VAWA-Based Adjustment of Status: Inadmissibility Waivers & Exceptions[1]

November 2024

Grounds of Inadmissibility	VAWA Waivers	VAWA Exceptions	General Waivers	General Exceptions
INA § 212(a)(1)(A)(i) *communicable disease of public health significance*	INA § 212(g)(1)(C), requires the VAWA Self-Petitioner to demonstrate that they merit a favorable exercise of discretion and for USCIS to consult with the CDC before determining whether to grant the waiver	*None.*	INA § 212(g)(1), requires a qualifying relationship and for USCIS to consult with the CDC before determining whether to grant the waiver[2]	*None.*
INA § 212(a)(1)(A)(ii) *vaccination against vaccine-preventable diseases*	*None.*	*None.*	INA § 212(g)(2), includes where a vaccination would not be medically appropriate or where a vaccination would be contrary to the noncitizen's religious beliefs or moral convictions[3]	INA § 212(a)(1)(C), for certain adopted children, aged 10 or younger, who are seeking an immigrant visa as an immediate relative. The adoptive or prospective parent must execute an affidavit stating they will ensure that the child will receive the necessary vaccinations within 30 days of the child's admission or as soon as is medically appropriate.[4]

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INA § 212(a)(1)(A)(iii) *physical or mental disorders associated with harmful behavior*	*None.*	*None.*	INA § 212(g)(3), requires USCIS to consult with the CDC and USCIS may impose terms and conditions to the waiver. No qualifying relationship is required.	*None.*
INA § 212(a)(2)(A)(i)(I) *Crime Involving Moral Turpitude (CIMT)*	INA § 212(h)(1)(C), if the VAWA Self-Petitioner can demonstrate they merit a favorable exercise of discretion and the LPR bars do not apply	*None.*	INA § 212(h)(1)(A), if the activities for which the noncitizen is inadmissible occurred more than 15 years ago; the noncitizen's admission would not be contrary US national welfare, safety, or security; the noncitizen has been rehabilitated; and the LPR bars do not apply *-OR-* INA § 212(h)(1)(B), the immigrant's USC or LPR spouse, parent, son, or daughter would suffer extreme hardship and the LPR bars do not apply	INA § 212(a)(2)(A)(ii)(I), youth exception: where the noncitizen committed only one crime when they were under 18 years of age and more than 5 years have passed since they committed the crime (and were released from any confinement) before the date of application for a visa or other documentation and the date of application for admission to the U.S. INA § 212(a)(2)(A)(ii)(II), petty offense exception: where the maximum possible penalty for the crime the noncitizen was convicted of or admits to committing the essential elements of the crime did not exceed imprisonment for one year and, if the noncitizen was convicted, they were not actually sentenced to more

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				than 6 months' imprisonment (regardless of the time actually served)
INA § 212(a)(2)(A)(i)(II) *controlled substance violation only for a single controlled substance conviction for simple possession of 30 grams or less of marijuana or related offense* *(other controlled substance violations are not waivable)*	INA § 212(h)(1)(C), if the VAWA Self-Petitioner can demonstrate they merit a favorable exercise of discretion and if it relates to a single offense of simple possession of 30 grams or less of marijuana or an offense related to simple possession of 30 grams or less of marijuana and the LPR bars do not apply	*None.*	INA § 212(h)(1)(A)(i), if it relates to a single offense of simple possession of 30 grams or less of marijuana or a related offense and if the activities for which the noncitizen is inadmissible occurred more than 15 years ago; the noncitizen's admission would not be contrary US national welfare, safety, or security; the noncitizen has been rehabilitated; and the LPR bars do not apply *-OR-* INA § 212(h)(1)(B), if it relates to a single offense of simple possession of 30 grams or less of marijuana or a related offense and if the immigrant's USC or LPR spouse, parent, or son, or daughter would suffer extreme hardship and the LPR bars do not apply	*None.*

