

# **USCIS Form I-212: Application for Permission to Reapply for Admission After Removal or Deportation-A Legal and Analysis**

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## FINDINGS

# USCIS FORM I-212: APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION AFTER REMOVAL OR DEPORTATION-A COMPREHENSIVE LEGAL AND STRATEGIC ANALYSIS

### Executive Summary

Form I-212 (Application for Permission to Reapply for Admission after Removal or Deportation) addresses inadmissibility under [INA § 212(a)(9)(A) and § 212(a)(9)(C)][5], permitting individuals with prior removal orders to seek waiver of time-based reentry bars before the statutory waiting period expires.[4][10] The distinction between the two statutory grounds is critical: INA § 212(a)(9)(A) creates time-limited bars (five, ten, or twenty years depending on removal circumstances), which I-212 can waive unconditionally as a matter of discretion, whereas INA § 212(a)(9)(C)-the "permanent bar"-applies to individuals who accrued more than one year of unlawful presence and then reentered without inspection, and cannot be waived until the applicant has spent at least ten continuous years outside the United States.[2][10][14] An approved I-212 does not grant admission automatically; instead, it waives removal-related inadmissibility and permits the applicant to pursue a subsequent visa or green card application.[1][15] Approval rates and processing timelines remain highly case-dependent and sensitive to individual discretionary judgments by USCIS officers, with no published government statistics on denial rates but practitioner reports indicating average processing times of approximately 33.5 months as of March 2025.[15][38] For Northern California practitioners, particular attention should be paid to (1) the interaction between I-212 and Form I-601 waivers when criminal convictions or fraud grounds coexist with removal-related bars, (2) the Ninth Circuit's distinct jurisprudence on materiality determinations and discretionary relief, and (3) recent USCIS policy memos issued in 2025 affecting good moral character assessments and discretionary determinations broadly.[39] This report synthesizes authoritative sources-including the USCIS Policy Manual, BIA precedent, applicable regulations, and field-tested practitioner guidance-to provide strategic direction on I-212 eligibility, discretionary approval standards, evidence requirements, and integration with subsequent visa pathways.

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## I. Statutory and Regulatory Framework Governing Form I-212

### Foundational Statutory Provisions: INA § 212(a)(9)(A) and § 212(a)(9)(C)

The inadmissibility grounds addressed by Form I-212 originate in two distinct statutory provisions of the Immigration and Nationality Act, each creating different temporal bars and waiver mechanisms. [INA § 212(a)(9)(A)][5] establishes that any alien who has been ordered removed-whether as an arriving alien through expedited removal or as a non-arriving alien through formal proceedings-becomes inadmissible if seeking admission within a specified period: five years from the date of removal (for arriving aliens subject to a single removal); ten years from the date of departure or removal (for non-arriving aliens subject to a single removal); or twenty years from the date of departure or removal (for any alien subject to a second or subsequent removal, whether arriving or not).[5][14] Additionally, any alien convicted of an aggravated felony becomes permanently inadmissible under this ground, meaning consent to reapply is required at any time the applicant seeks admission, regardless of how much time has passed.[5][17] The statute explicitly provides in [INA § 212(a)(9)(A)(iii)][5] that the Attorney General (delegated to the Secretary of Homeland Security) may consent to an alien's reapplying for admission prior to the alien's reembarkation outside the United States or

attempt to be readmitted from foreign contiguous territory, thereby waiving the statutory time bar.[5] In contrast, [INA § 212(a)(9)(C)][5] creates what practitioners refer to as the "permanent bar." This ground applies to any alien who has been unlawfully present in the United States for an aggregate period of more than one year, or who has been ordered removed, and who enters or attempts to reenter the United States without being admitted (that is, without inspection and authorization).[2][5] Unlike the time-limited bars of § 212(a)(9)(A), § 212(a)(9)(C) creates an indefinite prohibition unless and until the alien has remained outside the United States for a minimum of ten years after departure and obtains Secretary consent to reapply.[2][5] The statute explicitly provides in [INA § 212(a)(9)(C)(ii)][5] that the permanent bar shall not apply if, prior to reembarkation or attempt to reenter from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.[5] Importantly, statutory waiver authority under § 212(a)(9)(C) is limited: only VAWA self-petitioners (under [INA § 212(a)(9)(C)(iii)][5]) can obtain a waiver before ten years have elapsed, and only if they can demonstrate a connection between battery or extreme cruelty and the removal, departure, reentry, or attempted reentry triggering the permanent bar.[20][23]

### **Regulatory Implementation: 8 CFR § 212.2 and Related Provisions**

[8 CFR § 212.2][33] operationalizes the statutory framework by specifying procedures and evidentiary standards for I-212 adjudication. The regulation clarifies that any alien who has been deported or removed and is applying for a visa, admission, or adjustment of status must present proof of having remained outside the United States for the time period required for re-entry after deportation or removal.[33] The regulation explicitly authorizes the examining consular or immigration officer to be satisfied that since the alien's deportation or removal, the alien has remained outside for more than five consecutive years (or twenty consecutive years in the case of an aggravated felony conviction).[33] Significantly, [8 CFR § 212.2(c)][33] addresses the voluntary departure scenario: if an alien received an order of voluntary departure and departed during the specified period, the time period specified in the applicable statute is measured from the date of such voluntary departure.[33] Additionally, [8 CFR § 212.2(i)][33] provides for retroactive approval of I-212 applications, meaning that if the alien filed the application when seeking admission at a port of entry, the approval shall be retroactive to either the date on which the alien embarked outside the United States or the date on which the alien attempted to be admitted from foreign contiguous territory.[33] [8 CFR § 212.2(j)][33] addresses advance (conditional) approval: an alien whose departure will execute an order of deportation shall receive a conditional approval depending upon satisfactory departure, though this grant of permission to reapply does not waive inadmissibility under § 212(a)(9)(A) resulting from subsequent removal proceedings instituted after the date permission to reapply is granted.[33]

### **Discretionary Framework and Burden of Proof**

Form I-212 approval is entirely discretionary once the applicant meets the threshold time and procedural requirements.[4][10][19] USCIS officers must weigh favorable factors against unfavorable factors under a "totality of circumstances" standard, with no single factor being dispositive.[1] The burden of proof rests with the applicant to establish that approval is warranted; there is no mandatory approval simply because the statutory time period has elapsed (except in the case of certain VAWA self-petitioners seeking waiver of § 212(a)(9)(C) within the ten-year waiting period).[4][10] The discretionary determination must be grounded in the administrative record and cannot be arbitrary or capricious under arbitrary-and-capricious review principles applicable to administrative decisions.[1][7] However, courts generally accord substantial deference to USCIS discretionary decisions and rarely overturn them absent a clear showing of abuse of discretion.[1]

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## **II. Current Legal Landscape: Developments Through February 2026**

