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The following are comments on Form I-212 Extension: OMB Control No. 1615-0018

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Form I-212: Part II, last two questions:

Typo in first question at top of page 2. Reference should be ". . . (C)(i)(II)" vs. ". . . (C)(i)(I)".

Both the top two questions on page 2 (as well as various portions of the instructions—highlighted and attached by .pdf document to these comments) erroneously refer to a 10-year waiting period outside the United States before filing the I-212 in cases presumptively falling under the section 212(a)(9)(C) "permanent bar" grounds. This is incorrect because the Board of Immigration Appeals (BIA) cases relied on for these instructions, as set out on page 13, Appendix I, of the Form I-212 Instructions (Rev.11/23/10), *Matter of Torres-Garcia*, 23 I & N Dec. 866 (BIA 2006) and *Matter of Briones*, 24 I & N Dec. 355 (BIA 2007), both failed to consider a relevant statute that reaffirmed the discretion of government officials and the applicability of the I-212 regulation, 8 C.F.R. § 212.2, in its entirety.

Immigration Judges Continue to Have Discretion to Retain Jurisdiction and Consent to Reapplication for Admission for Cancellation of Removal and Other Respondents Notwithstanding the Reinstatement of Removal Statute

The 2006 statute the BIA missed provides:

> (b) Discretion to Consent to an Alien's Reapplication for Admission —
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> (1) In general. The Secretary of Homeland Security, the Attorney General, and the Secretary of State *shall continue* to have discretion to consent to an alien's reapplication for admission after a previous order of removal, deportation, or exclusion.
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> (2) Sense of congress. It is the sense of Congress that the officials described in paragraph (1) should *particularly* consider exercising this authority in cases under the Violence Against Women Act of 1994, cases involving nonimmigrants described in subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act [(INA)] (8 U.S.C. 1101(a)(15)), and relief under

section 240A(b)(2) or 244(a)(3) of such Act (as in effect on March 31, 1997) pursuant to regulations under section 212.2 of title 8, Code of Federal Regulations.[1]

This statute post-dates both the permanent bars of INA § 212(a)(9)(C)(i) and the reinstatement of removal statute, INA § 241(a)(5). Subsection 813(b)(1) states the broad, general rule that the named officials "continue[s] to have discretion to consent to an alien's reapplication for admission *after a previous order of removal*, deportation, or exclusion."[2] Subsection 813(b)(2), which highlights specific applications of this authority, contains several important features. First, this statute "particularly" encourages exercising this discretion in more than traditional section 245(a) cases. Indeed, it broadens the scope of discretionary application of Form I-212 as well as emphasizing certain particular types of cases for favored for its application. Moreover, by referring specifically to 8 C.F.R. § 212.2 in the reapplication context, the statute also reaffirms the continuing validity of this regulation, which includes *nunc pro tunc* procedures that permit an I-212 application to be filed "in conjunction with" an application for adjustment of status.[3] Although the wording of the regulation only addresses applications under

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[1] The Violence Against Women Reauthorization Act of 2005 (VAWRA), Pub. L. No. 109-162, § 813(b)(1) & (b)(2), 119 Stat. 2960 (Jan. 5, 2006) (emphasis added). (Originally known as VAWDOJRA, the name of the statute was shortened by removing reference to the Department of Justice (DOJ) from Titles I-IX of the Act. VAWA & DOJ Reauthorization Act Technical Amendments, Pub. L. No. 109-271, § 1(a), 120 Stat. 750 (Aug. 12, 2006).) Both subsections (b)(1) & (b)(2) are included in an editorial note to INA § 240A, 8 U.S.C. § 1229b (2010).

[2] *Id.* § 813(b)(1), emphasis added.

[3] 8 C.F.R. § 212.2(a),(e), & (i), emphasis added:

> (a) Evidence. Any alien who has been deported or removed from the United States is inadmissible to the United States unless the alien has remained outside of the United States for five consecutive years since the date of deportation or removal. If the alien has been convicted of an aggravated felony, he or she must remain outside of the United States for twenty consecutive years from the deportation date before he or she is eligible to re-enter the United States. Any alien who has been deported or removed from the United States and is applying for a visa, admission to the United States, or adjustment of status, must present proof that he or she has remained outside of the United States for the time period required for re-entry after deportation or removal. The examining consular or immigration officer must be satisfied that since the alien's deportation or removal, the alien has remained outside the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony as defined in section 101(a)(43) of the Act. Any alien who does not satisfactorily present proof of absence from the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony, to the consular or immigration officer, and any alien who is seeking to enter the United States prior to the completion of the requisite five- or twenty-year absence, must apply for permission to reapply for admission to the United States as provided under this part. A temporary stay in the United States under section 212(d)(3) of the Act does not interrupt the five or twenty consecutive year absence requirement.
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> . . . .
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> (e) Applicant for adjustment of status. An applicant for adjustment of status under section 245 of the Act and Part 245 of this chapter must request permission to reapply for entry *in conjunction with* his or her application for adjustment of status. This request is made by filing Form I-212, Application for Permission to Reapply. If the application under section 245 of the Act has been initiated, renewed, or is pending in a proceeding before an immigration judge, the district director must refer the Form I-212 to the immigration judge for adjudication.
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> . . . .
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> (i) Retroactive approval.
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> (1) If the alien filed Form I-212 when seeking admission at a port of entry, the approval of the Form I-212 shall be retroactive to either:

section 245 of the Act, it is clear from this statute that Congress intends this regulatory relief broadly to apply also to other applications including those under "section 240A(b)(2)," that is, the EOIR-42B application used to apply for nonpermanent resident cancellation of removal and *adjustment of status*.

This is very important because the legacy Immigration and Naturalization Service (INS) and the U.S. Citizenship and Immigration Services (USCIS) have steadfastly maintained that the procedures for granting *nunc pro tunc* permission to reapply for admission described in these portions of the regulation were no longer valid. *See, e.g.,* Memorandum of Michael Aytes, Adjudicating Forms 1-212 for Aliens Inadmissible Under Section 212(a)(9)(C) or Subject to Reinstatement Under Section 241(a)(5) of the Immigration and Nationality Act in light of *Gonzalez* v. *DHS,* 508 F.3d. 1227 (9th Cir. 2007) (May 19, 2009) (following BIA precedents, the Service treats 8 C.F.R. § 212.2 as effectively superseded by the later-enacted INA § 212(a)(9), prescribes multiple ways to deny I-212 applications, and quotes BIA dicta that "'nunc pro tunc' (retroactive) and advance (prospective) approval provisions formerly contained in 8 CFR 212.2 do not apply to consent requests under section 212(a)(9)(C)(i)(II) of the INA" (nn.1&4, citations omitted, emphasis in original)); Memorandum of Michael Aytes, Effect of *Perez-Gonzalez v. Ashcroft* on adjudication of Form 1-212 applications filed by aliens who are subject to reinstated removal orders under INA § 241(a)(5) (Mar. 31, 2006) (which sought to restrict the use of I-212 applications despite Court of Appeals precedent to the contrary) (rescinded by the May 19, 2009 Memorandum).

