

CATHERINE CORTEZ MASTO
NEVADA

516 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-3542
CortezMasto.Senate.Gov

United States Senate

May 24, 2019

COMMITTEES:
FINANCE
BANKING, HOUSING, AND
URBAN AFFAIRS
ENERGY AND NATURAL RESOURCES
INDIAN AFFAIRS
RULES AND ADMINISTRATION

2019 MAY 28 AM 8:25
SCANNED/RECEIVED
BY EXEC SEC

The Honorable Kevin McAleenan
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, DC 20016

Dear Acting Secretary McAleenan,

In light of this administration's stated interest in immigration reform, I write today to obtain information on the administration's implementation of the three- and ten-year bars on reentry.

As you know, the three- and ten-year bars were created as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The statute imposes reentry bars on immigrants who accrue unlawful presence in the United States. These provisions make it much more difficult for those who have avenues to adjust their status to do so if they have previously accrued unlawful presence. In order to better understand the effects of these provisions of immigration law, please respond to the following questions by June 21st, 2019.

1. In the last three fiscal years, how many applicants for legal permanent residence per year completed the 3-year bar and were able to return to the United States with a visa?
2. In the last three fiscal years, how many applicants for legal permanent residence per year had the 3-year bar waived and were able to return to the United States with a visa?
3. In the last three fiscal years, how many applicants for legal permanent residence per year completed the 10-year bar and were able to return to the United States with a visa?
4. In the last three fiscal years, how many applicants for legal permanent residence per year had the 10-year bar waived and were able to return to the United States with a visa?
5. What is the average age of applicants for legal permanent residence who have overcome the 3-year bar?
6. What is the average age of applicants for legal permanent resident who have overcome the 10-year bar?

Too many of my constituents have had their futures put on hold by provisions of immigration law that seem to do more harm than good. I hope your response to these questions will shed light on the common-sense reforms that our immigration laws need. Thank you for your attention to this matter.

Sincerely,

Catherine Cortez Masto
United States Senator

LAS VEGAS
333 LAS VEGAS BOULEVARD SOUTH
SUITE 8016
LAS VEGAS, NV 89101
(702) 388-5020
FAX: (702) 388-5030

RENO
400 SOUTH VIRGINIA STREET
SUITE 902
RENO, NV 89501
(775) 686-5750
FAX: (775) 686-5757



**U.S. Citizenship
and Immigration
Services**

September 27, 2019

The Honorable Catherine Cortez Masto
United States Senate
Washington, DC 20510

Dear Senator Cortez Masto:

Thank you for your May 24, 2019 letter. Acting Secretary McAleenan asked that I respond on his behalf.

In 1996, to deter recidivist immigration violations, Congress added the unlawful presence grounds of inadmissibility to the Immigration and Nationality Act (INA), including section 212(a)(9)(B), which made certain individuals who had accrued more than 180 days of unlawful presence and thereafter departed, inadmissible to the United States. Aliens who are subject to section 212(a)(9)(B) are barred from admission for 3 years or 10 years, unless that ground of inadmissibility is waived. The length of the inadmissibility period is determined by how long the alien was unlawfully present in the United States prior to his or her departure. These inadmissibility bars only apply if the alien departs the United States after having accrued the requisite amount of unlawful presence.

U.S. Citizenship and Immigration Services (USCIS) administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values. USCIS is not alone in administering the grounds of inadmissibility under section 212 of the INA, including the 3-year and 10-year unlawful presence bars. The grounds of inadmissibility codified by Congress in section 212 of the INA generally apply to aliens in a number of situations, including when an alien seeks an immigrant or nonimmigrant visa from the Department of State (DOS); applies for admission with or without a visa at a port of entry with U.S. Customs and Border Protection (CBP); and applies for certain immigration benefits with USCIS or with the Department of Justice, Executive Office for Immigration Review (EOIR). The inadmissibility grounds also apply to most aliens who have entered or attempted to enter the United States at locations other than ports of entry.

If an alien is inadmissible to the United States under the 3-year or 10-year unlawful presence bar, and if eligible under the law, the alien may seek a waiver of that ground of inadmissibility. USCIS adjudicates waivers of inadmissibility filed by aliens seeking an immigrant visa with DOS or adjustment of status with USCIS.¹ This waiver permanently waives the 3-year or 10-year unlawful presence bar. The waiver is requested by filing Form I-601, *Application for Waiver of Grounds of Inadmissibility*. Since 2013, certain aliens who are only inadmissible based on the 3-year or 10-year unlawful presence bar may seek a provisional unlawful presence waiver while present in the United States by filing Form I-601A, *Application for Provisional Unlawful Presence Waiver*.² An approved provisional unlawful presence waiver is not effective unless and until the alien departs from the United States, appears for the immigrant visa interview scheduled by DOS, and is determined to be otherwise eligible for an immigrant visa by the DOS officer.

