



ADDRESSING INADMISSIBILITY GROUNDS IN U NONIMMIGRANT STATUS PETITIONS

By ILRC Attorneys

I. Overview of Inadmissibility and Waivers

All applicants for U nonimmigrant status, including derivative family members of U principal applicants are subject to the grounds of inadmissibility in § 212(a) of the Immigration and Nationality Act (INA).¹ Under INA § 212(d)(14), U nonimmigrant applicants may apply for a waiver of any inadmissibility ground except those in INA § 212(a)(3)(E) [participants in Nazi persecutions, genocide, torture, or extrajudicial killing]. This inadmissibility waiver for potential U nonimmigrants is very generous and does not apply in most other immigration petitions and applications.

Example: Lupe has been afraid to apply for any immigration benefit because of several immigration violations in her past. She originally entered the United States without permission, remained here for several years before returning to Mexico to visit her son, re-entered the United States without inspection, and arranged to have her son brought into the country, also without permission. Despite her fears about her immigration status, Lupe was helpful in the criminal investigation of her boyfriend for abusing her. If Lupe meets the requirements for U nonimmigrant status, she could apply for it along with a waiver of all the grounds of inadmissibility (such as entering without inspection, the unlawful presence “permanent bar,” and smuggling) that she may have triggered. This is because under INA § 212(d)(14) she may be eligible for the special U nonimmigrant provisions to waive those grounds.

The INA authorizes U.S. Citizenship and Immigration Services (USCIS) to grant an inadmissibility waiver for U nonimmigrants when a waiver would be in the “public or national interest.”² There is no published standard, and this is a highly discretionary determination. In using its discretion, USCIS must balance negative factors with the social and humane considerations presented by the applicant.³ While previously USCIS was generous in exercising its discretion favorably to grant inadmissibility waivers, in recent years we have seen a stricter approach, particularly around criminal grounds of inadmissibility.

¹ For a longer discussion of inadmissibility grounds and waivers for U nonimmigrants, see the ILRC’s manual, *The U Visa Manual: Obtaining Status for Immigrant Victims of Crime* (<http://www.ilrc.org/>). The ILRC also publishes a manual, *Inadmissibility & Deportability* (<http://www.ilrc.org/>) which discusses in detail these grounds of inadmissibility and the general (not U-specific) waivers available to overcome them.

This practice advisory covers ways to gather information to determine whether your client might be inadmissible, how to address inadmissibility issues when applying for U nonimmigrant status, and how to file for an inadmissibility waiver for a U nonimmigrant applicant.²

II. Identifying Inadmissibility Grounds Requiring a Waiver

The main ways to identify which inadmissibility factors may apply to your client are (1) an intake interview;³ (2) filing background checks and/or records requests;⁴ and (3) completing questions in Part 3 (pages 3-6) of the I-918 petition with the client.

If it appears that your client might be inadmissible under statutory grounds, the first line of defense is to analyze whether an inadmissibility ground really applies. Does the act meet the definition and requirements of an inadmissibility ground? Even if your client has a criminal arrest or conviction in their past, can you make the argument that it does not meet the definition of a “conviction” under immigration law? For example, has it been legally vacated? Or if it is a conviction for immigration purposes, can you argue that it is not an offense triggering inadmissibility, for example that it is not a crime involving moral turpitude under the case law in your jurisdiction? Even if it is a crime involving moral turpitude, is there an exception to the ground of inadmissibility such that your client is exempt? For example, does the offense qualify for an exception, such as the youth offender or petty offense exceptions for crimes involving moral turpitude?

Example: Enrique first came to the United States in 1994, without inspection. After living in the United States for two years, he returned to Mexico. He later came back to the United States without inspection in January 1997 and has not left since then. Because the “unlawful presence” bars did not take effect until April 1, 1997, “unlawful presence” time did not count prior to that date. This means that Enrique did not accrue “unlawful presence” prior to his last entry and is not inadmissible under either INA § 212(a)(9)(B) (the “ten-year bar”) or INA § 212(a)(9)(C)(i)(I) (the “permanent bar” relating to aggregation of one year of unlawful presence, and a subsequent reentry without inspection). By taking a close look at the dates of Enrique’s exits and entries, an advocate can determine that he is not actually inadmissible under the unlawful presence bars—although he is still inadmissible for entering without inspection and will require a waiver for that ground of inadmissibility. Had Enrique entered the United States unlawfully in 2004, stayed until 2006, and then departed, he would have accrued sufficient “unlawful presence” to trigger inadmissibility under INA § 212(a)(9)(B) (for both the “three and ten-year bars”) when he left. And if he returned to the

