U.S. Citizenship and Immigration Services

Application for Advance Permission to Enter as a Nonimmigrant Pursuant to Section 212(d)(3) of the Immigration and Nationality Act (Form I-192)

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Vermont Service Center

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Introduction

Purpose

This publication:

- Incorporates standardized operational policies and procedures,
- Includes processing information for Form I-192, and
- Should be used as a guide for consistent processing.

It is your duty to be familiar with all the SOPs and guides that are required to adjudicate Form I-192.

IMPORTANT: Use this guide in conjunction with the Form I-192 National SOP if applicable. The information contained in this guide is a combination of handouts and local policy for Form I-192. Use it as a resource/instruction guide.

Conflict Resolution

Any provision of the INA or 8 CFR that conflicts with this SOP/User guide will take precedence over the SOP/User guide. If you identify a conflict, report the matter immediately to your supervisor.

If any conflict is noted between this SOP/User Guide and policy or guidance documents issued by USCIS, report the matter through the supervisory chain for resolution.

This SOP/User guide supersedes all prior VSC guidance documents, policy memoranda, training packets, or other material pertaining to Form I-192; such documents should be discarded.

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Revisions

Numbered revisions to this document will be issued as required; no other document will be considered a valid modification.

Electronic and Printed Copies

All personnel who maintain a printed copy of this document will post the revisions upon receipt. Electronic copies of this document will be modified to reflect changes as they are issued. A summary of all applicable revisions will be included in the electronic SOP/User guide.

Proposed Changes

Submit proposed changes with appropriate supporting documents through first-line supervisors.

Previous Revisions

A historical listing of all prior revisions is located at the end of this document.

Current Revisions

Current revisions will be posted in the beginning of the document and all new changes will be highlighted in yellow. ***NOTE**: The KM# column indicates the Knowledge Management change request number associated with the change.

Revision #	Date	Description	Page (s)	KM#
9	6/1/15	Created *I-192 Summary Memo* section with guidance on cases requiring this memo and what is to be included on the memo.	61-63	2739 & 2740

General

Hyperlinks

Throughout this document, where appropriate, hyperlinks to associated SOPs have been created.

Refer to the table below for the physical document locations of common hyperlinks:

If the hyperlink is for a ...	Then look in ...
Worksheet or SOP,	Word under *Add'l Resources* tab
Memo, letter or denial	Word under *Open/Insert* tab

NOTE: Hyperlinks to documents that are not on the local area network (LAN) or that are not Humanitarian Division specific products will include the physical internet address in the body of text.

Applicability

This SOP applies to all VSC employees performing adjudicative functions or review of those functions relating to Form I-192 when such application is filed in conjunction with a Form I-914 or Form I-918.

Overview

Purpose	Form I-192 is used to apply for a waiver of inadmissibility. A fee is required or a waiver can be requested. See 8 CFR 103.7(b).
Jurisdiction	The Vermont Service Center has sole jurisdiction for the adjudication of the Application for Advance Permission to Enter as a Nonimmigrant Pursuant (Form I-192) when filed by an I-914 applicant or an I-918 petitioner. See Section 212(d)(3) of the INA
Section 212 of the INA	When adjudicating a Form I-192, you must determine whether a waiver of a ground of inadmissibility should be granted for the alien. Section 212 of the INA outlines grounds that serve as a basis for refusing to admit aliens to the United States and for refusal of visa issuance. This list is referred to as "grounds of inadmissibility."
References	References for the adjudication of Form I-192 include: • INA • 8 CFR • Precedent Decisions • Recommendations from other agencies

Waiver Eligibility

General

To be eligible for T or U nonimmigrant status, the alien must be admissible to the United States. An applicant who is inadmissible or who becomes inadmissible based on conduct that occurs while his or her T or U nonimmigrant status is pending, is not eligible for T or U nonimmigrant status unless USCIS waives the ground of inadmissibility.

To apply for a waiver of inadmissibility, the alien must file an Application for Advance Permission to Enter as a Nonimmigrant (Form I-192).

Waiver Authority Form I-914

Waivers are available under two sections of the INA for T Non-immigrants.

- Section 212(d)(3) of the INA provides USCIS discretion to waive certain grounds of inadmissibility.
- Section 212(d)(13) of the INA provides USCIS with a wider discretionary waiver if the grounds of inadmissibility are incident to the victimization.

NOTE: You must consult with your supervisor prior to making any final decision when adjudicating a waiver for violent criminal acts, terrorism, foreign policy or national security concerns.

Waiver Authority Form I-918

Waivers are available under two sections of the INA for U Non-immigrants.

- Section 212(d)(3) of the INA provides USCIS discretion to waive certain grounds of inadmissibility.
- Section 212(d)(14) of the INA provides USCIS wider discretion to waive grounds of inadmissibility in the public or national interest.

NOTE: You must consult with your supervisor prior to making any final decision when adjudicating a waiver for violent criminal acts, terrorism, foreign policy or national security concerns.

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212(d)(3) Waiver

To approve a waiver under 212(d)(3), USCIS must determine that the waiver is warranted. All inadmissibility grounds may be waived by section 212(d)(3) except the following:

- Section 212(a)(3)(A)(i), (ii), (iii);
- Section 212(a)(3)(C); or
- Section 212(a)(3)(E)(i) or (ii).

Considerations for the exercise of this discretion.

In *Matter of Hranka*, 16 I&N Dec. 491(BIA 1978), the Board of Immigration Appeal listed three criteria for determining whether to approve or deny a Section 212(d)(3) waiver:

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

NOTE: You must consult with your supervisor prior to approving a waiver for a criminal act.

212(d)(13) Waiver

To approve a waiver under 212(d)(13), evaluate the connection between the behavior which created the ground of inadmissibility and the circumstance of the applicant's trafficking.

If the applicant is inadmissible based on criminal grounds or related grounds that occurred after the alien escaped his or her trafficking, consider the number and severity of the offenses for-which the applicant has been convicted. Also consider the circumstances under which the crimes occurred and any special circumstances surrounding the applicant.

USCIS will grant waivers for cases involving violent or dangerous crimes or those involving security and related grounds only in extraordinary cases. The existence of extraordinary grounds may not be sufficient to merit an approval of such a waiver.

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212(d)(14) Waiver

To approve a waiver under 212(d)(14), evaluate whether it is in the public or national interest to waive the applicable ground(s) of inadmissibility.

If the applicant is inadmissible on criminal grounds or related grounds, consider the number and severity of the offenses for which the applicant has been convicted.

USCIS will grant waivers for inadmissibility involving violent or dangerous crimes or those involving security and related grounds only in extraordinary cases. The existence of extraordinary grounds may not be sufficient to merit an approval of such a waiver.

Form I-192 Approval Annotations and Validity Dates

When approving Form I-192, clearly and legibly annotate on the waiver stamp which waiver is being granted and what grounds are being waived.

The waiver validity dates are the same as the validity period for the U or T nonimmigrant status.

Multiple Pending Form I-192 Waivers

When more than one accompanying Form I-192 is pending in the file, you must make final decisions on each filing.

Refer to the table below to determine the appropriate adjudicative action when multiple Form I-192s are pending in the file:

If a waiver is ...	Then ...
Approvable,	• Approve one of the Form I-192s. • Terminate the remaining pending Form I-192s as "status acquired by other means." – This termination does not require a denial letter. – It will be terminated through the electronic update only.
Not approvable,	Deny each Form I-192 under separate orders.

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Subsequently filed Form I-192

There are times when an alien triggers grounds of inadmissibility after the initial approval of his or her T or U nonimmigrant status files a subsequent Form I-192. For example, when an alien departs the United States after being granted T or U nonimmigrant status, he or she may trigger an unlawful presence inadmissibility ground.

When adjudicating the subsequently filed Form I-192, you must address all new inadmissibility issues that have been triggered.

If the applicant is inadmissible on criminal or related grounds, consider the number and severity of the offenses for which the applicant has been convicted. You must consult with your supervisor prior to approving a waiver for a criminal act.

Approval dates for the subsequently filed I-192 will be from approval date of the subsequently filed Form I-192 until the end validity date of the initial Form I-918 or Form I-918A.

Form I-192 Denial

There is no appeal of a decision to deny Form I-192. The applicant may file a motion to reconsider.

An alien whose waiver is denied may file a new Form I-192 application for a waiver.

If the Form I-918 /I-918A or the Form I-914/I-914A is denied and there is Form I-192 accompanying the filing, the waiver needs to be denied. The reason for denial is the denial of the nonimmigrant petition.

Revocation of Form I-192

USCIS may, at any time, revoke a waiver of inadmissibility previously granted. See 8 CFR 212.17(c).

There are no appeal rights regarding a decision to revoke a waiver.

Aliens may file a new Form I-192.

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Impact of I-918 Revocation on Approved Waivers

When you revoke an approved Form I-918 or Form I-918, Supplement A, you must also revoke any waiver of inadmissibility granted in conjunction with that petition.

Issue an Intent to Revoke on the Form I-192 when you issue an-Intent to Revoke on the Form I-918.

Form I-193 Waiver Filed

Aliens outside the United States use Form I-193 to waive the passport requirement. Aliens seeking U status who are outside the United States do not need to provide evidence of a valid passport as that is a requirement is for consular processing

Refer to the table below to determine the appropriate action on a Form I-193 that has been filed in conjunction with a Form I-918 or Form I-918A.

