

FAQ

FREQUENTLY ASKED QUESTIONS & ANSWERS: WAIVER CASES

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I wrote a strong “hardship letter” and filed my waiver case with another attorney or a notario. Why was my case denied or sent into the backlog?

So many people we encounter seeking my help with a waiver filing focus solely on the elusive “hardship letter.” Many have been told by notaries or those trying to do it themselves, or heard somewhere on the internet, that the hardship letter is the only evidence necessary for the case. This is completely wrong. The hardship letter is important because it informs CIS of what arguments you are trying to make – where the hardship is in your case. However, many make the mistake of just submitting a letter (sometimes a few pages, sometimes upwards of 10 pages) and don’t submit anything to support the letter. These cases go straight into the backlog in Mexico or are denied flat out. What a good attorney will help you with is to help you narrow down and focus your strongest arguments & help you assemble and instruct you on the evidence necessary to support your arguments. If you think an attorney is just there to help you write a hardship letter, then you don’t understand what’s really needed in this process.

How much documentation is necessary? What types of documentation will CIS consider?

Providing documentation to support your arguments is essential. However, it will hurt your case if you provide the wrong kind of documentation. Be very cautious in submitting country documentation about how difficult it would be for the qualifying relative (USC or LPR spouse or parent) to live in the country that the immigrant is from. The officers deciding the waiver cases already know what it’s like to live there; unless it’s a recent development or something that particularly applies to your spouse or parent as opposed to everyone in this circumstance, adding this documentation is usually useless. Also, don’t try to hide weaker evidence in a filing just to bulk up the amount of documents you are filing. This will weaken the rest of the arguments and your credibility. Sometimes 2 or 3 strong arguments is all you need. There is no minimum amount of documentation necessary to pull off a strong waiver case. In my office, my submissions usually range from 2 ½ to 4 inches thick because the clients have worked hard to provide me with witnesses to speak to and have provided supporting documentation I have

instructed them to. We have smaller and we have larger cases. You always risk having too much documentation for the officer to read and must choose wisely what evidence is crucial to your case. In Mexico, for instance, officers typically have no more than 10 minutes to review your documentation. Not only does it have to be easily accessible and organized but also all relevant or it ends up in the backlog for another officer to sift through when they have more time.

CIS will accept many forms of evidence including affidavits, medical records, criminal transcripts, financial documentation, research results (careful!), transcripts, and much more. Be creative but give solid documentation to back up anything you claim.

After I submit my waiver package, can I submit more evidence later?

Yes, typically CIS will accept documentation in support of the waiver filing up until the time the case is decided. The difficulty is figuring out when they will make a decision, as waiver processing times vary from CIS office to CIS office across the country. It is always best to supply all your waiver documentation when you first file. A skeletal filing, one where just the hardship letter and a few pieces of evidence are submitted, risk backlog in Mexico and denial out-right everywhere else. Usually, it is better to delay a waiver appointment or submitting a waiver until you have all your key documentation ready to submit at once. You will also run the risk of your new evidence being lost in transit once it is sent to CIS. There's no guarantee that it will actually get into the file to be compared and added to your existing, previously submitted documentation. Still, if there's a new argument that suffices due to an unexpected hardship (i.e., someone heaven forbid develops a disability or runs into financial ruin) then it may be worth submitting more documentation at a later point.

My case was denied when I tried it myself or filed with a notario or another lawyer. Should I file an appeal or re-file the case at the same CIS office?

In almost all circumstances, it is better to re-file the case with new evidence of existing or new hardship arguments. Re-filing can take a lot less time than filing an appeal, sometimes up to a year less, if the arguments are vastly improved. Further, by filing an appeal on a weak case, all you are doing is postponing the inevitable, another denial this time coming from CIS's Administrative Appeals Unit, which *rarely* overturns a CIS office's decision on hardship, which has made a discretionary finding. You would be in the same position as before, now another 1 ½ years later, on average, having to refile with CIS again. In addition, by filing an appeal on a weak case, you are claiming that CIS office made a wrong decision, which will likely make it more difficult for you to get a decision fast on an inevitable re-file. Appeals can work but again, they are rare. The best thing you can do is send the new attorney a complete copy of all the

evidence and hardship letter you sent to CIS that resulted in the denial. Only after reviewing such documentation can a competent immigration lawyer be able to weigh whether an appeal or a re-file is your best option.

CIS doesn't know that my husband overstayed or is here in the US illegally. Why do I have to apply for a waiver?

If you lie to CIS on any paperwork, you are committing a felony, risking jail time and a hefty fine. Your immigrant spouse will also be risking this as well as a lifetime bar for misrepresentation (that although, has a waiver available in most circumstances, can be difficult to overcome). I have often seen notaries advise clients to not put this information on the forms. Do not live your life constantly looking over your shoulder. I will not help you nor will any other attorney worth their salt if you try to hide important facts such as prior overstays from CIS. I have a strong reputation with CIS and I won't risk my other client's cases by supporting another client's lie.

My spouse is still in the U.S. Wouldn't I have a better chance trying to fight this type of case and legalizing my spouse's status in immigration court instead of having my spouse leave the U.S. to consular process?

Notarios and misinformation on the internet give many people the idea that they can apply for a ten year bar waiver in immigration court. This is extremely rare occurrence. What most notaries are talking about is *Cancellation of Removal*, a form of deportation relief for non-permanent residents. They call this the "10 year amnesty provision." This is NOT an amnesty provision. Besides an extremely low approval rate on these cases for immigrants nationwide, cancellation of removal requires ten years of physical presence in the U.S., the person actually being in removal court, and worst of all, a much tougher burden – *a higher level of hardship defined as "exceptional and extremely unusual" hardship* whereas the 10 year bar requires "extreme" hardship. It usually results in a deportation order on top of having to apply for the 10 year bar.

