

Waivers for Grounds of Ineligibility for Certain Immigration Benefits:

- Under INA § 212(h), 212(c):¹ Waiver for previous certain criminal convictions
- Under INA § 212(a)(9)(A)(iii), INA § 212(a)(9)(B)(v): Waiver for having previously having been ordered deported or excluded;
- Under INA § 212(a)(6)(A): Waiver for previously having entered the U.S. without inspection and having had unlawful presence in the U.S.;²
- Under INA 212(i): Waiver for having procured admission to the U.S. by fraud or willful misrepresentation;³

Under INA § 209(c): Waiver for asylum applicants or existing asylees who have criminal convictions or have committed certain prohibitive acts before having applied for asylum or after having been granted asylum but before adjusting one's status to a legal permanent resident;⁴

1 All references to the "Act" or "INA" refer to the Immigration and Naturalization Act. Section 212, which covers grounds of inadmissibility and certain waivers, can also be found codified in the United States Code under 8 U.S.C. § 1182.

2 A person present in the U.S. without having been admitted or paroled or who arrives at a place other than that designated by DHS is inadmissible. See INA § 212(a)(6)(A); see also 22 C.F.R. § 40.61. However, Section 212(a)(6)(A) is inapplicable and does not bar adjustment under the amnesty program under INA § 245(i). See Legal Opinion, Martin, General Counsel, CO 245(i) (Feb. 19, 1997), published on AILA InfoNet at Doc. No. 97021991. This section is also not applicable when a person seeks an immigrant visa at a U.S. consulate. The ground of inadmissibility applies only when the person is in the U.S. and therefore "does not apply to visa applicants outside the U.S." Memo, Virtue, Acting Exec. Assoc. Comm., HQ IRT 5015.12, 96 Act 026 (Mar. 31, 1997), published on AILA InfoNet at Doc. No. 97033190.

3 INA §212(a)(6)(C)(i), an alien is inadmissible if he or she procured admission to the United State or another immigration benefit by fraud or willful material misrepresentation. This is a permanent bar with a limited immigrant waiver. See INA § 212(i). Under INA § 212(a)(6)(C)(ii), making a false claim to U.S. citizenship made after September 30, 1996, leads to lifetime inadmissibility, with no immigrant waiver at all. Public benefit fraud under INA §212(a)(6)(C)(iii) draws a five-year bar to admission. Section 212(i) waives inadmissibility pursuant to INA §212(a)(6)(C)(i) only, for fraud or material misrepresentation in connection with procurement of a visa, admission to the United States, or other documentation or immigration benefit. See INA §212(i); 8 USC §1182(i). See also 8 C.F.R. § 212.7 (controlling processing of INA § 212(i) waivers); 22 C.F.R. § 40.63; 9 FAM § 40.63.

4 An alien applying for asylum or who has already been granted asylum can be denied asylum or be served with a notice of intent to terminate asylum if the alien qualifies for the limitations to being granted asylum. See INA § 208(2)(A)(i)-(vi), B(i)-(ii), 8 U.S.C. § 1158(2)(A)(i)-(vi), B(i)-(ii). Those limitations include instances where it is proven that the alien committed or was involved in such prohibitive acts or conditions as:

- (i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

- Under INA § 237(a)(1)(H): Having procured a visa or other documentation by marriage fraud;
- Under INA § 209(c): For asylum applicants or existing asylees who have criminal convictions or have committed certain prohibitive acts before having applied for asylum or after having been granted asylum but before adjusting one's status to a legal permanent resident;
- Under INA § 203(b)(A)-(B): Labor certification under the National Interest Waiver
- Under INA § 241(a)(1)(E)(iii): Having smuggled aliens in to the U.S.:

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- (ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;
 - (iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;
 - (iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;
 - (v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 1182 (a)(3)(B)(i) of this title or section 1227 (a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 1182 (a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or
 - (vi) the alien was firmly resettled in another country prior to arriving in the United States.

INA § 208(b)(2)(A)(i)-(vi).

Furthermore, as to convictions for a “particularly serious crime” as stated under c clause (ii) above, “an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.” INA § 208(b)(2)(B)(i). Whether a conviction is an aggravated felony or not under immigration law does not hinge on whether it is a felony or not. See INA § 101(a)(43); 8 U.S.C. § 1101(a)(43). Seek the counsel of an excellent immigration lawyer to determine whether any convictions you might have could be an aggravated felony or not. Ms. Trupiano has made successful arguments in the past that certain convictions, which the Department of Homeland Security contended were aggravated felonies, were not as a matter of law, aggravated felonies.

The waiver only applies to some of the prohibitive conditions for an asylum applicant or asylee. The waiver requires the alien to prove that granting the waiver would further “humanitarian purposes, [] assure family unity, or [that] it is otherwise in the public interest.” INA § 209(c).

Thus, a good attorney is required to evaluate whether the following arguments can be made:

- That the alien does not fall under the restrictions at all; or
- That the alien may fall under the restrictions but that the alien is eligible for the waiver; and
- That the alien meets the requirements of the waiver and demonstrates the waiver is appropriate “for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.”

- Under INA § 212(e): Two-year foreign-residence requirement for J-1 visa;⁵
- Under 8 C.F.R. § 214.2(k)(2): Requirement that fiancés meet each other for K-1 visa;⁶ and
- Under INA § 212(A)(6)(a): Violence against Women Act waiver for unlawful presence to adjust status to a lawful permanent resident under INA § 245(a).⁷
- Under INA § 203(b)(A)-(B): Labor certification under the National Interest Waiver⁸

⁵ See also 8 C.F.R. § 212.7(c); 22 C.F.R. § 41.63.

⁶ See also 8 C.F.R. § 212.7(c)(5).

⁷ See also AFM 23.5.

⁸ "Advanced Degree Professionals" or persons of "Exceptional Ability" whose work would substantially benefit the national interests of the U.S. may be exempted from the labor certification requirement if it is sufficiently proven that it would be in the "national interest" of the U.S. See INA § 203(b)(2)(B) [8 U.S.C. § 1153]. The law states that the immigration agencies "may, when [it] deems it to be in the national interest, waive the requirement . . . that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States" for aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. The AAO has ruled that factors for this type of waiver include that the alien seeks employment in an area of substantial intrinsic merit, where the proposed benefit of the employee's employed services will be national in scope, and where the benefit of the alien's participation in the field considerably outweighs the interest in protecting U.S. workers through labor certification. See also 9 FAM § 43.42(b).