<table>
<tr><th>If the Form I-193 was filed by an alien who is...</th><th>Then ...</th></tr>
<tr><td>In the United States, and the Form I-193 has not been receipted at the VSC,</td><td>The waiver should not be receipted. Treat the Form I-913 as a supporting document, only.</td></tr>
<tr><td>In the United States, the Form I-193 has been receipted at the VSC, and the underlying case is approvable,</td><td>• Approve the waiver in Claims Adjudicate a Case (not in GUI Receipting or GUI Adjudications). No approval notice will be generated.
• Stamp and sign the action block of the Form I-193. No other annotations are needed.
• Annotate the worksheet instructing clerical to send the Form I-193 to the KCC.
• If there is a Form I-192 in the file, approve the Form I-192. If necessary, waive the passport on the Form I-192.</td></tr>
<tr><td>Outside of the United States,</td><td><table><tr><th>If the Form I-918/ Form I-918A is ...</th><th>Then ...</th></tr><tr><td>Approved</td><td>Update the Form I-193 as approved in CLAIMS (Adjudicate a Case)</td></tr><tr><td>Denied</td><td>Deny the Form I-192 as not needed.</td></tr></table></td></tr>
</table>

Eligibility and Required Evidence

Evidence	Applicants must establish eligibility by a preponderance of the evidence. Regulations do not require a specific amount of evidence or list specific documents required to establish eligibility for a waiver. This is a case by case determination based upon the grounds of inadmissibility being waived.
Discretion	The discretionary determination of eligibility is the last step in the adjudication of the application. See the ***Discretion*** section of the SOP.

Form I-192 FBI Name Check Process

General

An FBI Name Check is required on all Form I-192 applications. You must complete this check in addition to the FBI Fingerprint Check process.

Ensure that the information in the record matches the information contained in the CIS 9101 screen. Correct and update the record and all related systems, as appropriate. (see Dec. 21, 2006 FBI Name Check Policy and Process Clarification for Domestic Operation Memo).

IMPORTANT: FBI Name Checks are required for all final decisions on Form I-192s for applicants who are age 14 and over.

Validity and Name Check Results

The FBI Name Check results for the Form I-192 you are adjudicating are valid indefinitely.

FBI Name Check results from other applications and petitions are valid for 15 months from the date of the results. You may use those results when you make a final decision on the Form I-192.

Continued on next page

Form I-192 FBI Name Check Process, Continued

Process Follow the steps below to perform the FBI Name Check.

<table>
<tr><th>Step</th><th>Action</th></tr>
<tr><td>1</td><td>• Enter Mainframe CLAIMS/GUI From Teleview menu:
• Select session number for RAPS-APSS-EOIR.
• Press [Enter].
• At prompt, type: FBIQUERY.
• Press [Enter].</td></tr>
<tr><td>2</td><td>Select "FBI NAME CHECK RESPONSE" [at bottom of list].</td></tr>
<tr><td>3</td><td>Search system by alien's A-number or name and date of birth.</td></tr>
<tr><td>4</td><td>View Results and refer to the table below:

<table>
<tr><th>If ...</th><th>Then ...</th></tr>
<tr><td>"No data found",</td><td>Proceed to block titled "No Data Found"</td></tr>
<tr><td>One record matches,</td><td>• A detailed screen showing dates related to the individual and status of the FBI Name Check will appear.
• Go to Step 5.</td></tr>
<tr><td>The response is pending</td><td>Hold the case for further guidance.</td></tr>
<tr><td>The response code is "Duplicate H" or "Duplicate I",</td><td>• Make a screen print of the "Duplicate H" or "Duplicate I" screen,
• Hold for further guidance.</td></tr>
<tr><td>More than one record matches,</td><td>• A list of the matches will appear.
• Select the correct record (by form number) and press [Enter].
• Go to step 5.</td></tr>
</table>

NOTE: If an applicant is 14 years of age or older when you adjudicate the I-918, place a screen print of the FBI Name Check response on the non-record side of the file.</td></tr>
<tr><td>5</td><td>Refer to the table on the next page to determine how to proceed with adjudication following the initial response code to the FBI Name Check.</td></tr>
</table>

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Form I-192 FBI Name Check Process, Continued

How to Process "No Data Found" and "Error" Results

If "No Data Found For Request" or "Error" appears:

- Send an email to the ISA:
- Noting if an "Error," "No Data," "Age-In", or "Processing Time.
- List the A number, full name of the petitioner/applicant as listed on 9101, Date of Birth and Country of Birth.

Example: This population of cases includes:

- Applicants who have aged into the FBI Name Check requirement,
- Denied cases that have been reopened and may now be outside the processing time, and
- Other cases that did not successfully transmit to the FBI for various reasons.

IMPORTANT: Any information that does not match CIS 9101 must be reviewed and the correct information entered and updated all the systems.

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Missing or Incorrect DOB

Missing Date of Birth (DOB)

- An "Error" result will occur if a record is sent without a DOB attached.
- These cases should be referred to the appropriate POC as indicated in a previous section.

Incorrect DOB

- Do not submit cases where the discrepancy is with the day or month of birth. These discrepancies do not warrant resubmission of the case for a new name check.
- A new name check should only be initiated if the year of birth is incorrect.

If a resubmission is required:

1. Make a screen print of the FBI NDOB screen and notate the correct year of birth in red pen.
2. Notate your NFTS code on the screen print.
3. Bring the screen print to the ISA POC.

Example:
Juan Garcia Menendez, DOB 06.05.1960

DOB is run as...	Variation occurs in the...	The variation is...
05.06.1960	Day and month	Acceptable. Do not submit for a new name check. and resubmission is NOT necessary.
06.05.1961	Year of birth	Not acceptable and resubmission is necessary. Submit for a new name check.

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Name Variation in NDOB Result

You must review information that does not match CIS 9101 and enter and update the correct information in all related systems.

Name checks are conducted using an applicant's name and date of birth. Alias submissions and spelling variations do not require a separate check. Names are searched in a multitude of combinations, switching the order of the first, middle, and last names, as well as combinations of just the first and last names, first and middle names, etc.

The name check also automatically includes a phonetic search and retrieves records with similar spelling variations (e.g. Rodriguez = Rodrigues). Do not resubmit name checks because of misspellings.

Example:

Name submitted is Jose Garcia Rodriguez

The following names will be run automatically:
Jose Garcia Rodriguez
Jose Rodriguez Garcia
Jose Garcia
Jose Rodriguez
Garcia Jose Rodriguez
Garcia Rodriguez Jose
Garcia Jose
Garcia Rodriguez
Rodriguez Jose Garcia
Rodriguez Garcia Jose
Rodriguez Jose
Rodriguez Garcia

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Form I-192 FBI Name Check Process, Continued

Incorrect A-number

You must review information that does not match CIS 9101 and enter and update the correct information in all related systems.

Name checks are conducted using biographical information relating to the applicant. Therefore, name checks performed with an inaccurate or missing A-number are valid. Do not resubmit incorrect A numbers for a new FBI name check.

When an inaccurate A-number is identified, the record must be corrected. However, you may complete the adjudication before the record is corrected. To have a record corrected:

1. Make a screen print of the FBI NDOB screen and notate the correct A-number in red pen.
2. Notate your NFTS code on the screen print.
3. Bring the screen print to the SISO or ISO (3) POC.

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Form I-192 FBI Name Check Process, Continued

FBI Name Check Response

Refer to the table below for guidance on information that is obtained from the FBI Name Check Response.

Response Code	Description	Can the case be approved?	Can the case be denied?

(b)(7)(e)

Continued on next page

Form I-192 FBI Name Check Process, Continued

FBI Name Check Response, continued

(b)(7)(e)

Response Code	Description	Can the case be approved?	Can the case be denied?

212(a)(1) – Health Related Inadmissibility Provisions

Health Related Grounds Requiring Form I-693 212(a)(1)

You must request a Form I-693 if the file contains evidence that the alien may have a health-related ground of inadmissibility. Request the Form I-693 by sending an RFE.

IMPORTANT: You must obtain supervisory sign-off prior to sending an RFE seeking a Form I-693.

212(a)(1)(A)(i) Communicable Disease

The alien has a communicable disease of public health significance, as defined by the Secretary of Health and Human Services (HHS) in 42 CFR 34.2(b).

A communicable disease of public health significance may include:

- Chancroid,
- Gonorrhea,
- Granuloma inguinale,
- Leprosy (infectious)= Hansen's Disease (HD)
- Lymphogranuloma venereum,
- Syphilis (infectious stage),
- Class A Tuberculosis (active), and
- Any other communicable disease as determined by the Secretary of HHS and defined at 42 CFR 34.2(b).

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212(a)(1) – Health Related Inadmissibility Provisions,
Continued

212(a)(1)(A)(iii) (I) & (II) Vaccination

The alien seeks admission with an immigrant visa, or applying for adjustment of status, and has not presented documentation of having been vaccinated against vaccine-preventable diseases.

Vaccine preventable diseases may include:

- Mumps,
- Measles,
- Rubella,
- Polio,
- Tetanus and Diphtheria toxoids,
- Pertussis,
- Seasonal and Type B Influenza,
- Meningococcal,
- Pneumococcal,
- Varicella,
- Hepatitis B, and
- Any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices.

EXCEPTION: Adopted children under age 10 applying for immigrant visas under section 201(b) of the INA provided certain requirements are met.

212(a)(1)(iii)(I) & (II) Physical or Mental Disorder

The alien has been determined (in accordance with regulations prescribed by the Secretary of HHS in consultation with the Attorney General):

- To have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or
- Has had a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others.

NOTE: DWI/DUI convictions and other offenses where a non-controlled substance was a factor may fall under section 212(a)(1)(A)(iii) of the INA.

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212(a)(1) – Health Related Inadmissibility Provisions,
Continued

212(a)(1)(A)(iv) Drug Abuser or Addict	The alien has been determined (in accordance with regulations prescribed by the Secretary of HHS) to be a drug abuser or addict.
Supporting Evidence	Examples of the evidence considered sufficient to meet the danger to public health and the possibility of spreading the infection requirements include, but are not limited to: • Evidence that the applicant has arranged for medical treatment in the United States, • The applicant's awareness of the nature and severity of his or her medical condition, • Evidence of counseling, • The applicant's willingness to attend educational seminars and counseling sessions, and • The applicant's knowledge of the modes of transmission of the disease.

