



**U.S. Citizenship  
and Immigration  
Services**

# **Transcript: Press Conference: USCIS to Propose Changing the Process for Certain Waivers on Unlawful Presence, Jan. 6, 2012**

**USCIS TO PROPOSE CHANGING THE PROCESS FOR CERTAIN WAIVERS BASED  
ON UNLAWFUL PRESENCE**  
Press Conference

Moderator: Edna Ruano, Chief, Office of Communications  
U.S. Citizenship and Immigration Services (USCIS)  
Jan. 6, 2012  
1 P.M. EDT

Coordinator: Welcome, and thank you for standing by. At this time all participants are in a listen-only mode until the question and answer session. If you would like to ask a question at that time you may press star then one on your touchtone telephone.

Today's conference is being recorded. If you have any objections you may disconnect at this time. I would like to turn the meeting over to Miss Edna Ruano. Ma'am, please begin.

Edna Ruano: Thank you. Hello, my name is Edna Ruano and I'm the Chief of the Office of Communications at USCIS. Welcome to today's call with USCIS Director Alejandro Mayorkas.

Before we begin the call, quickly I wanted to set some guidelines for today's call. Please introduce yourself, your name, what media outlet you represent, and there will only be one question per reporter.

Thanks again for your participation and now I will turn it over to USCIS Director Alejandro Mayorkas.

Alejandro Mayorkas: Thank you, Edna, and thank you, all of you, for joining us today. We have convened this call to provide you with the opportunity to learn more about the Notice of Intent that we posted in the Federal Register this morning regarding a proposed regulatory change in the processing of Waivers of Inadmissibility.

This proposed regulatory change will significantly reduce the time that U.S. citizens are separated from their spouses and children under certain circumstances while those family members are going through the process of obtaining visas to become legal immigrants to the United States.

**AILA InfoNet Doc. No. 12012060. (Posted 01/20/12)**

Its purpose is to minimize the extent to which bureaucratic delays separate Americans from their families for long periods of time, specifically in cases where a Waiver of Inadmissibility due to unlawful presence is required as part of the visa process.

The proposed streamlined process will be available to spouses and sons and daughters of U.S. citizens who have accrued a certain period of unlawful presence in the United States as the waiver statute requires and can demonstrate that separation would cause an extreme hardship to their U.S. citizen spouse or parent.

The process would allow these individuals to have their waiver applications processed in the United States and receive a provisional waiver determination before they complete the visa process at a consulate outside the United States.

This proposal would not change existing laws, the requirement that immigrants leave the country to process their visas, or the standards for determining who is eligible for a Waiver of Inadmissibility.

And allow me to emphasize this last point: The law as currently written is designed to avoid extreme hardship to a United States citizen.

Existing law provides that to achieve this goal a U.S. citizen's spouse or child who is here unlawfully can obtain a waiver and become a legal resident if their separation would cause extreme hardship to a United States citizen.

We are proposing a process change to better serve the current law's goal, a change that will reduce the time of separation and thereby alleviate the extreme hardship to the United States citizen.

And I think it might be helpful, before I really give you the opportunity to ask questions, to explain the current process - to explain the process as contemplated so that you understand the change that is being made and what is not changing.

Currently, once the familial relationship between the spouse or son or daughter and a U.S. citizen has been established by U.S. Citizenship and Immigration Services, once we have already adjudicated that familial relationship, an individual who is unlawfully present in the United States must leave the United States and, after having departed, apply for a Waiver of Inadmissibility.

The Waiver of Inadmissibility would be adjudicated by U.S. Citizenship and Immigration Services, by us, and the time it takes us to adjudicate those waivers, on average, is approximately six months, but often it is longer than that. And if indeed we grant the waiver, then the individual would be able to have a visa issued and enter the country.

What happens is the individual - to be more specific, the individual departs the country, has a consular interview, the Department of State determines the different grounds of inadmissibility, and the individual would then seek a waiver of those grounds from USCIS. And if indeed we grant the waiver, the individual's case returns to the Department of State for the issuance of the visa.

What happens under current process is that the case moves back and forth between USCIS,

and the Department of State, and the individual, who has been granted a Waiver of Inadmissibility because the separation between him or her and the United States citizen relative would serve an extreme hardship on the United States citizen, will have been separated from that United States citizen for at least six months and most often more.

