HOW TO GET LEGAL STATUS THROUGH YOUR FAMILY MEMBER – NOW OR IN THE FUTURE

WARNING

This booklet provides general information about immigration law and does not cover individual cases. Immigration law changes often, and you should try to consult with an immigration attorney or legal agency to get the most recent information. Also, you can represent yourself in immigration proceedings, but it is always better to get help from a lawyer or legal agency if possible.

This booklet is presented by the Vera Institute of Justice, an independent non-profit organization, which assists in the coordination of the Legal Orientation Program (LOP). It is adapted from materials originally prepared by the Florence Immigrant and Refugee Rights Project (Florence Project), a non-profit law office that supports human and civil rights. It was not prepared by the Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE) or Executive Office of Immigration Review (EOIR) but these agencies have reviewed its content.

Immigration law, unfortunately, is not always clear, and everyone's understanding of the law may not always be the same as DHS' interpretation of the law. It is believed that the information in this booklet is correct and helpful, but the fact the booklet is available in the libraries of detention centers for the use of detainees does not mean that DHS' interpretation of the law is the same as that expressed in the booklet.

This booklet was written for two reasons. One is to help you find out if you may qualify for adjustment of status so you can avoid being sent back to your country. The second is to help you apply for any relief that you may be eligible for either by yourself if you cannot get a lawyer to represent you, or to help you help your lawyer if you have one.

Who was this booklet written for?

This booklet is for people who are in the custody of DHS who want to know whether their family members legally in the U.S. can help them get (or, in some cases, keep) legal status in the U.S., and who have been placed in "removal" proceedings. "Removal" is what used to be called "deportation." You can tell what type of proceedings you are in by the document you should have received from DHS that has the charges against you (or reasons you can be removed from the U.S.):

- If the document is labeled **"Notice to Appear,"** you are in **removal proceedings.**
- If the document is labeled **"Order to Show Cause,"** you are in **deportation proceedings.**
- If the document is numbered at the bottom, **"Form I-110"** or **"Form I-122,"** you are in **exclusion proceedings.**
- If the document is numbered **"Form M-444,"** you are in **expedited removal proceedings.**
- If the document is numbered **"Form I-851,"** you are in **administrative**

removal proceedings.

- If the document is labeled **"Notice of Intent/Decision to Reinstate Prior Order,"** you are in **reinstatement of removal proceedings.**

If you are in proceedings other than removal proceedings, some of the laws we explain here may be different in your case. You should consult with an attorney or a legal agency to find out whether your family members in the U.S. can help you avoid an order to return to your home country or can help you return legally in the future.

If you are in one of the last three types of proceedings listed above, ask for a booklet called "What to Do If You Are In Expedited Removal or Reinstatement of Removal."

Can I use this booklet if I am a permanent resident in removal proceedings?

Maybe. There is another booklet called "How to Apply for Cancellation of Removal for Certain Lawful Permanent Residents," which explains which lawful permanent residents are eligible to apply to stay in the United States and avoid deportation (removal). If you qualify, that kind of relief is easier to obtain. Also, **if you have any drug crimes on your record, the laws we explain in this packet will not help you**.

Otherwise, though, it may be possible for you to remain legally in the U.S. by having your husband, wife, parent (if you are under 21 and not married), or adult child file papers for you AND by applying for "adjustment of status" (explained later). *This may only be possible (and make sense) in certain cases.*

SO…..

☞ If you are a lawful permanent resident and you do NOT qualify for "cancellation of removal for certain lawful permanent residents" read on to see if you qualify to avoid being removed by getting lawful resident status AGAIN through a relative petition!

In what kind of case would a lawful permanent resident NOT be eligible for "cancellation of removal for certain lawful permanent residents" but still be eligible to "adjust status" through a relative?

This could happen if you do not qualify for "cancellation of removal" for one of two reasons:

1) You have an **"aggravated felony"** conviction (explained in the booklet we just mentioned) but

- you do not have any drug crimes on your record AND
- neither your aggravated felony conviction nor any other crime in your record is a "crime involving moral turpitude," (explained later) AND
- the sentences you received for two or more criminal convictions do not add up to five years or more in jail or prison (no matter how much time you actually served).

In this situation, your relative may be able to apply to get new legal papers for you so you can start all over again as a lawful permanent resident, without having to leave the U.S.

NOTE: A drunk driving conviction may or may not be a crime involving moral turpitude. So, you may be able to have a relative apply to immigrate you (again) if you are in removal proceedings because of a drunk driving conviction that is considered an "aggravated felony."

OR

2) You do not meet the time requirements for "cancellation of removal" because:

- You have not been a lawful permanent resident for 5 years OR
- You do not have 7 years continuous residence, perhaps because your crime "cuts off" your time under the rule for counting time for "cancellation of removal."

If you do not have an aggravated felony conviction but you were ever convicted of a crime that is considered a "crime involving moral turpitude" (explained later), or if your sentences for two or more crimes add up to five years or more in jail or prison (even if you actually served less time), you may be able to re-immigrate through your relative. But this would be possible only if you have been living legally in the U.S. for the last 7 years in a row (before your removal case started) and you qualify for a type of waiver (pardon) called a "212(h) waiver" (explained later).

What relatives can help me get legal status?

Only your lawful permanent resident or U.S. citizen husband, wife, mother or father or a U.S. citizen son, daughter, brother, or sister can help you get legal status here.

What legal status must my family member have for me to get legal status?

In most cases, your relative must be a lawful permanent resident or a United States citizen in order to help you get legal status. He or she may be able to help you by filing a **"relative petition." You <u>may</u> be able to get legal status through a relative petition if you are the:**

- Husband or wife of a U.S. citizen or lawful permanent resident (a lawful permanent resident is someone with a "green card" or "mica")
- Son or daughter of a U.S. citizen
- Unmarried son or daughter of a lawful permanent resident
- Brother, sister, or parent of a U.S. citizen who is more than 21 years old

What if I am in the United States illegally?

In general, if you entered the U.S. without permission, or if you entered legally but overstayed your authorized period of stay or worked without authorization, **you can**

only get immigration papers through your family member if:

1. Your relative filed a petition for you before January 14th of 1998

2. You were present in the United States on December 21, 2000 and your family member filed a petition for you between January 15th of 1998 and April 30, 2001.

3. You entered illegally but later got some kind of legal status.

4. You entered legally, overstayed your authorized period of stay and your spouse filing the petition is a U.S. citizen.

The immigration judge may not have any choice other than to order you to leave, but you might be able to come back at a later date through your family member. We discuss this later.

Can I qualify to immigrate by marrying my U.S. citizen or lawful permanent resident boyfriend or girlfriend?

If you get married now that there are legal proceedings against you, you will have to prove that your marriage is real. When your husband or wife files the petition for you, he or she should include as much proof as possible that you have had a close relationship before now, such as records showing you own property or a car together, family photos, proof that you have been living together, and birth certificates of any children you have had together. If you are not able to convince DHS or the immigration judge that your marriage is "real" rather than just an attempt to keep you from having to leave the U.S., you will have to remain outside the U.S. for at least two years from the date you got married before you can start the paperwork again.

Again, if you entered the United States illegally, you must fall within one of the situations above or getting married will not help you avoid removal now.

Are there any other requirements to be able to get legal status through a relative petition?