Continued on next page

212(a)(1) – Health Related Inadmissibility Provisions, Continued

Physical or Mental Disorder Waiver

Evidence required:

- Complete medical history and report addressing the physical or mental disorder and the behavior associated with the disorder that poses, may pose, or has posed a threat to the property, safety, or welfare of the alien or others;
- Details of hospitalization, institutional care, or other treatment received;
- Current findings regarding physical condition;

Detailed prognosis specifying, based on a reasonable degree of medical certainty, possibility that harmful behavior is likely to recur or that other harmful behavior associated with the disorder is likely to occur I-693, Report of Medical Examination and Vaccination Record) is acceptable for this purpose); and

A recommendation concerning treatment that is reasonably available in the United States and that can reasonably be expected to significantly reduce the likelihood that the physical or mental disorder will result in harmful behavior in the future.

IMPORTANT: This waiver may be approved only after consultation with the Secretary of HHS. (The I-693 Medical Civil Surgeon Form).

Drug Abuser or Addict Exception

Evidence contained in the file establishes the applicant/petitioner may have a serious addiction. A Report of Medical Examination and Vaccination Record Form I-693 maybe requested. You must get supervisor sign-off prior to requesting in an RFE.

REMISSION EXCEPTION: If upon reexamination the civil surgeon or panel physician certifies, per the applicable HHS regulations and CDC's Technical Instructions, that the individual is in remission, the ground of inadmissibility under section 212(a)(1)(A)(iv) of the INA no longer applies.

Continued on next page

212(a)(1) – Health Related Inadmissibility Provisions, Continued

HIV Regulation

Effective January 4, 2010, Human Immunodeficiency Virus (HIV) infection no longer makes an alien (or their HIV-positive spouse or child) inadmissible under section 212(a)(1)(A)(i) of the INA for any immigration benefit adjudicated on or after January 4, 2010, even if the immigration benefit was filed before January 4, 2010.

See the following memo, dated 9/15/2009, on the AG1 website under Memos, Waivers Memos for additional guidance on HIV:
Memo re HIV inadmissibility and proposed HHS Rule

Medical Documentation

The panel physician or civil surgeon must complete the medical examination according to the CDC guidance at:
http://www.cdc.gov/immigrantrefugeehealth/exams/ti/hiv-guidance-panel-civil.html.

IMPORTANT: A Class B condition does not make the alien inadmissible on medical grounds.

The Center for Disease Control

Introduction

USCIS may grant the waiver of 212(a)(1) in accordance with the terms, conditions, and controls considered necessary after consulting with the Secretary of Health and Human Services (HHS). Before USCIS makes a final determination on the waiver application, the Center for Disease Control (CDC) must first issue an endorsement of review.

NOTE: There are variations to the procedures for working through CDC, depending on whether the individual is applying for admission as:

- a refugee,
- for an immigrant visa, or
- for adjustment of status in the United States.

Purpose of CDC Endorsement

The CDC's endorsement of review does not constitute waiver approval. Rather, the purpose of the endorsement is for CDC to verify that the applicant (or person assuming responsibility on his or her behalf) has identified a suitable health care provider in the United States.

Form I-693 Validity

You must be certain that the Form I-693 is valid. There are multiple versions of the form. Refer to the table below to determine if the Form I-693 is valid:

If the medical exam was completed...	Then accept the I-693 dated...
Before November 1, 2011	July 20, 2010
Between November 1 and December 31, 2011	October 11, 2011 or July 20, 2011
After January 1, 2012	October 11, 2011 or January 15, 2013

212(a)(2) Criminal and Related Inadmissibility Provisions

Criminality Issues

When evaluating a waiver application with criminality issues, you must first determine if the crime is a CIMT.

Evidence of Conviction

Evidence of conviction must be contained in the record if the applicant has a criminal history. If there is no official record, you must issue an RFE.

EXCEPTION: Evidence contained outside an alien's record of conviction may properly be considered in determining whether the alien has been convicted of a CIMT **only** where the conviction record itself does not conclusively demonstrate whether the alien was convicted for engaging in conduct that constitutes a CIMT. This can include the police report or court transcripts.

Matter of Ahortalejo-Guzman, 25 I&N Dec. 465 (BIA 2011)
Matterof Teixeira, 21 I&N Dec. 316 (BIA 1996)

Admission V. Conviction

An alien's admission of a crime requires strict criteria. The alien must:

- Admit all elements of the crime,
- Be given an adequate definition of the crime, and
- Have the definition explained in understandable terms.

Matter of G-M-, 7 I.&N. Dec 40 (BIA 1955)
Matter of J--, 2 I. & N. Dec 285 (BIA 1945)

Pursuant to section 101(a)(48)(A)of the INA, the term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where:

- liberty to be imposed. a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and
- the judge has ordered some form of punishment, penalty, or restraint on the alien's.

Expungement or Pardon

An expungement will generally remain a conviction for immigration purposes. If you are not sure, check with USCIS Counsel to determine whether the conviction results in a ground of inadmissibility.

Continued on next page

212(a)(2) Criminal and Related Inadmissibility Provisions, Continued

Vacated Convictions

If a court vacates a conviction on the merits or for a constitutional or statutory defect, then there may be no conviction for immigration purposes (though the applicant may still be inadmissible if the applicant admits to having committed acts that constitute inadmissibility grounds).

Matter of Sirhan, 13 I&N Dec. 592.

Consult with counsel if it appears that the conviction was vacated solely to relieve the alien of the immigration consequences of the conviction.

Suspended Sentences

Section 101(a)(48)(B) of the INA states refers to suspended sentences. This provision was added in 1996 with IIRIRA. Therefore, if a court provides a sentence but later suspends the sentence; the suspended sentence is a sentence actually imposed under section 212(a)(2) of the INA.

Matter of S-S- 21 I&N Dec. 900 (BIA 1997), and
Pre-IIRIRA case: *Matter of Esposito,* 21 I&N Dec. 1 (BIA 1995)

Youthful Offenders

Refer to the table below for general adjudication guidance for youthful offenders aged of 15, 16, 0r 17.

If the alien is age 15, 16, or 17when a single...	**Then the alien is...**
Non-violent offense was committed	Admissible. No waiver is required.
Violent CIMT was committed, ***and*** the alien was treated as an adult	Inadmissible. A waiver is required.

Continued on next page

212(a)(2) Criminal and Related Inadmissibility Provisions, Continued

Violent or Dangerous Crimes

Regulations generally preclude you from exercising favorable, discretion in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or when an alien clearly demonstrates that denial of the application would result in "exceptional and extremely unusual hardship."

Depending on the gravity of the underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion. See 8 CFR 212.7(d). If you believe that discretion should be exercised favorably in a case involving a violent or dangerous crime, you must obtain written concurrence by the Associate Director or Deputy Associate Director for Service Center Operations, if adjudicated as part of the permanent SCOPS workload, or by the Chief or Deputy Chief of International Operations if adjudicated on overtime, before the application is approved.

IMPORTANT: Consult with the Form I-192 SISO POC before proceeding.

212(a)(2)(A)(i) (I) &(II) Criminal Activity

The alien has been convicted of, admits having committed, or admits committing acts which constitute the essential elements of:

- A crime involving moral turpitude (CIMT) or an attempt or conspiracy to commit such crime, or
- A violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 USC 802)).

Continued on next page

212(a)(2) Criminal and Related Inadmissibility Provisions, Continued

212(a)(2)(B) Multiple Convictions

An alien is inadmissible under section 212(a)(2)(B) of the INA if he or she has been convicted of two or more offenses (other than purely political offenses), regardless of whether the offenses involved moral turpitude, for which the combined aggregate sentences to imprisonment were five years or more.

If an alien has been convicted of two or more crimes, not involving moral turpitude (and not involving prostitution), and the alien was sentenced to less than five years of imprisonment, the alien is admissible.

212(a)(2)(C) Controlled Substance Traffickers

An alien is inadmissible if he or she is known or reasonably believed to be, or to have been:

- an illicit trafficker in any controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act (21 USC 802)); or
- a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any controlled substance or listed chemical, or endeavored to do so.

Additionally, the spouse, son or daughter of an alien inadmissible above is considered inadmissible if he or she has:

- obtained any financial, or other benefit from the illicit activity of the alien within the previous five years, and
- knew or reasonably should have known that the financial or other benefit was the product of such illicit activity.

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212(a)(2) Criminal and Related Inadmissibility Provisions, Continued

212(a)(2)(D) Prostitution

An alien is inadmissible if he or she is coming to the United States solely, principally, or incidentally to:

- Engage in prostitution,
- Has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,
- Directly or indirectly procures or attempts to procure or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure,
- To import prostitutes, or persons for the purpose of prostitution, or receives or within such 10-year period received, in whole or in part, the proceeds of prostitution, or
- To engage in any other unlawful commercialized vice, whether or not related to prostitution.

NOTE: Inadmissibility for involvement with prostitution involves a 10-year bar. If these acts occurred more than 10 years ago, a waiver is not required.

IMPORTANT: A single act of soliciting prostitution on one's own behalf does not fall within section 212(a)(2)(D)(ii) of the INA.

Continued on next page

212(a)(2) Criminal and Related Inadmissibility Provisions, Continued

212(a)(2)(E) Diplomatic Immunity

An alien is inadmissible if he or she:

- Committed a serious criminal offense (as defined in section 101(h) of the INA) in the United States,
- Asserted diplomatic immunity to avoid prosecution,
- Left the United States (as a consequence of the crime and exercise of immunity), and
- Has not subsequently submitted fully to the jurisdiction of the U.S. court having jurisdiction over the crime.

212(a)(2)(G) Serving Foreign Government

An alien is inadmissible if he or she, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 USC 6402).

212(a)(2)(H) Trafficker in Persons

An alien who is listed in a report submitted pursuant to section 111(b) of the Trafficking Victims Protection Act of 2000 [22 USC 7108(b)] or who the consular officer or Attorney General knows or has reason to believe is, or has been, a knowing aider, abettor, assistor, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons as defined in section 103 of such act.