The proposal as contemplated now is that the spouse or son or daughter of the United States citizen could apply for a waiver before departing the United States if the only ground of inadmissibility is unlawful presence.

USCIS will adjudicate that waiver, and if that waiver is granted, if we determine that the ground of inadmissibility is unlawful presence and the separation between that individual and a United States citizen would serve an extreme hardship on the United States citizen relative, we would grant a provisional waiver.

The individual, the relative, would then depart the United States for their visa interview. The Department of State would confirm that the only ground of inadmissibility is unlawful presence, and if indeed that was confirmed and there was no other deterrence to admission, such as the commission of fraud, then the provisional waiver would be finalized and the individual would be admitted to the United States.

And so the period of separation is significantly reduced because the time that it takes USCIS to adjudicate the waiver would be accomplished before the individual has departed the United States.

We are not changing the standard. The standard remains. The standard of adjudicating a waiver remains extreme hardship to a United States citizen. The individual must still depart the United States. The only ground of inadmissibility as to which this proposed process change applies is the ground of unlawful presence.

It does not pertain to people whose ground of inadmissibility is, for example, the conviction of a crime. And I should add that in that regard, to ensure that our national security and public safety interests are fully protected, USCIS, before adjudicating and granting a provisional waiver, will be taking the biometrics of the applicant and doing our background checks.

And so the goal here, through a proposal that is designed to achieve process efficiency, the goal is to reduce the time of separation and alleviate the extreme hardship to a United States citizen as the law currently intends. And with that I will open it up to your questions.

Coordinator: Thank you. If you would like to ask a question please press star then one. You'll be prompted to record your first and last name so that I may announce your question. To withdraw your question from queue you may press star then two. Once again, to ask a question please press star then one now. One moment for our first question please. (Fernando Pizarro), your line is open.

(Fernando Pizarro): Hi, Director, how are you?

Alejandro Mayorkas: Good afternoon, (Fernando).

(Fernando Pizarro): I just wanted to clarify one thing, and if you could explain this to me,

okay, so let's say an alien satisfies or meets the requirement of the only ground of inadmissibility being unlawful presence, does that - and it meets, obviously, their requirement of being a relative or immediate son or daughter or spouse of U.S. citizen, does that immediately constitute extreme hardship or is there an additional burden for that alien to prove extreme hardship?

Alejandro Mayorkas: It is the latter, (Fernando). That does not in and of itself constitute extreme hardship. And the standard of extreme hardship is articulated in immigration cases, in published immigration cases, and it is a fact-based inquiry and the law speaks to a review of the totality of the circumstances. But the standard is a rigorous one and it is important to emphasize that it is extreme hardship to the United States citizen.

(Fernando Pizarro): Okay.

Coordinator: Our next question comes from Daniel Gonzalez of The Arizona Republic. Your line is open. One moment please.

Daniel Gonzalez: Hello, can you hear me?

Alejandro Mayorkas: Yes. Thank you.

Daniel Gonzalez: Hi, Director. How are you?

Alejandro Mayorkas: Good afternoon, Daniel.

Daniel Gonzalez: Good afternoon. Could you tell me about how many people this will affect and when this change would go into effect?

Alejandro Mayorkas: So let me answer both questions. We do not know how many people will be impacted. Let me, if I can though, provide you with some context. We receive - last year, for example, we received approximately 485,000 petitions to establish the relationship of immediate relatives or the familial relationship, I should say, between an individual and a U.S. citizen or lawful permanent resident, approximately 485,000.

Of those petitions to establish familial relationship, the I-130, here we take that number and layer a number of filters. First, we are dealing here in this proposed systems change only immediate relatives, so only the spouses or sons or daughters of United States citizens. And that's actually a subset of immediate relatives, one. The second filter is we are dealing with individuals whose only grounds of inadmissibility is unlawful presence.

Another filter is that we are dealing with only those who cannot adjust their status while - who can only adjust their status by first having to leave the United States. We are not addressing a population that can adjust status while remaining here. And we are also only dealing with those whose separation would effect an extreme hardship on a United States citizen.

The second, I think, number that I would provide to you by way of context is last year we received approximately 23,000 applications for Waivers of Inadmissibility, so that, I think, provides, I think, some numbers that we are using to guide ourselves.

