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Dear Sir:

The USCIS proposal of January 9th regarding I-601 waivers would appear to describe a humane cure to one of the severe enforcement oriented amendments to the Immigration Act of 1996. There has been a lot of adulation and excitement. The proposal may be good politics-but it is very narrowly crafted and will help very few individuals-and only if those individuals have the courage to come out of hiding to try to meet the very restrictive extreme hardship waiver standard.

The 1996 provision created reentry bars of 3 and 10 years for most aliens who overstayed their legal status in the U.S. for six months or one year respectively, or who entered illegally, if they then depart-even after having lawfully married a U.S. citizen. This insidious provision has the real effect of trapping these people in the U.S. and increasing the illegal population. If they leave to visit a U.S. Consulate for a green card interview, their return could be delayed for 3 or 10 years if they file a waiver at a U.S. consulate and it is denied – a very real possibility.

The Obama administration's proposal would, on the surface, appear to remedy this problem, by allowing a "provisional waiver" to be approved prior to departure, therefore, eliminating both the bar, and any processing delays resulting from the need to first file the waiver at the U.S. consulate abroad, and then being forced to wait abroad.

The concept is good. Unfortunately the waiver applies only to "Immediate Relatives" of U.S. citizens, i.e. spouses and parents. This limitation effectively limits the "provisional waiver" to "entrants without inspection" (EWI) from the Western Hemisphere. The reality is that Eastern Hemisphere entrants become undocumented because they overstay their visas. Unlike EWI's, the overstay may adjust their status to LPR in the U.S. as an exception to 245(c) of the Act. The EWI is not covered by this exception. As most EWI's enter illegally by crossing the Mexican border, the provisional waiver will only affect this group which is mostly Hispanic and whose U.S. citizen spouses and children vote.

Further, the reality is that if the U.S. citizen spouse or parent files for a provisional waiver in the U.S., and USCIS decides that there is no extreme hardship, USCIS will know the location of the undocumented individual. The proposal thus shifts the fear of being trapped abroad to the fear of being arrested in the U.S. To fix this problem, if possible, there will need to be extensive educational outreach to vulnerable populations regarding the technical legal standards of "extreme hardship" and just which individuals have a good chance of approval, rather than arrest.

On June 17, 2011, USICE published "Guidelines" for prosecutorial discretion in making arrests. Those guidelines have been strongly resisted by ICE personnel (See: *New York Times* of January 8, 2012 pg. 15), and when applied, have been unevenly administered and enforced. If ICE interprets its guidelines to use proper discretion and refrains from arresting denied applicants, the proposal could work.

Without fully and fairly informed outreach and fair enforcement, the undocumented community will remain in hiding, and the administration's proposal will merely be smoke and mirrors. But it will get votes!

Very truly yours,

Eugene Goldstein