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Improvements in I-601 Waivers May Be Soon: Standards for Extreme Hardships, Concurrent Filings With I-130 Alien Relative Immigrant Petition, Adjudication, Processing Time!

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On June 10, 2010, the U.S. Citizenship and Immigration Services (USCIS) Ombudsman has made formal recommendations to the USCIS to enhance its efficiency in processing applications for I-601 waivers of inadmissibility. USCIS Ombudsman is an independent agency of the Homeland Security to assist individuals and employers in resolving, and identifying areas of, problems with the USCIS; and it also proposes changes to USCIS to mitigate identified problems. The USCIS Ombudsman reports directly to the Homeland Security.

Foreign nationals or non-U.S. citizens (including green card holders) with certain histories may need I-601 waivers 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); and/or (e) certain removal/deportation experience with the U.S. immigration law.

For example, many non-U.S.-citizens and their U.S. citizen families, often times, encountered harrowing experiences when they learned, for the first time, that the non-U.S.-citizen family members are prohibited for a proscribed period (such as 3 years, 5 years, or 10 years) from entering or re-entering the U.S.; or are being removed/deported, or charged with removal/deportation, from the U.S. To the surprise of many, this may be so even if the non-U.S.-citizen has U.S. citizen spouse/child(ren), grew up in the U.S., and/or even has a green card.

For foreign nationals or non-U.S.-citizens who are already stranded abroad as a result of the time bar, the process and wait-time for applying for a waiver, such as an I-601 extreme hardship waiver (I-601 waiver), are complex, lengthy and extremely stressful

to both the non-citizens, and their aggrieved family members in the U.S. This is because the adjudication and grant of a waiver such as an I-601 waiver are inherently highly discretionary; immigration regulations have not defined the criteria of “extreme hardship” for I-601 waiver, and therefore, there are inconsistencies and lack of uniformity on the standards that would sufficiently constitute “extreme hardships” as well as the best materials to provide; and the wait-time for an I-601 waiver immigration adjudication office varies widely, 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.

In addition, foreign nationals who are still in the U.S., and aware of their need for I-601 waiver applications, are often times deterred from utilizing the I-601 process by going abroad, where required and depending on the circumstances, to seek the I-601 waiver remedy due to the highly uncertain outcome of the I-601 adjudication process or its excessive wait time. These foreign nationals are faced with the choices of either sacrificing the opportunity in remedying/improving their immigration status/compliance so that they could stay close to their family members in the U.S., or embarking on a risky journey of I-601 process which may result in long-term separation from their families in the U.S.

The USCIS Ombudsman has made several important recommendations to the USCIS Director to change, improve or enhance its adjudication and handling of applications for I-601 waivers such as:

1. Implementing an avenue for concurrently filing of I-130 Petition for Alien Relatives together with the I-601 waiver applications. Currently, where an I-130 petition is required, a foreign national must wait for the I-130 petition to be adjudicated before filing an I-601 waiver application, where required, thereby, unnecessarily increases the wait time for foreign nationals and their U.S. families.

2. Centralizing the USCIS processing of all I-601 waiver applications to achieve faster and more standardized adjudication.

3. Developing a centralized case management system to allow for accurate and centralized tracking of processing time and individual case status. Currently, the case status for an I-601 waiver application, filed at the U.S. Consulate, cannot be tracked using the USCIS online case status, unlike other immigration cases. (USCIS online case status service is available for I-601 waiver cases that are eligible for filing and are filed within the U.S.)

4. Providing clear filing instructions and guidelines to customers on the procedures for a request for expedited processing of an I-601 waiver application. At present, there are no instructions on what must be submitted for such a request for expedited processing.

5. Improving the interactions and coordination between the U.S. Department of State

(DOS) and the USCIS to allow expeditious handling of I-601 waiver cases, for I-601 waivers filed at the U.S. Consulate.

6. Establishing a policy on advance file gatherings to allow the I-601 adjudication offices to expeditiously review and adjudicate I-601 waiver cases.

For further information on I-601 waiver applications/cases, please also read our article on "Permanent or long-term residency in the U.S. does not mean "permanent", even for those with U.S. citizen spouse/child(ren), I-131 advance parole/re-entry permit, and/or green card!" at http://tiyalaw.blogspot.com/2010/04/permanent-or-long-term-residency-in-us.html

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We represent companies, and individuals and their families in U.S. immigration law such as green card, work visa and waiver matters. We represent clients within the U.S. and abroad.

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