212(a)(2)(I) Money Laundering

An alien is inadmissible if the consular officer or Attorney General:

- Believes, or has reason to believe he or she has engaged, is engaging, or seeks to enter the United States to engage in an offense described in section 1956 or 1957 of 18 USC (relating to laundering of monetary instruments), or
- Knows the alien is, or has been, a knowing aider, abettor, assister, conspirator or colluder with others in an offense described in this section.

Criminal Exceptions

Under Age 15 Exception

An alien is NOT inadmissible under CIMT by reason of any offense if committed prior to age 15. Children under age 15 are ALWAYS considered juveniles. See 22 CFR 40.21.

Youthful Offender Exception

An alien is NOT inadmissible if a single CIMT was committed:

- While alien was under the age of 18, and
- More than five years prior to application for visa/entry.

NOTE: If imprisoned, the alien must be released more than five years prior to application for visa/entry.

The Youthful Offender could still be a concern to be admitted into the United States and have developed a pattern of behavior which could be enough to deny the waiver due to another inadmissibility requirement. See Section 212 (a)(2)(A)(ii)(I) of the INA.

Petty Offense Exception

An alien is NOT inadmissible if a single CIMT was committed and:

- The maximum possible penalty for which the alien was convicted (or admits to having committed) does not exceed imprisonment for over one year, and
- If the alien was convicted, the sentence for imprisonment was six months or less (regardless of the extent to which sentence is executed (imposed, not served)). See Section 212 (a)(2)(A)(ii)(II) of the INA.

Purely Political Offense Exception

An alien is NOT inadmissible under section 212(a)(2)(A)(i)(I) of the INA, based on a conviction for a CIMT, if the offense is completely or totally "political." *Matter of O'Cealleagh*, 23 I.&N. Dec 276 (BIA 2006),

A purely political offense is defined in 22 CFR 40.21(a)(6) as an offense that has resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious, or political minorities.

Crimes Involving Moral Turpitude (CIMT)

Moral Turpitude Defined

The term "moral turpitude" is not a precise term. The various USCIS precedent decisions relating to moral turpitude use some of the following language in trying to define moral turpitude:

- Morally reprehensible and intrinsically wrong,
- Conduct which is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between human beings, or
- Vicious motive or corrupt mind.

Black's Law Dictionary Definition

Black's Law Dictionary contains the following definition of moral turpitude:

[A]ct of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man....Act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others....The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita.

Continued on next page

Determining if a Crime is a CIMT

To determine whether a conviction is a CIMT, check the CIMT Online Reference Document. (Refer to the Online CIMT References section of this SOP.) While murder, bank robbery, and rape, in terms of the scope of moral turpitude quoted above, seem to be obvious CIMTs, there are some less serious crimes that are CIMTs.

Example:
Petty larceny and tax evasion may be crimes involving moral turpitude. Similarly, other offenses, depending on the circumstances, may or may not be crimes involving moral turpitude; Sometimes manslaughter and assault are crimes involving moral turpitude, and sometimes they are not.

If further clarification is needed you must look to the statute of conviction, precedent decisions or the FAM. You may also examine the record of conviction, including documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. If the record of conviction is still inconclusive, consider any additional evidence deemed necessary.

Committed Only One Crime

The decision as to whether a crime does or does not involve moral turpitude is particularly important if an alien has committed only one crime.

If the alien has committed only one crime AND the crime ...	**Then the alien ...**
Involves moral turpitude,	Inadmissible.
Does not involve moral turpitude,	Admissible (unless the crime involved prostitution, 10 year bar).

Continued on next page

Crimes Involving Moral Turpitude (CIMT), Continued

Online CIMT References

If an alien has been convicted of a crime, and there is uncertainty whether the crime involves moral turpitude, use the sources below for additional guidance.

Source	Link
VSC Intranet - CIMT Online Reference Document **NOTE**: Always check the CIMT reference information before researching other sources.	Access the CIMT Online Reference Information
Precedent Decisions	Appendix B
The Foreign Affairs Manual (FAM) 9 FAM 40.21(a)	http://www.state.gov/m/a/dir/regs/fam/index.htm

212(a)(6)(C) Misrepresentation

212(a)(6)(C)(i) Fraud or Willful Misrepresentation of Material Fact

An alien is inadmissible if he or she by fraud or willfully misrepresenting a material fact, seeks to procure, sought to procure, or has procured, a visa, other documentation , or admission to the United States or any other benefit provided under the INA, to include false claims to U.S. citizenship made prior to September 30 1996.

212(a)(6)(C)(i) Inadmissibility Considerations

The following considerations must be taken into consideration when determining inadmissibility under section 212(a)(6)(C)(i) of the INA:

- The fraud or willful misrepresentation must have been made to a U.S. government official;
- Misrepresentation must be related to a material fact; and
- Misrepresentation must have been made to obtain a visa, other documentation, or admission to the United States (such as reentry permit, border crossing cards, U.S. passports), or other benefits provided under the INA.

212(a)(6)(C)(ii) (I) & (II) False Claim to U.S. Citizenship

Section 212(a)(6)(C)(ii)(I) of the INA indicates that an alien is inadmissible if after September 30, 1996, he or she falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under the INA (including section 274A or any other federal or state law).

EXCEPTION: Section 212(a)(6)(C)(ii)(II) of the INA
The alien shall not be considered to be inadmissible based on section 212(a)(6)(C)(ii)(I) of the INA if:

- Each natural or adoptive parent of the alien is or was a citizen (by birth or naturalization),
- The alien permanently resided in the United States prior to age 16, and
- The alien reasonably believed at the time of making such representation that he or she was a citizen.

REFRENCE: HQ policy memo date March 3, 2009, Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators.

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212(a)(6)(C)(ii) Inadmissibility Consideration

The following considerations must be taken into consideration when determining inadmissibility under section 212(a)(6)(C)(ii) of the INA:

- Only applies to false claims to U.S. citizenship made on or after 9/30/96.
- Covers false claims made to a State or Federal official for *ANY* State or Federal benefit. Not limited to immigration benefits.
- Covers false claims made to U.S. government or to private individuals, such as an employer (because INA 274A covers the verification of employment eligibility, and statements made during the I-9 process can be made to a private or a Government employer).
- The claim can be in writing, oral, under oath, or not under oath.

False Claim to be a Non-Citizen National of the United States

Claiming falsely to be a non-citizen national of the United States does not render an individual inadmissible under section 212(a)(6)(C)(ii)(I) of the INA. A false claim to be a non-citizen national, whether made on, before, or after September 30, 1996, could make the alien inadmissible under section 212(a)(6)(C)(i) of the INA, if all requirements are met.

Defense of Timely Retraction

While there is a statutory waiver available for this charge, the alien may also use as a defense to this charge the fact that he or she timely retracted the misrepresentation. If the alien timely retracts the statement, the individual is not in need of a waiver. The retraction of the fraud or of the concealment or misrepresentation of a material fact has to be voluntary to work as a defense; that is, the alien must correct his or her testimony voluntarily prior to being exposed by the adjudicator *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949). Admitting to the fraud or misrepresentation after DOS or USCIS has challenged the veracity of the claim is not a timely retraction.

If the alien timely retracted the misrepresentation, the alien is not in need of a Form I-192 waiver; properly document the timely retraction

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Test of Materiality

Generally, a misrepresentation is material if it enabled (if acted upon) or would have enabled the alien to receive a benefit for which he or she would not otherwise have been eligible. *Kungys v. United States*, 485 US 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998).

Determine whether the evidence in the record supports a finding that the alien was inadmissible on the true facts and refer to the table below.

<table>
<tr><th>If a finding is ...</th><th>Then ...</th></tr>
<tr><td>Supported,</td><td>The misrepresentation is material.</td></tr>
<tr><td>Not supported,</td><td>Consider whether the misrepresentation tended to shut off a line of inquiry that was relevant to the alien's eligibility.

<table><tr><th>If ...</th><th>Then ...</th></tr><tr><td>Yes,</td><td>Consider whether the inquiry might have resulted in a proper determination of inadmissibility. Matter of S- and B-C-, 9 I&N Dec. 436, at 447-449 BIA 1960, AG 1961. If yes, then the misrepresentation was material.</td></tr><tr><td>No,</td><td>The misrepresentation is not material.</td></tr></table></td></tr>
</table>

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Burden of Proof

There must be some evidentiary basis for a USCIS conclusion that an alien is inadmissible under section 212(a)(6)(C)(i) of the INA. If there is no evidence that the applicant obtained or sought to obtain some benefit under the INA, you should not find inadmissibility under section 212(a)(6)(C)(i) of the INA.

If there is any evidence that would permit a reasonable person to conclude that the alien may be inadmissible under section 212(a)(6)(C)(i) of the INA, then the alien has the burden of establishing at least one of the following facts:

- That there was no fraud or misrepresentation,
- That any fraud was not intentional or with the intent to deceive, or that the misrepresentation was not willful,
- That any fraud or any concealed or misrepresented fact was not material, or
- That the fraud or misrepresentation or concealment was not made to procure a visa, admission, or some other benefit.

Minors

Generally, a minor under the age of 16 will not be held to have committed fraud or misrepresentation.

For an older child, you must determine if fraud or misrepresentation will apply based on the evidence that:

- The minor had knowledge and was an active participant in the fraud or misrepresentation, and
- That it was willful on the minor's part.

Definitions

Fraud

According to the Board of Immigration Appeals (BIA), a finding of "fraud" requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive a consular or immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). (This is not required for "misrepresentation," see below).

Misrepresentation

A misrepresentation is an assertion or manifestation that is not in accordance with the facts. A material misrepresentation includes a false misrepresentation concerning a fact that is relevant to the alien's entitlement. It is not necessary that there was intent to deceive or that the officer believed and acted upon the false representation. *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

A misrepresentation requires an affirmative act taken by the alien, which can be in the form of oral false statements during an interview, written false statements on an application or petition, or the submission of evidence containing false information. *Matter of L-L-*, 9 I&N Dec. 324(BIA 1961); *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994).

