

I-601A (Provisional Waiver Program) vs. I-601 Waiver: A Comparative Analysis

On January 3, 2013, USCIS published the Provisional Waiver Rule in the Federal Register allowing immediate relatives of US citizens who are currently in the United States to apply for the extreme hardship waiver in the US BEFORE departing to attend their visa appointment. The new rule will provide thousands of families with an opportunity to legalize their loved ones' status without subjecting families to an often lengthy separation that is so common for the traditional I-601 waiver applicant.

Every day I work with people who are confused about what to do, where to file, and what to file. And for good reason!

In an effort to dispel some of this confusion, I have put together the following chart comparing the current I-601 process with the Provisional Waiver process. The information offered is certainly not intended to be comprehensive or a substitute for legal advice as I-601 waiver cases – indeed most immigration cases – are complex and require a thorough legal analysis. It should thus be used for educational purposes only!

	Current I-601 Waiver Process, aka “Centralized Lockbox Filing”	I-601A Provisional Waiver Process (PWP)
Is the Program in Effect?	Yes	Yes.
Who is the Applicant?	The applicant is a beneficiary of an approved family-based I-130 petition.	The Applicant must be at least 17 years old, and be the beneficiary of an approved I-130 visa petition as an “immediate relative” of a US citizen (spouse, parent or child of a US citizen) or an approved I-360 Petition.
Who is the Qualifying Relative?	US Citizen (USC) ¹ or Lawful Permanent Resident (LPR) Spouse, Fiancée, or Parent. Children are qualifying relatives only for applications waiving criminal grounds of inadmissibility. Hardships to children can be used only as they relate to the hardships of the qualifying relative, i.e., the parent.	US Citizen spouse or parent. Children are not considered qualifying relatives, but children’s hardships can be used in so far as they affect the qualifying relative spouse or parent.
Does the Petitioner and Qualifying Relative Have to Be the Same Person?	No.	No, but the Provisional Waiver Program is limited to immediate relatives.

¹ USC = United States Citizen; LPR = Lawful Permanent Resident
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What grounds of Inadmissibility Can Be waived?	Most common grounds are unlawful presence of more than 180 days, misrepresentation, and certain criminal grounds.	Unlawful presence only
What Grounds of Inadmissibility Cannot be Waived?	False claims to US citizenship (made after 1996), almost all drug convictions, suspicions of drug trafficking, prior gang membership, prior frivolous asylum claims (filed after 1997), repeat immigration law violators under 212(a)(9)(C).	The only ground that can be waived under PWP is unlawful presence. If other bars exist, must use Lockbox Filing and apply for the waiver after appearing at Immigrant Visa interview at the Consulate.
What if Additional Grounds of Inadmissibility are Discovered?	A new I-601 would normally be required. Also, may be able to amend.	The waiver would be denied and applicant would have the choice to pursue Lockbox Filing.
I-130 or I-360	Must be approved to file	Must be approved to file
Can I file the Waiver Once the I-130 is approved?	No. The applicant has to finish his case process with the National Visa Center, be scheduled for and appear for the immigrant visa interview, and be found inadmissible, but eligible to file the waiver.	No. An applicant has to pay the immigrant visa to the National Visa Center and inform NVC that she/he intends to file an I-601A application.
Physical presence in the US?	Must be abroad to file or have other grounds of inadmissibility that would disqualify her from the Provisional Waiver Program.	Must be in the US to file.
Biometrics?	Must capture abroad.	Must appear for capturing in the US.
Must I Prove Extreme Hardship?	Yes	Yes
What if the Applicant is Abroad?	File with the Lockbox in the US.	Not eligible to use the PWP.
NVC	Must have finished processing case with NVC.	Must have paid Immigrant Visa fee to the National Visa Center and provide proof with I-601 filing.
What if I Have Been Scheduled for a Visa Interview at the U.S. Embassy/Consulate?	Follow instructions received from NVC, attend the interview, be found eligible to file the waiver, file the I-601 Waiver with Lockbox.	Generally, no, but review the following excerpt from the Final Rule: <i>"An alien who is ineligible to apply for a provisional unlawful presence waiver because of a previously scheduled immigrant visa interview may still qualify for a provisional unlawful presence waiver if he or she has a new DOS immigrant visa case because 1) DOS terminated the immigrant visa registration associated with the previously scheduled interview, and they have a new immediate relative petition; or 2) the alien has a new immediate</i>

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		<i>relative petition filed on his or her behalf by a different petitioner."</i>
What if I'm Currently in Removal Proceedings	Outside the scope of discussion.	Yes, if the removal proceedings were administratively closed AND your case was not put back on the Immigration Court calendar at the time you file the I-601A. If your I-601A is approved, you need to seek an order from the Immigration Judge to terminate/dismiss your removal proceedings BEFORE you leave US.
What if I have a final order of removal, deportation or exclusion?	Can File the I-212 Application together with I-601 at Lockbox or file stand-alone I-212 if removal is sole ground of inadmissibility.	Not eligible to use the PWP.
How Many Times Can I File?	No limit	No limit
Can I Appeal?	Yes. Re-filing is also an option.	No, but can re-file a new application
Filing Location	Lockbox in Phoenix, AZ (for immigrant visa/K visa cases). For other cases, refer to form instructions.	Lockbox in Chicago, IL. Refer to uscis.gov for specific address.
Who Makes the Decision on my Waiver?	USCIS	USCIS
Will USCIS Deny My Waiver Outright?	While this seldom happens, a Request for Evidence or Notice of Intent to Deny is appropriate.	You should receive a Request for Evidence or Notice of Intent to Deny first.
If My Waiver is Denied, Can I Appeal or File a Motion to Reconsider?	Yes	No
How Much is the Waiver Filing Fee?	\$585	\$585 plus \$85 for biometrics
Can the Filing Fee Be Waived?	No	No
Must I Depart the US	Yes.	Yes, the waiver is called "Provisional" because it's contingent on the person leaving and processing her case at the US Consulate/Embassy in her home country.
Would Approval of the Waiver Give me Immigration Benefits?	Yes, assuming the applicant is otherwise admissible and an immigrant visa is granted.	No.
Is this New Law?	No, this is a change in procedure	No, this is a change in procedure.

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