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Immigration Magazine

Proposal to Expedite I-601 Extreme Hardship Waiver is Currently Under Review!

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Recently, the U.S. Citizenship and Immigration Services (USCIS) is considering a proposal to expedite the adjudication, based on extraordinary circumstances, of I-601, Application or Waiver of Grounds of inadmissibility ("I-601 extreme hardship waiver") filed by individuals outside the United States.

Foreign nationals or non-U.S. citizens (including green card holders) with certain histories may need I-601 and/or other waivers, etc to be allowed to enter, remain or return to the U.S. These certain histories include, but are not limited to: (a) the commission of certain crime, or even possible commission of misrepresentation/fraud to obtain or attempt to obtain immigration benefits in or to the U.S.; (b) certain medical conditions; (c) certain period(s) of illegal presence in the U.S.; (d) abandonment (intentional/unintentional) of green card; and/or (e) certain removal/deportation experience within the U.S. immigration law. At present, the wait-time for an I-601 extreme hardship waiver varies widely between the immigration adjudication offices, from 6 months to 1 year. Certain adjudication offices can take several years to adjudicate an I-601 waiver while an extremely small number of adjudication offices may only take several days to several weeks. As a result, family separation is often lengthy and uncertain, and for the unfortunate ones, permanent.

Under the proposed expeditious adjudication policy, each expeditious request would be handled on a case-by-case, and discretionary basis. Since a strong desire to immigrate to the United States immediately would not be considered an "extraordinary circumstance", it follows that extreme hardships from family separation would not by itself qualifies for the proposed expeditious handling of I-601.

The proposed "extraordinary circumstance" may apply if there is compelling and urgent, or time-sensitive reason necessitating the foreign national's presence in the United States sooner than the regular I-601 extreme hardship processing time. For example, "extraordinary circumstance" may include, but are not limited to:

1. I-601 applicant's urgent or critical medical reasons;

2. A (qualifying) family member in the United States has life-threatening medical condition necessitating immediate need of assistance from the I-601 applicant;
3. Urgent or critical circumstances such as terminal illness or death of a (qualifying) family member;
4. Vulnerable individual due to age or disability of the I-601 applicant or qualifying family member;
5. I-601 applicant is at risk of serious harm due to personal circumstances unrelated to the general safety conditions of those living in the applicant's country;
6. It would be in the national interest of the United States to have the applicant in the United States (for example, applicant's special skills, applicant's urgent contribution is sought by the U.S. government entity); OR
7. Member of the Armed Forces of the United States:
 - (a) I-601 applicant's qualifying member is a member of the military who is deployed or will soon be deployed; and
 - (b) I-601 applicant demonstrates compelling reasons (impact to the applicant, qualifying family member or their children) for expeditious adjudication of the I-601 extreme hardship waiver in light of the deployment.

The above and recently proposed policy on expeditious handling of I-601 extreme hardship waiver is currently under review by the USCIS and has not yet been adopted.

Please also visit <http://tiyalaw.blogspot.com/2010/06/improvements-in-adjudication-standards.html> and <http://tiyalaw.blogspot.com/2010/04/permanent-or-long-term-residency-in-us.html>.

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We represent employers, and individuals and their families in green card and work visa matters in U.S. immigration law.

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