

SUPPORTING STATEMENT

Application for Provisional Waiver of Inadmissibility

(Form I-601A)

OMB No. 1615-NEW

A. Justification:

1. Section 212(a)(9)(B)(i)(I) and (II) of the Immigration and Nationality Act (the Act) provide for the inadmissibility of certain aliens who have accrued unlawful presence in the United States. There is also a waiver provision incorporated into section 212(a)(9)(B)(v) of the Act, which allows the Secretary of Homeland Security to exercise discretion to waive the unlawful presence grounds of inadmissibility on a case by case basis. The information collection required on Application for Provisional Waiver of Inadmissibility, Form I-601A, is necessary for U.S. Citizenship and Immigration Services (USCIS) to determine whether the applicant meets not only the requirements to participate in the streamlined waiver process provided by regulation, but also whether the applicant is eligible to receive the provisional waiver.
2. USCIS will use the data collected on this newly created form to determine whether the applicant is eligible for a provisional waiver of the unlawful presence grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act. The streamlined form serves the purpose of standardizing the application and will ensure that applicants provide the information

required to assess their eligibility to pursue the streamlined application process, as well as their waiver eligibility.

3. The use of this form provides the most efficient means for collecting and processing the data required to determine whether the applicant qualifies for a provisional waiver of the unlawful presence grounds of inadmissibility under section 212(a)(9)(B) of the Act. This form will reside on the USCIS Web site (www.uscis.gov) but the public will not be able to immediately submit it electronically. The public, however, will be able to complete and save the form electronically, but the form will have to be mailed to USCIS. USCIS is working towards the conversion of electronic submission of forms, known as “Transformation”, but the scope of work required and large number of forms impacted will result in a graduated approach to implementation. As such, due to partial GPEA compliance of allowing for accessing, completing and saving the form electronically, USCIS respectfully requests at least a 2-year approval as we continue to move towards full GPEA compliance for all forms.

4. A review of USCIS Forms Inventory revealed no duplication of effort, and there is no other similar information currently available which can be used for this purpose.

The provisional unlawful presence waiver process is a priority initiative for the WH and the Administration. USCIS was asked to work under

narrow timeframes (beginning in November of 2011) to create a waiver process for immediate relatives of U.S. citizens who are currently in the United States in an unlawful status. USCIS published a notice of intent on January 9, 2012, and the proposed rule on April 2, 2012, with a 60-day comment period that ended June 2, 2012. The final rule is supposed to be cleared through OMB and published by August 30, 2012.

The primary purpose for creating a new Form I-601A, *Application for Provisional Unlawful Presence Waiver*, instead of modifying the existing Form I-601, *Application for Waiver of Grounds of Inadmissibility*, was to minimize the confusion applicants would experience when trying to determine their eligibility for a provisional unlawful presence waiver versus a waiver for all grounds of inadmissibility. USCIS also wanted to minimize confusion about how this new domestic process would differ from the regular I-601 process, because it begins in the United States instead of overseas. Finally, creating a new form was important because USCIS was about to announce another priority initiative – centralization of the filing and processing of overseas I-601s at one USCIS Service Center, the Nebraska Service Center. Under the provisional waiver process, applicants outside of the United States are not eligible to apply. Simply revising the I-601 would have created confusion and had a significant impact on USCIS operations, especially if all domestic and overseas applicants started filing I-601s with the Nebraska Service Center.

The current I-601 is designed to address all potential grounds of inadmissibility that can be waived under the Immigration and Nationality Act (INA), as opposed to one ground of inadmissibility – unlawful presence. The provisional waiver process is a negotiated process between USCIS and Department of State (DOS). USCIS has agreed to expeditiously adjudicate waiver requests and DOS has agreed to schedule immigrant visa interviews based on immediate relative petitions accompanied by the provisional waiver within a two to three month timeframe. Simply modifying the I-601 would have undermined this agreement and resulted in a duplication of processes that are already done by DOS (i.e., a full interview, a full admissibility assessment, and resolution of any criminal or immigration history).

Below are some other differences between the current I-601 process and the requirements for a regular waiver of any ground of inadmissibility and the proposed process and requirements for a provisional unlawful presence waiver:

- Biometrics: The current I-601 does not require biometrics capture because the waiver requests are all based on a pending immigration benefits application that already requires biometrics (i.e. I-485, I-821, DS-230).
- Fee: The current I-601 only requires a fee for the form. A request for a provisional waiver would also require a biometrics fee.

