

PUBLICATION

Visa Waiver Entrants Can Adjust as Immediate Relatives

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USCIS has clarified policy that persons who enter the U.S. on the Visa Waiver Program may apply within the U.S. to "Adjust Status" to permanent residence as an "immediate relative" even if their 90-day stay has expired.

People from certain countries may enter the U.S. as visitors without a visa under the Visa Waiver Program as long as they register online first. There is a trade-off for the ease of visa-free travel: the visitor can stay for only 90 days and cannot extend stay or change to another status in the U.S. without departing.

The law provides for one exception to the limit for VWP entrants who are seeking permanent residence as "immediate relatives": the parent, spouse, or under-21 unmarried child of a U.S. citizen. USCIS officers long have recognized this exception and granted "adjustment of status" to permanent residence within the U.S. for persons eligible for the exception. But some officers have taken a hard line and denied adjustment and referred such persons to ICE for removal, especially if the person filed the green card application after the expiration of the 90 day stay allowed on the visa waiver, even if they had done nothing else wrong.

Now USCIS has issued policy directive to USCIS officers that a VWP entrant who is sponsored as an immediate relative can file for adjustment, even after expiration of the 90 day limit, and should usually be granted unless ICE has issued a removal order, ICE has "paroled" the person on other than humanitarian grounds, or USCIS exercises discretion not to approve adjustment for good reason reviewed by a supervisor (typically for crimes, misrepresentation, or national security reasons).

If USCIS denies a VWP applicant in its discretion, the person will be referred to ICE for removal with no opportunity for removal proceedings except in the 9th Circuit (where the court of appeals already ruled otherwise, allowing the applicant to "renew" the adjustment applicant in front of an immigration judge).

How We Can Help

We assist clients in evaluating and comparing the seemingly innumerable visa classifications for which they might be qualified, whether a visa will be required (and if not required whether it should be obtained anyway), where and how to apply, and how best to accomplish entry. We advise clients about inadmissibility grounds that may apply and assist in waiver applications and appeals from denials of them. We assist clients in seeking review of visa denials. We represent clients in removal proceedings, where available if they are found inadmissible. We help clients seek remedies even when they have been removed at the border without a hearing. We help clients maintain their status and extend and change it to meet new goals. We also plan and take appropriate steps toward permanent residence, coordinating such plans and steps with the temporary status.