

Provisional Waiver Handbook

The Green Cards of Tomorrow
Belong to Those Who Apply Today



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About the Author

Elizabeth R. Bandon has been practicing immigration law for almost twenty years. The association of lawyers of her state has certified her as an Immigration Expert. Fewer than 100 lawyers in Florida have been honored with this Board Certification.

The Martindale-Hubbell Peer Review Rating System rated Ms. Bandon AV. This score – which is the highest rating possible -- reflects the confidential opinions of both judges and other attorneys regarding Ms. Bandon's legal ability and adherence to the highest level of professional ethics. Clients, who publish anonymous reviews on the website AVVO, also gave her the highest rating (10.0 Superb).

In 2015, The Miami Herald named her one of the Top-Rated Immigration Lawyers in South Florida. She has appeared on national media outlets including CNN and The Daily Review, and has spoken about immigration reform at a national debate between presidential candidates.

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Introduction

How many years have you waited? How many years have you spent in the United States, supporting your family and working hard, waiting for the day when “an amnesty” would allow you to get your green card?

For those who are eligible, the Provisional Waiver is that amnesty. It is a path for foreigners in the United States to become legal permanent residents – whether they entered without authorization (illegally); have orders of deportation; or have been in the United States for more than six months without permission.

It is not, however, a simple form to be completed and mailed in with a penalty. This is not a quick run. This is a marathon process that will take several years to complete. The Blandon Law team, on your behalf, will work with at least three different government agencies: U.S. Citizenship and Immigration Services, National Visa Center and Department of State. Some cases will require additional work with the Immigration Courts.

At the end of it all, a green card will arrive in your mailbox – with your name and photograph. Five years later, you will be able to apply to become a citizen of the country where you have spent so many long years. You will vote. You will belong. If you can imagine that, if you want that, read on.

Why is This News Now?

President Obama created this new program with an executive action announced on November 20, 2014. The Citizenship and Immigration Service did not finish writing the rules (regulations) to begin the program until August 2016.

Who Can Get a Green Card?

Who qualifies?

Family members of U.S. citizens and legal permanent residents (LPRs) 17 years of age or older who are eligible for immigrant visas. They must also be inadmissible to the United States because of unlawful presence and for no other reason.

Who is “eligible for an immigrant visa”?

Foreigners who are the beneficiaries of either an I-130, I-140 or I-360 petition. If a family member or a company has ever filed an application on your behalf with Citizenship and Immigration Service, bring those documents to your consultation with the Attorney.



What is unlawful presence?

Each day you are in the United States without permission from the government is considered unlawful presence. So, visitors in the U.S. for eight months have two months of unlawful presence because tourists are usually only allowed six months of stay ($8-6=2$). Persons who entered without authorization have unlawful presence for every day they are in the country.

What is the minimum number of days of unlawful presence needed to qualify?

This process applies to undocumented individuals who have resided unlawfully in the United States for at least 180 days.

Why do people say that if I leave the United States I cannot return for three or ten years?

Foreign Nationals who have been in the U.S. without lawful immigrant status for more than one hundred eighty (180) days, but less than one year, are typically subject to a three (3) year bar from returning to the U.S. Foreign nationals unlawfully present for more than one year are typically subject to a ten (10) year bar from returning to the U.S. The Immigration and Nationality Act permits a waiver of these unlawful presence bars.

Which family members are eligible to qualify for immigrant visas?

The following persons can apply for a Provisional Waiver if they have a U.S. citizen or legal permanent resident spouse or parent:

- adult and married children of U.S. citizens
- spouses and unmarried children (any age) of Legal Permanent Residents
- siblings of U.S. citizens
- parent, spouse or child of U.S. citizens

Does this mean that my U.S. citizen or legal permanent resident spouse or parent has to file a Petition for me?

No. There may be instances when the Qualifying Relative is not the Petitioner.

Who cannot apply for a Provisional Waiver:

- Married children of LPRs (Legal Permanent Residents) until after the parent becomes a U.S. citizen
- Parents of LPRs until after the son or daughter becomes a U.S. citizen

Can my parent, son, or daughter become a U.S. citizen even if s/he does not speak English?

