



VIOLENCE AGAINST WOMEN ACT (VAWA):

Inadmissibility Grounds and Waivers for Adjustment of Status

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I. Introduction

A VAWA self-petitioner who is approved may seek to become a lawful permanent resident. This can be done either through the adjustment of status process with the U.S. Citizenship and Immigration Services (USCIS) in the United States or by applying for an immigrant visa at a U.S. consulate abroad, through what is known as consular processing. For both processes, the self-petitioner will need to establish that they are admissible (i.e., that they do not fall under any grounds of inadmissibility at INA § 212(a)), and if they do fall under any ground of inadmissibility, or that they qualify for a waiver. Even if the Form I-360 self-petition has been approved, the self-petitioner and their derivatives will not receive lawful permanent resident status if they are inadmissible and not eligible for a waiver.

This practice advisory will cover some common grounds of inadmissibility, waivers available for VAWA self-petitioners who will be filing for adjustment of status, and how to identify whether a ground of inadmissibility has been triggered and whether a waiver is available.

II. VAWA Adjustment of Status

VAWA self-petitioners adjust status under INA § 245(a), like other family-based adjustment of status applicants, though there are special rules that apply to VAWA cases. To apply for adjustment of status through VAWA, the applicant must meet the following requirements:

- Have an approved VAWA Form I-360 self-petition, unless the self-petitioner is eligible to file the Form I-360 self-petition concurrently with the adjustment of status application, Form I-485;
- A visa is currently available, either because the applicant is an immediate relative, or the priority date is current; and
- Be admissible under INA § 212(a) (or be eligible for and granted a waiver).

Several requirements for general family-based adjustment of status do not apply to those who are adjusting based on VAWA. The following general adjustment requirements do not apply to VAWA self-petitioners:

¹ Thank you to ASISTA who helped with some of the editing of this advisory.

- Threshold requirement under INA § 245(a) that an adjustment applicant have been “inspected and admitted or paroled”;
- The bars at INA § 245(c), which prevent some from adjusting if they have, for example, worked without authorization or failed to continuously maintain lawful status; and,
- The affidavit of support requirement.

For more information on VAWA adjustment of status please see the ILRC’s Practice Advisory “Applying for Adjustment of Status Through VAWA.”²

III. Inadmissibility Grounds for VAWA Self-Petitioners

There are generally ten categories of inadmissibility grounds at INA § 212(a). Each of these categories contain several grounds of inadmissibility within them and each must be reviewed thoroughly before an application for adjustment of status is submitted. These grounds are:

- Health-related grounds;
- Criminal-related grounds;
- National security grounds;
- Public charge;
- Labor protection grounds;
- Fraud or other immigration violations;
- Documentation requirements;
- Grounds relating to military service in the United States;
- Prior removals or unlawful presence in the United States;
- Miscellaneous grounds.

VAWA self-petitioners who are seeking to adjust their status and fall under one or more of these grounds will need to see if they qualify for a waiver or an exception to the inadmissibility ground. While there are some general waivers, there are also special exceptions and other provisions available for VAWA adjustment of status applicants. These are discussed below.

A. The Three- and Ten-Year Bars at INA § 212(a)(9)(B)(i)

A noncitizen is inadmissible under INA § 212(a)(9)(B)(i), the unlawful presence bars, if they have accrued too much unlawful presence and then depart the United States. Within this ground, there is a three-year bar and a ten-year bar depending on how much unlawful presence the person accrued after April 1, 1997, when the unlawful presence bars came into existence through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).

² Available at:

https://www.ilrc.org/sites/default/files/resources/applying_for_aos_through_vawa_june_2021_final4.pdf.

The “Three-Year Bar.” Under INA § 212(a)(9)(B)(i)(I) noncitizens who, beginning on April 1, 1997, (a) are unlawfully present in the United States for a continuous period of **more than 180 days but less than one year**, (b) then voluntarily depart the United States before any immigration proceedings commence, and (c) subsequently apply for admission to the United States, are inadmissible for a period of three years from the date of departure. The statutory three-year bar begins when the person departs the United States.

The “Ten-Year Bar.” Under INA § 212(a)(9)(B)(i)(II) noncitizens who, beginning on April 1, 1997, (a) are unlawfully present in the United States for a continuous period of **one year or more**, (b) leave the United States voluntarily or by deportation/removal, and (c) then apply for admission to the United States, are inadmissible for a period of ten years from the date of departure or removal. The statutory three-year bar begins when the person departs the United States.

