THE 237(a)(1)(H) FRAUD WAIVER

Waiver of Deportability for Persons Inadmissible at Time of Admission Due to Fraud or Misrepresentation

By ILRC Attorneys

People who were wrongfully admitted to the United States due to a misrepresentation—i.e., those who were in fact inadmissible at time of admission—may be eligible for a waiver of deportability under INA § 237(a)(1)(H).[1] This lesser-known waiver is *only available in removal proceedings* and unlike most waiver requests, *does not involve any application form or fee*. To qualify, a person must be charged in removal proceedings under paragraph 237(a)(1) for being inadmissible at time of admission due to fraud, not have any other inadmissibility or deportability issues apart from those stemming from the fraud, and have certain qualifying family members (unless they are a VAWA self-petitioner). This advisory explains who can request a 237(a)(1)(H) waiver and the process for applying.[2]

Usually, these persons are deportable because they intentionally committed visa fraud to gain admission, but innocent misrepresentations may also be addressed using the 237(a)(1)(H) waiver. Thus, the 237(a)(1)(H) waiver can encompass a person who knowingly immigrated as an unmarried child of an LPR even though they were secretly married at the time, as well as someone who immigrated based on a marriage that, unbeknownst to them, had been legally terminated. The fraud may not come to light—together with subsequent initiation of removal proceedings—until many years later, for instance when the individual applies to naturalize and the fraud is discovered.

> **Example:** Dolores immigrated through a petition filed by her permanent resident mother when she was twenty-five years old (family-based second preference 2B). Later, when Dolores applied for U.S. citizenship, USCIS discovered that Dolores was in fact married at that time, and thus did not qualify to immigrate as the unmarried daughter of an LPR. Dolores is placed in removal proceedings, charged with being deportable for being inadmissible at time of admission. Assuming she has a qualifying relative, she can apply for a 237(a)(1)(H) waiver.

> **Example:** Kai became a permanent resident through their marriage to a U.S. citizen. Many years later, after the marriage has dissolved and Kai applied to naturalize, USCIS determines that Kai engaged in marriage fraud, and places Kai in proceedings charged with being deportable for marriage fraud. Kai has a qualifying relative, a U.S. citizen child, so they will be able to seek a 237(a)(1)(H) waiver.

[1] Previously, this waiver was found at INA § 241(f) and thus older cases refer to that section of the INA.

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I. When to Use the 237(a)(1)(H) Waiver

The 237(a)(1)(H) waiver is only available in removal proceedings, as a defensive form of relief; a person cannot apply for this waiver if they are not presently in proceedings. If granted, it allows a permanent resident to keep their LPR status notwithstanding the underlying fraud or misrepresentation. Conditional permanent residents may also apply for a 237(a)(1)(H) waiver in certain situations, explained below.

A. Individuals in Removal Proceedings Charged Under INA § 237(a)(1) for Inadmissibility Related to Fraud

This waiver can be a valuable tool in removal proceedings for individuals charged under INA § 237(a)(1)(A) or "related provisions" of 237(a)(1), such as INA § 237(a)(1)(D) (see next section).

Under INA § 237(a)(1)(A) a person is deportable, for being inadmissible at time of entry or adjustment of status. In the context of the 237(a)(1)(H) waiver, the underlying inadmissibility must be for fraud or misrepresentation under 212(a)(6)(C)(i) or lack of valid documents (due to fraud or misrepresentation) under 212(a)(7)(A).[3]

B. Conditional Residents in Removal Proceedings After Status Terminated Due to Fraud

A conditional lawful permanent resident (CLPR) whose status was terminated based on fraud or misrepresentation may also benefit from this waiver. CLPRs are those permanent residents who immigrated through a spouse or step-parent petition, but the petitioner and principal spouse beneficiary were not yet married for two years at the time of the immigrant spouse or child's admission to the United States or adjustment to permanent residency.[4]

In a 2010 Ninth Circuit case, *Vasquez v. Holder*, a conditional resident whose joint petition was denied for marriage fraud was subsequently charged with deportability under INA § 237(a)(1)(A), as a noncitizen inadmissible at the time of admission because they sought to procure admission by fraud, and § 237(a)(1)(D)(i), as a conditional permanent resident whose status was terminated.[5] DHS argued, and the immigration judge and BIA agreed, that § 237(a)(1)(H) would only cure deportability under § 237(a)(1)(A), but would not eliminate the other charge, that Vasquez was also deportable based on the termination of her conditional permanent resident status.