With respect to your second question on timeline, it is our goal - let me share with you what, really, the next step is because what we have posted today is a Notice of Intent to proceed with a proposed regulation.

Well, we will have a listening session with the public that will inform our rule-making. We will publish a for-public-comment a proposed rule. We will take those public comments, and those public comments will inform our final rule that we will post. And it is our goal to make that final rule effective and begin processing applications this year.

David Gonzalez: I'm sorry, but the numbers you gave, there's a wide disparity. Do you have an idea of where it would closer fall in, the 23,000 or the 480,000?

Alejandro Mayorkas: Those are two very different, very different, numbers. One is the numbers, I said, of the I-130s, the petitions to establish a familial relationship of which a subset is immediate relatives of U.S. citizens, and the other is the number of Waivers of Inadmissibility that we receive as an agency.

That does not define the number of individuals who are impacted or would be impacted by this regulation, but nevertheless they are two numbers that are relevant to your question and the only numbers we really have.

Coordinator: The next question is from (Antonietta Cadiz) from LA Opinion. Your line is open.

(Antonietta Cadiz): Hello. Thank you, Director, for having this call today. You said that the (unintelligible) (unintelligible) (will be significantly reduced.) I was wondering if you have any clear estimation of how much time will this new process take.

And second, representatives like (RS meet), for example, (already we have access to this) announcement. He said today that while the waiver of these bars is (unintelligible) under current law, it is not intended to be applied to millions of illegal immigrants. I was wondering if you have any (objection) to that.

Alejandro Mayorkas: Well, let me answer, (Antonietta), your first question, which is the time this new process will take. Let me make sure that everyone understands something; that the time it takes us as an agency to adjudicate the waiver very well may not change.

That time period is six months on average, but sometimes more. We're always, of course, interested in improving our processing times, but those are our processing times currently. And we don't anticipate an acceleration of that processing time. However, under this new process we will be adjudicating that waiver before the individual has to depart the United States.

And what - the time that really will be reduced is the time of separation between the family member whose waiver has been granted and the United States citizen who would suffer extreme hardship by virtue of that separation. So that's the critical time period that current law, as it exists now, is designed to avoid.

And so we are going to be working very closely with the Department of State to ensure that

that time of separation, the time when an individual has already departed the United States with a provisional waiver, the time it takes for that provisional waiver to become final, the visa to be issued, and the person to be admitted, our goal is to reduce that time. And it will not be months. It will be days or weeks. That is our goal.

Coordinator: Our next question is Leslie Rojas with KPCC (Southern California Public Radio). Your line is open.

Leslie Rojas: (Unintelligible). Hi. Yes, a couple of questions. Actually, just to clarify on the number...

Alejandro Mayorkas: I'm sorry. You're at a very low volume, very difficult for me to hear.

Leslie Rojas: Is this better?

Alejandro Mayorkas: (Unintelligible).

Leslie Rojas: Okay. Sorry. I'm on a cell phone. Is this a little bit better?

Alejandro Mayorkas: Yes. Thank you.

Leslie Rojas: Okay. Great. I just wanted to clarify with the numbers. I understand that in FY 2011 there was something like 17,000 hardship waivers granted, if that's correct. I'm wondering how many applications were received. I mean, how many were granted out of the applications received a year?

Alejandro Mayorkas: So I think I - maybe I didn't make myself clear, but there are about 23,000 applications received for waivers and about 17,000 approved.

Coordinator: The next question is from (Julian Resendez), Al Dia. Your line is open.

(Julian Resendez): Yes, (Julian) from (Al Dia), Dallas. Can you give me an example of what would constitute extreme hardship for a U.S. citizen, maybe from some past cases?

Alejandro Mayorkas: So I don't - I appreciate the question. I don't have a particular case in mind, but let me share with you perhaps an example on a very generalized basis so - because - a type of situation, for example, would be a U.S. citizen who suffers a grave illness whose sole caretaker is a son or daughter and who relies on that son or daughter to - for the medical care and the like. That's the type of thing that we have seen in an extreme hardship case with, of course, greater detail and more facts.

And as I alluded to earlier this is a fact-based inquiry. It's - and the standard is extreme hardship defined in the law. But that type of need, that type of hardship is an example of the - a very generalized fact pattern we've seen in cases.