Applicants for adjustment of status who trigger either of these bars will have to wait until the bar lapses or see if they qualify for a waiver. USCIS policy guidance³ and a Board of Immigration Appeals (BIA) case, *Matter of Duarte-Gonzalez*,⁴ acknowledge that the simple passage of time is enough for the three- and ten-year bars to run, regardless of whether the full-time period is spent inside or outside the United States. When determining if a person has triggered this ground, advocates must first identify if a person has departed the United States after accruing the requisite unlawful presence time. These bars can only be triggered by a departure following the accrual of the requisite time (*more than 180 days* for the 3-year bar or *365 days or more* for the 10-year bar). Someone who does not depart the United States will not trigger these bars, even if they have accrued the requisite time. VAWA self-petitioners who have never departed after entering the United States will not need to worry about these bars.

Applicants should be screened for all their entries, including manner of entry, and exits. Note that even if a VAWA self-petitioner was not inspected and admitted or paroled, they are still eligible to adjust status. If a VAWA self-petitioner has departed since they entered the United States, advocates will need to review each time period they spent in unlawful status – what was their age (time under 18 does not count), when were they in unlawful status (only start counting time on April 1, 1997), how did they depart (advance parole before *Matter of Delcarmen-Lara*⁵ would not trigger the bars). See Counting Period of Unlawful Presence, below, for more.

Counting Periods of Unlawful Presence:

- (a) Start Counting on April 1, 1997. Unlawful presence does not start accumulating until April 1, 1997, the effective date of the IIRIRA, which added unlawful presence inadmissibility.

³ USCIS, *Policy Memorandum: INA 212(a)(9)(B) Policy Manual Guidance* (June 24, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220624-INA212a9B.pdf>. This new guidance has been incorporated in the USCIS Policy Manual (USCIS-PM) at 8 USCIS-PM O.6.

⁴ 28 I&N Dec. 688 (BIA 2023).

⁵ 29 I&N Dec. 830 (BIA 2026).

- (b) Only count continuous periods. The period of unlawful presence must be continuous. If a person is here for two months, leaves, and comes back to being without status five months, they have not spent six months or longer in continuous unlawful presence during a single stay, therefore they do not have the time needed to trigger these bars.⁶
- (c) Do not count time under the age of 18. Unlawful presence does not accrue for purposes of the three- and ten-year bars during time the noncitizen is under age 18.⁷
- (d) Do not count any time spent with certain applications pending, like a bona fide asylum application, a properly filed affirmative application for adjustment of status, TPS, among others.
- (e) Do not count any time the person has approved deferred action, including DACA⁸, or is the beneficiary of Family Unity Protection.⁹

If a VAWA self-petitioner has accrued the requisite time needed and departed, they would be deemed to have triggered the unlawful presence bar. However, VAWA self-petitioners and their derivatives can claim an exception to inadmissibility if there is a relationship between the abuse suffered, the unlawful presence, and their departure from the United States. See VAWA Exceptions for Inadmissibility at INA § 212(a)(9)(B) below for more.

Many VAWA self-petitioners may have or have had other statuses that would allow them to travel on advance parole, such as Deferred Action for Childhood Arrivals (DACA). For over fourteen years, leaving the United States on advance parole was not considered a “departure” for purposes of the unlawful presence bars at INA § 212(a)(9)(B)(i) based on the BIA’s decision in *Matter of Arrabally and Yerrabelly*.¹⁰ However, on August 13, 2026, the BIA issued a decision on *Matter of Delcarmen-Lara*¹¹ that overruled *Matter of Arrabally and Yerrabelly* and held that travel on advance parole is now a “departure” for purposes of the unlawful presence bars. Applicants who depart on advance parole after this decision may trigger the unlawful presence bars depending on how much unlawful presence they accrued before departing. For applicants who have prior departures, or who are thinking about traveling on advance parole, it is crucial to know how and when they departed to assess whether they have or will trigger the unlawful presence bars.

VAWA Exceptions for Inadmissibility at INA § 212(a)(9)(B):

A VAWA self-petitioner will not be subject to this ground of inadmissibility, even if their departure triggered an unlawful presence bar, if they can show a substantial connection between the violation of their nonimmigrant visa and the abuse they suffered.¹²

⁶ Note, however, that the permanent bar at INA 212(a)(9)(C) does add time periods together, meaning unlawful presence is counted in the aggregate.

⁷ INA § 212(a)(9)(B)(iii)(I). However, there is no “minor exception” for the permanent bar at 212(a)(9)(C).

⁸ 8 CFR 236.21(c)(4).