Fraud vs. Misrepresentation

The distinction between "fraud" or "misrepresentation" is not greatly significant. If the evidence shows that the alien made the misrepresentation with intent to deceive, and that the officer believed and acted upon the misrepresentation, then, under *Matter of G-G-*, the alien is inadmissible on the fraud theory. But even assuming there is no intent to deceive or the officer did not believe the alien or act upon the representation, *Matter of Kai Hing Hui* makes clear that the alien is still inadmissible, if the misrepresentation was willful and material.

Willfully

The term "willfully" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161(BIA 1956).

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Definitions, Continued

False	The applicant knowingly misrepresents that he or she is a citizen of the United States when he or she is actually not a citizen.
Material	The test whether a misrepresentation is material is derived from the Supreme Court decision of *Kungys v. U.S.*, 485 U.S. 759 (1988), and in the context of a proceeding to revoke naturalization. According to this decision, a statement is material if it has been shown to be predictably capable of affecting the decision of the decision making body. A misrepresentation made in connection with an application for a visa or other document, or in connection with an entry into the United States, has a natural tendency to influence the decision on the person's case, if either: • The alien is inadmissible/removable/on the true facts; or • The misrepresentation tends to cut off a line of inquiry, which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he or she is inadmissible. *Matter of S-and B-C-*, 9 I&N Dec. 439 (BIA 1961).

212(a)(6)(E) Illegal Entrants and Immigration Violator Inadmissibility Provisions

212(a)(6)(E)(i) Smuggling

Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the United States is inadmissible.

212(a)(6)(E)(ii) Smuggling Exception

Exception for family reunification.

If the alien encouraged, induced, assisted, abetted or aided, only their spouse, parent, son or daughter to enter the United States prior to May 5, 1988, in violation of the law, then clause (i) does not apply if the alien:

- Is eligible as an immigrant,
- Was physically present in the United States on May 5, 1988, and
- Is seeking admission as an immediate relative.

212(a)(9)(A) Aliens Unlawfully Present after Previous Immigration Violations

Inadmissibility Under Section 212(a)(9)(A)

Section 212(a)(9)(A) of the INA applies to applicants who have been ordered removed and provides a time period during which consent to reapply is required. Section 212(a)(9)(A) of the INA is separated into two categories:

- Arriving aliens
- Other aliens

Section 212(a)(9)(A)(I) Arriving Aliens

An alien is deemed inadmissible if he or she has been **ordered removed** under section 235(b)(1) of the INA or at the end of proceedings under section 240 of the INA initiated upon the alien's arrival in the United States and again seeks admission within:

- 5 years of the removal,
- 20 years for a second or subsequent removal, or
- Anytime if convicted of an aggravated felony.

NOTE: Look for a signed Notice and Order of Expedited Removal (Form I-860) in the record.

Section 212(a)(9)(A)(ii) Other Aliens

Any alien not described in clause (i) is deemed inadmissible if he or she has been **ordered removed** under section 240 of the INA or any other provision of law or **departed the United States while an order of removal was outstanding** and who seeks admission within:

- 10 years of the date of his or her departure or removal,
- 20 years for a second or subsequent removal, or
- Anytime if convicted of an aggravated felony.

Factors that Determine Length of Inadmissibility

The length of time an applicant is inadmissible depends on:

- The type of removal proceedings,
- The number of times the applicant was removed, and
- Whether the applicant is an aggravated felon.

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212(a)(9)(A) Aliens Unlawfully Present after Previous Immigration Violations, Continued

Identify Inadmissibility Period

Refer to the table below for the inadmissibility periods that apply.

If the alien...	Then the alien is admissible for...
Was removed only once and was removed as an arriving alien found inadmissible and ordered removed under section 235(b)(1) of the INA or at the end of section 240 proceedings initiated upon the alien's arrival in the United States (section 212(a)(9)(A)(i) of the INA),	5 years
Was removed only once, and was removed under any provision of law, but not as an arriving alien, as detailed in section 212(a)(9)(A)(i) or (ii) of the INA,	10 years.
Has a second or subsequent removal, regardless of the basis for the removal order (section 212(a)(9)(A)(i) or (ii) of the INA),	20 years.
Was convicted of an aggravated felony as defined in section 101(43) of the INA, and was subsequently removed (section 212(a)(9)(A)(i) or (ii)* of the INA),*	Permanently.

NOTE: The statute does not require that the alien must have been removed because of the aggravated felony. The alien is permanently inadmissible if he or she has been removed and has been convicted of an aggravated felony. It does not matter whether the conviction for the aggravated felony was in the United States or abroad or whether the conviction occurred before or after the alien was removed.

IMPORTANT: Section 212(a)(9)(A) of the INA only identifies the required passage of time, not where that time must be spent. 8 CFR 212.2(a) specifies that the time must be spent outside the United States.

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212(a)(9)(A) Aliens Unlawfully Present after Previous Immigration Violations, Continued

Determined if Requisite Time Has Passed

Once the statutory time period has elapsed, the applicant no longer needs consent to reapply under section 212(a)(9)(A) of the INA, provided that he or she has spent the requisite time period outside the United States after removal or self-removal under an outstanding order of deportation, exclusion, or removal.

A temporary stay in the United States that was authorized pursuant to section 212(d)(3) of the INA, permission to enter as a nonimmigrant despite inadmissibility, does not interrupt the running of the requisite time period for section 212(a)(9)(A) of the INA inadmissibility purposes. See 8 CFR 212.2(a).

212(a)(9)(B) Unlawful Presence Inadmissibility

212(a)(9)(B)(i)(I)

An alien is inadmissible under section 212(a)(9)(B)(i)(I) of the INA for a period of 3 years from the date of his or her departure if he or she:

- Resided unlawfully in the United States for an uninterrupted period of more than 180 days but less than 1 year,
- Voluntarily departed prior to the initiation of removal proceedings, and
- Remained outside the United States for less than 3 years since the date of departure.

If removal proceedings are initiated before the alien has been in the United States for more than a year, and the alien leaves after initiation of the removal proceedings pursuant to a grant of voluntary departure, but before the alien has been unlawfully present for more than one year, the alien is not subject to the three year bar.

IMPORTANT: Unlawful presence under section 212(a)(9)(B)(i)(I) of the INA is not counted in the aggregate.

NOTE: An alien is not inadmissible under section 212(a)(9)(B) of the INA if he or she has accrued the requisite amount of unlawful presence but never departs the United States.

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212(a)(9)(B) Unlawful Presence Inadmissibility, Continued

212(a)(9)(B)(i)(II) Ten Year Bar

An alien is inadmissible under section 212(a)(9)(B)(i)(II) of the INA for a period of 10 years from the date of his or her departure or removal if he or she:

- Resided unlawfully in the United States for an uninterrupted period of one year or more,
- Voluntarily departed or was removed from the United States, and
- Remained outside the United States for less than 10 years since the date of departure.

IMPORTANT: Unlawful presence under section 212(a)(9)(B)(i)(II) of the INA **is not** counted in the aggregate.

NOTE: Section 212(a)(9)(B)(i)(II) of the INA does *not* include the "prior to the initiation of removal proceedings" language that is included in section 212(a)(9)(B)(i)(I) of the INA. If the alien has been unlawfully present for one year or more, the 10-year bar of inadmissibility applies whether or not removal proceedings were ever initiated against the alien, and even if the alien left once the proceedings were initiated.

Determining Unlawful Presence

Determining Unlawful Presence

An alien is determined to be unlawfully present in the United States if the alien is present in the United States:

- after the expiration of the period of stay authorized or
- without being admitted or paroled.

The period of unlawful presence must be uninterrupted and the alien must have departed from the United States following the specified period of unlawful presence in order for the alien to become inadmissible under section 212(a)(9)(B) of the INA.

Additional References

Further guidance on determining unlawful presence may be found in the policy memo dated May 6, 2009, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the INA.*

Additionally, guidance concerning unlawful presence and the sections of inadmissibility listed above can be found in AFM 40.9.

Time Counted as Unlawful Presence

General	Any presence in the United States prior to the effective date of the IIRIRA unlawful presence provisions on April 1, 1997, is not counted as "unlawful presence" for purposes of determining admissibility.
Duration of Status	Non-immigrants admitted for duration of status accrue unlawful presence only after DHS or an immigration judge finds a status violation. (See discussion of violation of status, below).
Pendency of Application	With the exception of certain applications, the filing of a petition or application does not grant an alien a period of stay authorized. Unless specifically noted, an alien will continue to accrue unlawful presence during the pendency of the petition or application. Refer to the Present in Legal Immigration Status section for a list of petitions and applications that grant an authorized stay in the United States.
Expired Status	In general, and unless otherwise protected, an alien will commence to accrue unlawful presence after his or her status (as evidenced on Form I-94, Arrival/Departure Record) expires.
Violation of Status	If it has been determined during the adjudication of an immigration benefits petition or application, or the immigration judge during removal proceedings, that the alien has violated his or her status, the individual will start to accrue unlawful presence the day after the determination of having violated his or her status, if this determination was made prior to the expiration of the Form I-94. **NOTE**: Although an alien may become removable because of the status violation, unlawful presence does not begin to accrue on the date of the violation (or when removal proceedings are initiated based on the violation).

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Time Counted as Unlawful Presence, Continued

Removal Proceedings	The initiation of a removal proceeding has no effect either to the alien's benefit or to the alien's detriment, on the accrual of unlawful presence; however, the initiation of removal proceeding may impact whether an alien is inadmissible under section 212(a)(9)(B)(i)(I) of the INA (the 3-year bar). If the alien was already accruing unlawful presence when the removal proceeding was initiated, the alien will continue to accrue unlawful presence, unless the alien comes to be protected from the accrual of unlawful presence (such as by renewing an adjustment or asylum application, or receiving a grant of voluntary departure or TPS). If the alien was not accruing unlawful presence when the removal proceeding began, the alien will continue to be protected from the accrual of unlawful presence, until the expiration date on a date-certain Form I-94 or until the immigration judge (or the Board, on appeal) holds that the alien has violated his or her immigrant or nonimmigrant status, whichever is earlier.
Order of Supervision	If an alien is under an order of supervision, the individual is not in a period of stay authorized.

