

Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases¹²

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This chart compares inadmissibility waivers and exceptions available to immigrant victims of domestic violence, child abuse or neglect, child abandonment, sexual assault, human trafficking and other U visa-listed criminal activities who apply for immigration relief under the Violence Against Women Act (VAWA) Self-petition, the U Visa, the T Visa, or Special Immigrant Juvenile Status (SIJS) programs. In order for an immigrant crime victim to gain legal immigration status based upon their victimization, the victim must prove that they are admissible to the United States. Certain forms of inadmissibility can be excused in cases of immigrant crime victims. Some forms of inadmissibility can be excused as a matter of law for any immigrant victim otherwise eligible for a particular form of crime victim or abuse-based immigration relief. For other types of inadmissibility, the form of crime victim related immigration relief a victim is seeking may provide them an opportunity to request that the U.S. Department of Homeland Security or an immigration judge grant a victim a waiver as an exercise of discretion. Waivers excuse the victim from the ground of inadmissibility preventing the victim from obtaining legal immigration status or lawful permanent residency and are connected to specific crime victim related forms of immigration relief that offer waivers for victims. This chart addresses four of the types of immigration relief that are available to provide help and protection for immigrant survivors. To find a list of inadmissibility factors that may be exempted or waivable in other forms of crime victim related immigration relief see the charts NIWAP has created comparing VAWA cancellation of removal, VAWA suspension of deportation, VAWA HRIFA, VAWA, NACARA, and VAWA Cuban Adjustment applications.³ <https://niwaplibrary.wcl.american.edu/vawa-comparison-interlineated-statutes-ncara-hrifa-cao>.

This chart is for informational purposes only and is designed to help attorneys, victim advocates, prosecutors and judges identify the forms of immigration relief for which an immigrant victim they are working with may be eligible. Since denial of an immigrant victim's crime victim based immigration case could lead to a victim's removal from the United States. For this reason particularly when victims have cases before an immigration judge it is extremely important that victims be represented by attorneys with expertise and specialized training on the immigration protections offered to immigrant victims under VAWA. NIWAP's directory will help you identify agencies and programs with this expertise in your state. <http://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>. For more information on locating attorneys in your state with expertise serving immigrant victims professionals working with immigrant victims can contact NIWAP for technical assistance.

	VAWA self-petition	U Visa	T Visa	Special Immigrant Juvenile Status (SIJS)
Is proof of good moral character required?	<p>Proof of good moral character is for the three years immediately preceding the filing of the VAWA self-petition required.⁴ Waivers available for crimes or other inadmissibility factors connected to the battering or extreme cruelty.⁵ A finding of good moral character may be made if⁶</p> <ul style="list-style-type: none"> • The act of conviction is waivable for purposes of determining inadmissibility or deportability,⁷ and • The act or conviction was connected to the immigrant having been battered to subjected to extreme cruelty⁸ 	<p>A finding of good moral character is not required to be eligible for a U Visa.</p>	<p>A finding of good moral character is not required to be eligible for a T Visa.</p>	<p>A finding of good moral character is not required to be eligible for SIJS.</p>
Inadmissibility grounds exclusions that will not impact approval of case for victims	<p>VAWA Self-petitioners are excluded from inadmissibility for:</p> <ul style="list-style-type: none"> • Public charge⁹ <p>Exception for self-petitioners from:</p> <ul style="list-style-type: none"> • The 3 and 10 year bars for unlawful presence in the U.S.¹⁰ • Unlawful entry, immigrants present without admission or parole¹¹ 	<p>U Visa applicants are excluded from inadmissibility for:</p> <ul style="list-style-type: none"> • Public charge¹² 	<p>T Visa applicants are excluded from inadmissibility for:</p> <ul style="list-style-type: none"> • Public charge¹³ 	<p>Grounds of inadmissibility do not apply to the adjudication of Special Immigrant Juvenile Status (SIJS) Petitions.¹⁴ However, grounds of inadmissibility will apply to an SIJS recipient's application for lawful permanent residency filed based on an approved SIJS petition.¹⁵</p> <p>In the SIJS recipient's application for lawful permanent residency the SIJS recipient is considered to have been paroled into the United States¹⁶ and the following grounds of inadmissibility <i>do not apply</i>:¹⁷</p> <ul style="list-style-type: none"> • Public charge¹⁸ • Labor certification violations¹⁹ • Immigrants present without admission or parole²⁰ • Misrepresentation, including falsely claiming US citizenship²¹ • Stowaways²² • Immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing ID, or other valid entry document²³ • Immigrants unlawfully present²⁴

	VAWA self-petition ²⁵	U Visa ²⁶	T Visa ²⁷	Special Immigrant Juvenile Status (SIJS) ²⁸
Inadmissibility Waivers Available so that the Victim Can Receive Immigration Case Approval and/or Lawful Permanent Residency	<p>The adjudication of a VAWA self-petition requires proof of good moral character²⁹ and obtaining lawful permanent residency once a VAWA self-petition is approved requires victims to be admissible³⁰ or seek waivers of inadmissibility.³¹</p> <p>Determinations of good moral character and inadmissibility are closely connected. When an act or conviction is one for which there is a waiver of inadmissibility available, if that act or conviction was connected to the domestic violence, DHS has the discretion for a self-petitioner to:</p> <ul style="list-style-type: none"> • Make a finding of good moral character • Grant an inadmissibility waiver <p>Waivers of inadmissibility are available for³²:</p> <ul style="list-style-type: none"> • Crimes involving moral turpitude³³ • Multiple criminal convictions³⁴ • Engaging in prostitution within the past 10 years³⁵ • Immigrants who committed a serious criminal offense who claimed immunity from prosecution³⁶ • Controlled substance violation relating to a single offense for possession of 30 grams or less of marijuana³⁷ • Not in possession of valid immigration documentation³⁸ • Unlawfully present in the U.S. after past immigration violations³⁹ • Health related grounds relating to communicable diseases and vaccinations⁴⁰ • Giving false testimony⁴¹ for the purpose of obtaining and immigration benefit⁴² • Smuggling people into the United States⁴³ • Subject to a civil penalty for document fraud⁴⁴ 	<p>The Secretary of DHS has the discretion to grant waivers for most grounds of inadmissibility in U visa applications and applications for lawful permanent residency filed by U visa holders⁴⁵ when granting the waiver would be in the national or public interest.⁴⁶</p> <p>Waivers of inadmissibility that meet these criteria are available for:</p> <ul style="list-style-type: none"> • Health-related grounds⁴⁷ • Conviction of certain crimes including a crime of moral turpitude or conspiracy to commit such a crime⁴⁸ • Multiple criminal convictions⁴⁹ • Controlled substance traffickers⁵⁰ • Prostitution and commercialized vice⁵¹ • Immigrants involved in serious criminal activity who have asserted immunity from prosecution⁵² • Foreign government officials who have committed particularly severe violations of religious freedom⁵³ • Significant traffickers in persons⁵⁴ • Money laundering⁵⁵ • Labor certification violations⁵⁶ • Unqualified physicians⁵⁷ • Uncertified foreign health-care workers⁵⁸ • Immigrants present without admission or parole into the U.S.⁵⁹ • Failure to attend removal proceeding⁶⁰ • Misrepresentation and false claims of citizenship⁶¹ • Stowaways⁶² • Smugglers—if at any time, the individual knowingly encouraged, induced, assisted, abetted, or aided any other person to enter or attempt to enter the US in violation of the law⁶³ • Subject to a civil penalty for document fraud⁶⁴ 	<p>The Secretary of DHS may waive the grounds of inadmissibility for health-related reasons⁶⁵ if it is in the national interest to do so.⁶⁶</p> <p>Unlawful presence as a ground of inadmissibility may be waived for T visa victims if the immigrant proves their trafficking was at least one central reason for their unlawful presence in the U.S.⁶⁷</p> <p>The Secretary of DHS may also waive the following grounds of inadmissibility if the activities that made the trafficking victim inadmissible were caused by or incident to the victimization and it is in the national interest to grant a T visa victim a waiver:⁶⁸</p> <ul style="list-style-type: none"> • Conviction of certain crimes including a crime of moral turpitude or conspiracy to commit such a crime⁶⁹ • Multiple criminal convictions⁷⁰ • Controlled substance traffickers⁷¹ • Prostitution and commercialized vice⁷² • Immigrants involved in serious criminal activity who have asserted immunity from prosecution⁷³ • Foreign government officials who have committed particularly severe violations of religious freedom⁷⁴ • Significant traffickers in persons⁷⁵ • Money laundering⁷⁶ • Labor certification violations⁷⁷ • Unqualified physicians⁷⁸ • Uncertified foreign health-care workers⁷⁹ • Immigrants present without admission or parole⁸⁰ • Failure to attend removal proceeding⁸¹ • Misrepresentation and false claims of citizenship⁸² • Stowaways⁸³ • Smugglers—if at any time, the individual knowingly encouraged, induced, assisted, abetted, or aided any other person to enter or attempt to enter the US in violation of the law⁸⁴ • Subject to a civil penalty for document fraud⁸⁵ 	<p>Grounds of inadmissibility do not apply to the adjudication of Special Immigrant Juvenile Status (SIJS) Petitions.⁸⁶ However, grounds of inadmissibility will apply to an SIJS recipient's application for lawful permanent residency filed based on an approved SIJS petition.⁸⁷</p> <p>The Secretary of DHS Attorney General may waive the following grounds of inadmissibility in the case of SIJS recipients for humanitarian purposes, family unity, or when it is in the public interest:⁸⁸</p> <ul style="list-style-type: none"> • Health-related grounds⁸⁹ • Prostitution and commercialized vice⁹⁰ • Immigrants who committed a serious criminal offense who claimed immunity from prosecution⁹¹ • Foreign government officials who have committed particularly severe violations of religious freedom⁹² • Significant traffickers in persons⁹³ • Money laundering⁹⁴ • Immigrant membership in a totalitarian party⁹⁵ • Association with terrorist organizations⁹⁶ • Recruitment or use of child soldiers⁹⁷ • Unqualified physicians⁹⁸ • Uncertified foreign health-care workers⁹⁹ • Failure to attend removal proceeding¹⁰⁰ • Smugglers—if at any time, the individual knowingly encouraged, induced, assisted, abetted, or aided any other person to enter or attempt to enter the US in violation of the law¹⁰¹ • Subject to a civil penalty for document fraud¹⁰² • Student visa abusers—violation of an (F) student visa as an elementary or secondary school student is excludable until the person has been outside of the US for a continuous period of 5 years after the violation¹⁰³ • Any nonimmigrant without a valid passport, nonimmigrant visa, or border crossing ID at the time of application for admission¹⁰⁴ • Any person ineligible for citizenship or anyone who has left the US to evade service in the armed forces during a time of war or emergency declared by the President¹⁰⁵