² For information about inadmissibility factors discovered or triggered after filing U nonimmigrant status or inadmissibility issues that arise after receiving U status affecting discretion at the time of U adjustment of status, the ILRC’s practice advisory, “Inadmissibility Issues that Arise After Applying for U Nonimmigrant Status,” available at <https://www.ilrc.org/u-visa-t-visa-vawa> or the ILRC’s manual, *The U Visa Manual: Obtaining Status for Immigrant Victims of Crime* (<http://www.ilrc.org/>).

³ For intake interview tips, see Chapter 4 of the ILRC’s manual, *The U Visa Manual: Obtaining Status for Immigrant Victims of Crime* (<http://www.ilrc.org/>).

⁴ Many advocates request Federal Bureau of Investigation (FBI) background checks, state-specific background checks, court-specific records requests, and/or Freedom of Information Act (FOIA) requests from USCIS, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), the Office of Biometric Identity Management (OBIM), and/or Executive Office of Immigration Review (EOIR).

United States without inspection after that, he would have also triggered the “permanent bar” under INA § 212(a)(9)(C)(i)(I).⁵

Example: Barbara has one criminal conviction from her past when she was arrested and convicted of shoplifting. Crimes that involve stealing can often trigger a crime involving moral turpitude inadmissibility ground. However, in Barbara’s case, she has committed only one crime involving moral turpitude, the sentence she received was six months, and the offense carries a maximum possible sentence of one year in the state in which she was convicted. Under INA § 212(a)(2)(A)(II), Barbara is eligible for the petty offense exception, and her conviction will not trigger a ground of inadmissibility. She will not need a waiver for this offense.

PRACTICE TIP: Handling crim-imm issues in U nonimmigrant cases. Immigration consequences of criminal convictions are very complicated, and this is an ever-evolving body of law, often dependent on the state and/or federal statute of conviction and circuit court case law. Some convictions that may look “serious” may not in fact trigger any inadmissibility grounds; other convictions that look “minor” may in fact give rise to multiple grounds of inadmissibility. If your client has a criminal history and you do have expertise in this area, please consult an expert to ensure that you are analyzing the inadmissibility grounds correctly and filling out the waiver request properly.

III. Addressing Inadmissibility Issues on Form I-918

Many of the questions on Form I-918 have been included to determine your client’s admissibility. However, it is important to note that not every ground of inadmissibility is addressed in these questions. For example, there is no question on the form that asks about whether the applicant has ever made a false claim to U.S. citizenship (which would trigger an inadmissibility ground under INA § 212(a)(6)(C)(ii)). Therefore, you may have to disclose some inadmissibility grounds only on the waiver application. It is also important to realize that some questions may not be as simple as they look and may require more knowledge of case law and legal interpretations by USCIS prior to answering the question. However, in strong U nonimmigrant cases, since most inadmissibility grounds for “U” visas are waivable, over-disclosing or answering “yes” when inadmissibility is not clear is not as potentially harmful as in other requests for benefits.

PRACTICE TIP: Answering questions on Form I-918 when you’re not sure an inadmissibility ground was triggered. Sometimes you might be unsure if a client triggered an inadmissibility ground and therefore do not know how to answer a question accurately on the form. For example, Question 18 asks, “Have you EVER been removed, excluded, or deported from the United States?” Your client might not know exactly what happened if they were stopped at the border before, had an interaction with border patrol, were not allowed to enter the United States, and/or were told to go back when they got to the border. They might

⁵ Note that had Enrique been ordered deported or excluded prior to April 1, 1997, and subsequently returned to the United States, entering without inspection (EWI) *either before or after* that date, he *would* be subject to the second “permanent bar” pursuant to INA § 212(a)(9)(C)(i)(II), and would need a waiver for that ground of inadmissibility.

