



Input Sought on Provisional Waiver Process

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On March 30, 2012, U.S. Citizenship and Immigration Services (USCIS) posted a notice of proposed rulemaking in the Federal Register requesting public comment on its plan to create a provisional waiver process for the unlawful presence ground of inadmissibility for eligible spouses and children of U.S. citizens. Under the current process, all waiver applicants must apply at a U.S. consulate abroad and remain abroad while the waiver is processed. The provisional waiver process would take place in the U.S., with the waiver recipient only travelling once an interview has been scheduled with the U.S. consulate abroad. The goal of the proposed process is to reduce the time that U.S. citizens are separated from their spouse and/or children during the waiver process.

The streamlined process would only apply to spouses and children of U.S. citizens who are otherwise eligible for an immigrant visa based on an approved immediate relative petition. To obtain the provisional waiver, eligible relatives would have to demonstrate that being separated from their U.S. citizen spouse or parent would cause that U.S. citizen relative extreme hardship. The proposed rule will not alter how USCIS determines eligibility for a waiver of inadmissibility or how an individual establishes extreme hardship.

The proposed process is not in effect and is not available until USCIS publishes a final rule with an effective date in the Federal Register. The 60-day comment period runs April 2, 2012 until June 1, 2012. Please contact us with any questions regarding the proposed provisional waiver or comment period.