

Form I-191 Waiver Application Under INA § 212(c): Legal Framework, Eligibility Analysis, and Procedural Guidance for Immigration Relief in the Northern California Context

Generated by: Legal AI Assistant
Facilitated by: The Law Offices of Fernando Hidalgo, Inc.
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FINDINGS

FORM I-191 WAIVER APPLICATION UNDER INA § 212(C): COMPREHENSIVE LEGAL FRAMEWORK, ELIGIBILITY ANALYSIS, AND PROCEDURAL GUIDANCE FOR IMMIGRATION RELIEF IN THE NORTHERN CALIFORNIA CONTEXT

Executive Summary

Form I-191, the Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act, represents one of the most consequential yet narrowly available forms of discretionary relief for lawful permanent residents (LPRs) facing removal based on criminal convictions entered before April 1, 1997.[1][12] Despite congressional repeal of former INA § 212(c) in 1996, the United States Supreme Court's landmark decision in *INS v. St. Cyr*, 533 U.S. 289 (2001) established that the statute's protections remain available retroactively to noncitizens who pleaded guilty to deportable offenses prior to the repeal date.[35][44] Subsequent precedent, particularly the Board of Immigration Appeals' decision in *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014), substantially expanded eligibility by eliminating distinctions between guilty plea convictions and trial convictions, and by authorizing waiver of most deportable grounds regardless of whether a comparable inadmissibility ground exists.[35][38][44]

As of February 2026, applicants meeting strict eligibility criteria may file Form I-191 through two distinct procedural pathways, each carrying substantially different legal consequences and strategic implications. LPRs not yet in removal proceedings may file directly with USCIS, paying a current filing fee of \$930.[1][9][31] Conversely, LPRs already subject to removal proceedings must file Form I-191 before the immigration judge rather than USCIS, triggering different procedural rules, deadlines, and appellate frameworks established by the Executive Office for Immigration Review (EOIR).[27][58] This procedural dichotomy creates critical strategic considerations that practitioners must navigate with precision, as premature USCIS filing once removal proceedings commence converts an administrative matter into court proceedings with irreversible consequences.

The core challenge in 212(c) relief applications lies not in establishing eligibility-which turns primarily on objectively verifiable facts regarding conviction dates, lawful permanent residency duration, and sentence length-but in persuading an adjudicator that the totality of circumstances warrants discretionary relief despite the client's criminal history. The applicable legal standard requires applicants to demonstrate that favorable factors, including family ties to the United States, military service, community contributions, length of continuous residence, property or business ownership, rehabilitation evidence, and hardship to immediate family members, outweigh unfavorable factors such as the nature and circumstances of the criminal conviction, prior criminal history, immigration violations, employment instability, and failure to comply with tax obligations or other legal duties.[1][4][12][16]

Risk Assessment for Form I-191 Applications: The likelihood of successful 212(c) relief varies substantially based on the applicant's specific circumstances and the discretionary standard applied by the particular adjudicator or immigration judge. Applications involving aggravated felonies with substantial prison sentences, multiple criminal convictions, or recent immigration violations present medium-to-high risk of denial. Conversely, applications by long-term LPRs with significant family ties, minimal criminal histories excluding the qualifying conviction, stable employment, and documented community service present medium-to-low risk profiles. No application meets the threshold for high probability of success given the

inherently discretionary nature of the analysis and the subjective weighting of competing factors across different judicial officers.

Primary Strategic Decision Points: Counsel must determine whether to (1) file preemptively with USCIS before removal proceedings commence, accepting the risk that denial may trigger subsequent proceedings, or (2) hold the application until removal proceedings begin, gaining procedural advantages of the removal context but accepting accelerated timelines; (3) pursue 212(c) relief independently or in combination with alternative reliefs such as cancellation of removal under INA § 240A(a) or waivers under INA § 212(h); and (4) prioritize discretionary factor development through evidence gathering and witness preparation to overcome factual vulnerabilities in the application record.

Legal Framework and Statutory Authority

Statutory Foundation and Historical Context

Former Section 212(c) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1182(c), originally provided discretionary authority for the Attorney General to waive deportability or excludability grounds for certain aliens who had been lawfully admitted for permanent residence and who could establish seven years of lawful unrelinquished domicile in the United States.[12][27] The provision was enacted as part of the comprehensive immigration reform legislation known as the Immigration Act of 1990, which substantially recodified deportability and inadmissibility grounds while preserving executive discretion to grant relief in extraordinary circumstances.[12] Congress repealed § 212(c) effective April 1, 1997, as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, which simultaneously enacted the Antiterrorism and Effective Death Penalty Act (AEDPA) section 440(d).[56][58]

The statutory repeal of § 212(c) did not immediately eliminate relief for all affected noncitizens. Instead, subsequent legislation and judicial interpretation created complex temporal boundaries determining when § 212(c) relief remains available. Congress amended § 212(c) multiple times before its ultimate repeal. First, section 511 of the Immigration Act of 1990 restricted the availability of § 212(c) relief by limiting its application to aliens removable on grounds that have corresponding grounds of excludability (inadmissibility).[12][27] Subsequently, section 440(d) of AEDPA, effective April 24, 1996, further restricted § 212(c) by specifying that relief would not apply to aliens deportable based on enumerated offenses including aggravated felonies, certain controlled substance offenses, firearms offenses, and multiple crimes of moral turpitude.[56][58] Finally, IIRIRA section 306(d), effective April 1, 1997, completed the repeal of § 212(c) itself.[56][58]

These successive amendments created overlapping temporal windows determining which version of § 212(c) applies to particular applicants. An LPR convicted by plea before November 29, 1990, may seek relief under the original, unrestricted version of § 212(c), facing no categorical bars from aggravated felony or controlled substance convictions.[1][27][58] An LPR convicted by plea between November 29, 1990, and April 24, 1996, may seek relief under the Immigration Act of 1990 version, limited only by the "comparable grounds" requirement but not by AEDPA's categorical restrictions.[1][27][58] An LPR convicted by plea between April 24, 1996, and April 1, 1997, may seek relief only for grounds not enumerated in AEDPA section 440(d), and therefore may be barred from relief if convicted of aggravated felonies, drug offenses, or specified firearms offenses.[1][27][38][58] Critically, *Matter of Abdelghany* established that trial convictions, rather than only guilty plea convictions, also qualify for § 212(c) relief if the conviction date falls before the operative restriction date, eliminating the prior regulatory distinction that had barred post-trial convictions from relief eligibility.[35][38][44]

Regulatory Framework

Regulations implementing Form I-191 procedures are codified at 8 C.F.R. § 1212.3, which establishes the procedural requirements for filing, supporting documentation, and agency adjudication. Section 1212.3(a) specifies that USCIS may grant applications for relief under former INA § 212(c) to otherwise eligible applicants if the applicant warrants a favorable exercise of discretion. Section 1212.3(c) establishes fee requirements, initially setting the filing fee at a level adjusted annually for inflation, with the current fee standing at \$930 as of January 2026.[53] Section 1212.3(d) specifies biometric services requirements, authorizing USCIS to require applicants to appear for biometric appointments including fingerprinting, photography, and signature capture.[12][15][18]

Immigration Court procedures for Form I-191 applications filed during removal proceedings are governed by the Immigration Court Practice Manual and supplemented by EOIR Policy Manual provisions, which establish different filing deadlines and procedural requirements than those applicable to USCIS administrative filings.[3][6][14][57] When a respondent is in removal proceedings, the immigration judge issues a scheduling order after finding removability, generally establishing a sixty-day deadline for submission of applications for relief or protection from removal and supporting documentation.[3][6][14][57] Failure to meet these court-imposed deadlines may result in abandonment findings precluding consideration of the application.[3][6][14][57]

Binding Precedent and Supreme Court Authority

The Supreme Court's decision in *INS v. St. Cyr*, 533 U.S. 289 (2001), remains the foundational authority establishing that § 212(c) relief remains available to noncitizens who entered into guilty plea agreements before IIRIRA's effective date of April 1, 1997, despite the statute's repeal.[35][44] In *St. Cyr*, the Court held that "IIRIRA's elimination of § 212(c) relief for people who entered into plea agreements expecting that they would be eligible for such relief clearly attaches a new disability to past transactions or considerations" and therefore constitutes an impermissible *ex post facto* application of law.[35][44] This retroactivity protection rests on the principle that noncitizens who pleaded guilty to crimes prior to IIRIRA's effective date reasonably relied on the continued availability of § 212(c) relief when negotiating their guilty pleas, and therefore Congress may not retroactively eliminate that protection.[35][44]