Yes. You either have to show:

1. That you are **"admissible"** -- that is, that you don't have certain problems that can keep you out of the U.S. such as health problems, drug addiction, criminal or terrorist activity, poverty, entering illegally after a removal or deportation order (explained in detail later), **or**

2. That you qualify for and deserve a **waiver** (pardon). Not everything can be waived (or pardoned).

For example:

If you have a drug conviction or admit to violating U.S. drug laws, you do not qualify to get lawful resident status through a relative petition!

(The only exception is that you may qualify to apply for a waiver if your only drug conviction is for a single conviction of simple possession of 30 grams or less of marijuana.)

Also, one part of showing that you are "admissible" is proving that your family member makes or has access to a certain amount of money and is willing to support you, if necessary. This is true even if you make or have a lot of money and your relative does not. In many cases, you will not be able to count the money you earn, even if you make more money than your relative does.

Are there ways to get legal status through a family member other than by a relative petition?

Yes. Here are at least 6 ways. The last three are based on a law called the "Nicaraguan And Central American Relief Act of 1997," also called "NACARA." To find out more about this, check the booklet called "How To Apply for Three Or Ten Year Cancellation of Removal." That booklet also explains how someone who has been emotionally or physically abused by a lawful permanent resident or U.S. citizen husband, wife, or parent (or whose child has been abused by the child's U.S. citizen or permanent resident parent) may apply for legal status.

Other ways to qualify for legal status based on a family member:

1. **If your husband, wife, or parent (if you are under 21 and are not married) has filed an application for asylum** with DHS or with an Immigration Judge and has not received a final decision, and if you do not have an aggravated felony conviction –

   ⇒ your relative may be able to add you to the asylum application, and the Immigration Judge may close or stop your case until your relative's case has been decided.

2. **If your husband, wife, or parent (if you are under 21 and not married) won asylum while in the United States or was allowed to enter the United States as a refugee,** and you were married to this person or were his or her child when that happened –

   ⇒ you may be able to get status as an "asylee" or refugee relative, and later, to apply to be a lawful permanent resident.

   NOTE: This is not true if your relative only received "withholding of deportation or removal." Also, if your relative was granted asylum while in the U.S., this does not help you if you have an aggravated felony conviction. But if your relative entered the U.S. as a "refugee," you may apply for a waiver (like a pardon), if necessary, for any crime that is not considered to be drug trafficking.

NOTE: Normally, you must file papers within two years of the date your family member won asylum or entered the U.S. as a refugee, but DHS may forgive your delay for "humanitarian reasons." If it has been longer, you need to gather letters from friends and family and write your own statement explaining how hard it will be on you and your family members if you are removed from the U.S.

3. **If you live with your husband, wife, or parent (if you are under 21 and not married),** if you are **"admissible"** (explained later), **if your relative is Cuban, and if he or she entered the United States legally sometime after 1958 and has been physically present in the U.S. for at least one year** –

   ⇒ you both may be able to apply for lawful permanent residence under a law called the "Cuban Refugee Act of 1966." If he or she already got permanent resident status this way, no matter when that was, you may apply yourself.

4. **If you and your husband, wife, or parent (if you are not married) are Cuban or Nicaraguan** and are **"admissible"** (explained later), and **your relative has been in the U.S. since December 1, 1995**, and gets legal status under the "Nicaraguan Adjustment and Central American Relief Act of 1997" (also called "NACARA").

   NOTE: If your relative is your parent and you are over 20, you must have been in the U.S. since December 1, 1995 to qualify, with any absences from the U.S. adding up to not more than 180 days. (There are some exceptions for absences between November 1997 and July 1998.)

5. **If you and your husband, wife, or parent (if you are not married) are from Haiti**, you may be able to get legal status, **if your relative <u>either</u> has been in the U.S. since December 31, 1995 and filed an asylum application before that date <u>or</u> was allowed to enter the U.S. before then with a permission called "parole,"** and if your relative gets legal status under the "Haitian Immigration Fairness Act of 1998."

   NOTE: If your relative is your parent and you are over 20, you must have been in the U.S. since December 1, 1995 to qualify, with any absences from the U.S. adding up to not more than 180 days. (Again, there are exceptions for certain absences.)

6. **If your husband, wife, or parent (if you are not married) is Guatemalan, Salvadoran, or from one of certain Eastern European countries; entered the United States by a certain date in 1990; and applied for political asylum** (or, if Guatemalan or Salvadoran, registered for something called "ABC" or "TPS") by a certain date, AND you and your relative **have been living in the U.S. continuously for at least 7 years; during which you have had "good moral character" (including no drug or gun crimes and no more than 6 months total in jail for any crimes), and do not have certain criminal convictions** (including aggravated felony),

⇒ you may ask the Immigration Judge to continue your case to allow your relative to apply for "suspension of deportation" or "cancellation of removal" under the law called NACARA (possibly even if you do not have 7 years in the U.S. quite yet); if he or she is granted NACARA relief (or has obtained such relief), you may also apply for legal status under that law.

NOTE: If you are over 20 at the time your parent is successful in his or her case, you are not eligible to apply unless you entered the United States before October 2, 1990.

NOTE: In most cases, any one period of absence from the U.S. of more than 90 days, or any absences which, combined, add up to more than 180 days, breaks the 7 years of continuous residence you need to qualify.

Since we cannot explain everything in this booklet, we do not explain exactly what you need to do (and what forms to file) if you are in one of the 6 situations just described. Try to get help from a lawyer, but if you cannot, make sure to tell the judge what you think you may qualify for.

If you may qualify for a defense based on a relative's legal status,

Explain the situation to the Immigration Judge!

Tell the judge enough facts so that he or she can understand your legal situation and get proof of your relative's legal status, including copies of any applications filed.

Can I get out of detention while my case is going on?

Maybe. If you do not have a criminal record and you were arrested after you were already in the United States (rather than at the airport or border crossing station), you have the right to ask the judge to lower your bond or let you out of custody without paying money (In other words, without bond. This is called being released on your "own recognizance."). In many cases, the judge will be willing to release you on a low bond or without paying any bond if it seems that you qualify for legal status. Even if you do have a criminal record, depending on what it is, you may have the right to apply for release. To find out more about this, read the booklet called "All About Bonds."

In some cases, though, getting out of detention while your case is going on may not be a good idea! This is true if you are going to have to leave the U.S. (through voluntary departure or removal) before being allowed to immigrate. If you have been in the U.S. illegally for at least one straight year as an adult (age18 years or older) at any time after March 31, 1997, you will have to remain outside the U.S. for at least 10 years before you are allowed to return (unless you apply for and get a special waiver, or pardon). Detention cases (those who stay in detention) generally require less time from start to finish than non-detained cases (those who are released from detention). Since the time your removal case is going on counts against your illegal stay, and your case may take longer if you ask to get out of custody, your time illegally in the U.S. may go

beyond one year. If this happens before you get an order of voluntary departure from the judge, you will be barred from the U.S. for at least ten years, unless you get a waiver. To learn more about this problem, read the booklet called “How to Apply for Voluntary Departure.”

What if I am tired of being in detention and just want to go back to my country and work everything out from outside the U.S.?

Being in custody is difficult. Especially if you have come from prison, you may be frustrated and depressed and you may just want to get out, even if it means accepting removal from the U.S. However, you should consider all your options before making any decisions, so that the decision you make is one you can live with for the rest of your life. In most cases, if you can "fix" your status and get your legal papers without leaving the United States, that is the safest thing to do. If you leave the country now, you may find that you can never return legally.

