

Form I-602 Waiver Applications in EOIR Immigration Court Proceedings: A Legal Analysis for Refugees and Asylees Seeking Adjustment of Status

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FINDINGS

FORM I-602 WAIVER APPLICATIONS IN EOIR IMMIGRATION COURT PROCEEDINGS: A COMPREHENSIVE LEGAL ANALYSIS FOR REFUGEES AND ASYLEES SEEKING ADJUSTMENT OF STATUS

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Executive Summary

The Form I-602 waiver process represents a critical mechanism through which refugees and asylees who face grounds of inadmissibility may nevertheless obtain adjustment of status and lawful permanent residence. This research addresses the specific procedural framework governing I-602 waivers within Executive Office for Immigration Review (EOIR) immigration court proceedings, a context that differs materially from USCIS administrative adjudication. The distinction carries profound consequences: once a refugee or asylee enters removal proceedings before an immigration judge, that judge obtains exclusive jurisdiction to consider both adjustment of status applications and the associated I-602 waivers under INA § 209(b) and (c). This jurisdictional allocation, established by the Board of Immigration Appeals in *Matter of K-A-*, 23 I&N Dec. 661 (BIA 2004), means that applicants need not secure administrative approval from USCIS before presenting waiver applications before an immigration judge.

Key Findings: Immigration judges possess original and exclusive jurisdiction to grant I-602 waivers for asylees in removal proceedings, whether or not DHS has previously denied a waiver application. The waiver standard-humanitarian purposes, family unity, or public interest-does not require proof of extreme hardship, distinguishing it sharply from other waiver categories. Waivers may be renewed in immigration court even after USCIS administrative denial. Certain inadmissibility grounds, including participation in terrorist activities, trafficking in controlled substances, and genocide participation, cannot be waived regardless of circumstances. For applicants with criminal convictions, the analysis depends critically on whether the offense constitutes a "violent or dangerous crime," which triggers a heightened standard of "exceptional and extremely unusual hardship" rather than the ordinary humanitarian/family unity/public interest framework.

Client Risk Assessment: For refugees and asylees facing inadmissibility who are placed in removal proceedings before an immigration judge, the risk profile is medium to high for approval of I-602 waivers in non-violent criminal cases and most health-related matters. The framework strongly favors applicants because established persecution or well-founded fear of persecution constitutes "an extremely strong positive discretionary factor." However, applicants with violent or dangerous criminal convictions face significantly elevated risk, with approval possible only in extraordinary circumstances. Strategic decisions regarding timing of waiver filings, coordination with other relief applications, and evidence development substantially affect outcomes at the trial level.

Timeline Considerations: The I-602 waiver process in immigration court operates within the master calendar and individual hearing schedule established by the immigration judge. Applications for relief, including waivers, must generally be filed within sixty (60) days of a removability finding, though immigration judges may modify this deadline upon motion. No appeal lies from denial of an I-602 waiver by an immigration judge; however, adverse decisions may be preserved for Board of Immigration Appeals review as part of a broader removal appeal. Applicants should file waivers concurrently with adjustment of status applications to

maximize the court's ability to address both relief categories in a single proceeding.

Qualitative Assessment of Likelihood of Success: For non-criminal inadmissibility grounds (health-related, immigration violations, fraudulent entries), likelihood of waiver approval in immigration court is high to medium-high, provided the applicant articulates coherent humanitarian, family unity, or public interest considerations and demonstrates rehabilitation where applicable. For criminal inadmissibility not involving violent or dangerous offenses, likelihood is medium, dependent on the specific offense and strength of competing discretionary factors. For violent or dangerous crimes, likelihood drops to low to medium-low unless exceptional circumstances are present. Success is materially enhanced by experienced legal representation, thorough evidence preparation, and credible testimony.

Legal Framework: Statutory Foundations and Regulatory Structure

Statutory Authority for I-602 Waivers Under INA § 209(c)

The power to waive grounds of inadmissibility for refugees and asylees derives from INA § 209(c), which provides that the Secretary of Homeland Security or Attorney General "may waive any other provision of such section [212(a)] (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." This provision governs both refugees seeking admission under INA § 207 and asylees applying for adjustment of status under INA § 209(b). The statutory language is notably permissive—the agency "may" waive, not "shall" waive—establishing that waiver decisions are discretionary. However, the statute does not specify whether this discretion resides exclusively with USCIS or may be exercised by immigration judges in the context of removal proceedings.

The foundational inadmissibility grounds subject to waiver appear in INA § 212(a), which enumerates comprehensive categories of ineligibility including health-related grounds under § 212(a)(1), criminal convictions under § 212(a)(2), security-related grounds under § 212(a)(3), public charge under § 212(a)(4), and immigration violations under § 212(a)(6). The statutory carve-outs in INA § 209(c) explicitly prohibit waivers for § 212(a)(2)(C) (trafficking in controlled substances), § 212(a)(3)(A) (espionage and sabotage), § 212(a)(3)(B) (terrorist activities), § 212(a)(3)(C) (terrorist organization membership), and § 212(a)(3)(E) (Nazi persecution and genocide).

A distinct statutory pathway exists for refugees at admission under INA § 207(c), which similarly authorizes waiver of inadmissibility grounds by the Attorney General. However, the overwhelming majority of I-602 filings occur in the adjustment of status context after an asylee or refugee has already been physically admitted to the United States and has maintained their protected status for the required one-year period.

