

Quick Guide to US Waivers of Inadmissibility

Many citizens who want to visit the United States find that they are inadmissible and unable to enter unless they apply for a US Waiver of inadmissibility. A waiver of inadmissibility allows a previously inadmissible person to gain legal entry into the USA. Some find that they are able to enter sometimes and are refused at other times. The reason for this inconsistency is the fact that border guards do not have the time to run records checks of everyone they screen. Nevertheless travelling to the US if you are inadmissible is a serious offence and can result in the confiscation of your vehicle, criminal charges and jail sentences. Those travelling with you may be charged with harbouring a criminal as well as being classed as inadmissible to the United States.

Reasons for Inadmissibility

- ❖ The grounds for inadmissibility are stipulated in the Immigration and Nationality Act (INA) of 1952. They are:
- ❖ **Health related** - a Canadian citizen can be refused entry to the USA if they have a communicable disease as determined by the US [U.S. Secretary of Health and Human Services](#). Examples are Tuberculosis, HIV, Gonorrhoea, Syphilis and Leprosy.
- ❖ Travellers can also be refused if they do not have the required vaccinations for entry to the USA or have other physical and mental disorders associated with harmful behaviour.
- ❖ **Criminal** - a Canadian citizen can be inadmissible to the USA if they have committed a crime of moral turpitude, which means behaviour considered contrary to community standards of honesty, justice and good morals. Examples are murder, manslaughter, rape, theft, bribery, forgery, aggravated battery, prostitution and fraud.
- ❖ Driving under the influence, breaking and entering, disorderly conduct and simple assault are not considered crimes that make a person inadmissible to the United States.
- ❖ Another reason for inadmissibility can be the possession of drugs (as little as 30 grams of marijuana), and a series of criminal convictions with a sentence of five years plus.
- ❖ **Security Breaches** - any persons who could endanger national security and American foreign policy. Examples are anyone suspected of being a spy, terrorist or saboteur or those convicted of money laundering and human trafficking or members of Communist, extremist or Nazi parties.

- ❖ **Illegal Entrants and Immigrant Violators** - anyone previously deported, or who overstayed the timeline dictated on their legal US visa or entered illegally are barred from entering the USA for a period from 3 to 10 years. This category also includes anyone who fraudulently claimed any immigrant or INA benefits.
- ❖ Canadian citizens who have falsely claimed U.S. Citizenship (after September 30, 1996) to claim benefits under the Immigration and Nationality Act or a Federal or State law are not eligible to apply for a US waiver.

US Waiver Requirements

- ❖ Three key factors are taken into consideration when processing US waivers;
 - CBP need complete assurance that the applicant is not a risk to US society.
 - The severity of the applicant's criminal or immigration crimes are also considered
 - The nature of the applicant's reasons for wishing to enter the United States.
- ❖ Canadian citizens may apply for a US waiver if they have been barred from the US for 3 or 10 years because they overstayed their visa deadline. Canadian citizens who exceeded their legal stay in the US by more than one year may not be eligible to apply for a waiver.
- ❖ Canadian citizens with a criminal record can apply for a US waiver if their record is based on any of the following:
 - ❖ a criminal record based on a crime involving moral turpitude
 - ❖ possession of 30 grams or less of marijuana
 - ❖ a criminal record with two or more convictions whose combined sentences were over five years
 - ❖ participating in prostitution; applicants must prove that they have been rehabilitated
 - ❖ unlawful commercialised vice
 - ❖ being an immigrant involved in serious crimes, who has declared immunity from prosecution
- ❖ Waivers are also granted if an applicant can prove any of the following:
 - that 15 years or more have passed since the action that made them inadmissible
 - that they have been rehabilitated and would no longer be a threat to the safety, security or national welfare of the U.S.
 - that their absence from the US would cause hardship to their immediate dependants. Immediate dependants in this case are classed as their children, US spouse or parent or their spouse or parent who is a legal permanent resident in America. They may also

apply if their K visa partner is liable to suffer extreme hardship if the application was refused.

- that they are an official self petitioner of the Violence against Women Act (VAWA).
- that they have a complete waiver from compulsory vaccinations from the civil surgeon for vaccinations stating that are not medically suitable at the time the person was examined.
- that they have proof based on moral or religious grounds that exempts them from vaccinations.

