Immigration Hardship Evaluations: 5 Questions Applicants Have About Hardship Evaluations & Waivers

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If you are trying to get a visa or green card but are blocked due to inadmissibility, you can apply for an I-601 or I-601A waiver based on the extreme hardship that a qualified relative will experience if you are not admitted to the United States. Attorneys will often ask applicants (the qualifying relative) to meet with a psychologist for an immigration hardship evaluation. Immigration hardship evaluations document the various hardships the qualifying relative will face if you are deported or if they have to leave the country.

There are several other petitions and waivers that you can apply for if you are trying to get a visa or green card to stay in the United States. We have a detailed blog post that goes over the seven immigration cases where you might need a psychological evaluation and another that goes over VAWA evaluation and petitions.

The goal of this blog post is to discuss the laws related to the 601 or I-601A waiver in more detail, answer the most common questions regarding immigration hardship evaluations, and explain how immigration hardship evaluations can help applicants with their I-601 or I-601A waiver.

What is an I-601 and I-601A Waiver?

The I-601 and I-601A waiver are named after their respective forms that have to be completed. You can click the links above to download the latest forms from the United States Citizenship and Immigration Services (USCIS). We will go through both of these forms below.

The I-601 Waiver and Form:

The I-601 form is to request a waiver due to inadmissibility. The form is lengthy and can seem intimidating but there is a helpful guide that will walk you through what you what to complete.

Part 4 of the form has a list of several of the reasons for inadmissibility. This can be complicated to fill out. If you are not sure what box to check off, please contact an immigration attorney.

Form I-601 asks USCIS to overlook the fact that the visa or green card applicant is inadmissible based on a past commission of a crime or fraud, or excessive unlawful presence in the United States.

Waivers of inadmissibility are available only if you have a U.S. citizen or permanent resident spouse, parent, or child in the United States who qualifies under the Immigration and Nationality Act (INA) for your particular grounds of inadmissibility. These individuals are also called qualifying relatives.

The waiver states that the U.S. citizen or permanent resident spouse, parent, or child will suffer some level of extreme hardship if you were denied the waiver.

The I-601A Waiver and Form:

The I-601A form is titled the "Application for Provisional Unlawful Presence Waiver," and is also known as the "stateside waiver".

This form is similar to the I-601 form in that it allows an immigrant to apply for a waiver of inadmissibility in order to overcome a barrier to obtaining a green card. Here is another helpful guide to assist you with completing the form.

Form I-601A is for certain close relatives of U.S. citizens and lawful permanent residents (LPR) seeking a waiver of the three- and ten-year time bars for unlawful presence. They are asking for this waiver in advance of leaving the U.S. for their green card interview at a U.S. consulate in their home country.

For more details on an I-601A waiver, check out the following links: Who Is Eligible for Provisional Waiver of Three- or Ten-Year Time Bar and How to Apply for Provisional Waiver of Three- or Ten-Year Time Bar. Completing the form is not enough to apply for this waiver.

You will have to also provide documentation showing that you are eligible for this waiver. If you are not sure how to complete the form or how to apply for the I-601A waiver, please contact an experienced immigration attorney.

Who Can Apply for the Waiver?

We went over both of these waivers in detail above. These waivers are available only if you have a U.S. citizen or permanent resident spouse, parent, child, or other qualifying relatives in the United States who qualifies under the INA.

The waiver states that the U.S. citizen or permanent resident spouse, parent, child, or qualifying relative will suffer some level of extreme hardship if you were denied the waiver.

The USCIS policy is that the waiver can be approved if you can provide strong evidence that the qualifying relative will experience **either:**

- Extreme hardship either in the U.S. (if you were not allowed to come to or stay in the U.S.), or
- In your home country (if your relative follows you there).

What is Extreme Hardship?

There is no specific law or regulation defining what constitutes a “normal” versus an “extreme” hardship. The evidence for each waiver application will be reviewed on a case-by-case basis.

The UCIS has a detailed write-up that explains how they review extreme hardship factors. Extreme hardship has been defined to mean hardship that is greater than what your qualifying relative would experience under normal circumstances if you were not allowed to stay in the United States or if they had to leave the United States to your home country.

It would be not enough to state that your qualifying relative will miss you, because this normal and expected and not “extreme”. The negative impact of deportation such as job loss or separation of parents from small children is considered “typical” hardships in the eyes of the court. Job loss alone is not considered to be an “extreme” hardship.