The Supreme Court's subsequent decision in *Judulang v. Holder*, 132 S.Ct. 476 (2011), fundamentally altered § 212(c) eligibility jurisprudence by striking down the Board of Immigration Appeals' "statutory counterpart" rule as arbitrary and capricious under the Administrative Procedure Act.[35][37][44] Under the counterpart rule adopted in prior BIA decisions, an LPR convicted of a deportable offense could seek § 212(c) relief only if the offense also constituted a ground of inadmissibility with a substantially similar statutory basis.[37][40][44] *Judulang* held this rule violated the APA's prohibition on arbitrary and capricious agency action because it imposed mechanical distinctions that did not rationally relate to an alien's fitness to remain in the United States, lacked a rational connection to legitimate agency goals, and treated similarly situated aliens disparately based solely on whether they had traveled abroad since their convictions.[37][40][44]

The Board of Immigration Appeals' decision in *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014), implementing the *Judulang* mandate on remand, represents the current controlling authority governing § 212(c) eligibility in the post-2014 period.[35][38][41][44] *Abdelghany* holds that an LPR who accrued seven consecutive years of lawful domicile may seek waiver of removal for most deportable criminal offenses if the conviction resulted from a plea or trial conviction entered before the applicable restriction date.[35][38][41][44] Critically, the Board eliminated distinctions between plea and trial convictions, holding that § 212(c) relief is available regardless of whether the conviction resulted from a guilty plea or full

trial.[35][38][41][44] The decision also abrogated the prior regulatory prohibition in 8 C.F.R. § 1212.3(h) that had categorically barred relief for convictions following trial.[35][38][41][44]

Policy Guidance and USCIS Standards

Current USCIS policy guidance on discretionary relief applications is established through the USCIS Policy Manual and supplemented by operational memoranda issued to adjudicating officers.[13] On August 19, 2025, USCIS issued Policy Alert PA-2025-16, which clarifies how officers must apply discretionary analysis in immigration benefit requests including certain forms of relief from deportation.[13] This recent guidance emphasizes that "even if eligibility is established, officers then weigh positive and negative factors to determine if granting the benefit is appropriate" and specifically allocates "significant negative discretionary weight" to cases where an applicant has endorsed, supported, or promoted terrorist organizations, anti-American ideologies, or antisemitic terrorism.[13]

For purposes of § 212(c) relief, the USCIS Policy Manual establishes that favorable discretionary factors include family ties in the United States, length of continuous residence, employment history, military service, community contributions, rehabilitation, property ownership, tax compliance, education, and evidence of character from employers, community leaders, and family members.[1][4][31] Conversely, unfavorable factors include the seriousness and circumstances of the criminal conviction(s), prior criminal history, immigration violations, instability of employment, failure to comply with tax obligations or other legal duties, and inability to rehabilitate.[1][4][31] The policy does not establish a formulaic weighting formula but instead requires case-by-case analysis under a totality-of-circumstances standard in which all factors are considered together to determine whether relief warrants a favorable discretionary exercise.[1][4][31]

Current Legal Landscape (2023-2026)

Recent BIA Decisions and Appellate Developments

The Board of Immigration Appeals has issued limited precedential decisions addressing § 212(c) relief in the 2023-2026 period, reflecting the relative rarity of such applications following the landmark decisions in *St. Cyr*, *Judulang*, and *Abdelghany*. However, practitioners should note that *Matter of Tepec-Garcia*, 29 I&N Dec. 371 (BIA 2025), issued in February 2025, provides important guidance on procedural requirements and burden of proof in removal proceedings more broadly, requiring that the government establish alienage and removability through admissible evidence or risk termination of proceedings even in the government's absence.[52] While not directly addressing § 212(c), this decision reinforces the government's continuing burden to prove all elements of removability and the immigration judge's authority to terminate proceedings when that burden remains unmet.

Regional variation in § 212(c) relief standards persists across circuits, with the Ninth Circuit maintaining relatively favorable interpretations of eligibility and discretionary relief compared to other circuits.[26][29] The Ninth Circuit's precedent in *Abebe v. Mukasey*, 514 F.3d 909 (9th Cir. 2008), and its progeny, continues to provide persuasive authority for broader availability of § 212(c) relief to deportable aliens, though the court has not issued substantial new guidance since *Abdelghany's* 2014 Board decision.[29] Practitioners in Northern California benefit from Ninth Circuit controlling authority that broadly interprets § 212(c) eligibility, though individual judges within the San Francisco Immigration Court may apply discretionary factors with varying rigor.

USCIS Procedural Updates and Fee Adjustments

Effective January 1, 2026, USCIS implemented annual fee adjustments pursuant to the Emergency Stopgap

USCIS Stabilization Act, which requires the agency to adjust certain fees annually based on inflation calculations.[7] The Form I-191 filing fee increased from the prior year to the current \$930 amount, effective immediately for applications postmarked on or after January 1, 2026.[7][53] Practitioners must verify current fee requirements with each application, as further increases may occur in subsequent years based on inflation indices.[7] Additionally, USCIS may collect biometric services fees separately if the applicant is required to attend a biometrics appointment, though biometric fees are assessed only after the agency notifies the applicant of the requirement.[53]

On December 12, 2025, USCIS issued updated guidance on photograph and biometrics requirements, effective immediately for all applications filed after that date.[15] This update eliminates acceptance of self-submitted photographs and restricts when previously collected photographs may be reused, requiring instead that photographs be taken at an Application Support Center (ASC) during a Biometrics Services Appointment (BSA) or by other USCIS-authorized entities.[15] For Form I-191 applications, practitioners should anticipate that USCIS will likely require a biometrics appointment unless the applicant provides a photograph taken at an ASC within the prior three years, as USCIS policy authorizes reuse of photographs less than three years old at the agency's discretion for nonimmigrant applications and may apply this framework to Form I-191 adjudications as well.[15]

EOIR Procedural Developments and Immigration Court Docket Management

The Executive Office for Immigration Review has not issued substantive changes to Form I-191 filing procedures in immigration court since the prior major rule amendments, but the agency continues to manage docket backlogs that affect case processing timelines.[6][14] As of February 2026, immigration court hearing backlogs remain substantial nationwide, with individual court locations experiencing significant delays between filing and scheduling of hearings for removal proceedings generally.[14][57] For applicants in the San Francisco Immigration Court, case processing timelines typically range from six to eighteen months between initial appearance and final hearing on applications for relief, though expedited removal proceedings and detained cases may move more quickly.[6][14]

Immigration judges in the San Francisco court, consistent with EOIR policy, apply the procedural requirements established in the Immigration Court Practice Manual, which mandate sixty-day filing deadlines for applications for relief following an order finding removability, unless the judge extends such deadlines by motion.[3][6][14][57] Failure to meet these deadlines may result in abandonment of applications for relief, precluding judicial consideration regardless of the application's substantive merit.[3][6][14][57] Practitioners must therefore prioritize early engagement with clients in removal proceedings to ensure timely preparation and filing of Form I-191 applications within the established deadlines.

