceedings; *or*
  - been convicted of an “aggravated felony” since becoming a lawful permanent resident.
- *Note:* If you have never been a lawful permanent resident, *or* if you got your lawful residency while in the United States, you may be able to apply *even if you have an aggravated felony*.
- *Warning:* It is always possible that the judge or officer will deny the application. But if your conviction is held to be a “violent or dangerous” crime, there is very little chance that the application will be approved. Get help.

## Does an applicant need to qualify for adjustment of status (Form I-485)?

- Most people applying for a 212(h) waiver in the United States will also need to qualify for adjustment of status (Form I-485, Application to Register Permanent Residence or Adjust Status), even if they are already lawful permanent residents. There are limited exceptions to this rule and courts are deciding whether additional exceptions might apply.
- People who may not need to qualify for adjustment of status include:
  - Lawful permanent residents who were arrested by immigration officials while trying to reenter the country;
  - Lawful permanent residents who successfully reentered the country after being convicted, even though immigration officials could have arrested them when they reentered. *Note:* The Board of Immigration Appeals ruled in *Matter of Rivas*, 26 I&N Dec. 130 (BIA 2013), that people in this group need to qualify and apply for adjustment of status. The U.S. Courts of Appeals have not yet ruled on this issue.

## When can you apply for a 212(h) waiver?

- You can file a waiver application (Form I-601) with the immigration judge in court.
- If you are not in removal proceedings and would be eligible to apply for lawful permanent residency if not for your convictions, you can file Form I-601 with U.S. Citizenship and Immigration Services, along with your application for lawful permanent residency (Form I-485). Be sure to consult with an immigration

lawyer before you do this, because it is possible that the waiver will be denied and you will be placed in removal (deportation) proceedings.

## **How do you apply?**

- Complete [Form I-601](#) and submit supporting documents showing:
  - Impact of you being separated from your family. You can submit documents or sworn declarations showing how you financially and emotionally support your family and how your detention and deportation would affect your family;
    - *Note:* As explained above, in many cases you must show extreme hardship to your spouse, child, or parent who is a lawful permanent resident or U.S. citizen spouse.
  - Hardship your children would face in your home country, if they will travel with you;
  - Conditions in your home country;
  - Medical conditions, particularly when you or your family members could not receive medical attention in your home country;
  - Length of your relative's residence in the United States as well as their age, health, job skills, and other related factors;
  - Proof of your volunteer work or religious activities;
  - Copy of Violence Against Women Act (VAWA) self-petition, if applicable.

**Please see the *Prosecutorial Discretion Guide* for more information on how to prove these facts.**