⁹ INA § 212(a)(9)(B)(iii)(III) (Family Unity exception). Under Section 301 of the Immigration Act of 1990. By USCIS policy, this exemption has been extended to Family Unity under section 1504 of the LIFE Act Amendments of 2000, for both 212(a)(9)(B) and the permanent bar.

¹⁰ 25 I&N Dec. 771 (BIA 2012).

¹¹ 29 I&N Dec. 830 (BIA 2026).

¹² INA § 212(a)(6)(A)(ii); INA § 212(a)(9)(B)(iii)(IV).

Example: Mayelle, from Nicaragua, entered the United States with a tourist visa. After two months, she met and married August, a U.S. citizen. August becomes physically and emotionally abusive to Mayelle and forces her to give him her passport and she overstays her visa. She leaves in order to escape the abuse. She self-petitions under VAWA from abroad and will obtain her visa through consular processing. She has triggered unlawful presence by departing the United States after accruing more than 180 days of unlawful presence that would make her inadmissible under INA § 212(a)(9)(B)(i)(I). However, she should be able to show a substantial connection between her unlawful presence and August's abuse, since his confiscation of her passport prevented her from leaving before accruing more than six months of unlawful presence. Under USCIS's interpretation, she is exempt from the INA § 212(a)(9)(B) inadmissibility ground.

VAWA self-petitioners who do not fall under the exception and have triggered the unlawful presence bar, will need to see if they qualify for the general unlawful presence waiver. A waiver for this unlawful presence is found at INA § 212(a)(9)(B).

General Waiver at INA § 212(a)(9)(B):

Under INA § 212(a)(9)(B)(v), a person can seek a waiver if they are seeking admission within the 3- or 10-year bar. To be eligible for this waiver, the applicant will need to show that denial of admission will result in extreme hardship to a qualifying relative in addition to showing that they warrant a favorable exercise of discretion.

Waiver applicants will need to show that their U.S. citizen (USC) or lawful permanent resident (LPR) spouse or parent will suffer extreme hardship. Hardship to a USC or LPR child, son, or daughter does not qualify. If the applicant lacks a qualifying family member, is unable to establish hardship that rises to the requisite level, or is denied based on discretion, then they will be unable to overcome this ground of inadmissibility and therefore be unable to adjust their status to that of a lawful permanent resident.

VAWA self-petitioners who are seeking to adjust status, have triggered this ground, and do not qualify for the VAWA exception, will need to seek this general waiver. USCIS could waive this ground if they can show that refusing permanent residence would result in extreme hardship to a USC or LPR spouse or parent. The general waiver is not available based on extreme hardship to the applicants themselves or to their USC or LPR child.¹³

B. Permanent Bar at INA § 212(a)(9)(C)

A person is inadmissible under INA § 212(a)(9)(C)(i) if they reentered or attempted to reenter the United States unlawfully after either:

- (1) Accruing an aggregate of more than one year of unlawful presence or
- (2) Having been removed.

¹³ INA § 212(a)(9)(B)(v).

The permanent bar can be triggered in one of two ways. First, it can be triggered by (1) having accrued more than 1 year of unlawful presence in the aggregated (meaning that all time spent in the United States in unlawful presence will be counted) (2) departing the United States; and, (3) reentering or attempting to reenter the United States without inspection.¹⁴ The triggering event is the attempted or actual reentry without inspection, whereas for the 3- and 10-year unlawful presence bars, the triggering event is the departure.

Second, the permanent bar can be triggered by a reentry or attempted reentry without inspection after having been ordered removed under any provision of law.¹⁵ This covers those who were ordered removed, deported, or excluded at any time and who entered or attempted to reenter the United States unlawfully on or after April 1, 1997.

The difference between this ground and the 3- and 10-year unlawful presence bars, is that for this ground, unlawful presence incurred at any time is counted in the aggregate (meaning that the time of all trips/stays will be counted), including any time spent under the age of 18. But like the 3- and 10-year unlawful presence bars, only time after April 1, 1997, is counted.

This provision is harsh and essentially renders a person permanently inadmissible. Generally, a person will need to spend 10 years outside the United States before they can seek to apply for a consent to reapply for admission. However, there is a limited waiver available to VAWA self-petitioners seeking adjustment of status prior to the lapse of 10 years.

VAWA Waiver: INA § 212(a)(9)(C)(iii)

To be eligible for the waiver, the self-petitioner must show a connection between the abuse the self-petitioner suffered and the self-petitioner's (a) removal, (b) departure from the United States, (c) reentry or attempted reentry into the United States. According to USCIS, the waiver applies where there is a connection between the abuse suffered, the unlawful presence, and departure or the applicant's removal, and the subsequent unlawful actual or attempted entry or entries.¹⁶ The VAWA self-petitioner must also convince USCIS to exercise discretion favorably.