## **Recent USCIS Policy Guidance and Memoranda (2024-2026)**

The landscape governing Form I-212 has shifted in response to recent policy memoranda from USCIS leadership and presidential directives issued in late 2025 and early 2026. In August 2025, USCIS issued Policy Alert PA-2025-16 clarifying several areas where discretion plays a decisive role, especially regarding applications involving anti-American or terrorist activity, parole or admission applications inconsistent with law at the time, and limited employment-based contexts.[1] This policy alert emphasized that USCIS now specifically evaluates whether applications for admission or parole complied with laws, regulations, and policies in effect at the time, with non-compliance weighing heavily against discretion.[1] More significantly, as of January 1, 2026, USCIS issued a policy memorandum expanding its December 2, 2025, pause on adjudicating benefit requests for foreign nationals from high-risk countries, following Presidential Proclamation 10998 (issued December 16, 2025).[18] This expansion means that USCIS will place holds on all pending benefit requests filed by or for foreign nationals who are citizens of or were born in countries listed in the December 2025 proclamation, with re-review of previously approved benefit requests for individuals from those countries approved on or after January 20, 2021.[18] While the policy memorandum lists ten exceptions to the adjudication hold-including Form I-90, Form N-400 (except for Yemen or Somalia), and applications filed by athletes for major sporting events-Form I-212 does not appear on the exceptions list, meaning I-212 applications involving citizens from designated countries will face adjudication holds and potential re-review of previously approved cases.[18] This represents a substantial policy shift affecting the processing timeline and potential vulnerability of approved I-212 waivers for applicants with current or former connections to high-risk countries.

## **Board of Immigration Appeals Precedent and Recent Decisions**

While published BIA decisions specifically addressing I-212 discretionary factors are limited, recent BIA jurisprudence affects the adjudicative framework applicable to I-212 review. In [Matter of Duarte-Gonzalez, 28 I&N Dec. 688 (BIA 2023)][34], the BIA affirmed that the three- and ten-year bars under [INA § 212(a)(9)(B)][2][31] can run while an alien remains in the United States, clarifying that the time calculation is not limited to time spent outside the country.[34] While this case addresses § 212(a)(9)(B) rather than § 212(a)(9)(A) or (C), the reasoning-that the statutory language does not condition the running of time on the alien's location-may inform interpretation of similar provisions applicable to I-212 cases, though the Supreme Court's decision in [Patel v. Garland, 596 U.S. 328 (2022)][49], which addressed jurisdictional bars to review of agency discretion, has narrowed courts' ability to overturn discretionary determinations on procedural grounds.[49] Recent cases have confirmed that discretionary relief determinations-including those on I-212 applications-do not give rise to substantive due process rights, meaning judicial review is limited to questions of law and colorable constitutional claims.[47]

## **Ninth Circuit Precedent and Regional Variations**

Ninth Circuit precedent controls in Northern California ([NDCal][47]) and remains favorable to respondent positions on several grounds affecting I-212 strategy. In [Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000)][47], the Ninth Circuit established a high bar for BIA interpretation of materiality and fraud grounds, requiring applicants to satisfy only their burden of proof by a preponderance of evidence, not clear and convincing evidence, in certain contexts-a principle that may benefit I-212 applicants challenging adverse discretionary determinations rooted in mischaracterized facts.[47] Additionally, the Ninth Circuit has recognized jurisdiction to review colorable constitutional claims and questions of law raised in petitions for review of discretionary denials.[47] However, practitioners must note that the Ninth Circuit has declined to second-guess discretionary determinations even when the applicant presents substantial equities; the court's

role is limited to ensuring the agency followed proper procedures and considered all relevant factors.[47]

### **Interaction with Unlawful Presence Bars: § 212(a)(9)(B) Clarifications**

Practitioners must distinguish between I-212 (addressing § 212(a)(9)(A) and § 212(a)(9)(C) removal-related bars) and I-601A (addressing § 212(a)(9)(B) unlawful presence bars). Recent policy clarification confirms that [INA § 212(a)(9)(B)][31] three- and ten-year unlawful presence bars can continue to run while an alien is physically present in the United States after the bars are triggered (typically upon departure from the U.S.).[31][34] This distinction is crucial: an alien subject to § 212(a)(9)(B) who returns unlawfully before the bar expires may trigger the permanent bar under § 212(a)(9)(C), requiring an I-212 filing after ten years outside.[31] Thus, for applicants with multiple removal scenarios, both I-212 and I-601A may be necessary at different stages of the immigration trajectory.

### **Reinstatement of Removal and § 241(a)(5) Interaction**

A critical practical concern for I-212 applicants involves reinstatement of removal under [INA § 241(a)(5)][35]. If an alien subject to a removal order reenters the United States unlawfully after April 1, 1997 (triggering § 212(a)(9)(C)), DHS may reinstate the prior removal order, and [§ 241(a)(5)][35] provides that "the [person] is not eligible and may not apply for any relief under this Act." [35] This creates a substantial trap: an I-212 applicant who has been outside the required ten years and obtains I-212 approval but then reenters illegally (rather than through lawful admission) faces reinstatement and loss of eligibility for virtually all forms of relief, including cancellation of removal and adjustment of status.[35] The only exception is VAWA self-petitioners, who may argue that special waiver authority under [INA § 212(a)(9)(C)(iii)][35] and [INA § 245(c)(2)][20] exempts them from the bar to relief under § 241(a)(5).[35] This risk underscores the necessity of ensuring that I-212 approval is followed by lawful entry through consular processing, not unlawful reentry.

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## **III. San Francisco Immigration Court and Asylum Office Context**

### **San Francisco Immigration Court Locations and Procedures**

The Executive Office for Immigration Review maintains three hearing locations serving Northern California: the San Francisco Immigration Court (100 Montgomery Street, Suite 800, San Francisco, CA 94104, and alternate location at 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111) and the Concord Hearing Location (1855 Gateway Blvd., Suite 850, Concord, CA 94520).[1] The San Francisco Immigration Court processes removal cases involving applicants from throughout Northern California, and its judges have developed distinct procedural expectations and jurisprudence regarding discretionary relief applications. While no comprehensive judicial statistics specific to I-212 decisions are published by EOIR, TRAC data on asylum denials by judge (the closest proxy for discretionary decision-making) indicates significant variation across individual judges, with grant rates ranging from approximately 0% to 99% depending on the judge.[6] This variation signals that individual judge assignment substantially affects discretionary outcome probability, though I-212 determinations are adjudicated by USCIS rather than immigration judges (except when I-212 is filed concurrently with adjustment of status before an immigration judge, in which case the judge must refer the I-212 application to the district director for adjudication).[11]

### **San Francisco Asylum Office Interview Procedures and I-212 Considerations**

Although the San Francisco Asylum Office processes affirmative asylum applications rather than I-212

applications directly, asylum applicants with prior removal orders may need to address I-212 requirements as a prerequisite to adjustment of status or consular processing following asylum approval.[1] The San Francisco Asylum Office maintains specific interview protocols and has observable tendencies regarding credibility and persecution analysis; however, applicants with I-212-related concerns should note that the asylum office generally does not adjudicate I-212 applications. Rather, any I-212 waiver needed would be adjudicated by USCIS's San Francisco District Office or the appropriate service center with jurisdiction over the underlying case.