Time NOT Counted as Unlawful Presence

Present in Legal Immigration Status

If an alien is granted a period of authorized stay, regardless of an alien's entry or immigration history, the alien will not accrue unlawful presence during the period of the grant or status. However, at the end of the period of stay authorized, the alien will revert back to accruing unlawful presence unless he or she is otherwise protected. The following periods are stay authorized (list is not comprehensive):

- Granted nonimmigrant status (note that an applicant in Duration of Status (D/S) will not accrue unlawful presence unless there is a determination of status violation)
- Voluntary departure
- Refugee status
- Asylee status
- Grants of withholding or deferral of removal under the United Nations Convention against Torture
- Grants of TPS and Deferred Enforced Departure.

Under Age 18

Time spent by a child while under age 18 in the United States is not counted as unlawful presence. See Section 212(a)(9)(B)(iii)(I) of the INA.

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Time NOT Counted as Unlawful Presence, Continued

Pending COS or EOS

An alien who was lawfully admitted or paroled will not accrue unlawful presence during the pendency of a timely filed application for change or extension of status under section 212(a)(9)(B)(iv) of the INA.

Each of following requirements must be met:

- The alien has been previously lawfully admitted or paroled into the United States;
- The application was timely filed;
- The application is not frivolous (has an arguable basis in law and fact); and
- The applicant has not engaged in any unauthorized employment before or during the pendency of the application.

The statutory provision allows for the tolling of the unlawful presence for up to 120 days, for purposes of the 3 year bar ***only***. USCIS extended this tolling of unlawful presence by policy. The unlawful presence period is tolled not only for purposes of the 3-year bar, but also for the 10-year bar, and may be tolled beyond the 120 day period and extending to the date a decision is issued, as long as the requirements above are met.

REFERENCE: March 3, 2000 Office of Field Operations memorandum, *Period of stay authorized by the Attorney General after 120-day tolling period for purposes of section 212(a)(9)(B) of the Immigration and Nationality Act* (AD 00-07).

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Time NOT Counted as Unlawful Presence, Continued

COS or EOS Denied	If the application is **denied**, the individual will commence to accrue unlawful presence the day after the denial. If the denial is based on the fact that the application was frivolous, not bona fide, or because the alien had worked without authorization, the alien is deemed to have accrued unlawful presence the day after his or her status (as evidenced on Form I-94, Arrival/Departure Record) expired. If the application was filed untimely, and is ultimately denied, unlawful presence begins to accrue on the date the request is denied. If the application is **approved**, whether filed timely or untimely, the individual is not deemed to have accrued any unlawful presence.
Deferred Action Status	An alien granted deferred action status is in a period of stay authorized and will not accrue unlawful presence.

212(a)(9)(C) Aliens Unlawfully Present After Previous Immigration Violations

Inadmissibility Under Section 212(a)(9)(C)(i)

Inadmissibility under section 212(a)(9)(C)(i) of the INA carries a stronger prohibition than inadmissibility under section 212(a)(9)(A)of the INA, in that (except for certain victims of domestic violence) the alien must remain outside the United States at least 10 years after the date of the alien's last departure before an alien's application for consent to reapply can be approved. See *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007).

If an alien is inadmissible under section 212(a)(9)(A) of the INA and subsequently enters or attempts to enter the United States without being admitted or paroled (i.e., as an EWI), regardless of how much time the alien had spent outside the United States, the alien also becomes inadmissible under section 212(a)(9)(C)(i)(II) of the INA.

Entry Without Inspection

An attempt to reenter the United States without being admitted or paroled is when an applicant unsuccessfully attempts to reenter the United States without presenting him or herself for inspection at a valid port of entry (i.e., is caught trying to cross the border).

Determine if Alien Entered Without Inspection

Check the A-file, EARM, TECS or EOIR screen in CIS, or other available systems for information on whether the applicant has, at any time, entered or attempted to reenter without having been admitted or paroled.

- The applicant may have been turned away or apprehended at the time of attempted entry without proper documents.
- The applicant may have been caught by officials within the United States and been put into removal proceedings.
- ICE may have reinstated the prior removal proceedings based on the applicant having entered without being admitted or paroled after previously being ordered removed.

Attempts to Legally Enter the United States

An attempt to legally enter the United States, (e.g., when the applicant presents him or herself for inspection, even with fraudulent documents) *does not count* as an attempt to enter the United States without being admitted or paroled.

Discretionary Factors

Favorable Discretionary Factors

Some favorable factors found in case law are:

- Family ties in the United States and the closeness of the underlying relationship.
- Unusual hardship to the Evidence of reformation and rehabilitation.
- Length of lawful residence in the United States and status held during that residence (particularly where the alien began his or her residency at young age).
- Evidence of respect for law and order, good moral character, and intent to hold family responsibilities (such as affidavits from family, friends, and responsible community representatives).
- Considerable passage of time since the criminal behavior.
- Absence of significant undesirable or negative factors.
- Eligibility for waiver of other exclusionary grounds.

Unfavorable Discretionary Factors

Some unfavorable factors to consider are:

- Evidence of moral depravity, or criminal tendencies reflected by an ongoing or continuing police record, the nature, recent and seriousness of the criminal violations, if any.
- Repeated violations of immigration laws, willful disregard for other laws.
- Pervious instances of fraud in dealings with service or false testimony.
- Mandatory grounds of inadmissibility for which no waiver exists or for which the alien is not eligible.
- Serious violations of immigration laws which evidence a callous attitude without hint of reformation of character.
- Nature and underlying circumstances of the exclusion ground at issue.
- The presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country.
- Gang involvement.

Continued on next page

Factors that Can Be Considered

The following is a list of some factors that can be considered:

Health - Ongoing or specialized treatment required for a physical or mental condition; availability and quality of such treatment in the country to which removed; anticipated duration of the treatment; chronic vs. acute vs. long or short-term.

Financial Considerations - Future employability; loss due to sale of home or business or termination of a professional practice; decline in standard of living; ability to recoup short-term losses; cost of extraordinary needs such as special education or training for children; cost of care for family members (elderly and sick parents).

Personal Considerations - Close relatives in the United States and country of removal; separation from spouse/children; ages of involved parties; length of residence and community ties in the United States.

Special Factors - Cultural, language, religious, and ethnic obstacles; valid fears of persecution, physical harm, or injury; social ostracism or stigma; access to social institutions or structures (official or unofficial) for support, guidance, or protection.

Adjudicating Form I-192

Required Systems Checks

Refer to the table to below to determine which systems checks are required when adjudicating the Form I-192.

System	Function
TECS	Conduct security checks and resolve any hits
CLAIMS/ GUI	Check for other pending applications.
CIS	Determine if additional files or records exist for the applicant.
NFTS	Determine if any T-files exist for the applicant
EARM	Review the EOIR screen through EARM (or CIS, EARM-X) to determine whether the applicant has been previously placed in removal/deportation hearings or has been previously deported
FD-258	The fingerprint response must be current and the name check response must be completed

FBI Name/DOB Check

An FBI name and date of birth check must be completed on any Form I-192.

Follow the steps below to determine the FBI name/DOB result.

Step	Action
1	Access Mainframe CLAIMS and select: • Item 15- FD 258, Fingerprint Tracking Inquiry. • FBI Name Check Response.
2	Type in applicant's A-number or Name/DOB. • Verify that the response to the FBI Name check has been received. • Review the FBI Name Check Response.

Fingerprints

All waiver applicants must have a current fingerprint check prior to approval.

NOTE: Look for any additional A-numbers on the RAP Sheet.

Continued on next page

No Fingerprints or Expired Non-IDENT Fingerprints

(b)(7)(e)

Expired Fingerprints: IDENT

TECS Checks

You are required to do a TECS query on the name of the applicant listed on the Form I-192. Whenever possible, run TECS under the applicant's A-number.

If you change the name of the applicant on the Form I-192 based upon documents reviewed in the file, then perform an TECS query on the changed name as well as the name originally found on the application.

Non-Ident and Derogatory Information

(b)(7)(e)

Determine if a Waiver is Available

Once all inadmissibility grounds have been identified, determine if a waiver is available. If a waiver is available for each inadmissibility ground identified, then determine if the applicant meets all of the waiver requirements and merits a favorable exercise of discretion.

Continued on next page

Evidence of Conviction

Evidence of a conviction for a crime is normally in the form of a documentary record from the court where the conviction occurred.

- If an alien were inadmissible for commission of a crime for which he or she was not convicted, the alien's admission would be the evidence of such inadmissibility.
- If the alien has been convicted of a crime, and there is not an official record of the conviction in the record of proceeding, the official record should be requested from the alien.

Adjudication Considerations

The questions below will help guide you through the adjudication process:

- Have all A-Files been obtained? If not, has an electronic version been reviewed?
- Is the alien inadmissible? On what grounds?
- If health waiver, is there a recommendation from CDC?
- If criminal, is a conviction in the record?
- If unlawful presence, has the alien departed the United States?
- Does the applicant need to file a Form I-192?

IMPORTANT: Decisions on waiver applications remain discretionary, and must be adjudicated only after a careful review of all positive and negative factors.

NOVA Stats Recording

Production stats will be recorded in NOVA under Production Training.

- Select
- Hours
  - Day
  - Units Stats Entry
  - Adjudications
  - Select Waivers (I-192) form type
- Enter hours
- Save

I-192 Summary Memo

Introduction

The I-192 Summary Memo is used to make a formal argument that waiving of the applicant's inadmissibility ground(s) would be in the national or public interest under INA 212(d)(14).

Purpose

An I-192 Summary Memo is required for any controversial approval of a Form I-918 or Form I-918A, where the applicant is inadmissible on criminal grounds or related activity.

