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Proposed Provisional Waiver Rules are Published by DHS and USCIS

In a previous [article titled "Explaining the Department of Homeland Security and United States Citizenship and Immigration Services Proposal for Provisional Waivers of Inadmissibility for Certain Immediate Relatives of U.S. Citizens,"](#) I explained that the government was proposing a new rule for waivers. Under current law, anyone seeking a waiver for unlawful presence must apply for the same outside the USA at a consulate. I explained the new law would allow for certain visa applicants applying through U.S. Citizens to apply for a "provisional waiver" in the USA if their only ground of inadmissibility was unlawful presence and that I intended to update readers on the progress of this proposed rule.

On April 2, 2012, the government issued its [proposed rule](#). Please note that this rule is not in effect and [USCIS will not accept any applications for provisional waivers](#). Even though this rule will tremendously help those US Citizens that would suffer extreme hardship by being forced to wait for a waiver application submitted at a US consulate abroad, it has one very large flaw. Namely, certain relatives of LPRs (mainly spouses), will suffer the same hardship by being forced to wait for their qualifying relatives to apply for, and receive, a waiver at a U.S. consulate abroad. In response, I wrote the following comment and I strongly recommend all those reading this article also [submit a comment](#) requesting the government change the rule to correct this inequality prior to the June deadline.

Submitted Comment:

Initially, I applaud the effort by the Dept. of Homeland Security and the U.S. Citizenship and Immigration Services to alleviate extreme humanitarian and financial hardships caused by prolonged separation of US Citizens from their qualifying relatives by allowing for them to remain in the United States while their waiver of inadmissibility based on unlawful presence is processed. First, the law is impractical in that it doesn't allow for a waiver for those that worked illegally. Next, the law also clearly allows for a waiver for qualifying relatives petitioning through a permanent resident (LPR) that would also suffer extreme hardship without a waiver, but there is no proposed provisional waiver for them. Additionally, US citizen's relatives have a visa immediately available to them while LPR's relatives must wait before a visa is available (currently by about three years per the Visa Bulletin). Additionally, some LPRs are here following Temporary Protected Status, which makes their home extremely dangerous for them and, if their spouse must leave to obtain a waiver, they may be put in a horrible position of choosing to return to a dangerous country or face extreme hardship in the USA. This will also create unnecessary inefficiency by separating out provisional waivers for those that are relatives of US citizens from those that aren't. Lastly, LPRs are, for the most part, eligible for US citizenship within five years and this could push many relatives of LPRs to delay filing for a visa and remain illegal until the LPR becomes a US citizen. This proposed rule appears, therefore, to be unnecessarily discriminatory and guarantees that the proposed purpose (alleviating humanitarian and financial hardships) will not be alleviated for LPRs. As Lincoln once said "let us forget this (immigrant and that immigrant)...Let us discard all these things, and unite as one people throughout the land, until we shall once more stand up declaring that all men are created equal." -Comment Tracking Number: 8100073a

At **Shunneson Law** I am devoted to helping you with your immigration problems. Call (847) 693-9120 for more information.

-Drake Shunneson (copyright 2012)

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