not know if that encounter resulted in an expedited removal order, a voluntary return, or something else. In such cases—where there is a possibility that an applicant triggered an inadmissibility ground, but you are not certain, or you do not think it is your job to make the determination that your client *did* trigger an inadmissibility ground—consider placing an asterisk (*) near the question, along with a note that says “see attached,” “see attached explanation,” or “see attached declaration” instead of answering the question with a “yes” or a “no.” You can also answer “yes” or “no” but then explain on an attachment. The key is to disclose any potential ground so that 1) USCIS believes that your client is being truthful and not hiding anything, and 2) your client can point to this disclosure in future applications for adjustment or naturalization. If you take this approach, you can then include a description of what happened to let USCIS decide if an inadmissibility ground was triggered. Some clients feel more comfortable with this approach because they can disclose everything, but the consequences may potentially be less rigid than with a “yes” answer. It is important not to concede that an inadmissibility ground applies if it does not; however, it is also important to disclose conduct that would likely cause an issue *if not disclosed*.

IV. Filling Out Form I-192 Waiver Request

The inadmissibility waiver request must be filed on Form I-192, “Application for Advanced Permission to Enter as a Nonimmigrant.” You may request a waiver for all the applicable, waivable inadmissibility grounds on one Form I-192.⁶ USCIS officials have noted that a Form I-192 that seeks to waive inadmissibility grounds other than immigration violations such as entry without inspection or the unlawful presence bars should include a statement explaining the discretionary grounds for granting the waiver, details of the victimization, the reasons and circumstances for needing the waiver, and any supporting documentation. In most cases, this can all be addressed in one single declaration that supports both the Form I-918 U nonimmigrant status petition and the Form I-192 inadmissibility waiver application. Similarly, documentation submitted in support of Form I-918 can also be considered in support of Form I-192. As it is a discretionary waiver, it will be adjudicated on a case-by-case basis. If there are criminal inadmissibility grounds, additional discussion of rehabilitation, responsibility, and remorse should be included in the declaration and additional documents showing rehabilitation and positive equities should be included in the application packet. This is particularly true currently, as practitioners have reported an increase in requests for more evidence (RFEs) and denials for criminal related grounds of inadmissibility.

⁶ Note that as of this advisory’s writing, USCIS will not pre-waive any inadmissibility grounds. Those who have received U visas but never previously triggered the three- and ten-year unlawful presence bars as they had no prior departures, for example, will likely trigger those bars if they travel after receiving their U visa but prior to adjusting status. If you know that your client will be traveling soon and triggering an unlawful presence bar upon their departure, you cannot pre-waive this ground. Instead, you will have to file another waiver with USCIS once your client leaves and triggers this ground, which is quite risky, as your client will then need to have the new inadmissibility ground waived, undergo consular processing, have a new U visa granted by the U.S. consulate and return to the United States within 90 days of departure to avoid potential denial of reentry and problems with their subsequent adjustment of status application.

Pay close attention to Question 26 of Form I-192 where it asks your client whether they may be inadmissible and directs them to answer in the additional information section in Part 8. Here you should state all inadmissibility grounds that your client seeks to have waived (or disclosed if USCIS deems the ground has been triggered). You should always list all the grounds by name and statute (for example “EWI, INA § 212(a)(6)(A)”) or by behavior (for example “I entered without inspection twice and accrued a year of unlawful presence in between so please waive INA § 212(a)(9)(C)”) that USCIS *knows* your client has triggered. The best practice in U visa cases is also to disclose any possible grounds that may have been triggered so that if they are not included in the waiver, you can later argue that they were fully disclosed and USCIS determined that a waiver was not needed.

PRACTICE TIP: Requesting a waiver when you’re not sure an inadmissibility ground was triggered. There may be times when it is difficult to determine whether your client triggered any inadmissibility grounds, and if so which ones, before requesting a waiver. There may be some grey areas, such as when the client cannot necessarily remember exactly what happened at the border. Inadmissibility waivers provided for by INA § 212(d)(14) are comparatively generous. Many advocates therefore believe it is beneficial to specifically request a waiver of any inadmissibility factors that may (or may not) apply to the applicant. For example, an applicant may, in response to I-192 Question 26, write the circumstances that may have triggered an inadmissibility ground, and then write, “if you deem that [describe the possible violation, e.g., “I was expeditiously removed”], please waive INA § 212(a) [relevant ground].” This may help an applicant in their subsequent application for adjustment of status, and those who later apply for naturalization at the local USCIS office, because they can show that they specifically requested (and hopefully were granted, if needed) a waiver of each potentially applicable ground.

