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Original page: [Introduction to I-601 & I-601A Waivers](#)

Introduction to I-601 & I-601A Waivers

Foreign nationals who are not eligible to adjust their status in the United States must travel abroad and obtain an immigrant visa. Individuals who have accrued more than 180 days of unlawful presence while in the United States must obtain a waiver of inadmissibility to overcome the unlawful presence bars under section 212(a)(9)(B) of the Immigration and Nationality Act before they can return. Typically, these foreign nationals cannot apply for a waiver until after they have appeared for their immigrant visa interview abroad, and a Department of State (DOS) consular officer has determined that they are inadmissible to the United States.

Under current law an undocumented spouse that entered illegally or remained past the visa date (unless an immediate relative) may not apply for [adjustment of status](#) and become lawful permanent resident unless they return to their home country and reenters properly. The big drawback with this scenario occurs when the undocumented resident remained in the U.S. illegally for any period greater than six months. In such a case, they are subject to the [3/10-year bar to re-entry](#). This means that they will have to remain abroad, anywhere between three to ten years, unless the U.S. citizen is granted a waiver. The catch is that such a [waiver \(I-601\)](#) can only be filed after the undocumented spouse leaves the U.S. The processing time for these waivers can take over a year; a long time to separate families

The new provisional unlawful presence waiver ([601A](#)) process allows immediate relatives who only need a waiver of inadmissibility for unlawful presence to apply for that waiver in the United States **before** they depart for their immigrant visa interview. This new process was developed to shorten the time that U.S. citizens are separated from their immediate relatives while those family members are obtaining immigrant visas to become lawful permanent residents of the United States.

If the waiver were approved, the immigrant spouse would be given a temporary waiver but still would have to return to his country to apply for the permanent resident visa (green card) to return to the United States.