

Department of Homeland Security Announces Final Rule on Unlawful Presence Waivers

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The Department of Homeland Security today announced a final rule that reduces the time U.S. citizens are separated from their immediate relatives (spouse, children and parents), who are in the process of obtaining visas to become lawful permanent residents of the United States under certain circumstances. It establishes a process that allows certain individuals to apply for a provisional unlawful presence waiver before they depart the United States to attend immigrant visa interviews in their countries of origin. The process will be effective March 4, 2013. More information about the filing process will be made available in the coming weeks. This final rule facilitates the legal immigration process. The law, which is designed to avoid extreme hardship to U.S. citizens, reduces the time family members are separated from those they rely on most. Under current law, immediate relatives of U.S. citizens who are not eligible to adjust status in the United States to become lawful permanent residents must leave the United States and obtain an immigrant visa abroad. Individuals who have accrued more than six months of unlawful presence while in the United States must obtain a waiver to overcome the unlawful presence inadmissibility bar before they can return to the United States after departing to obtain an immigrant visa. Under the existing waiver process, which remains available to those who do not qualify for the new process, immediate relatives cannot file a waiver application until after they have appeared for an immigrant visa interview abroad and the Department of State has determined that they are inadmissible. In order to obtain a provisional unlawful presence waiver, the applicant must be an immediate relative of a U.S. citizen, inadmissible only on account of unlawful presence, and demonstrate the denial of the waiver would result in extreme hardship to his or her U.S. citizen spouse or parent. USCIS will publish a new form, Form I-601A, Application for a Provisional Unlawful Presence Waiver, for individuals to use when applying for a provisional unlawful presence waiver under the new process. Under the new provisional waiver process, immediate relatives must still depart the United States for the consular immigrant visa process; however, they can apply for a provisional waiver before departing for their immigrant visa interview abroad. Individuals who file the Form I-601A must notify the Department of State's National Visa Center that they are or will be seeking a provisional waiver from USCIS.

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