The above approach is helpful if you are not sure what happened at the border. However, if your client has a criminal conviction or may think they committed conduct that could have led to a conviction, it is imperative to ask for a waiver **ONLY** for the criminal inadmissibility grounds triggered. If you concede, for example, that something is a conviction of a crime involving moral turpitude, or “help” your client to admit that they “committed” such a crime when there are good legal arguments to the contrary, that concession could haunt the client down the road, such as at adjustment or even in court if the client ends up in removal proceedings. If you are unsure of immigration consequences of your client’s criminal record, please consult an expert before filing the I-192 waiver.

Once Form I-192 has been received, USCIS will send you a receipt notice. If the inadmissibility waiver is approved, you will receive an I-192 approval notice listing the specific grounds that were waived. If you believed that a ground was triggered, asked for that ground to be waived, and did not see it listed on the approval notice, USCIS may have determined that ground did not apply. If you are convinced the missing inadmissibility ground does apply, USCIS stated in a stakeholder meeting that the correct response is to email the Vermont Service Center (VSC) or Nebraska Service Center (NSC) hotline to inform USCIS, depending on which Service Center adjudicated the waiver. The VSC hotline email address is hotlinefollowup19181914.VSC@uscis.dhs.gov; the NSC hotline email address is nsc.I-918inquiries@uscis.dhs.gov.

If the inadmissibility waiver application is denied, there is no appeal available. However, you can file a motion to reopen or reconsider, or re-file the waiver. In the Seventh Circuit case *L.D.G. v. Holder*, advocates have successfully argued that an immigration judge (IJ) may have jurisdiction over an I-192 under INA § 212(d)(3).⁷ Since then, there has been a circuit split on the issue, with the BIA and the Third Circuit holding that an IJ is not able to adjudicate an I-192 in the U context,⁸ and the Fourth, Seventh, and Eleventh Circuits finding that IJs do have jurisdiction over these waivers.⁹

V. Documenting Why the Applicant Merits a Waiver

To have a ground of inadmissibility waived, you must make sure your client can show that being granted the waiver is in the national or public interest.¹⁰ As a discretionary waiver, it will be adjudicated on a case-by-case basis. This standard is similar to the asylee adjustment waiver provision and traditionally has been interpreted as a generous standard. The regulations do not outline any specific requirements for demonstrating “public or national interest,” but USCIS officials have noted that each Form I-192 should include a statement explaining the discretionary grounds for granting the waiver, details of the victimization (which may be the same statement used to prove general U status eligibility), the reasons and circumstances for needing the waiver, and any supporting documentation. USCIS has considered the following factors in making positive discretionary determinations in U nonimmigrant petitions:

- The applicant’s loss of access to U.S. courts and justice system if the waiver is not granted;
- Nature and extent of the applicant’s physical or mental abuse;
- Likelihood that the perpetrator or people acting on their behalf in home country would harm the applicant or their children;
- Willingness of authorities in the home country to protect the applicant and their children;
- The applicant’s need for social, medical, mental health, or other services;
- Law and social practices in home country that punish the applicant or children for leaving the abuser;
- Political, economic conditions in the home country;
- Family ties (or lack thereof) to home country; and
- Contributions to the U.S. community.

⁷ See *LDG v. Holder*, 744 F.3d 1022 (7th Cir. 2014).

⁸ *Matter of Khan*, 26 I&N Dec. 797 (BIA 2016); *Sunday v. U.S. Attorney Gen.*, 832 F.3d 211 (3rd Cir. 2016).

⁹ *Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021); *Meridor v. U.S. Attorney Gen.*, 891 F.3d 1302 (11th Cir. 2018); *Baez-Sanchez v. Sessions*, 872 F.3d 854 (7th Cir. 2017).

¹⁰ INA § 212(d)(14).

Importantly, USCIS can consider all negative factors in its discretionary determination as well. For example, some behaviors or actions listed on Form I-918 that may not themselves make an applicant inadmissible may nevertheless be considered as negative factors by USCIS in granting a discretionary waiver. These negative factors can include driving under the influence, shoplifting, arrest warrants due to failure to appear in court, and criminal offenses committed as a juvenile (advocates caution against sending certain prejudicial criminal records to USCIS apart from final adult court dispositions, and in some states juvenile records may be confidential without a court order; although the offenses may still appear on a background check and have to be disclosed on the I-918). Many advocates encourage applicants to explain in an attachment to the I-918 or in the applicant's declaration the circumstances of the offense, acknowledge responsibility, express remorse, and describe how they have been rehabilitated.