	VAWA self-petition	U Visa	T Visa	Special Immigrant Juvenile Status (SIJS)
<p>Inadmissibility Waivers Available so that the Victim Can Receive Immigration Case Approval and/or Lawful Permanent Residency</p>	<p>VAWA 2005 included a Sense of Congress urging DHS, the Department of State and the Department of Justice to exercise their discretion to consent to reapplications for admission from VAWA self-petitioners who had been previously deported, removed or excluded from the U.S.¹⁰⁶</p>	<ul style="list-style-type: none"> • Student visa abusers—violiator of an (F) student visa as an elementary or secondary school student is excludable until the person has been outside of the US for a continuous period of 5 years after the violation¹⁰⁷ • Any nonimmigrant without a valid passport, nonimmigrant visa, or border crossing ID at the time of application for admission¹⁰⁸ • Not in possession of valid immigration documentation¹⁰⁹ • Persons ineligible for citizenship or anyone who has left the US to evade service in the armed forces during a time of war or emergency declared by the President¹¹⁰ • Certain immigrants previously removed¹¹¹ • Immigrants unlawfully present in the U.S.¹¹² • Any person unlawfully present after previous immigration violations¹¹³ • Practicing polygamists¹¹⁴ • Guardian required to accompany another helpless immigrant¹¹⁵ • International child abduction¹¹⁶ • Unlawful voters¹¹⁷ • Former citizens who renounced citizenship to avoid taxation¹¹⁸ <p>In addition to proving that the waiver is in the national or public interest,¹¹⁹ waivers of inadmissibility will only be granted in extraordinary circumstances in cases involving violent or dangerous crimes and in cases involving the following security and related grounds of inadmissibility:¹²⁰</p> <ul style="list-style-type: none"> • Seeks to enter the U.S. solely, principally or incidentally to violate or evade laws prohibiting the export of goods, technology or sensitive information¹²¹ • Terrorist activities¹²² 	<ul style="list-style-type: none"> • Student visa abusers— violator of an (F) student visa as an elementary or secondary school student is excludable until the person has been outside of the US for a continuous period of 5 years after the violation¹²³ • Any nonimmigrant without a valid passport, nonimmigrant visa, or border crossing ID at the time of application for admission¹²⁴ • Not in possession of valid immigration documentation¹²⁵ • Persons ineligible for citizenship or anyone who has left the US to evade service in the armed forces during a time of war or emergency declared by the President¹²⁶ • Certain immigrants previously removed¹²⁷ • Any person unlawfully present after previous immigration violations¹²⁸ • Practicing polygamists¹²⁹ • Guardian required to accompany another helpless immigrant¹³⁰ • Unlawful voters¹³¹ <p>Trafficking victims who will be applying for T visas who is known or believed to be inadmissible may be temporarily admitted to the U.S. by the at the discretion of the Department of Homeland Security (DHS) upon based upon the recommendation of the Secretary of State or a consular officer.¹³²</p> <p>Trafficking victims seeking admission to the U.S. to apply for a T visa may also be admitted to the US <i>temporarily</i> if they have the “appropriate documents” or have has been granted a waiver at the discretion of DHS and DHS may regulate the conditions of such temporary admission.¹³³</p>	<ul style="list-style-type: none"> • Certain immigrants previously removed¹³⁴ • Any person unlawfully present after previous immigration violations¹³⁵ • Practicing polygamists¹³⁶ • Guardian required to accompany another helpless immigrant¹³⁷ • International child abduction¹³⁸ • Unlawful voters¹³⁹ • Former citizens who renounced citizenship to avoid taxation¹⁴⁰

	VAWA self-petition	U Visa	T Visa	Special Immigrant Juvenile Status (SIJS)
Inadmissibility Waivers Available so that the Victim Can Receive Immigration Case Approval and/or Lawful Permanent Residency		<ul style="list-style-type: none"> Immigrant membership in a totalitarian party¹⁴¹ Association with terrorist organizations¹⁴² Recruitment or use of child soldiers¹⁴³ <p>VAWA 2005 included a Sense of Congress urging DHS, the Department of State and the Department of Justice to exercise their discretion to consent to reapplications for admission from U visa applicants who had been previously deported, removed or excluded from the U.S.¹⁴⁴</p>	VAWA 2005 included a Sense of Congress urging DHS, the Department of State and the Department of Justice to exercise their discretion to consent to reapplications for admission from T visa applicants who had been previously deported, removed or excluded from the U.S. ¹⁴⁵	
Persons Ineligible by statute or because the conduct is not waivable for inadmissibility or deportation purposes or because it is a bar to a finding of good moral character	<p>The following categories are not waivable and render the individual ineligible to self-petition and unable to attain lawful permanent residency through the self-petitioning process:</p> <ul style="list-style-type: none"> Person convicted of an aggravated felony¹⁴⁶ Is or was a habitual drunkard;¹⁴⁷ Certain persons previously removed from the United States¹⁴⁸ DHS knows or has reason to believe the applicant is, or has been an illicit trafficker in any controlled substance¹⁴⁹ Someone whose present income is derived principally from illegal gambling or convicted of 2 or more gambling offenses¹⁵⁰ Was incarcerated for an aggregate period of 180 days or more as a result of conviction¹⁵¹ Foreign government officials who have committed particularly severe violations of religious freedom.¹⁵² Significant traffickers in persons¹⁵³ Money laundering¹⁵⁴ Security and related grounds¹⁵⁵ Stowaways¹⁵⁶ Practicing polygamists¹⁵⁷ Guardian required to accompany a helpless immigrant¹⁵⁸ International child abduction¹⁵⁹ 	<p>The following grounds of inadmissibility may not be waived in U visa cases:¹⁶⁰</p> <ul style="list-style-type: none"> Seeking entry into the U.S. solely to engage in espionage or sabotage¹⁶¹ Seeking entry into the U.S. solely to engage in any kind of unlawful activity¹⁶² which can include any gang activity and incidental gang affiliation¹⁶³ Seeking entry into the U.S. solely to engage in plans to overthrow the US government by any means¹⁶⁴ If the entry would have potentially serious adverse foreign policy consequences¹⁶⁵ Participation in Nazi persecution, genocide, or acts of torture or extrajudicial killings.¹⁶⁶ 	<p>Any other grounds of inadmissibility under subsection (a)* may be waived if the activities rendering the person inadmissible were caused by or related to their victimization and the Secretary of Homeland Security determines it is in the national interest to grant a waiver. The following grounds of inadmissibility may not be waived in T visa cases:¹⁶⁷</p> <ul style="list-style-type: none"> Security and related grounds¹⁶⁸ International child abduction¹⁶⁹ Former citizens who renounced citizenship to avoid paying taxes.¹⁷⁰ 	<p>The following grounds of inadmissibility may not be waived and SIJS recipients are ineligible to attain lawful permanent residency based on SIJS:¹⁷¹</p> <ul style="list-style-type: none"> Conviction of certain crimes including a crime of moral turpitude (except a single offense of possession of less than 30 grams of marijuana)¹⁷² Multiple criminal convictions meaning two or more convictions (except a single offense of possession of less than 30 grams of marijuana cannot be counted)¹⁷³ DHS knows or has reason to believe the applicant is, or has been an illicit trafficker in any controlled substance (except a single offense of possession of less than 30 grams of marijuana)¹⁷⁴ Immigrants who seek to enter the U.S. solely, principally or incidentally to: <ul style="list-style-type: none"> Engage in espionage, sabotage¹⁷⁵ Violate or evade laws prohibiting the export of goods, technology or sensitive information¹⁷⁶ Engage in plans to overthrow the US government by any means¹⁷⁷ Engage in any other unlawful activity¹⁷⁸ which can include any gang activity and incidental gang affiliation¹⁷⁹ Terrorist activities¹⁸⁰ If the entry would have potentially serious adverse foreign policy consequences¹⁸¹ Participation in Nazi persecution, genocide, or acts of torture or extrajudicial killings.¹⁸²