On appeal, the Ninth Circuit looked at the plain language of the waiver statute, in particular that it applies to the "provisions of this paragraph [237(a)(1)] relating to the removal of aliens…," to hold that the waiver may be used to waive § 237(a)(1)(D)(i) when termination of status is based on fraud or misrepresentation (as opposed to termination upon failure to file a joint petition).[6] Since the statute referred to "*provisions* of this paragraph" in the plural, the Ninth Circuit held that INA § 237(a)(1)(H) could be applied to waive any ground under § 237(a)(1).[7] The Court found that a contrary interpretation would render the § 237(a)(1)(H) waiver inapplicable to marriage fraud cases involving conditional residents, because otherwise DHS could always charge removability under the additional ground for termination of conditional resident status, thereby preventing a conditional resident from

[3] *See Matter of Fu*, 23 I&N Dec. 985 (BIA 2006) (237(a)(1)(H) can waive deportability under 237(a)(1)(A) based on charges of inadmissibility at the time of admission under 212(a)(7)(A)(i)(I), as well as under 212(a)(6)(C)(i)).

[4] INA § 216(a).

[5] *Vasquez v. Holder*, 602 F.3d 1003 (9th Cir. 2010).

[6] *Id.* at 1010-12 (distinguishing the facts in *Vasquez* from those in *Matter of Gawaran*, 20 I&N Dec. 938 (BIA 1995), in which the respondent's conditional resident status was terminated for failure to file a joint petition, "separate and independent" of the fraud at entry charge).

[7] *Id.* (Emphasis added).

seeking a 237(a)(1)(H) waiver simply by including 237(a)(1)(D) as a charge in addition to, or in place of, 237(a)(1)(A).[8]

II. Requirements for the 237(a)(1)(H) Waiver

To qualify for a 237(a)(1)(H) waiver of deportability, the person must:

- Be the spouse, parent, son, or daughter of a U.S. citizen or permanent resident;
- Have been in possession of an immigrant visa or equivalent document; and
- Otherwise be admissible at the time of admission to the United States.

A VAWA self-petitioner does not need to have any qualifying relatives in order to seek the 237(a)(1)(H) waiver.[9]

Note that unlike most waivers, no hardship showing is required for the 237(a)(1)(H) waiver:

> Although the IJ *may* consider hardship in exercising discretion regarding whether to grant a fraud waiver to an eligible [noncitizen], there is no requirement that she do so, or that the [noncitizen] prove that a particular quantum of hardship would result from her removal.

Vasquez v. Holder, 602 F.3d 1003, 1018 (9th Cir. 2010). Nonetheless, hardship to the applicant and their family members may be considered as part of the discretionary decision to grant the waiver. (See *Section D. Discretion*, below).

The following sections will discuss each of these requirements in greater detail.

A. Qualifying Relative

The § 237(a)(1)(H) fraud waiver requires a qualifying relationship to a U.S. citizen or lawful permanent resident spouse, parent, or child of any age.[10] [11] This is another helpful feature of the 237(a)(1)(H) waiver, that children (who are U.S. citizens or permanent residents) may count as qualifying relatives for the waiver, unlike the 212(i) fraud inadmissibility waiver that does not allow children to be qualifying relatives.

> **Example:** Christine immigrated through marriage to Alex, a U.S. citizen. Christine and Alex did not stay married long and soon after their divorce, Christine married Lily, a U.S. citizen. Christine later applied for U.S. citizenship, and at the time of her naturalization interview the adjudicating officer determined that Christine's first marriage to Alex was fraudulent. Christine was placed in removal proceedings, charged with being deportable for having committed marriage fraud. She can apply for a 237(a)(1)(H) waiver, with her current spouse as a qualifying relative.