Different advocates have taken different approaches to providing supporting documentation for their inadmissibility waiver requests. In some cases, applicants may have many documents in support of the waiver request. In other cases, attorneys have asked USCIS to consider all the documentation submitted in support of Form I-918 to also be considered in support of Form I-192. Some have included a short declaration from the applicant along with just a couple supporting documents such as a copy of the applicant's domestic violence restraining order or birth certificates of the applicant's U.S. citizen children. Others, especially in situations where the applicant has any criminal history, include a separate declaration for the waiver and substantial evidence of rehabilitation. Thus far, most inadmissibility waiver requests where there are no criminal convictions (only immigration violations) have been approved with just the usual supporting documents that are needed for the I-918 petition. How much documentation you submit depends on the grounds of inadmissibility that your client has triggered. If your client has triggered criminal grounds of inadmissibility be prepared to submit substantial evidence of rehabilitation and positive equities. This is especially true if your client has a conviction that could be seen as the same type of offense that would create U visa eligibility for the victim of that offense (e.g., domestic violence or assault convictions). USCIS' current practice is not to place denied U petitioners in removal proceedings.¹¹ Thus, for most applicants and their family members, the benefit of applying and potentially obtaining relief, particularly for people who have no other possible path to lawful status, will far outweigh the risks of applying. However, please warn clients that this practice could change, resulting in placing denied applicants in removal proceedings. Given how long U visa petitions remain pending, a new policy could be in place by the time clients' petitions are adjudicated.

VI. How Much Documentation Does Your Waiver Need?

Negligible inadmissibility and no criminal record. If the only ground the applicant needs waived is INA § 212(a)(6)(A)—present without admission because they entered one time without inspection and have no departures that would trigger the bars at INA §§ 212(a)(9)(B) and (C), no misrepresentation, no smuggling, or no criminal factors to waive—then you should file Form I-192, but you may not need *any* additional supporting documentation for the waiver.

¹¹ USCIS, Notice to Appear Policy Memoranda (last updated 2021), <https://www.uscis.gov/laws-and-policy/other-resources/notice-to-appear-policy-memorandum>.

The documentation submitted in support of Form I-918 is most likely sufficient. To ensure USCIS has the relevant information to waive INA § 212(a)(6)(A), it is useful to state in the additional information section in Part 8 of the I-192: “I am requesting a waiver of INA § 212(a)(6)(A) because I entered the United States without inspection.”

More serious, or multiple immigration violations, and minor criminal offenses that do not alone make the applicant inadmissible. If an applicant has helped someone enter the United States without permission (smuggling), entered the United States illegally after a year of unlawful presence or having been removed (permanent bar), entered the United States illegally multiple times, or been deported in the past, the applicant should include some positive equities in the declaration, mitigating circumstances surrounding the immigration violations (especially if tied to the victimization), and include copies of the birth certificates of U.S. children if applicable. If the applicant has several such immigration violations, USCIS will want to see that the applicant takes these violations seriously and expresses sincere remorse. It is often a good idea to include mitigating factors. For example, perhaps the entry without inspection after an expedited removal order was due to the applicant’s desperation to return to their U.S. citizen children. If the applicant needs a waiver for immigration violations, but additionally has criminal convictions that do not rise to the level of inadmissibility (drunk in public, one shoplifting incident, simple assault, or battery arising from a fight rather than domestic violence, etc.), they should know that their criminal history will also be a negative discretionary factor in their waiver adjudication. Because of this, they should submit more positive equities evidence, such as a detailed statement describing how each of the positive factors listed above apply to their situation, any mitigating circumstances, their remorse and taking responsibility, and a few strong letters of recommendation.

Serious but not violent criminal inadmissibility factors. If the applicant has triggered a serious or criminal inadmissibility ground that did not involve violence (for example, a theft crime beyond one shoplifting offense, or a drug-related crime), they should provide, in addition to a statement addressing how they merit a positive discretionary determination, documentation to show rehabilitation and good moral character. While a DUI does not trigger an inadmissibility ground, USCIS considers a DUI to be a negative discretionary factor and if there is more than one DUI, USCIS may also consider whether the health-related inadmissibility ground of posing or having posed a threat to oneself or others due to a mental or physical disorder has been triggered. If any negative factors are tied to the crime they have suffered, either directly or indirectly, that should be documented as well. For example, the applicant may have been “self-medicating” by drinking too much after the crime of which they were a victim, and are now in therapy, sober, and learning how to better cope with the past without drinking.

