

# COUNSEL

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A publication of Paschal Nwokocha Law Offices, LLC.

## In this Issue...

- ◆ Comprehensive Immigration Reform – Updates

### New Immigration Rules

- ◆ I-601A Provisional Waiver—What Does It Mean?
- ◆ DACA Application—Am I Covered?
- ◆ H1B for 2013—Anything To Know?
- ◆ Recent Success Story

## About Counsel

*A newsletter publication of Paschal Nwokocha Law Offices, LLC, Counsel is dedicated to the needs and interests of our clients and subscribers.*

*Each issue of Counsel explores specific areas of immigration law, which may be of personal or business interest to its readers.*

*Counsel does not constitute legal advice. Readers are urged to consult an attorney before acting on any information contained in this publication.*

## Our Mission

At Paschal Nwokocha Law Offices, our mission is to provide the highest quality professional, client-driven legal services to businesses and individuals at reasonable rates.

We believe the Immigration and Nationality laws of the United States should work for our clients, *not* against them. And we employ all available tools to seek the best possible solutions on their behalf.

## Obama Administration to Push for Immigration Reform

The Los Angeles Times recently reported that the Obama administration plans to begin an “all-out drive for comprehensive immigration reform, including seeking a path to citizenship for 11 million illegal immigrants, according to officials briefed on the plans.”

Lawmakers from both sides of the aisle have already made their case for comprehensive reform and how changes in immigration laws could benefit businesses, education, healthcare and public safety.

After years on the back burner, immigration reform has suddenly looked possible as Republicans, chastened by the fact that more than 70 percent of Hispanic voters backed Obama in the November election, appear more willing to accept an overhaul.

Obama has pushed for a pathway to citizenship for immigrants already in the United States that is faster than one proposed by a bipartisan group of eight influential senators. President Obama argued that comprehensive reform can be done sooner than later. Speaking in a Telemundo television interview, he said “I don’t think that it should take many, many months. I think this is something we should be able to get done certainly this year and I’d like to see if we could get it done sooner, in the first half of the year if possible.”

With border security an emphasis for his administration over the first 4 years, Obama would now let immigrants get on a path to citizenship if they undergo national security and criminal background checks, pay penalties, learn English etc. This time the momentum seems to be in favor of reform.



## New Immigration Rules

### ***I-601 Provisional Waiver, State-side processing, What does it mean?***

The USCIS just announced new rules that reduce the time U.S. citizens are separated from their spouses, children and parents, who are in the process of getting their green cards. Under the new process:

Beginning March 4, 2013, eligible applicants filing the I-601 application for waiver of unlawful presence in the United States ('I-601A waiver') can now file their waiver request in the U.S. and can be granted provisional waiver approval. Applicants would be required to leave the U.S. briefly in order to return to their native country and pick up their visa without the long delays currently associated with I-601 waiver processing at the overseas embassies.

Applicants are still required to demonstrate that time apart from their American spouse, child or parent would cause "extreme hardship" in the waiver application. The new procedure will significantly reduce a family's time apart and in some cases to as little as 1 week. Compared to the previous procedure, this rule is designed to keep families together during the waiver process.

According to Alejandro Mayorkas, director of U.S. Citizenship and Immigration Services, "The law is designed to avoid extreme hardship to U.S. citizens, which is precisely what this rule achieves. The change will have a significant impact on American families by greatly reducing the time family members are separated from those they rely upon." The new rule, in addition to immigrants who entered without inspection at the border, also applies to immigrants who

overstayed a visa for more than six months and have a 3 year bar from reentering and those who overstayed for more than one year and have a ten year bar.

The new rule allows all of those in the above categories to apply for a waiver of their over-stay & unlawful presence without first leaving the U.S.

In addition to proving the extreme hardship, to qualify applicants are also required to:

1. Be present in the U.S. at the time they file for the waiver;
2. Be a beneficiary of an approved immediate relative petition or I-130;
3. Have a case pending with the Department of State based on the approved immediate relative petition and paid the immigrant visa processing fee;
4. Depart the United States to obtain the immediate relative visa; and
5. Be barred from readmission into the U.S. based only on unlawful presence or over-stay in the U.S. (subject to the 3 & 10 year bars) and no other grounds.

**Note:** Only applicants who are barred from readmission into the U.S. based only upon **only** one (1) illegal entry and unlawful presence or over-stay are eligible. Those with other, additional grounds of inadmissibility, e.g. multiple unauthorized entries after long stay in the U.S, criminal records/history, prior deportation, are not eligible for I-601A.

