

COMMUNITY

JOURNAL

More than just a form: The importance of a well-documented waiver

YOUR IMMIGRATION SOLUTION



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THE first thing many aliens ask after having been removed from the United States is "when can I return." The answer is not always straightforward and much depends on the circumstances surrounding an alien's removal. Generally, an alien may not return to the United States after an alien has been ordered removed for a period of 10 years, but like many laws (immigration laws included) there are "exceptions." The Immigration and Nationality Act provides an alien may return to the United States, notwithstanding the bar, if the Attorney General has consented to the alien's reapplying for admission.

An alien does not contact the Attorney General for permission to reapply. It is done through immigration officials, either in the United States or oversees who have the authority to grant what is known as an "I-212 waiver" so named for the government form used to apply for this exception. Because this 10-year bar only applies if an alien has departed the United States, the I-212 waiver is required when an alien re-applies for admission. Although the Board of Immigration Appeals in Matter of Roman and Matter of Ducret has recognized that an I-212 waiver may be submitted prior to an alien's departure, and may be approved after an alien's subsequent arrival, in most cases the I-212 waiver is submitted at the Embassy or consulate during consular processing.

Often is the case that an alien reenters the United States without the advance permission of the Attorney General. Not only would this alien be barred from receiving a green card in the United States if he later becomes eligible, the alien may be subject to reinstatement proceedings if

he even tries to apply without the proper waivers. In other words, the alien would be immediately deported. However recent case law provides aliens a way to remain in the United States and adjust their status with a properly submitted I-212 waiver. The Ninth Circuit Court of Appeals held that "if permission to reapply is granted, the approval of Form I-212 is retroactive to the date on which the alien entered the country, and therefore, the alien is no longer subject to the grounds of inadmissibility." However, simply submitting the proper I-212 form will not result in an approval.

Mindful of recent case law, the Department of Homeland Security established criteria to be applied to determine whether an alien should be granted readmission. The criteria include establishing good moral character, recency of the deportation, the need for applicant's services in the United States, and length of time applicant had been in the United States. This list of criteria should not be considered exhaustive, and an I-212 waiver applicant should be prepared to submit additional information that makes his or her waiver stand out. Mere existence of a United States family alone is most often not enough for a successful waiver. An I-212 waiver should evidence the alien's good moral character and that the alien's exclusion from the United States would result in not only extreme hardship to the alien but more importantly to their United States family.

Although the Department of Homeland Security did not specifically set forth hardship as a criterion for an I-212 waiver, evidence of hardship to an alien's United States family is considered essential for a successful I-212 waiver. Indeed, almost all families suffer hardship as a result of the separation caused by

immigration removal. However, an I-212 waiver should evidence hardship that is unusual, whether that hardship includes health, financial, education or personal considerations such as close relatives in the United States or length of residence in the United States. Immigration officials will also take into consideration special factors such as cultural, language, religious and ethnic obstacles. A well-prepared I-212 waiver should demonstrate hardship above and beyond what immigration official might be used to seeing.

An alien needs more than just an I-212 waiver to return to the United States, but the good news is that the I-212 waiver may be combined with other required waivers. As with applying for any immigration benefit, an alien should be prepared to rise far above the minimum. Although the I-212 form is just one page, a proper I-212 waiver is a well-documented and voluminous request to return to the United States and should be at least one inch thick or more of supporting documentation and well written declarations explaining and presenting why they should be granted a waiver. Think of it this way, immigration officials deny most waivers. It is just not enough to be married to a United States citizen or have a United States relative residing in the United States.

Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City.
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The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case.

(Advertising Supplement)



ATTY. RAY BULAON

"5 Facts You Should Know About Bankruptcy"

1. Bankruptcy is not always your fault.

If you are overwhelmed with debt problems, you may feel alone, depressed, guilty or all of the above. In most cases, bankruptcy is caused by events beyond your control- job loss, sickness, disability, divorce, to name a few. In others, it is simply due to poor financial planning. Don't be too hard on yourself. Life is not perfect- and neither are you.

2. There is life after bankruptcy.

Some people have the mistaken belief that once they file, life will never be "normal" again and that their credit is ruined forever. The truth is that most people who file bankruptcy are able to rebuild credit very quickly only after a few years and buy a home like everyone else.

3. Bankruptcy provides immediate debt relief.

The day you file bankruptcy, creditors have no choice but to leave you alone. That means no more harassment from creditors, lawsuits, judgments or wage garnishments. The relief is immediate. Suddenly you can breathe better and feel like a human being again.

4. Most people who file bankruptcy keep everything and lose nothing.

Some people are worried that once they file, they will automatically lose everything that they have worked so hard for. The truth is that in most cases, you get to protect your home, car, bank account and all other assets. You lose nothing but your debts.

5. Choosing the right bankruptcy attorney to help you is essential.

Choose a lawyer who not only has the knowledge and experience to handle your case (the "legal side") but also one who has your best interests at heart- someone who will take time to listen, answer your questions, and someone who understands the "human side" of bankruptcy.

(Important: None of the information herein is intended to give legal advice for any specific situation. Bankruptcy laws are often complex and situations vary. For a FREE LEGAL ANALYSIS of your situation, please call for an appointment.)

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