### **California State Law Intersections: PC § 1473.7 and Immigration Consequences**

Northern California practitioners must integrate California state criminal law modifications with I-212 strategy. [California Penal Code § 1473.7][1] authorizes motion to vacate a conviction if the conviction had specified immigration consequences that were not advisedly waived by the applicant, and such vacatur can eliminate or reduce criminal grounds of inadmissibility that might otherwise compound an I-212 application's complexity.[1] Because I-212 only addresses removal-related inadmissibility (not criminal grounds), an applicant facing both a § 212(a)(9) bar and criminal inadmissibility under § 212(a)(2) must pursue parallel strategies: I-212 for the removal bar and either I-601 or PC § 1473.7-based conviction modification for the criminal ground.[1][27] The timing of conviction modification can affect I-212 discretionary analysis, as elimination of a serious conviction may strengthen the case for favorable discretionary exercise.

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## **IV. Removal Ground Classification and Time Bars: Decision Framework**

### **Arriving Aliens Subject to Expedited Removal (Five-Year Bar Under § 212(a)(9)(A)(i)(I))**

Any alien removed upon arrival to the United States through expedited removal under [INA § 235(b)(1)][5] or placed in proceedings upon arrival and ordered removed by an immigration judge, who seeks admission within five years of the date of removal (or within twenty years if convicted of an aggravated felony), is inadmissible.[5][14] This is the shortest bar for first removals and represents removal of arriving aliens who were identified at a port of entry as deportable without full hearing (true expedited removal) or who were placed in full removal proceedings but received a removal order at the conclusion of those proceedings initiated upon arrival.[5][14][17] Form I-212 can waive this bar at any time before the five-year period expires, allowing the applicant to obtain an immigrant visa or adjustment of status before mandatory waiting period ends.[4][10] Applicants subject to the five-year bar generally have the highest likelihood of I-212 approval (relative to longer bars), as the removal was geographically and temporally proximate and the time bar is relatively brief, suggesting rehabilitation or changed circumstances can more readily be demonstrated.[22] The strategic calculation for arriving aliens subject to the five-year bar often involves determining whether waiting for the bar to expire naturally (typically the most certain path to admission without waiver) is preferable to filing I-212 in reliance on favorable discretionary factors, considering processing time and potential risks of denial.

### **Non-Arriving Aliens Subject to Formal Removal Proceedings (Ten-Year Bar Under § 212(a)(9)(A)(i)(II) and § 212(a)(9)(A)(ii)(I))**

The most common scenario in Northern California immigration practice involves non-arriving aliens-individuals who entered the United States without inspection or violated terms of admission and subsequently faced removal proceedings-who receive a final removal order.[5][14][17] These individuals are subject to a ten-year bar from the date of departure or removal if they were removed only once, measured from

departure or removal date.[5][14][17] Form I-212 can waive this bar at any time, allowing earlier admission than the statutory ten-year waiting period.[4][10] For applicants in this category, I-212 filing is common when compelling family-based or humanitarian factors exist, because the ten-year bar is substantially longer than the five-year bar for arriving aliens, and discretionary factors may change substantially during the ten-year window (family relationships formed, employment prospects improved, rehabilitation demonstrated, etc.).[4][22] Northern California practitioners regularly encounter Central American and Mexican nationals in this category, often with U.S. citizen spouses or U.S. citizen children, making the family-based equities argument a centerpiece of I-212 discretionary analysis.

### **Multiple Removals and Aggravated Felony Convictions (Twenty-Year Bar and Permanent Inadmissibility)**

Any alien subject to a second or subsequent removal-whether as arriving or non-arriving alien-becomes inadmissible for twenty years from the date of the second (or later) removal or departure, or at any time if the alien has been convicted of an aggravated felony.[5][14][17] Critically, the aggravated felony conviction creates a permanent bar; the applicant must obtain I-212 consent at any time seeking admission, without regard to the passage of time.[5][14][17] [8 U.S.C. § 1101(a)(43)][5] defines aggravated felony broadly, encompassing not only traditionally severe crimes but also crimes of violence, crimes of moral turpitude with a one-year sentence, drug trafficking, and other offenses that practitioners must carefully evaluate under the current definition.[5][27] For applicants with aggravated felony convictions, I-212 approval faces substantially higher discretionary barriers, as USCIS policy-both before and after the 2025 policy changes-emphasizes public safety and moral character concerns as central to discretionary determinations.[1][39] The August 2025 USCIS policy memo on good moral character assessment explicitly instructs officers to broaden scrutiny of disqualifying factors and to consider actions that are "inconsistent with civic responsibility" or do not align with the "average behavior" of citizens in the applicant's community.[39] This heightened standard makes I-212 approval for aggravated felony cases a medium-to-low probability outcome, though individual cases with extraordinary equities (such as removal from the United States as a juvenile with no criminal activity since, followed by decades of lawful presence abroad and strong family reunification needs) may warrant filing as a test of individual officer discretion.

### **Multiple Removal Orders and Outstanding Removal Orders: The Conditional I-212 Provision**

An underutilized strategic provision involves cases where an applicant has an outstanding (unexecuted) removal order and has not yet departed the United States but intends to apply for an immigrant visa abroad.[4][10][19][28] Under [8 CFR § 212.2(j)][33], "An alien whose departure will execute an order of deportation shall receive a conditional approval depending upon his or her satisfactory departure," with the conditional approval becoming effective upon departure.[33] This provision allows applicants to file Form I-212 before departing the United States, receiving what is termed "conditional" or "advance" approval.[4][10][19] Once the applicant departs the United States, the conditional approval becomes effective, and the applicant can proceed to consular processing confident that the I-212 waiver is already approved.[4][10][19] This strategy is particularly valuable for applicants who (1) have no basis to reopen removal proceedings or who lack relief eligibility if proceedings were reopened, (2) face uncertainty about whether the I-212 will be approved if filed after departure, or (3) seek to minimize the period of family separation by front-loading waiver adjudication.[4][10][19] However, conditional I-212 approval is not available for § 212(a)(9)(C) (permanent bar) cases; it applies only to § 212(a)(9)(A) scenarios.[4][19] Additionally, the conditional I-212 does not protect against other grounds of inadmissibility that may be triggered by departure, such as § 212(a)(9)(B) unlawful presence bars, meaning the applicant may also need to

file Form I-601A if applicable.[19]

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## **V. The Permanent Bar Under INA § 212(a)(9)(C): Statutory Mechanics and Waiver Limitations**

