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IMMIGRATION COURT-RELIEF FROM REMOVAL

Michelle L. Saenz-Rodriguez, Esq.

Saenz-Rodriguez & Associates, P.C.
13601 Preston Road, Suite W1000
Dallas, Texas 75240

Michelle@sralawonline.com
www.sralawonline.com
(214) 637-5700

INTRODUCTION

Immigration Court has changed significantly over the last several years. Since the implementation of AEDPA & IIRAIRA – relief available in immigration Court is quite limited. Moreover, the standard of proof as interpreted by case law is continuing to raise the bar of equities needed to win a case that may seem very basic in nature.

This paper will provide you with an overview of the most common waivers available in Court and some tips on how to present your case before the Immigration Judge.

I. WAIVERS WITH ADJUSTMENT APPLICATIONS

212(h)

The most commonly used waiver for criminal conduct is known as the 212(h) waiver. This waiver is used in the adjustment process to waive past criminal conduct that makes an applicant inadmissible under §212 of the INA[3]. In order to qualify for a 212(h) waiver you must prove the following elements:

- Extreme hardship to spouse, parent, or child of a citizen or legal permanent resident of the United States
- If LPR-must have been residing in the US for not less than 7 years immediately preceding the date of the initiation of proceedings.
- Crime cannot be classified as Aggravated Felony[1]

212(h) waives crimes that make an alien inadmissible under §212(A)(i)(I), (B), (D), and (E) or subsection(a)(2) and subparagraph(A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less ofmarijuana.[4]

212(h) can also now be used as a "stand alone" waiver for those who are returning residents or arriving aliens.

212(i)

Another waiver that is frequently used in the adjustment process is the 212(i)

[1] But see Martinez v. Mukasey, 519 F.3d 532, 544-45 (5th Cir. 2008)

waiver. This waiver is used to waive grounds of inadmissibility related to fraud in connection to the immigration process. To qualify for the 212(i) wavier you must prove the following:

- Extreme hardship to spouse or parent of a citizen or legal permanent resident of the United States

212(i) waives conduct that make an alien inadmissible under §212(i) of subsection (a)(6)(C). Generally, this covers any false use of documents such as fake social security cards, employment documents, and passport misuse. It could also encompass any criminal conduct related to fraud. IT DOES NOT INCLUDE ANY FALSE CLAIM TO USC MADE AFTER September 30, 1996.

*Please note that the 212(i) waiver does not include children as qualifying relatives for hardship. Children are included if the 212(i) waiver is made in adjusting under "Battered Spouse" provisions.

How do I file the Waiver?

The waiver is filed in conjunction with your application for adjustment of status. You file the form I-601 with a filing fee of $935. The Immigration Courts do not accept fees, so you must follow the prescribed mail-in procedures established by the court to pay the filing fee, then bring a fee receipt along with your application to the Immigration Court.

Both the 212(h) and 212(i) waivers are filed on form I-601. They do not require any additional documents for filing of the application itself-but keep in mind that you must file documents related to extreme hardship. Obviously, you would need to prove the relationship to the qualifying relative along with other supporting documents.

OTHER COURT WAIVERS

Cancellation of Removal

NON-LPR 240A(b)

II.

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