Example: Eleanor entered the United States without authorization on April 1, 2010, when she was twenty years old. One year later, she met and married Hector, a USC. Hector became abusive during the marriage. To escape the abuse, Eleanor returned home to Mexico and stayed there for several months. Then she reentered the United States without authorization. She filed a VAWA self-petition, which was approved, and would now like to apply for adjustment of status. If she were not a VAWA self-petitioner, Eleanor would be permanently inadmissible under INA § 212(a)(9)(C)(i)(I) and could

¹⁴ INA § 212(a)(9)(C)(i)(I).

¹⁵ INA § 212(a)(9)(C)(i)(II).

¹⁶ USCIS, *Interoffice Memorandum: Consolidation of Guidance Concerning Unlawful Presence for Purposes of sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, at 50 (May 6, 2009), available at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/revisionredesign_AFM.PDF.

not file an application for consent to reapply for admission until ten years after her last departure. Because she is a VAWA self-petitioner, however, she may be eligible for the special INA § 212(a)(9)(C)(iii) waiver. Eleanor should be able to argue that her departure was substantially connected to the abuse. Note that the statute does not appear to require that she also show that her reentry was connected to the abuse.

An VAWA adjustment applicant who is inadmissible under section 212(a)(9)(C)(i) and cannot meet the VAWA-specific section 212(a)(9)(C)(iii) waiver will need to seek consent to reapply.

Consent to Reapply for Admission:

VAWA self-petitioners who cannot show that their departure was connected to the abuse will need to wait for the permanent bar to lapse (10 years) outside of the United States before they can submit a request for consent to reapply for admission. The permanent bar, unlike the 3- and 10-year unlawful presence bar does not go away with the passage of time. The applicant will also need to apply and be granted consent to reapply to then seek admission.

C. Smuggling at INA § 212(a)(6)(E)

An individual is inadmissible under INA § 212(a)(6)(E) if they are found that they, at any time knowingly “encouraged, induced, assisted, abetted, or aided any other immigrant to enter the United States unlawfully.” This provision is very broad and can include many things, like sending money to pay for the trip or merely encouraging someone to enter the United States unlawfully.

Despite this broad provision, there are some limitations. First, the person must know that they are helping someone enter unlawfully. If they are not aware that the other person did not have legal status, they could not have committed smuggling.¹⁷ The courts have clarified that, in order for smuggling to occur, the individual must have made (1) an affirmative and (2) knowing act to constitute smuggling of persons.¹⁸ This has been defined differently by different courts in different circuits, so it is important to check the case law in your circuit to see if it is possible to argue that the person did not make an affirmative act required to trigger this ground.

Note that prior to 1990, only people who smuggled noncitizens in exchange for money were inadmissible. The post-1990 ground harshly imposes inadmissibility more broadly, including people who have sympathetic reasons for helping family members enter the United States.

If a VAWA self-petitioner falls within this ground of inadmissibility, for example they helped bring in their child or other relative, they will need to seek the general smuggling waiver. There is no VAWA specific waiver for smuggling.

¹⁷ *Altamirano v. Gonzales*, 427 F.3d 586 (9th Cir. 2005); *Tapucu v. Gonzales*, 399 F.3d 736, 739 (6th Cir. 2005).

¹⁸ This means that “belief that the alien was entitled to enter legally, although mistaken, would be a defense to inadmissibility for a suspected ‘smuggler.’” 9 FAM 302.9-7(B)(3).

Smuggling Inadmissibility Waiver at INA § 212(d)(11):

There is a limited waiver that exists for people who have triggered the smuggling ground of inadmissibility at INA § 212(d)(11).

A person who has assisted someone to enter the United States unlawfully can seek a waiver if:

(1) They are either:

- A lawful permanent resident who temporarily traveled abroad voluntarily (not under an order of deportation or removal) and is otherwise admissible¹⁹ OR
- A person applying for a green card based on a family-based petition (including immediate relatives or through a first, second, or third preference visa petition-but not through a fourth preference visa petition for brothers and sisters of U.S. Citizens).²⁰

AND

(2) The person smuggled *only* their spouse, parent, son, or daughter (and no other individual).

If a person meets these basic requirements, they must also convince the adjudicator to grant the waiver because of “humanitarian purposes,” to “assure family unity,” or because it is “otherwise in the public interest.”