Yes. Persons who cannot learn English are exempted from several requirements based on the certification of a physician. If the frailty justifies it, the government will allow residents to become U.S. citizens without even asking them any questions – not even in their language.

Can I apply for the Provisional Waiver if I filed an application for a green card (Form I-485) with Immigration?

You are not eligible if that application has not yet been decided, meaning it is pending. If Form I-485 is denied, the Blandon Law team will transfer your approved

Petition (I-130, I-360, or I-140) to the National Visa Center so you can file for a Provisional Waiver.

Can I apply for the Provisional Waiver if I currently have a case in front of an Immigration Judge or the Board of Immigration Appeals?

No. If your case is open, Bandon Law will request that your matter be administratively closed. This means the Immigration Judge stops scheduling hearings. With an order that your case has been closed, you can file for a Provisional Waiver.

Does this mean that I must leave the United States while I am in deportation proceedings before Immigration Court?

No. After the Provisional Waiver is granted, the Immigration Judge terminates your case. A Termination Order means that you won the case in Court and are not being deported.

Steps and Processing Times

Why Are Processing Times So Variable?

It depends on the type of the case and the quality of the documents provided. CIS may approve a Petition filed by a parent faster than a Petition filed by a spouse.

Why was the Provisional Waiver process created?

This new process was developed to shorten the time that U.S. citizens and legal permanent residents are separated from their relatives while those family members are obtaining immigrant visas to become legal permanent residents of the United States.

Can I file the Provisional Waiver at the same time that my family member files the Petition?

No. The Unlawful Presence Provisional Waiver is not filed with any other application or petition.

What are the steps for a green card through Provisional Waiver?

There are several steps with USCIS, NVC and DOS. Let's take them one at a time:

With Immigration (CIS)

You are eligible for a green card based on either a family or employment-based case. Thus, the first



step is that a family member files a Petition for Alien Relative (Form I-130) or a company files a Petition for

Alien Worker (Form I-140). Those who are beneficiaries of Form I-360 are also eligible for a green card.

A family petition will usually be approved in about six months. For employment cases, labor certification can take from six months to two years. Form I-140 will then take at least six months for processing.

If you do not have the documents from Immigration, we can obtain them on your behalf from the government.

With National Visa Center (NVC)

Once CIS approves the Petition, it is sent to the NVC until the Priority Date is current.

Each month, the State Department's Visa Bulletin shows whether a Priority Date is current. This document is available online. Reviewing that Bulletin is part of the service that Blandon Law provides.



It is important that a knowledgeable agent, such as an experienced immigration attorney, track your case at the NVC. Failure to communicate within one year will result in the TERMINATION of your case. You will have to start again with the filing of another Petition. Although cases can remain pending at NVC from one

year to as long as 10 years, the green cards of tomorrow belong to those who file today.

When the Priority Date is current, NVC will request payment of the immigrant visa processing fee. At this time, Blandon Law contacts NVC about the Provisional Waiver.

With Immigration (CIS)

You will apply for a Provisional Unlawful Presence Waiver while in the United States. Blandon Law will help you organize documents to win your case and suggest documents to increase the chance of winning based on our experience. After filing the Waiver, you will have fingerprints taken.

The processing time is currently about eight months, but some cases have been approved within five months. USCIS will notify the National Visa Center (NVC) of its approval decision regarding your Provisional Waiver.

With National Visa Center (NVC)

Once the NVC is notified, they will resume processing your immigrant visa case. This requires providing them with the following:

- Civil Documents
- Affidavit of Support
- Visa Application through computer system

Blandon Law handles all communications with the NVC and completes the visa application on your behalf. More importantly, we answer your questions every step of the way.

The processing time with NVC for this step depends mostly on the Beneficiary. Blandon Law takes two weeks to process the documents and information once you provide them to us. The immigrant visa interview is scheduled at the U.S. embassy or consulate, and you are notified of your interview appointment date.

With Department of State (DOS)

If you were in removal proceedings, the Attorney will provide the Immigration Judge's Termination Order.

After preparation by Blandon Law's consular specialist, you will attend the interview abroad. You will generally be outside the United States for about three weeks, because a medical exam must be completed and the passport will be mailed to you with the visa. In some countries, applicants are asked to return to the consular post to collect the passport personally.