> **Example:** Evangeline applied for a green card based on her marriage to Ronald, a U.S. citizen. Their marriage was tumultuous, and at one point early in their marriage, Ronald filed divorce papers. Evangeline was unaware of the divorce filing, which became final through a default judgment, and they continued living together as husband and wife until Ronald passed away about five years ago.

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[8] *Id.* at 1015.

[9] INA § 237(a)(1)(H)(ii).

[10] Note that "child" is a term of art within immigration law referring to those with a qualifying parent-child relationship who are unmarried and under age 21, whereas "son or daughter" refers to children who are married and/or 21 or older, but in this context *both* children under age 21 and those 21 and older can be qualifying relatives for the waiver.

[11] VAWA self-petitioners, however, are not required to have a qualifying relative in order to seek a 237(a)(1)(H) waiver. INA § 237(a)(1)(H)(ii).

Evangeline has an adult U.S. citizen daughter from a previous relationship. When Evangeline applied to naturalize in 2017, the immigration officer discovered that Evangeline and Ronald were divorced at the time of her adjustment interview, therefore she did not actually qualify to immigrate at that time because she was no longer legally married to her petitioning spouse. Evangeline was placed in removal proceedings, but she will be able to seek a 237(a)(1)(H) waiver. Her adult daughter is her qualifying relative.

1. The Spouse from a Sham Marriage *Cannot* Be the Qualifying Relative

The spouse from a marriage that the government finds to be fraudulent cannot be the basis of eligibility for this waiver. In *Matter of Matti*, the BIA refused to allow the respondent to use his relationship to the "spouse" he married in a sham marriage as a basis for establishing eligibility for a waiver of fraud at admission.[12] As the Board stated, "it is clear from [the] legislative history that a sham marriage is not the type of family tie which Congress intended to preserve in enacting section 241(f)(1) [former 237(a)(1)(H)]."[13]

Example: Suppose Christine from the previous example had not remarried another U.S. citizen, but remained married to Alex. Unless she has a parent or child who is a U.S. citizen or permanent resident, Christine would be unable to seek the 237(a)(1)(H) waiver because she lacks a qualifying relative.

2. A Deceased Parent or Child *Might* Be Able to Be the Qualifying Relative

In *Matter of Federiso*, the BIA denied eligibility for a 237(a)(1)(H) waiver to the son of a deceased U.S. citizen, reasoning that eligibility for the 237(a)(1)(H) waiver requires a living relative and that extending eligibility to the survivors of deceased relatives would not serve the legislative purpose of preserving family unity.[14] Federiso's U.S. citizen mother, who was his only qualifying relative for the 237(a)(1)(H) waiver, had died during the pendency of his removal proceedings. However, focusing on the statutory language at 237(a)(1)(H), which did not mention any requirement that the relative still be living, the Ninth Circuit reversed the Board's decision: "[T]he statutory language at issue here is plain: the son of a U.S. citizen may be eligible for a waiver."[15]

Outside the Ninth Circuit, the BIA's decision in *Matter of Federiso* likely controls, excluding deceased parents or children as qualifying relatives for the 237(a)(1)(H) waiver, but advocates should try to make arguments using the Ninth Circuit's reasoning in *Federiso v. Holder*. Also note that if an applicant's deceased *spouse* is their only qualifying relative, rather than a deceased parent or child, such a connection might not result in eligibility for the waiver because in *Federiso* the Court focused its decision on the enduring nature of a parent-child relationship—"A child never ceases to be his mother's son"[16]—in contrast to a spousal relationship, which may be less constant.

B. Been in Possession of Immigrant Visa or Equivalent Document

The statute states that the 237(a)(1)(H) fraud waiver is available only to those who are "in possession of an immigrant visa or equivalent document." Basically, this means that a 237(a)(1)(H) waiver applicant must be an LPR.

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[12] *Matter of Matti*, 19 I&N Dec. 43 (BIA 1984).

[13] *Id.* at 46.

[14] 24 I&N Dec. 661 (BIA 2008) (denying waiver eligibility under § 241(f), the predecessor to § 237(a)(1)(H)). In *Federiso*, the BIA relied on language in *INS v. Errico*, 385 U.S. 214 (1966), discussing the legislative history of the waiver and its purpose to preserve family unity. Also note that the surviving relative statute at INA § 204(l), which allows for the adjudication of certain visa petitions, adjustment applications, and "related applications" notwithstanding the death of certain qualifying relatives, does not apply to the INA § 237(a)(1)(H) fraud deportability waiver context.