Example: Sofia arranged for someone to smuggle her baby into the United States. Now she has married a U.S. citizen and wants to immigrate through her husband as an immediate relative. When she goes to her visa appointment, she will need to submit a waiver application to the official. She will need to demonstrate that she smuggled only her child, and that USCIS should grant the waiver based on humanitarian, family unity, or public interest grounds.

Not everyone will be able to access this limited waiver because of who it narrowly covers. For example, a person must have the required relationship at the time the smuggling occurs to qualify for this waiver. Meaning that if someone smuggles their partner, who later becomes their spouse, because they were not their spouse at the time the smuggling occurred, they will not qualify for the waiver.

¹⁹ This waiver applies to LPRs only if the LPRs are subject to the grounds of inadmissibility. For example, the LPR might have been found deportable and is seeking relief from deportation, or the LPR might fall into one of the categories in INA § 101(a)(13)(C) that causes an LPR to be “seeking admission” after a trip outside the United States, such as being absent for over 180 days, or being inadmissible under the criminal grounds of inadmissibility at INA § 212(a)(2).

²⁰ See INA § 212(d)(11).

Example: Mary smuggled her fiancé Harry across the border. Although they later married, Mary is not eligible for this waiver because, at the time she smuggled him, Harry was not her husband.

In addition, this waiver does not apply to someone who must establish good moral character,²¹ someone who is immigrating through a fourth preference category (sibling of U.S. citizens), someone seeking to immigrate through a work visa, or applies for some other form of relief.²²

D. Fraud and Material Misrepresentation at INA § 212(a)(6)(C)(i)

A person will be deemed inadmissible if they by “fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided ... is inadmissible.”²³ For someone to trigger this ground, USCIS officers must make a determination that the individual made a misrepresentation of a material fact. A misrepresentation will be found to be material if (1) the person was inadmissible on the true facts or (2) the misrepresentation tended to shut off a line of inquiry that was relevant to the applicant’s eligibility and (3) the line of inquiry might have resulted in a proper determination that they not be admitted.²⁴ Only misrepresentation to U.S. officials can be the basis for inadmissibility.²⁵

When looking at this ground, officers will look at what document or oral misrepresentation was made or used, what the applicant was attempting to procure, and if whether the misrepresentation was made willfully. This can include documents needed at the time of the individual’s admission to the United States, like a reentry permit, border crossing card, U.S. Coast Guard identity, or U.S. passport.²⁶ Under this ground, the benefit sought can be seeking adjustment of status, visa petitions, requests for extension of stay, change of nonimmigrant classification, request for employment authorization, and voluntary departure requests.²⁷

²¹ *Sanchez v. Holder*, 560 F.3d 1028 (9th Cir. 2009). Unlike other good moral character determinations, however, the good moral character bars for VAWA self-petitioners may be waived if 1) a waiver would be available for this offense for adjustment of status, and 2) the offense is connected to the battering or extreme cruelty. See INA § 204(a)(1)(C). According to a USCIS memo, a VAWA self-petitioner may thus be able to waive alien smuggling as a bar to good moral character. See USCIS, Determinations of Good Moral Character in VAWA-Based Self-Petitions, App’x 1 (Jan. 19, 2005), available at www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%2019982008/2005/gmc_011905.pdf. The good moral character bars may also be waived for VAWA cancellation of removal applicants if they can show that the offense is connected to the battering or extreme cruelty and that they warrant a finding of good moral character in the exercise of discretion. INA § 240A(b)(2)(C).

²² It is important to note that other forms of relief might have a waiver available for smuggling, like U visa, T visas, SIJS, or Asylees.

²³ INA § 212(a)(6)(C)(i).

²⁴ *Matter of Ng*, 17 I. & N. Dec. 536 (BIA 1980); *Matter of S and B-C-*, 9 I. & N. Dec. 436 (AG 1960); USCIS PM, Vol. 8, Part J, Ch. 3(A)(2) & (E)(2); 9 FAM 302.9-4; 22 C.F.R. § 40.63

²⁵ USCIS PM, Vol. 8, Part J, Ch. 3(A)(1) & (C)(1).

²⁶ USCIS Policy Manual Vol. 8, Part J, Ch. 3 (August 6, 2020) [USCIS-PM] 9 FAM 302.9-4(B)(7) (July 10, 2020); 22 C.F.R. § 40.63.

²⁷ USCIS PM, Vol. 8, Part J, Ch. 3(B) (August 6, 2020); 9 FAM 302.9-4(B)(7) (July 10, 2020).