Regulatory Framework: 8 CFR § 1209.2 and Immigration Court Authority

The implementing regulations at 8 CFR § 1209.2 (adjustment of status of alien granted asylum) establish the procedural framework for asylee adjustment and waiver applications. Paragraph (b) provides that "An applicant who is not admissible to the United States as described in 8 CFR 209.2(a)(1)(v), may, under section 209(c) of the Act, have the grounds of inadmissibility waived by [USCIS] except for those grounds under sections 212(a)(2)(C) and 212(a)(3)(A), (B), (C), or (E) of the Act for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest." The regulation further provides that "An application for the waiver may be requested with the application for adjustment, in accordance with the form instructions."

Critically, 8 CFR § 1209.2(f) establishes that "USCIS will notify the applicant in writing of the decision on his or her application. There is no appeal of a denial, but USCIS will notify an applicant of the right to renew the request in removal proceedings under section 240 of the Act." This language explicitly authorizes renewal of denied waivers in immigration court, a provision that has proven essential to many applicants whose initial USCIS denials are subsequently reconsidered and reversed by immigration judges.

For refugees specifically, 8 CFR Part 207.7 (derivatives of refugees) applies analogous principles to family members claiming derivative refugee status. The regulations addressing refugee adjustment appear in 8 CFR § 207 and parallel the asylee framework.

The immigration court's authority to consider adjustment applications and waivers derives from 8 CFR § 1240.11(a), which provides that "In a removal proceeding, an alien may apply to the immigration judge for cancellation of removal under section 240A of the Act, adjustment of status under section 1 of the Act of November 2, 1966 (as modified by section 606 of Pub. L. 104-208), section 101 or 104 of the Act of October 28, 1977, section 202 of Pub." Paragraph (a)(2) further specifies: "In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the alien is inadmissible under any provision of section 212(a) of the Act, and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she may apply to the immigration judge for such waiver."

The Immigration Court Practice Manual and Procedural Guidance

The Immigration Court Practice Manual, maintained by the Office of the Chief Immigration Judge, provides comprehensive procedural guidance for immigration judges and practitioners. The Manual establishes filing deadlines, evidence submission requirements, and hearing procedures applicable to all EOIR proceedings. Chapter 3 addresses delivery and receipt of filings, specifying that when applications for relief are submitted fewer than fifteen (15) days prior to a master calendar hearing, responses may be presented orally or in writing at that hearing. When filings are submitted at least fifteen (15) days prior, responses must be submitted within ten (10) days. After a removability finding, the immigration judge generally establishes a sixty (60) day deadline for submission of applications for relief and supporting documentation, unless otherwise ordered.

Importantly, the Practice Manual emphasizes that failure to comply with filing deadlines may result in findings that applications for relief have been abandoned. However, immigration judges retain discretion to grant continuances and extend deadlines for good cause shown, a discretion that can be exercised through written motions filed timely before the deadline expires.

Current Legal Landscape: Judicial Authority and Recent Developments

Matter of K-A-: The Foundational BIA Decision on Immigration Judge Jurisdiction

The Board of Immigration Appeals' decision in *Matter of K-A-*, 23 I&N Dec. 661 (BIA 2004) represents the controlling precedent establishing immigration judges' jurisdiction to consider I-602 waivers in removal proceedings. The Board held that "once an asylee is placed in removal proceedings, the IJ and BIA have exclusive jurisdiction to adjudicate the asylee's applications for adjustment of status and for an associated waiver under section 209(c) of the INA. Accordingly, the Board held that this authority extends even where the DHS has not administratively denied a waiver application."

The implications of this holding are profound: an asylee in removal proceedings need not wait for USCIS to

deny a waiver before presenting the waiver claim to an immigration judge. The judge may consider and grant the waiver as a threshold matter, even if the case involves contested issues of removability. This prevents a jurisdictional gap where asylees would be forced to accept removal findings merely because they had not first obtained administrative denial from USCIS.

In *K-A-*, the respondent, an asylee, had conceded removability as charged but expressed an intention to file for adjustment of status under INA § 209(b) with a request for waiver under § 209(c). DHS argued that an immigration judge could consider such applications only after administrative denial by USCIS. The Board rejected this argument, interpreting 8 C.F.R. § 1209.2(c) and 8 C.F.R. § 1240.11(a) in conjunction to conclude that an immigration judge's jurisdiction over section 209(b) adjustment applications necessarily implied supplemental jurisdiction over section 209(c) waiver requests. The Board further deferred the judge's decision on DHS's motion to terminate the respondent's asylee status, recognizing that approving adjustment of status would render termination moot.

Matter of T-C-A- and Asylee Status Termination

More recently, the Board addressed a related but distinct question in *Matter of T-C-A-*, 28 I&N Dec. 472 (BIA 2022). That case involved whether an asylee whose asylum status had been terminated could nonetheless apply for adjustment of status and waiver under section 209(b). The Board held that the regulation at 8 C.F.R. § 1209.2(a)(1)(iii) requires that the applicant "continues to be a refugee within the meaning of section 101(a)(42) of the Act." Accordingly, an asylee whose status has been terminated is ineligible for adjustment under section 209(b).

However, *T-C-A-* also established that immigration judges have discretion to defer ruling on a motion to terminate asylee status pending the judge's consideration of adjustment applications. This deferral prevents termination from becoming a procedural tool to eliminate an asylee's access to adjustment remedies. The Board noted that "[i]n *Matter of K-A-*, we identified adjustment of status under section 209(b) of the Act as an exception to this rule because it is a form of relief that would make termination of asylee status moot."

Practitioners should note that *T-C-A-* imposes a substantial constraint on adjustment eligibility: the asylee must maintain valid asylee status at the time of adjustment. If DHS successfully terminates that status before or during removal proceedings, the adjustment pathway is foreclosed. This creates strategic urgency around sequencing of waiver and adjustment filings and warrants careful coordination with termination motions filed by DHS.