### **Triggering Events and Cumulative Unlawful Presence**

The permanent bar under [INA § 212(a)(9)(C)][5] applies to any alien who has been unlawfully present in the United States for an aggregate period of more than one year, or who has been ordered removed, and who enters or attempts to reenter the United States without being admitted.[5][2][14] The critical difference from the time-limited bars of § 212(a)(9)(A) is that the permanent bar is not measured from a specific date but rather is perpetual unless waived by USCIS after satisfaction of prerequisites.[2][5][14] Unlawful presence for purposes of the permanent bar is calculated cumulatively, meaning an applicant who accrued unlawful presence on multiple separate occasions accumulates total periods, and even brief periods of absence do not reset the count.[2][9] The statute applies to reentries or reentry attempts occurring after April 1, 1997 (the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).[2][14] Notably, the statute does not include a "minor exception" for unlawful presence accrued by individuals under eighteen years of age; unlawful presence is counted in the aggregate regardless of age at time of accrual.[2][20]

### **The Ten-Year Prerequisite and Continuous Residence Requirement**

Unlike § 212(a)(9)(A) bars, which I-212 can waive without any prerequisite time outside the United States, § 212(a)(9)(C) explicitly requires that the alien remain outside the United States for a minimum of ten years after last departure before I-212 can be filed.[2][5][14] [INA § 212(a)(9)(C)(ii)][5] provides that "Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission." [5] Critically, the statute specifies that the time must be spent outside the United States.[2][5] The BIA has confirmed that the ten years cannot be tolled or suspended by remaining in the United States; brief departures and returns or extended periods of presence in the United States do not restart the clock but do require the full ten-year period to be measured from the last departure.[2][31] An applicant who has triggered § 212(a)(9)(C) by reentering without inspection after accruing more than one year of unlawful presence and then remaining in the United States cannot file I-212 while still present in the country; the applicant must depart and remain outside for the full ten-year period before eligibility accrues.[2][10][14]

### **Limited Waiver Authority for VAWA Self-Petitioners**

The only pathway to waive the permanent bar before ten years have elapsed is through VAWA (Violence Against Women Act) self-petitioner status. [INA § 212(a)(9)(C)(iii)][5] provides that "The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between (I) the alien's battering or subjection to extreme cruelty; and (II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States." [5][23] This waiver is narrowly tailored and requires proof of a causal connection between the abuse and the triggering event (removal, departure, reentry, or attempted reentry).[23] For example, if a VAWA self-petitioner was removed due to a criminal conviction that occurred as a result of the abuser's actions (such as being coerced to commit a crime), and the removal or subsequent

illegal reentry triggered the permanent bar, the connection requirement can be satisfied.[23] However, if the permanent bar was triggered by conduct predating the abuse or unrelated to it, the VAWA waiver will not apply.[23] Additionally, VAWA self-petitioners must file the VAWA self-petition (Form I-360) and be recognized as VAWA self-petitioners before they can benefit from the § 212(a)(9)(C) waiver; eligibility for VAWA waiver does not automatically flow from having suffered domestic violence—rather, the abuse must have a demonstrable causal connection to the immigration violation at issue.[20][23]

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## **VI. Discretionary Factors and Approval Standards**

### **Framework for Discretionary Analysis Under Totality of Circumstances**

USCIS officers adjudicating Form I-212 applications apply a "totality of circumstances" approach to discretion, meaning all relevant facts and circumstances are weighed together to determine whether approval is warranted.[1] There is no rigid scoring system, numerical weighting, or mandatory threshold at which approval must be granted; rather, the decision is impressionistic and depends on the individual officer's judgment.[1][4][22] However, USCIS has identified categories of favorable and unfavorable factors that officers should consider, and recent policy guidance has clarified that this discretionary analysis must be thorough, documented, and grounded in identified factors from the administrative record.[1] An applicant seeking I-212 approval must affirmatively demonstrate that approval serves the national interest, public safety, and humanitarian or family unity concerns; failure to present evidence supporting these propositions results in denial.[4][22]

### **Favorable Factors Supporting I-212 Approval**

Favorable factors that weigh toward I-212 approval include the following, based on USCIS guidance, BIA precedent, and practitioner experience:[1][4][19][22][26] Family ties in the United States and closeness of relationships: Strong evidence of immediate family members (U.S. citizen spouse, U.S. citizen or LPR children, LPR or citizen parents) residing in the United States, with documentation of emotional and financial interdependence, substantially supports approval.[1][4] Courts and agency officials recognize that family separation is an inherent consequence of removal but that the degree and nature of family ties can demonstrate equities sufficient to warrant discretionary relief.[1][4][26] Hardship to U.S. citizen or LPR family members: Beyond mere family ties, evidence that U.S. citizen or LPR relatives would suffer substantial hardship if the applicant is not allowed to return—such as loss of primary income, care responsibilities for children or elderly relatives, medical or mental health deterioration, or disruption of education—weights heavily in favor of approval.[1][4][26][37] However, hardship must exceed the common or typical hardship of family separation; routine economic loss and emotional distress are insufficient.[37] Length of lawful residence in the United States prior to removal: An applicant who had been lawfully present for an extended period before removal (e.g., ten or twenty years as an LPR with U.S. citizen children and an employment history) presents a stronger case than one removed shortly after entry.[1][4][22] The rationale is that longer residence demonstrates integration into American society and suggests lower risk of future immigration violations.[1][22] Good moral character and absence of criminal history: An applicant with no criminal record, no fraud convictions, no immigration violations post-removal, and documented compliance with law in the country of residence abroad demonstrates favorable equities.[1][4][22][39] The August 2025 USCIS good moral character policy memo instructs officers to consider sustained community involvement, family responsibilities, educational achievements, stable employment history, and compliance with tax obligations as positive attributes.[39] Time spent outside the United States without further immigration violations: The longer the period outside the U.S.

without additional violations or criminal conduct, the stronger the case for approval, as this demonstrates rehabilitation and reduced risk.[1][4][22] Employment history and economic contribution: Evidence of stable employment in the United States prior to removal and documented employment or business prospects upon return (through employer sponsorship, job offers, or educational credentials) supports favorable discretion.[1][4][22] Community involvement and service: Affidavits or documentation of community service, volunteer work, church involvement, mentoring, or charitable contributions demonstrate positive values and integration into American civic life.[1][4][22][26] U.S. citizen children's needs: If the applicant has minor U.S. citizen children, evidence of the applicant's role as primary caregiver, educational involvement, or medical decision-maker strengthens the case substantially.[1][4][22] Evidence of rehabilitation: For applicants with prior criminal conduct or immigration violations (not constituting bars to relief), evidence of completion of rehabilitation programs, counseling, substance abuse treatment, or significant passage of time without recurrence demonstrates positive change.[4][22] Basis and recency of deportation: A removal based on technical immigration violations (such as entry without inspection thirty years ago) may receive more favorable consideration than a removal based on serious criminal conduct or fraud, and an older removal may be viewed more favorably than a recent removal.[4][19][22]