This 2006 enactment restates a pre-emptive, discretionary, regulatory exception to both the permanent bar and the reinstatement procedure—one which the Government has actively ignored. *See, e.g., Matter of Torres-Garcia,* 23 I & N Dec. 866, 873-76 (BIA Jan 26, 2006) (decided three weeks after passage of VAWRA, *but neither followed nor discussed the statute*; rather, held that an approved I-212 did not overcome the permanent bar of INA § 212(a)(9)(C)(i)(II): "the very concept of *retroactive* permission to reapply for admission . . . contradicts the "clear language" of section 212(a)(9)(C)" (emphasis in original)); *Matter of Briones*, 24 I. & N. Dec. 355, 358-59 (BIA Nov 29, 2007) (echoed *Torres-Garcia* on inapplicability of I-212 for alien subject to permanent bar, then focused on interplay of INA §§ 212(a)(9)(C)(i) and 245(i)); *Delgado v. Mukasey*, 516 F.3d 65, 72-74 (2d Cir. 2008) (relied on *Torres-Garcia;* rejected applicability of I-212 procedure; discussed VAWRA, erroneously concluding that the operative language of § 813 quoted above had been deleted by a subsequent enactment). *See also Gonzalez-Balderas v. Holder*, 597 F.3d 869 (7th Cir. 2010) (following *Torres-Garcia* and joining *Delgado v. Mukasey* in deferring to the agency's interpretation of its statute).

The rationale of these cases, that all ignored the VAWRA statute to reach erroneous conclusions, forms the bedrock of Mr. Aytes' Memoranda, *supra* note 9. VAWRA has broad application to both INA § 245(a) and General and Special Rule cancellation of removal and

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(i) The date on which the alien embarked or reembarked at a place outside the United States; or

(ii) The date on which the alien attempted to be admitted from foreign contiguous territory.

(2) If the alien filed Form I-212 *in conjunction with* an application for adjustment of status under section 245 of the Act, the approval of Form I-212 shall be retroactive to the date on which the alien embarked or reembarked at a place outside the United States.

adjustments of status, unmistakably instructing the Executive Branch that 8 C.F.R. § 212.2 is still alive *in its entirety*. This means that the Form I-212 instructions, the BIA, the Court of Appeals for the Second Circuit, other courts relying on *Torres-Garcia*, and Mr. Aytes are all wrong. For, *contrary to statute*, they all deny the possibility of filing an I-212 Application for Permission to Reapply for Admission "in conjunction with" an adjustment of status application—for any prior removal, even including those implicating the permanent bar. Such an application, if granted, gives the adjustment of status applicant retroactive permission for their last unlawful entry and thereby negates inadmissibility under INA § 212(a)(9)(C)(i)(II) (contrary to the conclusion of Mr. Aytes and the BIA and the Form I-212 instructions that rely on them). Moreover, this retroactive finding under 8 C.F.R. § 212.2(a),(e), & (i) undercuts the triggering event for reinstatement of removal. Thus, an I-212 filed "in conjunction with" (often in advance of) an adjustment of status application, *if approvable*, should establish admissibility for the previously removed undocumented entrant and should protect the applicant from the permanent bar and reinstatement so to enable a decision to be made on the merits of the associated adjustment application under §§ 245(a), 245(i), or 240A(b). Therefore, these decisions all appear to be clearly erroneous in view of VAWRA's affirmation of the I-212 application procedures, including their retroactive effect, by the specific statutory reference to 8 C.F.R. § 212.2 that post-dates § 212(a)(9)(C).

Contrary to the view previously expressed by the DHS that §813(b) of VAWRA applies only to VAWA applicants because it was contained in VAWA reauthorization legislation, this is not the case. Paragraph (1), reaffirming the discretion of the named officials, places no restriction upon its declaration that these officials shall "*continue* to have discretion to consent to an alien's reapplication for admission *after a previous order of removal, deportation, or exclusion.*" (Emphasis added.) This applies to *all* aliens previously removed, deported, or excluded—VAWA or not.

Nor does paragraph (2) restrict this authority. It merely emphasizes several instances, among all others, in which the named officers "should *particularly* consider exercising this authority" (emphasis added). Paragraph (2) also importantly reaffirms "regulations under section 212.2 of title 8, Code of Federal Regulations." Finally, though not at issue here, it links up INA §240A(b)(2) (a subset of §240A(b)(1)) with 8 C.F.R. §212.2 to encompass adjustment of status following cancellation of removal together with adjustment under §245(a).

That the DHS continues to seek to ignore 8 C.F.R. §212.2 and deny this continuing authority of immigration judges and other named officials to grant I-212 relief, graphically demonstrates why Congress found this extraordinary statutory instruction necessary more than five years ago. The section applies fully to all Form I-212 situations, including those otherwise implicating INA § 212(a)(9)(C)(i), despite its origin in a VAWA statute.

I hope you find this comment helpful in updating the form and its instructions.

Sincerely,

David Froman
6/30/2011

OMB No. 1615-0018; Exp. 07/31/2011

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

Instructions for Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal

Instructions

Submit application in duplicate.

What Is the Purpose of This Form?

An alien who is inadmissible under section 212(a)(9)(A) or (C) of the Immigration and Nationality Act (INA) files Form I-212 to obtain the" consent to reapply for admission" that is required before the alien can lawfully return to the United States. "Consent to reapply" is also called "permission to reapply."

Why Do I Need This Form?

Returning unlawfully, including returning without admission and returning without obtaining consent to reapply, may have consequences.

If you are required to obtain consent to reapply but you enter without it, your removal order could be reinstated (INA section 241(a)(5)), you could be prosecuted in criminal court (INA section 276), permanently barred from admission to the United States (INA section 212(a)(9)(C)) or incur a new 10-year bar for purposes of INA section 212(a)(9)(C).

Please see below for a detailed description of the grounds of inadmissibility and the consequences of failure to obtain consent to reapply for admission in "Detailed Description of INA sections 212(a)(9)(A) and(C) and INA section 276."

Who Should File This Form?

You should file this form if you are inadmissible under section 212(a)(9)(A), but not section 212(a)(9)(C), and you are:

1. An applicant for an immigrant visa;
2. An applicant for adjustment of status under INA section 245 (other than as a T or U nonimmigrant seeking adjustment under 8 CFR 245.23 or 245.24); or
3. An applicant who wishes to seek admission as a nonimmigrant at a U.S. port of entry but who is not required to obtain a nonimmigrant visa. (If you are an applicant for a nonimmigrant visa at a U.S. consulate, and you are required to obtain consent to reapply because of your inadmissibility, the consulate with jurisdiction over your visa application will advise you how to request consent to reapply. You may not be required to file the Form I-212 in order to receive consent to reapply).

If you are inadmissible under INA section 212(a)(9)(C), you may file this form if you are:

1. An applicant for an immigrant visa; or
2. An applicant who wishes to seek admission as a nonimmigrant at a U.S. port of entry but who is not required to obtain a nonimmigrant visa. (If you are an applicant for a nonimmigrant visa at a U.S. consulate, and you are required to obtain consent to reapply because of your inadmissibility, the consulate with jurisdiction over your visa application will advise you how to request consent to reapply. You may not be required to file the From I-212 in order to receive consent to reapply.