The regulations state that USCIS will consider the “number and severity of the offenses” in making its waiver determination in cases involving applicants inadmissible on criminal grounds. Although waivers for U status applicants are set forth in INA § 212(d)(14), USCIS has asked applicants with serious, but not violent, violations to meet the standard for positive exercise of discretion used in nonimmigrant inadmissibility waivers under INA § 212(d)(3). The relevant criteria USCIS follows are those found in *Matter of Hranka*:

1. The risk of harm to society if the applicant is admitted;
2. The seriousness of the applicant's prior immigration law, or criminal law, violations, if any; and
3. The reasons for wishing to enter the United States.¹²

USCIS indicates that evidence of rehabilitation in such cases is particularly important and have suggested including the following the factors:

- Evidence of rehabilitation;
- The applicant's reasons for wishing to remain in the United States;
- Any mitigating factors in the applicant's favor (family ties, financial impact of departure on others, contributions or ties to the community in the United States);
- An explanation, in the applicant's own words, of the specific circumstances surrounding an act or conviction that prompted the need for this waiver request;
- Loss of access to the U.S. criminal justice system as it relates to the applicant's claim to victimization (or if the applicant is a derivative, the impact of the applicant's departure on the principal's access to the criminal justice system if the applicant were to depart); and
- Any physical, medical, mental health or social services required by the applicant that are not readily available in the applicant's home country.

USCIS regularly issues I-192 RFEs requesting that the above factors be specifically addressed by applicants with multiple criminal violations (sometimes even relatively minor), in addition to immigration violations. Instead of waiting for an RFE, some advocates affirmatively spell out in the I-918/I-192 cover letter how these factors are addressed, both in the applicant's declaration and supporting documents. There is continued advocacy with USCIS on the fact that USCIS seems to be conflating the standard for waivers under INA § 212(d)(14) with the standard for waivers under INA § 212(d)(3) (*Matter of Hranka*). If you believe your client's waiver was adjudicated incorrectly, you can file a motion to reopen or reconsider.

The most serious criminal inadmissibility factors. If an applicant has been convicted of what USCIS may deem "dangerous or violent crimes," the regulations state that waivers should only be granted in "extraordinary circumstances."¹³ The extraordinary circumstances standard has been interpreted to mean that the applicant must show that they or their U.S. citizen or permanent resident spouse, parent or child will suffer exceptional or extremely unusual hardship if they are denied the waiver.¹⁴

Although I-192 waivers are available for even serious criminal inadmissibility grounds, in practice it is an uphill battle to get them approved. Nevertheless, the U visa may be the only potential path to lawful status for certain people with multiple criminal grounds of

¹² 16 I&N Dec. 491, 492 (BIA 1978).

¹³ 8 CFR § 212.17(b)(2).

¹⁴ See *Matter of Jean*, 23 I&N Dec. 373, 383 (A.G. 2002); see also *Matter of C-A-S-D*, 27 I&N 692 (BIA 2019) (finding that to satisfy the waiver criteria under *Matter of Jean*, hardship to the applicant could be considered as well as hardship to qualifying relatives).

inadmissibility. Please warn your clients of the discretionary nature of waiver adjudications, and of the possibility that Notice to Appeal (NTA) guidance could change with a future administration and potentially result in NTAs for denied petitioners. The I-192 waivers for these cases should be addressed in the same way that cancellation of removal cases or other waivers with similarly high standards would be handled.¹⁵

Some practitioners recommend that applicants with inadmissibility issues submit proof that they have volunteered in their communities to demonstrate rehabilitation or general positive equities. Helping others in their communities does not have to mean formal “volunteering.” It can be as simple as helping a neighbor fix their car, carrying groceries for an elderly person, cooking a meal for someone, etc.

VII. Filing Fees and Fee Waivers

The filing fee for Form I-192 is \$930. A filing fee waiver request may be filed on Form I-912. If the I-192 is submitted without the fee or the I-912 fee waiver request, the I-192 waiver will be rejected. There is no fee for Forms I-918 or I-918A, so even if your fee waiver is denied, only the I-192 and I-765 applications will be returned and your client’s I-918 or I-918A will be accepted for processing. If this happens, you should resubmit the I-192 with the filing fee before your application is likely to be reviewed.