### **Unfavorable Factors Against I-212 Approval**

Unfavorable factors that weigh against approval include:[1][4][19][22][26][27] Nature and seriousness of the grounds for removal: A removal based on serious criminal conduct, terrorism, security concerns, or fraud is viewed far more unfavorably than a technical immigration violation.[1][4][22][27] Criminal history in the United States or abroad: Convictions for crimes involving moral turpitude, felonies, drug offenses, crimes of violence, or repeated criminal conduct substantially undermine the case for approval.[1][4][22][27] Aggravated felony convictions: As noted above, applicants with aggravated felony convictions face a permanent bar to admission and face substantial discretionary obstacles to I-212 approval; such cases require extraordinary equities to overcome the public safety concerns raised.[4][27] Moral depravity or criminal tendencies: Evidence of persistent criminal behavior, patterns of fraud, or conduct suggesting moral unfitness substantially harms discretionary prospects.[1][4][22] Noncompliance with immigration laws: Multiple immigration violations, willful disregard for immigration requirements, or evidence of attempts to circumvent immigration controls weigh heavily against approval.[1][4][22] Unexecuted removal, deportation, or exclusion orders: If the applicant had a prior removal order that was not executed and was subject to reinstatement or revival, this history of immigration violations compounds concerns about future compliance.[1][4] Fraud or false testimony: Any evidence of fraud in applications to USCIS, false testimony before immigration judges, or misrepresentation to government officials substantially harms credibility and discretionary prospects.[1][4][22] Sham marriage: If the applicant's basis for seeking to return is a marriage entered into primarily for immigration purposes (rather than based on genuine family relationship), this ground of inadmissibility and the fraud involved weigh heavily against approval.[1][4] Public safety or national security concerns: Any indication that the applicant poses a threat to national security or public safety (such as gang affiliation, terrorist connections, or patterns of violent behavior) results in denial regardless of other favorable factors.[1][4] Absence of close family ties in the United States: An applicant with no immediate family in the United States or minimal family contact may find discretion harder to obtain, particularly in the absence of other compelling humanitarian factors.[1][4][22] Likelihood of becoming public charge: Under current standards (recently redefined by proposed USCIS rule), evidence that the applicant is likely to rely on public benefits may weigh against approval, though this factor is less determinative in cases with a U.S. citizen spouse or parent who can execute an affidavit of support.[1][24]

### **Evolving Standards Under 2025 USCIS Policy Guidance**

The August 2025 USCIS policy memo on good moral character assessment introduces a more rigorous, holistic framework that applicants must navigate when presenting I-212 applications going forward.[39] Rather than focusing solely on the absence of disqualifying factors, USCIS now requires affirmative demonstration of positive attributes consistent with U.S. values and principles.[39] This represents a meaningful shift from prior practice, where USCIS often took a minimalist approach (approving I-212 in cases meeting statutory requirements unless substantial negative factors emerged). Under the new framework, applicants must now affirmatively build a compelling narrative of favorable factors, supported by detailed evidence, to overcome even minor negative indicators.[39] Additionally, the policy allows USCIS to consider actions that are "inconsistent with civic responsibility" or do not align with "average behavior" of citizens in the applicant's community—a vague standard that introduces additional subjectivity into the discretionary determination.[39] Officers are authorized to conduct neighborhood checks on a case-by-case basis, contacting employers, community members, or others to verify the applicant's character.[39] While previous guidance did not explicitly authorize neighborhood checks for I-212 applicants (unlike naturalization applicants), the reinstatement of this practice signals heightened scrutiny and suggests that practitioner strategies should now include obtaining advance certifications and affidavits from community members, employers, and references to preempt potential negative or inaccurate third-party characterizations.

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## **VII. Multi-Waiver Strategy: Coordinating Form I-212 with Form I-601**

### **Interaction Between § 212(a)(9) Bars and Other Grounds of Inadmissibility**

Many applicants face multiple, compounding grounds of inadmissibility beyond the removal-related bars addressed by Form I-212. For example, an applicant may be subject to a ten-year bar under § 212(a)(9)(A) (removal bar) and simultaneously inadmissible under [INA § 212(a)(2)(A)][27] (conviction of a crime involving moral turpitude requiring I-601 waiver) or [INA § 212(a)(6)(C)][43] (fraud or misrepresentation requiring I-601 waiver).[27][43] In such cases, approval of the I-212 alone is insufficient; the applicant must also obtain a waiver of the other ground(s) of inadmissibility before admission can be granted.[4][13][16] The statutory framework permits concurrent filing of Form I-212 and Form I-601, and the regulations contemplate this scenario.[33][43]

### **Filing Sequence and Timing Considerations**

The strategic question is whether to file I-212 and I-601 concurrently, sequentially (I-212 first, then I-601), or sequentially in the reverse order (I-601 first, then I-212). The optimal sequencing depends on several factors:[4][13][16] (1) Adjudication venue: If the applicant is applying for adjustment of status before an immigration judge, both forms should be filed with the adjustment application (Form I-485), and the judge must refer both to USCIS for adjudication (as judges lack jurisdiction to approve waivers).[11][33] If applying through consular processing from abroad, both forms should be filed with the consular officer at the time of visa interview, and the consular officer will coordinate adjudication with USCIS.[13] (2) Likelihood of approval for each form: If one waiver has substantially higher approval prospects than the other, filing the stronger waiver first may secure approval and provide leverage or additional equities for the weaker waiver (e.g., if I-601 is approved before I-212 is adjudicated, the I-212 officer may view the approval as evidence that the applicant merits favorable discretion).[4] Conversely, if one waiver is clearly problematic, filing it last allows time to address deficiencies or develop stronger evidence.[4] (3) Processing time efficiency: Concurrent filing avoids sequential delays; filing both forms at once means both are adjudicated on overlapping timelines rather than sequentially.[4][13] Average I-601 processing time (2025-2026) ranges from

two to four years or longer, depending on complexity and USCIS workload.[38][43] Average I-212 processing time (March 2025) is 33.5 months (approximately 2.8 years), though this varies significantly.[15][38] (4) Risks of premature disclosure: If the applicant has any concern that filing one waiver will alert USCIS to pursue a ground of inadmissibility that has not yet been identified or formally alleged, sequential filing allows the applicant to manage strategic disclosure-though in practice, USCIS typically identifies all potential grounds of inadmissibility contemporaneously during medical examination, background checks, and case review.[4]

### **Form I-601 Waiver Standards for Criminal and Fraud Grounds**

When an applicant faces both removal-related bars (requiring I-212) and criminal or fraud grounds of inadmissibility (requiring I-601), the I-601 waiver analysis is governed by [INA § 212(h), (i), and (g)][5][30], depending on the specific criminal or fraud ground.[5][30] For crimes involving moral turpitude, [INA § 212(h)][5][30] permits a discretionary waiver if the applicant is an immediate relative of a U.S. citizen and can establish that admission would be in the national interest.[5][30] For certain controlled substance violations, a limited waiver is available if the applicant can demonstrate they merit a favorable exercise of discretion and the offense was simple possession of thirty grams or less of marijuana (or related offense).[5][30] For fraud or misrepresentation of a material fact in immigration proceedings or documents, [INA § 212(i)][5] is the applicable provision, requiring that the applicant be a USC spouse or parent and can establish extreme hardship to that relative.[5] Unlike I-212, which is entirely discretionary once the temporal prerequisite is satisfied, certain I-601 waivers require qualifying family relationships and extreme hardship showings. Thus, the applicant's family composition substantially affects the feasibility of combined I-212 and I-601 strategy; an applicant with a U.S. citizen spouse has substantially more waiver options than one without qualifying family members.[4][5][30]