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INA § 212(a)(2)(B) *multiple criminal convictions*	INA § 212(h)(1)(C), if the VAWA Self-Petitioner can demonstrate they merit a favorable exercise of discretion and the LPR bars do not apply	*None.*	INA § 212(h)(1)(A)(i), if the activities for which the noncitizen is inadmissible occurred more than 15 years ago; the noncitizen's admission would not be contrary US national welfare, safety, or security; the noncitizen has been rehabilitated; and the LPR bars do not apply *-OR-* INA § 212(h)(1)(B), if the immigrant's USC or LPR spouse, parent, or son, or daughter would suffer extreme hardship and the LPR bars do not apply	*None.*

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INA § 212(a)(2)(D)(i) & (ii) *prostitution & commercialized vice*	INA § 212(h)(1)(C), if the VAWA Self-Petitioner can demonstrate they merit a favorable exercise of discretion and the LPR bars do not apply	*None.*	INA § 212(h)(1)(A), if the noncitizen is only inadmissible under INA § 212(a)(2)(D)(i) or D(ii) OR the activities resulting in inadmissibility occurred more than 15 years ago; and the noncitizen's admission would not be contrary US national welfare, safety, or security and the noncitizen has been rehabilitated; and the LPR bars do not apply *-OR-* INA § 212(h)(1)(B), if the immigrant's USC or LPR spouse, parent, or son, or daughter would suffer extreme hardship and the LPR bars do not apply	*None.*

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INA § 212(a)(2)(E) *involved in serious criminal activity and asserted immunity from prosecution*	INA § 212(h)(1)(C), if the VAWA Self-Petitioner can demonstrate they merit a favorable exercise of discretion and the LPR bars do not apply	*None.*	INA § 212(h)(1)(A)(i), if the activities for which the noncitizen is inadmissible occurred more than 15 years ago; the noncitizen's admission would not be contrary US national welfare, safety, or security; the noncitizen has been rehabilitated; and the LPR bars do not apply *-OR-* INA § 212(h)(1)(B), if the immigrant's USC or LPR spouse, parent, or son, or daughter would suffer extreme hardship and the LPR bars do not apply	*None.*
INA § 212(a)(4) *public charge*	*None.*	INA § 212(a)(4)(E)(i), public charge ground does not apply to VAWA self-petitioners	*None.*	INA § 212(a)(4)(E), exceptions for those who are applicants for, or are granted, U nonimmigrant status, and those who are qualified noncitizens, as described in 8 USC § 1641
INA § 212(a)(6)(A) *present without admission or parole*	*None.*	INA § 212(a)(6)(A)(ii), if the VAWA Self-Petitioner can show a connection between the EWI and the abuse[5]	*None.*	*None.*

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INA § 212(a)(6)(C)(i) *fraud / misrepresentation*	INA § 212(i), if the VAWA Self-Petitioner can show extreme hardship to self or to USC, LPR, or "qualified [noncitizen]" parent or child[6]	*None.*	INA § 212(i), if the noncitizen can demonstrate extreme hardship to USC or LPR spouse or parent	If the individual voluntarily and timely retracts the fraud/misrepresentation, the ground will not apply[7]
INA § 212(a)(6)(C)(ii) *false claim of U.S. citizenship*	*None.*	*None.*	If the false claim occurred prior to September 30, 1996, the waiver for INA § 212(a)(6)(C)(i) fraud or misrepresentation will be applicable	INA § 212(a)(6)(C)(ii)(II), if adopted or natural parents both are or were USCs, the noncitizen permanently resided in the U.S. before age 16, and the noncitizen "reasonably believed" that they were a USC *-OR-* If the individual voluntarily and timely retracts the false claim, the ground will not apply[8]
INA § 212(a)(6)(E) *smuggling*	*None.*	*None.*	INA § 212(d)(11), for humanitarian purposes, to assure family unity, or otherwise in the public interest if, at the time of smuggling, the smuggled individual was the noncitizen's spouse, parent, son, or daughter and no other individual. However, 4th preference beneficiaries are not eligible	INA § 212 (a)(6)(E)(ii), for those eligible for Family Unity under the Immigration Act of 1990 as a spouse or minor child of a person legalized through "amnesty" or "special agricultural work" or the related LIFE Act and were physically present in the U.S. on May 5, 1988 and the relationship existed and the smuggling occurred before May 5, 1988