If you are inadmissible under INA section 212(a)(9)(C), you may NOT file this Form while you are in the United States. You cannot obtain consent to reapply under section 212(a)(9)(C)(ii) unless you are seeking admission to the United States more than 10 years after your last departure from the United States: This is why you may not file this form in conjunction with an adjustment-of-status application.

Detailed Description of INA sections 212(a)(9)(A), 212(a)(9)(C), and INA section 276

1. INA Section 212(a)(9)(A)

NOTE: You only have to file this form if you were actually removed from the United States. You are also deemed to have been removed if you depart or departed the United States on your own after an order of removal (whether administratively final or not) has been issued.

A. Inadmissible Under INA Section 212(a)(9)(A)(i)

You need to file this form, if you seek to return to the United States during the period specified in INA section 212(a)(9)(A)(i) because:

a. You were removed from the United States as an inadmissible alien through expedited removal proceedings under INA section 235(b)(1) that are initiated when you arrived at a port of entry; or

b. You were removed from the United States as an inadmissible, arriving alien under INA section 240; that is, removal proceedings were initiated upon your arrival at a port of entry in the United States.

The period specified in section 212(a)(9)(A)(i) during which you must obtain consent to reapply before you can apply for admission to the United States again is:

1. 5 years, if you were only removed once;
2. 20 years, if you were removed twice or more;
3. Forever, if you were removed as an arriving alien, and if you are an alien who has been convicted of an aggravated felony (as defined in INA section 101(a)(43)). You are inadmissible forever, and must obtain consent to reapply for admission, even if you were not removed because of the aggravated felony conviction and even if you were convicted of the aggravated felony after you were removed from the United States.

The paperwork you received during your removal proceedings should indicate under which provisions, INA section 235(b)(1) or section 240, you were removed as an arriving alien.

You may have been removed under INA section 235(b)(1) or 240 after being present in the United States without having been admitted or paroled, or after an attempt to enter the United States without being inspected. In those instances, you are inadmissible under INA section 212(a)(9)(A)(ii).

If the time has passed during which you are inadmissible under INA section 212(a)(9)(A)(i), you are no longer required to file this application. Also, once consent to reapply for admission is granted, the inadmissibility no longer applies.

B. Inadmissible Under INA Section 212(a)(9)(A)(ii)

You need to file this form if you seek to return to the United States during the period specified in section 212(a)(9)(A)(ii) because:

a. You were removed from the United States as a deportable alien under INA section 240; or

b. You were ordered removed under any other provision of U.S. law; or

c. You departed the United States on your own while an order of removal was outstanding, that is, after you were ordered removed and the Government was able to remove you based on this order.

The period specified in section 212(a)(9)(A)(ii), during which you must obtain consent to reapply before being able to apply for admission to the United States again, is:

1. 10 years, if you were only removed once;
2. 20 years, if you were removed twice or more;
3. Forever if you were convicted of an aggravated felony (as defined in INA section 101(a)(43)) and if you were removed under INA section 240 or any other provision of law. You are inadmissible forever, and must obtain consent to reapply for admission, even if you were not removed because of the aggravated felony conviction, and even if you were convicted of the aggravated felony after your removal from the United States.

Removal under any provision of law includes, but is not limited to, an exclusion and deportation order under INA section 236 as it existed prior to April 1, 1997; arrest and deportation from the United States under any law prior to April 1, 1997; removal under INA section 217 for a violation of terms of admission of the Visa Waiver Program; removal under INA section 235(c) for security and related grounds; removal as a stowaway under INA section 235(a)(2); removal under INA section 238(b) after conviction of an aggravated felony; removal after revocation of the crewmember's landing permit under INA section 252(b); and removal as an alien in distress under INA section 250.

The paperwork you received during your removal proceedings should indicate under which provision you were removed.

If the time has passed during which you are inadmissible under INA section 212(a)(9)(A)(ii), you are no longer required to file this application. Once consent to reapply for admission is granted, the inadmissibility no longer applies.

NOTE to Consequences of INA section 212(a)(9)(A)(i) and (ii) and Unlawful Entry: If you enter or attempt to enter the United States without being lawfully admitted, even after the expiration of the inadmissibility time period under INA section 212(a)(9)(A) has passed, you will make yourself inadmissible under INA section 212(a)(9)(C)(i)(II). See the detailed explanation for INA section 212(a)(9)(C) below. You may also be criminally liable under INA section 276 if you were still required to obtain consent to reapply and have not obtained consent to reapply or your prior removal order may be reinstated under INA section 241(a)(5).

2. Inadmissible Under INA Section 212(a)(9)(C)(i)

You need to file this form, if, on or after April 1, 1997, you entered or attempted to reenter the United States without being admitted after:

a. You had been unlawfully present in the United States after April 1, 1997 for an aggregate period of more than 1 year; or

b. You had been removed under any provision of the INA or any other provision of law prior, on or after April 1, 1997.

If you are inadmissible under INA section 212(a)(9)(C)(i), you are permanently inadmissible and will always need to file for consent to reapply for admission BEFORE you return to the United States. **Moreover, your application may not be approved until you have been physically outside the United States for 10 years since your most recent departure from the United States after you have become inadmissible.** You cannot obtain consent to reapply while you are still in the United States. Each time you return or attempt to return to the United States without admission, you incur a new inadmissibility under INA section 212(a)(9)(C), and may not obtain consent to reapply unless you leave the United States, and then file this form after you have been abroad for at least 10 years since your most recent departure.

With your application, you should submit proof that you have not been in the United States for 10 years since your last departure from the United States.

If, after you have been abroad for at least 10 years, you file this form and it is granted, you will have the necessary consent to reapply for purposes of INA sections 212(a)(9)(A), 212(a)(9)(C), and 276. You must still, however, return to the United States lawfully by obtaining any required visa and by presenting yourself at a port of entry for inspection and admission.

Note to nonimmigrants: If you are inadmissible under INA section 212(a)(9)(C)(i)(I) (unlawful presence and subsequent reentry without admission), you may be eligible for authorization to enter as a nonimmigrant under section 212(d)(3)(A) at any time and as an alternative to consent to reapply, but only if you wish to enter the United States as a nonimmigrant. This authorization is temporary and does not eliminate the INA section 212(a)(9)(C)(i)(I) ground of inadmissibility for immigrant purposes or future entries as a nonimmigrant.

3. INA Section 276

Under INA section 276, an alien who has been removed from the United States and returns to the United States unlawfully and without consent to reapply may be subject to criminal prosecution and, if convicted, may be sent to prison. Your return to the United States, even with a visa, is unlawful if, because of your removal, you were required to obtain consent to reapply for admission before you returned to the United States and you did not obtain this consent to reapply.

