



The Waiver Process

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Foreign nationals who have stayed in the United States after the expiration of their period of authorized stay or are present in the United States without being admitted or paroled are unlawfully present in the U.S.

If more than 180 days but less than a year of unlawful presence accrues, then the foreign national is inadmissible for three years (three year bar). Foreign nationals who are unlawfully present for one year or more are inadmissible for 10 years (10 year bar). If a foreign national has accrued unlawful presence in the United States, then they are deemed inadmissible and illegible to re-enter the U.S. for either the three year or 10 year bar from the date they leave the U.S.

There is a waiver available for the unlawful presence ground of inadmissibility. Essentially the waiver will waive the three and 10 year bar of inadmissibility. The waiver is only available to foreign nationals with a U.S. citizen or lawful permanent resident (LPR) spouse or parent. Children are not deemed qualifying relatives for the waiver. The first step in the waiver process is for the foreign national to attend an immigrant visa consular interview in their home country. Once the consular officer deems the foreign national is inadmissible and a waiver is available, the foreign national will then file the waiver (form I-601, with the applicable filing fee) and establish there is extreme hardship to the U.S. citizen or LPR spouse or parent if the foreign national were not allowed to return to the United States. The waiver request is discretionary and extreme hardship is only one factor the officer will consider.

Certain individuals do not accrue unlawful presence and are not subject to the three or 10 year bar. For instance, foreign nationals under 18 years of age do not accrue unlawful presence.

For more information on the waiver process, and extreme hardship, please call Kraft & Associates at 214-999-9999.