VIII. I-192 Denials and Resubmissions

If USCIS denies an I-192, it will also deny the I-918 because approval of the I-918 requires a finding that the applicant is admissible, or that any applicable inadmissibility grounds have been waived. A denial of Form I-192 is not appealable. However, a motion to reopen or reconsider can be filed using Form I-290B. Another option is that a new I-192 may be submitted with a whole new filing (a new I-918 and I-918 Supplement B), as these denials are without prejudice (which means that an applicant can reapply if they think that they now have better evidence or a stronger case). In cases where a U nonimmigrant status petition is denied based on a denied I-192 waiver request, advocates have successfully filed motions to reopen or motions to reconsider on Form I-290B, as appropriate, with additional supporting documentation. If you file the I-290B, be sure to submit the filing fee of \$675 or a fee waiver application. If the I-918 is denied because the I-192 is denied, you only need to file one I-290B to request reopening and/or reconsideration of the denied I-192.

If the I-290B is granted, USCIS’ current practice is to reopen the I-918 or I-918A as well. Although USCIS used to accept Form I-290B with more than one form listed, some practitioners have had I-290B forms rejected where more than one form number and receipt number were listed on the I-290B form itself. Best practice is to list one form on the I-290B and then mention in the cover letter any ancillary forms (such as the I-918 and I-765) that you wish USCIS to re-open sua sponte. If multiple applications have been denied for independent reasons, you should file separate I-290B forms for each application.

¹⁵ For more information on proving hardship, see the ILRC’s manual, *Hardship in Immigration Law: How to Prepare Winning Applications for Hardship Waivers and Cancellation of Removal* (<http://www.ilrc.org/>).

Example: Lidia received a denial of her I-192 as a matter of discretion based on her recent welfare fraud conviction. She received a denial of her I-918 and I-765 because her waiver was denied, and thus she did not meet the U nonimmigrant status eligibility criteria of being admissible or having any applicable inadmissibility grounds waived. She talked to her advocate, and they decided to file a motion to reopen her I-192 waiver based on new evidence that she since repaid the overpayment amount, completed probation, and has not reoffended. She will file Form I-290B listing Form I-192 and its receipt number. In her cover letter, she will ask USCIS to reopen her I-918 and I-765 sua sponte.

Example: Jorge received a denial of his I-192 as a matter of discretion based on a recent drug conviction. He received a denial of his I-918 based on allegedly not suffering from a qualifying criminal activity. He talked to his advocate and decided to file Form I-290B to appeal his I-918 denial and a separate Form I-290B to reconsider his I-192 waiver denial.

Please be aware that there is a time limit for filing Form I-290B. Generally, the I-290B must be filed within 33 days of the date of the denial. But for denials received between November 1, 2021, and March 23, 2023, USCIS will consider an I-290B timely filed if it is received up to 90 days after the date of the decision. These COVID flexibilities ended as of March 23, 2023, but USCIS states it will still consider case-by-case a request for late filing on a discretionary basis “for applicants or petitioners affected by an emergency or unforeseen circumstance, such as natural catastrophes (hurricanes, wildfires, severe weather, etc.), national emergencies (public health emergencies), or severe illness (including COVID).”¹⁶ Please check the USCIS website for updates.

Depending on where your clients live, some clients in removal proceedings may also be able to convince the immigration judge to adjudicate the waiver application even after it has been denied by USCIS. The Fourth, Seventh, and Eleventh Circuits have held that an immigration judge may have jurisdiction over Form I-192 under INA § 212(d)(3).¹⁷ Keep in mind that adjudicating the I-192 waiver in court under INA § 212(d)(3) will trigger the waiver standard under *Matter of Hranka*, as discussed above.

¹⁶ USCIS, *USCIS Announces End of COVID-related Flexibilities*, (March 23, 2023), available at <https://www.uscis.gov/newsroom/alerts/uscis-announces-end-of-covid-related-flexibilities>.

¹⁷ *Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021); *Meridor v. U.S. Attorney Gen.*, 891 F.3d 1302 (11th Cir. 2018); *Baez-Sanchez v. Sessions*, 872 F.3d 854 (7th Cir. 2017).



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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC’s mission is to protect and defend the fundamental rights of immigrant families and communities.