[15] *Federiso v. Holder*, 605 F.3d 695 (9th Cir. 2010).

[16] *Id.* at 697.

Despite the consular processing-centric language in the statute, an individual who obtained lawful permanent residence through adjustment of status in the United States (as opposed to immigrant visa consular processing) is also eligible to apply for the § 237(a)(1)(H) waiver, according to the BIA in *Matter of Agour*.[17] In *Agour*, the BIA held definitively that the statutory phrase "inadmissible at the time of admission" includes inadmissibility at the time of adjustment of status, even if the person was previously admitted with a nonimmigrant visa, never left, and the fraud was related only to the "admission" at adjustment.

Additionally, the Ninth Circuit has held in an unpublished memorandum decision that a K-1 fiancé(e) visa is an "equivalent document" for purposes of a 237(a)(1)(H) waiver. *Ngoc Le Truong v. Sessions*, 727 Fed. Appx. 430 (9th Cir. 2018). Previously, the Ninth Circuit had held in dicta that the K-1 visa was not, in fact, "equivalent." *Caddali v. INS*, 975 F.2d 1428 (9th Cir. 1992). The Sixth Circuit, citing the Ninth Circuit's decision in *Caddali*, nonetheless held that while a K-1 is not an "equivalent document," the fiancé(e)'s subsequent adjustment of status after marriage to the U.S. citizen *does* "count" as an admission for 237(a)(1)(H) purposes. *Hussam F. v. Sessions*, 897 F.3d 707 (6th Cir. 2018).

C. "Otherwise Admissible" at Time of Admission

1. No Other Inadmissibility at Time of Admission Besides Fraud and That Directly Related to Fraud or "Innocent" Misrepresentation

The waiver is intended to cure any fraud at admission but cannot be granted if the person was also inadmissible at the time of admission for another reason not directly related to the fraud at admission, such as a crime. Inadmissibility issues that relate to the fraud at entry may be inadmissibility under 212(a)(5)(A), for lack of valid labor certification, or 212(a)(7)(A), lack of valid visa or other documentation. This is because these grounds are in fact related to the fraud at admission, where there was some kind of misrepresentation made at the time the person was admitted, whether intentional, innocent, or "inherent."[18]

However, the waiver *cannot* be utilized if the person was inadmissible at the time of admission on some other basis—e.g., if the person was inadmissible due to both a prior deportation and for fraud due to a failure to disclose the prior deportation on an application for adjustment of status.[19] And in *Matter of Tima*, the BIA held that a respondent inadmissible for both fraud *and* a crime of moral turpitude could not use the 237(a)(1)(H) waiver because he was not "otherwise admissible," even though his criminal conviction was based on the underlying fraud – making materially false statements about his marriage -- committed at admission.[20] In contrast, a recent Ninth Circuit case, *Fares v. Barr*,[21] held that an LPR who had failed to satisfy the INA § 212(e) two-year foreign residency requirement as a J-1 nonimmigrant was nonetheless "otherwise admissible" and thus able to seek the 237(a)(1)(H) waiver. The *Fares* decision was grounded in the language of the statute at § 212(e), which limits "eligibility" for particular forms of admission for those subject to the residency requirement, not "admissibility," and the Court pointed out that there are many other forms of admission that still remain available to those subject to § 212(e).

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[17] 26 I&N Dec. 566 (BIA 2015).

[18] See *Matter of Fu*, 23 I&N Dec. 985 (BIA 2006).

[19] *Corona-Mendez v. Holder*, 593 F.3d 1143 (9th Cir. 2010).

[20] *Matter of Tima*, 26 I&N Dec. 839, 843 (BIA 2016) ("Section 237(a)(1)(H) of the Act provides, in pertinent part, that '[t]he provisions *of this paragraph* relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 212(a)(6)(C)(i), whether willful or innocent, may, in the discretion of the Attorney General, be waived . . .' . . . The phrase 'this paragraph' refers only to section 237(a)(1) of the Act.") (emphasis added). The conviction related to false statements regarding his marriage that were made at the time of adjustment of status.

