

Fraud Waivers

An alien who commits fraud or who misrepresents a material fact when procuring a visa or other documentation faces the serious consequence of being inadmissible to the United States. The law, in INA 212(1)(6)(C)(i) says: “Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation or admission into the United States is inadmissible.”

Examples of fraud or misrepresentation are using a false name, birth date, marital status to obtain a visa, entry into the U.S., an extension or change of status, or adjustment of status.

The law provides a limited opportunity for the alien to waive his or her ineligibility but the waiver applies only if (1) the alien “is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence” and (2) if it is established that refusal of the admission would result in extreme hardship to the alien’s citizen or permanent residence spouse or parent.

An approved waiver means the alien will be able to obtain a visa or green card despite the fraud or misrepresentation committed.

The alien has the high burden to establish extreme hardship and circumstances deserving approval of the waiver. This article will discuss the procedure as well as the various strategies our office has used to satisfy the extreme hardship requirement.

The waiver is filed on Form I-601. The waiver is adjudicated by the USCIS and will be filed in one of three venues: consular processing abroad, adjustment of status, or removal proceedings. Often times, once the I-601 is filed, there is no live contact with the adjudicator. Thus, the form must be properly answered and it must be accompanied by an organized package of supporting documents.

When our office prepares the form I-601 waiver, we start by obtaining a chronology of events from the client. We review the alleged events of fraud or misrepresentation, including signed applications, visa interviews, applications for admissions at the port of entry, applications for extensions or changes of non-immigrant status, applications for adjustment of status, etc. The purpose for the thorough review is to determine if there was in fact fraud or misrepresentation of material fact committed by the alien.

If fraud or misrepresentation was in fact committed, then we move to the second step, which is proving (1) that alien has a qualifying permanent resident or U.S. citizen relative; and (2) extreme hardship to the qualifying relative.

Each and every element of extreme hardship must be defined, which includes: presence of qualifying relatives in the U.S.; the qualifying relative’s family ties outside the U.S.; conditions in that country; financial impact of departure from the United States;

significant medical and psychological health considerations; length of residence of the qualifying relative and the alien in the United States; possibility of other means of adjusting status; contributions to and position of the qualifying relative and the alien to the United States and the local community; alien's immigration history; and alien's moral character. Although the law only specifies hardship to a permanent resident alien or United States citizen spouse or parent, our office has successfully obtained waivers by showing that hardship to children means hardship to the spouse.

Fraud and willful misrepresentation have disastrous immigration consequences. Preparing a successful I-601 waiver is not an easy task but it can be done. The key is for the attorney and client to carefully examine all facts of the case and use all evidence available to satisfy an often skeptical adjudicator of the merits of the waiver application. The law on waivers is complicated and we advise you not submit an application on your own without first speaking with an attorney.

This article does not constitute legal advice but we hope it has been helpful in presenting different options and strategies to legally stay in the United States. If you have any questions about your particular situation, contact us and let us assist you in preparing and processing your case.

The Law Offices of Darren B. Silver & Associates concentrates exclusively to the practice of immigration and naturalization law. Mr. Silver has an extensive knowledge of all aspects of immigration law and procedures. His career in immigration includes a prior position as an Adjudications Officer for INS in Los Angeles, California. Mr. Silver served the INS for a period of three years, from 1992 through 1995. While working for INS, Mr. Silver assisted in recommending policy decisions, interviewing aliens for status changes and reviewed naturalization appeals.

The experience of working inside the INS has allowed Mr. Silver significant insight into maneuvering through the complex maze which makes up the Immigration Service. Mr. Silver formed the Law Offices of Darren B. Silver in 1996 and has maintained one of the most successful immigration practices in the country. Mr. Silver is an active member of the California Bar, the Los Angeles County Bar Association immigration section, American Bar Association and the American Immigration Lawyers Association (AILA).

Please contact the office for a [free consultation](#)

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