Interaction with Recent Discretionary Relief Policy Updates

USCIS's August 2025 policy update on discretionary factors (Policy Alert PA-2025-16) applies to all benefit applications involving discretionary analysis, including § 212(c) relief determinations.[13] The updated guidance heightens emphasis on national security concerns, lawful compliance with prior immigration filings, and integrity of applications, establishing that applicants must demonstrate that their record and compliance with immigration law support a favorable discretionary decision.[13] While § 212(c) relief does not explicitly require proof of extreme hardship to a qualifying relative-unlike § 212(h) waivers-the updated guidance indicates that USCIS officers will assign substantial negative discretionary weight to applications involving immigration violations, anti-American activities, or lack of demonstrated commitment to lawful compliance.[13]

San Francisco-Specific Immigration Court Context and Northern California Practice Considerations

San Francisco Immigration Court Locations and Administrative Structure

The San Francisco Immigration Court, operated by the Executive Office for Immigration Review within the Department of Justice, maintains three hearing locations serving Northern California: the primary courthouse at 100 Montgomery Street, Suite 800, San Francisco, California 94104; an auxiliary location at 630 Sansome Street, 4th Floor, Room 475, San Francisco, California 94111; and a Concord satellite location at 1855 Gateway Boulevard, Suite 850, Concord, California 94520.[6][14][23][57] Cases may be transferred between locations based on the respondent's residence, detention location, or hearing scheduling requirements, typically through motion practice requesting venue changes under 8 C.F.R. § 1003.20(b).[23]

The San Francisco Immigration Court serves one of the highest-volume asylum and removal dockets in the nation, with particular concentration of cases involving Central American applicants from Guatemala, Honduras, El Salvador, and Nicaragua, as well as Mexican nationals and significant Mexican-American applicant populations.[6][14] This demographic concentration has created specialized expertise among both immigration judges and DHS counsel regarding country conditions, gang-related persecution, gender-based violence, and common removal grounds specific to these populations.[6][14] Additionally, the court's location in the technology sector hub of the San Francisco Bay Area generates a secondary caseload of H-1B visa and employment-based immigration matters, though removal proceedings remain the primary docket.[6][14]

Judge-Specific Practices and Procedural Tendencies

Immigration judges within the San Francisco court maintain variable approaches to Form I-191 applications, reflecting individual judicial philosophies regarding discretionary relief and criminal history significance. While the EOIR Policy Manual establishes uniform procedural requirements, individual judges exercise substantial discretion in the weight assigned to particular discretionary factors, the strength of evidence required to establish favorable factors, and the overall rigor with which totality-of-circumstances analysis is conducted.[6][14] Practitioners are well-advised to research individual judge preferences regarding criminal history severity, rehabilitation evidence weight, family separation hardship, and evidence presentation format through PACER records of prior decisions and consultation with local immigration law practitioners familiar with specific judges' published opinions and observed practices.[6][14]

General best practices for Form I-191 litigation before San Francisco immigration judges include: submitting detailed written motions at least fifteen days prior to master calendar hearings to obtain vacated hearings and extended briefing deadlines; providing comprehensive evidence compilation establishing discretionary factors before hearings rather than relying on testimony alone; offering credible witness testimony from employers, community members, family, and potentially expert witnesses on country-specific persecution or rehabilitation; and clearly articulating how positive factors collectively outweigh criminal conduct under totality-of-circumstances analysis.[6][14]

San Francisco Asylum Office Interview Procedures (If Applicable to 212(c) Relief Pathway)

While Form I-191 applications filed with USCIS do not proceed through asylum office interviews, applications filed in immigration court may trigger different procedural frameworks if the applicant simultaneously pursues asylum or withholding of removal. The San Francisco Asylum Office, located at Fort Mason in San Francisco, maintains an interview schedule typical of major metropolitan offices, with appointment wait times currently ranging from two to six months following receipt of asylum applications.[3][6][14] Practitioners handling concurrent § 212(c) and asylum applications should coordinate

filing timelines to ensure asylum interviews do not delay § 212(c) processing and that evidence gaps identified during asylum interview preparation are addressed in § 212(c) discretionary factor development.[3][6][14]

ICE ERO Field Office 1 Enforcement Patterns and Detention Practices

Northern California ICE Enforcement and Removal Operations (ERO) Field Office 1 maintains detention facilities including the San Francisco ICE Processing Center, the Alameda County Santa Rita Jail (contracted detention bed space), and facilities in other Northern California locations.[6][14] ICE ERO Field Office 1 has historically prioritized enforcement against individuals with aggravated felony convictions, repeat immigration violators, and individuals with gang-related charges, though prosecutorial discretion policies have shifted substantially over the 2023-2026 period.[6][14] As of January 2026, consistent with national enforcement priorities, ICE has de-emphasized enforcement against individuals convicted only of low-level drug offenses absent other deportability grounds, though this discretion remains subject to change pending shifts in administration enforcement policies.[6][14]

For applicants detained pending removal proceedings, early application for 212(c) relief may support applications for bond reduction or release on own recognizance, as outstanding Form I-191 applications demonstrate active pursuit of relief from removal and may weigh favorably in custody determination proceedings.[6][14] Practitioners should coordinate § 212(c) filing with bond proceedings to maximize these collateral benefits of timely application filing.[6][14]

California Criminal Law Interaction with Immigration Consequences

Form I-191 eligibility intersects with California state criminal law provisions affecting conviction modification and vacation, particularly California Penal Code § 1473.7 (Vacation of Convictions with Immigration Consequences), PC § 1203.43 (Post-Conviction Relief for Immigration Consequences), and PC § 18.5 (Prop 47 Reductions and Immigration Impact).[6][14] Practitioners handling Form I-191 applications should systematically assess whether underlying convictions are subject to modification or vacation through state post-conviction relief procedures, as successful conviction modification may eliminate deportability grounds entirely, rendering § 212(c) relief unnecessary.[6][14]

California's SB 54 (California Values Act) limits state and local law enforcement cooperation with federal immigration enforcement, which may affect information flow regarding criminal convictions and may provide strategic leverage in communications with DHS counsel regarding case disposition or settlement possibilities.[6][14] However, SB 54 does not prevent immigration consequences from attaching to valid convictions; it merely restricts local cooperation with enforcement actions.[6][14]

Statutory Eligibility Framework: Core Requirements and Categorical Restrictions

Lawful Permanent Resident Status Requirement

Form I-191 applications require that the applicant maintain valid lawful permanent resident status at the time of filing and must have been "lawfully admitted for permanent residence" in the first instance, meaning that the permanent residence was obtained without fraud, misrepresentation, or ineligibility at the time of admission.[1][12][27][58] The requirement that the applicant "continue to have LPR status" means that the applicant has not abandoned permanent residency through explicit renunciation, extended departure from the United States exceeding the authorized period, or involuntary loss of status through prior deportation orders or administrative removals.[1][12][27][58]

Under 8 C.F.R. § 1.2, status as an LPR is abandoned if an applicant remains outside the United States for more

than one year without permission, voluntarily renounces status, or fails to maintain residence in the United States with the intention to make it the principal place of residence.[1][12][27] Additionally, under prior § 212(c) jurisprudence and current USCIS policy, an applicant who obtained LPR status through marriage to a U.S. citizen or LPR, if the marriage occurred less than two years before the applicant's admission as permanent resident, may be subject to heightened scrutiny regarding the bona fides of the marriage and the lawfulness of the admission.[1][12][27] However, § 212(c) relief does not categorically bar applicants admitted through family-based sponsorship, and marriage-based admissions that occurred more than two years before removal proceedings remain valid bases for established LPR status.[1][12][27]

Conditional permanent resident status does not preclude § 212(c) relief eligibility, provided the applicant has resided lawfully as an LPR (whether conditional or unconditional) for at least seven years, and provided the conditions have been removed or are in the process of removal when § 212(c) relief is sought.[1][12][27][36] The critical question is whether the applicant accumulated the required seven years of residence while maintaining LPR status, regardless of whether the status was initially conditional or unconditional.[1][12][27][36]

Seven-Year Lawful Domicile Requirement and Absences

Form I-191 eligibility requires that the applicant establish "lawful unrelinquished domicile" in the United States for at least seven consecutive years immediately preceding the filing of the § 212(c) relief application.[1][12][27][58] This requirement is distinct from physical presence within the United States and focuses instead on the applicant's intent to maintain a principal place of residence in the United States combined with lawful status permitting such residence.[1][12][27][58] The seven-year period must be continuous, meaning that extended absences from the United States may interrupt the domicile calculation.[1][12][27][58]

However, absences from the United States undertaken by an LPR holding valid advance parole documents, or absences authorized through other lawful travel documents, do not interrupt the seven-year domicile period, as the applicant's domicile is presumed to continue during authorized absences.[1][12][27][58] Conversely, travel without authorization or departure following termination of lawful status or entry without inspection upon return would interrupt the domicile clock, requiring that the applicant re-establish seven years of continuous lawful domicile from the date of the interruption.[1][12][27][58]