If you fail to depart and attend your immigrant visa interview, the Provisional Unlawful Presence Waiver will not take effect and the approval may no longer be valid.

The last part is the best: After you enter the United States, DOS mails a green card to your house, usually within a month.



Revocation

Can Immigration change its mind after approval and then revoke the approval of the Waiver?

Yes. This happens in the following situations:

- a. DOS ends the immigrant visa application process. This happens when you or your family member do not send the documents requested
- b. USCIS revokes the underlying approved immigrant visa petition (Form I-130 or Form I-360). As an example, this happens when the government discovers fraud in the documents provided, such as the birth certificate.
- c. The consular officer at the U.S. embassy or consulate determines that you are inadmissible on grounds of inadmissibility other than unlawful presence.

- d. You reenter or attempt to reenter the United States without being inspected and admitted or paroled (before or after your Provisional Unlawful Presence Waiver is approved or before your immigrant visa is issued).

What happens if Immigration discovers information after I leave for the interview?

The Waiver will be revoked. Foreign nationals with other grounds of inadmissibility, including fraud and criminal conduct, are not eligible for the provisional waiver program. If you have committed these acts, consult with the Attorney for other options. Please note that Blandon Law does not represent those who have been arrested for controlled substances or for battery on a household member.

Will I have to appear for an interview in order to have the Provisional Unlawful Presence Waiver approved?

Generally, no.

Extreme Hardship

What do I have to prove to win the Provisional Waiver?

Applicants must establish that their U.S. citizen or legal permanent resident spouses or parents would experience “extreme hardship” if the applicants are not allowed to return to the United States.



How can I establish “extreme hardship”?

The Blandon Law team will guide you (see our services on page 18). The Citizenship and Immigration Service claims it will provide guidance on how it makes “extreme hardship” determinations in the coming weeks.

What types of documents does Blandon Law need from me?

We ask for proof of different types of hardship:

- Economic – what happens to finances if Beneficiary is not in the U.S., either to contribute salary or contribute the value of child care?

- Mental – does the Petitioner have a history of health problems (alcoholism, medical issues) that would be worsened if the Beneficiary left?
- Unusual circumstances – are the conditions of the home country terrible right now?

Can I get my green card by remaining in the United States?

No. The provisional unlawful presence waiver process does not change the immigrant visa process. Even if your Provisional Unlawful Presence Waiver is approved, you are still required to depart the United States for your immigrant visa interview with a U.S. consular officer abroad.

What happens if I do not go to the consular interview?

The Department of State may cancel your immigrant visa application process if you fail to appear at your immigrant visa interview at a U.S. embassy or consulate.

Can I get a work permit while waiting for the visa interview?

Not with a Waiver. A pending or approved provisional unlawful presence waiver will not allow you to receive interim benefits while in the United States, protect you from removal, or grant you lawful status. Approval does

not guarantee visa issuance or admission to the United States. Of course, you should discuss all options with your immigration lawyer by scheduling a consultation.


Can I appeal a denial of the Provisional Waiver?

If USCIS denies your Provisional Unlawful Presence Waiver, you cannot file an administrative appeal or a Motion to Reopen or Reconsider. However, if it is denied or you withdraw it, you may file a new application.

If USCIS denies my request for a provisional unlawful presence waiver, will I be placed in removal proceedings?

The persons referred to ICE for deportation proceedings are those considered a DHS enforcement priority – that is, if the individual has a criminal history, has committed fraud, or otherwise poses a threat to national security or public safety. This is true regardless of whether a person applies for the Waiver or not.

Waiver for Those with a Deportation Order (I-212)



**Application for Permission to Reapply for Admission
Into the United States After Deportation or Removal**
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-212
OMB No. 1615-0018
Expires 06/30/2017

For DHS Use Only			
<p>Alien Registration Number</p> <p>A- <input type="text"/></p>	<p>Fee Stamp</p>		<p>Action Block</p>
<p>Initial Receipt</p>	<p>Transferred In</p>	<p>Remarks</p>	
<p>Approved</p> <p><input type="checkbox"/> INA 212(a)(9)(A) for Advance Approval</p> <p><input type="checkbox"/> INA 212(a)(9)(A)</p> <p><input type="checkbox"/> INA 212(a)(9)(C)</p>		<p>Relocated Returned</p>	<p>DHS Office Name/Location</p>
<p>Denied</p>		<p>Transferred Out</p>	

▶ Start Here. Type or print in black ink.

