USCIS began the I-601A provisional waiver to primarily shorten the waiting time that Qualifying Relatives would be physically separated from their Beneficiary Relative by allowing them to submit the I-601A waiver while inside the United States. For information on who is a qualifying relative, and other basic information, please review the instructions for Form I-601A. Although the Beneficiary must still physically leave the United States and apply for an immigrant visa from a consular post abroad, the I-601A significantly shortens the separation time. From a practical perspective, I have found the following areas key in preparing and submitting an Application for a Provisional Unlawful Presence Waiver. Recently USCIS published their I-601A approval rates that hovered around 50%. By keeping in mind these basic, but important considerations, you may just have enough meat on your application to have your client's application outshine the rest.

**Asking the Right Questions**

Eliciting relevant and important information from parties involved in the waiver process may be difficult, but can prove to be a very rewarding exercise. Many times clients and their family members don't know what information you may be looking for or may believe that their past (or current) experiences are not relevant to the application. You would be surprised at the information that comes out when asking clients to tell me about their childhood, their formative years, their parents, some significant relationships, and similar questions. Many people have gone through very traumatic experiences at an early age that still haunt them even in their adult years. These life experiences may play an important role in the waiver petition.

Although USCIS only takes into account the Qualifying Relative’s hardship, the Practitioner should still ask questions from key family members since any hardship suffered could be tied back to the Qualifying Relative. USCIS will take into account hardship found in the areas of Health, Finance, Education, Security, and Family Unity among others.

Health considerations include questions regarding any long term or short term illness. The illness may be mental or physical and the responses from the affected client would clarify the extent of the hardship. Should the answer be in the affirmative then asking whether relocation would affect the course of treatment in a negative way would be a follow up question. Another consideration to ask is whether there was any form of physical or sexual abuse inflicted upon any member of the family.

Financial considerations include questions regarding the loss of a house or employment. The loss of either may lead the family into bankruptcy or poverty and the responses from the client would clarify the extent of the hardship. Another consideration is to ask whether any member of the family solely relies on the beneficiary for financial support. Should the answer be affirmative then asking whether relocation would affect the family’s standard of living in a negative way would be a follow up question.
Education considerations include questions about losing the opportunity to achieve higher education or disruption of the academic year should the Qualifying Relative be currently enrolled in an academic program. Security considerations include questions about how dangerous life is in the foreign country or the risk of persecution to the Qualifying Relative and the lack of any safety mechanisms in place in the foreign country. Family considerations include questions about how the family would cope with a physical separation or how the family would adapt to the lifestyle of the foreign country should they decide to leave the United States.

Asking the right questions from the beginning will aid the Practitioner in laying out a foundation from which to build an effective strategy to meet the hardship requirement. As stated above it is important that all members of the family including the Qualifying Relative contribute thorough answers in order for the Practitioner to have a better understanding of what strategy to use.

**Hardship Report**

It is vital to choose the adequate professional to draft the Hardship Report. Many times, primarily because of financial considerations, clients will avoid getting a hardship evaluation, or will have one done by a professional who is not experienced in writing hardship reports for immigration purposes. I would highly recommend that the Mental Health Counselor, Psychologist, or Licensed Clinical Social Worker have experience in writing the hardship evaluations for immigration purposes. Before I add a name to my referral list I always ask for a sample report to evaluate the thoroughness of the work performed. If the client is not fluent in English it is important to find a professional who either speaks the client’s language or who would have access to an interpreter. Communication between the Mental Health Counselor, Psychologist, or Licensed Clinical Social Worker and the client is of utmost importance since questions and answers may be misinterpreted if either of the parties do not understand. I always encourage clients to be honest and transparent about their hardships. Keep in mind that some of the information may be difficult or embarrassing to share with a stranger. The Hardship report must also be clear, consistent and there must be proof either through direct testimony, clinical tests, or through evaluations. Although a Hardship Report must have enough substantive information it is important to note that USCIS officers analyze many reports and will look for reports that are concise but at the same time thoroughly explain the Hardship that the qualifying relative will suffer.

**Supporting Evidence**

USCIS requires substantive proof of hardship in order to adjudicate I-601A waivers favorably. Substantive proof may be demonstrated through documents, pictures, and letters although any other evidence showing hardship should also be included. The goal is to try to document every possible argument being made in support of the application. For example, if possible and where applicable, we like to include pictures of the neighborhood in the foreign country, the house where they would live in if the application is not approved, and similar items. We also include newspaper clippings and reports of violence that highlight the dangers of living abroad.
A Cover Letter written by the Practitioner should be included in any Waiver package application. The Cover Letter needs to summarize the findings and evidence that is being submitted in the entire Waiver package. The Hardship Report should be included followed by the Petitioner Letter which is written by the Qualifying Relative. Evidence indicating the Qualifying Relative’s relationship to the Beneficiary should be included with marriage or birth certificates indicating either a spouse or parent relationship between the Petitioner and the Beneficiary. The Qualifying relative also needs to show proof of naturalization or an American passport indicating that he/she is a United States citizen. Any favorable evidence including Federal Tax Returns, a No Arrest Record from the appropriate law enforcement agency, as well as any Certificate indicating his/her good standing in the community should be included for the Beneficiary.

Evidence of the specific considerations of hardship include: proof of health problems either through physician letters, lab reports or medical diagnosis and any course of treatments that are being administered; proof of financial problems either through bank accounts, mortgage payments or bankruptcy clauses; proof of educational problems either through disruption of any current enrollments or loss of access to certain academic fields that are unavailable in the foreign country; proof of security problems either through official country reports or through articles/pictures indicating the dangerous conditions in the foreign country; proof of family unity either through letters of support or by pictures showing their ties to the United States.

It is important to emphasize that each Waiver case is different and therefore the Practitioner might not include all of the evidence referenced above. USCIS adjudicates many waiver applications and the Practitioner should try to make his case as easy and as effective as possible for a favorable adjudication to occur.

**Petitioner's/Qualifying Relative's Support Letter**

The Petitioner Letter is the letter written by the Qualifying Relative where he/she explains in detail the hardship suffered should the Waiver application for the beneficiary be denied. The importance of this letter cannot be overemphasized. This is the client's opportunity to plead his/her case. The Practitioner should provide some guidance on what the letter should include, but the client needs to develop and write the letter the best possible way. This is what makes this letter so powerful - it's obvious that a professional didn't write it, but the emotions are many times raw and unfiltered. This, in my opinion, makes the application (all things considered) stand out when compared to other applications.

It is important that the letter be well written and organized. The client can have a compelling case but if the officer doesn't read it because it's difficult to read, then the letter looses it's impact. The overall goal of the letter is to trigger compassion and sympathy in the USCIS officer by explaining on a personal level the Hardship suffered. A good approach is for the Petitioner to thoroughly explain past, present, and future hardship by highlighting on the unique situation that each Qualifying Relative will face should the Waiver be denied. Should the Petitioner not be fluent in English the letter should be translated word for word since the overall goal is a personal plea from the Petitioner to the USCIS officer. The Practitioner should also review the letter before submitting it to USCIS.