Coordinator: The next question is from Alfonso Chardy of the Miami Herald. Your line is open.

Alfonso Chardy: Yes, thank you very much. I guess the question I have is whether this applies only to U.S. citizens or also to permanent residents, green card holders.

Alejandro Mayorkas: Thank you, Al, for the question. This applies to the spouses and sons and daughters of United States citizens. It does not apply to the relatives of lawful permanent residents.

Coordinator: The next question is from Peter Nicholas, Tribune Washington Bureau. Your line is open.

Peter Nicholas: Hello?

Alejandro Mayorkas: Yes.

Peter Nicholas: Hi, thank you very much for doing the call. I wondered, I'm just a little bit confused by the numbers. Why wouldn't 23,000, then, be the applicable number here? That's the number of people applying for waivers. Wouldn't that be the pool of people who are all affected by this new rule change?

Alejandro Mayorkas: No, because, you know, and this is anecdotally, so please understand it's anecdotally, what we have heard from the community, that some people who very well might be eligible to receive a waiver do not come forward and apply for the waiver because they would have to depart the United States before applying for the waiver. And the uncertainty of that - they are unwilling -- and the unpredictability -- they're unwilling to risk the extreme hardship to the United States citizen relative by virtue of a lengthy separation. And so we very well might not see waiver applications from individuals who very well might qualify.

Remember, the unlawful presence in the United States triggers bars of inadmissibility - bars of admissibility, and so if somebody has been unlawfully present in the United States for 180 days or more, but less than a year, then the bar to admission is three years in duration. If somebody has been unlawfully present in the United States for a year or more the bar is ten years in duration, and they are seeking a waiver of that bar.

The law currently provides for a waiver of those bars if the separation would cause extreme hardship, and in - faced with those bars and confronting uncertainty or unpredictability, perhaps people are not coming forward to seek a waiver to which they very well might be eligible.

Coordinator: The next question is from Miriam Jordan of The Wall Street Journal.

Miriam Jordan: Yes, high. I just wanted to clarify here, wouldn't this also benefit parents of, you know, parents who are undocumented and have a U.S.-born child who at the age of 21 could potentially sponsor them?

Alejandro Mayorkas: So, Miriam, I'm sorry. Can you repeat the question?

Miriam Jordan: Right. What I'm wondering is in addition to the mentioned individuals that you say would benefit, wouldn't this benefit a parent who has been here unlawfully but who has a U.S.-born child who turns 21 and is in a position to sponsor one or both parents who are here unlawfully to, you know, for legal, you know, for a green card?

Alejandro Mayorkas: I don't know the answer to that question. I don't know - Lori Scialabba, our Deputy Director, very well might know the answer.

Lori Scialabba: The answer is that yes it's possible. The one issue with that particular scenario is that in terms of the waiver the qualifying relative has to be spouse or parent, so that child who is petitioning for a parent, that parent is going to have to show extreme hardship to a qualifying relative which would be a parent or a spouse. They couldn't show the extreme hardship to the child that is petitioning for them.

Alejandro Mayorkas: So I hope that answers your question, Miriam. I think it does, and I think I failed to answer (Antonieta's) second question, who - (Antonieta), you referred to a statement by Chairman (Smith). We do not anticipate that this will impact millions of people.

And as I articulated previously, current law provides for a waiver of inadmissibility, and current law provides that extreme hardship to a United States citizen should be avoided, and the goal here is to accomplish that goal more effectively and more efficiently. Next question?

Coordinator: (Jordi Zamora) of AFP, your line is open.

(Jordi Zamora): Thanks. My question is, again, to clarify - try to clarify the previous question of The Wall Street Journal journalist because I couldn't get - if the minor, the U.S. child, turns 21, (she asked very purposely) and she or he requests for a waiver or tries to sponsor his or her parents, imagine that those parents are both undocumented and they are here and they have this child.

This child turns 21, he asked - or she asked if he or she can show proof of extreme hardship. Imagine that he has no job, or she has no job, or is still a student, wouldn't that apply?

Alejandro Mayorkas: So let me - before turning it over to Lori to really just repeat what she articulated earlier, because this - let me say this. This is an area that is highly technical, and the proposed rule that we will be promulgating and publishing for public comment will go through these types of technicalities and provide, of course, a far, far greater detail than our mere Notice of Intent posted today provides.