Part I. Information About You

Mailing Address

How do the steps change if I have been ordered deported (or excluded)?

You must file another application before filing for the Provisional Waiver. That first application is asking for a conditional grant of the Waiver of the Deportation Order (known as an I-212).

What do I have to prove to win the Waiver of the Deportation Order?

The Citizenship and Immigration Service will review documents showing you deserve this waiver. These are known as *Favorable Factors*.

What are Favorable Factors?

Close family ties; hardship to USC/LPR relatives; evidence of rehabilitation; length of presence in U.S.; evidence of respect for laws; eligibility for Provisional Waiver; likelihood that you will become LPR.

What would Immigration consider so unfavorable that it would result in a denial of the Waiver?

Immigration considers the following as reasons to deny: Lack of good moral character; absence of family ties; fraudulent marriage; unauthorized employment; repeated violations of immigration laws; likelihood of becoming public charge.

I have been in the United States for many years working without authorization. Will my Waiver be denied?

No. Immigration will include this as a reason for denial only if there are many other reasons to deny the case. For example: works without permission, fraudulent marriage to U.S. citizen, fails to pay child support, and has a DUI – probably a denial.

My Attorney in My Language

What Does the Attorney Do? Why Can't I Do This by Myself?

In order to become an attorney, a person must study at least seven years after high school – including at least three years of special training on how to use documents and the law to get you the benefit you want. On top of that, the attorneys and team members of Blandon Law have decades of experience handling cases before Immigration, the National Visa Center and the Department of State.

A non-lawyer is simply powerless to accomplish what needs to be done with the level of expertise that the Blandon Law team does it. Here are some of the tasks:

- Analyze whether you are eligible for a green card based on your history with government agencies. We review all papers you have with Immigration.
- Analyze whether there is a showing of Extreme Hardship.
- Communicate with the Citizenship and Immigration Service on your behalf –whether on the phone, through email, or through letters.

- Communicate with the National Visa Center on your behalf – whether on the phone, through email, or through letters.
- Communicate with the Department of State on your behalf – whether on the phone, through email, or through letters.
- Make sure that the government is processing the case during a normal timeframe and communicate with you about the status of your case. The Blandon Law team – including the attorneys working on the cases – returns calls within 24 hours.

What are the chances of winning the Provisional Waiver?

According to information provided by Immigration in 2015, the approval rate for Provisional Waivers – including those filed by persons working without an attorney – is about (70%) seventy percent. The rate of approvals at Blandon Law is over (90%) ninety percent.

Does the Attorney speak Spanish?

Yes. In addition, all Blandon Law team members who will contact you about your case also speak fluent Spanish.



How do I schedule a consultation with the Attorney?

Call 954-385-0157 or click on “Request Consultation” at www.Blandon-Law.com.

After I become a client, how often do I have contact with Blandon Law?

You will receive contact from a team member EVERY WEEK until we file your case. After the application is filed, we will contact you when there is an update – such as getting a receipt or fingerprint appointment notice.

Can the Attorney guarantee that I will win my case?

No ethical lawyer guarantees the decision that will be taken by another person. That is why it is important to have an attorney working for you that has expertise in immigration and excellent reviews from prior clients.

How do I know if an attorney has expertise in immigration?

The Florida Bar, the state’s organization of attorneys, gives Board certification to the experts in every type of law. Elizabeth Blandon is one of fewer than 100 attorneys who is a Florida Bar expert in Immigration. In fact, [The Miami Herald](#) named her one of the Top-Rated Immigration Lawyers in South Florida for 2015.

How do I know what prior clients think of Blandon Law?

Anonymous reviews from our past clients are available online at the following link:

<https://www.avvo.com/attorneys/33331-fl-elizabeth-blandon-590936.html>

Are the government fees or the Attorney fees refundable if my case is denied?

No. In fact, paying both the National Visa Center and the fees for Citizenship and Immigration Service are required before the government reviews your case. Likewise, the attorney fees are not refundable.