### **Interaction With Form I-601A (Provisional Unlawful Presence Waiver)**

Practitioners must also consider whether Form I-601A (provisional unlawful presence waiver) applies alongside I-212. [Form I-601A][9][40][43] permits certain applicants to request advance forgiveness of unlawful presence under [INA § 212(a)(9)(B)][2][9][31][40] before departing the United States for consular processing.[9][40][43] I-601A applies only when the sole ground of inadmissibility is unlawful presence (no other grounds exist), and only to applicants with qualifying family members (USC or LPR spouse or parent).[9][40][43] An applicant subject to both § 212(a)(9)(A) (removal bar requiring I-212) and § 212(a)(9)(B) (unlawful presence bar requiring I-601A), with no other grounds of inadmissibility and with a qualifying family member, could file I-212 and I-601A concurrently (or I-212 alone if the applicant intends to consular process and accept the unlawful presence bar as triggering the three- or ten-year waiting period).[9] However, this scenario is rare, because most applicants subject to removal orders either have already departed or face consequences (reinstatement) if they reenter without inspection; an applicant currently in the United States with an outstanding removal order seeking I-601A would need to file conditional I-212 before departure (if eligible) or risk reinstatement upon reentry.[4][9][19]

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## **VIII. Evidence Requirements and Documentation Strategy**

### **Removal and Deportation Documentation**

Form I-212 requires submission of copies of all correspondence and documentation relating to the applicant's deportation or removal.[17][28][58] This includes the original removal order, charging documents, notice of

appeal (if applicable), BIA decisions (if appealed), and any evidence of execution of the removal order.[17][28][58] If the applicant's removal order was executed by physical removal, evidence documenting the removal process should be included; if the applicant departed voluntarily under a voluntary departure order, the voluntary departure order and proof of departure during the authorized period should be submitted.[17][28][58] If the applicant was subject to expedited removal, evidence of the expedited removal procedures and timeline should be included.[17][28][58] If the applicant's removal proceeded through formal removal proceedings before an immigration judge, transcripts or summaries of the proceedings and the immigration judge's decision are important supporting documents.[17][28][58]

### **Family Relationship and Hardship Documentation**

Form I-212 requires documentary evidence of relationships to any relative claimed (marriage certificates, birth certificates, adoption decrees).[17][28][58] If the applicant claims ties to U.S. citizens or LPRs, proof of the relative's citizenship or LPR status must be submitted (birth certificate, naturalization certificate, green card copy, or USCIS documentation).[17][28][58] For each family relationship, detailed affidavits from the family member(s) explaining emotional and financial interdependence are essential.[1][4][17][22] These affidavits should specifically articulate how the applicant's absence harms the family member and how return would benefit the relationship and the family unit.[1][4][22] Evidence of financial dependence includes joint leases, shared bank accounts, evidence of remittances sent to support relatives, and testimony regarding shared household expenses or financial obligations.[1][4][22] Evidence of emotional bonds includes letters, emails, photographs, school records showing the applicant's involvement in children's education, medical records showing the applicant's role in healthcare decisions, and testimony from neighbors, teachers, clergy, or family friends regarding the relationship's nature and closeness.[1][4][22][26]

### **Rehabilitation and Good Moral Character Evidence**

If the applicant has any history of criminal conduct, immigration violations, or prior removal(s), evidence of rehabilitation and good moral character is critical. This includes completion of any rehabilitation programs, certificates of completion from substance abuse treatment facilities, drug testing records showing sobriety, educational credentials, employment letters demonstrating stable work history, tax returns showing compliance with tax obligations, and reference letters from employers, clergy, community leaders, or longtime friends attesting to the applicant's character, integrity, and community standing.[1][4][22][26][39] The August 2025 USCIS policy memo instructs officers to look for evidence of genuine rehabilitation through compliance with court-ordered conditions, payment of overdue taxes or child support, and community testimony from credible sources.[39] Practitioners should therefore obtain and organize evidence proactively, rather than relying on applicant assertions alone.

### **Country of Residence Documentation and Proof of Continuous Absence**

For applicants subject to § 212(a)(9)(C) (requiring ten years outside the U.S.), Form I-212 specifically requires proof of continuous residence outside the United States and evidence that the applicant has remained outside for the full ten-year period.[2][4][10][14][28] The USCIS Form I-212 instructions state that applicants may submit circumstantial evidence related to departure and absence, including entry/exit stamps from other countries in the applicant's passport, airplane tickets, residence registration or information, rental agreements, utility bills, or employment records showing the applicant's presence in a foreign country for the requisite ten-year period.[28][58] There is no single required piece of evidence; rather, any evidence demonstrating absence will be considered, and USCIS will evaluate the totality of circumstantial evidence to determine whether the ten-year requirement has been satisfied.[28][58] For applicants claiming residence in a specific foreign country, obtaining government-issued residence permits, voter registration records, business

registration documents, or certificates from employers or community organizations verifying the applicant's presence in that country strengthens the case.[4][22]

### **Police Records and Criminal History Documentation**

Form I-212 requires submission of the applicant's official police record from all countries of prior residence and from the applicant's country of citizenship or nationality, or evidence that no record exists.[17][28][58] For countries with limited or unreliable recordkeeping systems (which includes many countries of origin for Northern California's immigrant population), obtaining a police clearance certificate or a no-record certification from the country's police or justice ministry is essential; if such documentation cannot be obtained due to government barriers or corruption, an explanation and best-effort evidence (such as a letter from the applicant's counsel explaining the barriers to obtaining records) is appropriate.[4][17] Additionally, if the applicant has any criminal arrests or convictions in the United States, copies of court dispositions, sentencing records, and evidence of any post-conviction relief (such as expungement or reduction of charges under PC § 1473.7) should be submitted, as these affect the discretionary analysis and may eliminate certain grounds of inadmissibility.[4][17]

### **Employment and Financial Responsibility Evidence**

Evidence of stable employment history in the United States prior to removal is important supporting documentation.[1][4][22] This includes employment verification letters, W-2s, tax returns, and Social Security records documenting earnings history.[1][4][22] If the applicant was employed after removal while residing abroad, employment letters and tax documentation from the foreign country demonstrate continued economic productivity and reduced likelihood of becoming public charge.[1][4][22] If the applicant has job prospects in the United States (such as an employer ready to rehire or a written job offer), this substantially strengthens the application.[1][4][22] Evidence of business ownership or self-employment, professional licenses, educational credentials, or specialized training relevant to U.S. employment also supports the application.[1][4][22]

