

Frequently Asked Questions about the Possible New Waiver Rule

On Friday January 6, 2012, USCIS announced that they intend to publish new rules for I-601 hardship waivers. This may be good news for many, but there is no new rule yet.

Is this an amnesty?

NO. Only Congress can pass an amnesty and Congress had nothing to do with the announcement on 1/6/2012.

Is this a new law?

NO. Only Congress can pass a law. This announcement is only a possible “proposed rule”, which is a rule that decides details about how a law that already exists is enforced or carried out.

Who could benefit from this “proposed rule”?

Only people in the U.S. who are spouses and children under 21 years of age of U.S. citizens could benefit. This rule would not help other relatives of U.S. citizens or any relatives of Lawful Permanent Residents.

How could a spouse and/or child under 21 years of age of a U.S. citizen benefit?

Right now, U.S. citizens can file immigration petitions for their spouses and children. In many cases, a spouse or child entered the U.S. unlawfully, so he or she must return to his or her home country for processing. However, if the immigrant has been unlawfully present in the U.S. for more than a year, when the immigrant leaves the U.S., he or she will trigger a “bar,” which prohibits the immigrant from returning to the U.S. for 10 years. The immigrant will have to file for a **waiver** to excuse the immigrant from the 10 year bar so that he or she can come back to the U.S. as a permanent resident sooner. During this time, the immigrant has to remain in her home country while she awaits a decision. Many families have lost jobs, homes, and suffered medical problems as a result of this separation from a spouse or parent. If the waiver is then denied, the immigrant may not be able to return to the U.S. for 10 years or longer. Many U.S. citizen families have been separated from their loved ones for long periods when waivers are denied, and, as a result, there are an estimated 1 million immigrants who have decided to stay in the U.S. without legal immigration status so they can be with their families rather than risk a waiver denial and long separation. The proposed rule change would allow this same person to apply for the waiver *BEFORE* he or she leaves the United States. This way, the immigrant will know whether he or she was approved for the waiver before he or she leaves for her appointment at the consulate to complete the immigration process. This will result in a much shorter processing time outside the U.S., more people going through the process, and fewer families being separated. *Remember that even if the rule changes, the immigrant will have to establish that separation or relocation would cause extreme hardship to the U.S. citizen spouse or parent in order to get the waiver.* Many of these waivers are currently denied and would still be denied even if the process changes.

This is great! When can I apply?

NOT YET. These proposed rules have not been issued yet, and could be revised before going into effect.

So what can I do?

During the next two months, there will be public comment period on the new rule. If you are in favor, or if you want it to apply to more people (for example, relatives of lawful permanent residents) you can email: public.engagement@dhs.gov to say that you support the new rule and how it would affect you or people you know.

This is a publication of the Michigan Coalition for Immigrant and Refugee Rights (MCIRR), an organization dedicated to building capacity within Michigan's immigrant advocacy community, supporting immigrants' rights in federal, state, and local policy, and promoting a more positive and inclusive atmosphere for immigrants and refugees in Michigan. With support from:



ROMAN CATHOLIC
Diocese of Grand Rapids

MCIRR(AIR)