Moreover, the misrepresentation has to have been willful. This is met simply by the person having made a false statement deliberately and voluntarily and which they knew was false.²⁸ Because of this, a person who is mentally incompetent or a small child who is incapable of independently forming an intent to defraud should not be deemed inadmissible for material misrepresentation.²⁹ Fraud typically involves a false representation of a material fact with knowledge of its falsity and an intent to deceive and that must have been believed and acted upon.

A person, who has committed fraud or misrepresentation, can avoid triggering this ground if they make a timely retraction. A timely retraction will be one where the person voluntarily retracts the information given, during the same proceedings in which the false information was given, and before a U.S. government official challenge the information presented.

Note on False Claim: After September 30, 1996, a person who falsely represents themselves to be a USC for any purpose or benefit under the INA or any federal or state law, is inadmissible at INA § 212(a)(6)(C)(ii). This can include statements made to an immigration officer for purpose of gaining admission but can also include false claims to a state official in order to gain certain benefits, like employment, loans, or for a driver's license. It does not matter that the statements are not made under oath.³⁰ It is important to note that a false claim made before September 30, 1996, will not subject someone to this inadmissibility ground, but may subject them to the regular fraud or misrepresentation ground of inadmissibility. There is no waiver for VAWA self-petitioners who made a false claim after September 30, 1996.

To determine if someone falls within this ground of inadmissibility, an advocate should analyze each element of the ground. For willful misrepresentation, a person will be inadmissible if, they (1) procured, or sought to procure, a benefit under U.S. immigration laws, (2) made a false representation, (3) representation was willfully made, (4) the false representation was material, (5) was made to a U.S. Government officer. If all these elements are present, the person will need to seek a waiver of inadmissibility. For fraud, all the elements from misrepresentation will need to be present as well as the element that the false representation was made with the intent to deceive a U.S. government official authorized to act upon the request³¹ and the U.S. government official believed and acted upon the false representation by granting the benefit.³²

VAWA self-petitioners who have triggered this ground of inadmissibility can seek a waiver. There is both a general waiver they can seek and a specific waiver for VAWA self-petitioners.

VAWA & General Waiver for Fraud and Material Misrepresentation at INA § 212(i):

²⁸ *Matter of Tijam*, 22 I. & N. Dec. 408 (BIA 1998); USCIS PM, Vol. 8, Part J, Ch. 3(D)(1); 9 FAM 302.9-4(B)(2)-(4).

²⁹ USCIS PM, Vol. 8, Part J, Ch. 3(D)(5).

³⁰ USCIS-PM, Vol. 8, Part K, Ch. 2(B)(1).

³¹ See *Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998).

³² See *Matter of G-*, 7 I&N Dec. 161 (BIA 1956)

Under the **general waiver**, a person is eligible to apply if they can establish that their USC or LPR spouse or parent would suffer extreme hardship³³ if the applicant were not allowed to immigrate or adjust status within the United States to that of permanent resident.³⁴ Note a USC or LPR child cannot be the qualifying relative for this waiver.

In the case of VAWA self-petitioners, a self-petitioner can qualify for the waiver by demonstrating extreme hardship to *themselves*, or a USC, LPR, or “qualified alien” parent or child.³⁵ A “qualified alien” includes LPRs, asylees, refugees, persons paroled into the country for at least one year, immigrants granted withholding of deportation or removal, immigrants granted conditional entry under INA § 203(a)(7), and Cuban and Haitian entrants.³⁶ The term can also include abused immigrants or parents of abused children, if they have an approved VAWA self-petition, application for VAWA Cancellation of Removal, or if they have a pending petition for one of those types of relief that sets forth a prima facie showing of eligibility.³⁷ The VAWA waiver is much broader than the general fraud or misrepresentation waiver for other noncitizens.

In addition to this, applicants for either the general or VAWA waiver will need to show they merit a grant of discretion. In making this determination, the immigration judge or USCIS officer will look at the nature of the applicant’s fraud or misrepresentation.³⁸

Example: Marcos entered the United States with a false Italian passport and U.S. green card. He married Josephine, a USC, who was abusive to him during the relationship. Marcos and Josephine have a daughter, Ann, who is ten and lives with Marcos. Ann was born in the United States. She was severely affected by the abuse she witnessed in the home and is undergoing counseling to overcome the effects of her experiences. She is also very close to her half-brother, Jim, who is fourteen. Jim is the son of Josephine and Josephine’s former husband.