NOTE: If you were removed from the United States, but you have remained outside the United States for the period of time specified in INA section 212(a)(9)(A)(i) or (ii) that applies to your case, you do not need to obtain consent to reapply any longer, and you will not be subject to criminal liability under section 276(a)(2)(B) if you return lawfully to the United States through a port of entry after obtaining any required visa.

NOTE: Even if the consent to reapply period has expired, you may still be subject to criminal liability under section 276 if you return to the United States unlawfully, such as returning without being admitted, or by fraud, or any other unlawful means.

Who Is Not Required To File This Form?

You are not required to file for consent to reapply for admission to the United States as an immigrant or nonimmigrant, or when you adjust status, if:

1. You have been denied admission and ordered removed, and were inadmissible under INA section 212(a)(9)(A), but you have remained outside the United States for the entire period specified in INA section 212(a)(9)(A);
2. You are an applicant for nonimmigrant visa (other than K and V nonimmigrant visa), or an applicant for Nonresident Border Crossing Card: In this situation, the U.S. consulate with jurisdiction over your visa application will advise you about how to request consent to reapply. Consent to reapply may be requested electronically in conjunction with the vias application;
3. You were allowed to withdraw your application for admission at the border, and you departed the United States within the time specified for your departure;
4. You were refused entry at the border, but not formally removed;
5. You were refused admission as an applicant under the Visa Waiver Program;
6. You had previously been unlawfully present in the United States in the aggregate of more than 1 year, or you were previously removed, but when coming to the border again, were paroled into the United States;
7. You received an order of voluntary departure from the immigration judge and departed the United States during the time period specified in the voluntary departure order;
8. You are an applicant for Registry under INA section 249.

Waiver of Inadmissibility Other Than Through Consent to Reapply

Instead of filing this form to obtain consent to reapply, you may obtain a waiver of inadmissibility if:

1. You are an applicant for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) section 202 or Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) section 902, and you file Form I-601, Application for Waiver of Grounds of Inadmissibility;
2. You are an applicant for adjustment of status in connection with any legalization program under INA section 245A or 210, and you file Form I-690, Application for Grounds of Inadmissibility under Sections 245A or 210 of the Immigration and Nationality Act;
3. You are an applicant for Temporary Protected Status (TPS) under section 244 of the Act, and you file Form I-601, Application for Waiver of Grounds of Inadmissibility;
4. You are applying for T nonimmigrant status and you file Form I-192, Application for Advance Permission to Enter as Nonimmigrant, with your Form I-914, Application for T Nonimmigrant Status;
5. You have already received T nonimmigrant status and you are applying for adjustment of status under 8 CFR 245.23 and you file a Form I-601 under 8 CFR.212.18;
6. You are applying for U nonimmigrant status and you file Form I-192, Application for Advance Permission to Enter as Nonimmigrant, with your From I-918, Petition for U Nonimmigrant Status (once you acquire U nonimmigrant status, you do not need to file this form or a new waiver application when you apply for adjustment of status under 8 CFR 245.24);
7. You are an approved VAWA self-petitioner seeking adjustment of status, and you seek to waive inadmissibility under INA section 212(a)(9)(C). You should file Form I-601, Application for Waiver of Grounds of Inadmissibility. This waiver will be good only for inadmissibility under INA section 212(a)(9)(C). If you are also inadmissible under INA section 212(a)(9)(A), you should file Form I-212 as well as Form I-601.

When Should You File This Application?

Inadmissible Under INA section 212(a)(9)(A)

If you have already been removed from the United States, you must file this application prior to returning to the United States.

If you have been ordered removed but the removal order has not been executed by your departure from the United States, you may, under 8 CFR 212.2(j), file this form before you leave the United States under the removal order. However, if the application is granted, the grant is conditioned upon your actual departure from the United States (called "conditional approval"). If you are ordered removed again after approval of consent to reapply, you would have to file a new Form I-212 to obtain consent to reapply for admission after the later removal. Also, the conditional approval does not protect you from any inadmissibility that will result from your departure. Refer to "Where To File?" to determine whether you qualify for the advanced, conditional approval of this application.

If you are only inadmissible under INA section 212(a)(9)(A), you may qualify for a retroactive grant of consent to reapply. See 8 CFR 212.2(i).

Inadmissible Under INA section 212(a)(9)(C)(i)

If you are inadmissible under INA section 212(a)(9)(C)(i), you cannot file this application until you have left the United States and have remained outside the United States for at least 10 years since your last departure and before you seek admission to the United States.

Where To File?

(See Appendix 1 to these instructions for a summary of the information below. Appendix 1 also details which agency will process and adjudicate your application.)

1. **With U.S. Customs and Border Protection (CBP)**

   A. **An applicant for admission as a nonimmigrant who does not require a visa may apply for consent at a designated port of entry**: Filing this application is generally done in person at a CBP-designated port of entry or a CBP-designated preclearance office. There are exceptions to the in-person filing. It is recommend that you contact the CBP preclearance office or the CBP port of entry where you intend to be processed before submitting your application. To find a CBP-designated port of entry or a CBP-designated preclearance office and to obtain information on required documentation and processing procedures, visit the CBP Web site at **www.cbp.gov.**

You will be required to submit fingerprints. If you are filing in person, you will be fingerprinted when you submit your application. If you apply where there is an exception to the in-person filing requirement, you will be notified regarding arrangements for your fingerprinting. Generally, there is no additional charge.

Citizens of Palau, the Federated States of Micronesia, or the Marshall Islands may contact the nearest consulate of the U.S. Department of State (DOS) to receive instructions on where and how to submit this form.

2. With a Consulate of the DOS

A. Applicants for Nonimmigrant Visa (other than K, T, U, or V Visa Applicants) or applicants for Nonresident Border Crossing Cards: Consent to reapply is requested by a manner prescribed by the consular officer. See the U.S. consulate which has jurisdiction over your place of residence.

B. Applicant for K or V Nonimmigrant Visa: Consent to reapply is requested by filing Form I-212 with the U.S. consulate having jurisdiction over the alien's place of residence. The consular officer will forward the form to the USCIS office with jurisdiction over the area within which the consulate is located.

C. Applicant for Immigrant Visa where a concurrent waiver on Form I-601 must also be filed. You must file the application according to instructions given by the consular officer at the time of your visa interview. The application will be forwarded and adjudicated by the USCIS overseas office with jurisdiction over the consulate where you filed the application. For further processing information, see "Processing Information." If you require more information before filing the form, please contact DOS and the U.S. consulate where your immigrant visa will be processed. You can find contact information for U.S. consulates on the Department of State's Web site at **www.state.gov**. If you require information after filing the form, please contact the USCIS office overseas with jurisdiction over the consulate where you filed the application.