	VAWA self-petition	U Visa	T Visa	Special Immigrant Juvenile Status (SIJS)
Persons Ineligible by statute or because the conduct is not waivable for inadmissibility or deportation purposes or because it is a bar to a finding of good moral character	<ul style="list-style-type: none"> • Unlawful voters¹⁸³ • Former citizens who renounced citizenship to avoid taxation¹⁸⁴ • Persons ineligible for citizenship or anyone who has left the US to evade service in the armed forces during a time of war or emergency declared by the President¹⁸⁵ 			The only adjustment bar that applies to an SIJS adjustment applicant is the bar for being deportable due to involvement in a terrorist activity or group. ¹⁸⁶ There is no exemption if this bar applies.

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² NIWAP’s technical assistance: phone (202) 274-4457 and email info@niwap.org. Visit <http://niwaplibrary.wcl.american.edu/> for training materials, resources, and webinars for on-line learning.

³ Violence Against Women Act (VAWA) has created remedies for immigrant victims of spouse abuse and child abuse when the victim is involved in immigration proceedings before an immigration judge. See Leslye Orloff, Comparing VAWA Suspension of Deportation, VAWA Cancellation of Removal, VAWA Nicaraguan and Central American Relief Act (NACARA), and VAWA Self-Petitioning, NIWAP, (January 28, 2021) <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20> (for information on VAWA Suspension of Deportation, VAWA Cancellation of Removal, VAWA Nicaraguan and Central American Relief Act (NACARA), and VAWA Self-Petitioning). See Leslye Orloff, *Comparing VAWA Haitian Refugee Immigrant Fairness Act of 1998 (“VAWA HRIFA), VAWA Cuban Adjustment Act and VAWA Self-Petitioning*, NIWAP, (January 28, 2021) <https://niwaplibrary.wcl.american.edu/pubs/vawa-hrifa-cubans-self-petition-chart-4-28-20> (for more information on the different forms of VAWA Self-Petitions: 1) VAWA Haitian Refugee and Immigrant Fairness Act self-petitions (VAWA HRIFA); VAWA Cuban Adjustment Act self-petitions, and self-petitions filed by abused spouses, children and parents of U.S. citizens and lawful permanent residents).

⁴ SELF-PETITIONING BATTERED OR ABUSED SPOUSES AND CHILDREN, 61 Fed. Reg. 13061, 13066-7 (Mar. 26. 1996); 8 C.F.R. 204.2 (e)(2)(v); INA § 204(a)(1)(A)(iii)(II)(bb); INA § 204(a)(1)(A)(iv); INA § 204(a)(1)(B)(vii)(II); INA § 204(a)(1)(B)(ii)(II)(bb); INA § 204(a)(1)(B)(iii); INA § 204(a)(1)(C).

⁵ U.S. DEP’T OF JUST., DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK, 3-4 (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05> (in determining whether for purposes of good moral character the disqualifying act or conviction was connected to the battering or extreme cruelty the adjudicator must consider the full history of the domestic violence in the case including the victim’s need to escape the abusive relationship, the perpetrators role in compelling or coercing the victim to commit the act or crime and the circumstances surrounding the act or conviction including the abusive relationship).

⁶ U.S. DEP'T OF JUST., DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK 2 (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>.

⁷ This does not require a finding that the waiver would be granted to the victim, only whether under the statute a waiver request could be filed along with the victim's visa application or application for lawful permanent residency. <http://niwaplibrary.wcl.american.edu/pubs/uscis-good-moral-character-memo-1-19-05> page 3

⁸ U.S. DEP'T OF JUST., DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK 3-4 (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>

⁹ INA § 212(a)(4)(E); PUBLIC CHARGE: INADMISSIBILITY ON PUBLIC CHARGE GROUNDS, 84 Fed. Reg. 157 (Aug. 14, 2019) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, and 248) (“this rule does not create any penalty or disincentive for past, current, or future receipt of public benefits by U.S. citizens or aliens whom Congress has exempted from the public charge ground of inadmissibility. This rule does not apply to U.S. citizens, even if the U.S. citizen is related to an alien subject to the public charge ground of inadmissibility. The rule also does not apply to aliens whom Congress exempted from the public charge ground of inadmissibility (such as asylees, refugees, or other vulnerable populations listed as exempt in this final rule). Nor does this rule apply to aliens for whom DHS has statutory discretion to waive this ground of inadmissibility, if DHS has exercised such discretion”).

¹⁰ See I-601 *Form Instructions, Instruction for Application for Waiver of Grounds of Inadmissibility*, DHS USCIS, 2, <https://www.uscis.gov/i-601>. Under INA § 212(a)(6)(A)(i), the unlawful presence may be for unlawful entry at a place other than a port of entry or for being present in the U.S. without being admitted or paroled. INA § 212(a)(6)(A)(ii) provides a VAWA self-petitioner waiver for each of these grounds that applies to all VAWA self-petitioners described in INA Section 101(a)(51). Under INA § 212(a)(9)(B)(ii) the unlawful presence also includes visa overstays and immigrants who remain in the U.S. after violating the terms of their visas for more than 180 days which results in a 3 year bar to admissibility to the U.S. (INA § 212(a)(9)(B)(i)(I)) or more than a year which creates a 10 year bar to admissibility to the U.S. (INA § 212(a)(9)(B)(i)(II)) as well as immigrants who are unlawfully present as defined by INA § 212(a)(6)(A)(i). INA § 212(a)(9)(B)(iii) provides exceptions to the 3 and 10 year bars imposed by INA § 212(a)(9)(B)(i) for: minors INA § 212(a)(9)(B)(iii)(I)(the time a minor spends in the U.S. under the age of 18 does not count toward unlawful presence); Asylees INA § 212(a)(9)(B)(iii)(II)(the time that an asylum applicant has a bona fide application for asylum pending does not count toward the bars unless the asylum applicant works without authorization; Family unity INA Section 212(a)(9)(B)(iii)(III) time as beneficiaries of family unity is not counted). See Battered Immigrants INA Section 212(a)(9)(B)(iii)(IV) (discussing exemption from unlawful presence ere connected to the battering or extreme cruelty). See USCIS, ADJUSTMENT OF STATUS FOR VAWA SELF-PETITIONER WHO IS PRESENT WITHOUT INSPECTION, MEMO FROM MICHAEL L. AYLES (Apr. 11, 2008), <http://niwaplibrary.wcl.american.edu/pubs/adjust-status-present-without-inspection> (for DHS guidance on the matter); *Fact Sheet: USIC Issues Guidance for Approved Violence Against Women Act (VAWA) Self-Petitioners*, USCIS, April 21, 2008, <http://niwaplibrary.wcl.american.edu/pubs/uscisguidancevawafactsheet>; VICTIMS OF SEVERE FORMS OF HUMAN TRAFFICKING, INA § 212(a)(9)(B)(iii)(V) (who demonstrate that the human trafficking was at least one central reason for the unlawful presence).

¹¹ INA § 212(a)(6)(A) waiver included in the exemption from the 3 and 10 year bars for battered immigrants. ¹¹ See I-601 *Form Instructions, Instruction for Application for Waiver of Grounds of Inadmissibility*, DHS USCIS 2, <https://www.uscis.gov/i-601>; Under INA § 212(a)(6)(A)(i) The unlawful presence may be for unlawful entry at a place other than a port of entry or for being present in the U.S. without being admitted or paroled. INA § 212(a)(6)(A)(ii) provides a VAWA self-petitioner waiver for each of these grounds that applies to all VAWA self-petitioners described in INA § 101(a)(51). Under INA § 212(a)(9)(B)(ii) the unlawful presence also includes visa overstays and immigrants who remain in the U.S. after violating the terms of their visas for more than 180 days which results in a 3 year bar to admissibility to the U.S. (INA § 212(a)(9)(B)(i)(I)) or more than a year which creates a 10 year bar to admissibility to the U.S. (INA § 212(a)(9)(B)(i)(II)) as well as immigrants who are unlawfully present as defined by INA § 212(a)(6)(A)(i). INA § 212(a)(9)(B)(iii) provides exceptions to the 3 and 10 year bars imposed by INA § 212(a)(9)(B)(i) for: Battered Immigrants INA § 212(a)(9)(B)(iii)(IV) exempted from unlawful presence where connected to the battering or extreme cruelty; See USCIS, ADJUSTMENT OF STATUS FOR VAWA SELF-PETITIONER WHO IS PRESENT WITHOUT INSPECTION, MEMO FROM MICHAEL L. AYLES (Apr. 11, 2008), <http://niwaplibrary.wcl.american.edu/pubs/adjust-status-present-without-inspection>; *Fact Sheet: USIC Issues Guidance for Approved Violence Against Women Act (VAWA) Self-Petitioners*, USCIS (Apr. 21, 2008), <http://niwaplibrary.wcl.american.edu/pubs/uscisguidancevawafactsheet>.