Marcos filed a VAWA self-petition, which was approved. Now he wants to file for adjustment of status. His use of a false passport and green card makes him inadmissible under INA § 212(1)(6)(C)(i) but he may be eligible for the VAWA-specific waiver of this inadmissibility ground. He must show that refusal of permanent residence to him would cause extreme hardship to himself or to a USC, LPR, or “qualified alien” parent or child. Marco can claim hardship arising from his own possible separation from his daughter. He may also assert hardship resulting from the nature and extent of the physical or psychological consequences of the abuse he suffered. He may also bring out the hardship that Ann, a USC, would suffer if she were prevented from continuing

³³ For more information see USCIS-PM, Vol. 9, Part B.

³⁴ INA 212(i).

³⁵ See INA 212(i), INA 204(a)(1)(A)(iii), and INA 204(a)(1)(A)(iv).

³⁶ 8 U.S.C. § 1641(b).

³⁷ 8 U.S.C. § 1641(c).

³⁸ *Matter of Cervantes-Gonzalez*, 22 I. & N. Dec. 560 (BIA 1999), aff’d, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001); *Matter of Tijam*, 22 I. & N. Dec. 408 (BIA 1998).

her counseling by having to leave the United States with Marcos, and the effect on Ann of separation from her half-brother Jim.

E. Crime Involving Moral Turpitude at INA § 212(a)(2)(A)(i)(I)

An applicant for adjustment of status may be inadmissible if they have admitted to or been convicted of certain crimes deemed “crimes involving moral turpitude” (“CIMT”).³⁹ Under INA § 212(a)(2)(A)(i)(I), “any [person] who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense)” are inadmissible.

Determining if someone has triggered this inadmissibility ground upon review of their criminal convictions requires a multistep analysis. First, the advocate must determine if a conviction would be identified as a CIMT. While there is no exact definition for a CIMT, generally, a CIMT is a crime that involves conduct that is “inherently base, vile, or depraved,” and contrary to the private and social duties a person owes to society in general. When determining if a crime is a CIMT, the court uses the categorical approach or the modified categorical approach,⁴⁰ where the court looks if the elements of the statute of conviction, rather than the applicants actual conduct, involve moral turpitude, thus only considering the statutory elements of the offense.⁴¹

This analysis and review can only be done by requesting and carefully reviewing the client’s complete records. CIMT law changes rapidly, and it is always important to review both current BIA caselaw and the law of the circuit in which your client is presently residing to determine whether an offense is presently considered a CIMT. You must analyze the specific statute under which your client was convicted to determine whether the offense was of moral turpitude.

CIMT Exemptions: There are two exemptions for individuals who have committed one CIMT. Note that a person who has committed more than one CIMT, cannot claim either of these exemptions.

- **Youthful Offender Exception.** The first exemption exists for crimes that were committed when the individual was under the age of 18. A person is not inadmissible if the sole CIMT offense was committed while the noncitizen was under the age of 18 and the person both committed the crime and was released from prison more than five years before applying for a visa, other documentation or admission to the United States.⁴²

³⁹ For detailed explanation on Crimes Involving Moral Turpitude see ILRC’s practice advisory “All Those Rules About Crimes Involving Moral Turpitude” available at <https://www.ilrc.org/resources/all-those-rules-about-crimes-involving-moral-turpitude-june-2021>.

⁴⁰ For more information on the categorical approach and how to use it, see ILRC’s practice advisory “How to Use the Categorical Approach Now” available at <https://www.ilrc.org/resources/how-use-categorical-approach-now-2021>.

⁴¹ *Descamps v. U.S.*, 570 U.S. 254, 260 (2013); *Olivas-Motta v. Holder*, 716 F.3d 1199, 2015 (9th Cir. 2012).

⁴² INA § 212(a)(2)(A)(ii)(I).

This exemption is for people who might have been convicted as adults when they committed the crime as juveniles.

- **Petty Offense Exception.** A person is not inadmissible if the crime fits into the petty offense exemption. A person would be eligible for the petty offense exemption if they meet two requirements. First, it applies only to CIMTs that have a maximum possible penalty of one year of imprisonment. Second, the person must not have been sentenced to a term of imprisonment of more than six months, regardless of how much time the person actually served. In addition to meeting these requirements, it must be the person's *only* CIMT conviction.⁴³

Note that just because a person has committed a crime or admitted to committing a crime, will not automatically mean that they have triggered this inadmissibility ground. To determine if your client has triggered this ground of inadmissibility, and therefore needs to seek a waiver, advocates should ask:

- 1) Is the person really inadmissible because of the offense? Were they really convicted⁴⁴? And if they were (or admitted to it), do they meet the elements of the criminal inadmissibility ground? Or might they fall under the juvenile or petty offense exception?
- 2) If so, can the criminal matter be “ameliorated?”—i.e. can the person go back to the criminal court and ask the criminal court to either vacate or modify the criminal conviction for a statutory or constitutional defect, which will also reduce or remove the immigration consequences?
- 3) If the person is inadmissible, is the person eligible for a 212(h) waiver?

