

Gulf Coast Immigration Alert

Provisional Unlawful Presence Waiver – Effective as of 03.04.2013

The US Citizenship and Immigration Services (USCIS) has finalized its regulation concerning the adjudication of waivers for people who need to go through consular processing and would be subject to the unlawful presence ground of inadmissibility. As of TODAY, March 4, 2013, the rule, “Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives” is effective and the USCIS begins receiving and adjudicating the provisional waiver applications. Applicants will be using a new Form I-601A. The filing fee for the waiver application is \$585.

The rule allows certain immediate relatives of U.S. citizens who are in the U.S. without lawful status to request waiver of their unlawful presences and establishes a process in which the USCIS will adjudicate these waivers before the applicants leave the U.S for their immigrant visa interview in their home country. Please note that the regulations do not address all the issues that may arise when waiver filings commence.

To qualify for a provisional unlawful presence waiver, the immediate relative must:

- Be immediate relatives of U.S. citizen (spouses, parents of adult U.S. citizens at least 21 years of age, and minor children);
- Be present in the U.S at the time of filing the waiver application and for biometrics exam;
- Be inadmissible only based on unlawful presence - and not subject to any other grounds of inadmissibility upon departure and at the time of the consular interview;
- Have an approved I-130 or I-360 petition and have paid the immigrant visa processing fee;
- Depart the U.S to obtain an immigrant visa abroad; and
- Prove extreme hardship to a qualifying U.S. citizen spouse or parent if the waiver is denied.

The USCIS Director Mayorkas indicated that the USCIS may consider expanding eligibility for the provisional waiver after it reviews the impact the program has had on Service operations.

Notwithstanding the eligibility criteria listed in the rule, a provisional unlawful presence waiver will NOT be granted if:

- USCIS has “reason to believe” that the alien may be subject to inadmissibility grounds other than unlawful presence: criminal activity, fraud or misrepresentation to entry or attempted entry, without inspection following a prior period of unlawful presence in the U.S. in excess of one year;
- The applicant is under the age of 17;
- The applicant does not have a case pending with DOS based on the approved I-130 immediate relative petition or has not paid the immigrant visa processing fee;
- Applicants have been scheduled before January 3, 2013, for a consular interview; or

- The applicant is in removal proceedings, unless such proceedings have been administratively closed.

A significant number of immediate relatives of U.S. citizens who are present in the U.S, who entered the country without an inspection, unlawfully, are not eligible to apply for lawful permanent resident (LPR) status in the U.S. Before this law, they had to depart the U.S. to apply for LPR status and request waivers of inadmissibility due to their prior unlawful presence, which often resulted in a heavy toll of separation from their U.S. citizen relative and uncertainty in the process. Because of lengthy separation for the uncertain amount of time in the process, many immediate relatives of U.S. citizens have remained in the shadows without applying for LPR status

If the waiver is granted, the applicants will be notified that they may proceed with consular processing. They must still leave the U.S. and apply for and receive an immigrant visa abroad before returning to the U.S. However, the length of time that U.S. citizen families are forced to remain separated should be decreased considerably.

There are no appeals if the provisional waiver is denied; however, those denied applicants are allowed to re-file a new waiver application.

If you have questions about Provisional Unlawful Presence Waiver, please contact Sujin Kim, Esq. at (251) 379-8065/ (251) 387-2544 or skim@gcimmigration.com

About Gulf Coast Immigration

Immigration and Global Migration are one of the most complex and dynamic areas of law and policy affecting America's social and economic composition. A well-functioning immigration system is critical to America remaining strong and vibrant. To contribute to this goal and to meet the growing needs for comprehensive and sophisticated legal services in all aspects of business immigration-related matters in Northwest Florida, South Alabama and Mississippi, GCI has been issuing monthly business immigration newsletters/updates and immigration alerts to announce fast-breaking developments.

GCI offers guidance, advice, counsel and representation to business and individual clients in matters of immigrant (both employment- and family- based) and nonimmigrant working visa petitions and applications, with a subspecialty focusing on the U.S. Immigration Investor Program (EB-5 Program) and foreign investments under the U.S.-Korea Free Trade Agreement. GCI offers a free evaluation service for individuals who intend to apply for nonimmigrant and both employed- and family-based immigrant visas as to their immigration options and the likelihood of a successful case. To be considered for the free evaluation service, please e-mail info@gcimmigration.com, reference "Free Evaluation" in the subject line and include contact information.

GCI conducts free seminars for those community organizations and groups interested in learning about U.S. immigration laws and policies as a public service. If you would like to have

GCI present a free seminar please visit www.gcimmigration.com for more information.

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