The Notice of Intent really just outlines what our intentions are, but this is exactly why the rulemaking process is established, so that we can provide greater details to the public, give the public an understanding of what is intended, and give the public an opportunity to comment. So, this is an area that is very technical, but, Lori, if you'd be so kind as to repeat what you shared in response to Miriam's earlier question.

Lori Scialabba: Sure. It is possible that the adult child who has reached the age of 21 can petition for the parent. The issue is that the waiver only allows you to show extreme hardship to a qualifying relative, and the qualifying relative has to be a parent or spouse.

So the parent that the child is petitioning for cannot show extreme hardship to that child. They have to be able to show extreme hardship to a parent, and they might have an elderly parent here who is a United States citizen, or a spouse who is a United States citizen.

Alejandro Mayorkas: Thank you, Lori.

Lori Scialabba: That's statutory.

Alejandro Mayorkas: That's statutory. Thank you, Lori.

Coordinator: Amy Taxin, AP, your line is open.

Amy Taxin: Yes, I had a question about the 23,000 figure. I wanted to know, does that include applications by aliens who are technically eligible to adjust inside the United States already because they came here on visas or is that 23,000 number only for people who are automatically required to go overseas to then try to come back? That's sort of a technical question.

I also would like to know why you've decided to make this change now given that there have been complaints about this process and the lengthy separations for years.

Alejandro Mayorkas: Thank you. So the 23,000 figure applies to the number of waivers for individuals outside of the United States, so the latter category that you identified. And in response to your second question, we are always working on implementing efficiencies in our administration of the immigration system.

Early on in my tenure one of the first efficiencies that we were able to implement is a redesigned web site that provided greater transparency to the public and greater and faster information to applicants and petitioners and we are prepared to detail and implement this efficiency now.

Coordinator: Charlie Ericksen, Hispanic Link News Service.

Charlie Ericksen: Yes, thank you very much. Two questions: One, would emotional distress be something that has been used before as a reason for admitting somebody, and secondly...

Alejandro Mayorkas: Can you repeat that? I'm sorry, I missed that.

Charlie Ericksen: ...he uses the word fraud in who - people who automatically would be denied admission. Could that include people who have been sent away from the United States and then returned once again without papers?

Alejandro Mayorkas: So, I'm sorry. Could you repeat your first question?

Charlie Ericksen: Yes, you mentioned a very extreme case of somebody who might be accepted as re-admittable, and I'm wondering if just plain emotional distress, if a spouse or a parent who was having some mental health problem as a result of the child or sibling being refused admission.

Alejandro Mayorkas: I see. So that would be - that would be one factor that we would consider when looking at the totality of the circumstances because there very well may be additional factors that would weigh in favor of finding extreme hardship, and there very well may be other factors that mitigate against the finding of extreme hardship, and so we have to take a look at the case and all of the facts that arise in that case and review it as a

totality as the law provides.

And so medical - a medical issue, emotional issue, certain financial issues, we would look at those issues, life issues, in the totality as the law instructs us to do. And somebody who is convicted of a crime and that conviction is a ground of inadmissibility would not be subject to the new process. Next question?

Coordinator: Stewart Powell of the Houston Chronicle.

Stewart Powell: Good afternoon. I just wanted to get reaction from you to claims by Republican critics that this is the beginning of backdoor amnesty.

Alejandro Mayorkas: I think I addressed that in my opening remarks. The law, as it currently provides, provides for a Waiver of Inadmissibility if one can demonstrate extreme hardship to the United States citizen. The law as currently written has articulated a goal of alleviating extreme hardship to a United States citizen. This is in the interest of a United States citizen.

What we are doing is - our goal is to implement through the regulatory process - that we hope to implement a process efficiency that will achieve the law - the current law's clearly articulated goal more ably. Next question.

Coordinator: Cindy Carcamo from Orange County Register. Your line is open.

Cindy Carcamo: Hello, Director. I have a question about - I understand that the way the law is written that the American citizen with extreme hardship has to be the spouse or the parent, correct?

Alejandro Mayorkas: Yes.