- Immigrant visa petition: The current I-601 does not require an underlying immigrant visa petition. The provisional waiver process was designed to support an approved immediate relative petition (I-130 or I-360).
- Pre-interview adjudication: The current I-601 can only be filed by DOS immigrant visa applicants if the applicant was already interviewed by a DOS consular officer. The provisional waiver process was designed to fit into the DOS consular processing stage at the National Visa Center before the applicant is scheduled to appear at a U.S. Embassy or consulate for the immigrant visa interview.
- Inadmissibility determination: The current I-601 can only be used by immigrant visa applicants if a DOS consular officer already found the applicant inadmissible. The provisional waiver process was designed to allow immigrant visa applicants to self-identify the unlawful presence ground of inadmissibility before the interview with a DOS consular officer.
- Grounds that may be waived: The current I-601 can be used to waive multiple grounds of inadmissibility. The provisional waiver process was designed to only address the unlawful presence grounds.

5. This collection of information does not have an impact on small businesses or other small entities.

6. If this information is not collected, USCIS would not be able to properly assess the alien's eligibility for the requested provisional waiver of the unlawful presence grounds of inadmissibility under section 212(a)(9)(B) of the Act.
7. The special circumstances contained in item 7 of the supporting statement are not applicable to this information collection.
8. USCIS will be publishing a proposed rule, RIN 1615-AB99, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives in the Federal Register. With that rule, USCIS requests comments regarding this information collection and invites the public to submit comments during a 60 day comment period. USCIS will address any public comments that it receives in connection with that proposed rule and the imbedded 60-day information collection notice when it publishes the final rule.
9. USCIS does not provide payments or gifts to respondents in exchange for a benefit sought.
10. There is no assurance of confidentiality. The system of record notice associated with this information collection is United States Citizenship and Immigration Services Benefits Information System, which was

published in the Federal Register on September 29, 2008 at 73 FR 56596. The privacy impact assessment associated with this information collection is USCIS Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum.

11. There are questions of a sensitive nature regarding previous immigration and criminal records. The sensitive questions are necessary because aliens are not eligible for a provisional unlawful presence waiver if they are inadmissible for any ground provided in section 212(a) of the Act other than unlawful presence under section 212(a)(9)(B)(i) of the Act.

12. **Annual Reporting Burden.**

a.	Number of Respondents	45,376*
b.	Number of Responses per each Respondent	1
c.	Total Annual Responses	45,376
d.	Hours per Response	1.5
e.	Total Annual Reporting Burden	68,064
f.	Average hourly wage	\$30.74
g.	Total Annual Cost Burden to Respondents	\$2,092,287.3

**USCIS reported in the proposed rule, RIN 1615-AB99, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 38,277 as the estimated number of respondents. Since the publication of the proposed rule, the estimate has changed to 45,376 respondents. This change is due to the fact that the final rule expands the population of those who will become eligible to request a provisional unlawful presence waiver of inadmissibility.*

Total annual reporting burden hours is 68,064. This figure was derived by multiplying 45,376 number of respondents x (1) frequency of response x 1.5 hours (90 minutes) per response.

The estimated annual burden cost is \$2,092,287.3.This figure is calculated by: The number of respondents (45,376) (1) number of responses x 1.5 hours (90 minutes) per response x 30.74 (average hourly rate for all wage earners from BLS table and multiplying by 1.4 benefit multiplier).

13. There are no capital or start-up costs associated with this information collection.

For informational purposes, there is a \$585 application fee and a \$85 biometric fee associated with this information collection.

14. **Annualized Cost Analysis:**

a.	Printing Cost	\$	11,483
b.	Collecting and Processing	\$	30,401,920
c.	Total Cost to the Government	\$	30,413,403

Government Cost

The estimated cost of the program to the Government is calculated by multiplying the estimated number of respondents 45,376 x \$585 fee charge and also the number of respondents 45,376 x \$85 fee charge (which includes the suggested average hourly rate for clerical, officer, and managerial time with benefits, plus a percent for the estimated overhead,

stocking, distributing and processing of this form). The total cost to the government is \$30,401,920.

15. There has been no increase or decrease in the estimated annual burden hours as this is a new information collection instrument and no previous annual burden hours have been reported for this collection of information.
16. USCIS does not intend to employ the use of statistics or the publication for this collection of information.
17. USCIS will display the expiration date on this form in accordance with OMB regulations.
18. USCIS does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods.

Not Applicable.

C. Certification and Signatures

PAPERWORK CERTIFICATIONS

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under 5 CFR 1320.

Laura Dawkins,
Chief,
Regulatory Coordination Division,
Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security.

Date