

Proposed Rule Change Will Unify Families Subject to 3 and 10 Year Bars

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Washington D.C. - Today, U.S. Citizenship and Immigration Services (USCIS) announced a [proposal](#) [1] to streamline the application process for the spouses and children of U.S. citizens currently eligible for legal permanent resident status, minimizing the amount of time that applicants would have to be separated from their families. Under current procedures, thousands of persons who qualify for legal status must leave the U.S. to obtain their permanent resident status, but as soon as they leave, they are immediately barred from re-entering for 3 or 10 years if they have been unlawfully present in the U.S. for more than 180 days. Many are eligible for a family unity waiver, but under current rules (not law), the waiver can only be applied for from overseas. Because that process can often take many months and even years, it is believed that many otherwise eligible applicants do not apply for legal permanent resident status, remaining unauthorized in the U.S. rather than risk lengthy separation from their families.

Published in the Federal Register today, the proposal—or, at this point, a “notice of intent to issue a rule”—recognizes this Catch-22 by revising the procedures for determining the family unity waivers for spouses and children of U.S. citizens. However, the rule change will not cover spouses and children of legal permanent residents. Under this “in-country processing” proposal, which must still go through the formal [rule-making process](#) [2], spouses and children of U.S. citizens who apply for legal permanent residence and need a family unity waiver to re-enter the U.S. will be allowed to apply for the waiver without first leaving. This process does not alter or revise eligibility standards and only affects persons whose sole need for a waiver is based on having been in the U.S. without authorization.

This “in-country processing” proposal would permit USCIS to grant a provisional waiver, eliminating the often prolonged wait that many applicants currently face when they seek a waiver outside the U.S. Although applicants would still be required to depart from the U.S. before receiving final approval on their application, pre-processing of the family unity waiver will encourage applicants to come forward and create a faster and safer means for processing applications.

The emphasis on safety is particularly important, given the large number of applications processed in Ciudad Juarez, Mexico, a city that has been wracked with violence in recent years. Numerous cases of violence against persons waiting for their waivers have been reported, increasing the urgency of implementing the new rule quickly. For other applicants, the streamlined process will minimize the time away from family members, reducing the possibility of economic and other hardships caused by long separations.

Our current immigration laws are riddled with inconsistent and conflicting provisions which have the absurd result of discouraging legal immigration. Some of the most notorious are the bars to returning to the U.S. after a period of unlawful presence, even if a person has a legitimate relationship to a U.S. citizen. Today's announcement does not eliminate the bars, but it recognizes that there is no practical reason for forcing the spouses and children of U.S. citizens to wait outside the country for months or even years while their application for a waiver is pending.

According to Benjamin Johnson, Executive Director of the American Immigration Council, “By proposing new rules for processing waiver applications for spouses and children of U.S. citizens, USCIS has shown a commitment to addressing one of the most notorious implementation problems in our current immigration system. Improving this system, within the framework of the law, is the legitimate role of any administration. We commend USCIS for embarking on this rule change and its other attempts to bring efficiencies and fairness to the immigration system.”

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[2] http://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf

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