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UNLAWFUL PRESENCE BARS & WAIVERS

In 1996, **Congress** passed a law that bars certain persons who have accumulated a certain period of unlawful presence in the US and then left the country from becoming **US permanent residents** for 3 to 10 years unless they obtain a waiver.

Persons who have accumulated 180 days or more of unlawful presence after April 1, 1997, and have then left the country, cannot return to the US for 3 years. Persons who have accumulated one year or more of unlawful presence after April 1, 1997, and have then left the country, cannot return to the US for 10 years. Persons who illegally return to the US without seeking a waiver must wait outside the US for a period of 10 years before they can apply for a waiver.

A person can accumulate unlawful presence by (1) entering the US without inspection; (2) by overstaying the expiration date on his I-94; or (3) by violating his immigration status.

On August 9, 2018, the USCIS tightened the **criteria for determining what constitutes unlawful presence for F-1 and F-2, J-1 and M student status violators:**

<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-08-09-PM-602-1060.1-Accrual-of-Unlawful-Presence-and-F-J-and-M-Nonimmigrants.pdf>

An waiver may be obtained by submitting waiver form to the USCIS and demonstrating that the person's US citizen or permanent resident spouse or parent(s) would suffer "extreme hardship" unless the person was granted a waiver.

In 2013, it became possible to obtain a provisional waiver within the US. A 2016 rule expanded the qualifying relatives needed in order to apply for a provisional waiver.