HOW DO I KNOW IF I AM ADMISSIBLE?

To get an immigrant visa through a family member, you must either be **admissible** or be able to get a **waiver.**

Who is "admissible"?

We already mentioned the types of family relationships needed to legalize or immigrate through a relative. In addition to having the right kind of family member, you have to be able to show that you are "admissible," which means that there is no law to keep you from being admitted to the United States.

There are many things that can make a person not admissible. Listed below are the most common ones. If you are not admissible, you will not be able to get legal papers through your family member (and in most cases, you will not even be able to get a visitor’s visa) unless you can get a special waiver (pardon). So, if you have one of the problems listed in the next box, keep reading to see whether you qualify for a waiver

You are NOT admissible if you are in one of the following situations:

Crimes

- You admit committing or have been convicted of a "**crime of moral turpitude**" (we explain this later), UNLESS you have only one and it is a "**petty offense**" (we explain this later);
- You admit committing or were convicted of **any drug crime**, or there is reason to believe you are or have been a **drug trafficker**;
- You were convicted of **more than one crime and your sentences "imposed" add up to 5 years or more in prison** (Note: "Imposed" does not mean served, so just because you served less than 5 years does not mean your sentence “imposed” was less than that. You may need a lawyer’s help to find out whether

your sentences "imposed" totaled 5 years.);

- You helped or tried to **help someone enter the U.S. illegally** (even if you were not convicted);
- You **lied or used** (or tried to use) **false papers** to get into the country, work, or get some other immigration-related benefit (even if you were never convicted).

Money problems

- You are **likely to become a "public charge**," that is, to require certain kinds of government help such as welfare. For example, you could be inadmissible if you cannot show that your family (and other people if need be) have sufficient funds available and agree to support you financially if it becomes necessary.

Deportation or removal

- You were **deported or removed less than 10 years ago** (or less than 20 years ago if it was not your first time) or **removed after being stopped and detained at the border or port of entry less than 5 years ago** (or less than 20 years ago if it was not your first time);
- You were **ever excluded, deported, or removed after having been convicted of an "aggravated felony"** (explained later);
- You **did not show up in court for removal proceedings** (deportation proceedings that started after March 31, 1997), you cannot show exceptional reasons why you did not attend court, and it has been less than 5 years since you left or were removed from the U.S. after that.

Time living illegally in the United States

- You **voluntarily left the United States less than 3 years ago, *without being in removal proceedings*, after you had been in the U.S. illegally for more than 180 days straight**
  (all after March 31, 1997) (To understand this better, read the booklet called "How to Apply for Voluntary Departure");
- You **left the U.S**. (whether voluntarily or not**) less than 10 years ago after having been in the U.S. illegally for total of at least one year** (all after March 31, 1997);
- You ever **left the U.S. or were ordered removed after having been illegally in the U.S. for a total of one year** (all after March 31, 1997) **and you then reentered or tried to reenter the U.S. illegally**;

Health Problem

- You have a certain disease or physical or mental health disorder.

Other

Other things that make people not admissible include being considered dangerous to U.S. national security, engaging in terrorism, having been a member of the Communist party or any other "totalitarian" party (with some exceptions), and voting illegally in an election. Also, people who came in on non-immigrant "J" visas to teach, learn or train in special programs have to go back and live in their countries for two years before they can apply to be permanent residents of the U.S. (with some exceptions and waivers available).

What is a crime of moral turpitude, and what is a petty offense?

It can be hard to tell whether a crime is a "**crime of moral turpitude**," and you may need legal advice. It can be a felony or a misdemeanor. Generally, *if the crime involved dishonesty, fraud, an intent to steal, physical harm done on purpose or by being reckless, or sexual misconduct, it is a crime of moral turpitude.* Domestic violence is sometimes a crime involving moral turpitude, especially if you pled guilty to or were found guilty of hurting someone. Some acts against property are also considered crimes of moral turpitude.

Some examples of crimes of moral turpitude are *murder, rape, voluntary manslaughter, robbery, burglary, theft, arson, aggravated assault, and forgery*. On the other hand, the following are generally not crimes of moral turpitude: involuntary manslaughter, simple assault, trespass, joy riding, and various weapons possession crimes.

If you were convicted of only one crime of moral turpitude, you cannot be found inadmissible if it is a "**petty offense**." A petty offense is a crime for which 1) the most jail time you can get by law is one year (usually, this means a misdemeanor) and 2) if you were given prison time, the sentence the judge gave you was 6 months or less in prison. How much time you actually served doesn't matter -- it could be more or less than 6 months; what matters is what the paper that shows your conviction and sentence actually says.

A crime of moral turpitude is also a "**petty offense**" if it is your only one, you committed it when you were under 18, and it has been at least 5 years since you committed it (or, if you had to serve time for it, it has been at least 5 years since you were released).

NOTE: The best way to deal with a conviction for a crime of moral turpitude is to get rid of it. In some situations, you can "**expunge**" (get rid of) a conviction by filing papers with the court where you were convicted. The law of expungement and how it relates to immigration cases is very complicated. Especially if you do not come under the exception for a "petty offense," you may want to get a lawyer to look into this for you.

FOR WHAT CRIMINAL PROBLEMS CAN I GET A WAIVER?

There are several different kinds of waivers.

The 212(h) waiver

The waiver for several types of crimes is called **“212(h).”** You can find it in section 212(h) of the Immigration and Nationality Act or volume 8, section 1182(h) of the United States Code.

The 212(h) waiver waives:

- Crimes of **"moral turpitude"** (explained above) except murder or torture, or an attempt or conspiracy to commit murder or torture
- **"Multiple criminal convictions"** (with sentences totaling 5 years or more)
- **Prostitution** and promoting prostitution
- Only one offense (whether you admit to it or whether you were convicted) of **simple possession of 30 grams or less of marijuana** (and no other drug)
- Having claimed "diplomatic immunity" to keep from being prosecuted.

You can only apply for the 212(h) waiver if:

1) You are the **husband, wife, parent, son or daughter** of a

2) **U.S. citizen or lawful permanent resident** who would suffer

3) **"extreme hardship"** if you were kept out of or forced to leave the U.S.

or

1) It has been at least **15 years since you committed the crime,**

2) letting you in would **not harm the welfare, safety, or security of the United States**, **and**

3) you have been **rehabilitated** (You have changed and do not now commit crimes). NOTE: In the case of prostitution, you do not need 15 years since the crime.

You are not allowed to apply for the 212(h) waiver if:

You have ever been a lawful permanent resident of the U.S. and either –

1) After you became a permanent resident, you were convicted of an

aggravated felony (explained in other booklets, including, “How to Apply for Cancellation of Removal for Certain Lawful Permanent Residents” and “How to Apply for Voluntary Departure”),

or

2) You have **not been living legally in the U.S. for at least the last 7 years** (not counting any time after DHS filed papers against you with the Immigration Court)

Permanent residents may not want to apply for a 212(h) waiver and may prefer to apply for cancellation of removal” (explained in another booklet). However, as we explained toward the beginning of this booklet, some permanent residents may not qualify for cancellation of removal but may still qualify for a 212(h) waiver. These individuals may be able to have a relative file a relative petition (Form I-130) on their behalf and then apply for “adjustment of status” (explained later) and a 212(h) waiver.