Cindy Carcamo: But I'm just wondering, though, if you guys have any background on why it was crafted that way and not to include the child as the person who would have to have the extreme hardship, because I can see, you know, the example that you gave us about someone who is taking care of someone else, I can see, you know, the other way around where the child would be the person - extreme hardship - would need the parent who is in the country illegally to take care of that child who is an American citizen and that would be an extreme hardship. So I'm just wondering, in regards to the waiver, I'm just wondering why exclude the child? I understand that...

Alejandro Mayorkas: So, yes, so, you know, I apologize for not having in mind, as we are on this call today, the legislative history behind the statute as currently written insofar as why it provided for extreme hardship as it did under the waiver process. As it did, the only thing that I can really speak to is the fact that we are providing what I think is a very important process improvement to the law as it is currently written.

Coordinator: The next question is from Kiran Khalid from CNN.

Kiran Khalid: Hi, there, Director. Thank you for holding this call. I know that someone has already asked you about what precipitated this change in policy and why now. And, you know, you gave a standard answer, but given how much you guys work on this issue and

the human toll that it takes, I mean, what kind of stories were you hearing? What information were you assessing that led you to take on this hot potato of an issue at this juncture?

Alejandro Mayorkas: You know, my answer was the real answer. I'm not exactly sure what a standard answer means, but I appreciate that. You know, one of the things that we have observed in adjudicating waivers of extreme hardship, and one of the things that we have heard from the public and one of the things that we understand from our experience generally in dealing with these cases, is we have seen cases of extreme hardship where the time of separation is quite lengthy and where that length of time results in an enduring hardship that the law, as currently written, is designed to avoid. And so we understand that this process efficiency that we are proposing will alleviate that aspect of the hardship.

Coordinator: Matt O'Brien with The Bay Area News Group, your line is open.

Matt O'Brien: Hi, thanks. Could you just clarify that - does it change at all - somebody who is from Mexico and fits the eligibility requirements for this, it doesn't change at all the process that they would have to go through to go to Ciudad Juarez, to the consulate there. It just changes the time that they have to spend after doing that interview? Could you clarify, like, how, like, a typical case?

Alejandro Mayorkas: Well, so, that is correct. I mean, they will - what they will do now is rather than go back and forth - their case going back and forth between USCIS and the Department of State - they will go to their consular interview with the provisional waiver in hand, and so that is our goal...and we will be working very closely with the Department of State.

Our goal is that their case will not go back and forth, that they will go to the Department of State with the provisional waiver, and the Department of State will then confirm or not, but in cases where it is ultimately - the waiver - provisional waiver becomes final they will confirm that the ground of inadmissibility is as was presented, the only ground is unlawful presence, the provisional waiver will be final - the visa finalized.

The visa will be issued, and the individual will be admitted to the United States so that the time of adjudication of that waiver will not occur while the individual is out of the United States already having had the consular interview. I think we have time for a couple more.

Coordinator: All right. Our next question is from Sasha Aslanian, Minnesota Public Radio.

Sasha Aslanian: Hi, I am just wondering - we've covered some stories here where spouses of U.S. citizens have returned to places like El Salvador and Guatemala to fix their status and have been murdered while they're down there. I'm wondering, I suppose shortening the length of time might improve the situation for them, but are there some states that are just too dangerous to go back to and so they can fix their status here?

Alejandro Mayorkas: So we are, of course, aware of that. I think you have identified a very significant benefit of reducing the time of separation. Not only do we reduce the time of hardship that the U.S. citizen suffers by virtue of the separation, but we, of course, by reducing the time that the individual is in the foreign country and if indeed the situation in

that foreign country is precarious, the reduced time is reduced risk.

We will be working with the Department of State closely, as I've indicated, to make this process, you know, as good as possible in that regard, and in all other regards, to the extent that we can.

I appreciate everyone's interest in this, and I appreciate the time that you have taken. We feel that this proposed regulatory change that will significantly reduce the time that U.S. citizens are separated from their spouses and children under certain circumstances is a very important step forward that we have identified. What we will be implementing is a process improvement that will significantly alleviate the extreme hardship that U.S. citizens endure by virtue of separation from their spouses and children. And I thank you again for your time. Thanks.

Coordinator: Thank you for participating in today's conference. All participants may disconnect at this time. Thank you.

END

Last updated:01/17/2012

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