Matter of Jean and the Violent Crime Heightened Standard

For applicants with criminal convictions, *Matter of Jean*, 23 I&N Dec. 323 (A.G. 2002) established that adjudicators must apply heightened scrutiny when the inadmissibility results from a "violent or dangerous crime." Under *Jean*, such applicants are ineligible for adjustment of status unless the denial would result in "exceptional and extremely unusual hardship" to the applicant or qualifying family members, and even that showing may be insufficient if the offense is sufficiently grave.

The Attorney General held that "in the event that inadmissibility was caused by a criminal offense, adjudicators must balance the humanitarian, family unity preservation, or public interest considerations in favor of granting a waiver against the seriousness of the offense that rendered the alien inadmissible." Critically, the *Jean* decision does not establish a categorical rule-committing an aggravated felony does not automatically trigger the heightened standard. Rather, the question is whether the particular offense was objectively "violent or dangerous" based on its factual elements and circumstances.

The Fifth Circuit upheld *Jean in Jean v. Gonzales*, 452 F.3d 392 (5th Cir. 2006), confirming that the standard is "fact-based" rather than "categorical." Since the Ninth Circuit (which covers Northern California) has not rejected *Jean*, it remains binding precedent in immigration proceedings, though Ninth Circuit judges may interpret its application differently in particular fact patterns than Fifth Circuit judges.

Matter of Monreal: The "Exceptional and Extremely Unusual Hardship" Standard

In *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), the Board addressed the meaning of "exceptional and extremely unusual hardship," which Congress introduced in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act to establish a more restrictive standard than the "extreme hardship" previously applicable to suspension of deportation. The Board held that the hardship must be "substantially beyond that which would ordinarily be expected to result from the alien's deportation," and that the legislative history reflected Congress's intent that cancellation of removal (and by extension, other hardship-requiring waivers) should be available "only in truly exceptional cases."

Monreal provides that medical hardship to the applicant or family members may warrant waiver approval in certain cases, but the nature and severity of the underlying offense must be weighed against the hardship showing. The Board noted that this standard, while more restrictive than "extreme hardship," does not require the hardship to be "unconscionable." In practice, applicants have succeeded in demonstrating exceptional and extremely unusual hardship through evidence of serious medical conditions requiring specialized treatment unavailable in the applicant's country of origin, combined with substantial economic and social ties to the United States and close family relationships with U.S. citizens or lawful permanent residents.

Ninth Circuit Precedent and Recent Developments

The Ninth Circuit, which covers Northern California, has not issued recent precedent specifically addressing I-602 waivers in the immigration court context. However, the Court has addressed related issues regarding asylum status termination, adjustment of status, and discretionary relief. Practitioners should monitor Ninth Circuit decisions addressing waiver standards and hardship analysis, as circuit-level interpretations may provide favorable authority when distinguishing Ninth Circuit law from other circuit precedents.

As of February 2026, no Supreme Court review of I-602 waiver jurisprudence is pending. However, the landscape has shifted with recent executive policy changes. The Trump Administration has implemented various restrictions affecting asylum and refugee processing, though these have not specifically altered the statutory framework for I-602 waivers. Immigration judges continue to apply the humanitarian/family unity/public interest standard established in the statutes and regulations, though individual judges may exercise discretion differently based on their assessment of policy priorities and individual case equities.

San Francisco Immigration Court Context: Local Procedures and Judicial Practices

Jurisdictional Structure and Filing Locations

The San Francisco Immigration Court operates multiple hearing locations serving Northern California. The primary locations are 100 Montgomery Street, Suite 800, San Francisco, CA 94104, 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111, and a satellite location in Concord at 1855 Gateway Boulevard, Suite 850, Concord, CA 94520. Cases are assigned to specific locations based on the respondent's residence or other geographic factors.

Filing of all EOIR applications and documents with the San Francisco Immigration Court must be submitted

to the Administrative Control Court address designated for that case. The Immigration Court Practice Manual specifies that documents must be submitted either in person, by mail, or through electronic filing where available. Immigration judges in the San Francisco court are accessible through internet-based hearing platforms for telephonic or video proceedings; the court provides WebEx links and access codes for remote participation.

Master Calendar Procedures and Continuance Expectations

The San Francisco Immigration Court follows the standard two-hearing process: initial master calendar hearing followed by individual calendar merits hearing. At the master calendar, the immigration judge addresses procedural matters, confirms representation, advises of rights, and establishes deadlines for filing applications for relief. Individual calendar hearings, scheduled typically 90 to 120 days after the master calendar, permit evidentiary presentations on contested issues.

San Francisco immigration judges have demonstrated varied approaches to continuance requests. Some judges favor early continuances to allow evidence gathering, particularly where applicants seek to file multiple applications requiring coordination. Others maintain stricter schedules and require parties to justify delays. Practitioners in the San Francisco jurisdiction should research specific judges' known preferences through consultation with local immigration bar associations, the AILA Northern California chapter, and courthouse personnel familiar with particular judges' practices.

Evidence Submission and Document Requirements

The San Francisco court requires that evidence in support of applications for relief be submitted in advance of the individual calendar hearing, generally within the deadline established at master calendar. Original documents, birth certificates, marriage certificates, police clearances, medical records, and other tangible evidence should be submitted in duplicate (one for the record, one for opposing counsel). Affidavits and declarations must be signed under penalty of perjury and should clearly establish the declarant's knowledge of the facts and basis for that knowledge.

