

UNCLASSIFIED STATE 00113110

AUG 13

SUBJECT: Supplemental Guidance for Processing I-601a Provisional Unlawful Presence Waivers

1. SUMMARY: As announced in Ref A, 9 FAM 40.92 has been updated with information and guidance to consular officers related to a new final rule permitting certain immediate relatives of U.S. citizens to apply to the United States Citizenship and Immigration Service (USCIS) for an

I-601A provisional waiver of unlawful presence before leaving the United States for their immigrant visa appointments. This cable provides supplemental information for posts in processing these cases. END SUMMARY.

2. On January 3, 2013, USCIS published a final rule (78 FR 536) permitting certain immediate relatives of U.S. citizens to apply for an I-601A provisional waiver of the unlawful presence grounds of inadmissibility under section 212(a)(9)(B)(i)(I) or section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA) before leaving the United States for their immigrant visa (IV) appointments. Under existing law, individuals who are not eligible for adjustment of status in the United States must travel abroad to obtain an immigrant visa. We expect that the new I-601A provisional unlawful presence waiver process will shorten the time U.S. citizens are separated from eligible immediate relatives while those family members are obtaining immigrant visas. The application for a provisional unlawful presence waiver is made on Form I-601A, Application for Provisional Unlawful Presence Waiver.

3. USCIS began accepting I-601A applications on March 4, 2013. Upon receipt of an application, USCIS notifies the National Visa Center (NVC) that the applicant filed an I-601A provisional unlawful presence waiver so that NVC will defer immigrant visa (IV) appointment scheduling for any documentarily-qualified applicant until USCIS adjudicates the I-601A. If the applicant is already scheduled for an IV appointment, NVC will notify the designated post that the applicant has filed an I-601A, indicating that the applicant may choose to postpone his or her appointment. No action is required by post upon receipt of this notification of filing.

4. After notifying NVC, USCIS collects the applicant's biometrics at a USCIS Application Support Center and forwards the application to the USCIS National Benefit Center for adjudication. Once USCIS adjudicates the I-601A, it will inform NVC of its decision. NVC will then schedule any documentarily-qualified applicant for an IV appointment and forward the case to post for processing following the steps outlined in 9 FAM 40.92 N7.5. If the applicant previously had an IV appointment scheduled at post, NVC will notify post of the USCIS decision. In these cases, the applicant must contact post directly to schedule a new appointment.

5. If an applicant, while in the United States, submits an I-601A and his or her biometrics to USCIS and then leaves the country before USCIS adjudicates the I-601A, USCIS will still adjudicate the I-601A even though the applicant left the country. If such an applicant appears at post for an IV appointment, a consular officer may conduct

the interview, and if the applicant only has an unlawful presence ineligibility, the consular officer must refuse the applicant under INA 221(g) pending USCIS adjudication of the I-601A. Once USCIS adjudicates the I-601A, NVC will notify post of the USCIS decision; post may then overcome the INA 221(g) refusal and process the case to conclusion following the guidance in 9 FAM 40.92 N7.

6. A USCIS decision denying an I-601A cannot be appealed, nor can the I-601A applicant file a motion to reopen or reconsider the USCIS decision, but an individual may file a new I-601A, which may be based on the current petition or a new one. This will result in some visa cases remaining on hold at NVC or post for long periods of time as individuals file multiple I-601A provisional unlawful presence waiver applications. Consular officers should apply some flexibility when deciding whether or not to reinstate an applicant whose IV registration was terminated under INA 203(g) because the applicant applied for the provisional unlawful presence waiver.

7. Posts should direct all individuals with questions related to the I-601A to visit the USCIS website at <http://www.uscis.gov/provisionalwaiver> or to call the USCIS Customer Service Center at 1-800-375-5283. Please remember that to file an I-601A, an individual, among other criteria, must be physically present in the United States. Information on the I-601A for the public is available on the Department's website at <http://immigrantvisas.state.gov> .

Kerry

UNCLASSIFIED STATE 00113110