[21] 942 F.3d 1172 (9th Cir. 2019).

Example: John immigrated in 2001, and at the time of entry had a felony theft conviction for which he had served an 8-month sentence. He did not disclose the conviction. When John applied for naturalization in 2013, USCIS discovered the theft conviction and the misrepresentation. John is not eligible for a 237(a)(1)(H) waiver because he was inadmissible on another ground unrelated to fraud, for a crime of moral turpitude that did not fit within the petty offense exception, at the time of his admission as an LPR.

2. Not Limited to a Single Instance of Fraud

The Sixth Circuit has held that the 237(a)(1)(H) waiver is not limited to a single instance of fraud, and may be used to waive earlier fraud at an earlier admission or attempted admission that occurred prior to the fraud at time of the person's admission as a permanent resident.[22]

D. Discretion

The statute does not require a judge to consider hardship, equities, or any other factors in making the decision to grant a 237(a)(1)(H) waiver, but it does make such a grant discretionary.

However, in one BIA case, *Matter of Tijam*, the Board required a balancing of the person's equities against their bad acts, including consideration of the fraud itself, if a deliberate misrepresentation, as a significant negative factor.[23] The use of this type of balancing test is not necessarily required. In a concurring and dissenting opinion, Board Member Lory Rosenberg argued that because both § 212(c) and § 212(h) waivers have been utilized for the most part to waive deportability or inadmissibility grounds related to "anti-social conduct or criminal activity,"[24] the balancing test first articulated in *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978), for § 212(c) cases and later extended to § 212(h) waivers was *not* appropriate for fraud waivers arising under then INA § 241(a)(1)(H) (current § 237(a)(1)(H)).[25]

Moreover, *INS v. Yueh-Shaio Yang*,[26] the Supreme Court case on which the majority opinion in *Matter of Tijam* relies, does not require a *Matter of Marin*/212(c) balancing test in misrepresentation or fraud cases. Rather, the Court interprets former INA § 241(a)(1)(H) to not impose any limitations on the factors that may be considered in determining who should be granted relief under this waiver, beyond longstanding practice that the government would not consider the "entry fraud" or misrepresentation, which the Court narrowly construed, when deciding the waiver.[27]

Thus, the majority opinion in *Matter of Tijam* misread the holding in *INS v. Yueh-Shaio Yang*. In so doing, *Matter of Tijam* reversed prior Service policy regarding fraud, and specifically declined to follow the holding in *Matter of Alonzo*,

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[22] *Avila-Anguiano v. Holder*, 689 F.3d 566 (6th Cir. 2012). Avila-Anguiano had made misrepresentations at time of entry in 1991, after which he subsequently departed the United States, and again in 1993 for a misrepresentation on his immigrant visa application leading to his permanent resident status. Both were waived with the 237(a)(1)(H) waiver.

[23] *Matter of Tijam*, 22 I&N Dec. 408, 412-13 (BIA 1998) (*citing INS v. Yueh-Shaio Yang*, 519 U.S. 26 (1996)).

[24] *Id.* at 431 (Rosenburg, concurring and dissenting).

[25] *Id.* n. 7 ("Although a waiver under former section 212(c) of the Act was available to overcome any exclusion ground other than those relating to national security, or to overcome any ground of deportability that had a counterpart in the applicable exclusion grounds of the Act, no reported case since our precedent in *Matter of Marin*, decided over 20 years ago, involved an application for such a waiver on grounds other than those relating to criminal convictions or crime-related violations of the Act.").

[26] 519 U.S. 26 (1996).

[27] *INS v. Yueh-Shaio Yang*, 519 U.S. 26, 31 (1996). *See also Matter of Tijam*, 22 I&N Dec. 408, 430 (BIA 1998) (Rosenburg, concurring and dissenting) (*citing Yueh-Shaio Yang*).