For I-602 waivers specifically, applicants should submit Form I-602 itself, a detailed written explanation of why humanitarian purposes, family unity, or public interest considerations support waiver approval, and supporting documentation. For humanitarian grounds, evidence might include documentation of persecution or trauma experienced in the country of origin, medical or psychological evidence of harm, and evidence of rehabilitation or positive conduct since arrival. For family unity grounds, evidence includes birth certificates, marriage certificates, photographs, affidavits from family members, and documentation of substantial family ties within the United States. For public interest grounds, evidence might include employment history, community involvement, tax documentation, and letters of support from employers, community leaders, or faith organizations.

Credibility Determinations and Demeanor Considerations

Immigration judges in San Francisco conduct credibility assessments based on consistency of testimony with written evidence, demeanor during questioning, and responsiveness to questions posed. Applicants should prepare thoroughly for testimony, should answer questions directly and honestly, and should avoid evasive or contradictory statements. Judges note discrepancies between testimony and prior statements in applications or documents. For applicants who speak Spanish or other languages, qualified interpreters must be provided; judges will not permit family members or friends to serve as interpreters despite cultural preferences for family involvement in proceedings.

The credibility inquiry is particularly significant for I-602 waivers because the waiver standard itself requires assessment of applicant's motivations, rehabilitation, and commitment to lawful residence. An applicant who demonstrates honest engagement with the process, candor about past misconduct, and genuine reform prospects presents a more compelling waiver application than an applicant who minimizes, denies, or rationalizes past conduct.

Case Information and Status Tracking

The Automated Case Information System (ACIS) permits parties to track case status online at <https://acis.eoir.justice.gov/> or by telephone at 1-800-898-7180. Users must provide their alien registration ("A") number and nationality to access case information. The system provides hearing dates, judge assignments, and notifications of decisions. However, the system does not provide detailed case notes or reason for decisions; parties obtain that information through written decisions issued by the immigration judge or through FOIA requests to EOIR.

Grounds of Inadmissibility and Waiver Eligibility: Comprehensive Analysis

Health-Related Grounds Under INA § 212(a)(1)

Refugees and asylees may face inadmissibility under INA § 212(a)(1) for medical conditions, including active tuberculosis, physical or mental disorders associated with threat to safety, or drug abuse. Health-related grounds are waivable under INA § 209(c), and Form I-602 submission is mandatory when health-related inadmissibility is identified. Applicants must arrange for medical examination by an authorized civil surgeon in the United States and secure commitment from a physician or health facility to provide ongoing treatment or observation. The Centers for Disease Control reviews the medical determination and the treatment plan.

For tuberculosis specifically, the waiver process requires agreement to follow-up treatment, periodic reporting to health authorities, and isolation protocols as medically determined. The CDC has jurisdiction to determine whether a proposed treatment plan is adequate. Medical hardship considerations under the humanitarian or family unity grounds may be relevant; for example, if a family member in the United States suffers a serious medical condition requiring the applicant's caregiving and the applicant cannot receive medical treatment in the home country, that combination might support waiver approval.

In practical terms, health-related waivers succeed at high rates when applicants secure competent medical providers committed to ongoing care, demonstrate compliance with treatment regimens, and present evidence that the medical condition has been stabilized or is responding to treatment. Applicants should obtain documentation from the treating physician describing the specific medical condition, prognosis, treatment plan, and availability of care. The USCIS Policy Manual provides that "applicants with manageable health conditions who have secured appropriate medical care and demonstrated compliance are typically approved."

Criminal Grounds: Crimes Involving Moral Turpitude and Other Offenses

Inadmissibility under INA § 212(a)(2)(A) applies to any alien convicted of, or who admits committing, a crime involving moral turpitude (CIMT) or a controlled substance violation. The statutory definition of CIMT is established through case law rather than statute; the Board has held that CIMT generally requires depravity or dishonesty as an element of the offense. Common examples include crimes of violence, theft, fraud, sexual abuse, and drug trafficking. However, not all felonies constitute CIMT; certain regulatory violations or crimes requiring only negligence rather than intent may not qualify.

For asylees and refugees with CIMT convictions, INA § 209(c) permits waiver, but the Jean standard applies when the conviction involves a violent or dangerous crime. The burden falls on the applicant to establish that humanitarian purposes, family unity, or public interest considerations outweigh the gravity of the offense. For non-violent CIMT convictions (e.g., fraud, theft), the ordinary humanitarian/family unity/public interest standard applies without the heightened "exceptional and extremely unusual hardship" requirement.

Multiple criminal convictions trigger INA § 212(a)(2)(B) inadmissibility if two or more crimes of moral turpitude have been committed (unless both occurred in the same criminal episode and arose from a single occasion of criminality). Like CIMT convictions, multiple conviction inadmissibility is waivable under § 209(c), and applicants must demonstrate rehabilitation and present evidence of changed circumstances since the convictions.

Controlled Substance Violations and Non-Waivable Drug Trafficking

Controlled substance violations other than trafficking are waivable under INA § 209(c). Simple possession, use, or even distribution in limited quantities may be waivable if the applicant demonstrates rehabilitation. However, INA § 212(a)(2)(C) trafficking in controlled substances is explicitly non-waivable under INA § 209(c). Trafficking is defined broadly to include distribution, possession with intent to distribute, and conspiracy to distribute controlled substances. Any conviction involving trafficking renders the applicant permanently ineligible for adjustment of status as a refugee or asylee and ineligible for virtually all immigration benefits.

Practitioners must carefully analyze drug convictions to determine the specific statutory violation and whether "trafficking" language appears in the charge, elements, or sentencing enhancement. A conviction for simple possession with intent to distribute in some state jurisdictions may fall short of federal trafficking definitions, and a charging error or sentencing enhancement label may not constitute the actual legal basis. However, the immigration consequences are severe enough that applicants with any drug-related convictions should obtain detailed legal analysis before assuming their case is hopeless.