NOTE: As you can see, some lawful permanent residents would be able to apply for a 212(h) waiver if only they were not permanent residents. Some lawyers believe that not allowing someone to apply for a 212(h) waiver because he or she is or has been a permanent resident violates a part of the U.S. Constitution which requires the government to treat people the same unless there is a reason not to. However, DHS, the Immigration Judges, and the Board of Immigration Appeals are not allowed to decide whether the law goes against the Constitution or not, so you will have to take your case to federal court if you want to challenge the law.

The waiver for “alien smuggling”

This waiver for having helped someone enter the United States illegally only applies in very limited circumstances and is only available to certain individuals seeking legal status through a family petition. You can find the waiver in section 212(d)(11) of the Immigration and Nationality Act or volume 8, section 1182(d) of the United States Code.

The 212(d)(11) waiver waives:

1) **Alien smuggling**" (trying to help or helping someone enter the U.S. illegally)

You may only apply for this waiver if the only person you helped was your husband, wife, son, daughter, or parent.

The 212(h) waiver also does not apply to using, making, or possessing false papers or to lying or using false papers to get a visa or some other immigration benefit. There are special waivers in certain circumstances for those acts.

Waiver of civil court orders relating to false papers

Sometimes, people have a court order against them from a non-criminal – or "civil" – court because they had, used, or made false papers or used papers belonging to others. Often, people get this kind of order against them because they signed papers admitting that they used false papers to work.

If DHS is saying that you can be removed from the country because you had, used or made false papers, the charging document against you (called a "Notice to Appear") will say that you are "inadmissible" under section 212(a)(6)(F) of the Immigration and Nationality Act. If the charge is true, read on to see if you qualify for a waiver under section 212(d)(12) of the Immigration and Nationality Act.

The 212(d)(12) waiver

The 212(d)(12) waiver waives:

- Possession, use, manufacture (etc.) of **false papers** or papers belonging to others, *if you got a civil court order against you for this.*

You may only apply for this waiver if:

1) You were not ordered to pay a fine for this kind of violation more than once, and

2) you committed the illegal act **only to help or support your husband, wife, or child**
(and no one else).

Waiver for fraud (including lies or false papers)

If you entered or tried to enter the U.S. by lying, using false papers, or using someone else's papers, or if you tried to get some other immigration-related benefit this way, the charging document against you in your removal case may say you may be removed under section 212(a)(6)(C)(i) of the Immigration and Nationality Act. You do not need to have been convicted of a crime in order for DHS to charge you with this. There is a waiver under section 212(i) of the law for some cases, but there is no waiver for lying by claiming to be a U.S. citizen if you did it after September 29, 1996.

The 212(i) waiver

The 212(i) waiver waives:

- Use (or attempted use) of lies or false papers to get into the U.S., to work, or to get some other immigration-related benefit.

You may only apply for this waiver if:

You have **a spouse or parent who is a U.S. citizen or lawful permanent resident.**

To get this waiver, you have to show that the spouse or parent would suffer **"extreme hardship"** if you are not allowed to live in the United States. Having a U.S. citizen child who would suffer hardship does not qualify you for the waiver.

NOTE: You cannot apply for the 212(i) waiver if you received a court order against you for making, using, or possessing false papers or papers belonging to someone else. The only waiver for that is the 212(d)(12) waiver we just mentioned.

Waivers for Having Been Ordered Excluded, Deported, or Removed

Usually, laws that say how many years you have to stay out of the U.S. after a removal order in an immigration case, allow you to apply for a waiver at any time under a section of the law numbered 212(a)(9)(A)(iii). (For example, if you have to stay out of the U.S. for 10 years because you have been ordered removed, you can still apply for a waiver right away.)

The section 212(a)(9)(A)(iii) waiver waives:

An order of exclusion, deportation, or removal from the U.S. that would otherwise keep you from immigrating for a certain number of years.

Anyone can apply for this waiver. However, there are other sections of the law for people who have been removed that cannot be waived with this or any other waiver.

There is no waiver available to you if:

1) You were in removal proceedings (proceedings started after March 31, 1997), you failed to attend a hearing, and then you left the U.S. Normally, if you did this (or if you are now going to have to leave because you will be ordered removed or given voluntary departure), you will have to stay outside the U.S. for 5 years. However, if you can prove you had a good excuse (the law calls it "reasonable cause"), you will not need a waiver for this, and you can go ahead and apply for the waiver for your order of removal without waiting for 5 years to go by.

2) You reentered or tried to reenter the U.S. illegally after leaving or being ordered removed, and you had been in the U.S. illegally after March 31, 1997, for more than one year before you left. In that case, you are not allowed to apply for a waiver until you have stayed outside the U.S. for at least 10 years. (Also, the waiver is under a different section of the law: section 212(a)(9)(C)(ii).)

Waivers for Being in the U.S. Illegally After March 31, 1997

First, no matter how long you have been illegally in the U.S., if you have not left the U.S. and if you can avoid leaving because you are eligible to "adjust status," your time living illegally in the U.S. does not count against you, so you will not need a waiver for

it. For this reason, if you are eligible to adjust status now, you should consider doing it, especially if leaving (even with a voluntary departure order) will mean you have to apply for a waiver. However, as we explain below, most people in removal proceedings are not eligible to adjust status and, unless there is some other option (such as political asylum), they will have to leave either with a removal or a "voluntary departure" order. To reenter legally without waiting 3 or, in many cases 10 years, they will have to get special waivers.

In the box listing who is not admissible, we mentioned how long you are required to wait outside the United States if you have left the U.S. after having spent a certain amount of time here illegally after March 31, 1997. Another booklet called "How to Apply for Voluntary Departure" explains this in more detail, including what time may count against you and what may not.

There is a waiver under a section of the law numbered 212(a)(9)(B)(v), unless you are not admissible because you left the U.S. after having been here illegally for more than one year after March 31, 1997, and you then reentered or tried to reenter the U.S. illegally. (In that case, as we already mentioned, you are not even allowed to apply for a waiver until you have stayed outside the U.S. for at least 10 years.).

The 212(a)(9)(B)(v) waiver for unlawful time in the U.S. waives:

Certain periods of time spent living in the U.S. illegally after March 31, 1997.

You may only apply for this waiver if:

You have a spouse or parent who is a U.S. citizen or lawful permanent resident.

To get the waiver, you have to show that the spouse or parent would suffer **"extreme hardship"** if you are not allowed to return sooner to the United States. Having a U.S. citizen child who would suffer hardship does not qualify you for the waiver.

Other Waivers

Under a section of law numbered 212(g), there are waivers for certain health problems or failure to get certain vaccinations. Under a section numbered 212(e), there are waivers for the requirement that someone who entered with a J-visa live in his or her home country for at least two years before immigrating to the U.S.

CAN I GET LEGAL STATUS NOW OR DO I HAVE TO GO BACK TO MY COUNTRY AND WAIT?

If 1) you have a visa available to you now (and are admissible), and 2) you are eligible to "adjust status," you may be able to get legal status soon and without having to leave the United States. Otherwise, unless you have some other defense in your case (such as political asylum), the judge will have to give you an order of "voluntary departure" or "removal." Then, if you want to return, you will have to wait in your country while you try to get papers allowing you to come back. Because the laws are so strict, that is what

most people trying to get legal status through their relatives will have to do.

How do I know if an immigrant visa is available to me now?

There are waiting lists to immigrate to the United States. How long the wait is depends on the type of relative who is helping you and what country you are from. Certain types of relatives -- **immediate relatives** -- can skip the waiting lists completely. If you are an immediate relative and are admissible to the United States, an immigrant visa is always immediately available to you.