¹² INA § 212(a)(4)(E); PUBLIC CHARGE: INADMISSIBILITY ON PUBLIC CHARGE GROUNDS, 84 Fed. Reg. 157 (Aug. 14, 2019) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, and 248) (“this rule does not create any penalty or disincentive for past, current, or future receipt of public benefits by U.S. citizens or aliens whom Congress has exempted from the public charge ground of inadmissibility. This rule does not apply to U.S. citizens, even if the U.S. citizen is related to an alien subject to the public charge ground of inadmissibility. The rule also does not apply to aliens whom Congress exempted from the public charge ground of inadmissibility (such as asylees, refugees, or other vulnerable populations listed as exempt in this final rule). Nor does this rule apply to aliens for whom DHS has statutory discretion to waive this ground of inadmissibility, if DHS has exercised such discretion”).

¹³ INA § 212(a)(4)(E)(iii); PUBLIC CHARGE: INADMISSIBILITY ON PUBLIC CHARGE GROUNDS, 84 Fed. Reg. 157 (Aug. 14, 2019) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, and 248) (“this rule does not create any penalty or disincentive for past, current, or future receipt of public benefits by U.S. citizens or aliens whom Congress has exempted from the public charge ground of inadmissibility. This rule does not apply to U.S. citizens, even if the U.S. citizen is related to an alien subject to the public charge ground of inadmissibility. The rule also does not apply to aliens whom Congress exempted from the public charge ground of inadmissibility (such as asylees, refugees, or other vulnerable populations listed as exempt in this final rule). Nor does this rule apply to aliens for whom DHS has statutory discretion to waive this ground of inadmissibility, if DHS has exercised such discretion”).

¹⁴ See POLICY MANUAL, CHAPTER 2 – ELIGIBILITY REQUIREMENTS, VOLUME 6. IMMIGRANTS, SECTION F – INADMISSIBILITY AND WAIVERS, USCIS, (Nov. 18, 2020). See also INA § 101(a)(27)(J); INA § 203(b)(4); INA § 245(h); 8 C.F.R. § 245; 8 C.F.R. § 245.1(e)(3); 8 C.F.R. § 204.11; 87 Fed. Reg. 13094-13095 (Mar. 8, 2022).

¹⁵ See POLICY MANUAL, CHAPTER 2 – ELIGIBILITY REQUIREMENTS, VOLUME 6. IMMIGRANTS, SECTION F – INADMISSIBILITY AND WAIVERS, USCIS, (Nov. 18, 2020). See also, INA § 101(a)(27)(J); INA § 203(b)(4); INA § 245(h); 8 C.F.R. § 245; 8 C.F.R. § 245.1(e)(3); 8 C.F.R. § 204.11; 87 Fed. Reg. 13094-13095 (Mar. 8, 2022).

¹⁶ INA § 245(h)(1).

¹⁷ INA § 245(h)(2)(A); 87 Fed. Reg. 13094-13095 (Mar. 8, 2022); 8 C.F.R. 245.1 (e)(3)(iii).

¹⁸ INA § 212(a)(4); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(A); PUBLIC CHARGE: INADMISSIBILITY ON PUBLIC CHARGE GROUNDS, 84 Fed. Reg. 157 (Aug. 14, 2019) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, and 248) (“this rule does not create any penalty or disincentive for past, current, or future receipt of public benefits by U.S. citizens or aliens whom Congress has exempted from the public charge ground of inadmissibility. This rule does not apply to U.S. citizens, even if the U.S. citizen is related to an alien subject to the public charge ground of inadmissibility. The rule also does not apply to aliens whom Congress exempted from the public charge ground of inadmissibility (such as asylees, refugees, or other vulnerable populations listed as exempt in this final rule). Nor does this rule apply to aliens for whom DHS has statutory discretion to waive this ground of inadmissibility, if DHS has exercised such discretion”).

¹⁹ INA § 212(a)(5)(A); 8 C.F.R. 245.1(e)(3)(iii)(B) (this inadmissibility ground applies only to members of professions holding advanced degrees, immigrants of exceptional ability, skilled workers, professionals, or unskilled or temporary workers performing work for which qualified workers are not available in the U.S.); INA § 245(h)(2)(A).

²⁰ INA § 212(a)(6)(A); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(C).

²¹ INA § 212(a)(6)(C); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(D).

²² INA § 212(a)(6)(D); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(E).

²³ INA § 212(a)(7)(A); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(F).

²⁴ INA § 212(a)(9)(B); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(G).

²⁵ See PREAMBLE TO INTERIM REGULATIONS, 61 Fed. Reg. 13065, 13066 (Mar. 26, 1996); see also POLICY MANUAL, CHAPTER 2 – ELIGIBILITY REQUIREMENTS, VOLUME 6. IMMIGRANTS, SECTION F – INADMISSIBILITY AND WAIVERS, USCIS, (Nov. 18, 2020). *I-601 Form Instructions, Instruction for Application for Waiver of Grounds of Inadmissibility*, DHS USCIS 2, <https://www.uscis.gov/i-601>; *I-485 Form Instructions, Instructions for Application to Register Permanent Residence or Adjust of Status*, DHS USCIS, <https://www.uscis.gov/i-485>. The waivers are needed for VAWA self-petitioning cases both when the victim applies for lawful permanent residency and some of the inadmissibility factors listed also affect the good moral character determination that is made as part of the VAWA self-petition adjudication.

²⁶ The inadmissibility waivers are needed in U visa cases as part of adjudication of the U visa application. INA § 212(d)(14); 8 C.F.R. 212.14; 8 C.F.R. 212.17. Waivers granted are not re-adjudicated when the victim applies for lawful permanent residency. 8 C.F.R. 245.24(b)(11). However, at the time the U visa holder applies for lawful permanent residency the victim has the burden of showing the USCIS should exercise discretion to grant the U visa holder lawful permanent residency. USCIS will consider all factors including inadmissibility factors that arose since the victim was granted a U visa which could be considered adverse factors that without mitigating evidence from the victim, could lead to denial of the victim’s lawful permanent residency application as a matter of discretion. 8 C.F.R. 245.24(b)(11)

²⁷ In T visa cases, for the T visa application to be approved, the victim must as part of the T visa application file an inadmissibility request waiver form which is adjudicated as part of the T visa application. 8 C.F.R. 212.16. Waivers may be requested based on INA § 212(d)(13) and 212(d)(3)(B) the details of what may be waived are contained in this chart. Waivers granted as part of the adjudication that leads to the issuance of the T visa will also be valid for lawful permanent residency for T visa holders. 8 C.F.R. 245.23(a)(4). For waivable inadmissibility factors that arose since the trafficking victim became a T visa holder, as part of the T visa holders application for lawful permanent residency, the victim must file a waiver request at part of their lawful permanent residency application. INA § 245(l)(2); 8 C.F.R. 212.18; 8 C.F.R. 245.23(a)(4). Additional rules apply to waivers of unlawful presence that were not previously waived and that need to be adjudicated as part of the victim’s lawful permanent residency application. 8 C.F.R. 245.23(c)(3).

²⁸ See POLICY MANUAL, CHAPTER 2 – ELIGIBILITY REQUIREMENTS, VOLUME 6. IMMIGRANTS, SECTION F – INADMISSIBILITY AND WAIVERS, USCIS, (Nov. 18, 2020). See also INA § 101(a)(27)(J); INA § 203(b)(4); INA § 245(h); 8 C.F.R. § 245; 8 C.F.R. § 245.1(e)(3); 8 C.F.R. § 204.11. The grounds of inadmissibility do not apply to adjudication of SIJS petitions. Once an immigrant child’s SIJS petition has been granted, the inadmissibility is adjudicated at part of the SIJS recipient child’s lawful permanent residency application.

²⁹ SELF-PETITIONING BATTERED OR ABUSED SPOUSES AND CHILDREN, 61 Fed. Reg. 13061, 13066-7 (Mar. 26, 1996); 8 C.F.R. 204.2 (e)(2)(v); INA § 204(a)(1)(A)(iii)(II)(bb); INA § 204(a)(1)(A)(iv); INA § 204(a)(1)(B)(vii)(II); INA § 204(a)(1)(B)(ii)(II)(bb); INA § 204(a)(1)(B)(iii); INA § 204(a)(1)(C).