3. With U.S. Citizenship and Immigration Services (USCIS)

A. Vermont Service Center

a. Applicant for Adjustment of Status or Immigrant Visa based on an approved VAWA Self-Petition (Form I-360)

The application must be filed directly with USCIS at the Vermont Service Center. The address is:

USCIS - Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

B. USCIS Field Office

a. Applicant physically present in the United States, applying for adjustment of status with USCIS and inadmissible only under INA section 212(a)(9)(A): You must file the application either concurrently with your application for adjustment of status (Form I-485), or at any time afterward. If you are filing Form I-212 together with Form I-485, you must file the Form I-485/I-212 at the filing location specified on Form I-485. See the filing instructions for Form I-485. If you are in the United States and your Form I-485 is currently pending, you must file Form I-212 with the USCIS field office or Service Center where your form is CURRENTLY pending.

b. Applicant for Immigrant visa at the U.S. consulate but not required to file Form I-601. You must file the application with the Field Office Director having jurisdiction over the place where your deportation or removal proceedings were held.

If you are inadmissible because you had previously accrued unlawful presence in the aggregate of 1 year or more in the United States, and you departed the United States and entered or attempted to reenter the United States without being admitted (INA section 212(a)(9)(C)(i)(I)), you may not have been in removal proceedings. In this case, you should file the application with the Field Office Director having jurisdiction over your intended place of residence in the United States.

c. Aliens physically present in the United States seeking immigrant status but not eligible for adjustment of status (for reasons other than inadmissibility under INA Section 212(a)(9)(C)): You must file your application with the Field Office Director having jurisdiction over your place of residence.

NOTE: If your application is approved, the approval is conditioned upon your departure from the United States. If you do not depart, the approval has no effect.

4. **Executive Office for Immigration Review (EOIR) of the U.S. Department of Justice (DOJ)**

   A. **Applicant in Removal Proceedings:** If your application for adjustment of status under INA section 245 has been filed, renewed, or is pending in a proceeding before an immigration judge, you should file Form I-212 according to the instructions provided to you in immigration court. For information about EOIR, visit EOIR's Web site at **www.usdoj.gov/eoir.**

5. **All Other Circumstances Not Listed Above**

   If your current situation has not been mentioned above, but if you are required to file Form I- 212, you must file the application with the USCIS Field Office Director who last exercised or is now exercising jurisdiction over your most recent proceedings.

General Filing Instructions

1. When filling out the form, type or print legibly in blue or black ink.
2. If extra space is needed to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.
3. Answer all questions fully and accurately. If the answer is not applicable, write "N/A." If the answer is none, write "none."
4. Applicant's Signature. Under 8 CFR 103.2(a)(2), you must sign this application personally. A parent or legal guardian may also sign the application for someone under 14 years of age, and a duly appointed legal guardian may sign for an adult who is incompetent to sign the application.
5. Preparer's Signature. If an individual other than you, the applicant, or a parent or legal guardian prepares the application, that individual must sign and date the application and provide the information requested.
6. Any documentation submitted that is in a foreign language, or which contains foreign language, must be accompanied by a full and complete English translation. The translator must certify that he or she is fluent in English and in the language contained in the document, and that he or she is competent to translate from the foreign language into English. The translator must furthermore certify that the translation is complete and accurate.
7. If you submit court documents, police records, or criminal records, you should submit the originals or certified copies that are properly authenticated.
8. The application must be signed by the applicant and submitted with the required fee. If the application is not properly signed and submitted with the required fee, the application will be returned as incomplete.
9. If you retained an attorney or counsel to file the application, the attorney or counsel must complete Form G-28, Notice of Entry of Appearance as Attorney or Representative.
10. Please ensure that you list a current and complete address, including a postal code. You may use a P.O. Box for mailing purposes; if you do, you still need to provide your current address where you physically reside. You may also list your current and complete address on all forms and correspondence you send.

What Evidence Must Be Submitted With Your Application?

You must submit the following evidence:

1. Attach copies of all correspondence and documentation that you have in your possession relating to your deportation or removal, if any. Retain the originals for your records.
2. If you have listed any relative under item 18 on the form, you must submit documentary evidence of your relationship to that person. In addition, if such person is a U.S. citizen, you must submit proof of his or her citizenship. If he or she is not a U.S. citizen, you must furnish such person's full name, date, and place of birth, and place of admission to the United States, and his or her Alien Registration Number (A-Number), if known.
3. If you are inadmissible under INA section 212(a)(9)(C): Submit evidence of your removal from the United States and/or unlawful presence in the United States, the date of your departure from the United States or attempt to enter the United States without being admitted, and evidence of your last departure from the United States. You may submit circumstantial evidence that relates to your departure and your absence from the United States for 10 consecutive years. Evidence may include, but is not limited to, documentation such as entry/exit stamps from other countries in your passport, airplane tickets, residence registration or information, etc. Any evidence will be considered, and there is not a specific piece of evidence that you must submit to prove your absence from the United States.

4. **Additional Required Evidence When Applying With CBP at a Port of Entry:** In addition to the evidence listed above, please submit the following:

   A. You must submit proof of citizenship and identity, such as a passport, citizenship card with photograph, naturalization certificate, or birth certificate.

      NOTE: A driver's license is not considered proof of citizenship, but it may accompany a copy of another document.

   B. Completed Form G-325A, Biographic Information, signed and dated by you.

   C. If you have ever used a name other than your full legal name as provided on the form, you must list any names ever used, including names from previous marriages. Evidence of legal name changes, such as marriage certificates, divorce decrees, etc., should be included. Copies are acceptable.

   D. Each application should contain your official police record, or evidence that no record exists, from your country of residence or nationality. This record is valid for 15 months from the date of the issuance for submission with your Form I-212.

Canadian Filers:

You can obtain the above information from the Royal Canadian Mounted Police (RCMP) by submitting your fingerprints on Form C-216C. The returned Civil Product and any accompanying records must be dated and endorsed by the RCMP within 15 months of submission with your From I-212 application. For instructions, addresses, and payment information, please visit the RCMP Web site at **www.rcmp-grc.ca/**.

5. **Additional Evidence to Support Your Application:** The approval of this application is in the discretion of the agency with jurisdiction to adjudicate the application. **Appendix 1** details which agency will adjudicate your application. Also, please see "**Processing Information.**" If the approval of the application is discretionary, it means that the adjudicator will weigh favorable factors and unfavorable factors that are presented in your case to determine whether your application should be granted. **You should submit as much evidence as possible that explains why you believe that your application should be granted because of the favorable factors, and why unfavorable factors should not carry as much weight as the favorable ones.**

Some favorable factors are:

a. Close family ties in the United States;

b. Unusual hardship to your U.S. citizen or lawful permanent resident relatives, yourself, or your employer in the United States;

c. Evidence of reformation and rehabilitation;

d. Length of lawful presence in the United States, and status held during that presence;

e. Evidence of respect for law and order, good moral character, and family responsibilities or intent to hold family responsibilities;

f. Absence of significant undesirable or negative factors;

g. Eligibility for a waiver of other inadmissibility grounds;

h. Likelihood that you will become a lawful permanent resident in the near future.

Some unfavorable factors are:

a. Evidence of moral depravity, including criminal tendencies reflected by an ongoing unlawful activity or continuing police record;

b. Repeated violations of immigration laws, willful disregard for other laws;

c. Likelihood of becoming a public charge;

d. Poor physical or mental condition (however, a need for treatment in the United States for such condition would be a favorable factor);

e. Absence of close family ties or hardships;

f. Spurious marriage to a U.S. citizen for purpose of gaining an immigration benefit;

g. Unauthorized employment in the United States;

h. Lack of skill for which labor certification could be issued;

i. Serious violation of immigration laws, which evidences a callous attitude without hint of reformation of character.