An immediate relative is:

- **The husband or wife of a U.S. citizen,**
- **The unmarried child (under age 21) of a U.S. citizen,**
- **The parent of a U.S. citizen if the U.S. citizen is at least 21 years old, or**
- **The widow or widower of a U.S. citizen, if you were married for at least 2 years at the time your husband or wife died, were not legally separated, have not remarried, and apply to be a permanent resident within 2 years of your husband's or wife's death.**

If your relative has been a lawful permanent resident for at least 5 years (or 3 years, for most people married to U.S. citizens), he or she may be eligible to apply for U.S. citizenship. By becoming a U.S. citizen, he or she may make you an immediate relative. Unfortunately, that process takes some time (well over a year in many places), so your case will probably have to go forward before you can become an immediate relative. Even so, in many cases, if your relative becomes a U.S. citizen, you will not have to wait as long to return legally to the United States.

> ➢ **If your relative has been a lawful permanent resident at least 5 years, she or he may be able to speed up your immigration by becoming a U.S. citizen!**

Be careful, though, because in certain cases, your relative can slow down the process by becoming a U.S. citizen. This is true if you are an unmarried adult from the Philippines and your mother or father has applied for you. In cases from all countries, there might be consequences for your children if you are trying to get legal status for yourself and your children through your husband or wife who is a legal permanent resident, so you should talk to a lawyer to find out what would happen in your case.

For those who are not immediate relatives, there are 4 categories of family members, called "preference categories." They are:

- Unmarried son or daughter of a U.S. citizen
- Husband, wife, or unmarried son or daughter of a lawful permanent resident

- Married son or daughter of a U.S. citizen
- Brother or sister of a U.S. citizen if the U.S. citizen is at least 21.

Only a certain number of people in each category from each country get immigrant visas every year. So if a lot of people from your country in your category have applied to immigrate, there may be a long wait. On the other hand, if fewer people have been applying in your category from your country, there may be no wait at all. So, even if you are not an immediate relative, it is possible there is an immigrant visa immediately available to you. This is sometimes the case for unmarried sons and daughters of U.S. citizens, except those born in Mexico or the Philippines.

If I do not have a visa immediately available to me, how long will I have to wait before I can immigrate?

Again, that depends on your relative category and on what country you are from. No one can tell you exactly how long the wait will be, because it depends on how many people immigrate before you in your category. You or your relative can check with an immigration lawyer or agency to get an estimate of the waiting time.

Please note that even if your visa is not ready, you may be able to avoid removal by applying for what is called a "V" visa. This is a temporary visa that permits you to remain in the United States for two years or if you are an unmarried child, until you turn 21 years old, whichever comes first. To be eligible to apply for this visa, you must be the spouse or unmarried child of a lawful permanent resident who has filed a petition to immigrate you (a Form I-130).

The purpose of this visa is to allow spouses and children of lawful permanent residents to be in the United States and have permission to work while they wait for their permanent lawful status. You can only qualify for this visa if: your lawful permanent resident spouse or parent submitted a petition for you on or before December 21, 2000 AND you can show that a) the petition has been pending for three years or more; or b) the petition has been approved, three years or more has passed since it was filed, and an immigration visa is not yet immediately available; or c) the petition has been approved, three years or more has passed since it was filed, and your application for a visa or adjustment of status is still pending. If you think you qualify for the V visa, you may want to tell DHS or the Immigration Judge that you are interested in applying for a V visa and for work authorization.

If I did not enter the United States illegally, am I eligible to get legal status through my family member now?

If you entered the U.S. legally, either by being "inspected and admitted" or "paroled" into the country by an Immigration officer, you are eligible to "adjust status" to permanent lawful status through your relative if ALL of the following are true:

1. An immigrant visa is immediately available to you (as we explained before), AND
2. Your permission to stay in the U.S. has not expired, there has never been

a time that you were not in lawful status while in the U.S., AND

3. You have not worked illegally.

   BUT if you are the "immediate relative" of a U.S. citizen (discussed before), you can still adjust your status even if you worked illegally or your visa expired.

Note that the above rules do not apply if you only had permission to pass through on your way somewhere else or if you entered as a nonimmigrant crewman, UNLESS you are an "immediate relative" of a U.S. citizen.

You also cannot adjust status if you entered the U.S. with a fiancé(e) visa and are trying to become a permanent resident on some basis other than through a petition filed by your fiancé(e). And you cannot adjust status if you got "conditional" residence through your husband or wife (or your parent's husband or wife) and you are trying to get your permanent residence through someone else or through work.

WHAT DO I HAVE TO DO TO GET (OR KEEP) LEGAL STATUS?

This portion of the booklet explains, in general terms, how you and your family member go about getting you legal status through a **relative petition**. There are two possible ways. One is through an **interview at the U.S. consulate** in your country of origin. The other way is through **"adjustment of status"** inside the United States.

What do I do if I have to leave the U.S. and get a visa in my country?

Petition and Interview at the U.S. consulate

Most people have to apply for immigrant visas at the U.S. consulate in their countries. Overall, the process works like this:

1) Your relative in the U.S. files a petition (called a "Form I-130") for you with DHS.
2) The petition is approved (meaning you will be allowed to apply for a visa).
3) The United States government sends you forms to fill out and instructions telling you what vaccinations you must get and what documents you must gather. At the same time, a file on you is sent to the United States consulate where you will go for your visa interview.
4) You follow the instructions, gather the documents you need, and send the forms to the consulate. The consulate sets a date to interview you.
5) If you are "inadmissible" but eligible for one or more waivers which would make you admissible if they are granted, you file the application(s) for the waivers either with DHS in the U.S. or with the U.S. consulate in your country. (Keep reading for more details on how to apply for waivers.)
6) You go to the consulate in your country for an interview and, if your petition for a visa is approved, you are given an envelope with papers you may use to enter the United States.

7) You go to a U.S. border station or airport with your envelope and the officials there stamp your passport and allow you to enter the U.S. as a “lawful permanent resident.” You must go to the U.S. within six months of getting your visa application approved.

If you qualify to immigrate this way but do not qualify for adjustment of status, you will probably want to apply to the judge for **voluntary departure** so that you can leave without being officially ordered “removed.” Otherwise, you will not be able to enter the United States legally without special permission for at least 10 years (or 20 years if you have been ordered removed more than once, or forever if you have an “aggravated felony conviction.”). However, as we mentioned before, depending how long you have been in the United States illegally, you may have to apply for special permission to return anyway. We will talk more later about applying for a waiver that lets you return earlier.

How does "Adjustment of Status" work?

This can be done whether you are in immigration custody or not. However, it is harder to arrange for photographs, medical examinations, and vaccinations if you are in custody, and your case may have to be rescheduled a number of times:

1) Your relative files a "petition" (Form I-130) for you with DHS.
2) The petition is approved.
3) *You file with the judge or* DHS *an “adjustment of status” application form (Form I-485)* and other papers, including tax records and proof of your relative’s income and yours. If you are “inadmissible,” but qualify for a waiver, you also file the waiver application form and other papers to show why you deserve the waiver.
4) DHS will schedule you to have your fingerprints taken and will run your prints through a FBI and CIA background check. You will need to pay a fee for the fingerprints or a file a request for a fee waiver if you are indigent.
5) You are examined by a doctor, receive all required vaccinations, and file proof of this with the judge.
6) *You have an individual hearing at which you and any witnesses on your behalf speak and answer questions and the judge decides whether to allow you to become a lawful permanent resident.*

Adjustment of status is a good way to get lawful status because you do not have to leave the U.S. (People who leave the U.S., risk the danger of not being allowed to return.) However, many detainees do not qualify to get lawful status without having to leave the U.S. because you generally have to have entered the country legally (for example, with a visa, or with "parole"), or someone must have filed a visa petition on your behalf (a Form I-130) before January 14, 1998. There are other requirements, too (discussed below).