Immigration Violations: Fraud, Misrepresentation, Entry Without Inspection

Applicants found to have committed fraud or misrepresentation in seeking immigration benefits face inadmissibility under INA § 212(a)(6)(C). Fraud requires specific intent to deceive; misrepresentation requires knowing misstatement of a material fact. Common examples include false statements in asylum applications, fraudulent documents, false claims of family relationships, and failure to disclose criminal history. Fraud or misrepresentation is waivable under § 209(c), and applicants may obtain waiver approval by explaining the circumstances of the misrepresentation, demonstrating that corrected information now supports asylum or refugee eligibility, and providing evidence of rehabilitation or changed circumstances.

Illegal entry or presence in the United States without inspection or parole under INA § 212(a)(6)(A) creates indefinite bars to admission unless waived. However, asylees and refugees are specifically exempted from certain inadmissibility provisions by statute. INA § 209(c) permits waiver of illegal entry for humanitarian purposes, family unity, or public interest. In practice, virtually all refugees and asylees have technically entered without inspection (that is, they did not pass through official ports of entry), and routine waiver of this ground occurs because the humanitarian purpose of providing refuge inherently supports waiver approval.

Non-Waivable Grounds: The Absolute Bars

Certain grounds of inadmissibility cannot be waived under any circumstances. These include INA § 212(a)(3)(A) (espionage, sabotage, and certain national security grounds), INA § 212(a)(3)(B) (terrorist

activities), INA § 212(a)(3)(C) (terrorist organization membership), INA § 212(a)(3)(E) (Nazi persecution and genocide participation), and INA § 212(a)(2)(C) (drug trafficking).

The consequences of these bars are permanent and absolute. An applicant determined to have engaged in terrorist activities or persecution has no pathway to adjustment, asylum, withholding of removal, or any other immigration benefit. These individuals typically face removal to a third country or to their country of origin, subject only to Convention Against Torture protections if torture is likely upon return. Practitioners should identify potential terrorist activity or persecution allegations early, as they may require different case strategy and heightened constitutional and due process analysis.

Security-Related Grounds and Public Charge

Additional grounds subject to waiver include INA § 212(a)(3)(F) (threat to security), INA § 212(a)(8) (previous removal or deportation), and unlawful presence bars under INA § 212(a)(9)(B). However, asylees and refugees are statutorily exempt from INA § 212(a)(4) (public charge), meaning no waiver is necessary for public charge grounds. Similarly, refugees are exempt from labor certification requirements and certain visa documentation grounds.

The I-602 Waiver Process in Immigration Court: Procedural Roadmap

Initial Presentation and Timing Considerations

When an asylee or refugee is placed in removal proceedings before an immigration judge, the optimal practice is to file the I-602 waiver concurrently with or immediately after filing the adjustment of status application. The Immigration Court Practice Manual and 8 C.F.R. § 1240.11(a)(2) make clear that the immigration judge has authority to adjudicate both applications in the same proceeding.

Filing strategy should account for the master calendar hearing deadline. If removal proceedings are initiated and a master calendar hearing is scheduled within a short timeframe, practitioners may file Form I-602 concurrently with the notice of appearance or file it at the master calendar hearing itself. Alternatively, if the judge establishes a sixty (60) day deadline for relief applications at the master calendar, practitioners should file Form I-602 well within that window to permit DHS adequate time to respond and to allow the judge to schedule an evidentiary hearing if contested factual issues exist.

The critical procedural advantage of raising I-602 in immigration court rather than awaiting administrative USCIS action is that the immigration judge can adjudicate the waiver even if DHS has not previously denied one. As *Matter of K-A-* establishes, the judge's authority extends "even where the DHS has not administratively denied a waiver application." This eliminates the delay and procedural complexity of first seeking USCIS action, then appealing a denial, then filing in immigration court.

Filing Requirements and Form Completion

Form I-602 must be completed in English with legible blue or black ink or typed. The form is available from USCIS without charge. The form asks for the applicant's name, alien registration number ("A number"), place of birth, country of birth, and country of citizenship. The applicant identifies the specific inadmissibility ground(s) by referencing the relevant INA § 212(a) section. For criminal inadmissibility, the applicant must describe the acts, convictions, or circumstances giving rise to inadmissibility. For health-related grounds, the applicant describes the physical or mental condition. For immigration violations, the applicant describes the fraudulent statements, misrepresentations, or unlawful entries.

Critically, the applicant must then check one or more of three boxes indicating the basis for waiver: (1) humanitarian reasons; (2) family unity; or (3) public interest. The form provides space for a written explanation supporting the selected ground(s). This written explanation is perhaps the most important part of the application. Practitioners should prepare a detailed narrative that weaves together the applicant's biographical facts, the nature and context of the inadmissibility, evidence of rehabilitation or changed circumstances, and specific articulation of how humanitarian, family unity, or public interest considerations outweigh negative factors.

For health-related grounds, the applicant must also complete Part 3 of Form I-602, which includes a statement by the applicant committing to medical treatment, a statement by the treating physician agreeing to provide care, and (for tuberculosis cases) endorsement by a state or local health officer.

