

Obtaining a Waiver of a Denial of a US Visa

Section 212(a) of the Immigration and Nationality Act identifies classes of individuals that are ineligible for visas or admission into the United States. The Immigration and Nationality Act does, however, provide the Attorney General discretionary authority to waive the denial or a visa or admission into the United States pursuant to Section 212(a).

For example, Section 212(h) of the Immigration and Nationality Act gives the Attorney General discretion to waive the application of Section 212(a) for an individual who:

1. has been convicted of or has admitted to committing a crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime),
2. has violated or attempted or conspired to violate any law or regulation relating to controlled substances, so long as the violation only involved a single offense of simple possession of not more than 30 grams of marijuana,
3. has been convicted of two or more offenses with an aggregate penalty of five or more years of confinement,
4. is entering the United States to engage in prostitution or has engaged in prostitution within the past 10 years,
5. attempts to procure or has within the past 10 years attempted to procure persons for the purpose of prostitution or receives or has received within the past 10 years any proceeds of prostitution,
6. is coming to the United States to engage in any other commercialized vice, or
7. has committed a serious offense in the United States, has asserted immunity from prosecution and as a result has departed the United States.

The Attorney General may exercise his discretion if it is established to the satisfaction of the Attorney General that:

- (a) (1) such individual is inadmissible only under clause (4) or (5) above or the activities for which such individual is inadmissible occurred more than 15 years ago, (2) the admission of such individual into the United States would not be contrary to the national welfare, safety or security of the United States and (3) such individual has been rehabilitated, or
- (b) such individual is the spouse, parent, son or daughter of a citizen of the United States or of a lawfully admitted permanent resident of the United States, and it is established to the

satisfaction of the Attorney General that the denial of admission of such individual would result in extreme hardship to such spouse, parent, son or daughter, or
(c) such individual is a battered spouse or child of a United States citizen or lawful permanent resident.

Section 212(h) does not, however, give the Attorney General discretion to waive the application of Section 212(a) with respect to any individual who has been convicted of or has admitted to committing murder or acts involving torture or an attempt or conspiracy to commit the foregoing or if such individual had been previously lawfully admitted into the United States and been convicted of an aggravated felony or such individual has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove such individual from the United States. In addition, the Attorney General has made it more difficult to obtain waivers in connection with other violent offenses.

US Visa Denials Thailand

In the case of a US visa denial Thailand, an individual may apply for a waiver under Section 212(h) by submitting Form I-601 (Application for Waiver of Grounds of Inadmissibility), together with all relevant documentation, to a consular officer at the Bangkok District Office to be processed by U.S. Citizenship and Immigration Services. If a waiver under Section 212(h) is denied by U.S. Citizenship and Immigration Services,

US Visa Waivers Thailand

It must be emphasized that the grant of a waiver under Section 212(h) is discretionary, and even if the statutory requirements have been satisfied, a waiver may still be denied if an immigration judge or other adjudicator determines that in reviewing the factors in favor of and against the application for a waiver, the factors against the application are more compelling. It is for this reason that an experienced lawyer can be very helpful in preparing Form I-601 and the supporting documentation to provide the most convincing case that, for example and as the case may require, the grant of the waiver would be in the best interests of the United States and would not be contrary to the national welfare, safety or security of the United States, that the applicant seeking the waiver has been rehabilitated or that the denial of a waiver would result in extreme hardship to specified relatives of the applicant seeking the waiver.

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This article was provided by Chaninat & Leeds, a Bangkok law firm comprised of US and Thai attorneys, specializing in US visa waivers Thailand.

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