How does my relative file the relative petition (Form I-130)?

If at all possible, you should try to get a legal office to help you and your relative get together all the papers you need and to fill out all the forms. In many cities, there are non-profit agencies that will help you do this for free or for a small fee. Ask around.

The basic form to file when immigrating through a relative is Form I-130.

Whether you are eligible for adjustment of status or not, if you are getting legal status through your relative, your relative has to file a form called a "relative petition" for you with DHS. The petition is Form I-130. Its function is to show that your relative is a U.S. citizen or permanent resident and that you have the required family relationship. If you are applying based on your marriage, you also have to file a Form G-325A (Biographic Information form) for both you and your husband or wife, and 2 photographs of each.

➢ **Always keep a copy of <u>everything</u> you file!**

Other documents and in some cases, photographs, must be filed with the form. Follow the instructions on the I-130 very carefully. You should send **copies** of all documents; DHS may ask later to see the originals.

➢ **All documents not in English must be translated into English.**

You need to include both the foreign language document and the English translation of every document that is not in English. At the end of the translated document, the person who translated it should put the following:

<u>Certificate of Translation</u>

I, <u>(name of translator)</u>, certify that I am competent to translate this document and that the translation is true and accurate to the best of my abilities.

<u>(signature of translator) (date)</u>

The fee is $420. You may pay by money order or a personal check. Make the check payable to: U.S. Department of Homeland Security – do not use the initials USDHS or DHS.

Unless your relative is living outside the United States, you file the forms by mailing them to the USCIS Chicago Lockbox facility at this address: USCIS, P.O. Box 804625, Chicago, IL, 60680-4107. If you are applying for adjustment of status, this is different (see below).

Approval or Denial of the Petition

In some cases, though not in most, DHS decides to require a personal interview. This is especially true if there are questions regarding your marriage. An interview is usually required if you got married after the government started removal proceedings against you.

DHS will send your relative notice of whether the petition was approved or denied, or whether more information or documents are needed.

If the petition is approved, unless you are applying for adjustment of status, DHS sends it to the U.S. consulate in the country you are from. (Your relative will name a specific consulate on the I-130. You may be able to go to a consulate in another country if it would cause you extreme hardship to return to your own.)

Approval of the petition does not mean you will be allowed to become (or remain) a lawful permanent resident of the United States. It is only the first step.

The next step depends on whether you will have to apply for your immigrant visa at a U.S. consulate in your country or whether you are eligible to remain in the U.S. to "adjust status."

What should I do in Immigration Court if I hope to get lawful status through a relative but I do not qualify for adjustment of status?

If you are not eligible to remain in the United States through some other defense to removal, such as cancellation of removal or asylum (discussed in other booklets), the Immigration Judge will give you an order of "voluntary departure" or to give you a removal order. Another booklet, called "How to Apply for Voluntary Departure" explains what that is, who qualifies, and how to apply for it. As that booklet explains, you will not qualify for it if you have an aggravated felony conviction.

If you qualify for voluntary departure, there is no harm in applying for it, except that if you get it, you will have to pay your own way back to your country. How much of a benefit there will be in getting voluntary departure depends on how much time you have spent in illegal status in the U.S. after March 31, 1997. If you have spent less than one year in illegal status at the time the judge orders voluntary departure, you will be able to avoid having to stay out of the U.S. for 10 years (or having to get a waiver). This is a major benefit!

If you have spent a year or more in illegal status (after March 31, 1997) at the time the judge orders voluntary departure, you will have to apply for and get a waiver in order to reenter in less than ten years; however, with voluntary departure, you will not also have to get a waiver for having been ordered removed. This is still a benefit.

There is a disadvantage if the judge grants you voluntary departure and then you fail to leave the U.S. by the deadline set for your departure If you fail to leave after an order of voluntary departure, then you are not allowed to apply for adjustment of status or other immigration benefits for at least ten years.

So, applying for voluntary departure may be a good option if you will be able to leave within the time deadline.

One question you may have to face is whether to ask the judge to release you – on bond or on your "own recognizance" (your promise to appear) – before you ask for voluntary departure.

> **If you have been in the U.S. less than one year after March 31, 1997, asking the judge to lower your bond or release you on your own recognizance may not help you in the future.**

This is because detention cases (those who stay in detention) generally require less time from start to finish than nondetained cases (those who are released from detention). Since the time your removal case is going on counts against your illegal stay, and your case may take longer if you ask to get out of custody, your time illegally in the U.S. may go beyond one year. As we explained above, if this happens before you get an order of voluntary departure from the judge, you will be barred from the U.S. for at least ten years, unless you get a waiver.

There is no guarantee you will get the waiver. Thus, anyone who asks to be released from custody should consider how that request will affect the length of their illegal stay in the U.S.!

What happens if I get voluntary departure?

If you are in custody at the time the judge gives you voluntary departure, and he or she does not order you released, you may be taken back to your country by DHS as soon as it can be arranged. If others are deported to your country at the same time, you will all be taken back together.

If you are not in custody at the time of your hearing, you will be required to go back to your country on your own, by a date set by the judge. Even if you are in custody, if he or she grants you voluntary departure, he or she may order you released from custody and give you a deadline by which to leave.

What should I do if I get voluntary departure?

You must leave by the time the judge says. If you do not, your voluntary departure order automatically becomes an order of removal, which means you can't come back legally for at least 10 years (without getting a waiver).

When you leave after getting voluntary departure get proof that you left on time!

When you do leave, even if you are taken back to your country by an Immigration officer, you should get some kind of proof that you left on time. Here are some

examples of proof:

- Get your passport stamped
- Ask for a copy of the paper you give to the officers at the border and ask them to stamp it
- Go to the nearest U.S. consulate and fill out an affidavit (sworn statement) that you left voluntarily and on time.
- Save your airline ticket coupon showing your flight out of the United States.

You may need this to prove that you were not deported and that you left the U.S. on time.

What if the judge does not give me voluntary departure?

If the judge denies your request for voluntary departure and orders you removed, you will not be able to come back for at least 10 years without special permission.

If you do not get special permission, you'll have to wait the full 10 years. Then, when you do apply to immigrate, you will have to prove to the consulate, with whatever papers you can, that you have stayed out of the U.S. the whole time.

If you are not eligible for voluntary departure because of an aggravated felony conviction and will have to receive an order of removal, you can and should file a request for special permission to return to the United States by filing a Form I-212 with the regional service center of DHS where your relative filed or is filing the relative petition (Form I-130). You can do this even before you get an order of removal! This may shorten the time you have to wait for a decision when you apply for your immigrant visa at the U.S. consulate.

If I am applying for an immigrant visa (<u>not</u> by adjustment of status) what happens after my relative petition (I-130) is approved?

Whether or not the judge gives you voluntary departure, your visa petition should be making its way through the process.

