

Non-Immigrant Visa Waiver

The Immigration & Nationality Act lists the grounds on which a foreign national is barred from entering the United States. **Inadmissible persons may not obtain a nonimmigrant visa** (B-1, B-2 visitor, F-1 student, H-1B, etc.) or enter the U.S. as a nonimmigrant *without* a Section 212(d)(3) waiver.

The Section 212(d)(3) waiver is useful for many grounds of Inadmissibility

Including:

- Health-related issues,
- Criminal offenses,
- Fraud or willful misrepresentation of material facts to gain immigration benefits,
- False claims to U.S. citizenship, and
- Unlawful presence in the U.S.

Who can use it?

- The criteria to get the 212(d)(3) waivers is not defined by statute, however, there are three factors to consider:
 - The risk of harm to society if the applicant is admitted to the U.S.,
 - The seriousness of the applicant's prior immigration or criminal law violations, which caused the inadmissibility, and
 - The importance of the applicant's reasons for seeking to enter the U.S.
- Inadmissible persons who do not qualify for an immigrant waiver often still qualify for a 212(d)(3) waiver.
- Certain persons with illegal re-entries and prior removal orders may return, temporarily, to the United States.
- The waiver may be granted for *any* legitimate purpose, such as, medical treatment (even if available abroad), family visits, school attendance, and tourism. Even applicants with serious criminal convictions, including aggravated felonies, may file for the waiver.

What are the Limitations of a Section 212(d)(3) Nonimmigrant Waiver?

- Does not overcome every ground of inadmissibility such as: and is not available to all non-immigrants. It does not overcome inadmissibility based on:
 - Security-related grounds (espionage, sabotage); or
 - Foreign policy considerations.
- Is not available to those who have prior removal orders,
- The grant of the waiver is completely discretionary
- The waiver is valid for a limited time – A maximum of 5 years.

Filing the Nonimmigrant Waiver

The waiver is filed either with the U.S. Consulate **OR** with Customs and Border Protection (CBP) at a U.S. port of entry or preclearance office.

Application at the U.S. Consulate

- Applicants who need a nonimmigrant visa must file section 212(d)(3)(A)(i) waiver with the U.S. Consulate. No filing fee and no Application for Advance Permission to Enter as a Nonimmigrant (“Form I-192”) is required.
- After the consular officer reviews your nonimmigrant visa application and makes an initial finding of inadmissibility, you may submit your waiver application on the day of the interview or days after the interview.
- Assuming you are, otherwise, eligible for the visa, the consular officer ought to consider your waiver request.
 - If the waiver is granted, the U.S. Consulate then decides whether to actually issue the nonimmigrant visa.
 - Even when a 212(d)(3) waiver is granted, the U.S. Consulate may still deny the visa for other reasons.

Application at the U.S. Port of Entry

- Applicants who are visa-exempt (e.g. most Canadian citizens), are citizens of a Visa Waiver Program (VWP) country and have authorization under ESTA, or who already have appropriate travel documents, must file the 212(d)(3)(A)(ii) waiver with the CBP.
 - Form I-192, plus the filing fee, are normally required.

Processing times vary significantly especially now with the delays due to the pandemic.

Fong♦Ilagan, LLP works with clients to simplify the nonimmigrant waiver process. To discuss your case in more detail, please contact our office at 713.772.2300.