CBP generally adjudicates applications for waivers of the 3-year and 10-year unlawful presence bars in the nonimmigrant context.³ This type of waiver overcomes the inadmissibility ground only temporarily and for the duration of the alien's nonimmigrant stay in the United States.

The 3-year and 10-year unlawful presence bars apply to an alien's admission to the United States for either a 3-year or 10-year period. The unlawful presence bar no longer applies after the 3-year or 10-year period of inadmissibility has concluded. During the 3-year or 10-year period, an alien may generally only be admitted if the alien applies for, and the government agency with jurisdiction over the alien grants, a waiver of inadmissibility. The approval of a waiver or the expiration of the period of inadmissibility, however, does not guarantee visa issuance, admission at the U.S. border, or adjustment of status in the United States, as there are a number of other eligibility requirements for these benefits.

In your letter, you requested a response to six questions relating to the implementation of the 3-year and 10-year unlawful presence bars during the last three fiscal years. While USCIS is providing the data and information that is available in its databases, the available data is limited to the information contained in forms that USCIS adjudicates. USCIS does not possess information relating to aliens found inadmissible by EOIR or DOS in its databases. Therefore, USCIS defers to EOIR and DOS to provide that information.

In regard to your questions relating to the number of applicants for lawful permanent resident status after the 3- or 10-year unlawful presence bar has run, aliens who are no longer inadmissible due to the unlawful presence bars because more than 3 years or 10 years have passed since the alien's departure need not apply for a waiver of the inadmissibility ground in order to be granted status as a lawful permanent resident of the United States. USCIS does not have any information about how many aliens were able to return to the United States after the end of the inadmissibility period.

¹ See INA § 212(a)(9)(B)(v).

² See 8 CFR § 212.7(e).

³ See INA § 212(d)(3)(A).

USCIS makes the following additional notes concerning the limitations of the available data:

- Form I-601A does not distinguish between aliens seeking a waiver of the 3-year bar and those seeking a waiver of the 10-year bar. As a result, the USCIS data below concerns overall approvals of provisional unlawful presence waiver applications.
- Form I-601 is used to request waivers for a wider range of section 212 inadmissibility grounds, but it is also used by foreign nationals physically outside of the United States to request a waiver of the 3-year bar or 10-year bar. Foreign nationals who are physically outside of the United States are not eligible to apply for a provisional unlawful presence waiver using Form I-601A.
- There may be instances in which applicants make incorrect inadmissibility ground selections on Part 4 of the Form I-601, or fail to select an applicable inadmissibility ground in Part 4. Therefore, data may be missing from the electronic record or the electronic record may contain incorrect data. USCIS officers review the paper Form I-601 and all supporting evidence prior to making a decision on the Form I-601. If an I-601 is approved, officers are directed to indicate on the paper Form I-601 and in the electronic case processing system which specific grounds of inadmissibility have been waived. However, there are instances in which USCIS officers may make data entry errors in the adjudicative systems when approving Form I-601. As a result, the Form I-601 totals for the unlawful presence grounds should be viewed as approximates.

Waiver Approval Information:

Fiscal Year of Approval	Form I-601A Approvals	Form I-601 (Unlawful Presence) Approvals
FY2018	41,580	2,846
FY2017	68,636	2,567
FY2016	33,291	3,382

Mean Age of Approved Waiver Applicants on the Date of Approval:

Fiscal Year	Mean Age, Applicant of Approved I-601A	Mean Age, Applicant of Approved I-601 (Unlawful Presence)
FY2018	37.3 years	41.8 years
FY2017	36.3 years	41.1 years
FY2016	35.1 years	39.9 years

USCIS emphasizes again that the approval of an application for a waiver or provisional waiver of the 3-year and 10-year unlawful presence inadmissibility bars does not mean that the alien became a lawful permanent resident through adjustment of status or consular processing of an immigrant visa with DOS and admission as a lawful permanent resident by CBP at a U.S. port of entry.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ken C II", with a stylized flourish at the end.

Ken Cuccinelli II
Acting Director