Packets and Forms

After your I-130 petition is approved, the State Department will send you a packet of instructions and forms. The instructions tell you what papers you have to get to bring to your interview at the consulate. This includes a certificate of clearance from the police in every place you have lived for more than 6 months since your 16th birthday. You will also need to get a passport from your country, documents regarding your family relationships (marriages, divorces, children), and proof of your and your relatives' income and economic resources.

This booklet does not explain how to fill out the forms you will need, and we strongly recommend that you get the help of a lawyer in preparing all the papers. Make sure the lawyer who helps you has experience in immigration cases and in helping people apply for

immigrant visas.

Once you have gathered the documents you need, you will send a form to the consulate. After receiving it (or, if there is a wait in your category, once a visa is available to you) the consulate will send you a final set of forms and papers (including a form for a medical evaluation) and an interview date will be scheduled.

The Interview at the U.S. consulate

At the interview, you will have to bring all your papers (including all original documents and copies of each) and all required copies. The officer will ask you about problems that may mean you cannot be admitted, such as criminal problems or the possibility that you will become a "public charge." The officer will either give you a visa or tell you why it is being denied. If it is denied but could be granted if you applied for a waiver or got more papers, your case is kept open for one year.

What should I do in Immigration Court if I am getting legal status through a relative and I qualify for adjustment of status?

The main concern for many people, at least at first, is getting out of detention. To find out if you are eligible to get out of detention while your case is going on, read the booklet, “All About Bonds.” If you are eligible and you qualify for adjustment of status, the judge may order you released or lower your bond. You may be able to improve your chances of a low bond or release without paying a bond (“on your own recognizance”) if you are able to bring certain proof to your bond hearing:

- If your relative has filed a relative petition for you and you qualify for adjustment of status, you could bring proof that the Form I-130 was filed or was approved.
- If you entered the U.S. legally and you qualify for adjustment of status but your relative has not yet filed the petition, you may want to wait before you ask for a lower bond until the petition has been filed. Once it is filed, you could bring proof of that (such as a copy of the petition and a return receipt card showing DHS received the petition).

If you had a bond hearing before your petition was filed or approved but you cannot afford your bond, you may get the judge to release you on your own recognizance once the petition has been approved. (The law only lets you have a second chance to lower your bond if your circumstances change.)

Whether you can get out of detention or not, you may want to ask the judge for a **continuance** so that the petition can be filed and (hopefully) approved. The court may be willing to continue a case as long as progress is being made.

How do I apply for adjustment of status?

One way to apply for adjustment of status is to ask DHS to agree to let you apply for adjustment. You will need to talk to DHS’s attorney about this. If he or she agrees, you can file Form I-471, which is a request for **"conditional termination."** Conditional

termination temporarily closes your removal case to let you apply for adjustment. If DHS denies this application, the case automatically starts up again, and you can apply for adjustment with the judge.

The main application form for adjustment is Form I-485. The instructions tell you what other forms, papers, and photographs you need. You also have to file a Form I-130 unless one has already been filed and approved in your case.

If DHS agrees to conditional termination and the judge okays it, you can file all the forms at the same time at the Immigration office that is closest to where you live. *If DHS does not agree, your relative files the I-130 by mailing them to the USCIS Chicago Lockbox facility at this address: USCIS, P.O. Box 804625, Chicago, IL, 60680-4107 (or, if you are in custody, at the Immigration office with authority over detainees at your detention center) and you file the Form I-485 with the Court.* Whether or not you are in custody, the judge may be willing to postpone your case until there has been a decision on the I-130 petition.

The fee for filing the I-485 application is $1,070 (You also have to pay $420 for the I-130.). You have to file another form, called an "I-485 Supplement A" and to pay a $1,000 fine if you entered the U.S. illegally and are eligible to adjust status only because your relative filed a Form I-130 relative petition for you before January 15, 1998. If you are filing your application with the Court, you still need to pay the fee (and fine) with the Department of Homeland Security office called USCIS. The judge will provide you with instructions on how to file the application with the court and pay the necessary fees with USCIS. There are different locations or lockbox facilities for filing the I-485 depending on the kind of adjustment category for which you are applying. If you are not filing your application with the court, you should be able to obtain filing instructions from the detention facility.

You can also apply for a work permit while you are waiting for a decision. The form is I-765. It costs $380 to apply.

If you got a conditional termination, you will be asked to come to an interview at a DHS office. The Immigration officer will ask questions having to do with how you entered the country, whether your relationship with the family member who applied for you is valid, and anything that may make you inadmissible to the U.S. If your application is approved, you will receive your "green card" (lawful permanent resident card) in the mail. If it is denied, you will have the chance to apply again with the judge.

Whether you apply to adjust your status before DHS or the Immigration Judge, you have to prove that you deserve to be granted adjustment of status. To do this, you should follow the same rules and recommendations we explain in the booklet called "How to Apply for Voluntary Departure" (See the section of that booklet called "How Do I Support My Request for Voluntary Departure?").

If you lose with the judge, you can appeal to the Board of Immigration Appeals. You appeal by filing a Notice of Appeal and a $110 fee (or a request for a fee waiver), and if you lose there, you may be able to appeal to a federal court. This booklet does not cover appeals, but we do talk a bit later about how to file an appeal.

How do I apply for a waiver?

Where to File the Waiver Application

If you are in removal proceedings, you file any waiver applications with the Immigration Judge.

If you got a "conditional termination" and are applying for adjustment of status with DHS or are released from detention, where you file your waiver application depends on why you need the waiver and where you are living. You should check the Instruction Sheet for filing the waiver form to find out where you file for the waiver.

Forms and Papers to File for Most Waiver Applications

The form to apply for all kinds of waivers, except the one for having been removed, deported, or excluded, is Form I-601. The fee is $585. If you are going to have an interview at the consulate, that is where you file it. The consular officer has to find you "inadmissible" before accepting the application, which is then sent on to DHS.

Completing and filing the waiver form will not be enough to obtain a waiver. We mentioned earlier what you have to prove to get a waiver, and to do it, you need more documents. For example, many people apply for a 212(h) waiver (discussed before) or a waiver under section 212(a)(9)(B)(v) (for illegal time in the U.S.). Most of these people have to show that being kept out of the U.S. would cause **"extreme hardship"** to certain relatives in the U.S. Extreme hardship does not mean the normal emotional effects of being separated from your loved ones or the normal money problems. The hardship has to be extreme. Because of this, "extreme hardship" can be tough to prove. You will need to file statements from you and your family members explaining with a lot of detail why the hardship is extreme in your case; letters from doctors, psychologists, social workers, or other experts talking about your situation; and any other proof you can get. Because extreme hardship is so hard to prove, you should try to get a lawyer's help.

In deciding whether to give you a waiver, DHS will look very closely at the relationship between you and the person you are saying will suffer extreme hardship if you are kept out of the U.S. If it is a child but you have not been supporting that child and living with or keeping in close contact with that child, this may not help your case.

Forms and Papers For Waivers of Removal Orders

To get a waiver for having been ordered removed, deported, or excluded from the United States, you have to file a Form I-212 and a fee of $585. You should include a statement explaining why you think you should be given permission to come back early and a letter from the family member you are separated from. You have to make a very strong case that you have good character and that there are very important reasons that you need to come back early. You may need a lawyer's help in order to get this permission.

WHAT DOES IT MEAN TO APPEAL THE JUDGE'S DECISION?

