

From: U.S. Citizenship and Immigration Services [<mailto:uscis@public.govdelivery.com>]
Sent: Tuesday, March 18, 2014 3:33 PM
Subject: USCIS Message: Form I-601A, Provisional Unlawful Presence Waiver

Dear Stakeholder,

We wish to answer a question the public has posed regarding how we at U.S. Citizenship and Immigration Services (USCIS) adjudicate an application for a provisional unlawful presence waiver, Form I-601A (the “I-601A waiver”).

The provisional unlawful presence waiver process allows immediate relatives of U.S. citizens (spouses, children, or parents) who are currently residing in the United States to apply for a provisional waiver while in the United States, provided they meet all eligibility requirements outlined in the regulations and warrant a favorable exercise of discretion. The law provides that USCIS can deny an I-601A waiver application if USCIS has reason to believe that the individual is subject to another ground of inadmissibility, in addition to the unlawful presence ground that is the subject of the I-601A waiver application.

The public asked us: when the possible additional ground of inadmissibility is a prior criminal offense, does the existence of *any* prior criminal offense trigger the automatic denial of the I-601A waiver application, or must USCIS have reason to believe that the prior criminal offense would actually render the applicant inadmissible? There are some criminal offenses, such as certain petty offenses for example, that do not serve as a ground of inadmissibility under the governing statutes.

In response, USCIS has determined that it should not find a reason to believe that the prior criminal offense would render the applicant inadmissible and deny an I-601A waiver application based on a prior criminal offense if the criminal offense falls under the petty offense or youthful offender exceptions or is not considered a crime involving moral turpitude. This answer is reflected in USCIS’s January 24, 2014 [field guidance](#).

Starting on March 18, 2014, USCIS will reopen, on its own motion, all I-601A waiver applications that were denied prior to January 24, 2014, solely because of a prior criminal offense, in order to determine whether there is reason to believe the prior criminal offense might render the applicant inadmissible. USCIS will re-adjudicate the cases where applicants have not been issued an immigrant visa, consistent with the new field guidance. USCIS will notify applicants (and their legal representatives) of this action within 60 days. Once the case has been reopened and reviewed, USCIS will continue to process the I-601A waiver application and either approve or deny it or request additional information from the applicant.

Applicants may check the status of their case [online](#). For more information, please visit www.uscis.gov/provisionalwaiver.

Kind Regards,

USCIS Public Engagement Division