17 I&N Dec. 292 (Comm'r 1979), which previously had governed waivers of misrepresentation, and had held that the fraud for which the applicant seeks forgiveness should not be considered as an unfavorable factor.[28]

PRACTICE TIP: Do not automatically consider the majority opinion in *Matter of Tijam* dispositive. Rather, distinguish the facts of that case from your own, and emphasize that the only reason that the respondent's fraud was taken into consideration in *Matter of Tijam* is that Tijam had not only committed fraud at her admission, but had also committed other acts of fraud, including a finding that she had lied under oath at her naturalization interview. You should also cite to the two concurring and dissenting opinions in *Matter of Tijam* and point out how the majority opinion's reliance on the Supreme Court's holding in *Yueh-Shaio Yang* is due to fundamental misunderstanding of that case. Finally, emphasize that the purpose of INA § 237(a)(1)(H) is to unite families, as the Supreme Court held in *INS v. Errico*, and that *Errico* has been recently affirmed in *Matter of Federiso*, cited above.

Best practice, however, is to clearly demonstrate how your client's equities outweigh any adverse factors. Do not concede that the initial fraud may be considered, rather show that even if it were considered, your client warrants a favorable exercise of discretion. Hardship factors are useful in this regard, notwithstanding the lack of any requirement of hardship in the statute. From *Matter of Tijam*:

> The question whether to exercise discretion favorably necessitates a balancing of [a noncitizen]'s undesirability as a permanent resident with the social and humane considerations present to determine whether a grant of relief is in the best interests of this country. Adverse factors may include the nature and underlying circumstances of the fraud or misrepresentation involved; the nature, seriousness, and recency of any criminal record; and any other additional evidence of the [noncitizen]'s bad character or undesirability as a lawful permanent resident of the United States. Favorable considerations may include family ties in the United States; residence of a long duration in this country, particularly where it commenced when the [noncitizen] was young; evidence of hardship to the [noncitizen] or her family if deportation occurs; a stable employment history; the existence of property or business ties; evidence of value and service to the community; and other evidence of the [noncitizen]'s good character.

Tijam, 22 I&N Dec. at 412-13.

III. How to Request a 237(a)(1)(H) Waiver

As previously mentioned, the waiver is only available in removal proceedings. There is no form or fee to apply for a § 237(a)(1)(H) waiver. To seek a § 237(a)(1)(H) waiver, the respondent should inform the court of their intention to apply for the waiver and submit evidence that they meet the eligibility requirements, as well as evidence that their equities outweigh any adverse factors (as discussed above, under *D. Discretion*).

IV. Effect of 237(a)(1)(H) Waiver

A waiver of deportability granted under § 237(a)(1)(H) should "cure" the ground of inadmissibility retroactively, dating back to the date of admission. *See Matter of Sosa-Hernandez*, 20 I&N Dec. 758 (BIA 1993). This may be helpful, for example, to persons who someday need to show seven years lawful residence to qualify for LPR cancellation of removal under INA § 240A(a) (see below).

[28] *See Matter of Alonzo*, 17 I&N Dec. 292, 294 (Comm'r 1979) ("Obtaining visas by fraud and misrepresentation shows disrespect for the law, but this is the action for which they seek to be forgiven and should not be held as an adverse factor.").

Further, if the waiver is granted, the government cannot subsequently pursue removal based on other grounds that are a direct result of the fraud or misrepresentation that was waived: "[a] waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation."[29]

V. Applying for 237(a)(1)(H) Waiver Concurrently with LPR Cancellation, Other Waivers

In *Matter of Sosa-Hernandez*, an LPR was charged with deportability both for having no valid immigrant visa at time of admission, and for a subsequent drug conviction after living in the U.S. as an LPR for over a decade. The immigration judge had granted the noncitizen a waiver under § 241(f) (former 237(a)(1)(H)), but then reasoned that because his prior residency was not "lawful," he could not have yet acquired the seven years of lawful un-relinquished domicile (necessary for § 212(c) relief) at the time of the judge's decision granting the fraud deportability waiver. The BIA reversed the immigration judge, holding that a person granted a waiver of former INA § 241(f) retroactively validated his LPR status so that Sosa-Hernandez had, in fact, accumulated the necessary seven years of lawful, un-relinquished domicile necessary to qualify for § 212(c) relief and could therefore proceed with that application.