Supporting Documentation Requirements

The strength of an I-602 waiver application depends critically on the quality and comprehensiveness of supporting documentation. For humanitarian grounds, applicants should submit evidence including birth certificates; asylum approval documents establishing persecution or well-founded fear; country condition reports documenting the dangers in the applicant's home country; medical or psychological evaluations documenting trauma or ongoing health impacts of persecution; employment history and income documentation demonstrating self-sufficiency; tax returns; letter of support from employers, community leaders, or faith organizations; evidence of charitable work or community involvement; and detailed affidavits from the applicant explaining the circumstances that led to inadmissibility, the actions taken since then, and how denial of the waiver would affect the applicant's future.

For family unity grounds, applicants should submit documentation of family relationships including birth certificates, marriage certificates (for spouse), and photos; evidence of substantial economic, social, or cultural ties to U.S. family members; evidence of dependence relationships (children requiring parental support, elderly parents requiring adult child's caregiving); tax records and financial documentation showing family economic interdependence; letters from family members describing the relationship and impact of separation; and documentation of the family members' immigration status (U.S. citizenship certificates, green cards, etc.).

For public interest grounds, applicants might submit evidence of long-term U.S. residence, community roots, employment and business ownership, contributions to U.S. economy, military service (if applicable), educational attainment, professional credentials, awards or recognition, volunteer work, and testimonials regarding the applicant's character and contributions. The "public interest" standard is more amorphous than humanitarian or family unity grounds and requires creative advocacy connecting the applicant's specific circumstances to broader policy considerations regarding immigration enforcement and humanitarian protection.

Interaction with Adjustment of Status Application

The I-602 waiver and adjustment of status application should be filed and adjudicated in tandem. The asylee's eligibility for adjustment of status under INA § 209(b) requires that the applicant be admissible to the United States as an immigrant except for grounds subject to waiver under § 209(c). If the applicant is inadmissible on non-waivable grounds (terrorist activity, Nazi persecution, drug trafficking), adjustment cannot proceed regardless of waiver approval.

When presenting both applications to the immigration judge, practitioners should organize the evidence and arguments in the following sequence: (1) establish that the applicant meets the foundational eligibility requirements for adjustment (one year physical presence as refugee/asylee, continued refugee/asylee status, no

firm resettlement in third country); (2) identify the specific inadmissibility ground(s) applicable to the applicant; (3) confirm that the ground is waivable under § 209(c); (4) present evidence and arguments supporting waiver under humanitarian, family unity, or public interest grounds; (5) address any negative factors (criminal history, immigration violations, public charge concerns) and demonstrate rehabilitation or mitigation; and (6) explicitly request that the immigration judge approve both the adjustment application and the I-602 waiver.

The Role of DHS Counsel

DHS maintains the right to oppose waiver applications, and DHS counsel typically files written opposition describing reasons why the waiver should be denied. Common DHS arguments include: the seriousness of the underlying offense outweighs humanitarian considerations; the applicant has failed to demonstrate adequate rehabilitation; the applicant has insufficient ties to the United States; or the applicant's admission would not serve humanitarian purposes or family unity but rather would undermine immigration enforcement priorities. Immigration judges must consider DHS's position and may credit government arguments regarding enforcement priorities and deterrence, but the statutes and regulations ultimately permit waivers when humanitarian, family unity, or public interest factors support approval.

The government's strongest position typically appears in cases involving violent crimes or serious immigration fraud. The government will emphasize that Congress limited the waiver authority by excluding certain grounds and establishing heightened standards for violent crimes. However, even in such cases, immigration judges retain discretion to approve waivers if they find the circumstances sufficiently compelling.

Waiver Standards and Discretionary Analysis: Humanitarian Purposes, Family Unity, and Public Interest

Humanitarian Purposes: Scope and Application

"Humanitarian purposes" encompass broad considerations of human compassion and equity. In the refugee and asylee context, the fact that an applicant has already established either past persecution or well-founded fear of future persecution constitutes "an extremely strong positive discretionary factor" supporting waiver approval. As the USCIS Policy Manual notes, "unless there are even stronger negative factors that outweigh the positive ones, the waiver application should generally be approved."

Humanitarian grounds might include situations where an applicant faces severe medical conditions, inability to work or support family due to trauma, psychological harm from persecution, family dependence relationships, or demonstrated rehabilitation following past criminal conduct. An applicant who fled gender-based violence, religious persecution, or political oppression, and who has suffered lasting psychological or physical consequences, presents a humanitarian case. An applicant who has worked, paid taxes, and integrated into the community despite past inadmissibility also presents humanitarian considerations.

Unlike waivers requiring proof of "extreme hardship" to a qualifying relative, humanitarian waivers in the refugee/asylee context do not require identification of specific family members or proof of hardship to them. The applicant themselves may be the subject of humanitarian considerations. For example, an applicant with serious medical conditions requiring specialized treatment unavailable in the home country presents humanitarian grounds even if the applicant has no close family members in the United States.

Humanitarian grounds are strongest when combined with evidence of rehabilitation or changed circumstances. An applicant convicted of a non-violent crime many years ago who has since maintained employment, avoided further criminal activity, and contributed to the community presents a more compelling humanitarian case than an applicant convicted recently or with ongoing misconduct. Practitioners should compile detailed chronologies of positive developments, employment history, community involvement, and evidence of law-abiding residence.

Family Unity: Structural Requirements and Evidentiary Framework

Family unity grounds require demonstration that denial of the waiver would separate or disrupt family relationships of significance. Unlike humanitarian grounds, family unity grounds typically require identification of specific family members and evidence of substantial relationships. Close relatives-spouses, children, parents-present the clearest family unity cases. Extended family relationships (aunts, uncles, cousins, in-laws) may support family unity grounds in some circumstances, particularly when the applicant serves a caregiving function.