³⁰ Since VAWA self-petitioners are seeking legal immigration status as abused spouses, children or parents of U.S. citizens or abused spouses or children of lawful permanent residents there are certain grounds of inadmissibility for which self-petitioners would not need a waiver because the grounds of inadmissibility would not apply in VAWA self-petition cases. These are:

- INA § 212(a)(5)(A) (labor certification violations. This inadmissibility ground applies only to members of professions holding advanced degrees, immigrants of exceptional ability, skilled workers, professionals, or unskilled or temporary workers performing work for which qualified workers are not available in the U.S.);
- INA § 212(a)(5)(B) (unqualified physicians. This inadmissibility ground applies only to members of professions holding advanced degrees, immigrants of exceptional ability, skilled workers, professionals, or unskilled or temporary workers performing work for which qualified workers are not available in the U.S.);
- INA § 212(a)(5)(C) (uncertified foreign health-care workers. This inadmissibility ground only applies to immigrants who enter the U.S. for the purpose of performing labor as a health-care worker of physician. VAWA self-petitioners are seeking lawful permanent residency based on their spousal or parent child relationship to a U.S. citizen or lawful permanent resident who subjected them to battering or extreme cruelty);
- INA § 212(a)(6)(G) (student (F) visa holders who violated the terms of their (F) student visa by receiving public elementary school education or receiving public secondary education for more than an aggregate period of time of one year and failed to repay the secondary school for the full unsubsidized cost of their education.)

³¹ See I-601 Form Instructions, *Instruction for Application for Waiver of Grounds of Inadmissibility*, DHS USCIS 2, <https://www.uscis.gov/i-601>.

³² See INA § 212(a)(9)(C). In the case that a victim leaves the U.S., or was removed and had an *in absentia* order, there is no specific waiver for VAWA self-petitioners. Additionally, upon reentry the victim would be subject to reinstatement under the removal order and trigger the permanent bar in INA § 212(a)(9)(C). See also INA § 212(a)(9)(C)(iii) (for VAWA self-petitioners, the permanent bar may demonstrate that they qualify for the exception to the permanent bar by filing a VAWA-specific waiver on Form I-601), it is important to note that when such a waiver is granted, the victim would still be subject to the reinstatement of a removal order. However, filing the Form I-601 waiver application coupled with a Form I-212 Application for Permission to Reapply for Permission to Reenter

the United States after Removal or Deportation *may* allow VAWA self-petitioners to overcome the reinstatement of an old removal order. The I-601 waiver will pardon the permanent bar, while a nunc pro tunc I-212 application for advance permission to reapply for admission may “cure” the unlawful reentry, thus removing one of the requirements for reinstatement. In requesting permission to reenter on Form I-212, it can be useful to note in the application that Congress in Section 813(b) Violence Against Women and Department of Justice Reauthorization Act of 2005 (title IX of Public Law 109–162; 119 Stat. 3080)(Violence Against Women Act of 2005) included the following “Sense of Congress” encouraging the Department of Homeland Security to grant this permission to reenter after removal or deportation for VAWA self-petitioners, VAWA cancellation of removal and suspension of deportation applicants, and for U and T visa applicants. The text of Section 813(b) of the Violence Against Women Act of 2005 states:

(b) DISCRETION TO CONSENT TO AN ALIEN’S REAPPLICATION FOR ADMISSION.—

- (1) IN GENERAL.—The Secretary of Homeland Security, the Attorney General, and the Secretary of State shall continue to have discretion to consent to an alien’s reapplication for admission after a previous order of removal, deportation, or exclusion.
- (2) SENSE OF CONGRESS.—It is the sense of Congress that the officials described in paragraph (1) should particularly consider exercising this authority in cases under the Violence Against Women Act of 1994, cases involving nonimmigrants described in subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), and relief under section 240A(b)(2) or 244(a)(3) of such Act (as in effect on March 31, 1997) pursuant to regulations under section 212.2 of title 8, Code of Federal Regulations.

The regulations regarding applying for and the process for adjudicating requests for consent to reapply after deportation or removal are described in detail in 8 C.F.R 212.2.

³³ INA § 101(f)(3); INA § 212(a)(2)(A)(i)(I) (grounds of inadmissibility-convicted of, or has admitted to, committing acts of moral turpitude, other than (1) purely political crimes or (2) petty offenses or crimes committed both when the alien was under 18 years of age and more than five years before applying for a visa for admission); INA § 212(h)(1)(C) (waiver available for battered spouse or child self-petitioner with DHS agreement to a favorable exercise of discretion); *See* U.S. DEP’T OF JUST., DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>.

³⁴ INA § 101(f)(3); INA § 212(a)(2)(B) (grounds of inadmissibility for someone who was convicted of 2 or more offenses (other than purely political offenses), regardless of whether they arose out of a single scheme or the conviction was in a single trial, for which the aggregate sentences to confinement were 5 years or more); INA § 212(h)(1)(C) (waiver available for battered spouse or child self-petitioner with DHS agreement to a favorable exercise of discretion); *See* U.S. DEP’T OF JUST., DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>.

³⁵ INA § 101(f)(3); INA § 212(a)(2)(D) (ground of inadmissibility prostitution within the last 10 years before filing the VAAW self-petition); INA § 212(h)(1)(C) (waiver available for battered spouse or child self-petitioner with DHS agreement to a favorable exercise of discretion); *See* U.S. DEP’T OF JUST., DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>.

³⁶ INA § 212(a)(1)(E) renders immigrants inadmissible who have committed serious criminal offenses in the U.S., who claimed immunity from prosecution and left the United States who have not submitted fully to the jurisdiction of a court in the United States. Serious criminal offenses is defined in § 101(h) to include any felony, reckless driving or driving while intoxicated or under the influence if the crime involved injury to another person, and any crime of violence defined in 18 U.S.C. § 16 as an offense that has as an element the use, attempted use or threatened use of physical force against a person or property of another, or any other offense that is a felony that by its nature involves a substantial risk of physical force against the person of a property of another may be used in the course of committing the offense. Waiver authorized by INA § 212(h)(1)(C) for VAWA self-petitioners.

³⁷ INA § 101(f)(3); INA § 212(a)(2)(A)(i)(II) (grounds of inadmissibility convicted or admitted to violating controlled substance laws); INA Section 212(h)(1)(C)(waiver available for battered spouse or child self-petitioner for a single offense of simple possession of 30 grams or less of marijuana with DHS agreement to a favorable exercise of discretion); *See* U.S. DEP’T OF JUST., DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK, 3 (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>. *See also*, INA § 212(a)(2)(A)(i)(II) (violation of

any other laws or regulations related to controlled substances makes the VAWA self-petitioner inadmissible. A conviction is not required. *See* INA § 212(a)(2)(A)(ii) for limited exceptions for certain under 18 year old offenders and for cases in which the maximum penalty possible for the crime did not exceed imprisonment for one year and if there was a conviction the sentence did not exceed 6 months (regardless of the extent to which the sentence was ultimately executed).

³⁸ INA § 212(a)(7)(A) and (B); *see* WAIVER BY JOINT ACTION OF CONSULAR AND IMMIGRATION OFFICERS OF PASSPORT AND VISA REQUIREMENTS, 22 C.F.R. § 41.3 (2014) (in determining whether VAWA self-petitioners qualify for the 212(d)(4)(A) waiver for unforeseen emergency in individual cases of 212(a)(7)'s inadmissibility grounds applicable to any immigrant or nonimmigrant without a valid passport, nonimmigrant visa, or border crossing ID at the time of application for admission to the United States, a self-petitioner will only qualify if they meet the emergent circumstances specifically listed in 22 C.F.R. § 41.3). Most VAWA self-petitioners will not meet the limited exceptions in this regulation and thus typically seek admissions through the victim's application for adjustment of status to lawful permanent residency and address inadmissibility waivers and exceptions they are eligible for in the context of adjudication of that application.

³⁹ INA 212(a)(9)(C); *see I-601 Form Instructions, Instruction for Application for Waiver of Grounds of Inadmissibility*, DHS USCIS 2, <https://www.uscis.gov/i-601>; Waiver available under INA Section 212(a)(9)(C)(iii) for VAWA self-petitioners where there is a connection between the battering or extreme cruelty and the self-petitioner's removal, departure, reentry, reentries, or attempted reentry into the United States.

⁴⁰ INA § 212(g)(1)(C) makes waivers available to VAWA self-petitioners of the health-related grounds of inadmissibility related to communicable diseases in INA § 212(a)(1)(A)(i). Also, waivers are available for health-related grounds for required vaccinations to immigrants who receive vaccination against preventable diseases. INA § 212(g)(2).

⁴¹ *See* U.S. DEP'T OF JUST., DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05> (for more detail on false testimony and good moral character in self-petitioner cases).