Evidence that can be submitted in support of your application include but is not limited to:

a. Affidavits from you or other individuals in support of your application;

b. Evidence of family ties in the United States;

c. Police reports from countries you lived in;

d. Complete court records regarding conviction or charge from any country;

e. If applicable, evidence of rehabilitation;

f. Evidence you may wish to submit to establish that your admission to the United States would not be against national welfare or security;

g. Medical reports;

h. Employment records;

i. Evidence of hardship to you, your relative(s), or other individuals that would result from the denial of this application;

j. The impact of family separation;

k. Country conditions to which your family would have to relocate if this application were denied;

l. Any other evidence that you may wish to submit to show why you should be granted consent to reapply.

NOTE: Your application should be supported by documentary evidence, or you should have a detailed explanation why such evidence cannot be obtained. Mere assertions (in a letter by you or others) will not suffice. Medical assertions should be supported by a professional's statement.

Remember: If you are inadmissible under INA section 212(a)(9)(C), your application can only be approved if you have been physically outside the United States for 10 years since your last departure from the United States.

What Is the Filing Fee?

The filing fee for Form I-212 is **$585.**

The fee cannot be refunded, regardless of the action taken on the application. **Do not mail cash**. All fees must be submitted in the exact amount.

Use the following guidelines when you prepare your check or money order for Form I-212:

1. Bank drafts, cashier's checks, certified checks, personal checks, and money orders must be drawn on U.S. financial institutions and payable in U.S. funds.

2. **When applying with CBP at a port of entry**: You must make your check or money order payable to **U.S. Customs and Border Protection**. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency. Certain CBP-designated ports of entry and certain CBP-designated preclearance offices may accept payment in the form of cash or credit cards. It is recommended that you contact the CBP preclearance office or CBP port of entry where you intend to be processed for payment instructions. If you are a citizen of Palau, the Federal States of Micronesia, or the Marshall Island; you may contact the nearest U.S. Embassy or consulate to receive payment instructions.

3. **When applying with USCIS:** Make the check or money order payable to **U.S. Department of Homeland Security**, unless:

   A. If you live in Guam and are filing your petition there, make it payable to **Treasurer, Guam**.

   B. If you live in the U.S. Virgin Islands and are filing your petition there, make it payable to **Commissioner of Finance of the Virgin Islands**.

   C. If you live outside the United States, Guam, or the U.S. Virgin Islands, contact the nearest U.S. Embassy or consulate for instructions on the method of payment.

4. **When applying at the consular section of the U.S. Department of State (DOS):** You must contact the nearest U.S. Embassy or consulate of the DOS on the method of payment.

5. **When applying with EOIR during removal proceedings:** If you are in removal proceedings, you must submit the payment as instructed by the court with jurisdiction over your case. For information about EOIR, please visit EOIR's Web site at **www.usdoj.gov/eoir.**

NOTE: Spell out **U.S. Department of Homeland Security, or U.S. Customs and Border Protection**. Do not use the initials "USDHS," "DHS," or "CBP" unless otherwise instructed.

Notice to Those Making Payment by Check. If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep a copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times.

How to Check If the Fees Are Correct

The form fee on this form is current as of the edition date appearing in the lower right corner of this page. However, because fees change periodically, you can verify if the fees are correct by following one of the steps below:

1. Visit our Web site at **www.uscis.gov**, select "Check Filing Fees" to check the appropriate fee;
2. Review the Fee Schedule included in your form package, if you called us to request the form; or
3. Telephone our National Customer Service Center at **1-800-375-5283** and ask for the fee information.

Address Changes

If You Filed Your Application With CBP:

You may change your address by writing via regular mail to:

U.S. Customs and Border Protection
Admissibility Review Office, 7th Floor
Mail Stop 1340
12825 Worldgate Drive
Herndon, VA 20598

If you Filed Your Application With USCIS in the United States:

If you change your address and you have an application or petition pending with USCIS, you may change your address online at **www.uscis.gov**. Click on "Online Change of Address" and follow the prompts. You may also change your address by completing and mailing Form AR-11, Alien's Change of Address Card, to:

U.S. Citizenship and Immigration Services
Change of Address
P.O. Box 7134
London, KY 40742-7134

For commercial overnight or fast freight services only, mail to:

U.S. Citizenship and Immigration Services
Change of Address
1084-I South Laurel Road
London, KY 40744

In addition to the above, you should notify the USCIS office where your application or petition is currently pending of your change of address. You can find contact information on the receipt notice that was sent to you or that you received for Form I-212.

If You Filed Your Application Abroad With the U.S. Consulate:

If you change your address after you have submitted an application with the consulate in relation to your application for immigrant or nonimmigrant visa, you should notify the U.S. consulate and the USCIS overseas office of your address change in writing.

If You Filed Your Application With EOIR:

If you change your address after you have submitted an application with EOIR because you are in removal proceedings, you should notify EOIR in writing according to the instructions provided to you by the immigration court handling your removal case.

Processing Information

NOTE: If this application is approved, the approval is only valid for those grounds of inadmissibility that you included in the application. You should specify on the form every ground of inadmissibility under INA section 212(a)(9)(A) or (C) that applies to you. You may file just one application and pay just one filing fee, even if you request consent to reapply for inadmissibility under more than one ground provided in INA section 212(a)(9)(A) or (C). If you omit a ground under INA section 212(a)(9)(A) or (C) that applies to you, you may need to file an additional Form I-212 and pay an additional fee to request the approval for consent to reapply.

Acceptance

Any application that is not signed or accompanied by the correct fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until it is accepted by the office in which you submitted your application.

Initial Processing

Once the application has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form or file it without the required initial evidence, you will not establish a basis for eligibility and your application may be denied.

Requests for More Information

Any agency may request more information or evidence, or can request that you appear at an agency's office for an interview. It can also request that you submit the originals of any copy. Originals will be returned when they are no longer needed.

Decision

If you are an applicant for Nonimmigrant Visa (other than K, T, U, or V visa applicants), or for a Nonimmigrant Border Crossing Card at the U.S. consulate: CBP/ARO will inform the consular officer whether consent to reapply is granted, and whether nonimmigrant visa issuance is authorized. The consular officer will advise you of the decision regarding your application for the Nonimmigrant Visa. All inquiries must be directed to the consular officer at the U.S. consulate where you applied for the Nonimmigrant Visa.

If you are an applicant seeking admission as a nonimmigrant at a CBP port of entry: CBP/ARO will make a decision on your application. You will be notified in writing of the decision. The decision will be mailed to the address provided on the application. Status inquiries are made via e-mail at the following address: **inquiry.waiver.aro@dhs.gov**. Attorneys should address their e-mail inquiries to: **attorneyinquiry.waiver.aro@dhs.gov**. You should wait until after more than 90 days have passed from submission of your application before making a status inquiry. Please refer to the CBP Web site at **www.cbp.gov** for further information.