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			for this waiver.	
INA § 212(a)(9)(B)(i) *3- and 10-year bars*	*None.*	INA § 212(a)(9)(B)(iii)(IV), if the VAWA Self-Petitioner can demonstrate a substantial connection between the battery / extreme cruelty and violation of status[9]	INA § 212(a)(9)(B)(v), noncitizen must demonstrate extreme hardship to USC or LPR spouse or parent	INA § 212(a)(9)(B)(iii), statutory exceptions include: minors under 18, noncitizens with a bona fide application for asylum (unless they were employed without authorization), and victims of a severe form of human trafficking who can demonstrate that the trafficking was one central reason for their unlawful presence[10] *See also* INA § 212(a)(9)(B)(iv), for tolling of unlawful presence for good cause[11]
INA § 212(a)(9)(C) *permanent bar*	INA § 212(a)(9)(C)(iii), if the VAWA Self-Petitioner can show connection between the battery / extreme cruelty and their removal, departure, reentry/reentries, or attempted reentry[12]	*None.*	*None.*	INA § 212(a)(9)(C)(ii), must wait 10 years outside the US and then file Request for Consent to Apply for Readmission[13]

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This resource is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client's case. Content is current as of the date of writing and it is your responsibility to ensure content is up to date. This resource should be viewed only as a starting place for research on how to best counsel survivors. It is imperative to also consider the context of policy, law, and enforcement practices in place at the time a potentially inadmissible survivor is considering adjustment of status.

Also note that this resource does not discuss how to determine whether a noncitizen has triggered an inadmissibility ground. For information on that, review ASISTA's Inadmissibility Issues page, see ASISTA's Practice Advisory, "Representing Criminalized Survivors: Impact of Criminal Inadmissibility on Survivor-Based Immigration Remedies" (Jan. 18, 2023), and view relevant webinars.

[2] To have a qualifying relationship, they must be the spouse, unmarried son or daughter, or the minor unmarried lawfully adopted child of a United States citizen, a lawful permanent resident, or a noncitizen who has been issued an immigrant visa or they must have a son or daughter who is a United States citizen, a lawful permanent resident, or a noncitizen who has been issued an immigrant visa.

Note: USCIS interprets "unmarried son or daughter" to encompass those who are "children" because they are not yet 21 years old, as well as those who are over 21 years of age, as long as they are unmarried. *See* 9 USCIS-PM D.2 (fn. 6).

[3] Blanket waivers are available for those who are pregnant or immunocompromised; where the CDC advises USCIS to grant a blanket waiver due to nationwide vaccine shortage; or where a civil surgeon or panel physician indicates that a vaccine is not routinely available. *See* 8 USCIS-PM B.9.

Unlike blanket waivers, the individual waiver (for religious beliefs or moral convictions) requires the filing of an I-601.

Be sure to check for possible differences in guidance relating to waivers for adjustment of status applicants and waivers available through the consular process. The Foreign Affairs Manual (FAM) generally references USCIS Policy Manual Guidance, but has included an additional possible waiver for known chronic Hepatitis B virus infection, for example. *See* 9 FAM 302.2-6(B)(2).

[4] The child must fall under the definitions of "child" under INA § 101(b)(1)(F) or (G).

[5] USCIS interprets VAWA adjustment applicants as exempt from this ground entirely, without needing to show that this INA § 212(a)(6)(A)(ii) exception applies. Therefore, no waiver is needed or required for this ground and no inspection and admission or parole is required for VAWA adjustment. *See* 2008 USCIS Policy Memorandum, "Adjustment of status for VAWA self-petitioner who is present without inspection," available at https://asistahelp.org/wp-content/uploads/2018/10/USCIS-Memorandun-Adjusment-of-Status-for-VAWA-EWI-1.pdf

[6] *See* 8 USC § 1641 (qualified noncitizens).

