



“AMNESTY” PROGRAM FOR NONCITIZEN SPOUSES OF U.S. CITIZENS

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On June 18, the U.S. Department of Homeland Security (DHS) announced that it was rolling out a new process for a specific category of noncitizens. The program is being described by the Biden administration as an effort to “promote family unity in the immigration system.” Specifically, it will allow the spouses of U.S. citizens currently in the United States without being admitted or paroled to be officially “paroled.”

In immigration law parlance, a grant of “parole” simply means being allowed to enter or remain in the U.S. without a legal basis to do so. Usually, this is done for humanitarian reasons or because allowing entry has some significant public benefit that merit a favorable exercise of discretion from DHS. Parole is different from “admission.” Admission occurs when an immigration officer allows a foreign person to enter the U.S. under a visa or other entry document.

Under current law, a U.S. citizen can sponsor a spouse for permanent residency, even if the spouse has overstayed a legitimate admission. For example, Susie Thailand enters the U.S. as a tourist from Thailand on a 90-day visa. Susie then marries Bill American after a quick romance. A year later, Bill decides he wants Susie to work in the U.S. and sponsors her for permanent residency (and the corollary work permit). U.S. Citizenship and Immigration Services (USCIS) will approve this permanent residency petition despite the fact that Susie has significantly overstayed her tourist visa because her initial entry was lawful. However, if Susie crossed into the country without admission and then married Bill, she would have to leave the country, seek a waiver of inadmissibility and then return to the U.S. – if and when the waiver is granted. This process can involve a long period of separation for the married couple. In effect, the upcoming DHS proposal seeks to eliminate this difficulty and allows spouses of U.S. citizens who entered the country illegally to remain in the U.S. throughout the permanent residency process.

Although the details of the program are not yet final—a forthcoming notice in the Federal Register will address the application process and fees—USCIS has released information on eligibility for the program. To

be considered for a discretionary grant of parole, the applicant must be: (1) present in the U.S. without admission or parole; (2) have been continuously present in the U.S. for at least 10 years as of June 17; and (3) have a legally valid marriage to a U.S. citizen as of June 17. In addition, the applicant must not have a “disqualifying criminal history” or “constitute a threat to national security or public safety.” Importantly, noncitizen children of spouses granted parole under the program (i.e., those born outside the U.S. prior to the marriage to the U.S. citizen) may also be considered eligible for parole on a case-by-case basis. While this might seem like a relatively small group of eligible applicants, DHS estimates that 500,000 noncitizen spouses and 50,000 noncitizen children of such spouses will be eligible to seek the benefits of this newly announced program.

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