⁴² INA § 101(f)(6); INA § 212(a)(6)(C)(i); INA § 212(i) (waivers available and good moral character may be found for VAWA self-petitioners who demonstrate extreme hardship to themselves or their citizen, lawful permanent resident or qualified immigrant parent or child. Qualified immigrant is defined to include the immigrants listed in 8 U.S.C. 1641); INA § 237(a)(1)(H)(ii) (waiver available for immigration related misrepresentation which will operate to waive removal and operates to waive deportation grounds of inadmissibility resulting from the fraud or misrepresentation). <http://niwaplibrary.wcl.american.edu/pubs/uscis-good-moral-character-memo-1-19-05.0>

⁴³ INA § 101(f)(3); INA § 212(a)(6)(E) (ground of inadmissibility); INA § 212(d)(11) (waiver available for immigrants seeking lawful permanent residency as a family member of a U.S. citizen (spouse, child, unmarried son or daughter, married son or daughter, brother or sister) or lawful permanent resident (spouse, child, unmarried son or daughter) under INA § 203(a) may qualify for a waiver only if the immigrant encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the immigrant's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law); *see* U.S. DEP'T OF JUST., DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK, 3 (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05>.

⁴⁴ INA § 212(a)(6)(E); INA § 274(C); 212(d)(12) (VAWA self-petitioners would be eligible for the 212(d)(12) exception as spouses and children of lawful permanent residents or as spouses, children or parents of U.S. citizens).

⁴⁵ 8 C.F.R. 245.24(b)(11) (in U visa cases waivers of inadmissibility are adjudicated as part of the application for the victim to be granted a U visa. When the victim applies for lawful permanent residency United States Citizenship and Immigration Services (USCIS) all factors in the victim's case in deciding whether to exercise discretion to grant a U visa holder lawful permanent residency. The factors USCIS will consider can include factors that would generally render the U visa holder applicant for lawful permanent residency inadmissible. Once an inadmissibility factor has been waived in the adjudication of the victim's U visa application, that factor cannot be adjudicated when the victim applies for lawful permanent residency. However, if acts that could constitute grounds of inadmissibility arise after the victim was granted their U visa these could be considered adverse factors when USCIS adjudicates the victim's lawful permanent

residency application, and the victim should submit evidence establishing mitigating equities for USCIS to consider in weighing whether to exercise discretion in granting the U visa holder lawful permanent residency).

⁴⁶ INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁴⁷ INA § 212(a)(1); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁴⁸ INA § 212(a)(2)(A); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁴⁹ INA § 212(a)(2)(B); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁵⁰ INA § 212(a)(C); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁵¹ INA § 212(a)(2)(D); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁵² INA § 212(a)(2)(E); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁵³ INA § 212(a)(2)(G); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁵⁴ INA § 212(a)(2)(H); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁵⁵ INA § 212(a)(2)(I); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁵⁶ INA § 212(a)(5)(A); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1) (this inadmissibility ground applies only to members of professions holding advanced degrees, immigrants of exceptional ability, skilled workers, professionals, or unskilled or temporary workers performing work for which qualified workers are not available in the U.S.).

⁵⁷ INA § 212(a)(5)(B); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1) (this inadmissibility ground applies only to members of professions holding advanced degrees, immigrants of exceptional ability, skilled workers, professionals, or unskilled or temporary workers performing work for which qualified workers are not available in the U.S.).

⁵⁸ INA § 212(a)(5)(C); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁵⁹ INA § 212(a)(6)(A); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁶⁰ INA § 212(a)(6)(B); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁶¹ INA § 212(a)(6)(C); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁶² INA § 212(a)(6)(D); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁶³ INA § 212(a)(6)(E); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

⁶⁴ INA § 212(a)(6)(F); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1); INA § 274(C).

⁶⁵ INA § 212(a)(1).

⁶⁶ INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(2).

⁶⁷ INA § 212(a)(9)(B)(iii)(V).

⁶⁸ INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁶⁹ INA § 212(a)(2)(A); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁷⁰ INA § 212(a)(2)(B); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁷¹ INA § 212(a)(C); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁷² INA § 212(a)(2)(D); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁷³ INA § 212(a)(2)(E); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁷⁴ INA § 212(a)(2)(G); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁷⁵ INA § 212(a)(2)(H); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(2).

⁷⁶ INA § 212(a)(2)(I); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁷⁷ INA § 212(a)(5)(A); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3) (this inadmissibility ground applies only to members of professions holding advanced degrees, immigrants of exceptional ability, skilled workers, professionals, or unskilled or temporary workers performing work for which qualified workers are not available in the U.S.).

⁷⁸ INA § 212(a)(5)(B); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3) (this inadmissibility ground applies only to members of professions holding advanced degrees, immigrants of exceptional ability, skilled workers, professionals, or unskilled or temporary workers performing work for which qualified workers are not available in the U.S.).

⁷⁹ INA § 212(a)(5)(C); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁸⁰ INA § 212(a)(6)(A); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁸¹ INA § 212(a)(6)(B); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁸² INA § 212(a)(6)(C); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁸³ INA § 212(a)(6)(D); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁸⁴ INA § 212(a)(6)(E); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

⁸⁵ INA § 212(a)(6)(F); INA § 212(d)(13)(B)(i); INA § 274(C); 8 C.F.R. § 212.18(b)(3).

⁸⁶ See *Policy Manual, Chapter 2 – Eligibility Requirements, Volume 6. Immigrants, Section F – Inadmissibility and Waivers*, USCIS, (Nov. 18, 2020). See also INA § 101(a)(27)(J); INA § 203(b)(4); INA § 245(h); 8 C.F.R. § 245; 8 C.F.R. § 245.1(e)(3); 8 C.F.R. § 204.11; 87 Fed. Reg. 13094-13095 (Mar. 8, 2022).

⁸⁷ See *Policy Manual, Chapter 2 – Eligibility Requirements, Volume 6. Immigrants, Section F – Inadmissibility and Waivers*, USCIS, (Nov. 18, 2020). See also INA § 101(a)(27)(J); INA § 203(b)(4); INA § 245(h); 8 C.F.R. § 245; 8 C.F.R. § 245.1(e)(3); 8 C.F.R. § 204.11; 87 Fed. Reg. 13094-13095 (Mar. 8, 2022).

⁸⁸ INA § 245(h)(2)(B); 87 Fed. Reg. 13094-13095 (Mar. 8, 2022); 8 C.F.R. 245.1 (e)(3)(iv) and (v).

⁸⁹ INA § 212(a)(1); INA § 245(h)(2)(B).

⁹⁰ INA § 212(a)(2)(D); INA § 245(h)(2)(B).

⁹¹ INA § 212(a)(2)(E); INA § 245(h)(2)(B).

⁹² INA § 212(a)(2)(G); INA § 245(h)(2)(B).

⁹³ INA § 212(a)(2)(H); INA § 245(h)(2)(B).

⁹⁴ INA § 212(a)(2)(I); INA § 245(h)(2)(B).

⁹⁵ INA § 212(a)(3)(D); INA § 245(h)(2)(B).

⁹⁶ INA § 212(a)(3)(F); INA § 245(h)(2)(B).

⁹⁷ INA § 212(a)(3)(G); INA § 245(h)(2)(B).

⁹⁸ INA § 212(a)(5)(B); INA § 245(h)(2)(B).

⁹⁹ INA § 212(a)(5)(C); INA § 245(h)(2)(B).

¹⁰⁰ INA § 212(a)(6)(B); INA § 245(h)(2)(B).

¹⁰¹ INA § 212(a)(6)(E); INA § 245(h)(2)(B).

¹⁰² INA § 212(a)(6)(F); INA § 274(C); INA § 245(h)(2)(B).

¹⁰³ INA § 212(a)(6)(G) (attending a publicly funded elementary school violates the terms of an (F) student visa. Attending a publically funded secondary school also violates the terms of an (F) student visa unless the attendance was for an aggregate period that is less than 12 months and the student reimbursed the public school for the full unsubsidized per capita cost of providing the child education at the school).

¹⁰⁴ INA § 212(a)(7)(B); INA § 212(d)(4); INA § 245(h)(2)(B).

¹⁰⁵ INA § 212(a)(8); INA § 245(h)(2)(B). Persons ineligible for citizenship are: INA § 313 (persons opposed to the government or in favor of totalitarian forms of government are prohibited from naturalization); INA § 314 (deserters from the armed forces are prohibited naturalization); INA § 315 (immigrants relieved from service in the armed forces are ineligible for naturalization).