[7] *See* 8 USCIS-PM J.3(D)(6). *See also Llanos-Senarillos v. United States*, 177 F.2d 164, 165 (9th Cir. 1949) and other case law relating to timely retraction.

[8] *See* 8 USCIS-PM K.2(E). *See also Llanos-Senarillos v. United States*, 177 F.2d 164, 165 (9th Cir. 1949) and other case law relating to timely retraction.

[9] For this exception, USCIS policy is more generous than the statute requires. If the VAWA Self-Petitioner can establish a substantial connection between the battery or extreme cruelty, the unlawful presence (rather than ""violation of status""), and departure from the U.S., they can claim this exception. *See* AFM Ch. 40.9.2(b)(2)(E). Note that "battery / extreme cruelty" references that of the underlying VAWA Self-Petition.

The "and" language (for connection between the abuse, the unlawful presence, and departure) makes USCIS policy more restrictive, as some self-petitioners can show the connection between the abuse and their departure, but not to their unlawful presence. In different field offices, there is variation in how strictly they interpret the "and" requirement. We suggest checking with local practitioners to see how the local field office handles this exception.

Note: Most VAWA self-petitioners are not inadmissible under this ground, given the INA § 212(a)(6)(A) exemption, which will allow them to adjust their status, instead of consular processing, and, therefore, not trigger a bar upon departure after accruing unlawful presence.

[10] In June 2022, USCIS issued policy guidance confirming that the 3- and 10-year unlawful presence bar periods run from the date of departure or removal (whichever applies) without interruption, regardless of the noncitizen's location (i.e., whether they are in the United States). Therefore, if the noncitizen seeks admission within the statutory period, they will be found inadmissible under INA § 212(a)(9)(B), but, after the respective time period has run, the ground no longer applies. *See* USCIS PA-2022-15, "INA 212(a)(9)(B) Policy Manual Guidance" (June 24, 2022); 8 USCIS-PM O.6.

[11] INA § 212(a)(9)(B)(iv) tolling for good cause states:

> For a noncitizen who:
>
> > (I) has been lawfully admitted or paroled into the United States,
> >
> > (II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and
> >
> > (III) has not been employed without authorization in the United States before or during the pendency of such application,
>
> the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

[12] The “or” language in the statute is very important. The self-petitioner only has to show a connection between the abuse and just one triggering event. Note that "battery / extreme cruelty" references that of the underlying VAWA Self-Petition.

Compare INA § 212(a)(9)(C) with AFM Ch. 40.9.2(c)(2)(D), which states: "An approved VAWA self-petitioner and his or her child(ren) can apply for a waiver from inadmissibility under section 212(a)(9)(C)(i) of the Act, if he or she can establish a “connection” between the abuse suffered, the unlawful presence and departure, or his or her removal, **and** the [noncitizen's] subsequent unlawful entry/entries or attempted reentry/reentries." (emphasis added)

[13] While the statute considers this an exception, the noncitizen must first file the Form I-212, Application for Permission to Re-apply for Admission Into the United States After Deportation or Removal, and DHS must approve it, before they can lawfully return to the U.S. Approval of the I-212 is discretionary and negative factors include: evidence of bad moral character, likelihood of becoming a public charge, marriage fraud, serious or repeated violations of U.S. immigration laws. Admissibility or eligibility for a waiver are also factors DHS will consider. If the I-212 is approved, the permanent bar no longer applies.

There is no provision to file the I-212, Request to Apply for Readmission before the time period of 10 years outside the U.S. have run. The 10-year statutory period begins on the date of the last departure from the U.S. and the noncitizen must remain outside the U.S. for a consecutive 10 years. If the noncitizen reenters after a departure/removal and subsequently departs, the "clock" restarts from that last departure.

See AFM Chapter 43, Consent to Reapply After Deportation or Removal.