Analogizing to the BIA's decision in *Matter of Sosa-Hernandez* that allowed both 212(c) and 237(a)(1)(H) waivers in the same deportation proceeding, and since IIRIRA replaced 212(c) waivers with LPR cancellation of removal, it should therefore be possible to apply for both a § 237(a)(1)(H) waiver and § 240A(a) LPR cancellation of removal *concurrently*, in order to cure the illegality of the applicant's permanent residence retroactively to the date of initial admission, consequently making them eligible for cancellation of removal if they have otherwise accumulated the requisite period of continuous residency since the entry fraud.[30]

> **Example:** Sally immigrated in 2004 as the adult unmarried daughter of a U.S. citizen, but was in fact married at the time. Then in 2012, Sally was convicted of simple possession of cocaine. She is now in removal proceedings. As an LPR, Sally can apply for both 237(a)(1)(H) to cure the charge that she is deportable for being inadmissible at the time of her admission due to her misrepresentation, with her U.S. citizen parent as her qualifying relative. And she can also apply for cancellation of removal under 240A(a) to overcome a charge of deportability due to the drug-related conviction, which arose later, after her admission. The 237(a)(1)(H) waiver "cures" her residency retroactively to the date of her admission as an LPR in 2004, which in turn means she now has sufficient continuous lawful residency prior to the commission of her drug offense to qualify for LPR cancellation of removal.

The Seventh Circuit, however, held that when an immigrant is only charged in proceedings with a ground of deportability from an issue arising after admission, such as controlled substance deportability ground—even if the immigrant also obtained their LPR status through fraud—then a waiver under 237(a)(1)(H) is not available; the immigrant must also be charged with fraud at admission in order to use the 237(a)(1)(H) waiver.[31]

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[29] INA § 237(a)(1)(H).

[30] Note that relief pursuant to INA § 212(c) was not restricted by a "stop-time" rule, unlike LPR cancellation. An LPR seeking 212(c) relief could continue to accumulate time toward the required seven years after lawful admission up until a final order of deportation, exclusion, or removal. LPR cancellation applicants, on the other hand, must accrue seven years of continuance residency after lawful admission and prior to the issuance of a Notice to Appear or commission of conduct triggering inadmissibility or deportability. *See* INA § 240A(d)(1).

[31] *Torres-Rendon v. Holder*, 656 F.3d 456 (7th Cir. 2011).

In *Corona-Mendez v. Holder*, 593 F.3d 1143 (9th Cir. 2010), the Ninth Circuit held that although the 237(a)(1)(H) waiver may be "stacked" with other waivers, this is only true if the additional ground(s) of inadmissibility were triggered subsequent to admission, so as not to defeat the requirement for the 237(a)(1)(H) waiver that the applicant was otherwise admissible at time of admission, besides the misrepresentation or fraud.[32]

Corona-Mendez was charged with deportability for being inadmissible at time of admission for two grounds of inadmissibility—fraud (failure to disclose a prior deportation on his application for adjustment of status), and his prior deportation within the past ten years. In addition, he was charged with deportability for being present in the United States in violation of the law. Corona-Mendez applied for a 237(a)(1)(H) waiver in conjunction with an I-212 waiver of past deportation, "nunc pro tunc," and in the alternative, adjustment of status with a 212(i) waiver for fraud and an I-212 waiver for the past deportation. The immigration judge found Corona-Mendez did not prove that his qualifying relative (his U.S. citizen spouse) would suffer extreme hardship, and denied adjustment of status. The Ninth Circuit held that his alternative application for 237(a)(1)(H) was also properly denied by the immigration judge, because Corona-Mendez was not "otherwise admissible" at the time of his fraudulent application for adjustment of status, due to his prior deportation, and so 237(a)(1)(H) relief was not available.[33]

[32] *Corona-Mendez v. Holder*, 593 F.3d 1143, 1147 (9th Cir. 2010) (Comparing with the facts in *Sosa-Hernandez*: "In *Sosa-Hernandez*, only one ground of inadmissibility existed at the time of the fraud—an invalid entry document. In contrast, two grounds of inadmissibility existed for Corona-Mendez at the time of his fraudulent application for adjustment of status—the fraud itself and his improper return to the United States after deportation, without permission to reenter.").

[33] *Id.*

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