

What is an Visa Waiver and How Do I Get One? Part I

If you are found inadmissible a visa waiver will be necessary in order for you to enter the United States. A visa applicant can be determined to be inadmissible for a number of reasons. The most common reason for inadmissibility is an illegal presence or prior visa overstay and the penalties are quite severe. There is a three year ban for those who have illegally resided in the U.S. for more than 180 days and a ten year ban for those who remained illegal in the U.S. for more than 365 days. Therefore, if you have been present in the U.S. illegally for more than 180 days you should consult with an experienced Phoenix immigration attorney in determining whether you are eligible for a waiver.

At your visa interview the consular officer will determine if you are ineligible for a visa. You will also be notified if you are eligible under the law to file a waiver. As a result, waivers cannot be submitted until the interview has taken place and the applicant has been denied. It is in your best interests to consult with an immigration attorney and have your waiver prepared for the consular interview if you anticipate being found inadmissible. Normally at the consular interview you will be provided with the waiver form along with the reason for which you were denied. You will also be fingerprinted and required to pay the waiver fee.

If your waiver is approved, the ban will be lifted and your visa will be issued. However, waivers are not available for all grounds of inadmissibility. For example, falsely claiming U.S. citizenship incurs a lifetime ban for which there is no waiver. The following list includes some of the more common reasons why your visa may be denied:

1. Have been determined to have a communicable disease
2. Have been determined to have a dangerous physical or mental disorder
3. Have been determined to be a drug or alcohol abuser
4. Have committed serious criminal acts, including crimes involving moral turpitude, drug trafficking, and prostitution
5. Are likely to become a public charge
6. Have used fraud or other illegal means to enter the U.S. (misrepresentation)
7. Have accumulated illegal present in the U.S. for more than 180 days

What Must I Prove in Order to Get a Waiver?

The standard for being granted a waiver is very broad and often difficult to prove. Immigration law requires that the qualifying U.S. Citizen (fiancé or spouse) proves extreme hardship to the U.S. Citizen, if the fiancé or spouse's visa is not ultimately approved and as a result they need to relocate permanently to their fiancé or spouse's country. Extreme hardship is often vaguely defined as greater than normal hardship the qualifying relative can be expected to experience if the Alien is denied admission. You should consult with an immigration attorney to determine whether your situation meets the burden of extreme hardship under the law.