Critically, the Supreme Court's decision in *Vartelas v. Holder*, 132 S.Ct. 1479 (2012), establishes that absences from the United States undertaken by permanent residents, even if they triggered re-admission as a new arrival, do not interrupt the domicile requirement or expose the resident to retroactive application of post-departure immigration law amendments, provided the permanent resident maintained valid status and lawful intent to return.[35][44] This retroactivity protection ensures that LPRs cannot be penalized through retroactive application of immigration law amendments for lawful travel undertaken when prior law was favorable to their interests.[35][44]

The seven-year clock for § 212(c) purposes is measured from the date of filing the § 212(c) relief application (whether with USCIS or in immigration court), not from the date of the criminal conviction or the date of removal proceedings commencement.[1][12][27][58] An applicant who obtained LPR status on January 1, 2000, and filed a Form I-191 application on January 1, 2007, would satisfy the seven-year requirement despite any intervening criminal conviction, detention, or removal proceedings commencement, provided that the intervening circumstances did not result in abandonment of LPR status.[1][12][27][58]

Conviction Date Requirements and Temporal Windows

Form I-191 eligibility turns on conviction dates relative to specific statutory amendment effective dates: November 29, 1990 (Immigration Act of 1990 effective date); April 24, 1996 (AEDPA effective date); and April 1, 1997 (IIRIRA effective date, § 212(c) repeal date).[1][12][27][38][58] These dates create temporal windows determining which version of § 212(c) applies and which categorical bars apply to specific convictions.[1][12][27][38][58]

Applicants convicted by guilty plea before November 29, 1990, are eligible for § 212(c) relief under the original, unrestricted version of the statute, subject only to the requirement that the convicted offense represents a ground of deportability (or inadmissibility) and that the applicant has satisfied the seven-year domicile requirement.[1][12][27][38] This earliest category includes no categorical restrictions based on aggravated felonies or other offense types.[1][12][27][38]

Applicants convicted by guilty plea between November 29, 1990, and April 24, 1996, are eligible for § 212(c) relief under the Immigration Act of 1990 version, subject to the "comparable grounds" requirement (requiring that the deportable offense have a substantially similar inadmissibility counterpart), but not subject to AEDPA's categorical bars on aggravated felonies, drug offenses, or firearms offenses.[1][12][27][38] Following *Matter of Abdelghany*, the "comparable grounds" requirement has been eliminated, and relief is available for virtually all deportable offenses within this temporal window.[35][38][44]

Applicants convicted by guilty plea between April 24, 1996, and April 1, 1997, are eligible for § 212(c) relief only for deportable offenses not enumerated in AEDPA section 440(d), which specifically excludes aggravated felonies, controlled substance offenses, certain firearms offenses, multiple crimes of moral turpitude, and espionage-related offenses.[1][12][27][38][56][58] *Matter of Abdelghany* established that trial convictions entered within this temporal window are now also eligible for § 212(c) relief (subject to AEDPA's categorical bars), eliminating the prior regulatory distinction limiting relief to guilty plea convictions.[35][38][41][44]

Applicants convicted after April 1, 1997, are categorically ineligible for § 212(c) relief, as the statute was repealed effective that date and no retroactivity protection extends beyond April 1, 1997.[1][12][27][38][58]

Crime Categorization and Categorical Bars to 212(c) Relief

Aggravated Felony Convictions and the Five-Year Imprisonment Bar

Aggravated felonies, defined at 8 U.S.C. § 1101(a)(43), represent the most serious category of criminal convictions for immigration purposes and are subject to heightened restrictions on § 212(c) relief.[19][22][35][38] Aggravated felonies include murder, rape, sexual abuse of a minor, illicit drug trafficking, firearms trafficking, money laundering exceeding \$10,000, certain fraud offenses exceeding \$10,000, crimes of violence with one-year sentences, theft or burglary with one-year sentences, child pornography, RICO offenses with one-year sentences, and numerous other serious felonies.[19][22][35][38]

Critically, § 212(c) relief is not available to an applicant who "has served an aggregate term of imprisonment of at least 5 years as a result of one or more aggravated felony convictions entered between November 29, 1990, and April 24, 1996," and similarly not available to applicants subject to AEDPA section 440(d) categorical restrictions if they have been convicted of aggravated felonies after November 29, 1990, and have served five or more years in actual imprisonment.[1][12][27][35][38][56] The critical distinction is between the statutory sentence imposed and the actual term of imprisonment served—an applicant may have a statutory sentence of ten years but serve only four years through early release or good conduct credits, in which case the five-year bar would not apply.[1][12][27][35][38]

However, aggravated felonies convicted before November 29, 1990, are not subject to the five-year bar and

may be waivable under the original § 212(c) if the applicant can demonstrate that favorable discretionary factors outweigh the criminal conduct.[1][12][27][38][41] Additionally, Matter of Abdelghany clarifies that the application of the five-year bar is limited to convictions entered on or after November 29, 1990, meaning that aggravated felony convictions prior to that date are not subject to the five-year bar regardless of the sentence imposed.[35][38][41][44]

Controlled Substance Offenses and Categorical Limitations

Controlled substance offenses present a complex § 212(c) eligibility analysis dependent on both the conviction date and the type of offense. Generally, convictions for drug trafficking are categorically barred from § 212(c) relief if the conviction falls within AEDPA's restricted window (April 24, 1996, to April 1, 1997), but are potentially waivable under the original § 212(c) for convictions prior to November 29, 1990.[1][12][27][38][56] Convictions for simple drug possession, particularly simple possession of 30 grams or less of marijuana, present a more nuanced analysis, as certain controlled substance possession offenses may be waivable even within the restricted window, depending on whether the offense constitutes a deportable versus inadmissible ground.[1][12][27][47][54]

The distinction between "illicit trafficking" in controlled substances and simple possession or other non-trafficking drug offenses is critical to § 212(c) eligibility analysis. Federal and state law definitions of trafficking may differ, requiring case-by-case analysis of the specific conviction judgment language to determine whether the offense constitutes trafficking within federal law definitions established at 21 U.S.C. § 802 (Controlled Substances Act definitions).[1][12][27][47] An offense characterized in state law as "possession with intent to distribute" or "sale" may or may not meet federal trafficking definitions depending on whether the conviction judgment establishes all elements of federal trafficking.[1][12][27][47]

Crimes Involving Moral Turpitude and Specific Categorical Restrictions

Crimes involving moral turpitude (CIMTs) present substantial § 212(c) eligibility challenges, though the availability of relief depends on the conviction date. Generally, CIMTs are deportable offenses that render applicants removable, and therefore potentially waivable under § 212(c) for conviction dates prior to AEDPA's effective date of April 24, 1996.[1][12][27][38] However, applicants convicted of two or more CIMTs within five years of admission to the United States are subject to categorical bars from § 212(c) relief if the convictions fall within the April 24, 1996, to April 1, 1997, restricted window.[1][12][27][38][56]

Additionally, certain categories of CIMTs carry heightened significance for § 212(c) relief purposes. Crimes of violence with intent to cause serious bodily harm or involving reckless endangerment of human life, designated as CIMTs, are distinguishable from simple CIMTs and may carry enhanced restrictions under some interpretations of immigration law, though Matter of Abdelghany has substantially expanded the availability of relief for CIMTs by eliminating the statutory counterpart requirement.[35][38][44]

Firearms Offenses and Interstate Nexus Issues

Firearms offenses present categorical restrictions similar to drug offenses, with detailed restrictions enacted as part of AEDPA section 440(d) applicable to convictions within the restricted window.[1][12][27][38][56] Specific prohibited firearms offenses enumerated in AEDPA section 440(d) are not waivable under § 212(c) if the conviction falls within the April 24, 1996, to April 1, 1997, window.[1][12][27][38][56] However, firearms offenses convicted prior to November 29, 1990, or outside the restricted window are potentially waivable, particularly if the offense does not constitute an aggravated felony.[1][12][27][38]

California state firearms convictions require careful analysis under the federal categorical approach to

determine whether the state offense meets the federal definition for firearms trafficking or other federal firearms restrictions. California offenses such as carrying a concealed weapon, brandishing a firearm, or unlawful possession of a firearm may or may not meet federal definitions of "trafficking" depending on whether the conviction judgment establishes elements of federal offenses.[1][12][27][47]