INA § 212(h) Waiver⁴⁵:

INA § 212(h) provides a waiver for those who have committed one or more CIMTs. The 212(h) waiver is also available for other inadmissibility grounds. Under section 212(h) there is both a general waiver and a waiver specifically for VAWA self-petitioners.

For the **general waiver**, a noncitizen can be eligible if:

- They are the spouse, parent, son, or daughter of USC or LPR. ***To obtain such a waiver, the applicant must establish that their inadmissibility would result in extreme hardship to the USC and LPR spouse, parent, son, or daughter, OR***

⁴³ INA § 212(a)(2)(A)(ii)(II).

⁴⁴ For more information on conviction, see ILRC's practice advisory, “What Qualifies As a Conviction For Immigration Purposes” at <https://www.ilrc.org/resources/what-qualifies-conviction-immigration-purposes>.

⁴⁵ For more detailed information the 212(h) waivers, see ILRC's Practice Advisory on “Eligibility for Relief: Waivers Under INA §212(h)” at https://www.ilrc.org/sites/default/files/resources/waivers_under_212h_dec_2019-final.pdf.

- They are deemed inadmissible for a crime that occurred more than fifteen years before the person's application for a visa, entry, or adjustment.⁴⁶

In addition to meeting these criteria, noncitizens must also demonstrate that their admission would not be contrary to U.S. national welfare, safety, or security and that they have been rehabilitated.

Unlike the general 212(h), **the waiver for VAWA self-petitioners at INA § 212(h)(1)(C), does not require that a VAWA self-petitioner show that refusal of the waiver will cause extreme hardship to a qualifying relative.**⁴⁷ Approval of this waiver is still subject to the discretion of the Attorney General, and applicants will still need to submit favorable factors to outweigh any negative factors.⁴⁸

IV. Identifying if Your Client Will Need a Waiver of Inadmissibility

Advocates who are aiding a VAWA self-petitioner to submit their adjustment of status must thoroughly screen applicants to ensure they meet the requirements to adjust status. When working with someone, it is important to review all the elements under INA § 245(a), determine which ones apply and do not apply to VAWA self-petitioners, and determine if they are admissible, and if they are not, whether a waiver is available to them.

Remember that a VAWA self-petitioner can obtain lawful permanent status through consular processing or adjustment of status. For self-petitioners who are in the United States, adjustment of status will be a route they can take to obtain their residency. VAWA self-petitioners will be able to file a one-step adjustment (filing the Form I-360 concurrently with the Form I-485) if their abuser was their USC spouse, they are a child of a USC, or the parent of a USC son/daughter (considered immediate relatives) or will be able to adjust status once a visa becomes available. Once the visa is available, the applicant will need to show they are admissible. Note that VAWA self-petitioners are not barred by INA § 245(c) and do not need to show they were inspected and admitted or paroled to adjust status.

When reviewing admissibility, and whether a waiver is needed, advocates should answer the following three guiding questions in relation to their client:

1) *Does the ground of inadmissibility apply to my client?*

For VAWA self-petitioners all grounds of inadmissibility apply. If a self-petitioner triggers an inadmissibility ground, they will need to see if there is a VAWA exception or if they qualify for a waiver (whether a general waiver or a VAWA specific waiver).

2) *Do the facts show that my client is potentially inadmissible under this ground?*

⁴⁶ INA § 212(h)(1)(B) and (A).

⁴⁷ The waiver is available to applicants who are classified under 209(a)(1)(A)(iii) or (iv), abused spouses and children for USCs or under INA 204(a)(1)(B)(ii) or (iii), abused spouses and children of LPRs.

⁴⁸ INA § 212(h)(1)(C); *Matter of Mendez*, 21 I. & N. Dec. 296 (BIA 1996).

Part II of this advisory goes over the most common grounds of inadmissibility and summarizes the elements of each ground. To analyze if someone has triggered a ground, it is important to read the elements of each ground and determine whether the client's acts are enough to meet those elements. It is also important to understand when there are exceptions to the grounds of inadmissibility and whether the client can meet those exceptions given their unique circumstances.

3) *If my client is inadmissible, is there a waiver available?*

If it is determined that an inadmissibility ground in fact applies, then it must be determined whether the client is eligible for a waiver. Form I-601 is used to apply for a waiver for VAWA self-petitioners who are seeking to adjust status.



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