



April 22, 2011

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

AILA National Office
Suite 300
1331 G Street, NW
Washington, DC 20005

Tel: 202.507.7600
Fax: 202.783.7853

www.aila.org

Re: Stateside Processing of Waivers of Inadmissibility for Immigrant
Relatives of U.S. Citizens and Permanent Residents

Dear Secretary Napolitano:

The American Immigration Lawyers Association (AILA) writes to recommend that the Department of Homeland Security (DHS) revise the processing of waivers of inadmissibility to allow immigrant relatives of U.S. citizens and Lawful Permanent Residents to apply for waivers while inside the United States. The “stateside” granting of waivers would conserve DHS and State Department (DOS) resources and facilitate permanent residence for many individuals who have already begun the family reunification process but would otherwise endure long-term separation from loved ones.

Current waiver process Under the present system, an alien relative—who is ineligible to adjust status to permanent residence in the United States due to unlawful entry or, in the case of an alien relative of a permanent resident, overstay of a lawful visa—is required to depart the United States for permanent residence processing at a U.S. consulate abroad. Departure from the United States triggers the bars to admissibility found in Immigration and Nationality Act (INA) §212(a)(9)(B) and (a)(9)(C). The State Department makes the formal finding of inadmissibility during the course of an immigrant visa interview at a U.S. consulate.

Upon the consular finding of inadmissibility, the alien relative is directed to submit an application for waiver of the grounds of inadmissibility to the USCIS. The USCIS processing of the waiver application can span a matter of weeks or many months, depending upon the workload of the USCIS office involved and the thoroughness of the documentation in support of the waiver application. During this time, the alien relative remains abroad and the family is separated.

Stateside waiver process The stateside processing of waiver applications would achieve three important government objectives: First it would lessen the administrative burdens on DHS and DOS. Second, it would remove a major obstacle in the waiver process that deters many eligible individuals from even applying for a waiver and requires lengthy separations from family for those who do apply. Third, stateside processing would increase transparency by encouraging alien relatives to come forward and apply for the waiver and to fully disclose issues in their cases while in the U.S. Under stateside processing, a waiver applicant would disclose the potential grounds of inadmissibility to USCIS on Form I-601, and USCIS would make a determination whether the alien is inadmissible, or will be inadmissible upon departure from the United States, and will render a decision on the waiver request itself. If an interview is required, USCIS could conduct the interview at an office in the United States.

This process would be similar to the current adjustment of status application process, where applicants are encouraged to file I-601 waiver applications concurrently with their I-485 applications. Under this proposed method, applicants would be advised of the risk of filing an I-601 waiver in the United States if the waiver were ultimately denied.

Consular processing still required for the immigrant visa Final processing for the immigrant visa would still take place at a U.S. consulate abroad, during which the alien relative would be interviewed by the consular officer regarding the alien's relationship to the citizen or permanent resident relative, as well as regarding the grounds of inadmissibility. The USCIS approval of the waiver application would be conditional, subject to the consular officer's determination that all grounds of inadmissibility were waived by the previously-filed waiver application. USCIS would inform DOS of the grounds of inadmissibility which were waived before the alien relative's interview. If the consular officer identified an additional ground of inadmissibility, then DOS could refer the case to USCIS to request additional evidence or to request a new waiver application with a new fee.

Benefits of stateside processing The stateside waiver process would enable DHS to make use of USCIS's network of field offices to handle interviews, when necessary, and would reduce workloads at consulates and USCIS offices overseas. A stateside process would reduce safety and security risks at U.S. consulates and USCIS offices abroad. Finally, a stateside process would bring alien relatives out of the shadows and enable DHS to take appropriate actions consistent with established enforcement priorities and humanitarian considerations.

Failure to implement a stateside waiver process would also come at a cost. Most notably, every year large numbers of individuals who are likely eligible for the waiver choose not to apply because they undertake significant risk and cost by applying outside the United States. While deterred from obtaining permanent residence, they continue to live in a state of uncertainty and face greater challenges in seeking employment and integrating into American society.

At a time when the entire country is focused on rebuilding the economy and our communities, DHS cannot ignore practical solutions that will conserve government resources and strengthen families. A stateside waiver process would accomplish precisely those aims.

AILA would be pleased to work with you in the development and implementation of such a process. Please contact Gregory Chen, AILA's Director of Advocacy, gchen@aila.org, 202-507-7615.

Sincerely,



David Leopold
President
AILA



Crystal Williams
Executive Director
AILA

cc: Alejandro Mayorkas, Director, USCIS
Dea Carpenter, Acting Chief Counsel, USCIS
Denise Vanison, Director of Policy, USCIS

Noah Kroloff, Chief of Staff, DHS

John Sandweg, Counselor to the Secretary and Deputy Secretary, DHS
Esther Olavarria, Counsel to the Secretary, DHS
Seth Grossman, Acting Chief of Staff, Office of the General Counsel, DHS
Kelly Ryan, Acting Deputy Assistant Secretary, Office of Policy, DHS

Cecilia Munoz, Director of Intergovernmental Affairs, The White House
Felicia Escobar, Senior Policy Advisor, Domestic Policy Council, The White House
Stephanie Valencia, Associate Director, Office of Public Engagement, The White House