Venue and Procedural Pathways: USCIS vs. Immigration Court Filing

USCIS Administrative Filing Process and Requirements

Applicants not in removal proceedings may file Form I-191 directly with USCIS at the appropriate service center, currently based on applicant residence geography as established by USCIS processing facility assignments.[1][9][12][31] The USCIS filing process requires submission of the completed Form I-191 form, the \$930 filing fee (or Form I-912 fee waiver request if applicable), and comprehensive supporting documentation establishing eligibility and discretionary factors.[1][9][12][31][53]

Supporting documentation for USCIS § 212(c) filings must include: certified court documents reflecting conviction information including the offense charged, the specific statute violated, the date of conviction, the sentence imposed, and the actual term of imprisonment served; documentation of LPR acquisition including green card copies, adjustment of status documentation, or immigrant visa documentation; proof of seven-year lawful domicile including lease agreements, utility bills, tax returns, employment records, or other documentation establishing residence within the United States for the required seven-year period; evidence of favorable discretionary factors including employment letters, family documentation, community service records, military service documentation, business ownership evidence, property deeds, medical records, character reference letters, rehabilitation certificates, and similar evidence demonstrating ties to the United States and rehabilitation efforts.[1][9][12][31]

The USCIS process does not involve an interview or hearing in most cases, though USCIS may schedule a biometrics appointment at an Application Support Center to capture fingerprints, photograph, and signature.[9][12][15][53] Applicants who fail to attend a scheduled biometrics appointment without authorized postponement risk application denial.[9][12][15][53] After USCIS receives the application and biometric information, the agency will adjudicate the application based on the submitted evidence and may issue an approval notice, a request for evidence (RFE) seeking additional documentation, or a final denial notice.[9][12][31]

USCIS processing times for Form I-191 applications are not separately tracked and reported by service center, but general USCIS processing times for discretionary relief applications range from six to eighteen months depending on service center workload, evidence complexity, and whether RFEs are issued.[9][31][39] Applicants should not expect expedited processing regardless of personal circumstances, and should plan for extended processing timelines when filing administratively with USCIS.[9][31][39]

Immigration Court Filing Process and Procedural Distinctions

Applicants already in removal proceedings must file Form I-191 (or Form EOIR-42A in some circumstances) before the immigration judge rather than with USCIS, triggered by a Notice to Appear (NTA) charging the applicant with deportability or inadmissibility and initiating removal proceedings.[1][27][58] The immigration court filing process operates under different procedural rules, deadlines, and standards than the USCIS administrative process, and therefore requires distinct strategic considerations.[1][27][58]

When an immigration judge issues an order finding that removability has been established (meaning the applicant has not successfully contested the charge of deportability or inadmissibility), the judge enters a

scheduling order establishing a deadline for submission of applications for relief and supporting documents, generally sixty days from the order finding removability, unless the judge extends the deadline by motion.^{[3][6][14][57]} This 60-day deadline is strictly enforced, and failure to meet the deadline may result in abandonment of all applications for relief, precluding judicial consideration regardless of the application's substantive merit.^{[3][6][14][57]}

For applicants represented by counsel, practitioners must file a Notice of Appearance (Form EOIR-28 or Form G-28) with the immigration court at least fifteen days prior to a scheduled hearing to preserve rights to receive notice, participate in proceedings, and extend hearing deadlines for briefing and evidence submission.^{[3][6][14][57]} Represented applicants may request continuance of master calendar hearings to allow for counsel engagement and case development, with continuance requests typically granted absent extraordinary circumstances provided they are timely filed.^{[3][6][14][57]}

For individual calendar hearings (the merits hearing on removal charges and applications for relief), filings including amendments to applications for relief, additional supporting documents, or updates to witness lists must be submitted at least thirty days in advance of the hearing for both represented and unrepresented applicants.^{[3][6][14][57]} Responses to the respondent's filings must be filed by the DHS attorney within ten days of the original filing.^{[3][6][14][57]} Failure to meet the thirty-day advance filing deadline may result in exclusion of late-filed evidence and documents, though the immigration judge maintains discretion to accept evidence offered solely to rebut or impeach government evidence at the hearing itself.^{[3][6][14][57]}

Strategic Considerations Regarding Filing Venue Selection

Practitioners must weigh competing strategic considerations when deciding whether to file Form I-191 preemptively with USCIS or to defer filing until removal proceedings commence. Filing preemptively with USCIS, before removal proceedings begin, offers the advantage of additional time for evidence gathering, witness preparation, and discretionary factor development, as the six-to-eighteen-month USCIS processing timeline allows for more extended case development than the 60-day immigration court deadline following establishment of removability.^{[1][9][31][39]} Additionally, preemptive USCIS filing may demonstrate active pursuit of available relief, potentially supporting applications for voluntary departure or bond reduction if removal proceedings subsequently commence despite USCIS application approval.^{[1][9][31][39]}

However, preemptive USCIS filing carries substantial risks. If USCIS denies the application, the applicant then faces immigration court proceedings with a prior administrative denial in the record, which may be characterized by DHS counsel as dispositive evidence that § 212(c) relief is not warranted, or which may undermine the applicant's credibility regarding discretionary factor representations.^{[1][9][31][39]} Additionally, filing Form I-191 with USCIS converts the matter from a confidential attorney-client matter to a formal government record accessible to all parties in subsequent immigration court proceedings.^{[1][9][31][39]}

Conversely, deferring Form I-191 filing until removal proceedings commence allows applicants to benefit from complete factual development, witness identification, and evidence gathering before committing to a formal application record.^{[3][6][14][57]} Applicants can observe government witnesses' testimony, assess the immigration judge's receptivity to discretionary relief arguments, and tailor the Form I-191 application to address factual vulnerabilities identified during removability proceedings.^{[3][6][14][57]} However, deferring filing until removal proceedings creates compressed timelines and requires immediate engagement with practitioners upon receipt of the Notice to Appear to ensure meeting the 60-day deadline for relief applications following removability findings.^{[3][6][14][57]}

Discretionary Relief Standards and Evidentiary Framework

Burden of Proof and Evidentiary Standard

Form I-191 applications require that applicants establish eligibility for relief by a preponderance of the evidence, with USCIS or the immigration judge making final determinations regarding whether favorable discretionary factors outweigh unfavorable factors under a totality-of-circumstances analysis.[1][12][27][29] Unlike certain other forms of immigration relief (such as asylum, which requires clear and convincing evidence of persecution), § 212(c) relief requires only preponderance-of-evidence proof of facts constituting eligibility requirements and favorable discretionary factors.[1][12][27][29]

The applicant bears the burden of proof throughout § 212(c) relief proceedings. As established in INA § 291 and confirmed in immigration court precedent, the applicant (respondent in removal proceedings) must affirmatively establish that discretionary relief is warranted by submitting credible evidence supporting each claimed favorable factor.[1][12][27][29] The government bears no burden to disprove discretionary factors; rather, the applicant's failure to submit sufficient evidence of favorable factors results in finding that relief is not warranted.[1][12][27][29]

Favorable Discretionary Factors and Evidence Categories

Favorable discretionary factors for § 212(c) relief include, but are not limited to: lengthy and continuous residence in the United States (generally, residence exceeding seven years, and particularly residence exceeding ten or fifteen years, weighs substantially in favor of relief); family ties in the United States including spouse, children, parents, or siblings with U.S. citizenship or LPR status; evidence of immediate family members' ties to U.S. schools, employment, or community; military service in the U.S. Armed Forces; documented community contributions including volunteer work, charitable service, church involvement, or community organization leadership; stable employment history including tax records, wage statements, and employer letters; property or business ownership in the United States; education and vocational training completed in the United States; rehabilitation from the criminal conviction including participation in treatment programs, educational programs, or other rehabilitation initiatives; tax compliance and regular filing of federal and state tax returns; and character evidence from employers, community leaders, educators, spiritual advisors, and family members attesting to the applicant's reliability, honesty, work ethic, and character.[1][4][12][16][31]

Evidence of discretionary factors must be specific, credible, and substantive rather than conclusory. A general character letter stating that an applicant is "a good person" carries minimal evidentiary weight compared to detailed letters from employers describing specific workplace accomplishments, customer satisfaction, reliability, and performance over extended periods. Witness testimony or affidavits should be accompanied by documentation supporting the witness's knowledge and credibility (e.g., employment records, military service documentation, church attendance records, volunteer hour certifications).[1][4][12][16][31]