Cancellation requires that someone intentionally be placed in removal proceedings, which is never recommended. Waiver cases are much harder to win in immigration court than at consulates abroad. This shows the danger that notaries and those who are not lawyers present to immigrants when they don't know what they are talking about and are practicing law without a license. Be Smart. If it sounds too good to be true, it probably is.

Why should I use an immigration lawyer instead of a notario to file my waiver case?

Only a U.S. licensed lawyer or accredited representative is qualified to assist you with your immigration case. Notarios claim to be less expensive than attorneys and always paint an easier route to your immigration goals. They know little about the law and take advantage of people who don't speak English well, are new to the U.S. or don't have much money for a lawyer. Be careful - If it sounds too good to be true, it likely is. With so many immigration attorneys providing a free consultation, you should get a second opinion if a notario or some stranger on the internet who is not a lawyer provides you with a solution that seems simple and easy. Non-lawyers who advertise as legal "consultants" or "notaries" are not authorized or qualified to help with immigration matters. By promising too much – and knowing too little – unauthorized consultants often shatter immigrants' dreams. Many are little better than scam artists, taking their client's trust – and money – and never having to answer for the results.

Immigration lawyers are subject to discipline by their state Bar and must adhere to ethical standards. There is no such requirements for people who are not lawyers. When a consultant promises to help – but doesn't deliver – the damage may not be fixable, and there may be no one to turn to.

Why are you, Heather, more expensive than other lawyers?

Many immigrants and their families end up choosing the lawyer with the lowest fee because as lawyers, we don't make it any easier to determine which of us know what we're doing because there is little information available to the public about most lawyers. Unfortunately, most times, you get what you pay for. If the case is prepared inadequately or by an attorney who doesn't have experience or know-how, this usually leads to a denial or *in Mexico*, a 14-16 month additional wait just to receive a denial and having to re-file, which could take another 2 years to get a decision, if the attorney is incompetent.

I often see people who have gone to other attorneys who have charged much less than what I do who have cases that have been denied. Sometimes I can help, sometimes the case is so screwed up that there's no way to salvage it and the immigrant and his or her spouse or parent must make some real hard decisions to move abroad or stay apart for 10 years, sometimes a lifetime. I have seen many cases prepared by other attorneys where hardship is not addressed at all and brings up children and basic economic and emotional problems knowing this is common to all hardship scenarios and is not enough for an approval or strong argument. It can cost a lot more to re-file and try to pick up the pieces after a mishandled job. Plus, being separated from your loved one even longer is very trying on the relationship and can get even more expensive, especially if the spouse is supporting the other in a foreign country. It's all about the level of risk you are willing to take with your loved one's case.

If you want my help, be prepared to talk about your past as well as your present. Any good waiver case takes into account your history, the good and the bad. My staff and I are going to be asking you and your spouse a lot of personal questions and will be spending a lot of time trying to determine your best arguments. It is your responsibility to be as open and honest with us as you can so we can truly determine the best hardship arguments and the strength of your case.

Why I am successful with these cases? 50% of my caseload is waiver cases and I have an extremely high approval rate. Check out our “Success Stories” page on our website for comments from clients with tough waiver cases, the best people to recommend my services, people just like you.

I know what CIS is looking for and I brief all cases, provide detailed exhibit lists (where I again argue the case), and mold the hardship arguments with my clients throughout the process.

- I know the law and the cases that help your case. *I help you determine the merits of your case before agreeing to take it on.* Do other attorneys offices spend over an hour with you discussing your hardship in detail? Check out our website for more information on waivers; I bet you won't find this kind of information on most other lawyers' sites; that should concern you.
- Each of my clients are willing to do the work required and are willing to provide personal, sometimes painful information from their past so we can truly delve into potential arguments that set the case apart. My office handles every step of the process, including prepping the client for the Immigrant visa (green card) interview and the waiver filing. Paralegals help with forms but I mold the arguments and advise clients on evidence. My hands are all over your case.
- I am accessible to my clients. Ask yourself when talking to a potential attorney - Will you be able to make an in-person appointment with your lawyer within the same week you call? Will you have alternative ways to reach your lawyer personally (by phone, email, fax, and mail)? Will you be able to speak with the lawyer personally about your case as opposed to only being allowed to speak with the lawyer's staff on major issues?
- I come highly recommended. *Major nonprofits* including the Los Angeles Legal Aid Society & Neighborhood Legal Services refer their complicated cases out to me. *Immigrants and their families recommend me* on the net at major portals including Immigrate2US.net and VisaJourney.com. I've been named a *Super Lawyer: Rising Star THREE TIMES* – considered in the top 1% of Immigration Attorneys in Southern CA, the second largest concentration of immigration attorneys in the U.S. behind New York. *My own waiver clients rave about me* (see our website under Success Stories).
- Need flexibility with our legal fees? I offer discount plan and a payment plan for most cases to make it affordable, so you can have one of the best attorneys in this field working on your case.
- Appeals: I only take cases I feel I can win. I don't want to get your hopes up nor waste your money.

If you cooperate fully in the process, my legal fees also include any legal fees that would normally be incurred if I have to file an appeal. I have not had to appeal any of my own

cases (I have taken on other appeals for other attorney denials and won). I will not file an appeal if you have violated your duties in our engagement agreement, especially having lied to me about any aspect of the case.

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The above information is general in nature and is not intended to be considered or relied upon as legal advice. You should always consult an attorney to determine if what immigration options are available to you and to determine how any recent changes in the law could affect your situation.