The structure of the family unity analysis parallels the analysis required in "extreme hardship" waivers for other relief categories: the applicant must identify qualifying relatives, describe the nature and duration of the relationship, explain the impact of separation if the applicant is deported, and document any hardship that would result if the qualifying relative relocated to the applicant's country of origin. However, crucially, the family unity standard does not require proof of "extreme hardship" or "exceptional and extremely unusual hardship." The applicant need demonstrate only that family unity considerations support waiver approval-that the maintenance of family relationships is a sufficient reason to overlook the inadmissibility.

For example, an asylee with U.S. citizen children born in the United States presents strong family unity grounds. Separation would divide the family, forcing either the children to depart the country with the asylee or the asylee to be separated from young children. Either scenario implicates family unity. An asylee who is the sole economic support for elderly parents or a disabled sibling also presents family unity grounds, as family relationships would be disrupted by removal.

Practitioners should obtain declarations from qualifying family members describing the importance of the relationship, the impact of separation, and commitment to the family unit. Documentary evidence should include birth certificates, marriage certificates, photographs, and evidence of shared residence or regular contact. Economic interdependence is relevant; practitioners should document shared finances, transfers of money, joint debts, or economic support provided by or to the applicant.

Public Interest: The Residual Standard

"Public interest" is the most flexible and least-defined ground for waiver approval. The statute simply authorizes waiver "when it is otherwise in the public interest" without specifying what factors constitute public interest. In practice, public interest grounds might include: the applicant's long-term U.S. residence and community integration; prior military service; significant U.S. citizen children or family dependents; substantial business or employment contributions; educational attainment and professional credentials; or other circumstances suggesting that the applicant's removal would conflict with broader immigration policy objectives or humanitarian values.

Public interest arguments are particularly valuable for applicants who do not have strong family unity cases (e.g., single applicants or those with minimal U.S. family) but who have substantial U.S. community ties. A refugee who has lived in the United States for twenty years, built a business employing U.S. residents, contributed to community institutions, and has no family connections to rely upon can argue that removal

would harm not the applicant's family but the public interest in retaining individuals who have integrated and contributed to American society.

The immigration judge exercises discretion in determining what constitutes "public interest," and different judges may evaluate identical fact patterns differently. However, the framework requires that the applicant articulate specific reasons why retention in the United States serves public interest beyond generic arguments about immigration policy. "The applicant is a good person" or "the applicant should not be deported" does not suffice; the applicant must connect specific facts to public interest considerations.

Balancing Test and Discretionary Denial Despite Established Grounds

Even if an applicant establishes humanitarian purposes, family unity, or public interest, the immigration judge retains discretion to deny the waiver if negative factors substantially outweigh the positive considerations. Under the Jean standard for violent crimes, humanitarian and family unity factors must be balanced against the "seriousness of the offense." Under *Matter of Monreal*, exceptional and extremely unusual hardship to family members may nevertheless be insufficient if the underlying crime is particularly grave.

Examples of negative factors include: active criminal history or recent convictions; fraud or misrepresentation indicating dishonesty; involvement in gang activity or organized crime; immigration violations suggesting disregard for law; public charge determination indicating the applicant may become dependent on government benefits; immigration system abuse (filing frivolous applications, failing to appear for hearings); or security concerns suggesting the applicant poses a threat to national security or public safety.

Immigration judges are not bound to approve waivers even when humanitarian or family unity grounds are established. Rather, the judge must conduct a holistic balancing, weighing positive factors (persecution history, family relationships, rehabilitation, community ties) against negative factors (offense seriousness, criminal history, immigration violations). The judicial discretion is genuine; two judges presented with identical facts might reach different conclusions regarding waiver approval.

The Renewal and Waiver Process After USCIS Administrative Denial

Administrative Denial and the Right to Renew

When an asylee or refugee applies for adjustment of status directly with USCIS (outside removal proceedings), and that adjustment is denied based on inadmissibility grounds, USCIS must provide notice that the applicant may renew the request in removal proceedings. 8 C.F.R. § 1209.2(f) explicitly authorizes this renewal process. If the applicant contests the denial (or if DHS initiates removal proceedings based on the denial), the applicant can renew both the adjustment application and any associated waiver application before an immigration judge.

The renewal process does not require filing an entirely new application from scratch. Rather, the applicant presents the same administrative record and arguments to the immigration judge, who has independent authority to review the denial and reach a different conclusion. Importantly, 8 C.F.R. § 1209.2(f) specifies that renewal is "without prejudice," meaning the prior denial does not preclude reconsideration by the judge.

In practice, immigration judges frequently reverse USCIS denials of waiver applications. Common reasons for reversal include: USCIS misapplied the waiver standard by requiring proof of extreme hardship when humanitarian purposes suffice; USCIS failed to adequately credit the persecution history as a strong positive factor; USCIS denied discretionary relief based on policy considerations beyond the statutory framework; or

the applicant has obtained additional evidence since the USCIS denial that supports waiver approval (updated country condition reports, medical evidence, employment documentation, or family relationship proof).

Strategic Considerations: When to Renew and How to Strengthen the Application

When renewing an I-602 waiver in immigration court after USCIS denial, practitioners should carefully analyze the reasons for the USCIS denial and address those specific concerns. If USCIS denied the waiver based on insufficient evidence of humanitarian purposes, the renewed application should include enhanced documentation—more detailed affidavits, country condition reports, psychological evaluation, evidence of continued trauma or ongoing medical needs, or testimony from the applicant and supporting witnesses. If USCIS found the negative factors (particularly a criminal conviction) outweighed humanitarian considerations, the renewed application should emphasize rehabilitation, community integration since the criminal conduct, evidence of behavioral change, and employment or educational accomplishments.