Family separation hardship, while not explicitly required under § 212(c) (unlike the "extreme hardship" requirement for § 212(h) waivers), constitutes a significant favorable discretionary factor when supported by evidence regarding the depth of family relationships, dependent children's ties to U.S. schools and community, and the specific hardship that would result from family separation or relocation. Practitioners should document the educational status of dependent children, their length of U.S. residence, their social and community ties, health conditions requiring continued U.S. medical care, and similar factors demonstrating how removal would create meaningful hardship to family members.[1][4][12][16][31]

Unfavorable Discretionary Factors and Mitigation Strategies

Unfavorable discretionary factors include the seriousness and circumstances of the criminal conviction, prior

criminal or immigration violations, employment instability, failure to comply with tax obligations or other legal duties, violations of immigration laws, substance abuse history, and similar evidence suggesting character deficiency or propensity for lawbreaking.[1][4][12][16][31] The nature of the underlying crime significantly influences discretionary relief determinations, with more serious offenses (such as violent crimes, sex crimes, or drug trafficking) receiving greater negative weight than less serious offenses (such as theft, fraud, or simple possession).[1][4][12][16][31]

Practitioners must proactively address unfavorable factors rather than ignoring them, as applicants who fail to acknowledge and explain criminal conduct or negative factors invite judicial inference that the applicant lacks insight into misconduct or fails to appreciate its severity. Detailed explanation of the circumstances surrounding the conviction, acknowledgment of wrongdoing with genuine remorse, documentation of rehabilitation efforts, and evidence of changed circumstances or motivations substantially mitigate negative factors.[1][4][12][16][31]

Prior criminal violations, convictions other than the qualifying offense, and immigration violations carry substantial negative weight but are not automatically disqualifying. Evidence that prior violations occurred years in the past, that the applicant has successfully completed rehabilitation, that community or family circumstances have changed to eliminate prior motivations, and that the applicant has maintained law-abiding conduct during extended intervening periods may substantially mitigate the negative impact of prior convictions.[1][4][12][16][31]

Totality of Circumstances Analysis and Judicial Discretion

Immigration judges and USCIS adjudicators determine § 212(c) relief eligibility through holistic totality-of-circumstances analysis, weighing all favorable and unfavorable factors together to reach an overall discretionary determination.[1][12][27][29][31] There is no mechanical formula or weighted scoring system; rather, judges exercise judgment in assessing how favorable factors collectively address or offset the negative implications of the criminal conduct.[1][12][27][29][31]

An applicant with extensive family ties, decades of U.S. residence, military service, stable employment, and business ownership may receive favorable discretionary relief despite a serious underlying crime, if the judge determines that the totality of positive factors sufficiently demonstrates rehabilitation and commitment to lawful conduct to warrant relief.[1][12][27][29][31] Conversely, an applicant with minimal family ties, unstable employment, recent immigration violations, or prior criminal history may be denied relief despite a less serious underlying crime, if the judge determines that the totality of negative factors suggests ongoing character deficiency or propensity for lawbreaking.[1][12][27][29][31]

Practitioner strategy should emphasize the cumulative weight of favorable factors, demonstrating how the applicant's decades of lawful U.S. residence, deep family connections, stable employment and tax compliance, and community integration collectively establish that the applicant has become a member of the U.S. community whose removal would cause meaningful hardship to established family and community. This narrative approach is substantially more persuasive than itemized lists of favorable factors, as it invites judges to view the applicant as a fully integrated community member rather than as a criminal alien whose removal serves immigration enforcement purposes.[1][12][27][29][31]

Fee Waivers and Biometric Appointment Requirements

Form I-191 Filing Fee and Current Cost Structure

The current Form I-191 filing fee is \$930, effective January 1, 2026, and represents an annual inflation

adjustment from the prior year fee.[7][53] The filing fee is not separately itemized and must accompany the Form I-191 application upon filing, whether filed with USCIS administratively or paid at the immigration court when filing in removal proceedings.[1][53] Applicants who fail to submit the required fee or fee waiver request will have their applications rejected by USCIS or the immigration court.[1][53]

USCIS does not accept partial payments, and therefore applicants must either submit the full \$930 fee or a complete Form I-912 fee waiver request with supporting documentation.[1][53] Applicants whose applications are rejected for failure to pay the fee are permitted to resubmit with corrected fee payment, but resubmission does not extend USCIS processing timelines or immigration court filing deadlines.[1][53]

Fee Waiver Eligibility and Form I-912 Procedures

Applicants unable to afford the \$930 Form I-191 filing fee may request a fee waiver through Form I-912 (Request for Fee Waiver), which can be filed contemporaneously with Form I-191 or in lieu of fee payment.[21][24] The fee waiver is available to applicants whose household income is at or below 150 percent of the Federal Poverty Guidelines established annually by the Department of Health and Human Services, or applicants experiencing demonstrable financial hardship despite income exceeding the 150 percent threshold.[21][24]

The "means-tested benefit" pathway provides the most straightforward fee waiver qualification mechanism. Applicants receiving federal or state benefits determined by income and resources (such as Supplemental Security Income, Temporary Assistance for Needy Families, SNAP benefits, Medicaid, or similar programs) are presumptively eligible for fee waivers based on receipt of such benefits alone, without requiring income calculations or documentation of other financial circumstances.[21][24] Applicants receiving means-tested benefits must submit official documentation from the benefit-granting agency showing the applicant's name, the benefit type, and the benefit amount.[21][24]

For applicants not receiving means-tested benefits, fee waiver eligibility requires demonstrating that adjusted gross household income is at or below 150 percent of Federal Poverty Guidelines for the applicant's household size. As of 2026, Federal Poverty Guidelines are established annually, and applicants must compare household income to the applicable guidelines. Documentation requirements include federal tax returns for prior two years, current pay stubs if employed, statements from employers regarding salary, unemployment benefit documentation if applicable, and similar records establishing current household income.[21][24]

Applicants whose household income exceeds 150 percent of Federal Poverty Guidelines may still qualify for fee waivers upon demonstrating exceptional financial hardship such as recent unemployment, high medical expenses, substantial financial losses, eviction, homelessness, or similar extraordinary circumstances. Applicants must provide detailed written explanation of the hardship and supporting documentation (medical bills, termination letters, eviction notices, insurance documentation, etc.).[21][24]

USCIS and immigration judges must evaluate all factors, circumstances, and evidence supplied with fee waiver requests when making determinations, considering each case on its individual merits.[1][21][24] Fee waiver denials are not automatically appealable but may be reconsidered by motion if additional evidence of financial hardship subsequently becomes available.[1][21][24]

Biometric Appointment Requirements and Implications

USCIS will notify applicants in writing if biometric services are required, and applicants receiving such notices must appear at an Application Support Center (ASC) within the timeframe specified in the notice to provide fingerprints, photograph, and signature.[1][9][12][15][53] Applicants who fail to appear for a

scheduled biometrics appointment without authorized postponement will have their Form I-191 applications denied.[1][9][12][15][53]

Authorized postponement of biometric appointments requires submission of a written request to USCIS explaining the reason for the postponement and providing proposed alternative dates. Acceptable reasons for postponement include serious illness documented by medical certification, family emergency, required work travel with documentation of employer necessity, or similar extraordinary circumstances. Casual scheduling conflicts or inconvenience do not constitute acceptable grounds for postponement.[1][9][12][15][53]

As of December 12, 2025, USCIS no longer accepts self-submitted photographs and will not reuse previously submitted photographs unless they were taken at an ASC within the prior three years.[15] Applicants called to biometrics appointments should plan to bring only identification and should not submit their own photographs.[15] Failure to comply with updated biometric procedures may result in rejection of the application.[15]

For immigration court filings, courts do not separately assess biometrics fees, as USCIS processes biometrics only for administrative Form I-191 filings with USCIS, not for Form I-191 filings before immigration judges.[3][6][14][57] However, if an immigration judge grants Form I-191 relief and the applicant subsequently requires biometric clearance for other immigration benefits (such as advance parole or employment authorization), standard USCIS biometric procedures and fees would apply.[3][6][14][57]

Immigration Court Filing Procedures and EOIR Deadlines

Filing Deadlines Following Removability Findings

When an immigration judge finds that removability has been established through admission of factual allegations by the applicant or through government presentation of evidence establishing deportability or inadmissibility, the judge enters an order finding removability and simultaneously issues a scheduling order establishing deadlines for submission of applications for relief and supporting documentation.[3][6][14][57] The general deadline for such filings is sixty days from the date of the order, unless the judge specifies a different deadline based on individual case circumstances or extends the deadline by motion.[3][6][14][57]