If you or DHS disagree with the judge's decision, you both have the right to keep fighting the case by appealing the decision to a higher court called the Board of Immigration Appeals ("the Board" or "BIA"). This court is a group of judges in Virginia who look at all the papers filed in the case and everything that was said in court, and decide if the judge was right. In most cases, unless the judge made a mistake about the law or the facts in your case, the Board will not change the decision.

As soon as the judge tells you the decision (unless you get it later, in writing), he or she will ask both you and the attorney for DHS whether you want to "reserve appeal," that is, whether you want to hold on to your right to appeal. You can also "waive appeal," which means to give up your right to appeal. If both sides "waive appeal," that is the end of the case.

If someone "reserves appeal," he or she has 30 days to file a paper called a "Notice of Appeal" with the Board in Virginia. If DHS appeals, it has to send you a copy of this Notice and if you appeal, you have to send DHS a copy.

What if DHS appeals my case?

The attorney for DHS may say he or she wants to "reserve appeal," but that does not necessarily mean DHS will actually appeal. You may not know for sure until 30 days from the judge's decision, and if DHS has not filed a Notice of Appeal by then, it cannot appeal. You should know if DHS has filed a Notice of Appeal or not because you should get a copy of the Notice if it is filed. If DHS does file a Notice of Appeal and, on the form, says that it will file a "brief" or written statement later, the Board of Immigration Appeals will send you and DHS a paper saying when DHS must file its brief or statement and when you should mail to the Board any response you want to write to DHS's arguments. Try to get a lawyer to help you with this if you can.

If I lose, how do I appeal?

If you lose and you "reserve appeal," the Board of Immigration Appeals must <u>receive</u> your papers by the 30th day after the Immigration Judge's decision or the judges there will not read them.

The forms you must fill out in order to appeal the judge's decision are

1) A white "Notice of Appeal" form (EOIR-26), and
2) A brown "Appeal Fee Waiver Request" form (EOIR-26A) (unless you can pay a $110 fee, in which case, follow the instructions on the "Notice of Appeal and pay the fee)

The forms explain how to fill them out and where to send them.

If, after 30 days, the appeal papers have not been <u>received</u> in Virginia, you will not be allowed to appeal and the judge's decision will become final. For this reason, we recommend mailing the papers as soon as possible and mailing them by express mail

or “certified mail” (with proof of receipt).

If the Board has received your forms, it will give DHS a chance to file some papers also. DHS will give you a copy of whatever papers it files.

If you are detained during the appeal process, it may take from three to six months for the Board to decide the appeal, although some cases can take longer. If you are out of custody during the appeal process, it may take much longer. There is no set time frame, and it is impossible to determine how long the appeal will take.

What if the Board of Immigration Appeals decides against me?

You may be able to appeal the Board’s decision to a federal court, but with some criminal convictions, that is not clear. Also, unless you get a special order from a federal court, DHS may remove you from the country while the federal court considers your case! This can happen fast, so if your case is appealed to the Board, you may want to try to get a lawyer’s help before the Board makes its decision. Appealing a case to federal court is very complicated, so this booklet does not explain how to do that.

WHAT HAPPENS IF I GET OUT OF DETENTION BEFORE MY HEARING?

If you are allowed to leave the detention center before your case is over, your case continues. You must notify the Immigration Court of your new address within five days of any change using a Form EOIR 33/IC. The court will send you a letter telling you the date, time, and place of your next hearing.

For this reason, it is extremely important that you try to find legal help as soon as possible. Don't delay.

 **When you leave the detention center, look for legal help for your case!**

It is also very important that you or your lawyer ask the court to transfer your case to a different court, unless you want to go to court where your case is now. You do this by filling out a form called a "Motion for Change of Venue" on which you write the address where you plan to live when you leave the detention center. (**This has to be a street address, not a post office box!).** At the back of this booklet is a form that you may use but some courts may want you to use a different form, so find out. At some detention centers, a DHS officer will give you the form and will give it to the court after you complete it. Find out how things are done at your detention center and make sure to file the right form with the court (with a copy to DHS’s attorney). When the court gets this paper, it will send your file to the Immigration Court closest to the address you wrote down. That court will then send you a letter telling you where and when to go for your next hearing. After receiving this letter, you should then only send things to the new Court and DHS in your new location.

> ➢ **When you leave the detention center, if you do not want your next court hearing to be where you are now, file a "Motion for Change of Venue!"**

Some courts require a more complete explanation of why you want to change court locations. At the time of your bond hearing, ask the judge if you will need to do that.

Remember, if you miss a hearing, the judge can order you removed without giving you another chance to apply for asylum or withholding of removal!

What should I do if I move?

Every time you move, it is <u>your</u> responsibility to tell both the Immigration Court and DHS!

You must tell the Immigration Court within five days of your move and you must tell DHS within 10 days of your move. There are special forms to do this and you can get one from the Immigration Court (EOIR Form 33/IC) and a different one from DHS (Form AR-11) (The officers may give you the forms when you leave.). Letting the Immigration Court and DHS know your new address will not change where you will have your hearing. Instead, the special forms used for changes of address let the Immigration Court and DHS know where to send you papers about your case. When the Immigration Court and DHS send you papers, they will send them to the address you gave them. If the Immigration Court only has an old address for you, it will send the paper telling you when your next hearing is to the old address, and when you don't show up to court on that date, you will receive an order of removal. This means that the next time DHS arrests you, you can be sent back to your country without a hearing.

> ➢ **If you move, send the Immigration Court your new address using the EOIR 33/IC form within 5 days of your move! Also you must send the DHS your new address using the AR-11 form within 10 days of your move!**

It is important to remember that the Immigration Court and DHS are two different agencies and that the forms required are different. If you let DHS know your new address but you don't send the right form (a blue EOIR 33/IC, "Change of Address" form) to the Immigration Court, the Immigration Court will keep sending papers to you at your old address, and you can miss your court date. If that happens, you can get a removal order without seeing a judge. This is also true if you case is on appeal to the Board of Immigration Appeals. You must also notify the Board of Immigration Appeals within 5 days if you move using the Form EOIR 33/BIA.

Can I travel outside of the United States after getting out of detention?

If you leave the country before your court case is over, an order of removal will be entered against you. That means that you shouldn't leave until you have received a final decision. Even if you are successful in front of the judge, if DHS appeals, the decision is not final. Do not leave unless you get special permission from DHS.

Certificate of Service

Name
: _____

A#: -- -- ____

I certify that on _____, I served the Department of Homeland Security with a copy of the foregoing by placing a true and complete copy in an envelope, postage prepaid, and mailing it, addressed as follows:

Department of Homeland Security
Office of Chief Counsel
_____

_____

_____
(Sign your name here)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

_____
City and state where court is

	)	IN REMOVAL PROCEEDINGS
In the Matter of _____	)	
	)	File No. A _____
	)	
_____ (your name)	)	
Respondent	)	**MOTION FOR CHANGE OF**
_____	)	**VENUE**

The Respondent has bonded out and will be residing at:

_____

_____

_____
(your address outside of detention)

The Respondent requests that his case be transferred to the Immigration Court that covers the area of his residence.

CERTIFICATE OF SERVICE

This original document is being sent by mail to:

Executive Office of Immigration Review
Office of the Immigration Judge

_____
_____
(address of court that handled your case while you were in DHS custody)

I hereby certify that I have served a copy of this motion by mailing a copy to:

Office of Chief Counsel
Department of Homeland Security

_____
_____
(address of DHS office that handled your case when you were in DHS custody)

Date:_____ Signed:_____
Respondent (sign your name here)