Types of cases that MUST have an I-192 Summary Memo

Depending upon the type of inadmissibility or criminality grounds, some cases with the I-192 Summary Memo also required a signature from the VAWA-T-U Section Chief. Refer to the table below for cases that must have an I-192 Summary Memo prior to approval:

Type of Inadmissibility or Criminal Grounds	Section Chief Signature Required
Violent crime by the applicant	Yes
Crime involving moral turpitude (CIMT)	Yes
Gangs: suspected gang member, known gang member, any affiliation with gangs or gang members **NOTE:** This information can come from any place in the file, record or non-record side, or from the TECS resolution memo;	Yes
Drug trafficking	Yes
Multiple Convictions	Yes
Sex crime by the applicant	Yes
Drug possession	Possible*
DV by the applicant	Possible*
Any other activities that would make an approval controversial.	Possible*

*Refer to supervisory guidance to determine if Section Chief sign-off is required on the I-192 Summary Memo.

Continued on next page

Gang Membership

A determination of gang membership should be made by documented membership contained in the file, and/or evidence contained in the record. You must write an I-192 Summary Memo for all cases involving evidence of gang membership, not *"possible gang affiliation"*.

Refer to the table below for cases referencing gang affiliation.

If the gang affiliation information comes from...	**Then the file should be routed to...**
TECS records,	The BCU. You must ask BCU to contact the TECS record owner and explain the source and reason behind the gang affiliation record. **CAUTION:** You must make sure the information in the resolution is adequate, and that it does not conflict with the information in the file (e.g. "known gang member" becoming "suspected gang member.")
ICE Records,	CFDU to ask CFDU to contact ICE and find out whether the gang affiliation can be substantiated. These referrals and results must be included on the non-record side of the file. Refer to the Non-TECS NS and EPS SOP for further instructions.

Continued on next page

I-192 Summary Memo, Continued

Creating the I-192 Summary Memo

Address each section on the memo as it relates to the controversial decision requiring the submission of the I-192 Summary Memo.

You must ensure that:

- The file receipt number reflects the receipt number of the Form I-192, not the I-918 receipt number;
- The waiver of consideration is granted under 212(d)(14);
- Inadmissibility grounds are written to include the description of inadmissibility (e.g. 212(a)(6)(A)(i), Alien present without admission or parole); and
- If a ground does not apply to the applicant, or to his or her specific set of circumstances, mark that particular section of the summary as "Not Applicable," "N/A," or "None".

IMPORTANT: N/A or none is often marked on the "Nexus between the criminal acts or other antisocial behavior and the claim to victimization" section of the I-192 Summary Memo, even when there is a nexus. Review all the elements surrounding the qualifying crime as this this can be the most powerful section of the summary.

The I-192 Summary Memo is placed on non-record side of the file, and remains in file after adjudication. An I-192 Summary Memo is *not* required for denials as the denial letter will cover reasoning for the decision.

NOTES: The I-192 Summary Memo is located in MS Word, Add'l Resources, ADJ Worksheets, Humanitarian - VAWA, I-918 folder, I-918 I-192 Summary Memo.

Approvals

Processing & CLAIM/GUI Update

Follow the steps below when approving a Form I-192.

Step	Action
1	Check TECS if applicable
2	Complete an Adjudication Worksheet.
3	Update CLAIMS/GUI. Press [F10] and Select: • Case Review, Approve the Case, and Approve - Order Notice.
4	Enter "N" to clerical on the approval screen and Save.
5	• Complete the third (approval) page of both the original and KCC copy of the Form I-192 • Stamp the Form I-192 with approval stamp in the top middle of the page • Sign (the file copy and the copy that will be sent to the KCC). **REMINDER:** Be sure to clearly annotate all grounds of inadmissibility that are being waived.
6	Place or write the EAC number of the I192 on the third (approval) page of the I192.

Requests for Evidence (RFEs)

RFEs

An RFE may be issued to the applicant if missing initial or additional evidence is needed to adjudicate the Form I-192.

Processing & CLAIMS/GUI Update

Follow the steps below to process and update an RFE.

Step	Action
1	Prepare your RFE in CG and save under the EAC #.
2	Type or wand the A number into Adjudicate a Case
3	Verify the following applicant data fields: • Name • Address • Date of birth • A-number, if applicable • G-28 information, if applicable **NOTE**: If any of the fields are incorrect or missing, you must make the necessary data changes.
4	Press [F4] to save, if changes are made. **NOTE:** If G-28 information is corrected, press [F4] after entering the data on the Information About the Attorney or Representative screen, then press [F4] again after this screen has been closed.
5	Update CLAIMS/GUI. Press [F10] and select: • Case Review • Place in Suspense • Order Initial, Additional, or Initial and Additional Evidence Request Notice
6	Select "Yes" to "Change Case Status?".
7	• Press [Esc] until "Exit Case?" appears. • Select "Yes" to return to the main screen.
8	Attach an Adjudications worksheet and check off "87 days".

Denials

Waiver Not Available

If the applicant is inadmissible under an inadmissibility ground for any ground the officer chooses not to waive, deny the Form I-192. Any inadmissibility ground for which a waiver is not being granted should be cited in your denial as the basis for the denial.

Denial Notice Content

Denial notices must include the following:

- Statement of applicable inadmissibility provision(s) and how it applies to the specific facts of the case.
- Discussion of the requirements to establish eligibility for the relevant waiver.
- Discussion of the claim made by the applicant related to eligibility for the waiver and documents submitted in support of the waiver.

Continued on next page

Processing & CLAIMS/GUI Update

Follow the steps below when denying a Form I-192.

Step	Action
1	Check TECS if applicable.
2	Construct the denial using CG
3	Save denial in CG.
4	Stamp the Form I-192 with the denial stamp in the top middle of the third (approval) page and sign.
5	Update CLAIMS/GUI. Press [F10] and: • Double Click on "Deny the Case", • Order Denial Notice, and • "N" to clerical release.
6	• Select "Yes" to continue then "Close" **or** • Press [ESC] twice.
7	When the "Supervisor Hold" box comes up, click "OK"
8	Press [Shift] + [F8] **NOTE:** You can also click on 'Remove Hold' then 'Remove Supervisor Hold' on the toolbar at top.
9	Send to supervisor for sign off.
10	Click "Yes" to remove supervisor hold.
11	Press [ESC] or the "Cancel" button, and then "Yes" to exit form.
12	Release denial when case is returned from your supervisor

Appeals and Motions

A denial of a Form I-192 for a waiver is a discretionary decision and there are no appeal rights to the Administrative Appeals Office (AAO).

A denial of a Form I-192 for a waiver under section 212(g) of the INA based upon an unfavorable recommendation from Center for Disease Control (CDC) has appeal rights with the U.S. Public Health Service at the CDC.

Motions may be filed by the Form I-192 applicant or the Qualifying Family Member.

Appendix A: Statutory Authority

Statute	The INA sections of law that apply to Form I-192 are listed below: • Section 212(d)(3) • Section 212(d)(13) • Section 212(d)(14)
Regulations	The regulations that apply to Form I-192 are listed below: • 8 CFR 212.7(a)
Adjudicator Field Manual	Chapter 41 of the Adjudicator Field Manual applies to Form I-192.

Appendix B: Documents to Review in A-File

Documents to Review

Form	Description
I-205	Warrant of Removal
I-210	Notice of Action – voluntary departure
I-213	Record of Deportable/Inadmissible Alien
I-246	Application for Stay of Removal
I-259	Notice to detain, deport, remove, or present alien
I-261	Additional charges of removability
I-275	Withdrawal of Application for Admission/Consular Notification
I-296	Notice to alien ordered removed
I-851	Notice of intent to issue final deportation order
I-851A	Final administrative removal order
I-860	Notice and Order of Expedited Removal
I-862	Notice to Appear or Order to Show Cause
I-867AB	Record of Sworn Statement
I-881	Application for suspension of deportation or cancellation of removal
G-170	Alien Smuggler Data Input Sheet
EOIR 40	Application of Suspension and/or decision made by the IJ on the Application
IJ Decisions	Decisions by Immigration Judge (i.e.-order of deportation and decision on Motion to Reopen proceedings)
BIA Decisions	Any appeal decisions by the Board of Immigration Appeals (BIA)
Other	Any other documents that may assist in making a qualifying decision

Moral Turpitude Decisions

***Matter of Abreu-Semino*, 12 I&N Dec. 775, 777 (BIA 1968)**	Classification of a crime as a felony or misdemeanor does not control whether a crime is a CIMT.
Matter of Ahortalejo-Guzman, 25 I&N Dec 465 (BIA 2011)	Evidence outside of an alien's record of conviction may properly be considered in determining whether the alien has been convicted of a crime involving moral turpitude only where the conviction record itself does not conclusively demonstrate whether the alien was convicted of engaging in conduct that constitutes a crime involving moral turpitude.
***Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988)**	An aggravated assault against a peace officer, which results in bodily harm to the victim and which involves knowledge by the offender that his force is directed to an officer who is performing an official duty, constitutes a CIMT.
***Matter of Fernandez*, 14 I&N Dec 24 (BIA 1972)**	• Conviction of transporting forged securities in interstate commerce is a CIMT. • A 3-year sentence to imprisonment on each of two counts of an offense, with the sentences to run concurrently, does not constitute "aggregate sentences to confinement actually imposed" of "5 years or more" within the meaning of section 212(a)(10) of the INA. • Refusal to entertain section 212(h) of the INA application for a waiver of excludability because the applicant was still in prison was not improper.
***Matter of Franklin*, 20 I&N Dec. 867 (BIA 1994)**	A conviction for involuntary manslaughter pursuant to sections 562.016(4) and 565.024(1) of the Missouri Revised Statutes constitutes a CIMT within the meaning of section 241(a)(2)(A)(i) of the INA, where Missouri law requires that the convicted person must have consciously disregarded a substantial and unjustifiable risk, and that such disregard constituted a gross deviation from the standard of care that a reasonable person would exercise in the situation.