This 60-day deadline is strictly enforced pursuant to 8 C.F.R. § 1240.11(c)(1) and immigration judge discretion to enforce procedural requirements. Failure to meet the deadline may result in abandonment of applications for relief, and "[r]espondents are presumed to have received notice of the deadline" for filing applications for relief.[3][6][14][57] Practitioners must calendar this deadline immediately upon receipt of the removability order and must work backwards from the deadline to establish evidentiary development and filing preparation timelines.[3][6][14][57]

Extensions of filing deadlines are available by written motion but are not granted automatically and require demonstration of good cause such as counsel unavailability, translation delays for necessary documents, or other circumstances beyond the respondent's control preventing timely compilation of evidence.[3][6][14][57] Immigration judges maintain discretion to grant or deny extension requests, and failure to request timely extension results in forfeiture of the right to file applications within the extended deadline.[3][6][14][57]

Advance Notice Requirements and Documentation Submission

For individual calendar hearings (the merits hearing on removal charges and applications for relief), all amendments to applications for relief, additional supporting documents, updates to witness lists, and other evidence must be filed at least thirty days in advance of the scheduled hearing.[3][6][14][57] This thirty-day

requirement applies to both represented and unrepresented applicants and is strictly enforced to prevent surprise evidence or arguments at the hearing.[3][6][14][57]

Evidence submitted after the thirty-day deadline may be excluded from consideration unless it is offered solely to rebut or impeach government evidence, in which case the immigration judge maintains discretion to accept late-filed evidence at the hearing itself.[3][6][14][57] Practitioners should plan evidence compilation and submission to comfortably meet the thirty-day advance filing requirement rather than filing at the deadline, as any technical delays or incomplete documentation may result in evidence exclusion if the deadline is not clearly met.[3][6][14][57]

Responses to respondent's filings must be filed by the DHS attorney within ten days after the respondent's original filing is received by the immigration court.[3][6][14][57] This ten-day response period provides the government opportunity to address respondent's arguments, identify evidentiary deficiencies, and prepare government closing arguments regarding discretionary relief determinations.[3][6][14][57]

Master Calendar vs. Individual Calendar Hearing Procedures

Immigration proceedings typically commence with a master calendar hearing, at which the respondent is advised of rights, representation options, and the charges of removability contained in the Notice to Appear.[3][6][14][57] At the master calendar hearing, unrepresented respondents must provide written response to the charges, whereas represented respondents may provide oral or written response.[3][6][14][57] If the respondent is represented by counsel at least fifteen days prior to the master calendar hearing, the respondent's counsel must file Notice of Appearance (Form EOIR-28 or Form G-28), which triggers vacation of the master calendar hearing and issuance of a scheduling order establishing written pleading deadlines for both parties.[3][6][14][57]

The scheduling order issued upon representation typically provides thirty days for submission of written responses to the charges by both parties, with the respondent submitting written response to the charges first and the government responding to the respondent's filing within twenty days of the respondent's filing receipt.[3][6][14][57] This written pleading stage allows for detailed contestation of charges and presentation of legal arguments regarding removability grounds and applicability of immigration law, prior to any evidentiary hearing on the charges.[3][6][14][57]

Following resolution of removability (either through admission of allegations, successful contestation resulting in findings of no removability, or uncontested finding of removability), the immigration judge will schedule an individual calendar hearing for proceedings on applications for relief from removal.[3][6][14][57] At this hearing, respondents present evidence regarding eligibility for relief, discretionary factors, and arguments regarding why relief should be granted despite removability.[3][6][14][57] For Form I-191 applications, the immigration judge will consider the written application, supporting documentation, witness testimony, and oral arguments by both respondent's counsel and government counsel before determining whether relief is warranted.[3][6][14][57]

Appellate Procedures and Post-Denial Remedies

Immigration Judge Denial and BIA Appeal Procedures

If the immigration judge denies the Form I-191 application for § 212(c) relief, the applicant maintains the right to appeal to the Board of Immigration Appeals (BIA) within thirty calendar days of the immigration judge's written decision.[3][6][14][57] The thirty-day appeal deadline is measured from the date the immigration judge's decision is provided to the respondent by mail or electronic notification, and is strictly

enforced by the BIA.[3][6][14][57]

Appeals to the BIA must be filed with the immigration court where the decision was entered, along with the appropriate appellate fee (currently determined by USCIS fee schedules for appeal processing).[3][6][14][57] The appellate filing must include the Form EOIR-26 (Notice of Appeal), a brief or statement of reasons supporting the appeal, and copies of relevant portions of the record on proceedings before the immigration judge.[3][6][14][57] If the appellant is represented by counsel, the appellate brief must be submitted on behalf of counsel and cannot be filed pro se if counsel has previously represented the respondent in the case.[3][6][14][57]

Appellate briefs challenging immigration judge denials of § 212(c) relief applications must articulate specific legal or factual errors committed by the judge, demonstrate how such errors affected the outcome, and present supporting case law or legal authority establishing why the immigration judge's discretionary relief determination was erroneous.[3][6][14][57] The BIA applies a highly deferential standard of review to immigration judge factual findings and discretionary determinations, overturning such findings only upon demonstration of clear error or abuse of discretion.[3][6][14][57] Clear error exists when the record compels the conclusion that the immigration judge's finding is manifestly contrary to the weight of evidence.[3][6][14][57] Abuse of discretion occurs when the immigration judge relied on an erroneous legal principle or made findings unsupported by substantial evidence.[3][6][14][57]

BIA decisions on appeals are typically issued in written form within six to eighteen months of appeal filing, depending on BIA docket backlogs and case complexity.[3][6][14][33] If the BIA affirms the immigration judge's denial, the applicant loses the right to seek further judicial review of discretionary relief determinations in federal court (with limited exceptions for constitutional violations or APA challenges).[3][6][14][33]

Federal Court Habeas Corpus Petitions and APA Challenges

If the BIA denies § 212(c) relief relief (or fails to timely decide the appeal), the applicant may petition for review in federal district court or federal court of appeals through a habeas corpus petition or Administrative Procedure Act (APA) challenge under 5 U.S.C. § 706.[3][6][14] In the Northern California context, habeas corpus petitions are filed with the United States District Court for the Northern District of California (NDCal) or the United States District Court for the Central District of California (CDCal), and petitions challenging APA violations may be brought in either district court or the Ninth Circuit Court of Appeals.[3][6][14]

Habeas corpus petitions must be filed within the applicable statute of limitations (generally within one year of the BIA decision, subject to equitable tolling in rare circumstances), and must demonstrate that the applicant is in custody (or subject to removal orders) and is being unlawfully detained or subject to unlawful removal proceedings.[3][6][14] The petition must articulate specific constitutional violations, violations of procedural requirements in the removal proceedings, or legal errors in the application of immigration law that affected the case outcome.[3][6][14]

APA challenges to agency discretionary determinations in immigration cases are substantially limited by immigration law's unique jurisprudence regarding agency deference. However, applicants may challenge agency determinations as arbitrary and capricious if they demonstrate that the agency action was not based on consideration of relevant factors, was based on irrational distinctions, or departed from prior agency policy or precedent without explanation.[3][6][14][26][37] The high bar for overturning discretionary relief denials on APA grounds reflects immigration law's traditional deference to enforcement agency determinations, and federal courts rarely overturn immigration judge or BIA discretionary decisions absent extraordinary circumstances such as complete absence of evidence or contradictory case law application.[3][6][14][26][37]

Strategic Considerations Regarding Appeals

Practitioners must carefully assess whether BIA appeals of immigration judge § 212(c) denials are strategically sound, as appeals do not stay removal orders and may create unfavorable precedent if the appeal reveals legal vulnerabilities in the applicant's position. Generally, appeals are strategically appropriate when the immigration judge committed clear legal error (such as misapplication of controlling BIA precedent or misunderstanding of statutory requirements), or when appellate precedent supports positions not clearly addressed by the immigration judge's decision.[3][6][14][33]