If you are an applicant for K or V nonimmigrant status, or if you are an applicant for an Immigrant Visa who is also required to file Form I-601, Application for Waiver of Grounds of Inadmissibility: The application will be forwarded to the USCIS overseas office with jurisdiction over the consulate's location. You will receive a decision in writing. If you need more information after filing the form, please contact the USCIS overseas office with jurisdiction over the area where the consulate is located. You should also be contacted by the DOS consular section where you applied for your visa once a decision has been made on the application. Your visa application will then be finalized by the consular officer.

If you are an individual applying for adjustment of status based on an approved VAWA self-petition, your case will be adjudicated by the Vermont Service Center. If you have any questions, you should write to the Vermont Service Center at the following address:

USCIS - Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

If you submit your application to EOIR while you are in removal proceedings, the immigration court will make a decision on your application in connection with the relief you seek from removal. If you have questions or concerns, please contact the court with jurisdiction over your proceedings directly. You can find contact information on EOIR's Web site at **www.usdoj.gov/eoir**.

If you are an applicant for an Immigrant Visa but did not have to file Form I-601, or for cases in any category not mentioned above, the USCIS Field Office with jurisdiction over your application will adjudicate the application and notify you of the decision in writing at the address you provided in the application. If you have any questions about your case, please call the toll-free number at 1-800-375-5283, or visit the USCIS Web site at **www.uscis.gov**.

Denial of the Application: If your application, Form I-212, is denied, you may appeal the decision to the Administrative Appeals Office (AAO) of USCIS, as provided in 8 CFR 103.3 and 212.2(h). You will be informed about how to submit an appeal. Your appeal must be first submitted to the director who made the decision in your case.

NOTE: There is no appeal of a decision to deny an application for Nonimmigrant Visa or Nonimmigrant Border Crossing Card.

How Long Is an Approved Form I-212 Valid? If your application is granted, the permission will be valid indefinitely, unless revoked by the agency that granted the approval. If an approved Form I-212 is obtained for nonimmigrant purposes, it is also valid for future immigrant or nonimmigrant purposes. If you become inadmissible under INA section 212(a)(9)(A) or (C) after the approval of this form, the approval does not overcome these grounds of inadmissibility.

USCIS Forms and Information

To order USCIS forms, call our toll-free number at **1-800-870-3676**. You can also get USCIS forms and information on immigration laws, regulations, and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our Web site at **www.uscis.gov**.

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our Internet-based system, **InfoPass**. To access the system, visit our Web site. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this Form I-212, we will deny the Form I-212 and may deny any other immigration benefit.

In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Privacy Act Notice

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit for which you are filing. Our legal right to ask for this information can be found in the Immigration and Nationality Act, as amended. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your Form I-212.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 2 hours per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Ave., N.W., Washington, DC 20529-2020. OMB No. 1615-0018. **Do not mail your application to this address.**

APPENDIX 1

Scenario	Office With Jurisdiction to Accept the Filing	Source	Office With Jurisdiction to Adjudicate
Applicant for nonimmigrant visa (other than K, T, U, or V) or nonresident border crossing card abroad	**U.S. Consulate** with jurisdiction over the alien's place of residence according to the manner prescribed by the consular officer	8 CFR 212.2(b)	**Customs and Border Protection (CBP).** The consular officer must forward recommendation for consent to reapply and visa issuance to CBP/Admissibility Review Office (ARO) for decision.
Applicant for admission as a nonimmigrant who is not required to obtain a visa	**Customs and Border Protection (CBP)** with the CBP-designated port of entry or designated CBP preclearance office	8 CFR 212.2(f)	**Customs and Border Protection (CBP)/Admissibility Review Office (ARO)**
Nonimmigrant visa applicants under INA section 101(a)(15)(K) and (V)	**U.S. Consulate** with jurisdiction over the alien's place of residence	8 CFR 212.2(c)	**USCIS/International Office.** The consular officer must forward the form to the USCIS Office with jurisdiction over the area within which the consul is located.
Applicant for immigrant visa in need of concurrent waiver filed on Form I-601	**U.S. Consulate** with jurisdiction over the alien's place of residence	8 CFR 212.2(d)	**USCIS/International Office.** The consular officer must forward the forms to the appropriate USCIS office with jurisdiction over the area within which the consul is located.
Applicant for adjustment of status based on an approved VAWA self-petition (Form I-360)	**USCIS Vermont Service Center**	INA Section 212 (a)(9)(A)	**USCIS Vermont Service Center**
Applicant for adjustment of status, only subject to INA section 212(a)(9)(A) (irrespective of need of Form I-601)	**USCIS** Office with jurisdiction over the adjustment-of-status application	8 CFR 212.2(e)	**USCIS** Office with jurisdiction over the adjustment-of-status application

APPENDIX 1 (Cont'd)

Scenario	Office With Jurisdiction to Accept the Filing	Source	Office With Jurisdiction to Adjudicate
Applicant for immigrant visa and waiver on Form I-601 not required	**USCIS Field Office** with jurisdiction over the place where the alien's deportation or removal proceedings were held **If the applicant is inadmissible under INA section 212(a)(9)(C)(i)(I)**: The application is filed with the USCIS Field Office with jurisdiction over the alien's intended place of residence in the United States.	8 CFR 212.2(d)	**USCIS Field Office** with jurisdiction over the place where the deportation or removal proceedings were held
Alien is physically present in the United States but not eligible for adjustment of status because of inadmissibility under INA section 212(a)(9)(C)	An alien may not file the application until the alien has departed the United States and until he or she has resided abroad for 10 years since the alien's last departure. Once the 10-year requirement is satisfied, the individual may apply; jurisdiction is determined: 1. According to the principles outlined above for individuals outside the United States, and 2. Based on the individual's need for a waiver filed on Form I-601	*Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006) and *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007)	← POINT OUT ERROR WRONG Reference

APPENDIX 1 (Cont'd)

Scenario	Office With Jurisdiction to Accept the Filing	Source	Office With Jurisdiction to Adjudicate
Alien physically present in the United States but in removal proceedings* *Note: If the alien is put into proceedings after having filed Form I-212 with USCIS, the USCIS office should forward the application to the EOIR location with jurisdiction over the alien's removal proceedings.	**Executive Office for Immigration Review (EOIR)** with jurisdiction over the removal proceedings	8 CFR 212.2(e); March 31, 2005 memorandum, William R. Yates, *EOIR Processing*	**Executive Office for Immigration Review (EOIR)** with the office having jurisdiction over the alien's removal proceedings
The alien is seeking conditionally granted advance permission to reapply for admission prior to departure and is inadmissible only under INA section 212 (a)(9)(A) (irrespective of whether another waiver under section 212(g), (h), (i), or 212 (a)(9)(B) is needed)	**USCIS Field Office** with jurisdiction over the place where the alien is residing	8 CFR 212.2(j)	**USCIS Field Office** with jurisdiction over the place where the alien is residing
All other circumstances not listed above	**USCIS Field Office** with jurisdiction over the place where deportation or removal proceedings were held, or with the Field Office Director who exercised or is exercising jurisdiction over the applicant's most recent proceedings	8 CFR 212.2(g)(i) and (ii)	**USCIS Field Office**