What are the costs for the government agencies?

About \$1,000 for Immigration. About \$500 for the Department of State. Remember that this is a process that will take years and the fees ARE expected to increase.

What are the fees for the attorney?

The legal fees depend on the amount of work that we anticipate will need to be performed on a case. For this reason, an attorney will quote the fee after a consultation. The total legal fees may be in the thousands as this process requires several years of work.

How do I know if I can afford the legal fees?

Blandon Law offers payment plans and discounts for payment in full. We also accept credit cards.

Ask yourself whether legal status and a path to citizenship is a good investment for you and your family.



Glossary

A

Authorized presence – the opposite of unlawful presence, this is the period during which a foreign national does not accrue time in unlawful status, as permitted by the Department of Homeland Security. Deferred action, appeals to the BIA, and consideration of change of status applications are examples of such time periods. Persons who have authorized presence are legally present in the United States, for purposes of the immigration laws.

B

Beneficiary – the foreign national who will obtain the immigrant visa, based on a petition filed by a company or a family member (known as a Petitioner). In some cases, the spouse and children under 21 years of age also receive immigrant visas; they are known as Derivative Beneficiaries.

Board of Immigration Appeals – also known as the Board, the BIA is an administrative appellate body within the United States Department of Justice. Published decisions of the Board are used as guidelines for Immigration Judges.

C

Citizen – a member of the United States, eligible to participate in its government with rights such as holding public office, voting in elections, and being eligible for government jobs.

Citizen and Immigration Services – also known as Immigration or USCIS, this is the agency that performs the administrative functions previously performed by the Immigration and Naturalization Service. It is an agency within the Department of Homeland Security, granting benefits such as asylum, work permits, legal permanent residency, and naturalization.

D

Department of State – known also as the State Department or DOS, it is the federal department responsible for the international relations of the United States, equivalent to the foreign ministry of other countries. Embassies and consulates, where immigrant visa interviews are held, are part of the Department of State.

E

Employment authorization – work permit issued by the Citizenship and Immigration Service.

F

Foreign national – anyone who is NOT a citizen of the United States is a foreign national. Although foreign nationals may have entered through different methods and have different ties to their communities, they must apply to the government if they wish to work and remain legally in the United States. Thus, it is important to become a citizen.

G

Green card – the government-issued identification card issued to legal permanent residents

L

Legal permanent resident – a foreign national allowed to work and remain in the United States in a permanent status.

N

National Visa Center – also known as NVC, this organization holds United States immigrant visa petitions approved by the Citizenship and Immigration Services until an immigrant visa number becomes available for the petition, at which point it arranges a visa interview for the applicant at a consulate abroad. The NVC is located in New Hampshire.

Naturalization – the process by which a foreign national becomes a U.S. citizen.

P

Petitioner – the family member or company that is applying on behalf of the foreign national (the Beneficiary). They are known as Petitioners because the application is named either a Petition for Alien Relative (if it is a family-based case) or a Petition for Alien Worker (if it is an employment-based case).

Priority Date – for family-based cases, the priority date is the date that either Form I-130 or I-360 is received by CIS. For employment-based immigration beneficiaries, the priority date is the date an immigration petition is filed at CIS (under categories where a labor certification is not required) or when the Department of Labor receives a labor certification application (under categories where a labor certification is required). In all cases, the priority dates are not established until CIS approves the immigration petition.

S

Status – persons are deemed to be in status when Immigration has formally approved their visa, application, or petition. The duration of status varies based on the benefit granted.

V

Visa – permission to come to the United States, put into a page of the Beneficiary’s passport by the Department of State. A nonimmigrant visa is for a temporary stay (such as a student or a visitor). An immigrant visa is for a permanent stay; USCIS mails green cards to the Beneficiaries after they enter the United States.

Visa Bulletin – a State Department document available online showing a monthly updated waiting list for certain categories of foreigners seeking an immigrant visa.

W

Waiver – a pardon for breaking a law of the Immigration and Nationality Act. There are waivers for many different immigration violations, including trying to enter the United States after being deported (I-212 Waiver) and unlawful presence (the Provisional Waiver).



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