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

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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