¹⁰⁶ VIOLENCE AGAINST WOMEN AND DEPARTMENT OF JUSTICE REAUTHORIZATION ACT OF 2005, Pub. L. No. 109-162, § 813(b), 119 Stat. 2960 (Jan. 5, 2006); INA §212(a)(9)(A)(iii); 8 C.F.R. 212.2 (obtaining consent prevents or halts reinstatement of removal for VAWA self-petitioners, VAWA cancellation of removal, VAWA suspension of deportation, T visa, and U visa eligible victims). It is important to note that best practices in such cases would be for victims to apply for VAWA self-petition as soon as possible and then advocate for discretion. The other option in this case would be to file Form I-601 waiver application

coupled with a Form I-212 Application for Permission to Reapply for Permission to Reenter the United States after Removal or Deportation may allow VAWA self-petitioners to overcome the reinstatement of an old removal order. The I-601 waiver will pardon the permanent bar, while a nunc pro tunc I-212 application for advance permission to reapply for admission may “cure” the unlawful reentry, thus removing one of the requirements for reinstatement. *See* USCIS, MEMORANDUM FROM MICHAEL AYLES, USCIS ACTING DEPUTY DIRECTOR, TO USCIS LEADERSHIP, ADJUDICATING FORMS I-212 FOR ALIENS INADMISSIBLE UNDER SECTION 212(A)(9)(C) OR SUBJECT TO REINSTATEMENT UNDER SECTION 241 (A)(5) OF THE IMMIGRATION AND NATIONALITY ACT IN LIGHT OF *GONZALEZ V. DHS*, 508 F.3d. 1227 (9TH CIR. 2007) (May 19, 2009) at p. 6 n.5 <https://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoadjudicatingformsi212-05-19-09>. In requesting the I-212 request for permission to reenter it can be useful to note in the application that Congress in Section 813(b) Violence Against Women and Department of Justice Reauthorization Act of 2005 (title IX of Public Law 109–162; 119 Stat. 3080) (Violence Against Women Act of 2005) included the follow Sense of Congress encouraging the Department of Homeland Security to grant this permission to reenter after removal or deportation for VAWA self-petitioners, VAWA cancellation of removal and suspension of deportation applicants, and for U and T visa applicants. The test of Section 813(b) of the Violence Against Women Act of 2005 states:

(b) DISCRETION TO CONSENT TO AN ALIEN’S REAPPLICATION FOR ADMISSION.—

(1) IN GENERAL.—The Secretary of Homeland Security, the Attorney General, and the Secretary of State shall continue to have discretion to consent to an alien’s reapplication for admission after a previous order of removal, deportation, or exclusion.

(2) SENSE OF CONGRESS.—It is the sense of Congress that the officials described in paragraph (1) should particularly consider exercising this authority in cases under the Violence Against Women Act of 1994, cases involving nonimmigrants described in subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), and relief under section 240A(b)(2) or 244(a)(3) of such Act (as in effect on March 31, 1997) pursuant to regulations under section 212.2 of title 8, Code of Federal Regulations.

¹⁰⁷ INA § 212(a)(6)(G); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹⁰⁸ INA § 212(a)(7)(A)(i)(I) or INA § 212(a)(7)(B)(i)(I); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹⁰⁹ INA § 212(a)(7)(A) and (B); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹¹⁰ INA § 212(a)(8)(A); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1). Persons ineligible for citizenship are: INA § 313 (persons opposed to the government or in favor of totalitarian forms of government are prohibited from naturalization); INA § 314 (deserters from the armed forces are prohibited naturalization); INA § 315 (immigrants relieved from service in the armed forces are ineligible for naturalization).

¹¹¹ INA § 212(a)(9)(A); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹¹² INA § 212(a)(9)(B); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹¹³ INA § 212(a)(9)(C); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹¹⁴ INA § 212(a)(10)(A); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹¹⁵ INA § 212(a)(10)(B); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹¹⁶ INA § 212(a)(10)(C); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹¹⁷ INA § 212(a)(10)(D); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹¹⁸ INA § 212(a)(10)(E); INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹¹⁹ INA § 212(d)(14); 8 C.F.R. 212.17(b)(1).

¹²⁰ 8 C.F.R. 212.17(b)(2).

¹²¹ INA § 212(a)(3)(A)(i)(II); INA § 212(d)(3); 8 C.F.R. 212.17(b)(1).

¹²² INA § 212(a)(3)(B); INA § 212(d)(3); 8 C.F.R. 212.17(b)(1).

¹²³ INA § 212(a)(6)(G); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

¹²⁴ INA § 212(a)(7)(A)(i)(I) or INA § 212(a)(7)(B)(i)(I); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

¹²⁵ INA § 212(a)(7)(A) and (B); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

¹²⁶ INA § 212(a)(8)(A); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3). Persons ineligible for citizenship are: INA § 313 (persons opposed to the government or in favor of totalitarian forms of government are prohibited from naturalization); INA § 314 (deserters from the armed forces are prohibited naturalization); INA § 315 (immigrants relieved from service in the armed forces are ineligible for naturalization).

¹²⁷ INA § 212(a)(9)(A); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

¹²⁸ INA § 212(a)(9)(C); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

¹²⁹ INA § 212(a)(10)(A); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

¹³⁰ INA § 212(a)(10)(B); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

¹³¹ INA § 212(a)(10)(D); INA § 212(d)(13)(B)(i); 8 C.F.R. § 212.18(b)(3).

¹³² INA § 212(d)(3)(A)(i).

¹³³ See 212(d)(3)(A)(ii); see also 212(d)(3)(A)(i) (the following *may not* be waived for applicants who are inadmissible under this provision: seeking entry into the US for the sole purpose of engaging in espionage or sabotage, engaging in any kind of unlawful activity, engaging in plans to overthrow the US government by any means, or any applicant who was previously involved with the Nazi government and participated in its persecutions and genocide).

¹³⁴ INA § 212(a)(9)(A); INA § 245(h)(2)(B).

¹³⁵ INA § 212(a)(9)(C); INA § 245(h)(2)(B).

¹³⁶ INA § 212(a)(10)(A); INA § 245(h)(2)(B).

¹³⁷ INA § 212(a)(10)(B); INA § 245(h)(2)(B).

¹³⁸ INA § 212(a)(10)(C); INA § 245(h)(2)(B).

¹³⁹ INA § 212(a)(10)(D); INA § 245(h)(2)(B).

¹⁴⁰ INA § 212(a)(10)(E); INA § 245(h)(2)(B).

¹⁴¹ INA § 212(a)(3)(D); INA § 212(d)(3); 8 C.F.R. 212.17(b)(1).

¹⁴² INA § 212(a)(3)(F); INA § 212(d)(3); 8 C.F.R. 212.17(b)(1).

¹⁴³ INA § 212(a)(3)(G); INA § 212(d)(3); 8 C.F.R. 212.17(b)(1).

¹⁴⁴ VIOLENCE AGAINST WOMEN AND DEPARTMENT OF JUSTICE REAUTHORIZATION ACT OF 2005, Pub. L. No. 109-162, § 813(b), 119 Stat. 2960 (Jan. 5, 2006); INA §212(a)(9)(A)(iii); 8 C.F.R. 212.2 (obtaining consent prevents or halts reinstatement of removal for VAWA self-petitioners, VAWA cancellation of removal, VAWA suspension of deportation, T visa, and U visa eligible victims). It is important to note that best practices in such cases would be for victims to apply for the U visa as soon as possible and then advocate for discretion. The other option in this case would be to file Form I-601 waiver application coupled with a Form I-212 Application for Permission to Reapply for Permission to Reenter the United States after Removal or Deportation may allow U visa applicants to overcome the reinstatement of an old removal order. The I-601 waiver will pardon the permanent bar, while a nunc pro tunc I-212 application for advance permission to reapply for admission may “cure” the unlawful reentry, thus removing one of the requirements for reinstatement. In requesting the I-212 request for permission to reenter it can be useful to note in the application that Congress in Section 813(b) Violence Against Women and Department of Justice Reauthorization Act of 2005 (title IX of Public Law 109–162; 119 Stat. 3080) (Violence Against Women Act of 2005) included the follow Sense of Congress encouraging the Department of Homeland Security to grant this permission to reenter after removal or deportation for VAWA self-petitioners, VAWA cancellation of removal and suspension of deportation applicants, and for U and T visa applicants. The test of Section 813(b) of the Violence Against Women Act of 2005 states:

(b) DISCRETION TO CONSENT TO AN ALIEN’S REAPPLICATION FOR ADMISSION.—

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(2) SENSE OF CONGRESS.—It is the sense of Congress that the officials described in paragraph (1) should particularly consider exercising this authority in cases under the Violence Against Women Act of 1994, cases involving nonimmigrants described in subparagraph (T) or (U) of

section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), and relief under section 240A(b)(2) or 244(a)(3) of such Act (as in effect on March 31, 1997) pursuant to regulations under section 212.2 of title 8, Code of Federal Regulations.

¹⁴⁵ VIOLENCE AGAINST WOMEN AND DEPARTMENT OF JUSTICE REAUTHORIZATION ACT OF 2005, Pub. L. No. 109-162, § 813(b), 119 Stat. 2960 (Jan. 5, 2006); INA §212(a)(9)(A)(iii); 8 C.F.R. 212.2 (obtaining consent prevents or halts reinstatement of removal for VAWA self-petitioners, VAWA cancellation of removal, VAWA suspension of deportation, T visa, and U visa eligible victims). It is important to note that best practices in such cases would be for victims to apply for the T visa as soon as possible and then advocate for discretion. The other option in this case would be to file Form I-601 waiver application coupled with a Form I-212 Application for Permission to Reapply for Permission to Reenter the United States after Removal or Deportation may allow T visa applicants to overcome the reinstatement of an old removal order. The I-601 waiver will pardon the permanent bar, while a nunc pro tunc I-212 application for advance permission to reapply for admission may “cure” the unlawful reentry, thus removing one of the requirements for reinstatement. In requesting the I-212 request for permission to reenter it can be useful to note in the application that Congress in Section 813(b) Violence Against Women and Department of Justice Reauthorization Act of 2005 (title IX of Public Law 109–162; 119 Stat. 3080) (Violence Against Women Act of 2005) included the follow Sense of Congress encouraging the Department of Homeland Security to grant this permission to reenter after removal or deportation for VAWA self-petitioners, VAWA cancellation of removal and suspension of deportation applicants, and for U and T visa applicants. The test of Section 813(b) of the Violence Against Women Act of 2005 states:

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¹⁴⁶ If the victim has been convicted of an aggravated felony, as defined in INA § 101(a)(43), if the conviction was entered on or after November 29, 1990. See DETERMINATIONS OF GOOD MORAL CHARACTER, MEMO BY PAUL E. NOVAK, 3 (Jan. 19, 2015), <http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemoyatesgoodmoralcharacter-01-19-05> (murder convictions are bars to good moral character findings regardless of the date of conviction).