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Moral Turpitude Decisions, Continued

***Matter of Garcia-Hernandez*, 23 I&N Dec. 590 (BIA 2003)**	• An alien who has committed more than one petty offense is not ineligible for the "petty offense" exception if "only one crime" is a CIMT. • An alien who has committed a CIMT that falls within the "petty offense" exception is not ineligible for cancellation of removal under section 240A(b)(1)(B) of the INA, because commission of a petty offense does not bar the offender from establishing good moral character under section 101(f)(3) of the INA. • The respondent, who was convicted of a CIMT that qualifies as a petty offense, was not rendered ineligible for cancellation of removal under section 240A(b)(1) of the INA by either his conviction or his commission of another offense that is not a CIMT.
***Matter of Goldeshtein*, 20 I&N dec. 382 (BIA 1991)**	• Structuring any transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements of the financial institution(s) in violation of 31 U.S.C. 5324(3) (1988) entails a deliberate deception and impairment of governmental functions; thus, it is inherently fraudulent and is a CIMT. • Conspiracy to commit an offense. • Involves moral turpitude when the underlying substantive offense is a CIMT.
***Matter of McNaughton*, 16 I&N Dec. 382 (BIA 1978)**	• A foreign conviction, to be the basis for a finding of inadmissibility, must be for conduct deemed criminal by US standards. • If the conviction is for conspiracy, moral turpitude is present if the substantive offence to be committed pursuant to the conspiracy involves moral turpitude • A crime, a necessary element of which is intent to defraud the investing public, involves moral turpitude, and the motivation for the crime does not bear on the nature of the offense.

Continued on next page

Moral Turpitude Decisions, Continued

***Matter of Perez-Contreras*, 20 I&N Dec. 615 (BIA 1992)**	• Crimes involving negligent conduct, where the offender failed to be aware of a substantial risk involved in the conduct, are generally not found to involve moral turpitude. • A conviction for assault in the third degree under section A.36.031(1)(f) of the Revised Code of Washington is not a firearm offense where use of a firearm is not an element of the offense • The board withdraws from *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974), to the extent it holds that assault in the third degree resulting in great bodily harm is a CIMT without regard to the existence of intentional or reckless conduct.
***Matter of Serna*, 20 I&N Dec. 579 (BIA 1992)**	• Neither the seriousness of a criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. • A conviction under 18 U.S.C. 1546 (1982) for possession of an altered immigration document with knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a conviction for a CIMT.
***Matter of Short*, 20 I&N Dec. 136 (BIA 1989)**	• Statute, not conduct controls whether a crime is a CIMT. • If the underlying or substantive CIMT, then a conviction for aiding in the commission of the crime or for otherwise acting as an accessory before the fact is also a conviction for a CIMT. *Matter of F-*, 6 I&N Dec. 783 (BIA 1955), followed. • The BIA withdraws from *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974), to the extent that it holds that an assault with intent to commit a felony is per se a CIMT without regard to whether the underlying felony involves moral turpitude; there must be a finding that the felony intended as a result of the assault involves moral turpitude.
***Matter of Wojikow*, 18 I&N Dec. 111 (BIA 1981)**	Reckless conduct or a conscious disregard of substantial risk can equal moral turpitude.

***Matter of Barnes*, 10 I&N Dec. 755 (BIA 1964)**	Application for waiver, pursuant to section 212(g) of the INA, of excludability under section 212(a)(9) of the INA is denied, in the exercise of discretion, in the case of an alien who is at liberty under a sentence-imposed, 3-year good behavior bond, without prejudice to reconsideration upon the expiration date of the bond required by the sentence imposed.
***Matter of Bernabella*, 13 I&N Dec. 42 (BIA 1968)**	• An applicant, whose marriage to a USC occurred subsequent to his last admission to the US as a nonimmigrant, is ineligible for a *nunc pro tunc* section 212(h) waiver of the criminal inadmissibility grounds that existing at entry. • Applicant is also ineligible at the present time for section 212(h) waiver in current deportation proceedings; Section 212(h) of the INA benefits only available in deportation proceedings in conjunction with adjustment of status under section 245 or 249 of the INA (of which the applicant was ineligible).
***Matter of Parodi*, 17 I&N Dec. 608 (BIA 1980)**	• An alien convicted on August 2, 1977, for passing counterfeit Federal Reserve notes, and sentenced to six years imprisonment, who was also convicted for the same acts on June 30, 1978 of conspiring to commit offenses against the US (in connection with which conviction the judge recommended against deportation), is deportable under the first part of section 241(a)(4) of the INA for the 1977 conviction, despite the fact the convictions arose out of a single scheme of criminal misconduct. • An alien granted recommendation against deportation by a judge in one criminal proceeding, is not protected by that recommendation from deportation if convicted in another, separate criminal proceeding, in a different court and under a different charge, for the same underlying criminal misconduct, unless the second court also issues a recommendation against deportation. • 212(h) waiver may be obtained in deportation proceedings by an alien deportable under 241(a)(4) if it is granted *nunc pro tunc* or in conjunction with adjustment of status.

Continued on next page

***Matter of Haller*, 12 I&N Dec. 319 (BIA 1967) – sec. 212(h)**	• An applicant, who was separated from wife for 7 years, was declared eligible for section 212(g) of the INA waiver of criminal inadmissibility grounds, as hardship to his wife and children (who relied on him for monetary support) would result from his deportation. • Applicant was only eligible under non-preference quota and required to present a labor certification. Applicant was determined to be excludable under section 212(a)(14) of the INA and statutorily ineligible for benefits under section 245 of the INA.
***Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981)**	• FJDA defines a juvenile as a person who has not yet reached age 18, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not reached age 21. • FJDA defines juvenile delinquency as the violation of a United States law committed by a person prior to age 18 which would have been a crime if committed by an adult. • Pursuant to the FJDA, an act of juvenile delinquency while under rage 16 is not subject to prosecution as an adult, regardless of the nature of the offense or potential punishment, and is entitled to benefit from the protective and rehabilitative provisions of the FJDA.
***Matter of T*, 18 I&N Dec. 474 (BIA 1955)**	To "engage in" prostitution, one must have engaged in a regular pattern of behavior and conduct.

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***Matter of Sanchez*, 17 I&N Dec. 218 (BIA 1980)**

- A crime committed by an alien within 5 years of entry can form the basis for deportation.
- While an alien coming into the U.S. under custody did not make an entry, as he was not "free from actual or constructive restraint", an entry was made at the time he was released from custody.
- In order for an alien to establish "domicile" in for section 212(c) purposes, he must have the intention of making the U.S. his home for the indefinite future; that an alien is an LPR does not necessarily mean he is domiciled in the U.S.
- An alien residing with his family abroad, who commuted to work in the US, but had no home here is unable to satisfy the 7 years relinquished domicile requirement for 212(c), despite having a U.S. driver's license, paying taxes and registering for the Selective Service.
- Relief under section 212(h) may be granted *nunc pro tunc* in deportation proceedings in order to cure a ground of inadmissibility at the time of entry.

***Matter of Vaccarello*, 11 I&N Dec. 218 (OIC 1964)**

In the absence of persuasive, appealing factors, the application for waiver pursuant to 212(g) under sections 212(a)(9) and (10), is denied in discretion, in the case of an alien convicted in Italy in 1948 for continued extortion, in association with 14 other men in an operation bearing a strong resemblance to the activities of an organized criminal band.

Fraud/ Misrepresentation Decisions

***Matter of R-R-*, 10 I&N Dec, 696 (OIC 1963)**	Section 212(h) waiver of inadmissibility under section 212(a)(19) is granted to an applicant who has evidenced complete reformation and rehabilitation since his misrepresentations in securing a border crossing card in 1980; whose exclusion would result in serious hardship to his U.S. citizen dependent wife and child, and whose admission would not be contrary to the welfare, safety or security of the U.S.

Unlawful Presence Decisions

***Matter of Briones*, 24 I&N Dec. 355 (BIA. 2007)**	• Section 212(a)(9)(C)(i)(I) covers recidivist immigration violators, so to be inadmissible under that section, an alien must depart the United States after accruing an aggregate period of "unlawful presence" of more than 1 year and thereafter reenter, or attempt to reenter, the United States without being admitted. • Adjustment of status under section 245(i) is not available to an alien who is inadmissible under section 212(a)(9)(C)(i)(I).
***Matter of Diaz-Castaneda & Lopez Diaz*, 25 I&N Dec. 188 (BIA. 2010)**	An alien who is inadmissible under section 212(a)(9)(C)(i) is ineligible for adjustment of status under section 245(i). Matter of Briones, 24 I&N Dec. 355 (BIA 2007), reaffirmed.

Previous Revisions

Historical Revisions to SOP

The revisions listed below represent changes that were made to this document since it was created.

Revision	Date	Description	KM#
1	06/21/13	Document Created	
2	8/8/13	Corrected spelling and grammatical errors	
		Updated block entitled "General" to clarify that FBI Name Checks are only required for final decisions regarding applicants who are over the age of 14.	
3	8/27/13	Removed information indicating that Automatic Relocates can be sent to the district office without an FBI Name/DOB Check..	
		Added bullets to block entitled "Form I-192 FBI Name Check Process, Continued	
		Replaced references to IBIS with TECS	
4	11/14/13	Corrected Claims/GUI denial updating instructions	868
		Replaced Claims references with "Claims/GUI"	
		Updated instructions regarding adjudicating a pending Form I-193 contained in the file.	949
		Removed reference to Returned Mail SOP and corrected typographical error	959
5	1/8/14	Corrected instructions for stamping the Form I-192	1083
		Corrected instructions for stamping the Form I-192	
6	5/12/14	Converted SOP to new format.	--
7	5/20/14	Added resources for fingerprint resubmission form.	1674
--	--	Corrected broken hyperlinks.	1674
8	3/2/15	Clarified that FBI Name Checks are applicable for all applicants age 14 and older.	17
--	--	Corrected INA citations	25-26