### **Community Involvement and Service Documentation**

Letters from community organizations where the applicant volunteers, evidence of charitable contributions, proof of church or religious organization membership, and letters from neighbors or community members testifying to the applicant's positive character and community standing are all relevant evidence.[1][4][22][26][39] Under the August 2025 USCIS policy, such evidence is now explicitly part of the framework for assessing good moral character and discretion.[39] For applicants with U.S. citizen children, school records showing the applicant's involvement in school activities, parent-teacher organization membership, and teachers' letters regarding the applicant's commitment to the child's education strengthen the case substantially.[1][4][22]

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## **IX. Processing Timelines and Current Adjudication Standards**

### **Current I-212 Processing Times (2025-2026)**

As of March 2025, the average processing time for Form I-212 is approximately 33.5 months (approximately 2.8 years).[15][54] However, this average masks substantial variation based on case complexity, USCIS workload, service center jurisdiction, and individual officer efficiency.[15] Some cases are resolved within 12-18 months, while others remain pending for 4-5 years or longer.[15][38] Factors affecting processing time include the completeness of the application (incomplete applications and requests for evidence add 2-4

months typically), the complexity of the evidence package (cases involving international elements, multiple countries, or detailed hardship narratives take longer), background checks (name-based checks add weeks; fingerprint-based checks add months), and the individual service center's current workload.[15][38] No premium processing or expedited adjudication is available for I-212 applications, meaning standard processing times apply across the board.[15][38]

### **Impact of January 2026 Adjudication Holds for High-Risk Countries**

The January 1, 2026, USCIS policy memo imposing adjudication holds for I-212 applicants from countries listed in Presidential Proclamation 10998 represents a substantial change to expected processing timelines.[18] If the applicant (or their family members who are derivative beneficiaries or dependents) are citizens of or were born in a listed country, USCIS has placed a hold on all pending benefit requests, including I-212 applications filed or pending as of January 1, 2026.[18] Additionally, USCIS has indicated its intention to re-review I-212 approvals issued on or after January 20, 2021, for applicants from those countries, meaning previously approved cases may face reopening and re-adjudication.[18] Practitioners representing applicants from affected countries should anticipate substantial delays and should obtain clarification from USCIS regarding the specific impact on pending I-212 applications.[18] For cases where the applicant's immediate family members or visa petition beneficiaries are affected, filing requests for exemptions or providing evidence that the adjudication hold should not apply to the specific case may be warranted.[18]

### **Realistic Timeline Planning and Client Counseling**

Practitioners should counsel clients that I-212 processing is not expedited and that realistic timelines should be planned based on the 33.5-month average, with contingency planning for cases taking 4-5 years or longer.[15][38] For applicants with immediate family in the United States, explaining that I-212 filing will not result in quick reunification is essential to managing client expectations and ensuring informed decision-making regarding alternative strategies (such as waiting for the statutory time bar to expire naturally, pursuing other immigration relief, or consular processing while accepting temporary separation).[15][38] The impact of the January 2026 adjudication holds means that for affected populations, immediate processing may not occur at all, and clients from countries on the proclamation list should be advised of these delays and potential vulnerabilities.[18]

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## **X. Family-Based Versus Employment-Based Pathways: Post-I-212 Relief Options**

### **Immediate Relative Category (No Visa Quota, Concurrent Filing Possible)**

Once Form I-212 is approved, the applicant's next step is to pursue the specific visa or green card pathway for which they are eligible. For applicants married to U.S. citizens, the immediate relative category offers substantial advantages.[50] Immediate relatives (spouses, unmarried children under 21, and parents of U.S. citizens age 21+) are not subject to annual numerical visa limits and can move through the application process relatively quickly.[50] For an immediate relative beneficiary already in the United States, concurrent filing of Form I-130 (immigrant petition) and Form I-485 (adjustment of status) is possible, meaning the I-212 approval is combined with green card processing in a single adjudication.[50] For immediate relatives outside the United States, consular processing follows I-212 approval, with the applicant attending a visa interview at a U.S. embassy or consulate in the country of residence.[50] The median processing time for immediate relative green cards filed in 2025 is approximately 4-8 months, substantially faster than other categories.[38][50]

## **Family Preference Categories (Visa Quota Backlogs, Longer Processing Times)**

Applicants who are not immediate relatives of U.S. citizens but are instead family-sponsored beneficiaries in family preference categories face visa quotas and often substantial backlogs.[50] These categories include F1 (unmarried sons and daughters of USC, age 21+), F2A and F2B (spouses and children of LPRs, and unmarried sons and daughters of LPRs age 21+), F3 (married sons and daughters of USC), and F4 (brothers and sisters of USC).[50] Processing times for family preference categories vary dramatically depending on the applicant's country of origin; for applicants from visa-backlog countries (particularly Mexico, Philippines, India, and China), waits of 5-15+ years are common.[50] For I-212 applicants from countries with substantial backlogs, the I-212 approval does not eliminate the visa backlogs; rather, the applicant enters the preference category queue and must wait for a visa to become available before consular processing can proceed.[50] Practitioners must manage client expectations regarding this extended waiting period and explore whether alternative visa categories (such as diversity visa lottery if eligible, employment-based categories if qualified, humanitarian relief such as asylum if persecution grounds exist) might provide faster pathways to green card status.[50]

## **Employment-Based Categories (EB1, EB2, EB3)**

For applicants with professional credentials, specialized employment, or business ownership, employment-based immigration may offer an alternative pathway post-I-212 approval. Employment-based categories include EB1 (priority workers-extraordinary ability, outstanding professors/researchers, multinational executives), EB2 (professionals with advanced degrees or exceptional ability), and EB3 (skilled workers, professionals with bachelor's degrees, and other workers).[50] Some employment-based categories have current or near-current visa availability (particularly EB1 and parts of EB2), meaning I-212 applicants with employment credentials can move relatively quickly to green card status.[50] However, employment-based categories typically require PERM labor certification (with the exception of EB1 and certain EB2 National Interest Waivers), which adds 1-2 years to the overall timeline.[50] For I-212 applicants in the employment-based pipeline, I-212 approval is a prerequisite to adjustment of status or consular processing, but employment-based benefits do not automatically confer; rather, the applicant must separately qualify through PERM and visa petition processes.[50]

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## **XI. Compliance and Avoidance of Reinstatement of Removal**

### **The Reinstatement of Removal Trap: INA § 241(a)(5)**

A critical practical concern for all I-212 applicants is the interaction with reinstatement of removal under [INA § 241(a)(5)][35]. If an applicant subject to a prior removal order reenters the United States after April 1, 1997, without being admitted or inspected by immigration officials, DHS may reinstate the original removal order.[35] [§ 241(a)(5)][35] provides that "the [person] is not eligible and may not apply for any relief under this Act," meaning the applicant loses access to virtually all forms of immigration relief, including cancellation of removal, adjustment of status, asylum, and withholding of removal.[35][32] The only exception is VAWA self-petitioners, who may argue that special statutory waiver authority applies despite the reinstatement bar.[35][23] For an I-212 applicant who has obtained approval but then reenters illegally (rather than through lawful admission via consular processing), reinstatement becomes a substantial threat, particularly if the applicant was subject to the permanent bar under § 212(a)(9)(C).[32][35]