Criminal Records

- ❖ All applicants must satisfy the US authorities that they are not a risk to public and national security.
- ❖ US authorities require a copy of the applicant's official Canadian police record or evidence that no record exists. This record is valid for 15 months.
- ❖ Records of criminal convictions as well as a document proving a lack of criminal conviction can be obtained from the Royal Canadian Mounted Police (RCMP) by submitting your fingerprints on Form C216C at your local police station or an accredited fingerprint agency.
- ❖ Applicants must also submit their fingerprints to the American authorities on U.S. Fingerprint chart FD-258. The fingerprint chart can be completed in person when an application is submitted.
- ❖ If the application was sent by post, details of how to submit fingerprints will be forwarded to the applicant.
- ❖ Applicants who have a criminal record from a country other than Canada must also get hold of a copy of their criminal record from the authorities in that country.
- ❖ Where there is no criminal record available they must get an official court letter, which clearly states why there is no copy of the criminal record.
- ❖ Letters and records in a foreign language other than English must be translated by a certified translator.
- ❖ Applicants must apply to each court they have been convicted in to obtain a copy of the official court record for each crime for which they have been convicted. The record should show the conviction, plea indictment and the disposition. This must be obtained from foreign courts if the convictions occurred abroad as well as from Canadian courts if the conviction occurred in Canada.

- ❖ For each crime committed, regardless of location, the applicant must present a detailed personal account of each conviction to explain the circumstances behind each arrest along with details of the sentence or fine imposed.
- ❖ Details of reform and / or rehabilitation must also be included in the personal statement as well as information on community service, marital status, current employment etc.
- ❖ Any information that supports the applicants claim to be a reformed character of good standing should be included.

Applying for a US Waiver

- ❖ US Visa Waiver applicants must complete clearly and accurately Form I-192.
- ❖ The I-192 must have an expiration dated 11/30/2009, which can be found in the top right hand corner of the form; older versions of the form are unacceptable.
- ❖ In addition to the I-192 application form, applicants must enclose all of the following documents:
 1. Readable copies of valid identity and citizenship documents for example a passport, birth certificate, and permanent resident or citizenship card or immigration visas.
 2. Form G-28 completed by your lawyer or paralegal if you have used them to file your application.
 3. U.S. Fingerprint chart FD-258
 4. Biographical information filed out on Form G-325A, completed and signed by you. Please ensure that all copies of this form are legible.
 5. A copy of the applicant's official Canadian police record or evidence that no record exists.
 6. Criminal record from other countries where one exists. If this is not possible they must get an official court letter, which clearly states why there is no copy of the criminal record. Letters and records in a foreign language other than English must be translated by a certified translator.
 7. A declaration stating the purpose of your visit to the United States for example holiday, business etc.
 8. A copy of the official court record from the actual court of conviction indicating plea indictment, conviction and disposition for each and every crime committed anywhere in the world.
 9. Personal declaration giving details about each arrest and evidence of reform and rehabilitation.
 10. Applicants found to be inadmissible under section 212(a)(9)(B) of the Immigration and Nationality Act (unlawfully present in the United States) must submit detailed information regarding current foreign employment , previous U.S. employment, family

members presently living in the United States, past and current United States and/or foreign business investments, any and all ties to their present foreign country of residence.

US Waiver Application Forms and US Waiver Fees

- ❖ The following forms need to be completed by all US Waiver applicants:
- ❖ Advance Permission to Enter as Non-immigrant [I-192](#) (Form I-192 is limited to those applicants who do not need a non-immigrant visa)
- ❖ Biographic Info Form [G-325A](#)
- ❖ Representative's Declaration [Form G-28](#)
- ❖ [U.S. Fingerprint chart FD-258](#)
- ❖ [Form I-601](#) must be completed by those Canadian citizens applying for a waiver on the grounds of health related inadmissibility, or who have been unlawfully present in the US and those who deliberately falsified documents and / or fraudulently obtained an immigration benefit or benefit under the INA.
- ❖ [Form I-212](#) must be completed by those Canadian citizens who were previously deported or given expedited removal.
- ❖ The application fee for a US waiver is \$545.00. Payment must be with a certified check in U.S. funds drawn on a U.S. bank.

Submitting Your Application

- ❖ Applicants should submit Form I-192 and the relevant accompanying documents in advance of their travel to the US. Lawyers and representatives are not allowed to accompany their clients. Form I-192 is limited to those applicants who do not need a non-immigrant visa.
- ❖ Applications for a US Waiver of Inadmissibility can be submitted in person several [US ports of entry](#) or at a [Customs and Border Protection \(CBP\) Preclearance office](#) in Canada.
- ❖ Applicants are advised to call and make an appointment in advance of filing their application.
- ❖ When an application is filed the applicant or representative is given a receipt and a set of the applicant's fingerprints will be taken.
- ❖ Form I-601 should be submitted at the consular office, U.S. Citizenship and Immigration Services office or an immigration court considering the immigrant visa or adjustment of status application.
- ❖ Form I-212 should be filed with the office where an applicant's deportation trial was conducted or if the applicant is filing on the grounds of excludability, the form should be submitted to a US Consul.

US Waiver Time-Lines

- ❖ Applicants may inquire about the status of their US waiver application [online](#) once 90 days from the date of submission have elapsed.
- ❖ Lawyers and representatives should check online [here](#).
- ❖ Obtaining a US Waiver of Inadmissibility is a lengthy process, which can take approximately 12 months.