Conversely, appeals are less strategic when the immigration judge's decision rested on discretionary weighing of factors and factual findings, as the BIA's deferential standard of review makes appellate reversal unlikely absent abuse of discretion.[3][6][14][33] Additionally, applicants should consider whether BIA litigation resources might be better directed toward pursuing alternative forms of relief (such as cancellation of removal if eligibility requirements are met) or attempting to modify the underlying conviction through state post-conviction procedures (such as PC § 1473.7 vacatur or conviction modification), which would eliminate deportability grounds entirely and render § 212(c) relief unnecessary.[3][6][14][33]

Strategic Considerations and Risk Assessment Framework

Pre-Filing Assessment and Eligibility Confirmation

Before filing Form I-191, practitioners must conduct comprehensive eligibility confirmation to ensure the applicant meets all statutory requirements and is not subject to categorical bars that would render the application futile. This assessment requires: verification of LPR status through green card copies and USCIS records; confirmation of green card acquisition date and calculation of seven-year domicile period including any authorized or unauthorized departures; identification of all criminal convictions including juvenile adjudications, sealed convictions, and foreign convictions; analysis of each conviction's deportability implications and temporal applicability to § 212(c) availability; determination of which version of § 212(c) applies based on conviction date relative to November 29, 1990, April 24, 1996, and April 1, 1997, effective dates; and verification that actual imprisonment served does not trigger the five-year aggravated felony bar.[1][12][27][35][38]

If this preliminary assessment reveals categorical bars or ineligibility, practitioners should avoid filing Form I-191, as filing a futile application wastes client resources and may generate a record of denial that weakens future relief applications. Instead, practitioners should consider alternative relief strategies, conviction modification through state procedures, or other lawful status options if available.[1][12][27][35][38]

Discretionary Factor Development and Evidence Gathering Strategy

Once eligibility is confirmed, practitioners must undertake systematic evidence gathering to develop strong discretionary factors. This process should include: family tree documentation establishing family relationships, U.S. residency status of family members, and depth of family connections; interviews with prospective character witnesses including employers, community leaders, religious figures, teachers, and family members to assess suitability as witnesses and develop detailed knowledge of applicant's character and contributions; collection of employment records spanning the longest feasible period, including tax returns, W-2s, pay stubs, and employer verification letters; identification and collection of property ownership documentation, business documentation, or investment records; compilation of military service records if applicable; gathering educational records and vocational training certificates; collection of tax return records establishing tax compliance over extended periods; identification of community service or volunteer work

with supporting documentation (service hour records, reference letters from organizations, newspaper articles); gathering of medical records or documentation of family medical conditions if relevant to family separation hardship; and other supporting evidence specific to the individual applicant's circumstances.[1][4][12][16][31]

Character witness letters should be solicited from witnesses with detailed knowledge of the applicant's work performance, community contributions, family relationships, and character traits. Generic letters stating "this person is good" carry minimal evidentiary weight. Instead, practitioners should provide witnesses with written guidance requesting specific examples of the applicant's reliability, honesty, work ethic, and contributions, and requesting that witnesses describe the length and nature of their relationship with the applicant and the basis for their assessment of character.[1][4][12][16][31]

Decision-Making Framework Regarding USCIS vs. Court Filing

Practitioners should apply the following framework to determine appropriate filing venue:

Consider USCIS preemptive filing if: the applicant is not in removal proceedings and is willing to accept the risk that a prior administrative denial may appear in the immigration court record should subsequent removal proceedings commence; the applicant has limited time constraints and can tolerate the extended USCIS processing timeline of six to eighteen months; comprehensive evidence development has been completed and the applicant's discretionary factors are sufficiently strong to warrant formal application; and alternative forms of relief are not available or are less promising than § 212(c) relief.

Consider deferring filing until removal proceedings commence if: the applicant fears ICE enforcement and removal proceedings commencement; the applicant is currently in removal proceedings and must meet the 60-day deadline for relief applications; the applicant's discretionary factors require additional development and the immigration court timeline permits later completion; or the applicant prefers to preserve confidentiality of the relief application and avoid early government knowledge of § 212(c) relief intentions.

Practitioners must also assess whether simultaneous pursuit of multiple relief forms (such as Form I-191 and cancellation of removal) is appropriate, as the requirements for these relief forms differ substantially and simultaneous applications may create conflicts or redundancies in evidentiary presentation.[1][12][27][36]

Realistic Assessment of Approval Probability

Practitioners have an ethical obligation to provide clients with realistic assessments of approval probability, avoiding false optimism while maintaining client hope. Form I-191 approval probability varies based on applicant-specific factors, and no reliable statistical data exists regarding overall approval rates by immigration judge or adjudicator because § 212(c) relief remains relatively rare compared to other relief forms.

Generally, applications presenting medium-to-high probability of success include: applicants with 15+ years U.S. residence; significant family ties (U.S. citizen spouse and minor children, or aging U.S. citizen parents in declining health); stable employment and tax compliance; property ownership or business interests; military service; minimal or single criminal conviction; rehabilitation evidence; and limited prior criminal or immigration violations.

Applications presenting medium probability of success include: applicants with 7-15 years U.S. residence; family ties but not all immediate family members in the U.S.; stable employment history; minor prior offenses; and modest community contributions.

Applications presenting medium-to-low probability of success include: applicants with 7-10 years residence at the margin of eligibility; limited family ties; employment instability or tax non-compliance; multiple criminal convictions or serious prior offenses; or limited evidence of rehabilitation or community integration.

Applications presenting low probability of success include: applicants with aggravated felony convictions (particularly with 5+ years imprisonment); multiple serious criminal convictions; recent immigration violations; current substance abuse; minimal family ties; and insufficient discretionary factor evidence.

However, practitioners must acknowledge that discretionary determinations are ultimately within each adjudicator's sole discretion, and unusual facts or compelling equitable circumstances may result in approval even in seemingly weak cases, or denial in seemingly strong cases based on individual judge philosophy.[1][12][27][29][31]

Conclusion

Form I-191 applications under former INA § 212(c) represent a critically important avenue for discretionary relief for certain lawful permanent residents facing deportation based on criminal convictions entered prior to April 1, 1997. Despite the statute's 1997 repeal, controlling Supreme Court and Board of Immigration Appeals precedent-particularly *INS v. St. Cyr*, *Judulang v. Holder*, and *Matter of Abdelghany*-has substantially expanded eligibility to include applicants convicted through trial as well as guilty plea, and has eliminated arbitrary mechanical distinctions between comparable and non-comparable grounds of deportability.[35][37][38][41][44] This jurisprudential evolution reflects recognition that long-term permanent residents with significant U.S. ties may deserve discretionary relief despite criminal conduct, provided that favorable factors sufficiently outweigh unfavorable factors under totality-of-circumstances analysis.[35][37][38][41][44]

Practitioners in Northern California benefit from Ninth Circuit precedent favoring broad interpretation of § 212(c) eligibility and from San Francisco Immigration Court judges' general receptiveness to discretionary relief arguments for long-term residents with strong family and community ties.[6][14][29] However, successful § 212(c) applications require careful statutory analysis confirming eligibility under applicable temporal windows, comprehensive evidence gathering establishing favorable discretionary factors, strategic venue selection determining whether USCIS or immigration court filing is appropriate, and realistic client counseling regarding approval probability based on applicant-specific circumstances.[1][12][27][35][38][41][44]

The \$930 filing fee current as of February 2026 presents a financial barrier for certain applicants, though Form I-912 fee waiver procedures remain available for those with income at or below 150 percent of Federal Poverty Guidelines or experiencing exceptional financial hardship.[1][7][21][24][53] Practitioners must ensure clients understand procedural requirements, deadlines, and evidentiary standards before committing to Form I-191 applications, and must maintain realistic expectations regarding approval probability while advocating zealously for client interests within the bounds of professional responsibility.[1][12][27][35][38][41][44]

As immigration enforcement policies evolve and practitioner understanding of § 212(c) jurisprudence matures through appellate decisions and operational experience, Form I-191 relief may become increasingly important for long-term residents seeking to remain in the United States despite criminal conviction convictions. Diligent application of the legal framework presented in this report, combined with comprehensive evidence development and strategic case planning, positions practitioners to maximize their clients' opportunities for successful § 212(c) relief applications and to preserve meaningful options for relief from deportation based on

the enduring availability of this formerly repealed statutory provision.

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