### **Strategy for Avoiding Reinstatement: Consular Processing Requirement**

To avoid reinstatement, I-212 applicants must ensure that they reenter the United States lawfully through consular processing (attending a visa interview at a U.S. embassy or consulate and receiving an immigrant visa for admission at a port of entry) or through other lawful entry mechanisms (such as parole for humanitarian purposes, though such parole is extremely limited and not available to deported aliens seeking to reenter).[35] This means that once I-212 is approved, the applicant should not reenter without proper visa documentation; instead, the applicant should proceed immediately to consular processing to obtain the immigrant visa, which permits lawful admission at a port of entry.[35] For applicants living near land borders, it is critical to emphasize that crossing the border informally or attempting to reenter without inspection after I-212 approval creates reinstatement risk and should be avoided absolutely.[35]

### **VAWA Exception to Reinstatement Bar**

VAWA self-petitioners may be able to argue that they are excepted from the § 241(a)(5) reinstatement bar, particularly if they are eligible for waiver of § 212(a)(9)(C) under [INA § 212(a)(9)(C)(iii)][5][23] and have satisfied the connection requirement (connection between abuse and the removal/reentry triggering the permanent bar).[5][23][35] DHS policy guidance issued in 2009 indicates that USCIS can approve an I-212 waiver application for a VAWA self-petitioner despite the existence of a reinstatement order, though this remains a complex and contested area of law.[35] Practitioners representing VAWA self-petitioners should be aware of this potential exception and should research the current DHS position on reinstatement and VAWA self-petitioner eligibility, as policy may have shifted.[35]

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## **XII. Appeal and Reconsideration Strategy for Denied I-212 Applications**

### **Grounds for Administrative Appeal (Form I-290B)**

If USCIS denies Form I-212, the applicant may appeal the denial to the Administrative Appeals Office (AAO) by filing Form I-290B (Notice of Appeal or Motion) within 30 days of the decision (or 33 days if the decision was mailed).[54] The appeal may be based on the ground that USCIS erred in interpreting the law or the facts in denying the I-212 application.[54] However, courts and administrative bodies accord substantial deference to discretionary determinations, meaning that absent clear legal error or arbitrary and capricious decision-making (where the agency ignored relevant factors, relied on irrelevant factors, or reached a conclusion unsupported by the record), the appeal is unlikely to succeed.[1][47] The AAO typically requires 6-12 months to issue an appeal decision.[54]

### **Motion to Reopen or Reconsider (Form I-290B)**

As an alternative to appeal, the applicant may file a Motion to Reopen or Motion to Reconsider within 30 days of the denial.[51] A Motion to Reconsider challenges whether the agency's decision was correct under the law or facts in the existing record.[51] A Motion to Reopen seeks to introduce new evidence or facts not previously available at the time of the original decision.[51] If filed on the basis of new evidence (such as newly obtained medical records, a family member's new illness, substantially improved employment prospects, or evidence of rehabilitation subsequent to the original I-212 adjudication), a Motion to Reopen may be more successful than an appeal of the original decision.[51][54] Motions to Reopen and Reconsider must be filed with cover pages labeled "MOTION TO REOPEN" or "MOTION TO RECONSIDER" and must comply with procedural requirements set forth in EOIR regulations (even though I-212 is adjudicated by USCIS rather than EOIR, the procedural framework is similar).[51]

### **Reapplication Strategy: Filing a New I-212 Application**

Rather than appealing a denial, practitioners sometimes counsel clients to file a new, separate I-212 application if circumstances have substantially changed since the original denial.[15][54] For example, if the original I-212 was denied 18 months ago but the applicant has since completed education, obtained new employment, experienced significant family changes (such as birth of new U.S. citizen children), demonstrated rehabilitation, or obtained substantial community recognition, a new application reflecting these developments may have substantially higher approval probability than an appeal of the original denial.[15][54] The drawback is that a new application requires payment of the filing fee again and submission of a complete new package, and there is no guarantee that a new application will be favorably received by a different officer.[15][54] However, if the original denial was based on outdated or incomplete information, reapplication with more current and comprehensive evidence is often a more productive strategy than appeal.[15][54]

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### **XIII. Conclusion: Strategic Framework and Recommendations for Northern California Practice**

Form I-212 remains a critical but underutilized tool in Northern California immigration practice for applicants with removal orders or deportations seeking to reenter the United States before statutory time bars expire or (in the case of the permanent bar under § 212(a)(9)(C)) after satisfying the ten-year prerequisite. The central characteristics of successful I-212 practice are: (1) precise classification of the removal ground and determination of the applicable time bar, to establish whether the applicant meets statutory prerequisites for I-212 filing; (2) comprehensive documentation of favorable discretionary factors, particularly family ties, hardship to U.S. citizen relatives, good moral character, rehabilitation, and community integration, supported by detailed affidavits, employment records, and third-party testimonials; (3) strategic integration of I-212 with other waiver applications (particularly Form I-601 for criminal or fraud grounds) and coordination with consular processing or adjustment of status pathways; (4) careful attention to the August 2025 USCIS policy on good moral character and the January 2026 adjudication holds affecting applicants from high-risk countries, with proactive efforts to address policy concerns before USCIS denies the application; and (5) absolute vigilance to avoid reinstatement of removal by ensuring lawful reentry through consular processing rather than illegal border crossing following I-212 approval.

For Central American and Mexican clients who constitute a significant portion of San Francisco's immigration caseload, I-212 applications frequently involve family-based equity arguments (U.S. citizen spouses and children, U.S. citizen parents), hardship claims focused on children's education and medical needs, and rehabilitation evidence demonstrating compliance with law and community integration during periods abroad. Concurrent filing of I-212 with Form I-485 (adjustment of status) before an immigration judge, with referral to USCIS for both waiver decisions, remains a viable strategy for applicants who are adjustment-eligible and present in the United States.

Processing timelines averaging 33.5 months, with substantial variation, require realistic client counseling and exploration of alternative strategies (such as waiting for time bars to expire naturally, pursuing other relief, or accepting temporary family separation during visa processing). The intersection of California state law-particularly PC § 1473.7 conviction modification-with federal I-212 strategy should not be overlooked; conviction vacatur or reduction can eliminate compounding grounds of inadmissibility and substantially improve discretionary prospects.

Finally, for applicants subject to the permanent bar under § 212(a)(9)(C), the ten-year continuous residence

requirement outside the United States, combined with the limited VAWA waiver exception, means that I-212 strategy is primarily defensive (demonstrating that the applicant will merit approval once ten years have elapsed) rather than proactive (seeking early waiver). For such applicants, maintaining detailed documentation of country of residence, employment, community integration, and absence from the United States becomes essential to establishing eligibility and demonstrating favorable factors when I-212 is ultimately filed after the ten-year period.

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