For applicants who started the visa application process and received a consulate interview date in their native country prior to January 3, 2013:

They are not eligible to apply for I-601 waiver and must continue the interview process at the embassy **unless:**

1. They terminate their immigrant visa registration with the National Visa Center (NVC), this allows the State Department to return their file to USCIS and terminate their approved I-130.
2. Then file a new I-130 based on the

same relationship, which would result in a new NVC case after the approval of the new I-130.

### **If the applicant is in removal or deportation proceedings:**

If and once the I-601A is approved, the applicant should petition the immigration court to terminate his/her removal case before departing the U.S. for consular procession. If the I-601A is approved after the removal case is administratively closed the applicant should *not* depart the country before removal case is **terminated** with the immigration court.

**Caution!** Administrative closure of a removal case is significantly different from termination of a removal case. Leaving the country for consular processing when your case is administratively closed would be "self-deportation." Make sure your case is **terminated** by the immigration court before you depart for consular processing.

*Please visit or contact one of our attorneys at Paschal Nwokocho Law Offices if you need further clarification about these issues.*



### **DACA Application, Who is covered? Am I eligible?**

On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of two years, subject to renewal, and would then be eligible for work authorization.

Deferred action for Childhood Arrivals (DACA) is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion by the immigration service. Deferred action or DACA is an executive action by President Barack Obama absent

action by congress and therefore does not provide an individual with lawful status. DACA does however provide eligible candidates with employment authorization for 2 years.

To be eligible for DACA consideration, you have to show that you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16<sup>th</sup> birthday;
3. Must be at least 15 years or older, unless you are currently in removal proceedings (deportation process) or have a final removal or voluntary departure order;
4. Have continuously resided in the United States since June 15, 2007, up to the present time;
5. Were physically present in the United States on June 15, 2012, or your lawful immigration status expired as of June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the U.S.; and
7. That you have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

### **Tips for DACA Applicants**

**Travel:** Certain travel outside the United States may affect the continuous residence guideline. Travel outside the United States that happened before August 15, 2012 will not interrupt your continuous residence if the *travel was brief, casual, and innocent*. If you travel outside the United States after August 15, 2012 and before your request for DACA is adjudicated, you will not be considered for DACA under this process.

DACA will terminate automatically if you travel outside the U.S. without receiving advance parole (advance approval) from USCIS. If USCIS approves your request for deferred action, you may travel outside the U.S. only if you receive advance parole from USCIS before traveling.



**Myth: I have A criminal record so I am not eligible for DACA**

**Wrong. [Fact:]** Not all criminal records will disqualify you for DACA. There needs to be a clear distinction made between a felony conviction, a significant misdemeanor conviction and 3 or more non-significant misdemeanors. DACA rules specifically state what offenses constitute a felony or significant misdemeanor that will make an applicant ineligible for Deferred Action.

**Myth: Offenses criminalized as felonies by state immigration laws are felonies for DACA.**

**Wrong. [Fact:]** Immigration offenses characterized by state laws as felonies will not be classified as such under DACA.

**Myth: DHS will consider my expunged or juvenile conviction as an offense making me ineligible for DACA**

**Wrong Again. [Fact:]** Expunged convictions and juvenile convictions will not automatically disqualify you. Requests with these types of records are assessed on a case-by-case basis to determine whether, under the particular circumstances, a favorable decision is warranted on the case.

If you have questions about DACA or any other issues in this newsletter, please contact our office immediately. We can help you determine what process is relevant to your particular case or situation or for any of the issues raised in this article.



### ***Did you know?...***

- The **H-1B Visa** rush is upon us. April 1, 2013 is the first day that eligible individuals can file for H-1B status. We expect the available 85,000 visas will be used up in the first few months of availability.

If you are considering H-1B for 2013, take action now!

Contact us for more information.

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### ***Reader's Corner***

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Readers are encouraged to send questions and comments to Counsel at Paschal Nwokocha Law Offices.

To subscribe to or unsubscribe from Counsel, or to receive copies of Counsel for your business, please send your request to:

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### **Disclaimer**

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### **Recent Success Story**

With the administration's continued focus on I-9 Audit of employers, an enforcement procedure known as the "silent raid" where employers are punished for hiring illegal immigrants, havoc has been wreaked on small businesses. Following this silent raid strategy, our office successfully helped a small business in Minnesota challenge an I-9 Audit fine of over \$96,000 levied on the business by ICE based on ICE's allegations of I-9 violations. We helped the client challenge ICE's determination. The fine would have damaged the client's business and put them at the risk of closing. While we were ready to litigate the matter before the Court, we successfully helped the client reach a settlement with ICE of 50% of the initial fine amount. At Paschal Nwokocha Law Offices we are experienced with helping businesses with I-9 Audits, I-9 training and the administrative proceedings that follow.

*If you need legal services relating to immigration or other legal issues and would like to schedule a consultation...*

**Call us for an appointment**

**612.465.0060**

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