Here are some examples of extreme hardship if your relative stays in the U.S. and you are denied entry or deported:

- The relative has a medical condition, cannot leave the country due to the medical care they require, and depend on you for care or financial support.
- The relative is financially dependent on you and it will not be possible for you to provide adequate support from abroad.
- The relative has financial debts in the United States and cannot pay them without your support.
- The relative has a sick family member and will be unable to care for that person without your support.
- The relative is the caregiver for children and cannot afford childcare if you are not in the United States to provide support.
- The relative is experiencing clinical depression or other mental health issues and requires your support for treatment.

Here are some examples of extreme hardship if your relative were to accompany you to your home country:

- There are children involved and they are far along in their education in the United States and are unable to speak, read, or write in the language of the foreign country. Leaving the United States might permanently prevent them from completing their education.
- The home country is in or on the verge of war and/or civil unrest.
- The relative has a serious medical condition that cannot be adequately treated in your home country.
- The relative will be discriminated against, victimized, or face political persecution in your home country.

- The relative does not know the language of your home country or cannot legally enter your home country.
- The relative is a primary caretaker for a sick family member in the United States.
- The relative will be unable to secure gainful employment in your home country.
- The relative has children from a previous relationship who will not be allowed to live or visit your home country due to custody issues.
- Your home country has a high rate of violence or crime that would put the relative at risk for harm.
- The relative has financial debt in the U.S. that cannot be paid from your home country.

An immigration attorney can help evaluate your personal situation and come up with other examples of extreme hardship. Immigration hardship evaluations can also help identify various hardships and how it would impact the qualifying relative.

How Can I Show Evidence of Extreme Hardship?

There are several important pieces of documentation that can accompany your waiver. An experienced immigration attorney can help you submit evidence with your waiver application.

- The qualifying relative must draft a statement outlining all the reasons they will suffer extreme hardship if you are not in the United States with them or if they have to leave the United States.
- Country reports issued by the U.S. Department of State, or other governmental or human rights organizations, outlining the conditions of your home country that will lead to extreme hardship.
- Immigration hardship evaluations from medical professionals (e.g., medical doctor or psychologist) as evidence of physical and/or emotional conditions that will lead to extreme hardship.
- Copies of tax returns and/or pay statements as evidence of income.
- Copies of statements showing any debts that need to be settled in the United States.
- Copies of your qualifying relative's professional and/or educational credentials.
- Letters from relatives, professionals, and/or friends who are in a position to corroborate your arguments for extreme hardship.

What Can I Expect During an Immigration Hardship Evaluation?

An immigration attorney can complete the required forms and help you gather evidence of extreme cases. In most cases, they will request that you meet with a psychologist to complete an immigration hardship evaluation.

The goal of the immigration hardship evaluation is to document the various hardships the qualifying relative will face if you were denied entry or deported or if they had to leave the country.

This process can be anxiety-provoking so we have included a quick overview of what you can expect during the evaluation:

A typical immigration hardship evaluation includes the following:

- An interview with you and close members of your family. The interview will help us understand important psychological, medical, and social background information, and your current level of cognitive and psychological functioning.
- Consultation with your attorney to determine the type of waiver that will be best suited for your case.
- A review of medical, psychological, and other supporting documents that help us have a better understanding of your psychological and emotional functioning.
- If necessary, we will administer psychological tests and questionnaires to help us figure out specific areas where you are having psychological difficulty.
- If your attorney requests to have you evaluated for cognitive problems such as a learning disability, dementia, or traumatic brain injury, we will also administer neuropsychological tests.
- After we complete the evaluation, we will write a comprehensive report that integrates our findings and give it to your attorney.

Conclusion

You can apply for an I-601 or I-601A waiver if you are trying to get a visa or green card but are blocked due to inadmissibility.

The USCIS policy is that the waiver can be approved if you can provide strong evidence that the qualifying relative will experience **either:**

- Extreme hardship either in the U.S. (if you were not allowed to come to or stay in the U.S.), or
- In your home country (if your relative follows you there).

There is no specific law or regulation defining what constitutes a “normal” versus an “extreme” hardship. The evidence for each waiver application will be reviewed on a case-by-case basis. Extreme hardship can be caused by medical, psychological, financial, or other factors.

An experienced immigration attorney can help evaluate your personal situation to identify other examples of extreme hardship. In most cases, your attorney will request that you also undergo an immigration evaluation with a licensed psychologist to document the various hardships the qualifying relative will face if you are deported or if they have to leave the country.

You can read more about how we conduct immigration hardship evaluations and the benefits of retaining an expert to complete an evaluation here.