

Department of Homeland Security Announces Provisional Stateside Waiver of Inadmissibility

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The U.S. Department of Homeland Security (DHS) has issued a new rule that will allow certain people who have U.S. citizen family members, but who must leave the U.S. as part of the process of becoming eligible for lawful permanent residence, to complete a critical part of the application process before they leave the U.S. The new process lowers the risk that such people will be denied reentry into the U.S. and reduces the time they spend abroad apart from their families. DHS issued the new rule on January 3, 2013. The change in process will take effect March 4, 2013.

People who enter the U.S. without being “inspected” by a U.S. immigration officer are generally not able to obtain permanent residence—green cards—while in the U.S. Instead, they must leave the U.S. and complete the processing of their green card applications at a U.S. consulate abroad, which leads to a 3- or 10-year bar on re-entry. Waivers of the 3- or 10-year unlawful presence bars are available only to people who can show that certain members of their family would suffer “extreme hardship” should they be denied reentry into the U.S.

The stateside provisional waiver lowers the risk that such people will be denied reentry into the U.S. and reduces the time they spend abroad apart from their families.

To qualify for a provisional waiver, an applicant must first be the beneficiary of an immigrant visa petition as an *immediate relative*. After the immigrant visa petition is approved, the applicant can file for the provisional and has to demonstrate that his or her U.S. citizen spouse, parent, or child would suffer “extreme hardship” if the applicant were denied reentry into the U.S.

An individual is not eligible for the waiver if he or she:

- Was convicted of a crime, or engaged in conduct, that make him or her *inadmissible* to the U.S.;
- Is under 17 at the time of application;
- Is in removal proceedings (unless they are administratively closed) or has an outstanding removal order; or
- Was scheduled prior to January 3, 2013, for a consular interview on the immediate relative petition that is the basis for the provisional waiver application.

[Click here](#) to view National Immigration Law Center's full summary.