¹⁴⁷ INA § 101(f)(1) (no waivers inadmissibility or deportability available) so this is a bar to a good moral character determination).

¹⁴⁸ INA § 101(f)(3); INA § 212(a)(9)(A) (no waiver inadmissibility or deportability waiver available, so this is a bar to a good moral character determination).

¹⁴⁹ INA § 101(f)(3)INA § 212(a)(2)(C) (There is a waiver available for a single offense of simple possession of 30 grams or less of marijuana. A conviction is not required. No waiver inadmissibility or deportability waiver available, so this is a bar to a good moral character determination).

¹⁵⁰ INA § 101(f)(4) (income primarily from illegal gambling); INA § 101(f)(5) (convicted of two or more gambling offenses during the three year period for which good moral character is assessed. No waivers inadmissibility or deportability available, so this is a bar to a good moral character determination).

¹⁵¹ INA § 101(a)(7) (such incarceration is a bar to a finding of good moral character).

¹⁵² INA § 212(a)(2)(G) (no waivers inadmissibility or deportability available).

¹⁵³ INA § 212(a)(2)(H) (no waivers inadmissibility or deportability available). Except when beneficiaries of trafficking were children at the time. INA Section 212(a)(2)(H)(iii).

¹⁵⁴ INA §212(a)(2)(I) (no waivers inadmissibility or deportability available).

¹⁵⁵ INA § 212(a)(3) (no waivers of inadmissibility or deportability available, unless the exceptions in INA § 212(a)(3)(B)(ii), INA § 212(a)(3)(C)(ii) or (iii), INA § 212(a)(3)(D), (ii), (iii), or (iv) apply).

¹⁵⁶ INA § 212(a)(6)(D) (no waivers inadmissibility or deportability available).

¹⁵⁷ INA § 212(a)(10)(A) (no waivers inadmissibility or deportability available).

¹⁵⁸ INA § 212(a)(10)(B) (no waivers inadmissibility or deportability available).

¹⁵⁹ INA § 212(a)(10)(C) (no waivers of inadmissibility or deportability available, unless the exceptions in INA Section 212(a)(10)(C)(iii) apply).

¹⁶⁰ INA § 212(d)(3)(A)(ii).

¹⁶¹ INA § 212(d)(3)(A)(i)(I); 8 C.F.R. 212.17(b)(1).

¹⁶² INA § 212(d)(3)(A)(ii); 8 C.F.R. 212.17(b)(1).

¹⁶³ While criminal conduct in furtherance of the activities of a “criminal street gang” can be an aggravating factor leading to immigration enforcement against an immigrant, Immigration and Customs Enforcement attorneys have been directed to be mindful that inclusion in one or more gang databases is not determinative of whether a particular individual is, in fact, a gang member or associate. *See* KERRY E. DOYLE, GUIDANCE TO OPLA ATTORNEYS REGARDING THE ENFORCEMENT OF CIVIL IMMIGRATION LAWS AND THE EXERCISE OF PROSECUTORIAL DISCRETION 5 (Apr. 3, 2021) https://niwaplibrary.wcl.american.edu/wp-content/uploads/OPLA-immigration-enforcement_guidanceApr2022.pdf; *see also* ALEJANDRO MAYORKAS, U.S. DEP’T OF HOMELAND SECURITY, MEMORANDUM: GUIDELINES FOR THE ENFORCEMENT OF CIVIL IMMIGRATION LAW 4 (Sep. 30, 2021), <https://niwaplibrary.wcl.american.edu/pubs/mayorkas-civil-imm-guide-sept-21> (“Our personnel should not rely on the fact of conviction or the result of a database search alone”). *But see* 8 U.S.C. § 1182(a)(3)(A)(ii) (the Department of State uses gang activity to find inadmissibility); INA § 212(a)(3)(A)(ii). U.S. DEP’T OF STATE FOREIGN AFFAIRS MANUAL, VOL. 9 – VISAS, 9 FAM 40.31, n.5.3.

¹⁶⁴ INA § 212(d)(3)(A)(iii); 8 C.F.R. 212.17(b)(1).

¹⁶⁵ INA § 212(a)(3)(C); 8 C.F.R. 212.17(b)(1).

¹⁶⁶ INA § 212(d)(14); INA § 212(a)(3)(E); 8 C.F.R. 212.17(b)(1).

¹⁶⁷ INA § 212(d)(13)(B)(ii); 8 C.F.R. § 212.18 (b)(1).

¹⁶⁸ INA § 212(d)(13)(B)(ii); 8 C.F.R. § 212.18 (b)(1).

¹⁶⁹ INA § 212(d)(13)(B)(ii); 8 C.F.R. § 212.18 (b)(1).

¹⁷⁰ INA § 212(d)(13)(B)(ii); 8 C.F.R. § 212.18 (b)(1).

¹⁷¹ INA § 245(h)(2)(B).

¹⁷² INA § 212(a)(2)(A)(i)(I); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(1). A conviction is not required. *See* INA § 212(a)(2)(A)(ii) for limited exceptions for certain under 18 year old offenders and for cases in which the maximum penalty possible for the crime did not exceed imprisonment for one year and if there was a conviction the sentence did not exceed 6 months (regardless of the extent to which the sentence was ultimately executed).

¹⁷³ INA § 212(a)(2)(B); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(2).

¹⁷⁴ INA § 212(a)(2)(C); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(3). (A conviction is not required. There is an exception for a single offence of simple possession of 30 grams or less of marijuana.)

¹⁷⁵ INA § 212(a)(3)(A)(i)(I); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

¹⁷⁶ INA § 212(a)(3)(A)(i)(II); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

¹⁷⁷ INA § 212(a)(3)(A)(ii); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

¹⁷⁸ INA § 212(a)(3)(A)(iii); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

¹⁷⁹ While criminal conduct in furtherance of the activities of a “criminal street gang” can be an aggravating factor leading to immigration enforcement against an immigrant, Immigration and Customs Enforcement attorneys have been directed to be mindful that inclusion in one or more gang databases is not determinative of whether a particular individual is, in fact, a gang member or associate. *See* KERRY E. DOYLE, GUIDANCE TO OPLA ATTORNEYS REGARDING THE ENFORCEMENT OF CIVIL IMMIGRATION LAWS AND THE EXERCISE OF PROSECUTORIAL DISCRETION 5 (Apr. 3, 2021) https://niwaplibrary.wcl.american.edu/wp-content/uploads/OPLA-immigration-enforcement_guidanceApr2022.pdf; *see also* ALEJANDRO MAYORKAS, U.S. DEP’T OF HOMELAND SECURITY, MEMORANDUM: GUIDELINES FOR THE ENFORCEMENT OF CIVIL IMMIGRATION LAW 4 (Sep. 30, 2021), <https://niwaplibrary.wcl.american.edu/pubs/mayorkas-civil-imm-guide-sept-21> (“Our personnel should not rely on the fact of conviction or the result of a database search alone.”). *But see* 8 U.S.C. § 1182(a)(3)(A)(ii) (the Department of State uses gang activity to find inadmissibility); INA § 212(a)(3)(A)(ii). U.S. DEP’T OF STATE FOREIGN AFFAIRS MANUAL, VOL. 9 – VISAS, 9 FAM 40.31, n.5.3.

¹⁸⁰ INA § 212(a)(3)(B); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(5).

¹⁸¹ INA § 212(a)(3)(C); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(6).

¹⁸² INA § 212(a)(3)(E); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(7).

¹⁸³ INA § 212(a)(10)(D) (no waivers inadmissibility or deportability available).

¹⁸⁴ INA § 212(a)(10)(E) (no waivers inadmissibility or deportability available).

¹⁸⁵ INA § 212(a)(8). Persons ineligible for citizenship are: INA § 313 (persons opposed to the government or in favor of totalitarian forms of government are prohibited from naturalization); INA § 314 (deserters from the armed forces are prohibited naturalization); INA § 315 (immigrants relieved from service in the armed forces are ineligible for naturalization).

¹⁸⁶ 8 CFR §245.1(e)(3)(ii); 7 USCIS-PM F.7(C)(4).