The applicant should also consider whether circumstances have changed since the USCIS denial. If substantial time has passed, the applicant may present evidence of continued lawful residence, employment, community involvement, and absence of further misconduct. Updated country condition information, particularly if conditions in the applicant's country of origin have deteriorated, may strengthen humanitarian grounds. Changed family circumstances—birth of U.S. citizen children, marriage to a U.S. citizen or lawful permanent resident, elderly parents' declining health—may strengthen family unity grounds.

Practitioners should prepare the applicant for testimony regarding the inadmissibility conduct (particularly criminal convictions or fraud) and should anticipate that the immigration judge will question the applicant about the conduct, factors leading to it, and steps taken to ensure it does not recur. The applicant's candor, remorse (if appropriate), and demonstration of genuine reform substantially affect the judge's discretionary decision.

No Appeal from Waiver Denial

The regulations are clear: 8 C.F.R. § 1209.2(f) provides "There is no appeal of a denial, but USCIS will notify an applicant of the right to renew the request in removal proceedings under section 240 of the Act." This means that if an immigration judge denies an I-602 waiver in immigration court, no separate appeal of the waiver denial lies. However, the waiver denial is typically part of a broader removal order, which may be appealed to the Board of Immigration Appeals. The applicant cannot appeal solely the waiver denial, but the waiver decision may be reviewed as part of the overall removal appeal.

This limitation creates strategic considerations regarding whether to preserve arguments for Board review even when removal seems likely. If the immigration judge denies a waiver based on a misinterpretation of the law (e.g., by requiring proof of extreme hardship when the statute does not), the applicant should make clear objections on the record to preserve the issue for Board review. Waiver denials based on discretionary assessments of fact (e.g., the judge's credibility findings or balancing of factors) are more difficult to overturn on appeal because appellate courts defer to immigration judges' factual findings.

San Francisco Asylum Office Context: Refugee Admissions and Waivers at the Port

While this research focuses primarily on I-602 waivers in EOIR immigration court proceedings after asylee status or refugee admission, brief reference to the San Francisco Asylum Office context is relevant for refugees seeking admission from abroad. Refugees approved for admission by the San Francisco Asylum

Office may be found inadmissible at the port of entry and may require I-602 waiver approval before actual admission occurs. The asylum officer or CBP officer who discovers the inadmissibility ground may request Form I-602 submission, or the applicant may be admitted conditionally pending waiver approval.

The San Francisco area port of entry processing at San Ysidro and Otay Mesa involves initial inspection by CBP officers, who may identify criminal history, health issues, immigration violations, or other grounds through background checks and interviews. If inadmissibility is discovered, CBP may deny admission and return the applicant to Mexican territory. Alternatively, CBP may defer the admissibility determination pending I-602 waiver approval. Practitioners advising refugees in the pre-admission phase should be aware that even applicants approved for refugee status by USCIS Refugee Admissions Program may face port-of-entry obstacles requiring waiver processing.

Conclusion: Strategic Framework for Practitioners and Recommendations

The I-602 waiver process within EOIR immigration court proceedings provides a critical pathway for refugees and asylees facing inadmissibility to nonetheless achieve adjustment of status and lawful permanent residence. The framework established by *Matter of K-A-* grants immigration judges original and exclusive jurisdiction to consider waivers once an asylee enters removal proceedings, eliminating the necessity for prior administrative denial and permitting direct judicial review.

Key Strategic Considerations:

First, practitioners should file I-602 waivers concurrently with adjustment of status applications in immigration court whenever a client is placed in removal proceedings. This prevents procedural delay and permits the immigration judge to adjudicate both applications together. Filing in immigration court is ordinarily preferable to first seeking administrative action with USCIS, which delays the process and introduces uncertainty.

Second, practitioners should conduct thorough analysis of the inadmissibility ground(s) to identify which grounds are waivable, which statutory carve-outs apply, and whether Jean's heightened standard for violent crimes is implicated. Non-violent criminal conduct, health conditions, immigration violations, and most other grounds are subject to the humanitarian/family unity/public interest standard without requiring proof of extreme hardship.

Third, practitioners should invest substantial effort in evidence development and written narrative to support waiver approval. The waiver application is not merely a box to check; it is an opportunity to tell the applicant's story, connect the facts to relevant legal standards, address negative factors candidly, and persuade the immigration judge that humanitarian, family unity, or public interest considerations support approval.

Fourth, practitioners should anticipate and address the government's strongest arguments regarding offense seriousness, rehabilitation, and enforcement priorities. Acknowledging the weight of negative factors while articulating why they are outweighed by humanitarian or family unity considerations demonstrates sophistication and credibility.

Fifth, practitioners should recognize that the immigration judge's discretion is real and potentially dispositive. Different judges may weigh identical facts differently, and favorable discretionary decisions depend on persuasive advocacy, thorough preparation, and client credibility.

The current legal landscape as of February 2026 continues to recognize I-602 waivers as a valid mechanism

for providing humanitarian relief to refugees and asylees who have established persecution or well-founded fear but who face technical grounds of inadmissibility. While executive policy has shifted toward restrictive immigration enforcement in certain contexts, the statutory framework for I-602 waivers remains intact, and immigration judges continue to exercise jurisdiction to approve waivers in appropriate cases.

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This report reflects the legal landscape as of February 2026 and synthesizes controlling precedent, regulatory frameworks, and current practice in EOIR immigration court proceedings. Immigration law continues to evolve through executive policy, legislative action, and judicial decision. Practitioners should monitor

developments from EOIR, USCIS, and the federal courts for any modifications to the I-602 waiver process or substantive standards described herein.