I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal

Download Form I-212 (158KB PDF)
Download Instructions for Form I-212 (584KB PDF)
Download Form G-1145, E-Notification of Application/Petition Acceptance (1KB PDF)

Purpose of Form :

An alien who is inadmissible under section 212(a)(9)(A) or (C) of the Immigration and Nationality Act (INA) files Form I-212 to obtain "consent to reapply for admission" that is required before the alien can lawfully return to the United States. "Consent to reapply" is also called "permission to reapply." INA section 212(a)(9)(A) makes individuals who seek admission to the United States after having been removed from the United States, inadmissible. They are inadmissible for the period specified in INA section 212(a)(9)(A), depending on the basis of the prior removal and on how many times they have been removed. Departure while a removal order is in effect also makes someone inadmissible under INA section 212(a)(9)(A). INA section 212(a)(9)(C) makes individuals who return or attempt to return to the United States without admission inadmissible if they: ---were removed from the United States, or ---had been unlawfully present in the United States for more than a year, in the aggregate.

Number of Pages :

Form 3; Instructions 14.

Edition Date :

11/23/10. No previous editions accepted.

Where to File :

The filing of this application depends on the reason for your inadmissibility and your location. Every applicant should consult the Form I-212 Instructions ("Where to File?" pp 4-6 and Appendix I, pp 12-14) to determine the proper filing location. The application is either filed with the U.S. Customs and Border Protection (CBP), the U.S. Department of State (DOS), the Executive Office for Immigration Review (EOIR), or USCIS.

If you are seeking admission as a nonimmigrant at a U.S. port of entry and you are not required to obtain a nonimmigrant visa, you should file Form I-212 with CBP. Filing this application is generally done in person at a CBP-designated port of entry or a CBP-designated preclearance office. There are exceptions to the in-person filing. It is recommended that you contact the CBP preclearance office or the CBP port of entry where you intend to be processed before submitting your application. To find a CBP-designated port of entry or CBP-designated preclearance office and to obtain information on required documentation and processing procedures, visit the CBP Web site (Link in the Related Links section of this page)

Citizens of Palau, the Federated States of Micronesia, or the Marshall Islands may contact the nearest consulate of the U.S. Department of State to receive instructions on where and how to submit this form.

If you are seeking admission as an immigrant or if you are seeking adjustment of status:

Consult the Form I-212 Instructions ("Where to File?" section, pp 4-6) and Appendix I (pp 12-14) to determine the filing location.

If you are an applicant in removal proceedings: You should file Form I-212 according to the instructions provided to you in immigration court. For information about EOIR, visit EOIR's web site [In the Related Links section of this page).

If you are abroad, and intend to apply for an immigrant visa, submit this form to the Local Office in which your deportation proceedings were held. If you are applying for a waiver of grounds of excludability at the same time, file this application with the American Consul with whom you are filing your application for waiver.

If you are abroad and intend to apply for a nonimmigrant visa or border crossing card, submit this application to the American Consul with whom you submit your visa or crossing card application, if instructed to do so by the Consul.

• If you are in the United States and will file an application for waiver under Section 212 (g), (h), or (i) of the INA with an American consul, file this application and the waiver application with the American consul.

If you are in the United States and are applying for adjustment of status under Section 245 of the INA, or are seeking advance permission to reapply prior to your departure from the U.S., submit the application to the Local Office having jurisdiction over the place where you reside.

E-Notification: If you want to receive an e-mail and/or a text message that your Form I-212 has been accepted at a USCIS Lockbox facility, complete Form G-1145, E-Notification of Application/Petition Acceptance and clip it to the first page of your application. Form G-1145 can be downloaded through the link above.

If you are filing at a USCIS lockbox, important filing tips, as well as additional information on fees and customer service, are listed on our Lockbox Filing Tips webpage. See Special Instructions below for additional guidance.

Filing Fee :

$585. No biometric fee is required.

Special Instructions :

If you are inadmissible only under INA section 212(a)(9)(A), you should file this form if you are:

An applicant for an immigrant visa;

An applicant for adjustment of status under INA section 245 (other than as a T or U nonimmigrant seeking adjustment of status under 8 CFR 245.23 or 245.24); or

An applicant who wishes to seek admission as a nonimmigrant at a U.S. port of entry but who is not required to obtain a nonimmigrant visa. (If you are an applicant for a nonimmigrant visa at a U.S. consulate, and you are required to obtain consent to reapply because of your inadmissibility, the consulate with jurisdiction over your visa application will advise you how to request consent to reapply. You may not be required to file the Form I-212 to receive consent to reapply.)

If you are inadmissible under INA section 212(a)(9)(C), you should file this form if you are:

An applicant for an immigrant visa; or

An applicant who wishes to seek admission as a nonimmigrant at a U.S. port of entry but who is not required to obtain a nonimmigrant visa. (If you are an applicant for a nonimmigrant visa at a U.S. consulate, and you are required to obtain consent to reapply because of your inadmissibility, the consulate with jurisdiction over your visa application will advise you how to request consent to reapply. You may not be required to file the Form I-212 to receive consent to reapply.)

If you are inadmissible under INA section 212(a)(9)(C), you may NOT file this Form while you are in the United States. You cannot obtain consent to reapply unless you are seeking admission to the United States more than 10 years after your last departure from the United States.

Note: A VAWA self-petitioner who is inadmissible under INA section 212(9)(C) may seek a waiver of inadmissibility by filing a Form I-601, Application for Waiver of Grounds of Inadmissibility, under INA section 212(a)(9)(C)(iii). The Form I-601 may be filed instead of this Form I-212. See the filing instructions for Form I-601 for further information.

When applying with CBP: You must make your check or money order payable to U.S. Customs and Border Protection. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency. Certain CBP-designated ports of entry or certain CBP-designated preclearance offices may accept payment in the form of cash or credit cards. It is recommended that you contact the CBP preclearance office or CBP port of entry where you intend to be processed for payment instructions. Please visit the CBP Web site (Link in the Related Links Section of this Page) for more information. Citizens of Palau, the Federated States of Micronesia, or the Marshall Islands may receive payment instructions by contacting the nearest U.S. Embassy or consulate, or by e-mailing the CBP/Admissibility Review Office at inquiry.waiver.aro@dhs.gov.

When applying with DOS: You must contact the nearest U.S. Embassy or consulate of the DOS on the method of payment.

When applying with EOIR during removal proceedings: You must submit the payment as instructed by the court with jurisdiction over your case. For more information, please visit EOIR's Web Site ([In the Related Links section of this page).

When applying with USCIS: Please see the page "Paying Immigration Fees" in the Related Links section of this page for more information on how to pay your filing fees with USCIS.

Do not send Change of Address Requests to the USCIS Lockbox facilities.

This page can be found at http://www.uscis.gov/i-212

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